

PLANNING APPROVALS TRAINING – SUMMARY ONLY

Prepared by Julian Ardas, Director, PlanCom Consulting



© Plancom Consulting 2010

COURSE OUTLINE

Planning Approvals
Training

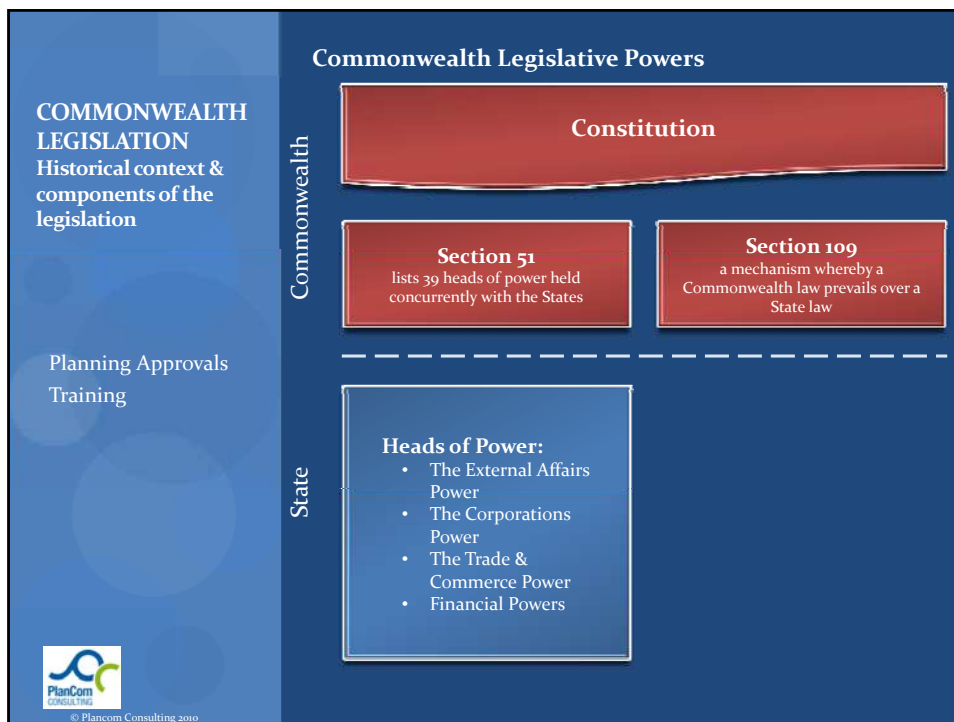
- Introduction
- Commonwealth Legislation
- NSW Planning Legislation
- Aspects of Legislation Relevant to Planning Approvals
- NSW Planning Approvals Processes
- Case Studies
- Tips – Things to do & not to do
- Questions & Answers

Note:

*Planning approvals legislation is not static.
It may be changing as we speak.*



© Plancom Consulting 2010



COMMONWEALTH LEGISLATION
Historical context & components of the legislation cont.

Planning Approvals
Training

Co-operative Federalism

- To develop environmental policy for pollution control, environmental impact assessment, heritage conservation, natural resource management, salinity and water quality, water reform and energy and climate change.

Intergovernmental Agreement on the Environment (IGAE) 1992

- Facilitates a co-operative national approach
- Introduced three key initiatives:
 1. Aims to delineate the respective roles and responsibilities of the Commonwealth, States and local government.
 2. Need for uniform environmental measures:
 3. To adopt sound environmental practices and procedures as a basis for Ecologically Sustainable Development (ESD) - can be achieved with the implementation of:
 - The precautionary principle
 - Intergenerational equity
 - Conservation of biological diversity and ecological integrity
 - Improved valuation and incentive mechanisms.
- Incorporated into State environmental legislation and often financially supported by the Commonwealth.

PlanCom CONSULTING
© Plancom Consulting 2010

COMMONWEALTH LEGISLATION
Historical context & components of the legislation cont.

Planning Approvals Training



© Plancom Consulting 2010

Major influences on the development of Australian Environmental Law cont.

Ecologically Sustainable Development (ESD)

- Adopted by the international community
- “Our Common Future” World Commission on Environment and Development, 1987 (also referred to as the Brundtland Report)

“development which meets the needs of present generations without comprising the ability of future generations to meet their needs”



COMMONWEALTH LEGISLATION
Historical context & components of the legislation cont.

Planning Approvals Training



© Plancom Consulting 2010

Major influences on the development of Australian Environmental Law cont.

The Rio Declaration 1992

- The 1992 United Nations Conference on Environment and Development (the UNCED or the Rio Conference) was a landmark for sustainable development.
- The principle objectives of the Rio Declaration were to establish:

“a new and equitable global partnership through the creation of new levels of co-operation among States, key sectors of societies and people”, and developing international agreements which would “respect the interests of all and protect the integrity of the global environmental and developmental system”.
- Most influential principles :
 - The principle of intergenerational equity (Principle 3)
 - The precautionary approach (Principle 15)
 - The polluter pays principle (Principle 16)
- Other enduring principles include:

• Poverty alleviation	• Effective environmental laws
• Achieving sustainable development	• Compensation for the effects of environmental degradation
• Capacity building and technology transfer	• Environmental impact assessment
• Public participation in decision making (including women and indigenous people)	• Effective legal remedies

<p>COMMONWEALTH LEGISLATION Historical context & components of the legislation cont.</p>	<p>Major influences on the development of Australian Environmental Law cont.</p>
<p>Planning Approvals Training</p>  <p>© Plancom Consulting 2010</p>	<p>• Agenda 21</p> <ul style="list-style-type: none"> • Set out a number of programs to establish the basis for action, objectives, activities and means of implementing the agreements reached at the Rio Conference. • The program areas included: <ul style="list-style-type: none"> ▪ social and economic dimensions; ▪ the conservation and management of resources; ▪ strengthening the role of major groups and means of implementation. • The 2002 World Summit on Sustainable Development ("Rio +10" Conference) • Plan of Implementation of the World Summit on Sustainable Development.

<p>COMMONWEALTH LEGISLATION Historical context & components of the legislation cont.</p>	<p>Major influences on the development of Australian Environmental Law cont.</p>
<p>Planning Approvals Training</p>  <p>© Plancom Consulting 2010</p>	<p>ESD in Australia</p> <ul style="list-style-type: none"> • Influenced by the Rio Declaration and Agenda 21. • National Strategy for Ecologically Sustainable Development (1992), committed all levels of Australian Government to the promotion of <i>"development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends"</i>. • Term <i>"ecologically"</i> before sustainable development - Australian innovation • Commitment by the Intergovernmental Agreement on the Environment 1992 • Incorporated in a large number of federal, State and Territory statutes (119 statutes were listed, Stein 2000) • Application by Australian courts (precautionary principle). <ul style="list-style-type: none"> • <i>Leatch v Director-General of National Parks & Wildlife Service (1993)</i>

COMMONWEALTH LEGISLATION
Historical context & components of the legislation cont.

Planning Approvals Training



© Plancom Consulting 2010


Major influences on the development of Australian Environmental Law cont.

ESD in Australia cont.

- The precautionary principle in New South Wales. For example:
 - Section 79C of the *Environmental Planning and Assessment Act 1979*, consideration of the public interest can embrace ESD.
 - ESD should be considered in all decisions under the Act.
 - ESD principles must be considered by decision-makers under Part 3A of the Act and that a failure to do so renders the decision void and of no effect.

COMMONWEALTH LEGISLATION
Historical context & components of the legislation cont.

Planning Approvals Training



© Plancom Consulting 2010

Major influences on the development of Australian Environmental Law cont.

Economic Rationalism

“Command and control” statutes
 “Market” influences
 National Competition Policy
 A review of law that restricts competition

Traditionally governed the regulation of every type of environmental problem

Increasing interest in recent years to use the “market” as a key aspect of environmental management.

Resulted in a move towards deregulation, corporatisation or privatisation and increased competition

Resulted in land use and natural resource approval systems as being the prime targets for deregulation

The Kyoto Protocol, Carbon Pollution Reduction Scheme, a national water trading market, NSW and ACT Greenhouse Benchmarks Scheme, NSW and Victorian biodiversity trading schemes.

1997 amendments to the EP&A Act 1979, to introduce the concepts of “integrated development” and “accredited certifiers”

Overhaul of Commonwealth environmental impact assessment procedures under the EP & BC Act 1999 to avoid duplication of State and Commonwealth procedures.

COMMONWEALTH LEGISLATION Overview

Planning Approvals
Training



© Plancom Consulting 2010

Commonwealth legislation

- Historical context and components of the legislation
 - Commonwealth legislative powers
 - Cooperative Federalism
 - Intergovernmental Agreement on Environment (IGAE) 1992
 - Ministerial Councils
 - Major influences
 - International Environmental Law
 - Ecologically Sustainable Development
 - The Rio Declaration 1992
 - Agenda 21
 - ESD in Australia
 - Economic Rationalism
- Questions and discussion

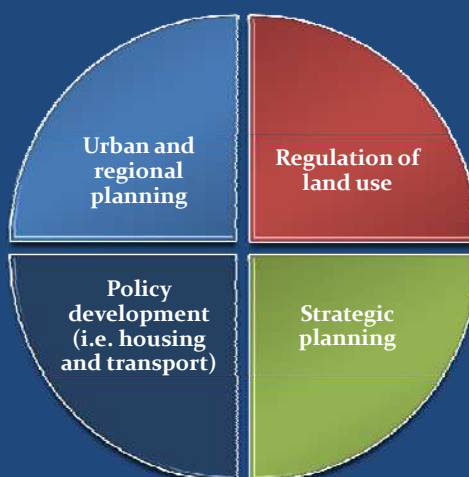
NSW PLANNING LEGISLATION Historical context and components of the legislation

Planning Approvals
Training



© Plancom Consulting 2010

Land use planning



NSW PLANNING LEGISLATION

Historical context
and components
of the legislation

Planning Approvals
Training



© Plancom Consulting 2010

- The *Local Government Act 1919* allowed local government to restrict undesirable development – Section 309 (Pt XI).
 - The *Local Government (Town & Country Planning) Amendment Act 1945* inserted a new Part XXIIA entitled “*Town & Country Planning Schemes*” into the *Local Government Act 1919*.
 - First comprehensive planning legislation
 - Federal government agreed to provide funds to the States for public housing, on condition that the States ensured there was adequate legislation to control town planning.
 - Planning Schemes focussed on infrastructure and technical issues. They **DID NOT HAVE**:
 - ✗ Environmental assessment and protection
 - ✗ Transparency in planning matters
 - ✗ Community involvement in the process

NSW PLANNING LEGISLATION

Historical context
and components
of the legislation
cont.

Planning Approvals
Training



© Plancom Consulting 2010

Who decides –



State
government

Local
government

NSW PLANNING LEGISLATION

Historical context
and components
of the legislation
cont.

Planning Approvals
Training



© Plancom Consulting 2010

The Environmental Planning & Assessment Amendment Act 2008

- **The Planning Assessment Commission (PAC)**
 - Members appointed by the Minister.
 - The PAC's key roles are:
 - to determine applications under Part 3A delegated to it by the Minister;
 - general advice and review function on the request of the Minister; and
 - a review function under Division 7A of Part 4 (review of Development Applications)
 - The PAC is prohibited from employing staff.
- **Joint Regional Planning Panel (JRPP)**
 - May be constituted by the Minister for a particular part of the State. Members are appointed by the Minister.
 - The functions of the JRPP include:
 - functioning as a consent authority;
 - functions under Division 1AA of Part 6 of the EP&A Act; and
 - providing advice on planning or development matters or EPIs

NSW PLANNING LEGISLATION

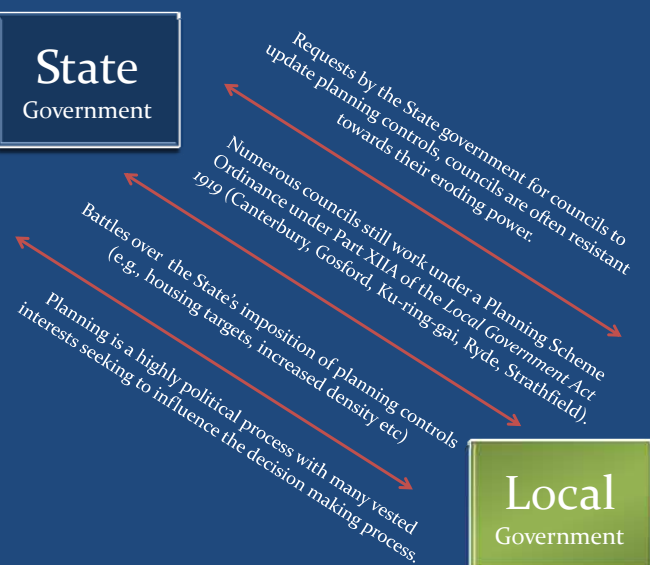
Historical context
and components
of the legislation
cont.

Planning Approvals
Training



© Plancom Consulting 2010

The Environmental Planning & Assessment Amendment Act 2008 cont.



NSW PLANNING LEGISLATION Overview

Planning Approvals
Training



© Plancom Consulting 2010

NSW Planning legislation

- Historical context and components of the legislation
- Land use planning
 - Local Government Act 1919
 - The County of Cumberland
 - Environmental Planning and Assessment Act 1979 (Amendment 2008)
- Questions and discussion

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS Environmental Planning and Assessment Act (EP&A Act) 1979

Planning Approvals
Training



© Plancom Consulting 2010

Objects of the EP&A Act - Section 5 are:

- (a) to encourage:
 - (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
 - (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.
- (i) the proper management, development and conservation of natural and artificial resources, for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities,
 - (vi) the protection of the environment,
 - (vii) ecologically sustainable development,
 - (viii) the provision and maintenance of affordable housing.

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS EP&A Act 1979 cont.

Planning Approvals
Training



© Plancom Consulting 2010

Progress of Environmental Planning Instruments

Local Government Act
1919 Part XIII A



Planning Scheme Ordinances
(PSO) or Interim Development
Orders (IDO)

EP&A Act 1979
-2008 Amendment



Removes REPs.
REPs in force are to continue as
SEPPs

- Section 33B, 30
September 2005



Enables the Minister to:

- specify a staged repeal program for existing EPIs
- facilitate the staged implementation of standard instruments
- periodic review of existing EPIs
- make a LEP, adopting the mandatory provisions of the standard instrument, to take effect after repeal, while a replacement LEP is prepared under the Act.
- direct councils to prepare their principal (Local Government Area wide) LEPs using the Standard Instrument by 2011.

- SEPPs, REPs and some LEPs are available online at www.legislation.nsw.gov.au

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS EP&A Act 1979 cont.

Planning Approvals
Training



© Plancom Consulting 2010

In NSW, the *EP&A Act* is the principal law overseeing the assessment and determination of development proposals.

Projects are considered as:

Part 4		
Part 3A for major projects of regional or State significance which require an approval from the Minister for Planning	for other proposals which require consent, usually by the local council but by the Minister in limited circumstances. Under Part 4, minor or routine development may also be complying development approved by accredited certifiers	Part 5 for proposals which do not fall under Part 4 or Part 3A. These are often infrastructure proposals approved by local councils or State agencies which are undertaking them

In addition, minor proposals can be **exempt** from development approval, while other proposals are **prohibited** under various planning instruments

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS EPBC Act 1999

Planning Approvals
Training



© Plancom Consulting 2010

The Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act)

Commonwealth's role in environmental assessment, biodiversity conservation and the management of protected areas and species, populations and communities and heritage items. The approval of the Commonwealth Minister for the Environment is required for:

- An action which has, would have, or is likely to have a significant impact on "matters of National Environmental Significance" (NES matters).
- Actions likely to have a significant impact on the environment of Commonwealth land.
- Actions taken on Commonwealth land likely to have a significant impact on the environment anywhere.
- Actions by the Commonwealth likely to have a significant impact on the environment anywhere.

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS EPBC Act 1999

Planning Approvals
Training



© Plancom Consulting 2010

NES matters include:

- The world heritage values of a declared World Heritage property.
- The National Heritage values of a listed National Heritage place.
- The ecological character of a declared Ramsar wetland.
- Listed threatened species and ecological communities.
- Listed migratory species
- The Commonwealth marine environment.
- Nuclear actions

Commonwealth approval is assessed through a referral process to the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA).

If the Commonwealth Minister for DEWHA determines that a project is likely to have a significant impact then the project becomes a controlled action and approval of the Commonwealth Minister for DEWHA is required before construction can commence.

There are numerous options to make a referral.

ASPECTS OF LEGISLATION RELEVANT TO PLANNING APPROVALS EPBC Act 1999

Planning Approvals
Training



© Plancom Consulting 2010

Outcome of referral process

There are generally four possible outcomes from a referral process:

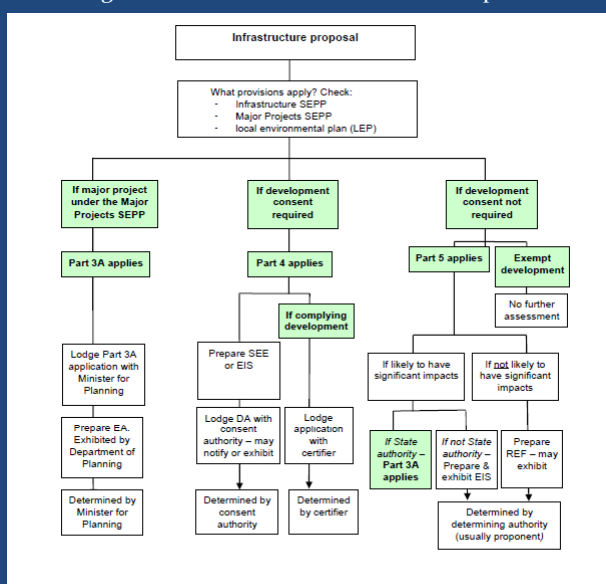
- **Not controlled** - approval is not required if the action is taken in accordance with the referral.
- **Not controlled (particular manner)** - approval is not required if the action is taken in accordance with a manner specified by the Minister
- **Controlled action** - action is subject to the assessment and approval process under the EPBC Act.
- **Refusal** - the action is considered unacceptable by the Minister and may not be undertaken

If the outcome is a controlled action then an assessment and approval process under the Commonwealth system is required.

NSW PLANNING APPROVALS PROCESSES EP&A Act 1979

Planning Approvals
Training

Planning Process for NSW Infrastructure Proposals



Source: NSW Department of Planning

NSW PLANNING APPROVAL PROCESSES CONT.

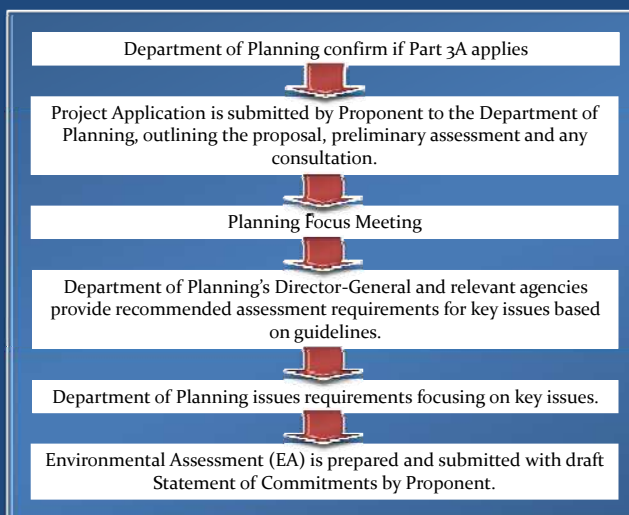
Planning Approvals
Training



© Plancom Consulting 2010

Part 3A:

Stage 1: Project Application and Environmental Assessment



NSW PLANNING APPROVAL PROCESSES CONT.

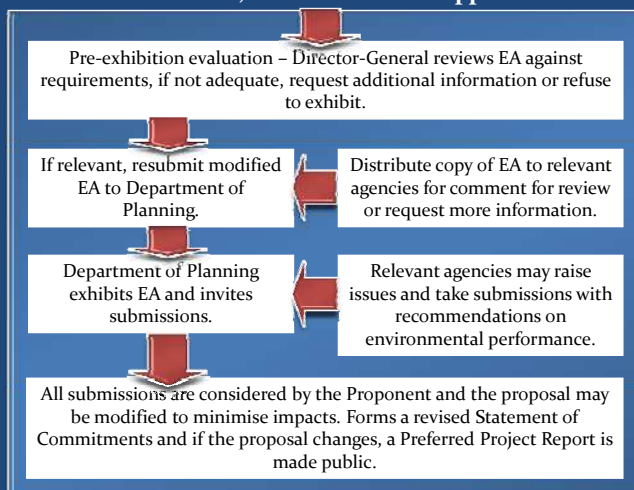
Planning Approvals
Training



© Plancom Consulting 2010

Part 3A:

STAGE 2: Exhibition, Consultation and Approval



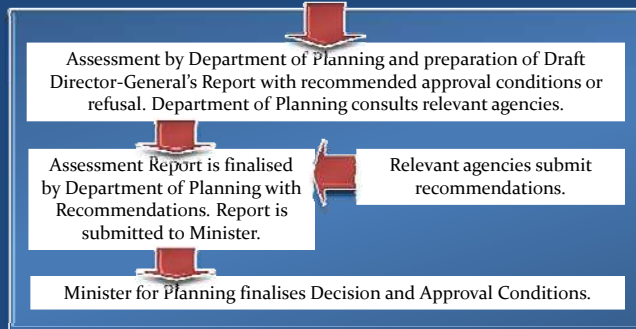
NSW PLANNING APPROVAL PROCESSES CONT.

Planning Approvals
Training



© Plancom Consulting 2010

Part 3A: STAGE 3: Assessment and Approval



TIPS – THINGS TO DO AND NOT TO DO

Planning Approvals
Training



© Plancom Consulting 2010

Managing Relationships

Important consideration both within and outside your team

- **Internal Relationships**
 - Communicate the information required, the lead times and the processes involved.
 - Understand and respond to the requirements of the people approving your work. Communicate the requirements to team members including design and construction.
 - Be aware of your team members program and drivers (cost, time, risks etc).
- **External Relationships**
 - Work with your environmental management representative, relevant members of the client's team and personnel from government agencies
 - Know their expectations, processes and drivers
 - Get to know their team members
 - Minimise personality clash
 - Formal meeting processes
 - Create opportunities to negotiate and discuss