June 2011

Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011

Ministerial 'call in' for State significant development

INTRODUCTION

The NSW Government has introduced a Bill into the Parliament to repeal Part 3A of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and replace it with an alternative system for the assessment of projects of genuine State significance.

The Bill, known as the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011* proposes to establish an environmental assessment framework for two broad categories of development, namely State significant development (SSD) and State significant infrastructure (SSI).

The Bill proposes that projects that fall under these two categories be assessed by the Department of Planning and Infrastructure (the Department), and provides for the ability to identify classes of development as SSD or SSI and some specified sites as SSD.

These classes of development and specified sites will be set out in a subsequent State Environmental Planning Policy (SEPP) to be published following the commencement of the new legislation, should it be passed by Parliament, and are set out in a separate Policy Statement tabled in Parliament when the Bill was introduced.

The Bill also provides a reserve power for the Minister for Planning and Infrastructure to call in a proposal that is not listed in the proposed SEPP following advice from the Planning Assessment Commission (PAC). This reserve power ensures that genuinely State significant proposals which are not captured by the SEPP can be assessed and determined at the appropriate level.

PURPOSE OF THIS POLICY STATEMENT

The purpose of this Policy statement is to provide further information about the reserve call in powers for SSD and SSI.

THE CALL IN POWER FOR SSD

Under proposed s.89C(3) of the Bill, the Minister may call in a development as SSD after he/she:

- receives advice from the PAC regarding the State or regional significance of the proposal; and
- makes that advice publicly available.

The call in power may be used at any time prior to the determination of a development application for SSD or lodgement by an applicant of a deemed refusal appeal to the Land and Environment Court.

It is not possible under the proposed Bill to approve wholly prohibited development unless it is called in under this proposed provision.

PROCESS FOR CALL IN FOR SSD

The procedure for calling in a development as SSD is shown in **Figure 1** below, as follows:

1. The applicant or council submits a written request to the Minister for the proposed development to be called in as SSD.
2. The Minister publishes the request on the Department's website and refers the request to the PAC for advice.
3. The PAC considers the request having regard to the State or regional planning significance of the development and prepares a report for the Minister.
4. The PAC report is provided to the Minister and is published on the Department's website.
5. The Minister determines whether the proposed development is of State or regional planning significance, after considering the PAC advice.
6. The Minister publishes his/her determination on the Department's website and publishes an order in the NSW Government Gazette if he/she determines to call in the development.

The amended *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) will provide procedures for councils to follow once an order has been gazetted. It will also provide for the exceptional circumstances where an application requires the transfer of the development application, files and proportionate fees payable to the Department.

The amended EP&A Regulation will also provide that the application will not need to be re-exhibited.

FACTORS TO BE CONSIDERED PRIOR TO EXERCISING THE CALL IN POWER FOR SSD

Under the proposed s.89C(3) of the Bill, the Minister and the PAC will have to consider whether or not the proposal is of State or regional planning significance.

The consideration includes (but is not limited to) whether the proposal:

- delivers significant public benefits for the State or regional communities, including those that directly relate to actions and goals in State or regional strategies and plans (including the State Infrastructure Strategy and projects endorsed by Infrastructure NSW), or
- is complex, contentious or environmentally hazardous and local authorities have requested or require State assistance, or
- is a precinct-scale or linear project that crosses over multiple local government areas or other jurisdiction boundaries, and requires coordinated assessment.

CONCURRENT REZONING PROCESS FOR PROHIBITED DEVELOPMENT

The Bill provides that where development is called in and is wholly prohibited under the provisions of an environmental planning instrument (EPI), there will be a concurrent rezoning process to amend that EPI. The Department will assess both the rezoning and the development application concurrently.

Under this process, the rezoning will generally be determined at the same time as the SSD development application. The Minister will delegate both determination functions to the PAC for all proposals called in and rezoned in this way. This process is set out in **Figure 2** below.

FURTHER INFORMATION

Department of Planning & Infrastructure website:
www.planning.nsw.gov.au

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FIGURE 1 – MINISTERIAL CALL IN POWER FOR SSD

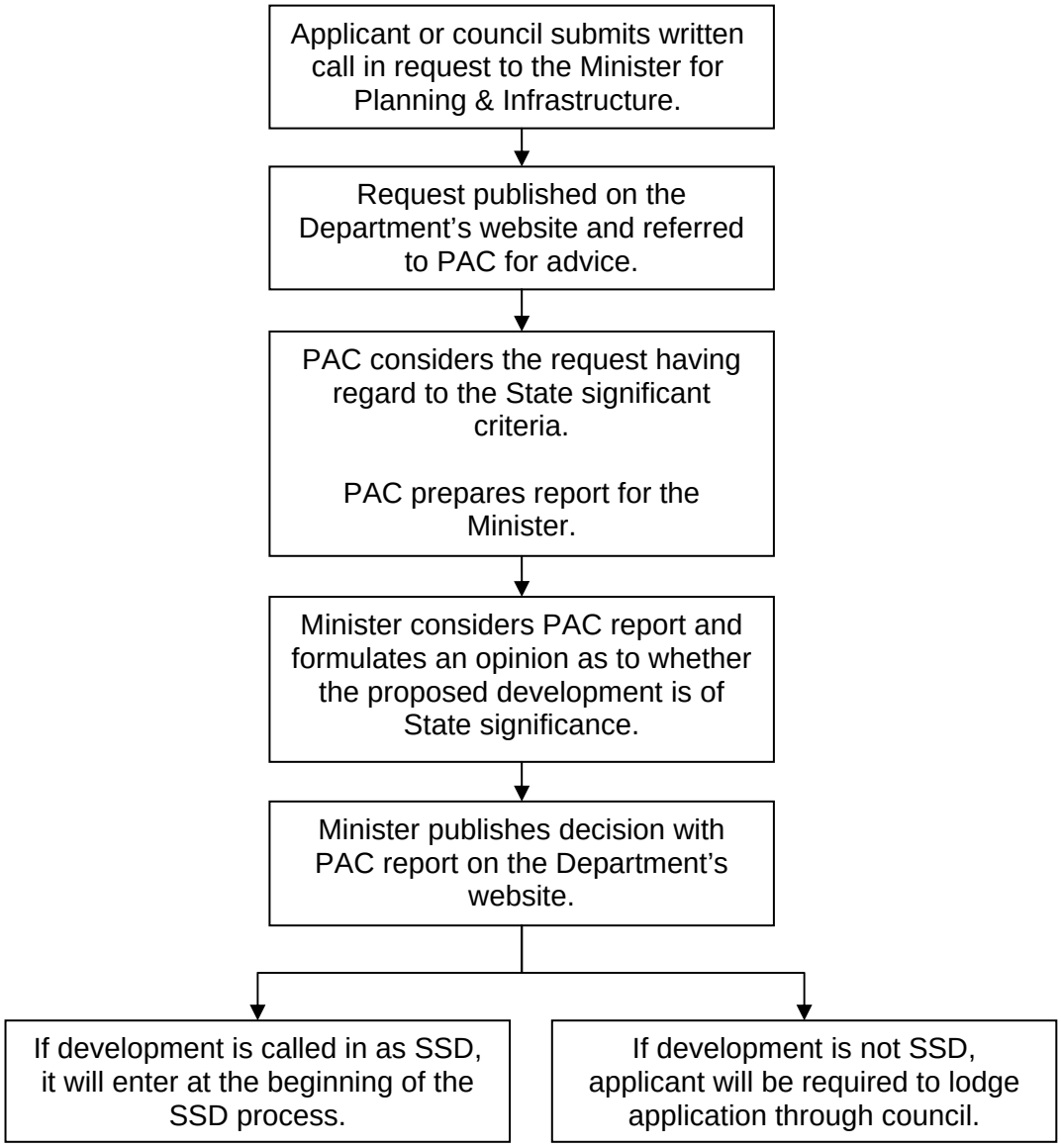

FIGURE 1 – CONCURRENT REZONING PROCESS FOR WHOLLY PROHIBITED DEVELOPMENT