

**Response to Newcastle Herald regarding State significant assessment system changes, given 28 September 2011**

Kirsty Ruddock believes the Part 4/4.1 process will be a general improvement on the Part 3A process.

The three specific concerns she raised related to:

1. Concurrences for things like pollution licences. ie. will a pollution licence be automatically granted as part of a major project approval or will it be separate?
2. Although Part 4.1 excludes private residential developments, a proponent can still lobby the PAC to have a project declared as a state significant project (She is referring to a Catherine Hill Bay/Huntlee type of project). She is concerned that the PAC process is compromised because PAC members are nominated by the minister.
3. The process for assessing public state significant infrastructure will continue to be assessed in the same way as the old Part 3A process.

Ms Ruddock has also suggested that many CSG project applications have been put on until the new system comes into effect. She says she wouldn't be surprised if a flood of CSG applications appear on the DoP website after October 1.

The main thrust of the article will be about how the planning law changes will/could affect major project assessment in the Hunter.

I'd welcome information/comment from the department on this issue plus anything that you would like to respond to regarding Ms Ruddock's concerns.

**RESPONSE given**

*Question one*

The State significant assessment system has two components – one for what is known as State significant development (SSD) and another for State significant infrastructure (SSI).

The SSD assessment system has been established to guide planning decisions on large-scale industrial, resource and other proposals in 24 different development classes, or specified development in precincts identified as important for the State by the NSW Government. It is located in Part 4 of the EP&A Act.

The SSI assessment system has been established to allow planning decisions on major infrastructure proposals, in particular linear infrastructure (such as roads, railway lines or pipes which often cross a number of council boundaries) or development which doesn't require consent but which could have a significant environmental impact (such as a port facility). It is located at Part 5.1 of the EP&A Act.

The State significant assessment system allows a wide range of disparate issues which often characterise such projects to be handled up front and in a co-ordinated way, while at the same time ensuring that each issue is assessed comprehensively and on its merits.

Without this co-ordinated approach, different decisions from different agencies have the potential to conflict with each other.

In regard to environmental protection licences (which typically control pollution), these licences cannot be refused if they are necessary for carrying out a State

significant development which has assessed and approved. However, under the EP&A Act, this doesn't apply to renewals of these licences – only the first time granted.

As licences are renewed, there's an opportunity to respond to the specific operations of the project and to apply, if necessary, contemporary environmental standards.

#### *Question two*

The Minister for Planning in NSW has had the power to call-in any development for more than 30 years.

Under the former Part 3A system, the Minister could decide to call-in any project by order in the NSW Government Gazette, without any limitation on the Minister's powers.

Under the new system, the Minister can only call-in State significant development projects if advice is obtained and made publicly available from the Planning Assessment Commission on the State or regional significance of project. The Planning Assessment Commission is an independent body of experts. The Minister for Planning and Infrastructure cannot direct the Commission in either its decision making or advisory functions.

This provision adds greater rigour to decisions to call-in private development.

#### *Question three*

The NSW Government has made it clear that it has an ongoing role assessing and determining major infrastructure projects and has placed the provision of public infrastructure at the forefront of its program.

Unlike Part 3A, the SSI system requires environmental impact statements (EIS) to be lodged. There's nationally and internationally-recognised approaches to preparing EISs, including detailed consideration of ecologically sustainable development, the need to look at alternative options and to consider ways to avoid, manage and mitigate impacts.

#### *Coal seam gas flood of applications*

It's not possible to predict the number of coal seam gas applications coming to the Department lodged after 1 October.

#### *Advantages for the Hunter*

Some of the advantages for the Hunter as a result of this new system (compared to the Part 3A system) are:

- The Planning Assessment Commission (PAC) now has the primary role to determine private projects, with a role for the Department to be the determining authority in less contentious matters;
- Local control local environmental plan controls must now be specifically considered when assessing SSD projects – this gives greater weight to local council controls;

- Approvals cannot be granted for development which is prohibited by a planning instrument (local or State). Any proposals for prohibited development can only be considered concurrently with a rezoning and must be determined by the PAC;
- Only State significant infrastructure projects can be declared critical infrastructure, not mining or coal seam gas projects (to protect against legal challenges).