Committee has recommended that the current ACT FOI Act be replaced with an Act that is consistent with the Commonwealth's FOI Act. The Committee has further recommended that information should be published online routinely and at no cost, and that the ACT should enact its own privacy legislation, to replace the Commonwealth legislation currently in force.

To read the report, see: http://www.legassembly.act.gov.au/committees/index1.asp?committee=114&inquiry=773

Residential and Subdivision Policy review – Draft Variation 306

Draft variation 306 to the Territory Plan has recently been released for comment. The draft variation was prepared to implement a review of the ACT residential and subdivision policies. The draft variation proposes:

- changes to residential development, estate development and leasing codes
- replacement of residential zones objectives development tables, and housing development codes
- introduction of Residential Zones Development Code and Lease Variation General Code
- replacement of existing Residential Subdivision Development Code with an Estate Development Code.

The changes include changes to solar access provisions, boundary setback changes, reducing the minimum block size for dual occupancy in RZ2 (suburban core zone) and changes to subdivision provisions for new estates.

Draft variation 306 supersedes draft variations 301 and 303 following a review of policies proposed in draft variations 301 and 303 which were put out for public comment last year. Draft variations 301 and 303 have now been withdrawn. Some of the changes have commenced.

More information is available at http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/current_territory_plan_variations/fact_sheets_for_draft_variation_306

NEW SOUTH WALES — Dr N. Brunton, A. Egan and H. Kahagalle

Infrastructure NSW Act 2011 (NSW)

An Act to establish a new lead agency to develop key strategies for infrastructure was introduced into the NSW Legislative Assembly on 26 May 2011 and passed on 17 June 2011, passed by the NSW Legislative Council on 22 June 2011 and received assent on 27 June 2011.

Part 1 of the amending Act provides preliminary information including definitions. A 'major infrastructure project' means a project that has a capital investment value of more than $100m or that has been nominated as a special project requiring oversight or coordination by Infrastructure NSW.

Part 2 establishes Infrastructure NSW as a statutory corporation and outlines the roles of the board, chief executive and coordinator general.

Part 3 specifies the functions of Infrastructure NSW, including the 20-year state infrastructure strategy, five-year plans, preparation of implementation plans, provision of advice regarding risk assessment in infrastructure provision, recommended funding and delivery arrangements, and the overseeing and monitoring of delivery of major infrastructure projects. An important function will be the role of Infrastructure NSW in coordinating funding submissions to the Commonwealth, including Infrastructure Australia.

Part 4 contains the provisions governing the 20-year state infrastructure strategy, annual five-year Infrastructure Plan and state infrastructure strategy sectoral statements. Division 4 of part 4 contains the provisions governing the role of Infrastructure NSW in overseeing and monitoring the delivery of specified major infrastructure projects.

Infrastructure NSW may require a government agency to prepare a project implementation plan. Part 5 of the

bill provides for the Premier to order, through a project authorisation order, that Infrastructure NSW become responsible for the carrying out of a project. Provisions include the option of transferring ownership of the project assets, rights and liabilities from an agency to Infrastructure NSW; or for a project to continue to be owned by the government agency but Infrastructure NSW to have the power to exercise the functions of the agency and to direct the authority in relation to the carrying out of the project. In such a case the agency itself will be unable to exercise its functions relating to the project without the consent of Infrastructure NSW; or where a project is owned by Infrastructure NSW, it will become the proponent of the project. It will have the power to acquire land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

The Act provides for a project that is owned by Infrastructure NSW during implementation to be transferred upon completion back to the relevant agency for operation. Importantly, this extends to state-owned corporations, which are responsible for many major infrastructure networks across New South Wales. The Premier cannot make a project authorisation in respect of a state-owned corporation without first consulting with the portfolio Minister, the voting shareholders and the chair of the board of the state-owned corporation. Similarly, it will be necessary to consult with the portfolio Minister, the voting shareholders and the chair of the board of the state-owned corporation before making a project divesting order in respect of a state-owned corporation. State-owned corporations—along with all government agencies—will be required to cooperate with Infrastructure NSW in the exercise of its functions, including complying with any reasonable request of Infrastructure NSW for information to enable that body to exercise its functions. This will enable Infrastructure NSW to request copies of draft submissions that state-owned corporations propose to make to independent regulators.

Schedule 1 of the amending Act sets out provisions for members of and procedures of the board, including that the chairman's remuneration be determined independently by the Statutory and Other Officers Tribunal.

***Courts and Other Legislation Amendment Act 2011* (NSW)**

The Courts and Other Legislation Amendment Act 2011 (NSW) received assent on 7 June 2011. Schedule 1.4 amends the *Land and Environment Court Act 1979* (NSW) for the purposes of clarifying the Land and Environment Court's jurisdiction and to ensure that the Court's procedures run efficiently.

Firstly, the Act makes provision for hearings to be conducted on site in relation to disputes between neighbours about high hedges. The Government is of the view that such disputes are best resolved by a commissioner on-site, because the impacts of the hedge can be assessed directly and the matter disposed of quickly.

Secondly, it restores the capacity of the Court to conduct on-site hearings of appeals against determinations of applications to modify development consents. These disputes are also liable to be assessed and disposed of most efficiently on-site.

Thirdly, amendments to the Land and Environment Court Act clarify the Court's jurisdiction in regard to the appropriate class of the Court's jurisdiction to which such matters belong. The aim is to ensure that the appropriate procedures and powers of the court will apply to the conduct of those proceedings. The Act provides for this to occur in respect of appeals against determinations of applications to modify development consents and in respect of matters transferred from the Supreme Court under the *Civil Procedure Act 2005* (NSW).

Phasing out Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW)

Shortly after taking office, the new NSW Government announced that Part 3A of the *Environmental Planning and Assessment Act 1979 (NSW)* (EP&A Act) would be repealed. Legislation giving effect to this commitment is summarised below, following a summary of interim arrangements.

On 13 May 2011 the Minister for Planning and Infrastructure launched a number of interim arrangements pending the repeal, including:

- 63 projects will now either not be declared as major projects under Part 3A or will be immediately removed from the Part 3A system and generally handed back local

councils for assessment and determination by the relevant Joint Regional Planning Panel

- 102 other residential, retail, commercial and coastal projects which have substantially progressed within the existing assessment process will continue under Part 3A pending its legislative repeal

- all applications for other project types (such as mining, chemical and manufacturing, agricultural, tourist and significant infrastructure proposals) which are already in the Part 3A system will continue to be assessed and determined under Part 3A pending its legislative repeal

- for significant private projects remaining in the system, the Minister will delegate his determination role to the independent Planning Assessment Commission (PAC), while smaller less complex applications will be determined by senior officers of the Department of Planning and Infrastructure

- the Government's position of not accepting any new projects under Part 3A will continue.

The changes were made by an amendment to the *State Environmental Planning Policy (Major Development) 2005* on 13 May 2011.

Projects awaiting declaration

Projects awaiting declaration under Part 3A will not be declared. The majority of projects awaiting declaration will need to be assessed under Part 4 and by the local council or a joint regional planning panel. The proponents of these projects need to lodge new applications with the relevant local councils.

Current approvals

Approved projects are not affected by the changes and can still be modified in accordance with Part 3A.

Declared projects which are currently being assessed

Whether a project will continue to be assessed under Part 3A depends on how far through the assessment process the project is.

If the Director-General Requirements (DGRs) were issued on or before 8 April, and are less than two years old at that date, then the project will still be assessed under Part 3A. In the case of a significant private project, the Planning Assessment Commission will assess and determine the application. In the case of a minor and non controversial project, a senior officer in the Department will assess and determine the application.

The Minister will continue to determine applications made by state agencies, other Ministers and public proponents (for example RailCorp and the NSW Roads and Traffic Authority).

Project declarations will be revoked for any projects which:

- have been declared as a Part 3A project but for which no DGRs were issued as at 8 April 2011

- have DGRs which were issued before 8 April 2009, but an environmental assessment had not been lodged by 8 April 2011

- have an approved concept plan, but the only DGRs that were issued on or before 8 April 2011 were in respect of the concept plan application.

Lists of the projects that will and will not be assessed under Part 3A are available on the Department's website.

Concept plan approvals

Project applications pursuant to an existing concept plan approval are to be assessed under Part 4 or 5 of the Act. Applications should be lodged with the relevant local council and will be assessed by that council or a joint regional planning panel.

When considering any application with a concept plan approval, the consent authority:

- may approve that application if it is made within the terms of the concept plan

- must consider the development standards in the concept plan

- must not grant consent unless the application is consistent with the concept plan

- may grant consent even if the application does not comply with the provisions of any relevant environmental planning instrument or master plan.

Stage 1 NSW planning legislation reforms now in place

Legislation for the first stage in the new Government's review and overhaul of NSW planning legislation received assent on 27 June 2011. The *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (NSW) (Part 3A Repeal Act) aims to reduce the number of developments that are considered to be state significant, and to ensure that transparent processes are followed in the assessment and determination of such projects.

The Act separates major developments into two new categories: state significant development (SSD), and state significant infrastructure (SSI).

State significant development (SSD)

SSD is intended to be the assessment process for developments that are generally lodged by private proponents. The classes of development and thresholds for development that will qualify as SSD (and SSI) will be set out in a new State Environmental Planning Policy (SEPP) that is to be called *SEPP (State and Regional Development) 2011*. This new SEPP will be published shortly. The proposed classes of development for SSD are expected to include (but are not limited to) intensive livestock agriculture, mining, petroleum (oil, gas and coal seam gas), extractive industries, cultural, recreation and tourist facilities, hospitals and health research facilities and water supply systems.

The Minister may also declare specific sites to be SSD but only after obtaining and releasing advice from the Planning Assessment Commission (PAC) about the state or regional planning significance of the development. Development on certain sites, such as Sydney Opera House, Sydney Olympic Park site and Barangaroo (if the capital investment value is over $10m) are already proposed to be identified as SSD.

The consent authority for SSD will be the Minister, although it is expected that the Minister will delegate his decision-making authority for all SSD to the PAC or senior officers of the Department of Planning and Infrastructure.

The provisions on SSD have been inserted into Part 4 in Division 4.1 of the *Environmental Planning & Assessment Act 1979* (NSW) (EP&A Act). This means that many of the current development assessment processes that are used by Councils will apply to SSD. For example, s 89H provides that s 79C (which sets out the matters a consent authority is to take into account when assessing a development application) is to apply to the determination of an SSD application. This has the effect that environmental planning instruments and their development standards will need to be considered in the determination of an SSD application.

The Department proposes that development control plans (DCP) will not apply to SSD as DCPs are typically not prepared with major, complex classes of development in mind. Nearly all SSDs will also be subject to the modification powers in s 96 of the EP&A Act.

Critical infrastructure declarations will not apply to SSD. This may allow greater opportunity for appeals by objectors to such development.

State significant infrastructure (SSI)

SSI is to be inserted into a new Part 5.1 of the EP&A Act, and will apply to development in which a government authority is the proponent. As noted above, a new SEPP will set out the classes of development that will be SSI. These will include development that but for Part 5.1 of the EP&A Act would (within the meaning of Part 5 of the Act) be an activity for which the proponent is also the determining authority and would also require an environmental impact statement. The proposed classes of development for SSI will also include large-scale infrastructure projects such as rail lines, water supply systems and pipelines (as provided for by the new SEPP).

The Minister is the consent authority for carrying out SSI although it is expected that applications will be determined by senior officers of the Department if there are fewer than 25 submissions by members of the public objecting to the proposal and the relevant local council does not object to the proposal.

The pre-approval and assessment provisions under the

former Part 3A are generally comparable with the new provisions for SSI.

There are also provisions in the SSI governing staged infrastructure applications that are comparable with concept plans under the former Part 3A.

Development can be declared Critical SSI if it is of a category that, in the opinion of the Minister, is essential for the state for economic, environmental or social reasons (s 115V).

Joint Regional Planning Panels

Projects that are no longer considered SSD or SSI will be returned to local government for assessment. Projects that meet specified thresholds will be sent to the Joint Regional Planning Panel (JRPP). The threshold for projects to be sent to the JRPP has been increased to $20m. Projects between $10m and $20m will be returned to the local council for determination. The Department estimates that around 55% of projects that would have been sent to the JRPP under the old Act will now be returned to Councils.

There are also new provisions relating to the composition of the JRPPs whereby one of the three state-appointed members of the relevant JRPP has to be appointed by the Minister with the concurrence of the Local Government and Shires Associations (LGSA). This aims to alleviate concerns that local governments are not able to control development that occurs in their own area.

Part 3A

Part 3A continues to apply to projects that fall within the definition of 'transitional Part 3A projects' under the EP&A Act, including approved projects and projects that have been the subject of a Part 3A project application and for which environmental assessment requirements have been notified or adopted.

Changes to affordable rental housing

The State Environmental Planning Policy (Affordable Rental Housing) 2009, or ARH SEPP, was introduced on 31 July 2009 to increase the supply and diversity of affordable rental and social housing in NSW.

The policy covers housing types including villas, townhouses and apartments which contain an affordable rental housing component, along with secondary dwellings (such as granny flats), new generation boarding houses, group homes, social housing and supportive accommodation.

The NSW Government announced changes to the policy on 20 May 2011 aimed at limiting the application of the policy in low density residential areas. The changes involve amending and removing certain provisions of the AHR SEPP, and retaining those provisions which encourage new affordable rental housing that is compatible with its surroundings and in locations that are well served by public transport. The aim of the changes is to stop private developers building townhouses and villas in low density areas, where the development is not compatible with the design of the locality and not well served by public transport. Tougher public transport access and parking standards will apply to new generation boarding houses in low-rise residential areas, while Housing NSW will need to satisfy new parking criteria and comply with council notification policies.

The NSW Government has also formed an Affordable Housing Taskforce and will work towards the development and implementation of a new Affordable Housing Choice SEPP. It will also involve working with local councils to develop Affordable Housing Choice Strategies to reflect their local housing needs and development characteristics. Once these local strategies have been confirmed as appropriately meeting local affordable housing needs, the council will be able to be exempted from all or certain aspects of the Affordable Housing Choice SEPP.