

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to reform land-use planning and the development assessment and approval system under that Act, particularly in respect of State infrastructure or other significant projects and land-use planning instruments.

The principal objects of the reforms are as follows:

- (a) to provide a separate streamlined and integrated development assessment and approval system for major infrastructure and other projects of significance to the State (and to facilitate the delivery of critical infrastructure projects),
- (b) to facilitate a strategic approach to land-use planning and to simplify and standardise land-use planning controls under environmental planning instruments,
- (c) to replace existing master plan and staged development arrangements with more secure arrangements for obtaining concept or staged approval for local development,
- (d) to streamline environmental assessment requirements under Part 5 for activities and approvals of public authorities that are not infrastructure or other projects referred to in paragraph (a),
- (e) to enhance the enforcement powers under the Act, particularly in relation to infrastructure and other projects referred to in paragraph (a).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed by the Governor.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* (**the Principal Act**).

Clause 4 is a formal provision giving effect to the Schedule of amendments to other Acts and regulations.

Schedule 1 Major infrastructure and other projects amendments

Schedule 1 [1] inserts a new Part 3A into the Principal Act relating to major infrastructure and other projects. This Part makes provision for the environmental assessment and approval of certain development that would have previously been the subject of environmental assessment under Parts 4 and 5 of the Principal Act.

Proposed Division 1 sets out the projects to which the Part applies.

Proposed section 75B provides that the Part applies to major infrastructure and development that is declared by State Environmental Planning Policy or by Ministerial order to be either of State or regional environmental planning significance (formerly State significant development in Part 4 of the Principal Act) or for which the Minister's approval was formerly necessary under Division 4 of Part 5 of the Principal Act (namely where the proponent is the determining authority and an EIS is obtained).

Proposed section 75C provides that a project declared to be subject to Part 3A may also be declared a critical infrastructure project if, in the opinion of the Minister, it is essential for the State for economic, environmental or social reasons. Proposed sections 75K, 75L, 75Q, 75R and 75T make special provision for critical infrastructure projects.

Proposed Division 2 sets out the procedures for carrying out the environmental

assessment of a project including public consultation, and the approval of projects together with rights of appeal.

Proposed sections 75D, 75E and 75F set out the requirements for the Minister's approval of projects to which this Part applies, the procedures for the making of applications to, and the provision of environmental assessment requirements by the Director-General, for that approval, including the provision by the proponent of a statement of commitments about environmental management and mitigation measures it is prepared to make, and compliance with that approval. The Minister may, after consultation with the Minister for the Environment, publish in the Gazette guidelines in relation to environmental assessment requirements for projects to which this Part applies.

Proposed section 75G provides that the Minister may constitute two types of independent hearing and assessment panels to assess any aspect of a project. One will be a panel of experts, the other a panel of officers of relevant public authorities.

Proposed sections 75H and 75I set out the procedures for the provision of an environmental assessment of a project to the Director-General, public consultation about that assessment, the consideration of and the preparation by the proponent of a response to public submissions, a preferred project report, any revised statement of commitments, and the Director-General's environmental assessment of the project.

Proposed section 75J sets out the procedures necessary for the Minister's approval or disapproval of a project. Any approval may be with such modifications and on such conditions as the Minister determines.

Section 75K sets out the circumstances in which a proponent may appeal to the Land and Environment Court against the Minister's determination. A proponent may appeal if the project is not a critical infrastructure project, and if the proponent is not a public authority, and if the project has not been the subject of a commission of inquiry nor a report of an expert panel, and but for the provisions of Part 3A, Part 4 of the Principal Act would apply to the project.

Section 75L sets out the circumstances in which an objector may appeal to the Land and Environment Court against the Minister's determination. Objectors may appeal if the project is not a critical infrastructure project, and no concept plan has been approved for the project under Division 3 of this Part, and if the project has not been the subject of a commission of inquiry nor a report of an expert panel, and but for the provisions of Part 3A, the project would be designated development under the Principal Act.

Proposed Division 3 sets out the requirements and procedures for the approval of a concept plan for certain projects.

Proposed sections 75M, 75N and 75O set out the nature and scope of concept plans, the procedures by which the Minister can require the submission of a concept plan, the procedures for the environmental assessment, public consultation and approval of a concept plan.

Proposed section 75P sets out the powers of the Minister when approving a concept plan to make certain determinations about the carrying out of the project, or the subsequent environmental assessment of the project or parts of the project under Part 3A, or Part 4 or Part 5 of the Principal Act. The Minister may determine that the project or part of the project may be subject to Part 4 or Part 5 of the Principal Act in which case subsequent approvals must be generally consistent with the concept plan and the assessment requirements of the Minister. The Minister may by order declare that a stage of the project is exempt or complying development, or not designated development.

Proposed section 75Q sets out the circumstances in which the proponent for a concept plan may appeal to the Land and Environment Court against a determination of the Minister to refuse to approve a concept plan. If the Court

allows the appeal the Minister is to approve the concept plan.

Proposed Division 4 sets out the relationship between Part 3A and the Principal Act, the exclusion of certain third-party appeals under the Principal Act and certain other Acts for critical infrastructure projects and the disapplication of the provisions of certain other Acts requiring the approval of projects approved under Part 3A, and the requirement for approvals given under certain other Acts to be applied consistently to projects approved under Part 3A.

Proposed sections 75R and 75S provide that (subject to the Division), Parts 3, 4 and 5 of the Principal Act do not apply to approved projects. Part 3 of the Principal Act and State Environmental Planning Policies do apply to the carrying out of projects under Part 3A, but in the case of a critical infrastructure project, only to the extent specifically provided by a State Environmental Planning Policy. Division 2A of Part 6 of the Principal Act only applies to a critical infrastructure project to the extent the regulations so provide. The provisions of the Principal Act relating to development and affordable housing contributions apply to projects approved under Part 3A if those provisions would have applied had the project been approved under Part 4 of the Principal Act. Sections 81A, 116B and 116G apply to building and subdivision work carried out under an approval under Part 3A.

Proposed section 75T provides that the third-party and other appeal proceedings referred to in the proposed section cannot be taken in the Land and Environment Court without the approval of the Minister in the case of critical infrastructure projects.

Proposed section 75U provides that the statutory authorisations listed in the proposed section are not required for a project approved under Part 3A, and that orders and notices under certain Acts listed in the clause cannot be made so as to prevent or interfere with the carrying out of an approved critical infrastructure project.

Proposed section 75V provides that the authorisations listed in the proposed section must be given consistently with any approval under Part 3A, and that those authorisations and any authorisations listed in proposed section 75U must be given consistently if, following the approval of a concept plan, any stage of a project is granted development consent under Part 4 of the Principal Act.

Proposed Division 5 (proposed sections 75W–75ZA) set out miscellaneous provisions that provide for the modification of approvals under Part 3A, and appeals against determinations relating to modifications, the public availability of information relating to projects, the lapsing of approvals, regulations to be made in relation to projects, and arrangements consequent upon the making of declaration in connection with a project, or the amendment or revocation of such a declaration.

Schedule 1 [2], [6], [8]–[10] and [12]–[20] remove the definitions of *local development* and *State significant development*, references to those terms, and provisions relating to State significant development from Part 4 of the Principal Act.

Schedule 1 [3] amends section 23 of the Principal Act so as to enable the Minister, the corporation established under section 8 (1) of the Principal Act and the Director-General to delegate their functions to a development corporation under the *Growth Centres (Development Corporation) Act 1974*, any employee or officer of the corporation, any public authority or employee or officer of a public authority.

Schedule 1 [4] amends section 23 of the Principal Act so as to prevent the Minister from delegating his or her approval function under the proposed Part 3A.

Schedule 1 [5] removes references to provisions in the Principal Act relating to State significant development and Division 4 of Part 5 of the Principal Act.

Schedule 1 [7] amends section 72I of the Principal Act so that the provisions in Division 4B of Part 3 of the Principal Act that permit the joint exhibition of draft environmental planning instruments and development applications extend to the

joint exhibition of draft environmental planning instruments and applications for approval to carry out projects in Part 3A.

Schedule 1 [11] inserts a note after section 79C (1) of the Principal Act referring to proposed section 75P and the requirement that determinations under section 79C are to be generally consistent with an approved concept plan.

Schedule 1 [21] replaces a reference to Division 4 of Part 5 of the Principal Act with a reference to Part 3A.

Schedule 1 [22], [23] and [25]–[27] repeal Division 4 of Part 5 of the Principal Act, and remove references to that Division or provisions relating to that Division from Part 5 of the Principal Act.

Schedule 1 [24] inserts a reference to Part 3A in section 112 (6) of the Principal Act.

Schedule 1 [28] amends section 115P of the Principal Act to make a consequential amendment.

Schedule 1 [29] amends section 115R of the Principal Act so that a designated fishing activity under Division 5 of Part 5 of the Principal Act cannot be declared to be a project under Part 3A.

Schedule 1 [30] amends section 119 of the Principal Act to enable the Minister to direct that a public inquiry be held into the environmental aspects of a project under Part 3A.

Schedule 1 [31] and [32] exclude members of assessment panels constituted under proposed section 75G from personal liability for any acts or omissions done or omitted in good faith for the purposes of executing the Principal Act.

Schedule 1 [33] inserts savings and transitional provisions consequent on the enactment of the proposed Schedule.

Schedule 2 Planning instruments amendments

Schedule 2 [1], [7] and [14] inserts a new definition of *development control plan* into the Principal Act and repeals sections 51A and 72 of the Principal Act consequent on the enactment of a new Division 6 to Part 3 of the Principal Act which provides for development control plans.

Schedule 2 [2] amends section 26 of the Principal Act to authorise environmental planning instruments to permit development control plans to specify the kinds of trees and vegetation that must be the subject of a permit before those trees and vegetation can be removed or otherwise affected. This provision will replace the provision authorising the making of tree preservation orders under the model provisions made under section 33 of the Principal Act.

Schedule 2 [3] repeals section 33 of the Principal Act, which authorises the Minister to make model provisions that may be adopted by environmental planning instruments, consequent on the enactment of proposed section 33A.

Schedule 2 [4] inserts proposed sections 33A–33C into the Principal Act.

Proposed section 33A provides for the standardisation of environmental planning instruments. It authorises the Governor to prescribe by order the standard form and content of local environmental plans and other environmental planning instruments—a *standard instrument*. It enables environmental planning instruments to be made that adopt the applicable mandatory provisions of a standard instrument, provide for the matters necessary to apply the mandatory provisions of the standard instrument, and provide for the other matters that the environmental planning instrument is to contain, including non-mandatory provisions of the standard instrument, or additional provisions. The proposed section provides that on amendment of any of the applicable mandatory provisions in the standard instrument the relevant environmental planning instruments are taken to have been amended accordingly (without the need for further amendment of the environmental planning instrument).

Proposed section 33B authorises the Minister by order to establish a program of

staged repeal of existing environmental planning instruments at specified times during the program and to provide for the making of replacement instruments.

Proposed section 33C enables the Minister to determine standard technical requirements for the preparation of environmental planning instruments, development control plans, maps and other documents and requires councils to provide the Director-General with copies and electronic files in the required format.

Schedule 2 [5] replaces section 36 (1)–(3) of the Principal Act. The new provision provides that unless otherwise provided for in an environmental planning instrument there is a general presumption that State Environmental Planning Policies prevail over Regional Environmental Plans and Local Environmental Plans whenever made, Regional Environmental plans prevail over Local Environmental Plans whenever made, and that the general presumptions of law apply to determine which of two environmental planning instruments of the same kind prevail.

Schedule 2 [6], [8] and [13] repeal sections 38, 52 and 71 of the Principal Act, consequent on the enactment of proposed section 33A.

Schedule 2 [9] and [12] enable the Director-General to refuse to issue a certificate under section 65 or furnish a report to the Minister under section 69 of the Principal Act unless the Director-General is satisfied that the draft local environmental plan has been prepared in accordance with the standard instrument under proposed section 33A.

Schedule 2 [10] replaces section 66 (1) (b) (ii) and (iii) of the Principal Act to provide for the documents that must be publicly exhibited with any draft local environmental plan.

Schedule 2 [11] amends section 68 of the Principal Act to enable the Director-General and council to agree to the council making changes to any draft local environmental plan, and for the Director-General to return the draft local environmental plan so that council can make any changes to the plan so it accords with the standard instrument and any directions under section 117 of the Principal Act.

Schedule 2 [15] inserts proposed section 73A into the Principal Act that will enable the making of an environmental planning instrument that corrects an obvious error in the principal instrument or addresses matters of a consequential, transitional, machinery or other minor matter without complying with the other provisions of Part 3 of the Principal Act that relate to the making of environmental planning instruments.

Schedule 2 [16] inserts proposed section 74A into Part 3 of the Principal Act which clarifies that Division 5 of that Part is subject to proposed sections 33A and 33B.

Schedule 2 [17] inserts proposed Division 6 into Part 3 of the Principal Act about development control plans.

Proposed sections 74B and 74C establish which relevant planning authorities may make development control plans, what development control plans may contain, that generally only one development control plan may apply to any land, how development control plans may be made, amended or revoked. Development control plans have no effect if their provisions are the same or substantially the same as the provisions of an environmental planning instrument or are inconsistent with or would tend to prevent compliance with the provisions of an environmental planning instrument.

Proposed section 74D sets out the requirements for development control plans that must be made before certain development can be carried out under an environmental planning instrument. Environmental planning instruments may provide that a development control plan must be submitted by a certain number or percentage of the land owners to which it applies before it can be approved (land pooling). If the relevant planning authority refuses to make a development control plan the owners may make a development application in place of the development

control plan or the Minister may act in the place of the relevant planning authority in some circumstances.

Proposed section 74E provides that the regulations may provide for the form, structure and subject matter of, development control plans and the procedures for making, certain fees relating to, and public access to, development control plans. The provision also permits the extension of the staged repeal program of existing local environmental plans under proposed section 33B to existing development control plans, and that an environmental planning instrument may exclude or modify the application of a development control plan.

Schedule 2 [18] removes references in the Principal Act to the repealed section 72.

Schedule 2 [19] amends section 117 of the Principal Act to provide that directions under this section may require draft local environmental plans to include provisions that achieve or give effect to particular aims, principles, objectives and policies, and may require draft local environmental plans to be strictly consistent, substantially consistent, or justifiably inconsistent with the terms of the direction.

Schedule 2 [20] amends section 117 of the Principal Act to prevent judicial review proceedings in any court challenging the validity of any aspect of any local environmental plan (or draft or purported plan) relating to compliance with that section of the Principal Act.

Schedule 2 [21] amends section 118 of the Principal Act to authorise the Minister to appoint a planning administrator to a local council with respect to the making of local environmental plans if the council fails to comply with its obligations under a staged repeal program under proposed section 33B.

Schedule 2 [22] inserts savings and transitional provisions consequent on the enactment of the proposed Schedule.

Schedule 3 Development consent amendments

Schedule 3 deals with local development to which Part 4 of the Proposed Act applies. **Schedule 3 [4]** introduces provisions into the Principal Act for “staged development applications”, which set out the concept proposals for a site, leaving more detailed proposals for subsequent development applications, the determination of which can not be inconsistent with the consent granted for the staged development application.

Schedule 3 [5] also provides that the grant of a mining lease or petroleum production lease is integrated development for the purposes of Part 4 of the Principal Act.

Schedule 3 [1]–[3] and [6]–[8] make minor, transitional or consequential amendments to the Principal Act.

Schedule 4 Environmental assessment amendments

Schedule 4 deals with environmental assessment by public authorities for activities to which Part 5 of the Principal Act applies. **Schedule 4 [1] and [2]** provide, in connection with environmental assessment under Part 5 of the Principal Act, that a determining authority (other than the nominated determining authority) will be required to forward to the nominated determining authority any submissions made to it, to enable the nominated determining authority to co-ordinate the preparation and furnishing of reports in relation to the activity.

Schedule 4 [3] also inserts proposed section 111A to exempt a determining authority from having to consider the environmental impact of an activity under the general duty imposed by section 111 where a modification will reduce the overall environmental impact, where the Minister determines the activity is a routine activity carried out in accordance with an applicable code, or where the environmental impact has already been considered by another determining authority.

Schedule 4 [4] and [5] make minor or transitional amendments to the Principal Act.

Schedule 5 Enforcement amendments

Schedule 5 amends Part 6 of the Principal Act to provide new powers to the Minister, the Director-General and authorised officers appointed by the Minister or Director-General to enforce approvals under proposed Part 3A. Schedule 5 creates two new Divisions (Division 2B and 2C) to be inserted into Part 6. It also makes amendments to Division 1A.

Schedule 5 [1]–[7] make consequential amendments to the entry and other powers, conferred by Division 1A as a result of the enactment of Division 2C.

Schedule 5 [8]–[16] amend Division 2A of Part 6 to enable the Minister or Director-General to use the order powers of local councils for the purposes of projects under Part 3A. In addition provision is made for the Minister or Director-General to give an order to remedy or restrain a breach of Part 3A or of an approval under that Part.

Schedule 5 [17] inserts Divisions 2B and 2C into Part 6 of the Principal Act. Proposed Division 2B, titled “Monitoring and environmental audits—approved projects” allows the Minister to impose conditions on Part 3A approvals requiring monitoring and audits to be carried out by or on behalf of the approval holder. Monitoring or auditing of a project may be carried out in order to determine whether the project is complying with the approval and relevant legislation or to assess the project’s environmental performance. A monitoring condition may require the provision of measuring and recording devices and the reporting and certification of monitoring data. An environmental auditing condition may require the appointment of an independent auditor approved by the Minister or Director-General and the production to the Minister of a report by the auditor. It will be an offence to include false or misleading information in a monitoring or audit report or to withhold relevant information from such reports. Certain monitoring and auditing information must be retained for at least 5 years. Proposed Division 2C, titled “Departmental enforcement powers” enables the Director-General to appoint a person (such as a DIPNR employee) as an authorised officer. An authorised officer may exercise some or all the powers under Division 2C. These powers will not be available to local council officers, unless those officers are specifically appointed as authorised officers by the Director-General. Authorised officers will have a power to enter premises in certain circumstances but will not be permitted to enter residential premises unless they have the permission of the occupier or a search warrant. Upon entering premises, authorised officers will have the power to conduct inspections, take samples and photographs, examine and copy records and seize things connected with an offence under the Act. Authorised officers will have the power to issue a notice to a person or company requiring that person or company to answer questions or produce documents. Compliance with a notice will be obligatory, but in certain circumstances, answers given or information furnished by a natural person in compliance with a notice from an authorised officer may not be used against that person in criminal proceedings.

Schedule 5 [18] amends section 153 of the Principal Act to enable any required notice or document to be sent by facsimile or electronic transmission (including for example the Internet).

Schedule 6 Minor amendments

Schedule 6 contains minor (including savings and transitional) amendments to the Principal Act.

Schedule 6 [1], [2], [4] and [11] amend the definitions of *Department* and *Director-General* in section 4 of the Principal Act to reflect the current name of the Department, correct reference to those terms elsewhere in the Principal Act and assist with the interpretation of references to the Director-General in other Acts and statutory instruments.

Schedule 6 [3], [9] and [10] inserts a definition of *ecologically sustainable development* in section 4 of the Principal Act consistent with the definition of that

term in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and removes references elsewhere in the Principal Act to that section of that Act.

Schedule 6 [5]–[7] and [13] repeal sections 32, 34 (1)–(4) and 155 of the Principal Act consequent upon the amendments in Schedule 7.5 of this Bill which apply certain provisions of the *Interpretation Act 1987* to environmental planning instruments.

Schedule 6 [8] repeals section 45 (1) (b) of the Principal Act to remove the requirement to notify the Local Government Liaison Committee when preparing a draft regional environmental plan.

Schedule 6 [12] and [14] make amendments to the Principal Act of a statute law revision nature.

Schedule 6 [15] and [16] insert savings and transitional provisions consequent on the enactment of the Bill.

Schedule 7 Amendment of other Acts and regulations

Schedule 7.1 amends the *Environmental Planning and Assessment Regulation 2000* to remove the requirements relating to master plans.

Schedule 7.2 amends the *Fisheries Management Act 1994* so that the regulations may prescribe when a person may carry out dredging or reclamation works without a permit issued by the Minister. The amendments also provide that it is a defence to a prosecution relating to threatened species of fish etc if the act or omission constituting the offence was essential for the carrying out of a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Schedule 7.3 amends the *Forestry and National Park Estates Act 1998* to provide that forestry operations cannot be declared to be a project under Part 3A of the *Environmental Planning and Assessment Act 1979* during the period that an integrated forestry operations approval applies to those operations.

Schedule 7.4 amends the *Heritage Act 1977* consequent on the amendments made by Schedule 1 to the Bill.

Schedule 7.5 amends the *Interpretation Act 1987* to provide that an environmental planning instrument is an instrument within the meaning of that Act.

Schedule 7.6 amends the *Land and Environment Court Act 1979* to provide that appeals under Part 3A of the *Environmental Planning and Assessment Act 1979* are Class 1 environmental planning and protection appeals.

Schedule 7.7 amends the *Lord Howe Island Act 1953* to provide that the reference to a consent authority in Parts 4, 4A and 5A and Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* apply to the Island as if the reference were a reference to the Board.

Schedule 7.8 amends the *Mine Subsidence Compensation Act 1961*.

Schedule 7.9 amends the *Mining Act 1992* to make consequential amendments as a result of mining leases becoming integrated development under the *Environmental Planning and Assessment Act 1979*. The amendments remove the exclusion of that Act in relation to mining.

Schedule 7.10 amends the *National Parks and Wildlife Act 1974*.

Stop work orders will not apply to a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

The amendments provide defences to various offences relating to threatened species etc if the accused proves that the act constituting the alleged offence was essential for the carrying out of a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (in similar fashion to the defence available where development and activities are approved under Part 4 or 5 of that Act).

Schedule 7.11 amends the *Petroleum (Onshore) Act 1991* to make consequential amendments as a result of petroleum production leases becoming integrated development under the *Environmental Planning and Assessment Act 1979*. The amendments remove the exclusion of that Act in relation to petroleum mining.

Schedule 7.12 makes consequential amendments to the *Redfern–Waterloo Authority Act 2004*.

Schedule 7.13 amends the *Roads Act 1993* to enable the RTA, for the purposes of enabling the carrying out of a project approved under proposed Part 3A of the *Environmental Planning and Assessment Act 1979*, to exercise the functions of a roads authority for any road for which it is not otherwise the roads authority.

Schedule 7.14 amends the *Rural Fires Act 1997* to provide that a bush fire safety authority is not required for the carrying out of any development excluded by the regulations.

Schedule 7.15 amends the *Water Management Act 2000*.