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The role of local government in crime prevention: an overview

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contents

In Australia, local government has played a key role in proactive crime reduction, with it partnering with different organisations at both state and local levels to address causes of offending since the 1980s. Crime prevention policies developed by state and federal governments have relied heavily on local government to resource and implement local partnerships and crime prevention plans. Policies implemented in Victoria, NSW and Queensland have relied upon some level of local government participation.[1]

Many local authorities in Australia have developed their own crime prevention through environmental design (CPTED) guidelines to address crime and fear of crime in and around parks, public toilets, pedestrian thoroughfares, public housing, transport facilities and entertainment districts.[2] CPTED aims to modify the physical environment in which crime can occur by considering planning and design issues. This can involve enhancing access control or improving an environment's capacity for natural surveillance (such as removing large shrubs or installing lighting).

Local government has partnered with police and non-government agencies to develop and deliver social crime prevention programs for young people. Many different examples of local government crime prevention schemes can be found on the Australian Institute of Criminology website (<www.aic.gov.au/research/localgovt>). Likewise, local government has invested resources in establishing designated community safety officer positions whose role is to develop and implement crime prevention projects and facilitate local partnerships.[3]

Hence, from the short review above, it is clear that local government has played a key role in crime prevention. While it makes sense that it does have a central role, local government faces a number of challenges in tackling crime and disorder. Also, local government crime prevention/community safety personnel face a number of challenges in ensuing local partnerships are sustainable and achieve tangible results. There is limited research and evaluation evidence indicating that local government crime prevention strategies lead to measurable reductions in crime or improved perceptions of community safety, which limits the adoption of evidence-based policy. While there is much to celebrate in regards to local government crime prevention initiatives, much of what has been adopted has been ad hoc in nature, with little effort given to in-depth problem analysis and more emphasis placed on implementing responses, rather than considering if they are applicable to crime and safety problems in question.[4] The issues listed above should not be regarded as criticisms of local government activities, but have arisen in part due to the political pressure placed on local government and its departments to swiftly solve crime and safety problems by state governments, the media, politicians and community groups, without due

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consideration to whether local government has capacity to do so. Sections to follow will discuss these issues and provide tentative suggestions about how they can be addressed.

Local government and crime reduction

Why is so much emphasis placed upon local government involvement in state and federal crime prevention programs? A cynic might suggest that such trends are simply an example of cost-shifting — that is, attempts by state and federal governments to offload more of its responsibilities to the local level. However, given local government's traditional responsibility in providing local services and support, it is in the best position to implement crime reduction strategies due to the localised nature of many crime and disorder problems.[5]

While local government has to play a key role in crime prevention and community safety, questions need to be asked whether it possesses the capacity to address many of the underlying causes of crime (that is, the corrosive effects of economic and social disadvantage on families and its impact on delinquency) which actually lies with Commonwealth and state governments rather than local governments.[6] Also, many of the crime prevention/community safety policies implemented by Australian state governments have reflected European models of program delivery.[7] In the UK, for example, local authorities have greater levels of influence over education and public housing decision, which have direct bearing on crime and safety, compared to local government in Australia. Hence, while local government is continually trumpeted as a lead agency in state government c rime prevention programs, it has limited authority to demand levels of accountability from organisations that have a key role to play in crime reduction at the local level (for example, the police or state government housing authorities).

What this points to is the need for open and honest dialogue between state and local government relating to responsibilities for crime prevention and community safety. It should involve discussion about resources (such as those addressing the non-recurrent nature of most state government funding schemes) aimed at building capacity within local government, and include agreements about expectations and outcomes. Most importantly, though, is that if local government is to be a 'torch bearer' for crime prevention, there needs to be some willingness on the part of state government to devolve authority and decision-making power to local government so it can facilitate effective partnerships with relevant agencies.

Partnerships

Partnerships have become the most accepted model of delivering crime prevention strategies by local government. For example, many graffiti prevention strategies adopted by local authorities in Australia involve partnerships with police, the retail sector (to restrict the sale of spray cans) and community groups (in terms of reporting incidents of graffiti). A key emphasis is often placed on 'whole-of-government approaches' that involve state and local governments working in partnerships to develop packaged crime prevention programs in a coordinated fashion, both pooling resources and expertise to address community safety.[8]

However, partnerships can be a challenging undertaking and in order for them to be effective, they need:

- clear priorities and objectives;
- broad representation including government and non-government groups;
- clarity about the inputs and responsibilities of various agencies in the partnership;
- commitment by all agencies, especially by senior personnel to their organisation or department participating in the partnership;
- processes to address disagreements in an open and constructive manner;
- support by a dedicated coordinator or officer;
- access to good quality data and research on best practice crime prevention — this is essential for strategy development;
- adequate resources;
- clear short- and long-term outcomes to be achieved; and

- a strategy to publicise the work of the partnership.

Crime prevention approaches

Reducing crime in a proactive manner can entail a number of possible approaches. It can encompass techniques that aim to reduce the opportunities for crime such as situational crime prevention (for example, restricting the sale of spray paint to juveniles) or CPTED (for example, improving natural surveillance in public space).[9] There are social and developmental approaches concerned with addressing risk factors that contribute to the onset of delinquency such as truancy, poor parenting or boredom.[10] Hence, there are many options that local government can choose from when aiming to reduce crime.

Before embarking on a crime prevention initiative, it is critical that attempts are first made to understand the nature of the crime problem in question. This should involve the collection and analysis of relevant data to identify underlying cases and then the selection of appropriate strategies based on this research, followed by the identification of agencies that can help to implement initiatives.[11] However, the tendency has been for local government to overlook in-depth problem analysis and prioritise instead the task of immediately 'getting projects up and running'.[12] This can have disastrous consequences.

It can lead to a solution that is not tailored or relevant to the specific nature of the crime problem in question. For example, it is useless to install closed circuit television (CCTV) in a nightclub district to address disorderly behaviour if the original cause of the problem relates to the irresponsible serving of alcohol by licensed premises. It can also lead to displacement (that is, offenders moving to other targets) because the key motivational factors influencing offending have not been addressed. Also, pressure to deliver projects can favour strategies that are politically fashionably (for example, wilderness camps for young people). Hence evidence that certain approaches are *not* effective can be ignored or areas or people in most need overlooked. Under such conditions it is likely that any outcomes will only be short-term in nature.

Another key tendency has been for local government in Australia to favour the use of CCTV as a feasible crime reduction tool (see the article by Dean Wilson on p ## of this issue of the *Local Government Reporter*). State government programs such as Queensland's Security Improvement Program (<www.lgp.qld.gov.au>) have provided financial support to councils wishing to install CCTV. However, one should not confuse popularity with effectiveness. One of the few systemic evaluations of CCTV actually shows that is impact varies according to the specific environments in which it is adopted (for example, a car park or a street) and the other types of crime prevention techniques it is paired with (such as street lighting).[13] Evaluations on specific CCTV initiatives in Australia are lacking.[14]

Evaluation

The issues raised above point to the overall lack of investment in evaluation. Rarely is evaluation a systematic part of project planning. Often it is an after thought; something to be left until a program has run its course. Overall, there lacks a body of evaluation evidence on Australian crime prevention schemes.[15] This limits the sharing of practical experience and creates a knowledge gap around what works.[16]

When planning a crime prevention program, evaluation should be a priority given as much consideration as the task of selecting what crime prevention approaches to adopt. It is beyond the scope of this article to provide an in-depth discussion on evaluation,[17] but a few key points are worth mentioning. An evaluation plan should involve process evaluation (that is, assessment of whether agencies/individuals actually implemented and delivered the strategy) and outcome evaluation (that is, methods for measuring whether the intended reductions in crime/improvements in safety were achieved). Evaluating process is not the same as evaluating outcomes. Process evaluation is concerned with looking at the quality and level of program outputs, whereas outcome evaluation is concerned with impact (that is, verification that outputs actually reduced the crime problem). Process evaluation should begin at the start of a strategy and be ongoing, involving the close monitoring of program implementation. Likewise, outcome evaluation should begin early on and involve the collection of data on the overall size of the crime problem before strategy implementation, and then following implementation to see whether the problem is decreasing. This is referred to as pre- and post-measurement. Post measurement should occur for some time after strategy implementation to establish that any observed reductions in crime are being sustained and to identify whether the problem is beginning to re-emerge.[18]

Conclusion

There is little doubt that local government has embraced crime prevention as a key policy priority, with there many laudable local government schemes. However, local government faces a number of challenges in crime reduction. The focus should be on developing crime prevention policiy that is evidence-based and doing so requires central support by state government. Crime prevention is not simply just about reducing crime. It is also about forging more effective working relationships between the different tiers of government — federal, state and local.

When implementing crime prevention strategies, local government should give the following best-practice principles equal consideration.

- Before a response is developed, the crime problem should be analysed through the use of a variety of data sources.
- Research literature and evaluations of schemes implemented in Australia and overseas should be consulted.
- Strategies should involve multiple interventions (either situational or social) consistently delivered over time.
- Partnerships should be drawn upon to assist in strategy implementation.
- Evaluation should be planned for, completed and findings disseminated.

Adopting these principles will go a

long way in improving crime prevention policy and practice. ●

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Endnotes

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CCTV and crime prevention

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The use of closed circuit television (CCTV) in public areas is one of the most rapidly expanding crime prevention measures in Australia. A 2003 study estimated that 33 local areas had a public area (or 'open-street') surveillance system. An updated survey in 2005 found this number had expanded to at least 45.[1] CCTV systems were initially installed in the central business districts of capital cities. Increasingly, however, CCTV is being installed in the main streets and shopping districts of the suburbs and country towns. While primarily introduced for localised problems of crime and disorder, CCTV cameras are more and more being promoted as a counter-terrorist tool. In 2005, Prime Minister John Howard advocated 'the huge value of surveillance cameras' in the combating of terrorism,[2] and the federal Government appears distinctly pro-CCTV. But what does CCTV actually do? Is it an appropriate crime prevention measure for your local area? And what do local governments need to bear in mind when considering installing CCTV?

In Australia, 'open-street' or 'town centre' CCTV means visual surveillance systems established mostly by local authorities in conjunction with police to monitor public spaces such as malls and major thoroughfares. They have been installed for many different reasons, but the major one is the desire to combat what is loosely defined as 'anti-social behaviour'. Some systems have been installed to combat more specific problems such as violence around licensed venues and street-level drug dealing. Generally, getting a CCTV system is linked to attempts to rejuvenate town centres and encourage commercial revitalisation. This aim is fair enough, but does CCTV actually prevent crime? The evidence so far is mixed.

Despite the considerable hype and the seemingly 'commonsense' assurances of some in the security industry that 'of course it works', the research evidence to prove the effectiveness of CCTV is at best ambiguous and at worst extremely unconvincing. Welsh and Farrington[3] (2002) conducted an analysis of evaluations of 13 sites with CCTV. Five found a positive effect (decrease in offences), three an undesirable effect (increase in crime) and five evaluations found no effect or the evidence was too unclear to draw any conclusions. All we know is that CCTV appears to 'work' (that is, it reduces recorded offences) in some areas but not others. This picture is complicated by the fact that it isn't always clear if successful results reflect actual changes or the result of random fluctuations in the statistics. Moreover, CCTV is almost always introduced with other crime prevention measures, such as remodeling of streetscapes and intensified police patrols. It then becomes difficult to work out whether changes are the result of CCTV or a more general crime prevention program.

The ambiguous results of research into the effectiveness are now well-known and have been repeated ad nauseum, but they deserve repeating, if only because at the local level there are often very loud voices shouting that CCTV is *the* answer. CCTV may be one possible answer to local problems but it is seldom, if ever, *the* answer. The important question that needs to be considered is not only 'will CCTV address the problem in my area?', but also 'is CCTV the *best* possible solution to the problem in my area?'. It's all too easy to become mesmerised by the high-tech gadgets and wares of security consultants and technology companies. But remember that after an awful lot of research we are still unsure as to the effectiveness of CCTV. Moreover, there may be more imaginative and cost-effective crime prevention measures and programs to address your particular problem. Do some research and think laterally, as it may be far more effective in the long run than falling prey to the quick technological fix. One way to avoid the 'knee-jerk' installation of CCTV is to commission a feasibility study. Ideally, a feasibility study should do more than simply tell you whether it is possible to install CCTV. Of course it's possible, you can install it anywhere. It should move beyond that narrow technical problem to provide an assessment of the issues, the location, the likely impact of CCTV upon it and other measures that might be compared or considered alongside CCTV. So far, such studies are rare in Australia, although I did conduct one for Alice Springs Town Council in 2003.

Maybe, having considered the local problem and conducted a feasibility study, CCTV does appear to be the best option. What then? It is only appropriate that any local government would then undertake consultation with the community to ensure the measure is understood and the interests of all who might be impacted upon are taken into consideration. This is recommended by Queensland and NSW government guidelines and appears to be becoming more common. However, most existing CCTV systems were established with no process of community consultation at all! The other major consideration is one that will no doubt be at the forefront of many local government administrators minds: how much is it going to cost? The answer, put simply, is a lot. Costs vary significantly, dependent upon the technology used, hours of monitoring and existing infrastructure. In 2003, costs ranged from $85,000 annually for Toowoomba to $900,000 per annum for Sydney (Wilson & Sutton 2003).[4]

Local councils have sometimes attracted state government funding for setting up a CCTV system. The federal government too, through the National Crime Prevention Program, has recently been providing significant funding towards the establishment of CCTV schemes, including $445,000 awarded to Wollongong City Council and $150,000 to the City of Bunbury this year. Contributions to start up costs are

one thing, but it's important to remember that CCTV systems will require substantial expenditure for many years to come. Nearly 80 per cent of local governments fund the ongoing operation of their system outright.[5] A small percentage use contributions from business levies or rates to contribute to ongoing funding.

Once funded, there are decisions to be made about how the system will be managed and administered. One of the crucial issues is what sort of monitoring will the system have and who will actually do the monitoring? By 'sort of monitoring' I mean will it be 'passive' or 'active'. Definitions about what 'active' monitoring is vary, but generally it refers to operators using the camera system to conduct dedicated 'patrols'. 'Passive' monitoring is where monitors are in view but only casually observed by operators (or other authorised staff). The work of watching the cameras can be done by council employees, private security firms, police or even volunteers, as is the case in some places in Tasmania. The most common model is to hire private security to do the monitoring. It's a very important question, as monitoring will be the most substantial ongoing cost and is also likely to have a very significant impact on the outcomes of the system.

Our knowledge about the crime prevention impacts of CCTV may be patchy, but we know far more about how systems currently operate and some of the common problems. The most common pitfall is failure to establish a good working relationship with local police. One aspect of cultivating a good relationship with police is technical. Communications between control room operators and police are crucial. A common practice is to form some sort of direct link between control operators and police, allowing operators to inform them of incidents and vice versa. Another aspect is clearly defining the roles and responsibilities of all parties who interact with the system. Having memorandums of understanding with local police is helpful for this reason. In some places, such as Melbourne, regular meetings with local police to discuss issues as they arise have also proven useful.

This leads to another vital issue to consider when (and if) installing CCTV. How will the system be regulated and managed? In my own research, all CCTV system managers were adamant that the ongoing administration of CCTV is both complex and time-consuming. CCTV programs bring with them substantial responsibilities for contract management and design, staff supervision, and routine administration (such as tracking and releasing footage as evidence) in addition to the ongoing task of cultivating and maintaining partnerships with stakeholders. Moreover, decisions need to be made about how the system will be regulated. Protocols and procedures need to be devised to ensure the system is appropriately and ethically operated. The essentials of the system's operation should be publicly available in the form of a code of practice. Audit committees also exist in several places (such as Dubbo, Sydney and Melbourne) and provide a mechanism of accountability and external review. Another essential mechanism is a workable complaints procedure. Public confidence in any CCTV system should not be taken for granted. It is something that must be earned, and transparent processes and procedures that evidence ethical operation are integral in securing such confidence. State governments in Queensland and NSW have issued guidelines for councils considering or installing CCTV that are useful.

Councils also need to put some effort into raising public awareness of CCTV cameras. While the relationship is not

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straightforward, greater awareness of the cameras can influence the general deterrent effect of cameras enhance feelings of safety. There may be no real evidence that cameras reduce crime, but there is some evidence that cameras make people feel safer (although there is a counterargument to this). Information about the system should then be freely available. It is also helpful to have clear signage indicating that an area is covered by CCTV. Increasing public awareness is ethically desirable and may also increase feelings of safety.

I would like to make another very significant point and one that all too often gets ignored. There should be some training of operators to reduce tendencies towards stereotyping and targeting on the basis of race, gender and age. One of the strongest arguments against CCTV, and one strongly reinforced by research, is that it intensifies discrimination against groups already marginalised. CCTV potentially acts to exclude groups such as youths and Indigenous Australians where they have a legitimate right to be. Patterns of over-policing, already well-documented in many locations, can be magnified through CCTV systems. Members of these marginalised groups will likely perceive the CCTV system as designed to exclude them. As such a CCTV system can destroy a community rather than foster it. Without carefully including all members of the community through consultation and careful governance, CCTV systems can deepen division and insecurity rather than providing the safety they appear to promise.

The crime prevention potential of CCTV remains uncertain. The results of research into its crime reduction impacts are contradictory and inconclusive. However, police generally praise the evidentiary value of CCTV footage. There's also some evidence feelings of public safety may be enhanced. But we need to be cautious here. Public expectations of police response may also be raised, and sometimes unrealistically. Moreover, CCTV systems are expensive. And as I have suggested, CCTV may deepen divisions within a community, and exclude those already marginalised.

It's clear the attraction of CCTV is often political rather than practical. CCTV sounds tough, and politicians, be they at local, state or federal level, like talking about it. Talking about CCTV sends out a message that this or that politician means business — he or she has a big gun and they're not afraid to use it! But such political messages are exceptionally shallow and not particularly helpful for problems at the local level. The most important thing a local council needs to do is sort the rhetoric from the reality. There's an awful lot of fast talk around the issue of CCTV, and a lot of people with a vested interest in it. It's absolutely essential that local governments make good policy choices for their areas and their problems. This might involve CCTV or it might not. If it does it should be alongside a broader program of crime prevention that includes social measures. But remember to try and think outside the CCTV box. I repeat again, there might be something more cost effective, innovative and productive you could do to address the problem. And that might not involve CCTV at all.

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LOCAL GOVERNMENT Reporter

Further planning reforms under the Environmental Planning Legislation Amendment Act 2006

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The *Environmental Planning Legislation Amendment Act 2006* (NSW) **(**the Act**)** was recently passed by the NSW Parliament and received Royal Assent on 4 December 2006 (the Act remains yet to be proclaimed). This is the fifth Act this year to amend the *Environmental Planning and Assessment Act 1979* (NSW) **(**the EPA Act**)**.

When Minister for Planning the Hon Frank Sartor first introduced the Bill in late October 2006, he stated in his Second Reading speech that the Bill 'is a housekeeping measure of targeted amendments that will improve the operation of the planning system'.

Chief among the targeted amendments are those to Pt 3A, which covers major infrastructure and other projects, and Pt 4, which regulates planning agreements and planning contributions.

When Pt 3A was first introduced into the EPA Act in June 2005, it ushered in changes which were quite controversial in the context of planning law. For the first time, 'major development' was given its own specific assessment and approval framework along with unique definitions such as 'major infrastructure development' and 'critical infrastructure projects'.

The amendments under the Act will vest more power with the minister to declare and approve projects. This power will also include the ability to override zoning prohibitions or restrictions on land to accommodate projects.

Other amendments include:

- clarification of the processes to be followed when approving projects;
- broader scope in the determination of projects to require additional requirements;
- more comprehensive conditioning of approvals to tie in with the commitments made by proponents; and
- conditioning of approvals to require planning agreements to be entered into.

This article looks briefly at the most significant amendments made by the Act.

Amendments to Pt 3A

Declarations

Section 75B(1) of the EPA Act makes it possible for a declaration to be made to have a development assessed and determined under Pt 3A. There are currently two ways for this to happen:

- the development can be a type prescribed under a state environmental planning policy **(**SEPP**);** or
- an order can be made by the minister which is published in the Gazette.

The Act amends s 75B(1) to allow the minister to make an order amending any SEPP to declare projects. In addition, any declaration can be made for not only a particular type of development, but also a class of development.

The same type of amendment applies to critical infrastructure projects with the insertion of new s 75C(2), though this amendment has the proviso that the minister may also choose to make a declaration as she/he sees fit.

Non-declared parts of a project

The Act clarifies the position in relation to non-declared parts of a project. Section 75B(3) proposes that all declared and non-declared parts of a project are to be dealt with as a 'single project'. This would seem a sensible approach given that a project with different declarations could be potentially assessed by separate authorities.

Process of determination and broader scope for additional requirements

Previous arrangements permitted the minister to exercise her/his power to approve or refuse a project application after a proponent has applied for an approval and when the environmental assessment requirements have been met. Section 75J(1) is now amended so that the minister will only be able to determine an application after the Director-General of the Department of Planning has provided an assessment and evaluation report on the project.

The same process also applies to the determination of a concept plan with similar amendments being made to s 75O(1).

Further, the amendments to s 75P include provisions relating to the additional matters the minister can seek when approving a project. These additional requirements are wide in their terms. For example, the Explanatory Note to new section s 75P(1A) states:

Note: The Minister may, for example, require a design competition for any building that is part of a project.

Underlying prohibitions and/or restrictions

Prior to the Act, under s 75J(3) of the EPA Act, the minister was prevented from approving a project (other than a critical infrastructure project) if the project was wholly prohibited by an environmental planning instrument. Section 75J(3) is amended in the following terms:

> (3) In deciding to whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

It should be noted that the same type of new overriding power applies to concept plans as well with amendments to s 75O(3).

In addition, the amendments introduce a new s 75R(3A) to give the minister power to make an order to amend any SEPP to authorise the carrying out an approved project or any development for which there has been approved concept plan. This subsection also empowers the minister to remove or modify any provision that purports to prohibit or restrict approvals granted for projects or concept plans.

The effect of these new amendments means that it is the minister's discretion to override a prohibition or restriction contained within any SEPP and to modify any SEPP that purports to impede a project or concept plan approval. While other planning instruments, like regional environmental plans and local environmental plans, do not apply to Pt 3A, prohibitions and/or restrictions under such instruments may nonetheless act to prevent an approval from going ahead if regulations are made which are referrable to those subordinate planning instruments. Given that any regulations would need to be made by the minister in any event, it would seem unlikely that any new regulation would be drafted in terms to oust the minister's new powers to override prohibitions.

Conditioning of approvals

New ss 75J(5) and 75O(5) respectively are inserted to give the minister power to impose condition(s) on any approval making reference to the 'statement of commitments' submitted with an application for an approval of a project or an application for approval of a concept plan. Both subsections will also permit the minister impose conditions to compel proponents to enter into planning agreements to tie in relevant commitments which have been made in relation to a project or concept. These changes are appropriate and clarify the position of approvals being referrable to extrinsic materials submitted by proponents.

Single application for projects and concept plans

New s 75M(3A) is inserted to clarify the position, with regard to the submission of applications, for concept plans. Previously, Pt 3A requires separate applications for concepts plans and projects. This requirement is changed to permit a single application for both concept plans and projects.

Under the new regime, the environmental assessment requirements, public consultation processes and reporting phases may be combined to cover both aspects.

Directives by the minister when Pt 4 applies

Section 75P(2) enables the minister to make a determination that a project, or any part of it, will be assessed and determined under Pt 4 of the EPA Act. Under the amendments, the minister will have the power under s 75P(a1) to direct a consent authority to impose conditions on a development consent to compel a proponent to comply with any obligations in a submitted statement of commitment. Once any conditions are imposed they can only be modified with approval from the minister. Again, these amendments are appropriate to ensure a proponent meets her/his compliance obligations.

Another significant amendment is the insertion of s 75P(2)(c1), which empowers the minister to make a directive to by-pass any Pt 4 restriction or prohibition preventing a project being carrying out. Under the minister's direction, any zoning prohibition or restrictive clause within an environmental planning instrument will have no force or effect. While on its face this amendment appears to strip any local council from planning powers, it must be remembered that under Pt 3A the council's involvement is excluded. In this context, the amendments it would appear to be aimed at situations where adjoining site zoning either prohibit or restrict the carrying out of development for things that are ancillary and incidental to the overall project.

Amendments to Pt 4

In contrast, Pt 4 is not subject to as many amendments. The most significant changes are those that relate to planning agreements and cross-boundary contributions.

Relationships between agreements and instruments

Section 93D, which deals with the relationship between planning agreements and planning instruments, is amended to remove any derogating effects between such matters. The

amendments will make it clear that an environmental planning instrument may contain provisions requiring satisfactory arrangements to be made for the public infrastructure, services or facilities.

Scope of planning agreements

The provisions of s 93F, which explain the purpose and scope of planning agreements, are amended to ensure that s 94 contributions or s 94A development consent levies cannot be excluded within a planning agreement unless one of the parties to the agreement is the minister or the consent authority.

In addition, where a planning agreement is required as a condition of development consent, the proposed amendments will allow a consent authority to rely on any offers made by a proponent in a statement of commitment made under Pt 3A.

Contributions to provide public benefits in other states and territories

Another interesting amendment is the insertion of new s 94CA, which allows for a condition to be imposed requiring a proponent to provide a public service or public amenity within another state or territory. The new provision will allow the minister to authorise s 94 or s 94A contributions to apply outside NSW where the development is in a local government area which adjoins another state or territory. It is unclear how the implementation of such a condition would work in practice as there would be a need to obtain planning permission from the other state or territory before any works-in-kind could be carried out.

Special infrastructure contributions

In relation to special infrastructure contributions under s 94ED, the section is amended to broaden the scope of what constitutes the 'provision of infrastructure'. The new term will include things like research, investigation, studying and reporting done by the minister or the Director-General.

Determination of development contributions

Two new subsections, s 94EE (3A) and (3B), are inserted with s 94EE. These will outline how the minister identifies what portions of a development contribution relate to the provision of infrastructure by a council, or the provision of infrastructure for broad, regional needs. As already noted above with the amendments to s 94ED, contributions for infrastructure may be taken for research and investigation to be undertaken by the minister or her/his delegate. The new amendments will clarify the apportionment of such contributions and make it easier to identify what moneys are to be paid directly to a council and what monies are to be paid into the Special Contributions Areas Infrastructure Fund.

Conclusion

By far the most controversial changes under this Act are those to Pt 3A, which place more discretionary power in the hands of the minister to override prohibitions and restrictions imposed by any environmental planning instrument. While this power will also extend to regional plans and local plans, it would seem most unlikely that regulations will be made to prevent a major project or any critical infrastructure from going ahead.

Although the Opposition has pointed out that these powers come with no clear basis under which they will be exercised, it must be noted that the rigour of environmental assessment for applications under Pt 3A is enhanced by the amendments. It is hoped that this will ultimately improve the process and moreover result in much better planning outcomes.

The changes to Pt 4 appear to be beneficial as they will provide better use of contribution funds and place more accountability upon authorities to demonstrate were the funds have been used.

Finally, the changes to broaden the use of planning agreements and to impose conditions referable to a statement of commitments will result in a greater onus on proponents to meet their obligations when carrying out development.' ●

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Queensland's Koala Conservation Plan

Mark Cowan
BLAKE DAWSON WALDRON

It's true, koalas are the apple of Queensland's eye. No other species has attracted quite the interest and protection from the state and local governments. Whether it be due to their cute and cuddly nature, or their somewhat injury-prone characteristics, it is true that the koala cannot be looked at by those carrying out activities on land in quite the same light as other protected animals in Queensland.

Since the inception of the *Nature Conservation Act 1992* (Qld) (the Act) and its predecessor, koalas have obtained protection from direct harm. The taking of a koala is an offence under the Act. However, it is unclear whether 'taking' is to be narrowly construed to mean the direct harming, injuring or killing of a koala, or whether taking includes removing essential habitat leading to inevitable harm to a koala.

However, the Act provides a tool for regulating these types of impacts — a conservation plan. In 2004, the koala's status was upgraded from 'common' to 'vulnerable' in the south-east Queensland (SEQ) region due to increased development and other threatening processes to koalas and their habitat. This upgrade was the catalyst for the preparation of a conservation plan for koalas to address these threatening processes.

The new regime for protection of koalas implemented through the Koala Conservation Plan comes after various transitional regimes which have applied in lieu of the finalisation of the Conservation Plan, namely, the *State Planning Policy for the Protection of Koalas and the SEQ Regional Plan Interim Guideline: Koalas and Development*.

This article gives a brief overview of the direct regulatory impact of the new regime. It should be noted that the regime also provides policy support for the protection of koalas through existing regulatory regimes, such as planning schemes, which is not addressed in this article.

The Koala Conservation Plan package

The new regime for koala conservation has now been finalised and commenced on 2 October 2006. The new regime is imbedded in the following new and existing instruments:

- the *Nature Conservation (Koala) Conservation Plan 2006* (the Koala Conservation Plan);
- the Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006–2016; and
- the *Nature Conservation and Other Legislation Amendment Regulation (No 1) 2006* (Qld), which inserts key amendments into the *Integrated Planning Regulation 1998* (Qld).

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The SEQ Regional Plan

The Koala Conservation Plan divides the state into the following three 'wildlife districts' to reflect the status of the koala under the *Nature Conservation Wildlife Regulation 1994* (Qld):

- Koala District A;
- Koala District B; and
- Koala District C.

Koala Districts A and B reflect the areas in which the koala has been listed as vulnerable in Queensland (that is, the SEQ bio-region). District C reflects those areas in Queensland where the koala is listed as of least concern.

The key focus of the regulatory regime is Koala District A, which covers Brisbane North to Noosa, South to Gold Coast and West to Toowoomba. District A is mapped into the following four Koala Habitat Areas by the Environmental Protection Agency (EPA):

- Koala Conservation Area;
- Koala Sustainability Area;
- Urban Koala Area; and
- Koala Living Area (however, this area has no regulatory effect).

The intention of the Koala Conservation Plan is for local governments to undertake their own koala habitat mapping projects and progressively update the Koala Areas through approved maps. Accordingly, the Koala Conservation Plan provides for the amendments of the state maps when local government maps are approved by the state or an approved local government map or the SEQ Regional Plan map is amended.

Regulatory impact on development

The new regime does not subject more forms of development to assessment, but places an extra layer of assessment on development already assessable under *Integrated Planning Act 1997* (Qld) (IPA), a local government's planning scheme or the SEQ Regional Plan.

When will the criteria apply?

The Nature Conservation (Koala) Conservation Plan and Management Program 2006 contains the 'koala conservation criteria'. These criteria apply to the assessment of assessable development involving certain activities in a Koala Conservation Area, Koala Sustainability Area and Urban Koala Area. Generally, these activities are as follows:

- for reconfiguring a lot: involving an increase in the number of lots or clearing of native vegetation;
- for operational works: involving clearing native vegetation; and
- for material change of use: is not a domestic activity, and involves clearing of native vegetation, new buildings or extensions to existing buildings, extracting resources, excavating or filling and generating additional traffic.

To find out whether development activities are to occur within a Koala Habitat Area, the Queensland Environmental Protection Agency (EPA) provides a free online mapping tool, which can be searched using real property descriptions.

Who will apply the criteria?

Generally, the relevant assessment manager will apply the criteria. However, the EPA will become a concurrence agency for a development application to which the criteria apply in the Koala Conservation and Koala Sustainability Areas in some circumstances.

How will the criteria apply?

For applying the criteria in the Koala Conservation Area and Koala Sustainability Area, there is a distinction between 'committed' and 'uncommitted' development.

Committed development is defined as development under a current development approval, or development which is *clearly* consistent with the relevant codes or policies for the zone, overlay or SEQ regional areas it is within. For committed development, general broad mitigatory criteria apply, such as 'development is designed and constructed in a way that minimises the loss and degradation of koala habitat'.

For uncommitted development, generally more restrictive criteria apply, such as 'development is not for an urban activity' or 'development does not involve the clearing of koala habitat trees'.

Extractive industries and community infrastructure are treated differently by the criteria. In general, they are not prevented by the criteria if they can jump certain 'hurdles'. For example, extractive industry in a key resource area will have to show a 'net-benefit' to koalas, which may mean providing a koala habitat off-set by protecting or rehabilitating koala habitats currently under threat. Community infrastructure will have to pass a public benefit test and also may have to show a net-benefit to koalas through off-sets.

Because it is recognised that Urban Koala Areas also have a land-use planning intent, the criteria in these areas are generally adapted to minimising adverse impacts rather than limiting development.

New offences

The Koala Conservation Plan also establishes the following two new offences relating the removing koala habitat trees, which are defined under the plan.

- A person clearing a koala habitat tree in District A or B (that is, the Tweed to Gladstone) must ensure the clearing is carried out in a way that complies with sequential clearing conditions defined under the Koala Conservation Plan.
- A person clearing a koala habitat tree in a koala habitat area must also ensure that the clearing is carried out in the presence of a koala spotter. ●

Mark Cowan, Law Graduate, Blake Dawson Waldron, Brisbane.

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Casenote

Conditional consent and liberty to reapply

HURSTVILLE CITY COUNCIL v RENALDO PLUS 3 PTY LTD

[2006] NSWCA 248; BC200607119

In this case, the NSW Court of Appeal dealt with a development consent granted by the NSW Land and Environment Court (LEC). The LEC, at first instance, granted development consent as it considered the proposed development to be compatible with the objectives of the relevant zone in which the proposed development was located. The consent was conditional, and two matters were left to the agreement of the parties and if not resolved, liberty to reapply to the court was granted.

The three pertinent issues considered by the Court of Appeal were:

- whether the impact of the proposed development on the character of the area was properly taken into account by the LEC at first instance;
- whether the consent granted by the LEC lacked the requisite finality or certainty; and
- whether the LEC had the power to leave open certain conditions and grant liberty to apply if they were not resolved.

The LEC proceedings at first instance involved a development appeal over a council's refusal of consent for the demolition of certain premises and erecting in their place a mixed commercial/retail/residential development. The commissioner hearing the matter granted conditional consent, which the council then appealed to a judge of the LEC pursuant to s 56A of the *Land and Environment Court Act 1979* (NSW). That section allows the decision of a commissioner to be reviewed by a judge of the LEC on a question of law only. Pain J heard the appeal and dismissed it with costs. The council then appealed to the Court of Appeal.

Consideration of the impact on the character of the locality

The first ground of appeal was that the commissioner erred by limiting himself to consideration of the character of the particular zoned area and, in doing so, failed to give proper, genuine and realistic consideration to the actual character of the general area. In other words, by finding that the appropriate character of the area was that envisaged by the '3(a) — General Business Zone', as reflected in the objectives of that zone set out in the Hurstville Local Environmental Plan 1994, and that the development was consistent with those objectives, the commissioner did not consider the whole of the surrounding residential area. The appellant's submission was that he should, considering the words of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act), require an assessment on the impact on the 'locality' and that locality extended beyond the zone boundaries.

This was an issue principally raised by resident objectors, who considered that the proposed development would provide a retail facility that would attract custom beyond the immediate area and, as a consequence, would generate additional traffic that would impact upon pedestrian safety and cause increased noise, thus effecting a change to the character of the existing centre that currently provided largely local service needs to the immediate locality. The court-appointed experts disagreed and regarded the amended development proposal as acceptable in terms of its impact on the character of the area.

Tobias JA, in delivering the Court of Appeal's majority judgment, considered that it was necessary for the commissioner to identify whether the proposed development was consistent with the objectives of the zone in order to satisfy himself that those objectives contemplated a development of the nature of that proposed, and which would give rise to impacts anticipated to be associated with such a development. He was then required to determine whether those impacts were acceptable in terms of the nature of the surrounding locality.

The Court of Appeal concluded that the commissioner did undertake that exercise and that Pain J was correct in finding that no error of law had been disclosed on the part of the commissioner in so doing.

Finality and certainty in the development consent

The second issue raised in the appeal arose from the nature of the development consent granted by the commissioner. The proponent of the proposed development had submitted an amended operations management plan (the plan) relating to the activity at the retail loading dock for the proposed development. The commissioner had considered this issue at length. The commissioner granted consent, but concluded that the plan should be amended to provide for a suitable parking location for trucks where the rescheduling of a delivery was neither appropriate nor necessary, provided that that location did not have the potential to impact on the amenity of any residential area and that the plan should contain a procedure for updating or changing its requirements. The parties could not agree at the time on suitable amendments, so the commissioner granted liberty to apply.

Two issues arose in the appeal relating to this part of the commissioner's determination. The first was whether this offended the well-established principles that a development consent convey certainty and finality. The second issue arising from this part of the commissioner's decision was whether reservation of liberty to apply in those circumstances was beyond power.

The finality principle arises from the Court of Appeal's decision in *Mison v Randwick Municipal Council* (1991) 23 NSWLR 734, and subsequent

decisions considering and applying *Mison*. Most recently, *Mison* was considered in *Kindimindi Investments Pty Ltd v Lane Cove Council* (2006) 143 LGERA 277, where Basten JA succinctly conveyed these principles as being that, first, a condition must not significantly alter the development in respect of which the application was made; and second, that if a purported consent lacks either finality or certainty, there is, in substance, no effective consent.

Tobias JA's expressed the view in this case, at [90] that:

> [I]f a purported consent lacks finality or certainty in the *Mison* sense, it is because that lack contravenes the statutory limits of the consent authority's power with the result that there is no valid consent because the development consented to is not that for which approval was sought. Again, as Basten JA pointed out in *Kindimindi* at 293 [56] and [57], a condition will not necessarily be beyond power because it is incidental, trivial, unimportant or mere surplusage or because it lacks specificity or particularity: it will only be invalid if it falls outside the class of conditions permitted by the EP&A Act.

This led his Honour to the conclusion that the fact that the commissioner had deferred for later consideration an important element is only legally relevant if it led to the conclusion that he failed to take into consideration and resolve relevant matters required for mandatory consideration pursuant to s 79C(1) of the EP&A Act. This was not the case and there was no basis which could support such a submission.

Liberty to apply on a condition of the consent

The appellant also submitted that by reserving liberty to apply, the commissioner contemplated that he had reserved to himself the right to refuse development consent if the amendments he required could not be agreed, notwithstanding that he had already granted consent. Such a reservation was, it was contended, beyond power as it offended the rule in *Bailey v Marinoff* (1971) 125 CLR 529 that once an order disposing of proceedings has been perfected, it is beyond recall by that court as it would not promote the due administration of the law or the promotion of justice for a court to have power to reinstate a proceeding of which it has finally disposed.

Tobias JA determined that the appellant's submission that the commissioner may reserve the right to later refuse consent was wrong, as the commissioner's intention with respect to the two disputed amendments to the plan were clear.

His Honour then dealt with the LEC's powers to grant liberty to apply after having granted development consent. His Honour first refers to Lloyd J's decision in *Detala Pty Ltd v Byron Shire Council (No 2)* (2000) 107 LGERA 422 referring to s 83(5) of the EP&A Act as an exception to the rule that a perfected judgment is beyond recall, because that provision, which empowered the LEC to fix the date upon which a development consent is taken to become effective and operate after and consequential upon a final determination to grant that consent [AQ].

His Honour then went on to consider that the same approach was reflected in Pt 15 r 9 of the *Land and Environment Court Rules 1996* (NSW) and, even in the absence of the rule, his Honour's view is:

> I see no reason in principle to deny the [LEC] the power to make orders necessary for the working out of its orders including an order granting a development consent. Such an order proceeds on the basis that a consent has been granted as a matter of final determination by the Court. No question of recalling or setting aside the consent is involved, nor is any question of whether it should be granted or refused re-opened. No matter or issue is to be re-litigated.

Based on the Court of Appeal's conclusion that the challenges to the validity of the consent by the commissioner had failed, the appeal was dismissed with costs. ●

Nick Eastman, Barrister, 8th Floor Wentworth Chambers, Sydney.

PUBLIC LIABILITY UPDATE

mindyourstep

Vicarious liability for the negligent act of a subcontractor

Freida Stylianou
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Can the independent actions of a contractor be sheeted home to the principal who engaged that contractor?
The High Court has provided guidance as to when a subcontractor may be considered to be an employee and when the principal could be vicariously liable for the subcontractor's actions.

Vicarious liability is defined in the *Butterworths Australia Legal Dictionary* as:

> The liability imposed on one person for the wrongful act of another on the basis of the legal relationship between them, usually that of employer and employee.[1]

To date, endeavours by litigants to expand vicarious liability beyond the acts and omissions of an employee so as to include the conduct of an independent contractor (as opposed to an employee) have been unsuccessful. An exception to this is except in circumstances where the principal of an independent contractor exercises a significant degree of control and direction over the actions of such a contractor: *Colonial Mutual Life Assurance Society Ltd v Producers and Citizens Cooperative Assurance Co of Australia Ltd* (1931) 46 CLR 41.

In the recent decision of *Sweeney v Boylan Nominees Pty Ltd* [2006] HCA 19; BC200603256, the High Court was concerned with the potential vicarious liability of a principal for the acts or omissions of a subcontractor. The court looked at the circumstances in which a subcontractor could be considered an employee, and when the employer in such circumstances could be vicariously liable for the subcontractor's negligent actions.

Facts

In August 2000, Maria Sweeney was injured when opening the door of a refrigerator to buy a carton of milk at a service station. The door came off its hinge and hit her on the head, resulting in significant injuries. An independent contractor had serviced the fridge a few hours earlier. The tradesman was not sued, the plaintiff opting to commence proceedings against the owner of the service station and Boylan Nominees (Boylan), which maintained/distributed the refrigerator. The evidence at trial was that the tradesman was not an employee of Boylan but was an independent contractor.

Ms Sweeney succeeded against Boylan. The trial judge found Boylan vicariously liable for the conduct of the tradesman and for his negligence. The trial judge concluded the tradesman 'was acting as a servant or agent of [Boylan] with the authority and approval of [Boylan] to undertake the work he did'. Boylan appealed to the Court of Appeal and was ultimately successful.

High Court appeal

Ms Sweeney appealed to the High Court. By a 5:1 majority, the court upheld the Court of Appeal's findings that Boylan was not vicariously liable for the negligence of the tradesman.

The High Court noted that there were two central issues to the law of vicarious liability:

- a distinction between employees (for whose conduct the employer would generally be vicariously liable) and independent contractors (for whose conduct the person engaging the contractor would generally not be vicariously liable); and
- whether the work being undertaken establishes an employer/employee like relationship.

The High Court stated (at [13]):

> … questions of vicarious liability fall to be considered in a context where one person has engaged another (for whose conduct the first is said to be

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> vicariously liable) to do something that is of advantage to, and for the purposes of, that first person. Yet it is clear that the bear fact of the second person's actions were intended to benefit the first or were undertaken to advance some purpose for the first person does not suffice to demonstrate that the first is vicariously liable for the conduct of the second.

The court had to consider whether the tradesman was an employee of Boylan. In determining this question, the court looked at various indicia, including that he conducted his own business, supplied his own tools and equipment, and that he was not presented to the public as an emanation of Boylan. The distinction between an independent contractor and an employee was critical to the ambit of the vicarious liability principles.

The court accepted that the tradesman was an independent contractor. He did what he did for the benefit of Boylan and in an attempt to discharge its contractual obligations. He did not do that work as an employee but rather as a principal pursuing his own business. The High Court dismissed the appeal. Maria Sweeney failed to recover damages.

Implications

The legal relationship between a principal and a subcontractor will not on its own impose a liability on one person for the wrongful act of another (save for a contractual clause). The exception is in relation to the employer/employee relationship when the employer will be liable to third persons for the tortious acts of an employee which the employer actually or impliedly authorises within the scope of the employee's employment.

This decision is important to the determination of vicarious liability, as well as the liability of independent contractors, agents and representatives. The High Court decision highlights the differences between contractors and employees, examining the test to be applied in determining such a relationship.

The personal liability of a council acting as a principal when engaging subcontractors should be carefully reviewed. In all likelihood, there will be no direct liability imposed pursuant to the vicarious liability principle where there is an absence of direct control of the work being undertaken and/or the method adopted. However, liability may still be imposed vicariously upon a principal for the negligent act of its subcontractor where there is a sufficient nexus between the principal and the conduct of the subcontractor by which the principal is alleged to be vicariously liable. Third parties will seek to commence proceedings against principals which may be seen to have deep pockets, particularly where a subcontractor is uninsured and may have few assets. ●

Freida Stylianou, Partner, Ebsworth & Ebsworth, Sydney.

Endnotes

1. LexisNexis *Australian Legal Dictionary*.

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National legislation update

Jurisdiction	Legislation	Status	Comment
Commonwealth	Environment and Heritage Legislation Amendment Bill (No 1) 2006	Tabled on 12 October 2006.	This Bill would amend the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Among other things, the Bill proposes to: • allow World Heritage properties to be transferred across to the National Heritage List without the need for further assessment; • allow the minister to publish policy statements on the application of the principal Act that will assist decision making and inform the community; • provide greater incentives for authorities and proponents to engage in strategic assessments, bioregional planning and conservation agreements under the Act; • develop a more strategic approach to the listing of heritage places and threatened species and ecological communities will be take; • cease the Register of the National Estate as a statutory register, with states and territories to complete the task of transferring places to state, territory and local heritage registers over a five year transitional period; • establish the List of Overseas Places of Historical Significance to Australia; • establish a range of new enforcement options as an alternative to court proceedings; • broaden the minister's powers to require remediation where matters of national environmental significance have been damaged without the need to resort to court action; and • introduce a regime to deal with environmental crimes conducted by foreign nationals in fishing vessels in the Australia jurisdiction but outside the migration zone. *Source: Second Reading speech.*
	Environmental Planning Legislation Amendment Bill 2006	Awaiting assent.	This Bill is another step in government reform of the NSW planning system. It amends the *Environmental Planning and Assessment Act 1979* (NSW) with respect to the certification of development, development contributions, major projects and other matters. It also amends the *City of Sydney Act 1988* with respect to the Central Sydney Planning Committee. See the article on p ## for a discussion of the Bill.
NSW	Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006	Second Reading in Upper House on 24 October 2006.	This Bill proposed to amend, among other things, the *Threatened Species Conservation Act 1995* and EPA Act to establish a biodiversity banking and offsets scheme.
	Trees (Disputes Between Neighbours) Act 2006	Received assent on 4 December 2006.	This Act establishes a separate statutory scheme giving the NSW Land and Environment Court (LEC) jurisdiction to make orders to remedy, restrain or prevent damage to property or to prevent injury to any person due to a tree on a neighbouring property. The legislation would apply to trees in urban areas (that is, areas that have zonings such as residential, industrial and business). The Act also amend s 124 of the *Local Government Act 1993* (NSW) to make it clear that councils may make orders on their own initiative for work to be carried out concerning a dangerous tree to ensure the safety of persons on adjoining lands.

National legislation update continued

Jurisdiction	Legislation	Status	Comment
	Community Protection (Closure of Illegal Brothels) Bill 2006	Second Reading on 21 September 2006.	This is a Private Member's Bill to amend the *Environmental Planning and Assessment Act* to make provision with respect to the protection of the community from the operation of illegal brothels and related purposes. According to the Explanatory Notes, the underlying principle of the Bill is to recognise the danger to public health and safety that is caused by the operation of illegal brothels in inappropriate locations within the community. The objects of the Bill are to: • protect the community from the operation of illegal brothels; • encourage the restriction and regulation of brothels under instruments and policies made or adopted by local councils; and • facilitate the prompt closure of illegal brothels by local councils. *Source: Explanatory Notes to the Bill.*
QLD	Local Government and Other Legislation Amendment Bill 2006	Tabled in parliament on DATE.	The main objective of this Bill is to increase public trust and confidence in local government election processes. The Bill amends the *Local Government Act 1993* (Qld) to: • enhance transparency and accountability in local government elections and decision-making; and • avoid duplication of process where *Size, Shape and Sustainability* local government reviews meet current requirements for major reviewable local government matters. The amendments are intended to be in place for the March 2008 local government elections. *Source: Explanatory Notes.*
	Prostitution Amendment Act 2006	Received assent on 11 August 2006, with provisions yet to commence.	This Act amends the *Prostitution Act 1999* to, among other things: • clarify that brothel licenses may operate under a corporate structure; • allow the maximum number of sex workers permitted on a brothel premises at any one time to be increased; • extend the jurisdiction of the Independent Assessor to include appeals against an assessment manager's decision; and • enable brothel licenses to be granted for a three-year period. *Source: Explanatory Notes to the Amendment Act.*
	State Development and Other Legislation Amendment Bill 2006	Second Reading on 2 November 2006.	The *State Development and Public Works Organisation Act 1971* provides for 'state planning and development through a coordinated system of public works organisation, for environmental coordination, and for related purposes'. To support this purpose, the Bill seeks to, among other things, provide a scheme for certain projects of significance, declared by the minister as prescribed projects, that will prevent unreasonable delays in the assessment and decision stage for necessary approvals, licences, permits or other authorities. *Source: Explanatory Note to the Bill.*
	Water Amendment Regulation 2006 (No 6)	Commenced 8 August 2006.	This amending Regulation inserts a new Pt 8 into the *Water Regulation 2002*, providing measures to combat the water supply emergency declared in the south-east Queensland (SEQ) region. The new Pt 8 sets out a number of initiatives to be implemented
			by local governments within the SEQ region, and their required outcomes. The new Part also sets out the contributions to be
			made by the Queensland Government in relation to the water initiatives, and the dates by which they are to be implemented. *Source: Freehills 'Environmental legislative developments November 2006'.*

National legislation update continued

Jurisdiction	Legislation	Status	Comment
	Wild Rivers and Other Legislation Amendment Bill 2006	Second Reading on 31 October 2006.	This Bill proposes to amend the *Wild Rivers Act 2005* to 'remove unreasonable impediments to essential and low-impact developments in a wild river area'. These include: • allowing small communal gardens to be established in a high preservation area (HPA); • providing an exemption for the construction of residential complexes (including homesteads, out stations and resorts) in HPAs; • providing an exemption for the contruction of 'homesteads' (including out stations) in HPAs; • allowing new fodder crops to be established in preservation areas without wild river requirements; • allowing vegetation regrowth within existing agricultural areas in HPAs to be cleared; • allowing secondary tributaries in preservation areas to be 'nominated' for wild river purposes; • allowing essential urban infrastructure to be developed in HPAs; • allowing low-impact mineral exploration within HPAs; • allowing mining to occur beneath HPAs and nominated waterways; • allowing mining to occur within nominated waterways in certain circumstances; • allowing new riverine quarry material allocations to be granted; and • allowing new riverine quarry material operations to be established. Relevantly, the Bill would also amend the *Building Act5 1975* to provide councils with the power to mandate water tanks. *Source: Explanatory Notes to the Bill.*
SA	Local Government (Public Place Amenity) Bill 2006	Tabled 21 June 2006.	A minor Bill that amends s 254 of the *Local Government Act 1999* (SA) to allow councils to order an owner or occupier of a public place that exceeds the prescribed area to plant and maintain specified types of trees or other vegetation in specified areas. However, the Bill provides that the council is not to do so if it would 'substantially detract from the owner's or occupier's use of the public space'.
	Local Government (Open Space) Amendment Bill 2006	Tabled 21 June 2006	This Bill amends the SA *Local Government Act* and seeks to preserve open space that is controlled by local government by requiring a poll of residents where land classified as community land is to be revoked. It modifies s 194 such that where a revocation is proposed and the community land is significant open space, then the public consultation policy must provide for a copy of the council's report under s 194(2) to be provided to electors who reside
			within 500 m of the land and for those electors to make submissions to the council in relation to the recovation. If more than 10 per cent of electors notify the council that they want a poll to be conducted on the matter, a poll must be conducted under the *Local Government (Elections) Act 1999* (SA) of the entire local government electorate. If electors vote against the proposal, the revocation cannot go ahead unless a subsequent poll is undertaken and the result changes or the council is re-elected and the proposal submitted again. *Source: Second Reading speech (the Hon Nick Xenophon).*

National legislation update continued

Jurisdiction	Legislation	Status	Comment
	Development (Development Plans) Amendment Bill 2006	CHECK	This Bill is part of a range of initiatives to improve SA's planning and development system that were originally packaged in the Sustainable Development Bill 2005 (which was later split into separate key parcels, of which this current Bill is one). Among other things, the Bill: • requires councils to undertake strategic planning on a five-yearly basis; • sets out the revised procedures by which councils are to prepare and consult on proposed amendments to the development plan for the area; • replaces the existing term, 'plan amendment report' (PARS), with 'development plan amendment' (DPA); • provides three clear procedural paths relating to DPAs; • enables the minister to have an independent investigator to examine the policy review process of a council if there are consistent ongoing delays; and • incorporates provisions to improve the major development assessment procedures. The Bill also includes consequential amendments to the SA *Local Government Act* to enable the strategic planning requirements of the *Development Act* and those of the *Local Government Act* to be undertaken as a single and complementary exercise. *Source: Second Reading speech (the Hon P Holloway).*
	Development (Assessment Procedures) Amendment Bill 2006	Tabled in Legislative Council on 23 November 2006.	This Bill is one of a suite of Bills originally packaged as one set of amendments to the *Development Act 1993* (SA). This Bill introduces a range of improvements to the existing development assessment procedures. *Source: Second Reading speech (the Hon P Holloway).*
	Statutes Amendment (Affordable Housing) Bill 2006	Second Reading on 15 November 2006.	This Bill implements some important initiatives stemming from a review of the state's social housing system. It amends a number of piece of legislation, including the *Development Act 1993* (SA). The Bill establishes the Affordable Housing Trust, which will work with local government and planning authorities to provide the legislative and policy framework to encourage developments that include affordable housing targets of 15 per cent affordable housing (including 5 per cent high-needs housing). Amendments to the *Development Act* specify the need to consider affordable housing in strategic planning and local council development plans. Section 23 of the Act will be amended to provide that a development plan may set out objectives or principles relating to the provision of affordable housing within the community. The *Housing and Urban Development (Administrative Arrangements) Act 1995* (SA) will be amended to include the promotion of planning and development systems that support sustainable and affordable housing outcomes within the community, including by participating in the referral system established under s 37 of the *Development Act*, which will enable the certification of developments that meet the 15 per cent affordable housing targets. *Source: Second Reading speech to the Bill (the Hon J W Weatherill).*

National legislation update continued

Jurisdiction	Legislation	Status	Comment
	Sewerage (Greywater) Amendment Bill 2006	Second Reading on 15 November 2006.	This Bill is to allow people to discharge on a permanent basis water from their domestic washing machines onto their lawn or garden. Current legislation provides that if a property is connected to the undertaking (that is, the waste water pipe network), it is illegal for someone to discharge any waste water onto their property. *Source: Second Reading speech (the Hon D W Ridgeway).*
	Sewerage (Water Mana)	Second Reading on 15 November 2006.	This Bill allows prescribed entities to establish a pumping station to extract material from the sewer, to recycle the water and discharge the solid material back into the sewer stream (a technique known as 'sewer mining'). It establishes a licensing system to allow people (for example, local councils) to undertake such a sceheme. *Source: Second Reading speech (the Hon D W Ridgeway).*
Tasmania	Valuation of Land Amendment Bill 2006	Upper house 2 November 2006.	Under this Bill, property valuations will be adjusted every two years by an adjustment factor, with a complete valuation every six years. It is anticipated that regularly adjusting property valuations allows property values to be more closely aligned with fluctuations in the housing market. The adjustment factors will be determined in accordance with international standards. *Source: Local Government Association of Tasmania weekly newsletter (29 September 2006).*
WA	Draft Waste Avoidance and Resource Recovery Bill 2006	Submissions closed 27 November 2006.	The main features of this Bill are: • establishment of a statutory waste authority with various non-regulatory functions and powers, including: — strategic policy and planning for the transition to zero waste to landfill in WA; — the implementation of policies, plans and programs to achieve that transition; — the administration of funds raised through the collection of the landfill levy; • allowing for regulations to be made and implemented by the Department of Environment and Conservation to effect waste avoidance and resource recovery in WA; • the provision of powers for compliance and enforcement in relation to those regulations; • creating the head powers for establishing extender producer responsibility schemes and product stewardship schemes, and implementation of the associated instruments for significantly reducing 'priority wastes'; and • consolidation of certain (but not all) waste provisions currently in the *Environmental Protection Act 1986*, the *Health Act 1911* and the *Environmental Protection (Landfill) Levy Act 1998*. *Source: Explanatory Notes for the draft Bill.*
	Local Government Amendment Bill 2006	Awaiting assent.	The Bill provides for amendments relating to local government elections. These include: (a) the introduction of the proportional system of voting as used by the Legislative Council; (b) changing the ordinary local government election date from the first Saturday in May to the third Saturday in October; and (c) clarification that persons registered on the electoral roll aged 17 are not able to vote until they turn 18 years of age.

backyardblitz

NEWS AND EVENTS AROUND THE COUNTRY

NATIONAL

Room for improvement: planners give report card on planning systems

16 November 2006. The 'state of the nation' results of the first Planning Report Card indicate that across Australia, all planning systems have much room for improvement, said Planning Institute of Australia (PIA) national president Sue Holliday.

In September 2006, the planning profession was invited to 'tell it like it is' for the inaugural Planning Report Card opinion poll. Planning systems across Australia were assessed against 10 key areas identified by PIA as critical to creating effective, functional and sustainable cities, towns, neighbourhoods and regions. Some 650 planners were asked to rate each key area with a score of A, B, C or D.

These key factors were growth management, sustainability indicators, governance, infrastructure, transport, demographic change, housing, community engagement, planning profession and streamlining approvals.

- The national average was a C, with above average performance in growth management and public participation.
- The ACT, Queensland and Victoria were the better performers, particularly in growth management.
- Tasmania received the lowest grade (C–), with infrastructure, growth management and transport identified as problem areas — a good thing the state is considering reforms to its planning system (see below).
- NSW received an average grade, with improvement needed in infrastructure, transport and demographic change.

The Report Card is available from PIA at <www.planning.org.au>.

PIA National Congress 2007

Next year's National Congress for the Planning Institute of Australia (PIA) will be held in Perth on 1–4 May.

Professor Sir Peter Hall of the Bartlett School of Architecture and Planning, University College London will be the keynote speaker. Further details, including program details and other speakers, will be available in the near future.

Details are available at <www.pia2007.com>.

ABS reports on environment snapshot

21 November 2006. The Australian Bureau of Statistics issued the results of its March 2006 survey on environmental behaviour and practices of Australian households and individuals.

Key findings include the following.

- Almost all households (99 per cent) recycled and/or reused waste, compared with 91 per cent in March 1996.

- Paper, plastic products and glass are predominantly the most recyclable materials in Australia because these are materials recycled through the local kerbside recycling to which about 90 per cent of households have access.
- Household recycling is influenced by three main factors: the quantity or volume of recyclable material generated by a household; accessibility/availability or households to service facilities; and interest.
- Tasmanian households had the largest rates of any state or territory of recycling certain materials, with 94 per cent reusing their plastic bags at home, 75 per cent recycling their garden waste at home as compost or mulch, and 40 per cent reusing motor oil.

The survey report is available at <www.abs.gov.au>.

National recycling website and hotline launched

5 November 2006. A national recycling hotline and website covering all 672 local government areas across the country was recently launched by the federal Minister for the Environment and Heritage, Senator Ian Campbell, and Planet Ark founder, Mr Jon Dee.

The service gives householders and businesses complete information about what and where they can recycle in their local areas. In addition to basic recyclables like newspapers and aluminium cans, the site also tells people where they can recycle other things such as computers, phone books and paint cans.

The website is <www.Recycling NearYou.com.au>, while the hotline number is 1300 733 712.

Mobile phone recycling now easier for councils

29 November 2006. The new MobileMuster Local Council Tool Kit was launched by Mr Chris Althus, CEO of the Australian Mobile Telecommunications Association. The free kit is comprises a CDROM designned to help councils promote mobile phone recycling in their local areas.

'Over 100 councils have already joined MobileMuster and it is critical the industry supports them in reaching out to local communities,' said Mr Althus.

MobileMuster, the official national recycling program of the mobile phone industry , is partnering with local councils around Australia in its bid to recycle more 1.5 million phones and batteries a year by 2008.

According to MobileMuster, over 90 per cent of materials in mobile phones can be recovered (such as nickel, cadmium, cobalt, gold, silver, copper, plastics and other metals) — 1 tonne of mobile phone circuit boards can yield about the same amount of pervious metals as 110 tonnes of gold ore, 123 tonnes of silver-bearing ore and 11 tonnes of copper sulphide ore. With Australians reported to upgrade or exchange their phones every 18 to 24 months, approximately 16 million phones lie stashed away and calling to be recycled.

Further details available at <www.mobilemuster.com.au>.
Source: MobileMuster media release.

NEW SOUTH WALES

Guidance on POEO amendments

October 2006. A range of new and updated material is now available to councils to assist them with implementing provisions of the *Protection of the Environment Operations Amendment Act 2005* (NSW) that commenced on 1 May 2006.

The information includes:

- Guide to Notices (updated), <www.environment.nsw.gov.au/mao/guidetonotices.htm>;
- Considering environmental values of water when issuing prevention notices (new), <www.environment.nsw.gov.au/mao/envwater.htm>;
- Powers of Authorised Officers (updated), <www.environment.nsw.gov.au/mao/powersao.htm>;
- Woodsmoke Resource Kit for Councils (updated), <www.environment.nsw.gov.au/woodsmoke/index.htm>;
- Guide to Licensing (updated), <www.environment.nsw.gov.au/licensing/licenceguide.htm>;
- Licence Forms (updated), <www.environment.nsw.gov.au/licensing/licenceforms.htm>; and
- Waste and Environmental Levy Operational Guidance (new; this guidance relates to changes that came into effect on 1 July 2006), <www.environment.nsw.gov.au/waste/wel.htm>.

Source: Local Government and Shires Associations of NSW weekly update (27 October 2006).

'One business, many providers': NSW government releases position paper on local government's future directions

October 2006. The NSW Department of Local Government has released *A New Direction for Local Government: A Position Paper*, which proposes principles for the future growth of local government in the state.

The position paper acknowledges the financial and other challenges confronted by local government, pointing to the recent NSW review of local government financial sustainability,

Hornsby Council wins environment award

5 December 2006. Hornsby Shire Council has won the premier awards in the 2006 Local Government Excellence in the Environment Awards for 'Hornsby earthwise' — a project on triple bottom line (TBL) sustainability.

The council has a strong history of leading its community by example to progress sustainability. To this end, it developed 'Hornsby earthwise', a program for corporate and community sustainability initiatives. The council's TBL framework is one of these initiatives. Since its introduction in early 2005, the council has incorporated TBL into the council's management plan, developed a TBL checklist for all council business papers and has trained all senior staff on TBL principles. Evaluation by postdoctoral research staff at the University of Western Sydney has determined that this TBL framework that has been implemented over the past 18 months is leading and innovative, and that the

progress to date has been successful and significant.

Awards were also given under the categories of stormwater and urban waterways, community sharps waste management, biodiversity management award, environmental education, sustainable purchasing, waste management, energy and water savings and local sustainability.

Further details on award winners are available from <www.lgsa-plus.net.au/www/html/1479-award-winners.asp?intSiteID=2>.

TASMANIA

Committee reports on Tasmania's planning system

31 October 2006. A report of the Legislative Council Select Committee has been tabled in Tasmania's Parliament. The report identifies the need for more specific guidelines and more comprehensive planning schemes. According to the report, the current form of the *Land Use Planning and Approvals Act* (the Act) 'is too open to differing interpretations. A particular concern is the failure of the Act to provide certainty and consistency of planning schemes.'

The Committee was asked to inquiry into and report on planning schemes and planning scheme amendments, with particular reference to:

- the extent to which the requirements of the *Land Use Planning and Approvals Act* provide guidance in preparation, assessment and approval;
- the relationships between the community, councils, and the Resource Planning and Development Commission (RPDC) in preparation, assessment and approval; and
- the role, procedures and practices of state agencies in preparation, assessment and approval.

Recommendations included that:

- a properly resourced department of state planning be established;
- a template planning ordinance be adopted to provide greater consistency between planning schemes;
- the current suite of state policies be expanded and written in less ambiguous terms;
- planning schemes include an overlay of the provisions of other Acts affecting land use planning for uses such as forestry, mining and marine farming;
- the state government and the Local Government Association of Tasmania, through the Premier's Local Government Council, formulate a process for regional planning;
- education in the planning be made mandatory for all elected members of councils within a prescribed time; and
- legislation be amended to provide for an appeal process to the RMPAT for all disagreements between councils and the RPDC in the preparation, assessment and approval of planning schemes and planning scheme amendments.

Source: Legislative Council Select Committee Planning Schemes (October 2006).

Tasmania moves closure to Aboriginal cultural heritage legislation

November/December 2006. The Tasmanian Government has released a consultation package on proposed new Aboriginal heritage legislation for the state.

The package consists of 17 information sheets that explain key issues that emerged in initial consultation on the proposed new legislation. The information sheets include:

- 'Protection certainty through a duty of care';
- 'Sustainable development and protection of Aboriginal heritage';
- 'Using the resource management and planning system to help protect and manage Aboriginal heritage';
- 'Using specific-purpose land use and planning systems to protect and manage Aboriginal heritage'; and
- 'Complying with the new legislation'.

The project began in July 2005 with initial consultation with the Aboriginal community and interest groups, and is expected to finish in late 2007 with the introduction of new legislation to Parliament. This present package forms part of the second of at least three rounds of consultation. Comments in the second round will be collated and analysed before the drafting of a new Bill starts in early 2007, when a third round of consultation is due to commence.

Written comments are due by 22 December 2006.

For background, see Tasmanian Aboriginal Heritage Office 'Cooperation and hard work to solve Aboriginal heritage issues in Tasmania' (2005) 4(4) *L Gov R* 61.

For further information, include a copy of the consultation package, visit <www.tahl.tas.gov.au>.

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