



Hawkesbury City Council

supplementary  
ordinary  
meeting  
business  
paper

date of meeting: 24 June 2008  
location: council chambers  
time: 5:00 p.m.



**ORDINARY MEETING - SUPPLEMENTARY**

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**Meeting Date:** 24 June 2008

SECTION 4 - Reports for Determination

SUPPLEMENTARY REPORTS

CITY PLANNING

Item: 137 CP - Environmental Planning and Assessment Bill 2008 - (95498)

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**REPORT:**

The purpose of this report is to advise Council that the Environmental Planning and Assessment Bill 2008 passed through Parliament in the early hours of Wednesday 18 June 2008. The Bill will amend the Environmental Planning and Assessment Act 1979 and other relevant Acts. Other Bills cognate with this Bill are the Building Professionals Amendment Bill and the Strata Management Legislation Amendment Bill.

The full details of the final Bill have not yet been fully assessed and the Regulations, that provide detail for the application of the amended Act, have not been released. However, the changes are similar to the original changes proposed in the Discussion paper released in November 2007 with some changes, particularly in the more contentious areas, made following exhibition.

**Background**

|                 |   |
|-----------------|---|
| November 2007   | Discussion Paper on the reform of the NSW planning system released.   |
| 5 February 2007 | Council considered a report and draft submission on the Discussion Paper  |
| 8 February 2007 | Submission from Council forwarded to the Department of Planning.  |
| April 2008      | Draft Legislation placed on public exhibition by the Department of Planning   |
| 29 April 2008   | Mayoral Minute discussing the draft exposure Bill and resolution in support of the LGSA's action calling for a Parliamentary Inquiry into the Draft Exposure Bills. |
| 18 June 2008    | Amendment Bill passed through Parliament and is awaiting Assent.  |

The Regulations for this Bill are yet to be finalised. As such, much of the detail of the actual workings of the proposed changes cannot be fully explored.

In November 2007 the NSW Department of Planning released a Discussion Paper on the reform of NSW planning system. The discussion paper contained over 100 recommendations for change and most of those recommendations were included in the Draft Exposure Bill. Some of the recommendations such as changes to land acquisition and payment of contributions at rezoning stage have not been included. The limitations on what Councils can levy development contributions for have been relaxed, but the accountability criteria has been clarified.

The following sections of the report provide a broad summary of the changes that are contained in the Bill. The report is not a definitive summary of the changes as there is 154 pages of amendments in the Bill, no Regulations and the full impact will take some time to assess. It should be noted that the Bill has not been Assented as yet and is yet to commence.

**Amendments Contained in the Bill**

**1. Changes to Plan Making**

A summary of the principle changes, more relevant to the Hawkesbury, contained in the Bill in relation to Planning Instruments is as follows:

1. Deletion of Regional Environmental Planning Instruments (EPI). However, existing REPs are covered by savings provisions but need to be reviewed "as soon as practicable" by the Minister.
2. Change to the definition of EPI to specifically exclude DCPs.
3. Simplification of the process for the making of SEPPs by the Governor or Minister.
4. Planning Authorities (including Councils) are to prepare an explanation of, and justification for, proposed LEP changes, termed the "planning proposal". The proposal is to state the objectives of the proposed LEP, explanation of provisions, justification of the objectives, outcomes and provisions and the process of implementation, maps and details of proposed community consultation.
5. The Minister or their delegate will then consider the planning proposal in a "Gateway" determination.
6. Remove the ability for DCPs to make provisions for notification or advertising of Complying Development Certificates.

A full assessment of the changes is still being undertaken.

## **2. Development Assessment and Review**

A summary of the principle changes, more relevant to the Hawkesbury, contained in the Bill in relation to Planning Instruments is as follows:

1. Creation of a number of committees into the development assessment process, including:
  - a. Independent Hearing and assessment panel - Council may set up the panel to assess parts of a development application or as defined in an EPI.
  - b. Joint Regional Planning Panel - Functions as a consent authority for developments of regional significance, as defined in an EPI, and is not subject to Ministerial direction except relating to procedures.
  - c. Planning arbitrator - An independent person, registered under the Act and Regulations, used to review determinations of specified matters.
  - d. Planning assessment commission - deals principally with Part 3A matters.
  - e. Planning assessment panel - Panel appointed by the Minister who feels that the Council has failed to comply with its obligations under the planning legislation. It should be noted that these Panels exist now and the Bill has made some modifications to the provisions.

As the Regulations to the Act amendments are yet to be finalised, the details of the operation of these panels is yet to be assessed. However, costs associated with these panels etc, are generally borne by Council.

2. Removal of the requirements to gain separate approval for a Place of Public Entertainment (POPE). However, changes are made to the ability of the consent authority to impose reviewable development consent conditions in relation to extension of operating hours to deal with these matters.
3. Minor changes to the way in which development by the Crown is determined.
4. Changes to applications to modify a development consent (section 96), to make current EPIs apply to the modification application as if it were a new development application, and apply deemed refusal timeframes to section 96 applications.

5. Introduce a review system of determinations outside the Court process, ie, Planning Arbitrators. Generally applicable to relatively minor matters which are defined in an EPI or the Regulations.
6. Increase third party appeal rights for objectors that live within one kilometre of the development, were an objector to the original application, not a matter reviewed by a Planning Arbitrator, must be within 28 days of determination. The Regulations, yet to be finalised, may limit the matters open to this objection.
7. Multiple changes to the provisions relating to reviews and functions of the various panels introduced into the system. Many of these panels, except Planning Arbitrators, apply to larger development proposals or matters of regional or state significance. These provisions are still being reviewed.

### 3. Development Contributions

The Bill makes a number of changes to the provisions relating to development contributions.

1. Divisions 6 – Development Contributions (Sections 93C – 94EM, dealing with Planning Agreements and Local Infrastructure Contributions) and Division 6A – Conditions requiring land or contributions for Affordable Housing, have been omitted.
2. The sections dealing with developer contributions have been completely rewritten with more detailed definitions, accountability provisions and clearer provisions for nexus. The terms “Direct” (old Section 94 plans) and “Indirect” (Old Section 94A Plans) contributions have also been introduced.
3. Separate sections dealing with State Contributions have been introduced.
4. Community Infrastructure is defined as:  
*“Public amenities and public services, but does not include water or sewerage services”*
5. Public Infrastructure is defined as:  
*“Public amenities and public services, affordable housing and transport infrastructure”*
6. Contributions for this infrastructure includes:
  - a. Provision, extension and augmentation.
  - b. The funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure.
  - c. The conservation or enhancement of the natural environment.
  - d. Any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.
7. There are key considerations that must be satisfied for any development contribution as follows:
  - a. *“Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?”*
  - b. *What will be the impact of the proposed development contribution on the affordability of the proposed development?”*
  - c. *Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?”*

- d. *Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?*
  - e. *Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?"*
8. Provisions for strict accounting and reporting requirements of the planning authority are also included.
  9. Contributions must be applied only to the purpose that was the basis for collection and within a reasonable timeframe.
  10. Contribution plans must be prepared and it seems that the Minister must approve the plans.
  11. The Minister can direct a consent authority in relation to:
    - a. What community infrastructure contributions can be collected for.
    - b. Factors that affect the amount of the contribution and the maximum amount (direct contributions).
    - c. For indirect contributions the maximum percentage or amount of the indirect contribution.
    - d. Things that may or may not be accepted as a material public benefit as a direct contribution.
    - e. The type or area of development in respect of which a community infrastructure contribution may or may not be imposed.
    - f. The time within which monetary contributions are to be applied.
    - g. The use of community infrastructure contributions in the form of monetary contributions for purposes other than those for which they were paid.
  12. An EPI cannot include a provision that requires a development consent condition that requires a contribution towards public infrastructure in connection with the carrying out of the development.
  13. Voluntary Planning Agreements must have regard to the key considerations quoted in 7 above.
  14. A Planning Agreement cannot apply in respect of provision of public infrastructure unless it is "key community infrastructure" as defined in the Regulations (not yet available).
  15. Contributions for affordable housing can be required under the provisions of a SEPP or other conditions specified in the Act.
  16. Contributions can be applied to Complying Development. The contributions plan is to specify the monetary value and a Private Certifier must apply that condition. If the Certifier does not apply that condition then Council can impose the condition.
  17. Only contributions paid for land development within the Growth Centre boundaries are collected by the State.
  18. Existing contributions plans are protected under a savings clause but only until 31 March 2010 unless the Minister remakes the plan.
- 4. Building and subdivision certification**
1. The penalty for commencing construction without a construction certificate is increased from 300 penalty units to 1,000 penalty units.



2. A certifying authority, before issuing a construction or occupation certificate may apply to the Council for advice as to whether the design and construction of a building is consistent with the development consent. If a reply is not issued within 21 days it can be assumed that the Council has no objection. If the consent authority gives advice that the building is consistent, then the consent authority may not challenge the certificates issued by the Private Certifier at a later date. The regulations are to prescribe the form and details required for this response and if any fees may be charged for this service.
3. Currently under the provisions of section 45 of the Building Professionals Act 2005 the Building Professionals Board may investigate a Council acting as a certifying authority. A Clause is added to the EP&A Act that enables the Board, depending on the outcome of this investigation, to recommend the Director-General of the Department of Local Government to take appropriate action. Council currently has that power to investigate a Private Certifier.
4. Additional Orders and Compliance Cost Notices have been introduced.
5. Application fees for Building Certificates where buildings have been constructed without approval attract additional fees. These fees are the total of the maximum application fees for a development application and construction certificate application as if the application was for these approvals.
6. It is likely that individual Council staff will be required to have individual and or Council to have Corporate Certification.
7. There may be consequential changes to the Building Professionals Act 2005 that will affect the operation of Private Certifiers and Council certification staff that are still being investigated by staff and were not available at the time of writing this report.

As mentioned previously, there are also cognate Bills, being the Building Professionals Amendment Bill and the Strata Management Legislation Amendment Bill. The Building Professionals Amendment Bill will contain the details of accreditation requirements and powers of investigation and complaints against Private Certifiers and Council Certifiers. These details were not available at the time of writing this report. It is understood that Council responsibility and powers in relation to Private Certifiers will be clarified and that Council officers will require certification qualifications. These matters will have implications on Council's training responsibilities and budget.

## **5. Exempt and Complying Development**

There are no changes of substance in relation to the provisions for Exempt and Complying Development in this Bill. The current Act enables the aims of the State Government, as described in the November 2007 Discussion Paper, to be undertaken without changes, ie increase Complying Development uptake to 50% of applications in the next five years. The Department of Planning is preparing a series of Codes to standardise the provisions for Complying Development across the state. The first of these Codes is currently on public exhibition and is the subject of a separate report in this meeting agenda.

### **Conformance to Strategic Plan**

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

*"Objective: An informed community working together through strong local and regional connections."*

### **Funding**

There are no direct funding implications from this report. However, as the changes to the planning legislation are implemented there will be implications to Council's training budget and some structural changes to the operation of the planning and development sections may be required in order to achieve the targets set by the State Government.

**ORDINARY MEETING - SUPPLEMENTARY**

**Meeting Date:** 24 June 2008

**RECOMMENDATION:**

That the information be noted.

**ATTACHMENTS:**

There are no supporting documents for this report.

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ordinary  
meeting

end of  
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been produced  
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