

Briefing note

Councils' plan making powers extended to planning panels Proposed amendment of the Environmental Planning and Assessment Act in Schedule 2 to Heritage Amendment Bill 2009

Summary

The Minister for Planning is proposing a series of amendments to the *Environmental Planning and Assessment Act* and *Regulation* in the Heritage Amendment Bill 2009 now before Parliament. The amendments will have the effect of extending to Joint Regional Planning Panels (JRPPs) all the plan making functions of a council i.e. LEPs, DCPs and contributions plans (s94 plans). These powers also will be extended to the Planning Assessment Commission (when acting as a JRPP) and to planning panels and planning administrators appointed under s118 of the Act. The Associations strongly oppose these amendments.

Background

Amendments to the *Environmental Planning and Assessment Act* in June 2008 provided for the establishment of new Joint Regional Planning Panels (JRPPs). JRPPs are to commence operation on 1 July 2009 and will have the power to **determine certain classes of development applications**, including:

- all commercial, residential, mixed use, retail and tourism developments above \$10M;
- 'ecotourism' projects and public and community infrastructure projects valued over \$5M (e.g. child care facilities, places of worship and schools);
- designated developments;
- certain coastal developments currently determined under Part 3A; and
- projects over \$5M where council is the proponent or has a conflict of interest.

In addition to the consent functions of a council, the Minister is now proposing a series of amendments that will expand the functions of a JRPP to include the **plan making functions** of a council. The changes include:

- Amendments (contained in the *Heritage Amendment Bill 2009* introduced into Parliament on 13 May 2009 by the Minister for Planning) that give the Minister the power to extend to JRPPs (and the PAC when acting as a JRPP and planning administrators and planning assessment panels under s118 of the Act) the powers of a council in relation to the preparation, making and approval of **development control plans** and the preparation and approval of **contributions plans**. [Schedule 2, cl 7 & 8].
- Amendments (provided in draft form to IAC members) to the *Environmental Planning and Assessment Regulation 2000* that enable the Minister to appoint a JRPP as the relevant planning authority for the preparation of a **Local Environmental Plan (LEP)**.

Minister's explanation for amendments

Minister Keneally has indicated in her speech to Parliament that the proposed amendments are in response to issues that have arisen in relation to planning panels (under s118) currently operating in the Burwood, Ku-ring-gai and Wagga Wagga local government areas. The original terms of appointment of these panels did not provide them with the power to prepare, make and approve development control plans, and prepare and approve contributions plans.

The Minister notes that ‘the requirement for this separate appointment is difficult to justify’ (under the existing provisions of s118 of the Act) and therefore the Act is being amended to facilitate the operations of the panels in these three LGAs.

The Minister notes that the Act still requires the Minister to give notice in writing to councils and allow 21 days for them to make submissions before appointing a planning assessment panel or a joint regional planning panel to perform these functions.

Associations’ comment

The problem with panels

The Minister has indicated in her speech to Parliament that the proposed amendments are in response to practical issues that have arisen in relation to the operation of planning panels in Burwood, Ku-ring-gai and Wagga Wagga. It is understood that the existing terms of the panels’ appointment and the provisions of s118 do not empower the panels to make DCPs or supporting contributions plans. In the case of Burwood, this has resulted in the Minister having to appoint a planning administrator (with the power to make and approve a DCP and contribution plan) alongside the appointed planning panel, which has the power only to make the LEP for the Burwood Town Centre.

The problems encountered by the Minister in relation to these panels highlight the broader issues associated with state appointed administrators and panels being given responsibility for what essentially are local planning decisions. Residents in areas with planning panels are becoming increasingly concerned about the lack of accountability of panels and their inability to have a say in the future development of their area. Community backlash against state appointed panels is likely to increase as the new model of JRPPs is rolled out across the State.

The problem with extending powers to JRPPs and other panels

While perhaps not the primary intent of the amendments, these amendments will establish a legal framework within which the Minister for Planning can, at any time and with no reference to Parliament, remove all the planning functions of a council and transfer them to a JRPP (or in the western region of NSW, the PAC operating as a JRPP).

The Minister’s powers are fettered only by the need to satisfy the criteria contained in s118, which the Associations previously have argued are subjective, contain few quantifiable or objective benchmarks, and too readily enable the Minister, with minimal justification, to remove all or part of a council’s planning functions.

A JRPP is an additional public body to exercise a role that is currently undertaken by elected councillors and council staff (under delegated authority). The JRPPs will have permanent, known members who are no less exposed to pressures from interested parties but are not directly accountable to the community for their decisions on development applications – or potentially LEPs, DCPs and infrastructure contributions plans.

The community is effectively disenfranchised by JRPPs. Councillors must present at election every four years and are directly accountable to their local community for the decisions they make or that are made in the name of the council. This is not the case with State appointed members of JRPPs.

The JRPP model is seriously flawed

The Associations have serious concerns about extending the powers of JRPPs to plan making before they have even proven capable of managing the role of consent authority (see the Associations' submission on JRPPs at www.lgsa.org.au/www/html/2945-joint-regional-planning-panels.asp).

The Associations believe that JRPPs are a seriously flawed model, both in principle and from a practical perspective. The Panels are untested and, just six weeks from their commencement date, the Department has not yet finalised the appointment of Panel members or the operational rules for the Panels – including meeting procedures, code of conduct for panel members, administrative support and the interaction between panels and councils (staff and councillors). The cost of JRPPs has been estimated at between \$2m-3.5m per annum (excluding legal costs) and there is no indication yet of who will pay for the extra costs and or how they will be recovered.

Against Leading Practice Model

The DAF leading practice model for development assessment states that for effective policy making -

“Elected representatives should be responsible for the development of planning policies (which) ensures planning operates in the public interest and delivers desired policy outcomes. This should be achieved through effective consultation with the community, professional officers and relevant experts.” (see www.daf.gov.au)

Planning panels such as JRPPs have previously been justified by the State Government and other supporters on the basis that they enable councils and council staff to focus on developing an appropriate strategic planning framework, within which individual DAs can be assessed and determined. Yet the proposal to extend plan making powers to JRPPs and other panels clearly goes against the DAF leading practice model which has previously been used to support the introduction of panels for DA decision making.

Recommendation

The Associations recommend that the proposed amendments to the *Environmental Planning and Assessment Act* in relation to extending the powers of planning panels be opposed.

To address the existing problem associated with s118 panels, the Minister should look to make targeted amendments to the terms and conditions of panels in Burwood, Ku-ring-gai and Wagga Wagga.