

URGENT ATTENTION!!

MAJOR CHANGES TO ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Last week the State Government introduced into Parliament a new Bill which proposes major and alarming changes to the assessment process for **large-scale** developments in NSW. The legislation removes many of the hard-won environmental and planning laws that have existed since 1979, when the *Environmental Planning and Assessment Act* (EP&A Act) was first introduced.

Essentially, **the Bill gives the Minister largely unfettered discretionary powers** regarding:

- the environmental assessment of large-scale projects
- the criteria for approval,
- the need to consider the views of the public and procedures governing such projects,
- the need for separate approvals including approvals on pollution, native vegetation, cultural heritage, coastal protection, bushfire safety, rivers and fisheries.
- the approval of critical infrastructure development even where local plans prohibit such development.

The new Bill is called the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005* and amends the existing EP&A Act by adding a new Part 3A.

NEW PART 3A FOR MAJOR INFRASTRUCTURE AND OTHER PROJECTS

- Applies to two types of development:
 - **“major infrastructure development”** which includes development such as desalination plants, dams, trading ports, roads, electricity generation etc; and
 - **“critical infrastructure projects”** which are essentially *any developments* that are considered by the Minister to be essential for the State for economic, environmental or social reasons.

ENVIRONMENTAL IMPACT ASSESSMENT NOW A DISCRETIONARY MATTER

- The **environmental impact assessment (EIA) process**, including the **requirement to prepare an environmental impact statement (EIS)** for large scale developments assessed under the proposed Part 3A is **removed**,
- The entire EIA process will be left to the broad, unfettered discretion of the Minister.
- The Minister *may* develop *guidelines* for environmental assessment, and the Director General (DG) is to prepare environmental assessment requirements on a case-by-case basis, having regard to those guidelines.
- A panel of experts *may* be appointed by the Minister to assess applications for approval, but there is no requirement that the recommendations of the panel should bind the Minister.
- All **public involvement is at the discretion of the Minister** or the Panel.

CONCEPT PLANS PROVIDE UP FRONT APPROVAL

- The Minister may require the developer to submit a “concept plan” for a large scale project.
- Concept plans are not required to include any detailed description of the project.
- Projects can be approved in principle by the Minister prior to full details of the project being made available. Additionally, there are **no appeal rights for objectors to the concept plan**.

OPPORTUNITIES FOR COMMUNITY CONSULTATION HACKED

- The Bill winds back community involvement with regard to the ability of members of the public:
 - to be involved in the pre-approval process;
 - to challenge an approval on legal grounds;
 - to enforce the approval (such as breaches of pollution licences);
 - to seek stop work orders, interim protection orders and notices regarding cultural heritage, threatened species and pollution; and
 - to appeal an approval on the merits.

- The **ability of the L&E Court to entertain challenges** to an approval and to enforce the approval (such as breaches of pollution licences) are **removed**
- The Bill **amends the *National Parks and Wildlife Act*** so that **developers will not be prosecuted for harming protected fauna without a license**, *if* the work carried out is essential for Part 3A projects.
- Developers will be able to defend themselves against prosecutions for harming threatened species, endangered populations or endangered ecological communities or damaging their habitat if the work was essential for a Part 3A project. They will also be able to use this defence to justify damaging critical habitat or reserved land (including National Parks).

REMOVAL OF CONCURRENCE APPROVALS

- The Bill gets rid of the need for authorisation from other State agencies and departments in the following areas:
 - concurrence under Part 3 of the *Coastal Protection Act*;
 - permits under the *Fisheries Management Act*;
 - heritage and excavation approvals under the *Heritage Act*;
 - cultural approvals under the *National Parks and Wildlife Act*;
 - approvals to clear native vegetation under the *Native Vegetation Act 2003*;
 - permits under Part 3A of the *Rivers and Foreshores Improvement Act*;
 - bush fire safety authorities under the *Rural Fires Act*; and
 - water use approvals, water management work approvals, and activity approvals under the *Water Management Act*.
- **Interim protection orders and stop work orders** under National Parks, threatened species and fisheries legislation **will no longer apply**, and neither will environment protection notices under the *Protection of the Environment Operations Act* or orders under s 124 of the *Local Government Act*.

In short, the laws remove long-standing checks and balances (accountability, transparency, technical oversight and community input) for the most important, and potentially environmentally sensitive proposals, such as coal-fired power stations and desalination plants.

WHAT YOU CAN DO

THE BILL MUST BE STOPPED! It may be back in Parliament on **Tuesday 7 June**. There is **VERY** limited time to act!

Please contact the following people as soon as possible expressing your concerns with this Bill:

- Local media
- Your local MP in NSW Parliament (look them up at www.parliament.nsw.gov.au).
- The Hon Craig Knowles MP, Minister for Infrastructure, Planning and Natural Resources (macquariefields@parliament.nsw.gov.au Fx 9228 3718) and Premier Bob Carr (Parliament House, Macquarie Street, Sydney NSW 2000).
- Your local council (they are greatly affected by this Bill).

Stress in your communications that the new Bill:

- 1. Significantly reduces the opportunity for community consultation,**
- 2. Does not guarantee that adequate levels of Environmental Impact Assessment will be undertaken, if at all, and,**
- 3. Reduces transparency in the entire assessment process for large scale developments.**

For more info, please contact Daniela at NCC on 9279 2466 or dgambotto@nccnsw.org.au