



McLEODS
BARRISTERS & SOLICITORS

Planning Law Update

A review of Planning and Environmental Law in Western Australia

Prostitution Amendment Act 2008 - Draft Planning Policy

The Prostitution Amendment Act 2008 (“Amendment Act”) has been passed and at least one of the matters delaying proclamation is the settling of the related Western Australian Planning Commission (“WAPC”) Planning Bulletin.

Planning Bulletin 90

The WAPC published Planning Bulletin 90 in June 2008 (“Bulletin”) containing a draft planning policy in regard to planning controls under the Amendment Act (see: <http://www.wapc.wa.gov.au/Publications/1633.aspx>). A further media statement was released by the Minister for Planning and Infrastructure on 24 July 2008 requesting further submissions by 14 August 2008 (see: www.wapc.wa.gov.au/Publications/1633.aspx).

“This may be the last opportunity for local governments to influence the way the “Planning and Development Control” provisions ... will impact on local government.”

Issues for local government

The Bulletin and the draft planning policy raise some serious questions for local government including:

- The meaning of “use permitted” in s.21X of the Amendment Act and the ability of local governments to impose conditions on, and control “existing well managed places”. The intent seems to be that the CEO of the Department of Racing, Gaming and Liquor will give the necessary “planning approval”, but no consideration seems to have been given to the necessary conditions of planning approval, and how any condition imposed by the CEO will be enforced under a local planning scheme. Special scheme provisions may be necessary and the WAPC Policy should address this problem;
- The lack of detail and guidance provided to local governments (i.e. no model scheme text provisions) and the potential for inconsistent and conflicting approaches;

- The lack of consultation and education given to member of the general public, leading to often unjustified or misinformed concern from residents;
- The failure to properly distinguish between the problems associated with regulating “small owner operated businesses” and larger commercial businesses.

Formulating submissions

We urge any local government, if it has not yet done so, to formulate and submit comments in regard to the draft policy. This may be the last opportunity for local governments to influence the way the “Planning and Development Control” provisions in Division 8 of the Amendment Act will impact on local government.

McLeods are available to assist local governments in drafting of any submissions to the WAPC. We are also available to assist in drafting appropriate scheme amendments.

Please contact Denis McLeod if you require any further assistance.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case

