COMMENT ON DEVELOPMENT OF MAJOR MINERAL PROJECTS IN QUEENSLAND

By Peter L. Ellis*

The principal paper focusses on the provisions of the 1981 amendment to the *State Development and Public Works Organization Act* 1971–1981, an amendment which introduced a new Part V to make provision for the declaration and administration of "prescribed developments" in Queensland. The author analyses the legal implications of the amendment (particularly for a potential resource developer), and where he considers it to be appropriate, he compares the "prescribed development route" with other options such as franchise agreements, or ad hoc government decisions.

Whilst it is very important for a prospective resource developer to be aware of his rights and obligations in relation to any Queensland statute that may affect him, it is equally important for all parties to be aware of the policy requirements that have been embodied in such statutes. Only by a careful analysis of relevant policies is it possible to answer some of the "what if?" questions posed in the principal paper.

In presenting the second reading of the Bill to amend the *State Development and Public Works Organization Act* 1971–1979, to Parliament (25 March 1981), the Minister highlighted two significant provisions in respect of prescribed developments. Firstly, he indicated that major mining and mineral processing operations locating in Queensland, once prescribed, must enter into agreements with local bodies, and that such agreements must include the provision and financing of the infrastructure required to service each project and the population increase caused by the development. Secondly, he drew attention to the fact that the Bill provided a mechanism whereby large-scale mineral processing or reprocessing plants which are important to the State in terms of regional economic development, State economic development, and employment generation can receive the necessary land use approvals as expeditiously as possible.

Although State departments and most statutory authorities were able to form satisfactory (and legally binding) agreements with large developers for the provision of State infrastructure services, this was not the case for local authorities. They were either constrained by the provisions of the Local Government Act or alternatively had no say whatsoever, for instance, when a development occurred in an adjacent local authority. One of the main thrusts of the amendment therefore was to make provision for affected local authorities (and their ratepayers) to be protected from the burden of paying for infrastructure such as urban roads, water supply, sewerage, and recreational and social amenities required by the major developers to service their projects.

It is very important to note that the second significant provision in the amendment i.e. the power of the Governor in Council to determine land-use applications in respect of prescribed developments, is effectively confined to large scale mineral processing or reprocessing plants such as aluminium smelters, cokeworks etc. This is so because in the case of mining proposals, the Mining Act

takes precedence over the Local Government Act, i.e. mining is a permitted land use within the boundaries of a Mining Lease.

The principal paper raises the question of the Government's intent in relation to approved Infrastructure Co-ordination Plans, and the nature of consultation with the developer in the process. It is therefore appropriate to quote directly from the Minister's second reading speech in order to understand the Government's policy in relation to these matters. He stated

> Each (infrastructure co-ordination) plan will broadly identify what infrastructure is required, the total cost of such infrastructure and the sharing of the costs between the developer and the responsible authorities.
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> These plans will not be land use plans, nor will they take the place of town planning schemes. They will refer solely to the infrastructure requirements for a prescribed development. They will include, however, requirements for the training of the necessary workforce, preferably Queenslanders of course, both in advance of the commissioning of the plant and to service the continuing needs of the plant.
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> In the preparation of an Infrastructure Co-ordination Plan, the Co-ordinator-General will consult with the Treasury Department, other Government departments and statutory authorities, local bodies and the project sponsor.
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> (The provision to ensure compliance) is a critical component of the State Government's policy to ensure that costs of the provision of infrastructure are not a burden upon a small group of ratepayers nor upon the State as a whole. If a project sponsor is not prepared to shoulder his fair share of infrastructure costs, then much of the advantage of the development to Queensland is lost.

A deal of concern is expressed in the principal paper to the effect that the proponent of a prescribed development might have little say in the preparation of an Infrastructure Co-ordination Plan. Indeed it is pointed out that ss.34 and 35 do not contain specific provisions requiring the Co-ordinator-General, the Minister or the Treasurer to consult with the developer and take his views into account in formulating an infrastructure co-ordination plan. The author believes that such "is surely as extraordinary situation!" If s.34 is carefully analysed (taking into account the Government's stated policy in respect of infrastructure co-ordination plans) it could be argued that s.34(2)(b) which deals specifically with consultation, requires the Co-ordinator-General to work closely with the Treasury and the affected local bodies in the first instance (surely because those officials are charged with the provision and financing of State infrastructure). It then gives the Co-ordinator-General discretionary authority to consult "with such other bodies and persons as he thinks fit".

In discharging his responsibilities under the Act it is inconceivable that the Co-ordinator-General would not consult with the proponent in terms of s.34(2)(b). However, should critics of s.34 of the Act entertain serious doubts as to the likelihood of liaison with the proponent of a prescribed development, it may be appropriate to look at the practicalities of the matter.

Firstly, in the case of the first infrastructure co-ordination plan to be determined, i.e. the Queensland Alumina Ltd. Fourth Expansion, constant liaison, consultation, and negotiation took place between Government and local body officers and the company.

Secondly, it surely must not be forgotten that an infrastructure co-ordination plan is designed to set out clearly, for all interested parties to see, just what certain costs of production are to be. This is a very important aspect. The plan has nothing to do with State taxes; it is not a revenue-generating instrument. It is a statement of fundamental costs to the developer, costs which Government policy says may not be passed onto local ratepayers or State taxpayers. The costs set out in a plan and their allocation are a very important input to the project developer. They

should figure prominently in his feasibility studies, and conceivably, if they are higher than a certain level, the proposed project may not be viable. However, this is rarely likely to be the case. Local authority (urban) infrastructure, although costly, does not compare in magnitude with basic project infrastructure such as railways, ports etc.

The author of the principal paper states that "the concern is rather with the imposition of financial terms or infrastructure standards which severely affect the likely returns to the developer and which may cause cancellation of the project after the developer has perhaps spent millions of dollars on investigations". In response, it could be stated that these "millions of dollars" were badly spent! It is repeated — infrastructure co-ordination plans deal with works needed by the developer, not by the State nor local bodies. Relevant costs are part of the developer's costs of production. If these costs are not included in the expensive pre-commitment feasibility studies the developer could be said to be grossly inefficient.

This discussion leads naturally to another matter raised in the principal paper as a potential problem for the proponent of a prescribed development. The author draws attention to s.36 of the new Part V of the Act (Variation of approved plan), and notes that it

> provides for preparation of the variation by the Co-ordinator-General in consultation with Treasury officers, consideration by the Treasurer and the Minister and finally submission to the Governor in Council without the obligation to consult with the developer.

He subsequently states that these variations would occur at a time when the developer has negotiated and obtained a financial package for the development.

The need for a provision in the Act to allow for variations in an infrastructure co-ordination plan arises simply because these plans are based on calculations of total population increase due to the proposal. That is, the Government has to estimate the increase brought about by the influx of construction workers, operational workers, service sector personnel and dependants of all these categories. The Government must rely on figures furnished by the proponent insofar as construction and permanent workforce are concerned, and also for his estimates of aggregated workforce growth over time from the date of commitment.

Experience shows that a proponent's program may vary due to a number of parameters e.g. world market fluctuations, industrial disputation, materials shortages etc. Should an infrastructure co-ordination plan be based on a certain population increase and the project be varied (by the proponent) in such manner as to (say) lessen the impact of population growth, it is very important (for the proponent) to have provision for the amendment of an infrastructure co-ordination plan accordingly. Likewise, if a project is to be expanded and accelerated in terms of an original proposal, infrastructure requirements might well need to be expanded to meet the proposed new impacts. In any case, as I have pointed out previously, it is the Government's policy that a specific plan set out the requirements of a specific prescribed development.

In summary, once the Governor in Council has approved a particular infrastructure co-ordination plan in respect of a prescribed development he is very unlikely to vary that plan unless the proponent varies the proposal substantially.

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