

Planning, Development and Infrastructure Bill 2015:

Infrastructure Frameworks

Briefing Paper

September 2015

What is the purpose of this paper?

1. On 8 September 2015 the South Australian Government introduced the Planning, Development and Infrastructure Bill 2015 (**Bill**) into the South Australian Parliament.
2. Part 13 of the Bill concerns infrastructure frameworks. The purpose of this paper is to provide detail regarding infrastructure frameworks and an outline of potential issues for Councils.
3. The paper discusses:
 - (a) infrastructure schemes;
 - (b) funding arrangements; and
 - (c) infrastructure works.

What are the key issues in respect of the infrastructure frameworks?

4. Key issues with respect to the infrastructure framework are :
 - (a) there are limited opportunities for Councils to be involved in the development of infrastructure schemes or funding arrangements;
 - (b) the funding arrangements under Part 13 of the Bill enable the imposition of liability for the cost of a broad range of infrastructure on Councils;
 - (c) a Council may need to raise its contribution to infrastructure costs by entering into commercial financing arrangements;
 - (d) a Council must impose a charge on rateable land with respect to the reimbursement of the Council's contribution (infrastructure charge);
 - (e) despite the infrastructure charge being a charge on rateable land mandated by the State, the infrastructure charge is likely to be perceived to be a Council tax rather than a State tax;
 - (f) Councils will be financially exposed to the extent that the infrastructure charge does not recover the amount of debt funding secured by the Council to pay its contribution of the infrastructure costs;
 - (g) proposed consequential amendments to the Local Government Act 1999 (LG Act) will subordinate Council regulation of roads and activities on roads to development authorisations granted under the Bill; and
 - (h) aspects of Part 13 of the Bill require amendment to correct errors, provide clarity and rationalise the regulatory framework under Part 13 with other systems of regulation relating to infrastructure.
5. There is a need for better infrastructure planning and coordination in South Australia. Councils could benefit through a legislative scheme which facilitates urban revitalisation projects by Councils and private proponents. Options for this type of regulatory framework, however, should be considered in detail with input from relevant stakeholders, including the Councils and the Local Government Association of SA (**LGA**).

6. There is uncertainty regarding aspects of the operation of Part 13 and considerable potential exposure for Councils. In these circumstances, it is reasonable to request the removal of Part 13 from the Bill pending further regulatory analysis. Opportunity for reintroduction of a modified infrastructure framework could occur in the next planning reform bill scheduled for 2016.
7. A regulatory impact assessment was undertaken in respect of the State government's response to the Expert Panel on Planning Reform's recommendations.¹ The Regulatory Impact Statement (**RIS**) considers the Government's response to the recommendations of the Expert Panel on Planning Reform at a conceptual level and does not consider the detailed regulatory frameworks in the Bill.
8. A thorough regulatory impact assessment of viable options for infrastructure coordination and funding could be undertaken to ensure that the optimal approach to infrastructure coordination and funding is adopted. A framework for this analysis is provided for in the *South Australian Better Regulation Handbook*.

¹ MacroPlanDimasi *Regulatory Impact Statement The Government Response South Australian Planning Reform* (September 2015).

Infrastructure schemes

What is an infrastructure scheme?

9. The Minister may initiate a scheme for the provision of essential infrastructure and the undertaking of any related development on their own initiative or at the request of any person or body interested in the provision or delivery of the infrastructure.
10. The term 'essential infrastructure' is broadly defined as:²
 - (a) *infrastructure, equipment, structures, works and other facilities used in or in connection with:*
 - (i) *the generation of electricity or other forms of energy; or*
 - (ii) *the distribution or supply of electricity, gas or other forms of energy; and*
 - (b) *water infrastructure or sewerage infrastructure within the meaning of the Water Industry Act 2012; and*
 - (c) *transport networks or facilities (including roads, railways, busways, tramways, ports, wharfs, jetties, airports and freight-handling facilities); and*
 - (d) *causeways, bridges or culverts; and*
 - (e) *embankments, walls, channels, drains, drainage holes or other forms of works or earthworks; and*
 - (f) *testing or monitoring equipment; and*
 - (g) *coast protection works or facilities associated with sand replenishment; and*
 - (h) *communications networks; and*
 - (i) *health, education or community facilities; and*
 - (j) *police, justice or emergency services facilities; and*
 - (k) *other infrastructure, equipment, buildings, structures, works or facilities brought within the ambit of this definition:*
 - (i) *by the Planning and Design Code; or*
 - (ii) *by the regulations.*
11. To initiate an infrastructure scheme, the Minister develops an outline of the scheme. The Minister must take reasonable steps to consult with any Council within whose area the scheme is proposed to be undertaken.³
12. Following the development of the scheme outline, the Chief Executive of the Department of Planning, Transport and Infrastructure (**DPTI**) must appoint a scheme

² Clause 3, Bill.

³ Clause 155, Bill.

coordinator (being a person, committee or precinct authority). The role of scheme coordinator is to:⁴

- (a) prepare scoped and costed proposals for the scheme that accord with any relevant design standards;
- (b) develop a work program for the scheme;
- (c) undertake consultation in relation to the scheme in accordance with any requirement under the Community Engagement Charter;
- (d) if it is proposed that a funding arrangement should be established, to develop the funding arrangement; and
- (e) such other functions assigned by the Minister after consultation with the Chief Executive.⁵

13. The scheme coordinator is not required to consult with any person in fulfilling this role.

14. After receiving a report from the scheme coordinator, the Minister determines whether or not to proceed with the scheme. The Minister is not required to consult with Councils prior to determining this matter. The Minister is required to provide a copy of the report on an approved or varied funding arrangement to the ERD Committee and publish a copy on the SA planning portal.⁶ If the scheme proceeds then the final outline of the scheme will be gazetted and the scheme coordinator will have the role of delivering the scheme. This role includes:

- (a) overseeing the delivery of any infrastructure or works that form part of the scheme;
- (b) if a funding arrangement is approved, administering the funding arrangement;
- (c) providing advice to the Minister about what should happen on the completion of the works associated with the scheme;
- (d) providing advice on any other matter at the request of the Minister or as the scheme coordinator thinks fit; and
- (e) fulfilling such other functions assigned by the Minister after consultation with the Chief Executive.⁷

15. Clause 158(4) of the Bill enables the Minister where he or she considers it necessary or appropriate to do so to amend the outline of a gazetted infrastructure scheme at any time. A variation is to be made by instrument notified in the *Gazette* and published on the SA planning portal.

What are the implications of infrastructure schemes for Councils?

Consultation with Councils required on infrastructure scheme outline

16. The only role for Councils in the development of infrastructure schemes expressly provided for in Part 13 of the Bill is being consulted on the Minister's draft outline of an

⁴ Clause 156, Bill.

⁵ Clause 157, Bill.

⁶ Clause 158, Bill.

⁷ Clause 159, Bill.

infrastructure scheme.⁸ This consultation occurs prior to the development of details of the scheme by the scheme coordinator.

Development of infrastructure schemes

17. Councils are not expressly included in the list of potential scheme coordinators.
18. A Council could have a role in the development of an infrastructure scheme where the Council is appointed as the scheme coordinator. This could occur where the Council is a 'precinct authority' under the *Urban Renewal Act 1995*.

Scheme coordinator is not required to consult with Councils

19. There is no specific requirement on the scheme coordinator to consult with relevant Councils when:
 - (a) scoping and costing proposals for the scheme;
 - (b) developing a work program for the scheme;
 - (c) developing a proposed funding arrangement; or
 - (d) undertaking other functions assigned to the scheme coordinator by the Minister.
20. The scheme coordinator is required to undertake consultation in relation to the scheme in accordance with any requirement under the Community Engagement Charter.⁹ The Bill does not expressly provide for consultation with Councils under the Community Engagement Charter.
21. The Community Engagement Charter is established and maintained under clause 44 of the Bill by the Minister. Various principles must be taken into account in relation to the preparation of the Community Engagement Charter. None of these principles relate expressly to the role of Councils.
22. The Community Engagement Charter must relate to public participation with respect to preparation or amendment of any statutory instrument or other circumstance where the Bill contemplates that compliance with the charter is required.¹⁰
23. Rather than mandate compliance with the Community Engagement Charter, clause 157(1)(c) of the Bill only requires the scheme coordinator to undertake consultation to the extent required by the charter. There is disconnect between the manner in which the Bill contemplates the Community Engagement Charter will be applied by provision of the Bill and the manner in which the Community Engagement Charter will apply to the scheme coordinator which should be addressed.
24. The Community Engagement Charter does not give rise to substantive rights or liabilities. A failure to comply with the Community Engagement Charter does not invalidate a decision or process under the Bill.¹¹

⁸ Clause 165(5)(b), Bill.

⁹ Clause 157(1)(c), Bill.

¹⁰ Clause 44(4), Bill.

¹¹ Clause 44(10), Bill.

No consultation with Councils on the final outline of a scheme

25. The Minister is not required to consult with Councils prior to determining to proceed with an infrastructure scheme. There is no reference to the Community Engagement Charter in respect of determining the final outline of a scheme.¹²

No consultation with Councils on a variation of a scheme

26. The Minister is not required to consult with Councils prior to varying an infrastructure scheme. There is no reference to the Community Engagement Charter in respect of varying a scheme.¹³

¹² Clause 158, Bill.

¹³ Clause 158, Bill.

Funding arrangements

What is a funding arrangement?

27. One potential aspect of an infrastructure scheme is a funding arrangement. The outline of an infrastructure scheme developed by the Minister may outline a funding arrangement for the scheme. If so, the scheme coordinator would develop the funding arrangements and report on these to the Minister.¹⁴
28. A funding arrangement takes effect only if approved by the Governor under section 160(3) of the Bill. A variation of a final outline of a scheme by the Minister can include a proposal to vary a funding arrangement which has been approved by the Governor. Presumably, a proposed variation also needs to be approved by the Governor under section 160(3) of the Bill, although this is not expressly set out in the Bill.
29. Funding arrangements may:
- (a) include one or more of the following:
 - (i) the provision of funds from public or private sources (including by the Treasurer providing guarantees);
 - (ii) exemption from one or more taxes, levies or local government rates imposed under a law of the State;
 - (iii) the collection of contributions from Councils;
 - (b) include a scheme for rebates and adjustments in relation to Council contributions;
 - (c) provide for any charge or other amount to be imposed, collected, rebated or adjusted according to a determination of the Essential Services Commission of South Australia, or some other specified person or body;
 - (d) include a scheme for other works to be undertaken on an 'in kind' basis; and
 - (e) provide for other matters determined by the Minister.¹⁵
30. Clause 160(1)(iii) indicates that a funding arrangement may provide for the collection of contributions from Councils. A contribution area may be specified for an infrastructure scheme. A contribution area may not align with Council boundaries and, therefore, multiple Councils may be liable to make contributions for infrastructure (ie be constituent Councils).
31. Once there is a funding arrangement in place providing for contribution areas then the Councils whose Council areas fall within the contribution area are responsible to make contributions under the infrastructure scheme.¹⁶
32. The infrastructure funding mechanism is modelled on Part 1, Chapter 5 of the *Natural Resource Management Act 1995 (NRM Act)*. Under this part of the NRM Act, Councils are to make contributions to the relevant Natural Resources Management Board (**NRM Board**) and recoup these moneys through a charge on rateable land.

¹⁴ Clauses 155 and 157, Bill.

¹⁵ Clause 160(1), Bill.

¹⁶ Clauses 163 and 164, Bill.

33. The infrastructure costs which a Council may be exposed to under Part 13 of the Bill are, however, of a different degree of magnitude to the NRM contributions made by Councils under the NRM Act. The amount collected by Councils to fund the NRM Boards equates to the NRM levy on properties and is proximate in time. Neither of these factors may be the case in respect of the contributions under Part 13.
34. Clause 164(2) of the Bill provides a process for apportioning contributions between constituent Councils. However, under clause 164(3) of the Bill the Minister may determine that there should be differentiating factors applied with respect to the calculation of the respective shares of the constituent Councils taking into account any matter prescribed by the regulations and make adjustments of the shares of the constituent Councils which would otherwise apply on the basis of the factors set out in clause 164(3). Notwithstanding clauses 164(2) and 164(3), clause 164(4) indicates that the share of each constituent Council will be determined by the Minister after consultation with the Council and the scheme coordinator.
35. A contribution to be paid under an infrastructure scheme is a debt owed by the Council which is payable on 30 September, 31 December, 31 March and 30 June of each year. Funds contributed in a financial year which are unspent may be spent in a subsequent financial year.¹⁷
36. In order to reimburse itself for the amount contributed, a Council must impose an infrastructure charge on rateable land.¹⁸ The term 'rateable land' is likely to be interpreted as having the same meaning as in the LG Act (although this is made slightly ambiguous by an express provision to this effect in relation to clause 164 of the Bill).
37. The infrastructure charge must be consistent with the funding arrangement established for the infrastructure scheme and any determination of the Minister.¹⁹
38. Clause 167(3) of the Bill provides that except to the extent that the contrary intention appears, Chapter 10 of the LG Act applies to and in relation to an infrastructure charge as if it were a separate rate under that Chapter. Clause 167(4) makes specific provision for the application of Chapter 10 of the LG Act with modifications to an infrastructure charge. There are detailed drafting issues to be addressed for Chapter 10 of the LG Act to apply in a practical manner to an infrastructure charge.
39. For example, section 154(10) of the LG Act provides for the repayment of funds raised by way of a separate rate declared to raise funds for a particular purpose where the purpose does not proceed or there is an excess of funds for the purpose. The funds may be credited against future liabilities for rates in respect of the land on which the separate rate was imposed or refunded proportionately to the persons who paid the rates. Care will need to be taken by Council in respect of this obligation to repay given that moneys standing to the credit of the statutory funds for a scheme will not be repaid to the constituent Councils.
40. Rebates for rates will apply to infrastructure charges. Again, this may expose Councils to financial liability where formerly rateable property subject to an infrastructure charge becomes eligible for rebates.
41. Clause 168 of the Bill provides that a Council may recover an amount in accordance with the regulations on account of the costs of a Council in complying with the requirements of the scheme contribution provisions of the Bill (Subdivision 3, Division 1, Part 13 of the Bill).

¹⁷ Clauses 165 and 166, Bill.

¹⁸ Clause 167(1), Bill.

¹⁹ Clause 167(2), Bill.

42. The Minister must establish a fund for each scheme. A fund consists of any money payable by a Council and recoverable under Subdivision 3. Also paid into the funds will be returns on the funds' investment, money advanced by the Treasurer for the purposes of the fund, money appropriated from the Consolidated Account for the fund and any other money paid into the fund under this or any other Act.
43. Amendment of clause 169(2) of the Bill is required because, as drafted, the payment by the Council *plus* the amount recovered as an infrastructure charge would be paid into the fund.
44. Moneys in the fund may be applied towards the purposes of the relevant scheme in accordance with any directions or approvals of the Treasurer made or given after consultation with the Minister.²⁰
45. If a fund is wound up, the balance is transferred to the Planning and Development Fund or another fund or account determined by the Treasurer.

What are the implications of funding arrangements for Councils?

No role in respect of development of a funding arrangement

46. Councils will be consulted by the Minister in respect of the outline of an infrastructure scheme.²¹ The outline may indicate that a funding arrangement should be included in the scheme. Where this is the case, the scheme coordinator is given the role of developing the funding arrangement. Except where the Council is the scheme coordinator, there is no role accorded to Councils in the development of the funding arrangement, even by way of consultation, despite a potential for the funding arrangement to involve the payment of Council contributions.
47. Lack of consultation prior to the funding arrangement coming into effect means that Councils have no formal opportunity under the Bill to inform the Minister of financial imperatives or constraints which may limit the ability of a Council to make the contribution.

No role in respect of varying a funding arrangement

48. Councils have no role in respect of the variation of funding arrangements.
49. Difficulties may arise for a Council that has secured debt funding to meet its contributions under a funding arrangement and then needs to vary the financing to meet the requirements of a varied financing arrangement. Consequences for Councils of this nature should be brought to the attention of the Minister prior to the variation of a funding arrangement. For this reason, the Bill should provide for consultation with Councils prior to the varying of a funding arrangement.

Requirement to pay contributions

50. Where an infrastructure scheme is determined to have a contribution area, the Council will be required to make contributions to statutory funds established by the Minister for the purpose of the infrastructure scheme.²² The Council is required to pay contributions to the statutory fund for a scheme quarterly in the year in which the contribution relates.

²⁰ Clause 171(3), Bill.

²¹ Clause 165(5)(b), Bill.

²² Clauses 163 and 164, Bill.

51. Where there is more than one Council in a contribution area, the contribution of the Council is determined by the Minister in consultation with the Council and the scheme coordinator.²³
52. There is a real possibility on the legislation as currently drafted that Councils will need to fund significant contributions to the costs of infrastructure either from their balance sheets or through debt financing.
53. While the Bill is suggestive of there being a correlation between the contribution made by a Council and the cost of infrastructure under an infrastructure scheme, there is no express limitation on Council contributions included in the Bill. Consequently, Councils' contributions may not be capped to the cost of the infrastructure.
54. Funding arrangements are to give effect to the principle that funding should seek to distribute the costs of the infrastructure over the lifetime of the infrastructure (**Distribution Principle**). The life of some infrastructure included within the definition of 'essential infrastructure' is of long duration.
55. There may be an inability in Councils to secure financing arrangements of a duration equal to the life of the assets. Where the financing arrangement is of shorter duration, Councils will not necessarily be able to recover the costs of its contributions through the statutory charge on the land at the same rate as contributions are made by Councils. This financially exposes Councils in respect of the shortfall.
56. There is a lack of clarity in this regard to the Distribution Principle as to whether the Council contributions should be distributed over the life of the infrastructure or whether this principle applies only to the reimbursement of Councils via the statutory charge. It is most likely given the other provisions of the Bill (and the reality that the upfront costs of infrastructure need to be met) that it is not the intention of the Bill to distribute the costs met by Councils in respect of the infrastructure over the life of the infrastructure.
57. There is a strong likelihood that the circumstances of Councils will alter during the currency of a funding arrangement of extended duration. There is no mechanism under the Bill for Councils to seek assistance from the State or the amendment of the funding arrangement in the event of hardship even though the duration of the funding arrangement may span decades.

Requirement to impose a statutory charge

58. A constituent Council must place a statutory charge on rateable land to recover the cost of the Council's contribution. The quantum of this charge is left to the determination of the Council, provided that this is consistent with any details of the charge determined by the Minister.
59. One of the objectives of the funding arrangement claimed by representatives of DPTI at public briefings on the Bill has been that a measure of security is provided through the statutory charge to potential financiers of infrastructure. For this to be the case, there would need to be a correlation between the aggregated infrastructure charge collected by a Council and the Council's liability under a financing agreement.
60. The perception will be that the statutory charge is a local government tax, rather than a State tax.
61. In the event of a default in the payment of the statutory charge to the Council, the Council will be exposed to the financial shortfall between the statutory charge and the

²³ Clause 164(4), Bill.

amount remitted by the Council. As is the case with rate payment default, the Council is able to sell the rateable land as contemplated in section 184 of the LG Act. This may not be a practicable remedy for default in the payment of an infrastructure charge in some circumstances. Typically the sale of a rateable property for failure to pay rates takes a minimum of six months and if complex can take more than a year.

62. The general principles applying to rates under section 150 of the LG Act will apply to the infrastructure charge (subject to modification by regulation). These principles emphasise the need for Councils to have in place hardship policies in respect of the deferral or waiving of rates. A waiver or deferral of an infrastructure charge payment from a ratepayer may expose the Council financially if the infrastructure has been debt funded by the Council.

Extended responsibility for funding infrastructure

63. Councils currently have responsibility for funding certain types of infrastructure. This includes stormwater infrastructure, Council managed roads and related infrastructure (including public lighting infrastructure).
64. The definition of 'essential infrastructure' goes beyond the types of infrastructure traditionally provided by Councils. There is a risk that Councils will be required to contribute to infrastructure costs which are currently met by the State or private sector. For example:
 - (a) electricity and gas infrastructure is provided and funded by private utility companies with these capital costs recoverable through tariffs controlled by a system of economic regulation;
 - (b) water and sewerage infrastructure (other than stormwater) is funded by the State through SA Water; and
 - (c) State roads and related road infrastructure, railways, busways and tramways are funded by the State.
65. There is no limitation in the Bill on the types of essential infrastructure which may need to be funded by Councils under an infrastructure scheme.

Recovery of Council costs

66. Councils will be exposed to the transaction costs of negotiating, documenting and managing their role under financing arrangements. Councils will also be subject to the financing costs where their contribution is debt funded. Clause 168 of the Bill provides that a Council is entitled to be paid an amount determined in accordance with the regulations on account of the costs of the Council complying with the requirements of the funding arrangement provisions in the Bill.
67. It is important that the regulations deal comprehensively with the types of costs which a Council may recover. Clause 169(4) of the Bill requires the Minister to consult with the LGA prior to making regulations for this purpose.
68. The Bill also needs to be explicit about how these costs will be met. As currently drafted, there is no express provision for the payment of these costs from the statutory funds established under clause 169 of the Bill. Provisions dealing with the administration of statutory funds will typically be construed strictly and, therefore, payment from these funds to meet Councils' costs should be expressly included in clause 169(3) of the Bill.

Infrastructure works

What are the infrastructure works provisions?

69. Infrastructure powers are provided to 'designated entities' for the purposes of infrastructure works for essential infrastructure or proposed essential infrastructure. A designated entity may carry out any infrastructure works if authorised to do so under the Bill or another Act. Authorisation can be under an infrastructure scheme.
70. Councils are designated entities along with Ministers, agencies and instrumentalities of the Crown, declared designated entities and persons acting under an infrastructure scheme (which could include private sector entities). A designated entity may carry out infrastructure works if authorised to do so by or under the Bill or an Act. The Bill does not itself authorise the exercise of the infrastructure works powers, but an infrastructure scheme under the Bill may provide this authorisation.
71. The types of infrastructure works powers which may be undertaken are broad. The powers may be exercised in respect of 'essential infrastructure' (see paragraph 10) and are listed in clause 173 of the Bill as:
- (a) installing, altering, adding to or demolishing or removing essential infrastructure;
 - (b) operating, maintaining, testing, repairing or replacing essential infrastructure;
 - (c) excavating or remediating any land;
 - (d) inspecting, examining or surveying any land and for that purpose:
 - (i) fixing posts, stakes or other markers; or
 - (ii) digging trenches or sink holes; or
 - (iii) removing samples for analysis;
 - (e) erecting, constructing, altering or demolishing or removing any structure, building, fence, barrier, bank or levee;
 - (f) carrying out any roadworks;
 - (g) carrying out activities constituting the installation, maintenance, alteration, operation or removal, or causing the installation, maintenance, alteration, operation or removal, of a traffic control device on, above or near a road;
 - (h) carrying out activities constituting the erection, construction, laying down, making, alteration or removal of buildings, structures, notices or signs, over, under, along, across, or adjacent to, a road or railway;
 - (i) without limiting a preceding paragraph, installing or removing any notice or sign;
 - (j) carrying out any water management works;
 - (k) damaging or removing vegetation; and
 - (l) carrying out other work reasonably necessary in connection with any activity referred to above (including with respect to any facilities, works or services connected with essential infrastructure).

72. Specific definitions are provided for 'roadwork' and 'water management works'.
73. Clause 175 of the Bill authorises entry onto and occupation of land for the purpose of undertaking any work or activity in connection with the exercise of a power under the infrastructure works provisions. A designated entity may authorise a person to enter onto land for the purpose of undertaking any work or activity in connection with the exercise of an infrastructure works power.
74. A designated entity may acquire land for a purpose associated with infrastructure works under and in accordance with the *Land Acquisition Act 1969*.

What are the implications for Councils?

Council as a designated entity

75. Clause 10 of the Bill indicates that '*Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not derogate from the provision of any other Act.*' Generally, therefore, the infrastructure works provisions will operate simultaneously with other legislation, including the LG Act.
76. As a 'designated entity' for the purposes of Division 2, Part 13 of the Bill, a Council may carry out infrastructure works if authorised to do so by or under the Bill or an Act. The infrastructure works provisions of Part 13 of the Bill may supplement the works powers of Councils under the LG Act.

Infrastructure works provisions of the Bill and LG Act

77. Division 8, Chapter 11 of the LG Act contains general provisions regulating authorised work. The term 'authorised work' is not defined in the LG Act. Section 228 of the LG Act requires a person authorised by an Act to carry out work on a road to:
- (a) carry out the work as expeditiously as practicable in the circumstances;
 - (b) take action that is reasonably practicable in the circumstances to minimise obstruction of the road and inconvenience to road users; and
 - (c) if a code of practice governing the work is prescribed by the regulations, comply with the code of practice.
78. These provisions are not inconsistent with the Bill and, therefore, the Bill should operate alongside the existing LG Act requirements.
79. A designated entity must make good any damage to a road arising from infrastructure works. Notice must also (except in the case of emergency) consult with the relevant road maintenance authority prior to undertaking the work. A road maintenance authority is likely in many instances to be the Council in whose Council area the road is situated (although no definition to this effect is provided in the Bill).
80. A person who breaks up or damages a road under an authorisation conferred by an Act must return the road to at least the condition that existed immediately before the action was taken. This is to the same effect as clause 174 of the Bill with respect to damage to roads due to authorised works.

Alterations of, and business activities, on roads

81. Councils regulate alterations of, and business activities on, roads. Consequential amendments to the LG Act by Part 7 of Schedule 6 of the Bill will subordinate these regulatory powers to the development authorisations.
82. Section 221 of the LG Act requires a person to have the authorisation of the relevant Council before altering a road. An authorisation is currently not required if the purpose of the alteration is to permit vehicular access to and from land adjoining the road and the alteration is approved as part of a development authorisation under the *Development Act 1993* (**Development Act**). This exemption will be replaced with a broader exemption for any alteration approved as part of a development authorisation under the Bill.
83. Section 222 requires a person to be authorised by a Council to undertake a business activity on a public road. There is currently no exemption from this requirement where the business activity is the subject of an application under the Development Act. The Bill proposes to amend section 222 of the LG Act to provide an exemption from the need to obtain Council authorisation where the use of the road is approved as part of a development authorisation under the Bill.
84. Practical issues may arise for Councils if the section 222 authorisation process is removed by a development authorisation. Current authorisations by Councils under section 222 of the LG Act address issues such as the term of occupation, indemnities to the Council and insurance requirements which need to be addressed due to Council's ownership and legal responsibility for activities in road reserves. This type of issue is unlikely to be addressed within a development authorisation.
85. A new section 234A of the LG Act is proposed by the Bill. This provision requires a person who alters a road or uses a road for a business purpose as part of a development authorisation under the Bill to comply with a design standard or other requirement applying under the Bill. To the extent that there is an inconsistency between a code or practice or other requirements applying under the LG Act and a design standard or other requirement under the Bill, that person is not required to comply with the requirements imposed under the LG Act.
86. A person who is authorised under the Bill to alter a road or use a road for a business purpose may apply to the ERD Court for a review of the conduct of a Council if that person considers that an act or omission of a Council is unreasonably preventing or delaying the ability of that person to undertake the development in accordance with the relevant development authorisation. One of the remedies available to the ERD Court is to order the Council to take such action as the ERD Court thinks fit.

How can you be involved in consultation on the Bill?

Consultation sessions

The LGA has organised a series of consultation sessions to be held in the metropolitan and regional areas. The current schedule for these is available at

<https://www.lga.sa.gov.au/page.aspx?c=65494>

Additional resources

A copy of the Bill is available at <http://www.legislation.sa.gov.au/listBills.aspx?key=P>

Further information regarding the planning reform process is available on:

- the Department of Planning, Transport and Infrastructure website at http://dpti.sa.gov.au/planning/planning_reform_paper_feb_2014.

Further information

Further information can be obtained by contacting LGA Director Planning & Development, Lisa Teburea on 8224 2068 or email lisa.teburea@lga.sa.gov.au