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**Recent Developments in
Planning Legislation**

by

Stewart Smith

Briefing Paper No 16/06

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ISSN 1325-5142
ISBN 0 7313 1812 9

November 2006

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by

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EXECUTIVE SUMMARY

Earlier this year significant amendments were made to the *Environmental Planning and Assessment Act 1979*. Perhaps the most controversial of these amendments were those relating to the Ministerial appointment of planning assessment panels to replace the role of local councils in determining development applications. Part 1 of this paper reviews the arguments for involving independent hearing and assessment panels in determining development applications. Part 2 of this paper looks at the assessment and determination of major projects.

Local government councilors have three main roles: establishing development standards through their role in preparing local environment plans; deciding whether to grant development consent to development applications; and acting as constituent representatives. The combination of these roles is unique to local government, and can create conflicting roles for councilors. The absence of a 'separation of powers', thus allowing councillors to both establish development standards and then assess applications against those standards, has been frequently criticised. This stems from the belief that a councilor's policy role should be separated from their operational role. It has been suggested that either: local government delegate development assessment determination power while retaining the ability to call-in any application for determination by council; or an expert panel determines the application. It has been argued that independent hearing and assessment panels have the following benefits:

- A mechanism for the assessment of development applications based on the rules of procedural fairness;
- An independent and professional judgement on development applications;
- A counterbalance to perceptions of bias decision making by councilors;
- A focus on a non-adversarial process for resolving disputes between objectors and applicants.

Arguments against the introduction of independent panels include: they could weaken democratic accountability; whoever chose the members of the panel would exercise influence; it would increase bureaucracy and costs; and there may not be a sufficient number of panel experts to serve all councils.

Local government does not support delegating determination authority to an independent panel, and believes that any panel role should be restricted to an advisory capacity. In contrast, developers support the introduction of independent panels to determine development applications. With the passage of the *Environmental Planning and Assessment Amendment Act 2006*, the Minister for Planning has the power to replace a local council's development determination function with either an independent panel or a planning administrator.

The *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* introduced provisions relating to major infrastructure and other projects into the *Environmental Planning and Assessment Act*. The legislative background to the determination of major projects is explained. Proposed amendments to the major projects legislation, and the introduction of a draft State Environmental Planning Policy (Infrastructure) are reviewed.

1.0 INTRODUCTION

This paper is divided into two parts. The first part reviews amendments to the *Environmental Planning and Assessment Act 1979*, to enable the planning functions of a local council to be replaced by an independent panel. The second part reviews the assessment of major projects and the provision of infrastructure.

PART ONE: INDEPENDENT HEARING AND ASSESSMENT PANELS

Earlier this year significant amendments were made to the *Environmental Planning and Assessment Act 1979*. Perhaps the most controversial of these amendments were those relating to the Ministerial appointment of planning assessment panels to replace the role of local councils in determining development applications. This paper looks at two inter-related areas of local government administration. The role of the council in determining development applications and the roles of individual councillors in making those decisions – and how their functions may be affected by the recent legislative amendments.

2.0 THE DIFFERENT ROLES OF LOCAL GOVERNMENT COUNCILLORS

Local government councillors have three main roles:

- establishing development standards through their role in preparing local environment plans and development control plans;
- Deciding whether to grant development consent to development applications, and with what conditions;
- Acting as constituent representatives.

The combination of these roles is unique to local government, and can create conflicting roles for councillors. The absence of a ‘separation of powers’, thus allowing councillors to both establish development standards and then assess applications against those standards, has been frequently criticised. This stems from the belief that a councillor’s policy role should be separated from their operational role.¹ In an independent review of the financial sustainability of local government, chair Percy Allan comments on this lack of separation of powers:

Transparency in making local planning decisions is weak and there is a risk of corruption or undue influence as a result of the unclear separation between legislative, executive and judicial power.²

In 2003 the NSW Government commissioned a Taskforce to determine methods to improve local development assessment in NSW. The Taskforce questioned the role of local

¹ Independent Commission Against Corruption, *Corruption risks in NSW development approval processes. Discussion Paper*. December 2005, at 11.

² Local Government and Shires Association of NSW, *Independent Inquiry into the Financial Sustainability of NSW Local Government. Are Councils Sustainable? Final Report: Findings and Recommendations*, Chair Percy Allan, May 2006, at 184.

government councilors assessing development applications. The Taskforce highlighted submissions that noted that councillor involvement in the determination of development applications creates the risk of:

- Emphasis on individual applications over the provision of clear policy direction;
- Greater risks of corruption as people attempt to influence the decision of councilors;
- Slower approval times due to the need to report an application to a cycle of council meetings and committees;
- Councillor assessment of a proposal based on community lobbying instead of the planning controls applying to the site;
- Councilors acting as advocates for individuals / groups whilst also participating as a decision maker in the development assessment process.³

In reviewing the role of councilors in the development assessment process the Taskforce found two opposing views: that it is a fundamental right/function/power of councilors to participate in development assessment, either as an advocate for an applicant or the community or as a decision maker, or both. The opposing view is that councilors should remove themselves from the development assessment process as far as possible. They should make strategic policy decisions about development at the plan and policy making stage and leave development assessment to the technical experts.

The Taskforce concluded that whilst the establishment of panels may not be necessary for those councils working efficiently, they may be of great assistance for councils who do not perform efficiently in their development assessment role. As such, the Taskforce recommended that the Government enact supporting legislation to provide for their establishment and operation. The legislation should not mandate the establishment of a panel. However, it would reassure councils who choose to establish a panel that the participation of the panel in the development assessment process is legitimate and unchallengeable.⁴

2.1 The Development Assessment Forum Model

In 1998 the Development Assessment Forum was formed, with membership from the development industry, planning professions and the three tiers of government. The Forum's mission is to encourage the harmonisation of Australian development assessment systems, through the promotion of leading practice regulatory reform. The Forum developed the *Leading Practice Model for Development Assessment*, which provides a blueprint for jurisdictions for a simpler approach to development assessment. It achieves

³ Department of Infrastructure, Planning and Natural Resources, *Improving Local Development Assessment in NSW*. Report by the Regulation Review – Local Development Taskforce to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) October 2003. Chair Mr Neil Bird AM.

⁴ Department of Infrastructure, Planning and Natural Resources, *Improving Local Development Assessment in NSW*. Report by the Regulation Review – Local Development Taskforce to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) October 2003. Chair Mr Neil Bird AM.

this by defining ten leading practices that a development assessment system should exhibit, and then by applying the ten leading practices to six development assessment pathways/tracks.

The eighth leading practice was that of determination of development applications. It stated:

“Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

- Option A – Local government may delegate development assessment determination power while retaining the ability to call-in any application for determination by council.
- Option B – An expert panel determines the application.
- Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.”⁵

The Forum considered that objective and expert evaluation of development applications against known policies and objective rules and tests provides efficient and transparent assessment of most applications. Providing a call-in power allows the policy maker to take control of applications that will either have a significant impact on the achievement of policy or which, by their nature, are likely to establish policy.

In receiving feedback on their leading practice model, it was noted that presently most applications are dealt with by council officers, not the elected councilors. Stakeholders generally agreed that professional officers (either public or private as appropriate) should determine the simpler proposals. These are referred to as code assess track proposals – development that can be assessed against standard criteria and can always proceed if the criteria are met. In contrast, a more complex application, referred to as an impact assess track proposal, involves development that may have a significant impact on the social, environment or economic attributes of a locality. Feedback to the Forum about the determination of these proposals contained more divergent views. There was significant disagreement over which body should determine these more complex development applications. Whilst some agreed that an independent expert panel should assess proposals in the impact track, some stakeholders believed that elected representatives (local government or the Minister) should make the decision. Local government held that elected representatives must retain the authority to determine applications in accordance with community expectations and policy objectives. This authority could be delegated to officers or a panel, provided a call-in power is retained. Community representatives generally supported the retention of decision-making power with local government but accepted that it could be delegated to officers or a panel if desired. Industry preferred independent panels determining applications.⁶

⁵ Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*. March 2005. See: http://www.daf.gov.au/reports/DAF_LPM_AUGUST_2005.doc, accessed October 2006.

⁶ Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*. March 2005. See: http://www.daf.gov.au/reports/DAF_LPM_AUGUST_2005.doc, accessed October 2006.

Whilst noting the feedback, the Development Assessment Forum clearly preferred the concept of independent panels determining applications. The Forum identified the following steps which need to be addressed:

- Develop guidelines on how development assessment panels might work, including information regarding their make-up, their period of tenure, their funding and their relevance to both local and regional circumstances;
- Develop guidelines for effective delegated authority decision-making and for the appropriate exercise of call-in powers.

On 4 August 2005, a Ministerial Council of Australian Local Government Ministers and Planning Ministers acknowledged the Model in their communiqué as "an important reference for individual jurisdictions in advancing reform of development assessment".⁷

The ICAC notes that the *Environmental Planning and Assessment Act 1979* outlines the matters that may be taken into consideration when determining a development application. Under section 79C, the final matter that may be taken into consideration is that of the public interest. It is thus possible for a development application which technically complies with local planning instruments to be legitimately refused under this consideration. Hence 'politically popular' decisions of councilors may not be inappropriate, provided all relevant considerations have been taken into account and decisions are not based on matters outside the scope of section 79C.⁸

The implementation of an Independent Hearing and Assessment Panel has the potential to reduce the involvement of councilors in individual development matters. Currently, where a council so chooses, the model used in New South Wales involves an independent panel reviewing a development matter, with final determination by the Council. For example, Warringah Council, Liverpool Council and Fairfield City Council refer development applications to an independent panel. IHAPs have the following benefits:

- A mechanism for the assessment of development applications based on the rules of procedural fairness. They provide a formal and transparent process for residents and objectors to present their case to an impartial and independent panel. IHAPs are also usually less encumbered by the typical time constraints of a council committee, and provide written reasons for their decision;
- An independent and professional judgement on development applications. This facilitates a level of transparency in decision making about developments. IHAPs also provide councils with an early indication of the likely outcome of the matter should it be appealed to the Land and Environment Court. The IHAP recommendations also assist councilors focus their minds on the relevant assessment criteria;
- A counterbalance to perceptions of bias decision making by councilors. While

⁷ Local Government and Planning Ministers Council, *Communique* 4 August 2005. See: http://www.daf.gov.au/reports/LGPMC-Communique-4_August_2005.doc, accessed October 2006.

⁸ Independent Commission Against Corruption, *Corruption risks in NSW development approval processes. Discussion Paper*. December 2005, at 12.

councillors can still vote against an IHAP recommendation, such acts should attract community scrutiny;

- A focus on a non-adversarial process for resolving disputes between objectors and applicants.⁹

2.2 The Local Government Viewpoint

The Local Government Association and the Shires Association argue that any Independent Hearing and Assessment Panels should have an advisory role only, and not the power to determine development applications. The Associations do not support the introduction of panels with decision making powers. The Associations argue that the biggest problem with the expert assessment approach of a panel, is that panel members will have no accountability to the local communities for the planning decisions they make. They argue this is in contrast to elected representatives who are accountable to their communities for their decisions through an election process every four years. The Associations cannot see how more accountable and transparent decisions will be made by a panel as opposed to an elected council. In addition, the Associations do not believe that a panel will have any more inherent independence when assessing development applications than an elected representative.

The Associations consider that if panels are to be introduced then the following should occur:

- The establishment of panels must be optional for councils, having regard to local circumstances and conditions;
- Councils must be able to make decisions about the membership, appointment and operation of panels;
- Panels must only have the power to make recommendations to council and not have the decision making powers;
- Councils should give reasons for rejecting the recommendations of panels;
- Adequate resources need to be provided to local government to operate these panels.¹⁰

2.3 The Developer's Viewpoint

The position of the Urban Development Institute of Australia (NSW) is that a separation of powers should be pursued in local government whereby elected councillors are responsible for determining strategic planning, and that development applications are delegated to officers or independent hearing and assessment panels where such applications are non-complying.

The Residential Development Council of the Property Council of Australia released a

⁹ Independent Commission Against Corruption, *Corruption risks in NSW development approval processes. Discussion Paper*. December 2005, at 20.

¹⁰ Local Government Association of NSW, Shires Association of NSW, *Submission to the ICAC Discussion Paper Corruption Risks in NSW Development Approval Processes*. February 2006, at 7.

survey with results claiming that two-thirds of Australians supported the creation of a new property development assessment system that would reduce the politicisation of development assessment by local government councilors. Asked if they would support a system where local councils set the rules and development guidelines but the applications were assessed by a separate independent panel, 66.5% of respondents said yes. On a state-by-state basis, Brisbane had the strongest support for a new system (75%), while the remaining four metropolitan centres (Sydney, Melbourne, Adelaide and Perth) all had more than 62% support ratings.

Residential Development Council Executive Director Ross Elliott said the time had come for changes to be made to the assessment process. He stated:

This is not about removing democracy from town planning – far from it. Local councils and their councilors should act as the forum for translating community opinion into a rigorous and well conceived town plan. But when it comes to assessing applications against that town plan, we need a more professional approach. If local governments reject this reform solution, we are only going to see costs for homebuyers escalate even further because of massive system inefficiency and local government councilors will find their community respect eroded.¹¹

The survey took in 1,114 respondents Australia wide and asked the following questions:

In your opinion, have local government politicians done a good job of deciding what gets built and what doesn't in your community?

	Yes	No	Don't know
SYDNEY	32.8%	51.8%	15.3%
MELBOURNE	41.2%	39.1%	19.7%
BRISBANE	45.9%	35.0%	19.1%
ADELAIDE	42.0%	32.0%	26.0%
PERTH	49.1%	32.1%	18.9%
Total	39.9%	41.7%	18.4%

Do you trust local government politicians to serve the community's interest when assessing development proposals?

	Yes	No	Don't know
SYDNEY	33.7%	55.5%	10.7%
MELBOURNE	43.7%	46.5%	9.8%
BRISBANE	46.3%	48.6%	5.1%
ADELAIDE	42.0%	48.0%	10.0%
PERTH	41.5%	50.9%	7.5%
Total	39.9%	50.8%	9.3%

Would you support a new property development application system where the Local Councils set the rules and development guidelines, but the applications themselves are assessed by a separate independent panel, based on the provisions of these rules and

¹¹ Residential Development Council, *Media Release - Residential Development Council Survey Shows Community Wants Pollies Out of Development Assessment*. March 2006. See: <http://propertycouncil.gravitymax.com.au>, Accessed October 2006.

development guidelines?

	Yes	No	Don't know	Undecided
SYDNEY	67.5%	16.6%	8.3%	7.7%
MELBOURNE	63.4%	17.8%	12.9%	5.8%
BRISBANE	74.7%	16.0%	4.7%	4.7%
ADELAIDE	69.0%	14.0%	12.0%	5.0%
PERTH	62.3%	22.6%	12.3%	2.8%
Total	66.5%	17.3%	10.3%	5.8%

In response to the Residential Development Council survey, the Local Government and Shires Associations of NSW commissioned their own poll. The Associations criticised the 'push polling' survey of the Residential Council, and noted that the Residential Council's survey only questioned people living in Sydney. In contrast, the Associations' survey included respondents state-wide.

The key questions and results of the Associations survey were:

- In response to the question: Which level of government do you think should have responsibility for determining building and development applications of local significance
 - 72% local government; 19% state government; 2% federal; 8% unsure
- [in regard to any attempt to transfer responsibility for approving local development applications from councils to planning assessment panels appointed by the State Government] In your opinion, is it necessary that the community be consulted prior to this decision being made?
 - 92% responded yes, 8% no;
- In response to the question: Do you agree or disagree with the idea of shifting responsibility of approving development applications from elected local councilors to a planning and assessment panel appointed by the State Government?
 - 60% disagree; 31% agree; 9% undecided.
- In response to the question: Who should be responsible for approving development applications in your local area: Council, or a panel appointed by the State Government?
 - 65% responded local council; 25% panel; 9% undecided.

The President of the Shires Association of NSW, Cr Col Sullivan, said the overall survey results masked a stronger commitment to local government in rural and regional areas than the metropolitan areas.¹²

2.4 The Independent Inquiry into Financial Sustainability of Local Government

A survey not directly involving stakeholders was undertaken for the Independent Inquiry into Financial Sustainability of Local Government in NSW, chaired by Percy Allan.

¹² Local Government and Shires Associations of NSW, *Media Release: Big Majority Want Planning Powers to Remain with Councils*. 27 March 2006. See: <http://www.lgsa.org.au>, accessed October 2006.

Survey respondents were asked:

A key responsibility of your local council is the processing of building and development applications. Which of the following options (presented in random order) would you prefer for the determination of building and development applications of local significance?

1. Elected councilors decide at a local council meeting;
2. Determined by professional council planning staff;
3. Determined by an independent panel of professional planners;
4. Determined by councilors after advice from an independent panel.

The result was that state-wide, most respondents, 35.5%, supported an independent panel to determine building and development applications. The second most popular response (25.9%) favoured determination by councilors after advice from an independent panel.¹³

The Inquiry's interpretation was that the public wants local rather than State Government to assess and approve development applications of local significance. Furthermore, it wants the approval process within Local Government to be depoliticised by having independent panels (either decision-making or advisory) along with professional staff dealing with such applications rather than councilors on their own.¹⁴

The Independent Inquiry noted that one proposal would be for the sole planning role of elected councilors to be the development of planning policies, which would be achieved through full consultation with the local community. It would then be the responsibility of the council's own staff to approve DAs, based on these policies, with disputes or situations of conflict of interest referred to an independent planning panel. A further reform would be to allow planning appeals from third parties to the panel, as permitted in a number of Australian states such as South Australia and Victoria. The Independent Inquiry outlined the following 'pros and cons' of different options regarding independent hearing panels.

Establish independent panels to consider and *decide* on disputed DAs and to determine appeals from third parties.

Pros

- Planning panels, by including a broad selection of experts would be in a better position to make the right decision than councilors who are not familiar with the detail of environmental planning controls. Independent planning panels are less adversarial than politically charged council chambers;
- There would be a clear separation between councilors, who set planning policies, and the independent panel, who ensure that the policies are implemented. The chances of conflicts of interest would be significantly reduced; and

¹³ IRIS Research, *Independent Inquiry into Financial Sustainability of Local Government in New South Wales. Opinion Poll on Role of Local Government in New South Wales. Final Report*. 2005, at 52. See: <http://www.lgi.org.au/>, accessed October 2006.

¹⁴ Local Government and Shires Association of NSW, *Independent Inquiry into the Financial Sustainability of NSW Local Government. Are Councils Sustainable? Final Report: Findings and Recommendations*, Chair Percy Allan, May 2006, at 184.

- The decision making panel system is a tried and tested model that appears to be working well in South Australia where its members comprise a councilor, the council's director of planning, a professional planner and a community representative.

Cons

- Would weaken local democratic accountability since the involvement of councilors would be removed. Local/community input into local planning decisions might be reduced;
- Whoever chose the panel members would exercise influence. If councilors chose the experts then the separation of powers would be lost. If appointed by the state, planning centralisation would increase;
- With a large number of councils in NSW, establishing separate panels for each jurisdiction would increase bureaucracy and cost since panel members would need to be paid;
- There may be insufficient 'experts', and care would need to be taken to ensure that only qualified people were selected. To overcome this panels may need to serve up to six Local Government areas in Metropolitan Sydney, probably based on the new regional council groupings; and
- Excluding experts who work on developments within the region might make it hard to find panel members. One way around this would be for experts to stand aside from a panel when organisations with which they are involved are associated with a DA.

Establish independent advisory panels to consider and *advise* councils on disputed DAs and to consider appeals from third parties.

Pros

- Responsibility and accountability for decision-making would remain with the popularly elected council, but councilors would have to consider expert advice from the advisory panel before determining a development application or appeal;
- Advisory panels would help clarify the role of councilors in the planning process and thereby bring much greater transparency to planning decisions. Recommendations made by the advisory panel would be published, so it would be clear to voters if councilors over-ruled the panel's recommendations;
- Public confidence in councilors and council would increase, as there would be less grounds for suspecting them of acting improperly when ruling on DAs. In the four NSW councils where independent panels are in the place, there is claimed to have been a significant improvement in public, staff and councilor satisfaction with the DA process; and
- Allowing third party appeals to a panel over disputed DAs would make the process more equitable as the value of their land may be affected by changes of use of a neighbouring plot. At present third parties cannot appeal to the Land and Environment Court to reassess a DA on its merits. They may only do so if councils have failed to comply with their internal rules.

Cons

- The advisory panel would not be truly independent and could be over-ruled by councilors. Therefore, a clear separation of powers would not be achieved; and
- All but the first disadvantage under 'Cons' in the above option above, would also

apply to this option.

Increase the number of development decisions that can be delegated by councils to certified planners or architects so as to enable faster processing times of the remaining DAs.

Pros

- Certification of straightforward DAs by architects and planners would be by qualified personnel and they would be professionally liable if errors occurred;
- State support might be forthcoming. Some of the Development Assessment Forum's recommendations are already to be incorporated as part of NSW planning reform. For instance, minor changes to a property's internal finishes will not need a DA; and
- Councils could use freed resources to reduce average DA processing times, which would make intervention by the Planning Minister less likely.

Cons

- There remains a potential for corruption, with architects and professional certifiers dependent for work on the development industry. They could be less impartial in determining DAs than council staff or an independent advisory panel. Corruption risk would be transferred rather than eliminated; and
- With budgets constrained, councils may employ fewer staff processing DAs and the chance to improve average processing times could be lost. The Minister may decide to reduce the processing time target from 40 days to say 20 days; a target council would still have problems meeting.¹⁵

3.0 NEW PLANNING LEGISLATION

On 28 February 2006 the Minister for Planning Hon Frank Sartor MP gave the Second Reading Speech on the *Environmental Planning and Assessment Amendment Bill*. In relation to the number of development applications faced by Councils across the State (125,000 development applications across 152 councils) he stated:

While most councils do a good job in dealing with these pressures, a small number do not. The State cannot stand idly by when some councils repeatedly fail to make timely and reasonable planning decisions. Good planning and environmental outcomes do not require interminable processes and delays.¹⁶

During his speech, the Planning Minister also made reference to: councils preparing local environment plans to rezone land solely on the basis of requests from developers rather than the consideration of a proper strategic planning framework; and the excessive legal costs incurred by some councils, in one case the council had spent over 50 percent of its planning budget on legal expenses.

¹⁵ Local Government and Shires Association of NSW, *Independent Inquiry into the Financial Sustainability of NSW Local Government. Are Councils Sustainable? Final Report: Findings and Recommendations*, Chair Percy Allan, May 2006, at 185.

¹⁶ NSWPD, *Environmental Planning and Assessment Amendment Bill Second Reading Speech*, 28 February 2006.

With this background, the Minister's solution was to legislate to make it easier to remove development consent functions from an elected council, and replace that function with an independent hearing panel or administrator. Such a panel will be able to perform a council's consent authority role or its role in preparing environmental planning instrument, and will be subject to the Minister's direction and control except in the determination of development applications. The Parliament passed the *Environmental Planning and Assessment Amendment Act 2006*, and Part 6 contains the provisions relating to planning administrators and panels. The provisions are:

- (section 118) The Minister may appoint a planning administrator or a planning assessment panel (panel) or both to exercise functions of a council if:
 - the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation; or
 - the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect; or
 - the council agrees to the appointment; or
 - a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councilors in relation to matters covered by the Environmental Planning and Assessment Act (EPAA).

A planning administrator may be appointed to exercise all or any particular function or class of functions of the council under the EPAA. In contrast, a panel may only perform the roles of consent authority or to make environmental planning instruments. Before appointing a planning administrator or panel, the Minister must obtain the concurrence of the Minister for Local Government. In addition, the Minister must make the reasons for appointing a panel or administrator public.

A panel, comprised of three to five members, is to be appointed by the Minister. Members of the panel are to have relevant skills and knowledge in planning and development matters. The Minister is to appoint one of the members as the chairperson. A council must pay the Department the remuneration and costs and expenses of the planning administrator or panel, and if directed by the Minister, also provide them with staff, facilities and documents. The Act also includes provisions for the filling of vacancies and the disclosure of pecuniary interests. A panel may not exercise the operations of a council for a continuous period of more than five years. After more than two years of continuous operation of a panel, the Minister is required to conduct a review of its appointment and functions.

The introduction and passage of the Bill attracted considerable comment from interested parties. The Local Government Association and Shires Association of NSW were critical of the legislation, particularly the very broad and subjective test which enables the Minister to remove a council's planning powers. The Associations believe that any panels in the NSW planning system should have an advisory role only and not the power to determine development applications. The Associations stated that the legislation should be amended

to:

- Make explicit the criteria to be used by the Minister in determining whether a planning administrator or panel (or both) is to be appointed;
- Require a formal process of forewarning and/or negotiation with the council concerned in an endeavour to address issues concerning a council's performance before a planning administrator or panel is appointed;
- Require the State Government to pay the remuneration and costs and expenses of the planning administrator or panel.¹⁷

The Associations also questioned the accuracy and integrity of the data the Government used to justify the bill. Research commissioned by the Associations in 2003 found that, of more than 3,500 development applications, only 4% went before councilors for a decision at a council meeting. Delays for processing development applications are also often out of council control, with the Associations citing: applicants submitting non-complying or incomplete applications; the critical shortage of planning staff; the referral of development applications to State government departments for concurrence and/or comment; the rapidly changing planning reform agenda and the plethora of legislation and regulations to be considered in the determination process.¹⁸

3.1 A State Independent Hearing and Assessment Panel

As part of the reforms with the passage of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*, a State panel may be formed. Section 75G of the *Environmental Planning and Assessment Act 1979*, in regard to major projects, provides for the Minister for Planning to constitute an independent hearing and assessment panel to provide advice to the Minister.

The Minister may appoint either a panel of experts or a panel of Departmental officers (but not an officer involved in a regulatory function in connection with the project). The panel will be able to provide independent and impartial technical advice to the Minister on complex or controversial proposals, major environmental planning instruments or proposed amendments to existing instruments. Draft guidelines produced by the Department for Planning state that a panel could be appointed to provide independent advice at various stages of the assessment process. For example, the Minister may direct a panel:

- To provide advice to the Director-General on the assessment requirements and documentation required for the assessment of projects, concept plans, State significant sites or rezoning proposals;
- To assess major development proposals or rezonings. This may include holding public hearings;
- To independently review planning strategies, policies and planning instruments; or
- To carry out post-determination functions, eg the panel may review compliance or

¹⁷ Local Government Association of NSW, Shires Association of NSW, *Information Sheet: EP&AA Bill 2006*. 7 March 2006.

¹⁸ Local Government Association of NSW, Shires Association of NSW, *Information Sheet: EP&AA Bill 2006*. 7 March 2006.

audit documentation and provide advice regarding compliance matters.¹⁹

4.0 INDEPENDENT HEARING AND ASSESSMENT PANELS IN OTHER STATES

South Australia is the only jurisdiction to have legislated for a greater role for independent panels in the determination process. The legislation is described below.

4.1 South Australia - Development (Panels) Amendment Act 2006

The major piece of legislation in relation to planning and development control is the *Development Act 1993*. Similar to NSW, local councils in South Australia determine the bulk of development applications. The South Australian Government has tried various ways to improve development assessment outcomes. Central to these reforms is that elected local councilors should undertake strategic planning and policy development, whilst development assessment must be impartial and made within the specified times and policies of development plans. In 2001 the Government amended the *Development Act 1993*, requiring local governments to establish a Development Assessment Panel to exercise or perform or to assist the council to exercise or perform its development assessment powers and functions. However, the amendments stated that a council is to determine the extent to which it will delegate its powers and functions to the panel. This effectively made the intent of the amendments 'null and void'. Environmental lawyer Paul Leadbeter commented:

...the drafting of the provision resulted in a situation whereby councils had to establish a panel but were not required to give those panels any delegated functions! ... The majority of councils created a Development Assessment Panel ... but then simply appointed all elected members to the panel. Some councils gave the panels very little, if any, assessment powers.²⁰

Clearly this was not the intent of the Government reforms. In response, in April 2005 the Government introduced the *Development (Sustainable Development) Amendment Bill*. This proposed significant changes for the development assessment process for local government, including expanding the functions of the development assessment panels. However, on 4 July 2005 the Minister adjourned the debate on the Bill due to concerns that amendments proposed had the potential to undermine the spirit of the reforms. Those pieces of the Bill agreed upon were passed in the *Development (Miscellaneous) Amendment*

¹⁹ NSW Department of Planning, *Draft Guideline Independent Hearing And Assessment Panels under Part 3A of the Environmental Planning and Assessment Act 1979 For Discussion Only – Not Government Policy Draft* September 2005. See: http://www.planning.nsw.gov.au/planning_reforms/p/draft_ihap_guidelines.rtf, Accessed October 2006.

²⁰ Leadbeter, P. "Proposed Development Assessment Panels in South Australia – Improving the impartiality of development assessment decisions." In *Local Government Law Journal*, 2005, Vol 11, at 21.

Act 2005. The Act strengthened the role of councils to prioritise strategic planning and policy drafting.

On 8 June 2006 the Minister introduced the *Development (Panels) Amendment Bill*. The Bill has been passed by the Parliament, with the Act yet to commence. The Act requires councils to establish a council development assessment panel. A council must delegate its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent to:

- Its development assessment panel; or
- A person occupying a particular office or position (but not including a person who is the member of the council); or
- A regional development assessment panel.

A council development assessment panel must normally consist of seven members, with the presiding officer appointed by the council. The presiding officer must: not be a member of the council; be a fit and proper person; and a person who has a reasonable knowledge of the operation and requirements of the *Development Act*, as well as appropriate qualifications or experience in a field relevant to the activities of the panel. The remaining members of the panel are also appointed by the council. Up to half of the members may comprise council members or officers of the council. The requirements for the rest of the panel members are the same as for the presiding officer.

An assessment panel member must lodge their pecuniary interests with a state-wide register. This is available for public inspection. A panel member who fails to comply with the register requirements, or who submits a false or misleading return, is guilty of an offence with a penalty up to \$10,000.

The Act makes fundamental changes to how development applications are assessed in South Australia. It separates the role of councils so that elected representatives are responsible for developing planning policies, whilst an independent body assesses development applications against those policies.

The South Australian Royal Australian Institute of Architects strongly supported the separation of roles of local councils, and wrote that the changes would:

... bring about better policies in Development Plans by focusing those who determine our built environment on the aspirations of their communities. Policy making is a political process; development assessment is a quasi-judicial process. Good development comes from good policy where the aspirations of the community are embodied in a plan for the community and where assessment against that plan is carried out objectively, independently and judiciously. The shift in emphasis for local government from assessment to policy is a monumental shift which will have economic, cultural and environmental benefits for this state. Assessment is a process and in itself cannot deliver a better built environment. Only good policy will achieve this.²¹

²¹ The Royal Australian Institute of Architects, South Australian Chapter, *Development (Sustainable Development) Amendment Bill 2004. Submission to the Urban Development and Planning Sustainable Development Bill consultation*, May 2004. See:

4.2 Victoria

Victoria has a similar legislative system to NSW, in that the Victorian Minister for Planning may appoint a Planning Panel to obtain independent advice. Planning panels are established to consider submissions made about:

- Planning scheme amendments;
- Environment effects inquiries;
- Advisory committees considering either site specific (including planning appeals called in by the Minister) or policy review matters;
- Planning permit applications called in by the Minister or combined with an amendment.

The basic role of a planning panel is to:

- Give submitters an opportunity to be heard in an independent forum and in an informal, non-judicial manner. A panel is not a court of law;
- Give independent advice to the planning authority and/or Minister about a proposal and about submissions referred to it.

Panels are comprised of one or more members, depending on the complexity or significance of the matter and the type of issues that have been raised. They generally deal with larger scale planning issues that concern the overall planning scheme of the State. Planning panels are appointed to consider and make recommendations (not decisions) about the proposal before them.²²

PART 2: THE ASSESSMENT AND APPROVAL OF MAJOR PROJECTS

5.0 MAJOR PROJECT ASSESSMENT

The *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* (assented to on 16.6.2005) introduced provisions relating to major infrastructure and other projects into the *Environmental Planning and Assessment Act*. These projects are often referred to as Part 3A projects, reflecting the new part inserted into the Act. The insertion of Part 3A introduced new definitions into the Act, as follows:

- **major infrastructure development** includes development, whether or not carried out by a public authority, for the purposes of roads, railways, pipelines, electricity generation, electricity or gas transmission or distribution, sewerage treatment facilities, dams or water reticulation works, desalination plants, trading ports or other public utility undertakings.
- **critical infrastructure project** is any development that is declared to be a project to which this Part applies if it is of a category that, in the opinion of the Minister, is

www.architecture.com.au, accessed October 2006.

²² Victorian Department of Environment and Sustainability, *Planning Panel Reports and Hearings*. See: <http://www.dse.vic.gov.au>, Accessed October 2006.

essential for the State for economic, environmental or social reasons.

A development may be declared a 'project' to which Part 3A applies either by order of the Minister published in the Gazette, or by a State environmental planning policy. As discussed in more detail later in this paper, the State Environmental Planning Policy (Major Projects) was made on 1 August 2005 to support the legislation.²³ The following kinds of projects may be declared to be a project to which Part 3A applies (s75B(2)) :

- major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance;
- major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent, would (but for this Part) require an environmental impact statement to be obtained under that Part.

As noted, the Minister may also declare a project to be a critical infrastructure project. The distinction is noteworthy, because if it is so declared:

- Proponent or objector appeals in respect of the determination of an application for approval of the project are excluded (s 75K, 75L & 75Q);
- All environmental planning instruments (other than SEPPs that specifically relate to the project) and council orders are excluded (s 75R);
- Third-party appeals against the project under the EPAA or other environment protection legislation is excluded (s75T).

Proponents may bypass Council planning legislation and apply direct to the Minister for their project to be approved under Part 3A. Once an application is received, the Director-General is to prepare environmental assessment requirements. The Minister may also constitute an independent hearing and assessment panel and report to the Minister. Once the environmental assessment has been accepted by the Director-General, it must be publicly available for at least 30 days, during which submissions, including from a public authority, may be received. The Director-General then provides an environmental assessment report to the Minister for his/her consideration. The Minister may then approve or not approve the carrying out of the project (s75J).

If the project is refused by the Minister, and:

- The project is not a critical infrastructure project; and
- The proponent is not a public authority; and
- The project has not been the subject of an inquiry, either by a 'Commission of Inquiry' or an independent hearing and assessment panel;

then the proponent may appeal to the Land and Environment Court within three months. Similarly, if the Minister approves a project, an objector, if they have made a submission during the environmental assessment process, is entitled to appeal to the Court within 28 days of notice of the determination (s75K, 75L).

²³ This SEPP was actually an amended version of the State Environmental Planning Policy State Significant Developments which was gazetted on 25 May 2005.

Division 3 of Part 3A provides for concept plans for critical infrastructure projects. The Minister may authorize or require the proponent to submit such a plan for a project. A concept plan does not include a detailed description of the project. Instead it is required to:

- (a) outline the scope of the project and any development options, and
- (b) set out any proposal for the staged implementation of the project, and
- (c) contain any other matter required by the Director-General.

A concept plan means that the overall provisions of a major project can be evaluated prior to consideration of the details. With this approach, NSW Planning argues that fundamental issues such as the suitability of a site or route can be resolved up-front and provides for the simplification of subsequent approvals where environmental impacts can be avoided or minimized.²⁴

The environmental assessment requirements and determination by the Minister for a concept plan are the same as those described above for project approval. Once a concept plan is approved, the Minister may make any, or any combination, of the following determinations:

- Further environmental assessment requirements for approval to carry out the project;
- Approval to carry out the project is to be subject to other provisions of the Act;
- No further environmental assessment is required for the project, in which case the Minister may approve (or disapprove) of the project without further application, environmental assessment or report.

If the Minister disapproves a concept plan, the proponent may, with the same conditions as a project refusal, appeal to the Land and Environment Court. However, the Act includes no provision for objectors to a concept plan to appeal the Minister's decision.

The following authorizations are not required for an approved project:

- Concurrence under Part 3 of the *Coastal Protection Act 1979*;
- A permit under the *Fisheries Management Act 1994*;
- Approvals under the *Heritage Act 1977*;
- Permits under the *National Parks and Wildlife Act 1974*;
- An authorization under the *Native Vegetation Act 2003* to clear native vegetation;
- A permit under the *Rivers and Foreshores Improvement Act 1948*;
- A bush fire safety authority under the *Rural Fires Act 1997*;
- Approvals under the *Water Management Act 2000*.

In addition, protection orders under the: *Heritage Act*; *National Parks and Wildlife Act*; *Threatened Species Act*; *Protection of the Environment Operations Act 1997*; and the *Local*

²⁴ NSW Planning, *Part 3A and the planning reforms. Fact Sheet 1*. August 2005. See: http://www.planning.nsw.gov.au/planning_reforms/index.asp#sepp, Accessed October 2006.

Government Act 1993 cannot be made so as to prevent or interfere with an approved project.

5.1 A new State Environmental Planning Policy (Major Projects)

To support the operation of Part 3A of the Act, in August 2005 the Government released a State Environmental Planning Policy (Major Projects) 2005. The stated aims of the policy are as follows:

- To identify development to which the development assessment and approval process under Part 3A of the Act applies;
- To identify any such development that is a critical infrastructure project for the purposes of Part 3A of the Act;
- To facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant sites for the benefit of the State;
- To facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes;
- To rationalise and clarify the provisions making the Minister the approval authority for development and sites of State significance, and to keep those provisions under review so that the approval process is devolved to councils when State planning objectives have been achieved.

Schedule 1 of the Major Projects SEPP identifies classes of development that will be determined by the Minister as a Part 3A project. Schedule 1 has 28 identified classes of development, each with their own benchmark for when Part 3A approval applies. The classes are divided into the following groups:

- Group 1 – Agriculture, timber, food and related industries
 - Intensive livestock industries;
 - Aquaculture;
 - Agricultural produce industries and food and beverage processing;
 - Timber milling, timber processing, paper or pulp processing
- Group 2 – Mining, petroleum production, extractive and related industries
 - Mining;
 - Petroleum;
 - Extractive industries;
 - Geosequestration;
 - Metal, mineral or extractive material processing;
- Group 3 – Chemical, manufacturing and related industries
- Group 4 – Other manufacturing industries, distribution and storage facilities;
- Group 5 – Residential, commercial or retail projects;
- Group 6 – Tourism and recreational facilities
 - Marina facilities;
 - Major sporting facilities;
 - Film, television, media or performing arts facilities;
 - Tourist, convention and entertainment facilities;

- Group 7 – Health and public service facilities;
 - Hospitals;
 - Medical research and development facility;
 - Educational facilities;
 - Correctional facilities;
- Group 8 – Transport, energy and water infrastructure
 - Port and wharf facilities;
 - Rail and related transport facilities;
 - Electricity generation;
 - Water supply works;
 - Sewage and related waste water treatment plants;
 - Pipelines
- Group 9 – Resource and waste related industries;
 - Resource recovery or waste facilities;
 - Remediation of contaminated land

Schedule 2 of the State Environmental Planning Policy identifies specific sites for projects that will be determined under Part 3A. Sites included are:

- Coastal areas – for various types of development or subdivision;
- Chatswood Railway Interchange;
- Kurnell peninsula;
- Newcastle-Honeysuckle development area;
- Penrith Lakes;
- Port and Related Employment Lands – for Botany and Sydney Harbour;
- Rhodes Peninsula
- Sydney – Fox Studios, Moore Park Showground and Sydney Cricket Grounds;
- Sydney Harbour Foreshore Sites;
- Taronga Zoo;
- Australian Museum;
- Sydney Olympic Park;
- Housing in Ku-ring-gai.

Schedule 3 of the SEPP identifies State significant sites where Part 3A applies. Included on this schedule are:

- Sydney Opera House;
- Luna Park site;
- Royal Rehabilitation Centre Sydney site;
- Channel 7 site (Epping);
- Redfern-Waterloo Authority sites;

Schedule 5 of the SEPP identifies critical infrastructure projects. To date, three sites have been identified as critical infrastructure:

- Kurnell Desalination Plant;
- Royal North Shore Hospital redevelopment site;
- Liverpool Hospital redevelopment site.

The State Environmental Planning Policy (Major Projects) outlines what constitutes a

major project for the purposes of Part 3A of the Act. These are termed ‘non-discretionary’ matters, in that if an activity is covered by the SEPP it is automatically considered a major project and determined by the Minister. In 2005-06, 289 proposals were lodged with the Department of Planning under the major projects law. Of these, 250 were ‘non-discretionary’ matters. The Minister exercised his ‘call in’ discretion for 39 proposals during the 12 month period, of which 20 were major projects, 18 were State significant sites and one was a critical infrastructure project.²⁵

Debating the legislation in the Legislative Assembly, the Minister Hon Craig Knowles MP stated:

These reforms not only are vital to the delivery of major infrastructure projects and to the economy of New South Wales but also underpin the Government's ability to implement strategic initiatives such as the Metropolitan Strategy.²⁶

Whilst the Opposition voted for the legislation, spokesman Chris Hartcher MP was particularly concerned about the ability of the Minister to declare a project critical infrastructure, hence curbing opponents’ appeal rights. Mr Hartcher stated:

Under this bill you could wake up with the Premier announcing that a nuclear plant will be built at the end of the street and you could not do a single thing to stop it. ... The Opposition calls on the Government to produce guidelines for what may be defined as "critical infrastructure".²⁷

In the Legislative Council, The Greens MLC Hon Sylvia Hale was critical of the Bill, and stated:

I say at the outset that the Greens oppose and deplore this bill. Even its title sticks in the craw. The bill represents the undoing of 25 years of environmental safeguards and the dismantling of hard-won environmental processes that have been underpinned by a framework of legal rights to challenge rapacious development.²⁸

The introduction of the Part 3A legislation also provoked significant criticism from conservation organizations. For instance, the Nature Conservation Council described the legislation as the greatest set-back in environmental protection laws in over 25 years.²⁹ In

²⁵ NSW Department of Planning, *New South Wales Major Development Monitor 2005-06*. September 2006, at 2. See: http://www.planning.nsw.gov.au/corporate_publications/pdf/nsw_development_monitor_2005-06.pdf, accessed October 2006.

²⁶ *NSWPD*, 27 May 2005, at 16332.

²⁷ *NSWPD*, 8 June 2005, at 16337.

²⁸ *NSWPD*, 9 June 2005, at 16,780.

²⁹ Nature Conservation Council, *Law removing community's right to appeal massive development passes*, 9 June 2005. See: http://www.nccnsw.org.au/index.php?option=com_content&task=view&id=1315&Itemid=207, accessed November 2006.

contrast, the Property Council of Australia (NSW) hailed the reforms as a breakthrough in the fight against red tape, and congratulated the Government on the reforms.³⁰

5.3 The Environmental Planning Legislation Amendment Bill – October 2006.

On 24 October 2006, the Government introduced into the Legislative Assembly the *Environmental Planning Legislation Amendment Bill*. The Bill aims to amend six Acts, including sections of the major projects (Part 3A) of the *Environmental Planning and Assessment Act 1979*. In his Second Reading Speech, the Minister for Planning Hon Frank Sartor MP stated:

... the bill will make a range of amendments to the provisions of the Environmental Planning and Assessment Act 1979 relating to major projects. These amendments flow from a review of the major projects system after its first year of operation. They will improve operational efficiency and simplify the administration of major projects' environmental assessments.³¹

Whilst the proposed amendments to the EPAA are generally of a 'housekeeping' nature, this Paper will briefly review some of those relevant to Part 3A – found in Schedule 1 of the Bill.

Section 75B of the EPAA states that the Minister may declare a project to be assessed under Part 3A by way of a State Environmental Planning Policy or by order published in the Gazette. Clause 2 of the Amendment Bill proposes to include the power of the Minister to declare Part 3A projects by way of an amendment to a relevant State Environmental Planning Policy.

Clause 5 of the Amendment Bill refers to the declaration of critical infrastructure projects. The amendment ensures that the same process by which Part 3A projects are declared also applies to the declaration of projects as critical infrastructure projects.

Section 75J of the EPAA relates to the giving of approval by the Minister to carry out a project. Section 75J(3) states that the Minister cannot approve a project that is not critical infrastructure and is wholly prohibited by an environmental planning instrument. However, section 75R states that in terms of environmental planning instruments, only state environmental planning policies apply. Clause 7 of the Amendment Bill omits section 75J(3) and reads as follows:

In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

³⁰ Property Council of Australia (NSW), Property Council Applauds New Focus on Major Projects. 12 May 2005. See: <http://www.propertyoz.com.au/nsw/>, Accessed November 2006.

³¹ NSWPD, *Environmental Planning Legislation Amendment Bill*. 24 October 2006, at 3189.

With this amendment, the regulations may prevent the Minister from giving approval to a Part 3A project that is subject to a prohibition in an environmental planning instrument to which the Minister is not bound – ie, a regional environmental plan or a local environmental plan. A similar amendment is proposed for the giving of approval for concept plans (clause 12).

Other proposed amendments include:

- Conditions of approval for the carrying out of a project may require the proponent to comply with any obligations in a statement of commitments made by the proponent (clause 8);
- Where the Minister approves the concept plan for a Part 3A project and determines that the project is to be finally assessed under Part 4 of the EPAA, the consent authority must make any consent subject to the conditions directed by the Minister for the purpose of fulfilling the obligations in a statement of commitments submitted by the proponent (clause 16);
- Excludes the application of any underlying prohibition or restriction of a development in an environmental planning instrument for a Part 3A project if the Minister so directs (clause 17);
- Similarly, clause 20 authorises the Minister to make a formal amendment of an environmental planning instrument (such as a SEPP) to remove or modify any prohibition or restriction in the instrument for an approved Part 3A project, including development for which a concept plan has been approved.

5.4 A new Draft State Environmental Planning Policy (Infrastructure)

The NSW Government has also recently released a draft State Environmental Planning Policy (Infrastructure) 2006. The draft SEPP is on exhibit for public comment until 17 November 2006. The draft SEPP consolidates and updates planning processes for new infrastructure, and replaces 19 other SEPPs into the one document. The draft Infrastructure SEPP includes general planning provisions to:

- Identify classes of infrastructure development that can be approved by public infrastructure proponents, rather than through a formal development consent process, if the development does not significantly affect the environment (Schedule 1 of SEPP). 23 classes of infrastructure are identified in the draft SEPP, ranging from: air transport facilities; educational establishments; electricity transmission; railway infrastructure and sewerage systems.
- Consolidate planning provisions relating to project specific infrastructure into the one SEPP (Schedule 2 of the SEPP). Planning consent will not be required for development or associated infrastructure, or is otherwise controlled, for ten specific projects identified in the draft SEPP. These are:
 - Deep water access infrastructure within the Sydney Catchment Authority's area of operations;
 - Groundwater investigations within the Sydney Catchment Authority's area of operations;
 - Desalination plants by or on behalf of Sydney Water Corporation;
 - Northside storage tunnel by or on behalf of Sydney Water Corporation;

- Port Kembla Coal Loader (controls coal hauling requirements);
- Castlereagh liquid waste disposal depot;
- Electricity supply corridors;
- Road transport projects;
- Rail transport projects;
- Metropolitan rail expansion tunnel corridors in the City of Sydney;
- Exempt minor development by local or State government authorities from needing approval, if it falls within set guidelines;
- Create more flexibility about where new infrastructure such as schools, police stations and health care facilities can be located without having to amend a council's local environment plan to create a 'special use' zone.

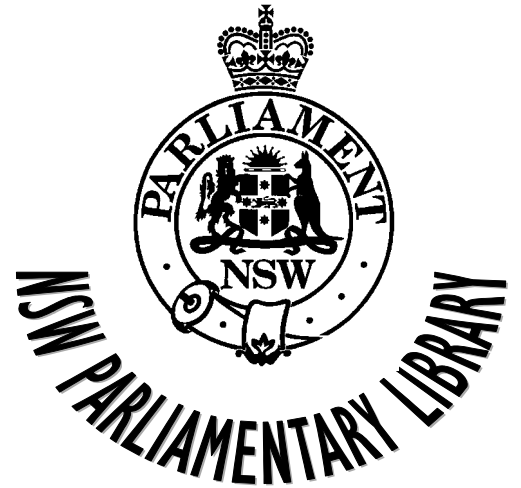
The impact of the draft SEPP is that if infrastructure works are deemed to not significantly affect the environment, then the project does not need development consent from a determining authority – usually a local council. If developments listed in Schedules 1 or 2 are determined to have a significant environmental impact, and if it is proposed by a State agency, it will be determined by the Planning Minister under Part 3A. Projects which may significantly affect the environment, and are proposed by a local council, can be determined by the council after an environmental impact statement has been produced and exhibited.

6.0 CONCLUSION

Part 1 of this paper reviewed the role of independent hearing and assessment panels in the determination of development applications. It is apparent that whilst local councils wish to remain the sole consent authority, the role of independent panels in assessing and determining development applications is increasing. South Australia has legislated to move councils' consent function to an independent panel. In NSW, whilst legislation this year has provided for the Minister to replace a council's determination function with a panel, there is no legislative basis for a council to appoint an advisory independent panel.

Legislation covering the assessment of major projects gives considerable scope and powers to the Minister for Planning, with limited rights of appeal to third parties. Whilst this has attracted the support of the development industry, community and environment groups have criticised this approach.

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