

Planning & environment

Legal update

17 June 2011

Further reforms to be introduced to the NSW Planning System

The controversial Part 3A major project approval regime has been on death row since the NSW State election in March 2011. Its final demise moved one step closer yesterday with the NSW Government's tabling of the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011*. The object of the Bill, in short, is to repeal Part 3A in its entirety and significantly redefine what constitutes State significant development. A number of other amendments have been introduced dealing with the ongoing role of the Planning Assessment Commission and the Joint Regional Planning Panels.

If the bill is passed by Parliament, it will result in approximately a 50% reduction in the number of projects dealt with by the State, with the remainder to be referred back to local councils or JRPPs for assessment. In essence, the bill returns the planning framework to that which was in place prior to the introduction of Part 3A.

The proposed changes include the following:

- Two types of State development have now been introduced, being State Significant Development (**SSD**) or State Significant Infrastructure (**SSI**).
- SSD will be dealt with under Part 4 of the *Environmental Planning and Assessment Act 1979 (EPA Act)* by the Minister. SSI will be dealt with under a new Part 5.1 of the EPA Act by the Minister. Any other development that is not SSD or SSI will be dealt with under Part 4 by local councils or JRPPs.
- SSD projects will generally involve major projects which deliver significant economic input into the NSW economy, or projects with significant environmental impact, including mining and other extractive industries, hospitals, and warehouses and other distribution centres. SSI projects will generally involve larger-scale linear projects including rail lines, electricity transmission lines and pipelines.
- Residential, commercial and retail projects which were previously accepted under Part 3A on the basis of capital investment value will no longer be considered to be of State Significance. Existing Part 3A projects will continue to be dealt with under Part 3A, if Director General's Requirements (**DGRs**) have been issued. If DGRs were not issued these projects will be dealt with as SSD or by a local council or JRPPs, if they do not fall within the SSD definition.

- The capital investment threshold for most development types assessed by JRPPs has been increased from \$10M to \$20M. If any development is within the \$10M to \$20M range, it will be returned to local councils. Accordingly, the Department of Planning has estimated that around 55% of projects that would have been determined by JRPPs will be determined by local councils.
- JRPP membership will include one state appointed member as an independent chairperson. Further, an applicant will have the right to refer a development application in the \$10M to \$20M range that has not been determined by a local council for more than 120 days, to the JRPPs for determination.
- Reporting from local councils is required regarding their performance in processing applications within the \$10M to \$20M range to ensure applications are processed in a timely manner.
- Changes have been made to the Planning Assessment Commission. A range of new procedures will be introduced. There will also be a two-term limit of 6 years in total to be placed on the appointment of permanent members of the Planning Assessment Commission.

It is anticipated that these changes will substantially reform the planning system, and are the next step in the NSW Government's agenda to completely overhaul the existing legislative framework.

If you have any queries in relation to the above, please do not hesitate to contact us.

**Lucinda Morphet
Solicitor**

D: +61 2 8281 4693
E: lzm@cbp.com.au

Planning and environment team



**Anthony Perkins
Partner**
M: +61 409 221 884
D: +61 2 8281 4606
E: afp@cbp.com.au



**Maysaa Parrino
Partner**
M: +61 432 660 255
D: +61 2 8281 4486
E: msp@cbp.com.au



**Claire Parsons
Solicitor**
D: +61 2 8281 4610
E: cfp@cbp.com.au



**Lucinda Morphet
Solicitor**
D: +61 2 8281 4693
E: lzm@cbp.com.au

T 61 2 8281 4555
F 61 2 8281 4567
E law@cbp.com.au
I www.cbp.com.au

Level 42, 2 Park Street
Sydney NSW 2000
Australia

DX 280 Sydney
Advoc Asia member

Colin Biggers
& Paisley

LAWYERS