

expiration of the lease.

- Residual values cannot be paid in the form of prior advances or loans nor are security deposit type arrangements prevented.
- Interest payments should not involve prepayment or "interest only" loans such that the residual funds the principal repayment.

In applying these principles to a property finance structure, certain additional comments should be made. Firstly, although the ruling states that rental payments should be paid in equal instalments, it would be expected that in circumstances where the market rate of lease payments increase on an indexed or similar basis, the ruling would not be infringed. Secondly, the ruling requires that the residual value be exercised at a market value. In most property financing transactions the residual is set at the cost of the development and accordingly care needs to be taken in setting the residual.

In addition, the Taxation Office also requires that leveraged lease and trust financing transactions must be "tax positive" over the term of the financing arrangement. The Commissioner accepts that the "tax positive" nature of the transaction should be calculated without regard to any investment allowance deduction entitlement. Although there are similar arguments to suggest that the Division 10C and 10D deductions should also be excluded from any such calculation, the Taxation Office have not apparently up to the present time accepted this.

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) BILL (Qld)

- Karen Trainor, Associate, Henderson Trout, Solicitors, Brisbane.

The Planning and Environment Bill currently before the Queensland Parliament proposes sweeping changes to the town planning and subdivision approval processes in Queensland.

The legislation will apply to all local authorities in Queensland and has two major objectives:

- it will provide a code for orderly development and protection of the environment in Queensland;
- it will provide a framework for applications for development and appeals.

The key changes envisaged by this legislation concern

- protection of the environment.
- streamlining of planning approval processes.
- the Planning and Environment Court.

Protection of the Environment

The definition of the "environment" has been expanded to include "all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings." This expanded definition will overcome recent Supreme Court rulings that the environment under the Local Government Act did not include flora and fauna.

Regulations to the Act will identify "designated developments" for which an environmental impact statement will be compulsory. Such developments will include cattle feed lots, mining operations, marinas, development within flood plains, the national estate and sensitive coastal areas. The EIS will be lodged with and form part of the development application.

The Bill clarifies the setting of terms of reference for an environmental impact assessment. Currently this process is somewhat confusing.

A local authority will still have a discretion to require an applicant to submit an environmental impact statement for developments other than designated developments.

Streamlining the planning approval process

A number of initiatives are proposed to reduce the length of time required for planning approvals and to meet the many and varied applications for development.

Developers will now be able to:

- rezone land in stages;
- lodge combined applications for rezoning town planning consent and subdivision to avoid the time consuming process of sequential approvals;
- lodge subdivision applications while Council is still considering the rezoning of land;
- apply for staged subdivisions (this is presently available only in some local authorities).

The Bill has formalised the often contentious processing of engineering drawings and specifications by a local authority to achieve sealing of subdivision plans.

The Bill also attempts to resolve some of the more contentious subdivision issues including parkland contributions and downstream drainage. A local authority will be required to consider the method of disposal of drainage and whether or not that will have a detrimental affect on neighbouring land. The local authority can impose as a condition of subdivision approval that the developer pay the cost of or a contribution to the cost of acquisition of land necessary to effect drainage discharge.

Planning and Environment Court

The Local Government Court is to be renamed the Planning and Environment Court.

The appeal process has been simplified.

- The form of Notice of Appeal will be made available with Council's notice of its decision.
- Appeals can be filed by post.
- More information concerning the nature of an application will be available for objectors. Copies of applications will be available for purchase from the local authority.
- Unincorporated associations will have a right of appeal.

The Land and Environment Court will have power to make findings on the interpretation of planning scheme provisions on an application for a declaration.

Any person will be able to apply to the Land and Environment Court for an injunction or a declaration against a person who has breached a provision of a town planning scheme. The right to prosecute breaches of town planning schemes in the Magistrates Court will be preserved. However, local authorities need not be the only prosecutors. Any person whether or not they are personally affected by the breach can commence a prosecution in the Magistrates Court.

Government Departments will be given formal rights to object to applications.

It is understood that Parliament's consideration of the Bill will recommence in August or September 1990.

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NATIONAL PUBLIC WORKS PUBLICATIONS Construction Publications has been requested to inform Newsletter subscribers of the availability of two National Public Works Conference publications.

These A4 format publications are:

- Guidelines For Cost Planning Consultant Services, Australian Government Publishing Service, October 1988 (31 pages).
- Life Cycle Costing, Australian Government Publishing Service, October 1988 (59 pages).

Both publications are available at the cost of \$10.00 each including packaging and postage from:

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