

Environmental Planning and Assessment Amendment Bill 2008

Analysis prepared for the NSW Greens 19 May 2008

Overview:

The Bill that has finally been presented to the parliament has some positive aspects and significant improvements over the exposure draft circulated in April 2008 but many of the major concerns remain.

The Bill's Positive Aspects:

The Bill has several positive aspects including:

- Tougher rules and penalties for private certifiers
- Strata law reform to reduce the ability of developers to exercise control over owners corporations

Major Concerns:

The Bill's positive aspects are overshadowed by its potential negative consequences, including:

- a reduction in environmental and heritage protections,
- a reduction in community involvement in development decisions,
- a massive centralisation of planning power into the hands of the Minister or panels appointed by the Minister,
- a decrease in council involvement in development decisions accompanied by an increase in council costs to pay for alternative decision-making processes
- an increase in conflicts of interest and the possibility of corruption and
- a reduction in council control over the setting and spending of development levies.

Most significant changes from the Exposure Bill to the Bill tabled in parliament

- Deletion of the proposal allowing land to be compulsorily acquired for the purposes of urban renewal;
- Deletion of the proposal allowing accredited certifiers to approve minor non-compliances;
- Clarifying that libraries and community centres, along with volunteer rescue and emergency services, are “key community infrastructure” that councils can automatically levy for;
- Retain permanent legislative protection to prevent new development in Sydney’s drinking water catchment unless it has a neutral or beneficial effect on water quality;
- Expanding the range of people who can be appointed to the Planning Assessment Commission (PAC) to include those with legal, engineering, traffic and transport, and tourism backgrounds; and
- Allowing only the Department of Planning to appoint planning arbitrators.
- Applicants seeking a merit appeal of a refusal will not be able to choose between an independent panel, such as the PAC, or the Land and Environment Court.

Status of the Bill

- Introduced into Legislative Assembly 15/05/2008. Awaiting "Agreed in Principle" Debate which is expected to proceed in early June. Expected to reach the Upper House around 17 June 2008.

Cognate Bills

The following Bills are cognate with this Bill:

- Building Professionals Amendment Bill.
- Strata Management Legislation Amendment Bill.

What the Bill Does

(1) Environmental planning:

The Bill:

- (a) makes provision for a gateway determination at an early stage of the planning process so that early decisions are made on whether a planning proposal will proceed, on the detailed community and other consultation required, on the time-frames for further stages of the process and on whether the final making of the plan can be delegated to the council, Director-General or other relevant planning authority, and
- (b) requires explanations and justifications for planning proposals for gateway determination and consultation purposes, rather than technical legally drafted documents, and
- (c) enables comprehensive and other major plans to be provided with more detailed community and agency consultation than minor plans, and
- (d) enable independent advice to be obtained to deal with planning proposals that have stalled, and
- (e) places on a permanent footing in the EPA Act provisions contained in a regional environmental plan to prevent development consent being granted in Sydney hydrological drinking water catchment unless it has a neutral or beneficial effect on the quality of water, and
- (f) makes other amendments to simplify the plan-making process.

(2) Development assessment

- (a) establishes the Planning Assessment Commission (the **PAC**) and gives the PAC approval and planning functions relating to projects under Part 3A of the EPA Act and other planning, development consent, advisory and review functions,
- (b) establishes joint regional planning panels (**regional panels**) and enables them to be given planning and development consent functions for parts of the State, the

planning and other functions of councils whose functions are removed under the EPA Act (eg Ku-ring-gai and Burwood Councils' planning powers) and other development consent, advisory and review functions,

(c) enables councils to appoint independent hearing and assessment panels to advise them about development applications and other planning matters,

(d) provides a right for applicants to seek reviews by planning arbitrators of determinations by councils relating to certain development applications and development consents (***planning arbitrator matters***) and to provide for a new third party right to seek a review of development determinations about certain residential and commercial and mixed use developments (to be prescribed by regulation)

(e) restricts appeals to the Land and Environment Court relating to planning arbitrator matters unless they have been reviewed by a planning arbitrator or the council consents to the appeal being made and to generally reduce the period for making an appeal to that Court in a development assessment matter from 12 months to 3 months,

(f) re-enacts the current limitations on the power of consent authorities to refuse or impose conditions on Crown developments, with certain procedural changes, and confers on regional panels power to determine disputes about council determinations about Crown developments,

(g) enables development consents relating to extended hours of operation of certain premises to be subject to later review and change,

(h) adds to the council functions that may be removed from councils for misconduct reasons and exercised by a planning administrator, planning assessment panel or regional panel,

(i) prevents administrative law and other proceedings being taken in respect of the exercise by the Minister of certain functions relating to the appointment of planning administrators or planning assessment panels or conferral on regional panels of certain council functions,

(j) requires the Director-General of the Department of Planning to consult public authorities on environmental assessment requirements for projects under Part 3A of the EPA Act only if required to do so by applicable guidelines,

- (k) enables the Independent Commission Against Corruption to recommend the removal from office of members of the PAC or regional panels and planning arbitrators on corruption grounds,
- (l) applies the provisions of the *Ombudsman Act 1974* to planning arbitrators,
- (m) makes other amendments relating to development assessment, development consents and complying development.

(3) Development contributions

The Bill replaces existing provisions of the EPA Act for development contributions with a new Part 5B that provides for community infrastructure contributions, State infrastructure contributions, planning agreements and development contributions for affordable housing.

Significant features of the new provisions are as follows:

- (a) local infrastructure contributions (currently known as section 94 and 94A contributions) will be replaced by community infrastructure contributions,
- (b) local councils will be limited to community infrastructure contributions for **key community infrastructure** (as prescribed by the regulations) and any additional community infrastructure approved for the council by the Minister, with provision for a council seeking such an approval to provide the Minister with a business plan and independent report in support of the application,
- (c) councils, the Minister and other planning authorities will be required to have regard to specified key considerations for development contributions, including affordability, in relation to community infrastructure contributions, State infrastructure contributions and planning agreements,
- (d) the Minister will be able to give directions as to the time within which community infrastructure contributions must be applied,
- (e) the regulations will be able to impose requirements for reporting by planning authorities about the determination, collection, application and use of development

contributions and the provision of public infrastructure by them,

(f) transitional provisions will revoke all existing contributions plans on 31

March 2010, with provision for the Minister to remake existing contributions plans on behalf of councils to cover contributions for infrastructure that is not key community infrastructure when there are binding arrangements in place for the provision of the infrastructure concerned,

(g) a Community Infrastructure Trust Fund is established under the control of the Treasurer to fund the provision of public infrastructure by public authorities out of community infrastructure contributions levied in the North West and South West Growth Centres of Sydney.

(4) Certification of development

The Bill amends the EPA Act:

(a) in relation to the requirements applying to the issue of Part 4A certificates and complying development certificates, (the government is aiming for 50% of development to be exempt or complying and thus no longer requiring a development application process) and

(b) in relation to the obligations of certifying authorities and, in particular, the obligations of certifying authorities to give directions with respect to certain matters involving the carrying out of development and to report on those matters, and

(c) to require design certificates from appropriately accredited persons for certain aspects of development, and

(d) to strengthen the powers under the EPA Act to prevent or deal with development that contravenes that Act, including enabling the issue of orders to cease building work or subdivision work, enabling authorised persons to ask questions of accredited certifiers and others involved in development and enabling consent authorities to require security to ensure compliance with development consents in the carrying out of building work and subdivision work, and

(e) to provide for the Minister to take action to suspend a council's certification

functions following an adverse report from the Building Professionals Board on the results of an investigation, and

(f) to make other amendments to the certification processes.

The Bill amends the *Environmental Planning and Assessment Regulation 2000* (the ***EPA Regulation***) in relation to applications for, and the issue of, Part 4A certificates and complying development certificates, critical stage inspections and fees for building certificates in certain circumstances.

The Bill amends the *Strata Schemes (Freehold Development) Act 1973* in relation to the issue of strata certificates under that Act.

The Bill amends the *Strata Schemes (Leasehold Development) Act 1986* in relation to the issue of strata certificates under that Act.

(5) Miscellaneous

The Bill contains miscellaneous amendments, including amendments:

- (a) to enact a scheme for the development of paper subdivisions, and
- (b) to omit provisions relating to places of public entertainment following the integration of separate licensing provisions under the *Local Government Act 1993* into the planning approvals and control processes of the EPA Act, and
- (c) to remove or modify some requirements for concurrence and referrals in relation to planning matters, and
- (d) to provide for the making of consequential savings and transitional regulations.

Source: Environmental Planning and Assessment Amendment Bill 2008 Explanatory Note. A copy of the Bill including the full Explanatory Note and the Minister's second reading speech can be found at:
<http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/F2D74B4003B6CF44CA257449001B64F3>