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## Welcome to the 4th edition of the JBA Alert!

The JBA ALERT is a monthly newsletter from JBA Urban Planning Consultants + TCW Consulting.

In this edition, we provide some in-depth analysis of the planning reform bill, which was released earlier this month for public exhibition. We pay particular attention to the proposed reforms to the development contributions system in NSW, which has implications for applicants and councils, and how the new applicant and objector appeal rights will affect the way you do business.

We are pleased to announce that **Gordon Kirkby**, who joined JBA in January 2007, has been appointed as a Partner.

In this month's JBA Profile, we talk to Principal Planner **Kirk Osborne**, and introduce you to the latest member of the JBA family **Hannah Nancy Mansell**.

Kind regards,  
Kathryn Werner (editor)

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## Planning Reform Bill

On Thursday 17 April, JBA held a client presentation on the *Environmental Planning and Assessment Amendment Bill 2008* (the Bill), with over 30 clients, plus senior JBA staff in attendance. For those of you that missed the presentation, JBA's experts have prepared a snapshot of certain aspects of the proposed reforms.

JBA understands the Bill will be presented to Parliament around 9 May 2008, and the amendments to the *Environmental Planning and Assessment Act 1979* (the EP&A Act) will be progressively enacted as Regulations and Codes are developed.

Once the Bill is enacted, JBA will provide advice to our clients on its implications and timing of commencement in future editions of the JBA Alert.

### 1. Plan making, including the LEP Gateway

The Bill proposes a new process for the preparation and finalisation of LEPs, called the "Gateway" process. The key steps in the process are:

- Council resolves to make a new instrument, before a "planning proposal" is prepared and forwarded to the Department of Planning for review.
- The planning proposal includes a statement of intended outcomes of the LEP, its justification, copies of any maps and details of any proposed community consultation.

The LEP "Gateway" process commences when the planning proposal is sent to the Department of Planning. The Minister then decides whether or not to accept the proposal. If accepted, the Minister will determine: the need to resubmit with additional information (including studies), details of consultation requirements, if there is to be a public hearing, a timetable to complete the various stages in the plan-making process, and if making the LEP is to be delegated or remain with Minister.

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## Planning Reform Bill continued...

The reforms aim to reduce the time for making new instruments to 6 months for simple LEPs, such as a boundary adjustment or spot rezonings, to 12 months for a complex or State Significant LEP. Other remedies to address delays in the current plan-making process are that the Minister for Planning may now direct the Director-General (or other body) to make planning instruments for a particular Council and the Director-General may make DCPs.

Contact JBA Associate **Vivienne Goldschmidt** for more information.

### 2. Development Assessment and Appeals

The new Bill seeks to formalise five planning assessment and review bodies:

- Planning Assessment Commission (PAC) – a new statutory body to undertake certain Ministerial planning roles including some Part 3A determinations and provision of advice to the Minister on certain DAs, planning instruments and planning matters;
- Joint Regional Planning Panel (JRPP) – a new regional statutory body, modelled on the CSPC, that may act as a consent authority for applications for Crown development and DAs over \$50 million (if conferred by a planning instrument). It also provides advice to the Minister and can take on the role of a public administrator;
- Planning Assessment Panel (PAP) – are currently established under the EP&A Act, and include the bodies already in place in Ku-ring-gai, Burwood and Wagga Wagga Councils;
- Independent Hearing and Assessment Panel – investigate planning matters, hold public hearings, and provide advice, and are of the type in place in Sutherland and Warringah Councils; and
- Planning Arbitrator – a mechanism to review actual determinations or deemed refusals in relation to minor local development and certain modifications (under \$1 million). It is also an alternate to Court appeals and section 82A reviews.

The reforms seek to limit the number of decisions that are made by elected officials and the Minister for Planning. Formalisation of the new bodies seeks to provide cheaper and less legalistic avenues for appeals and reviews of planning decisions for both applicants and objectors by minimising use of the Land and Environment Court.

In addition, “stop the clock” provisions will be removed, notification and information requirements for DAs will be simplified, and Councils will have 14 days to reject a DA and 21 days to request more information. Time periods for deemed refusal of DAs will be set at 50, 70 or 90 days, depending on the type of DA.

Contact JBA Partner **Gordon Kirkby** for more information.

### 3. Development Contributions

Under the proposed reforms, Division 6 of the EP&A Act (which contains sections 93C to section 94B relating to development contributions, planning agreements, State Infrastructure Contributions and affordable housing contributions) is to be repealed, and new provisions will be inserted.

The provisions introduce the new concepts of *community infrastructure* (public amenity and public services, including local roads, parks and sporting, cultural and civic facilities) and *public infrastructure* (affordable housing and transport infrastructure). Contributions funding community and public infrastructure may have a *direct* (similar to current section 94 contributions) or *indirect* (similar to current section 94A fixed levies) connection to the development to which the contribution relates.



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## Planning Reform Bill continued...

For a Council to levy contributions toward community infrastructure, it must first adopt a contributions plan (unless the Minister directs a Council to impose a contribution beyond the power of the contributions plan).

A Council's contribution plan can only seek contributions for *key community infrastructure* (to be defined by the Regulations and are as yet unknown). The plan can seek contributions toward *additional community infrastructure* with the Minister's approval.

*State Infrastructure Contributions* (SIC) remain, with the level and nature of the contribution to be determined by the Minister. SIC levies will be in addition to a community infrastructure contribution.

"Voluntary" Planning Agreements remain, however limitations are proposed as to the nature of the infrastructure provision they relate to. In addition, where a SEPP identifies a need for affordable housing, a condition can be imposed on a development seeking a reasonable contribution.

Contact JBA Associate **Clare Brown** for more information.

### 4. Other matters

#### Lapsing of consent:

The period within which an applicant may lodge an appeal against the refusal of a development application, or imposition of a condition, has been reduced from 12 months to 3 months.

#### Certification:

Tougher penalties and an enhanced role for the Building Professionals Board now apply, with a view to limiting conflicts of interest by private certifiers.

Construction and Occupation certificates must be consistent with a development consent, and only the person who has the benefit of a consent may engage the PCA.

Private certifiers (individuals) must not generate more than 20% of their income from a single person/contractor, and corporations must not issue more than 50% of all certificates in a year to a single person/contractor.

Contact JBA Associate **Clare Brown** for more information.

## New Partner at JBA

JBA is pleased to announce that **Gordon Kirkby** has been appointed as a Partner of the firm. Gordon joined JBA in January 2007, and is a graduate in Economics with a Diploma in Urban and Regional Planning, both from the University of Sydney. During his time at JBA, Gordon has been responsible for the coordination and preparation of applications for a range of Major Projects and State Significant Sites in both rural and urban environments. Prior to joining JBA Gordon was a Director at the Department of Planning, and is one of NSW's leading practitioners on the application of Part 3A of the *Environmental Planning and Assessment Act 1979*.

Gordon recently returned from the Australian Dragon Boating Championships in Perth, where he was part of the silver and bronze-medal winning Sloths mixed crew. Gordon's next challenge will be in June, taking on the 740 km Yukon River Quest canoe race in Canada.



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## Court Decision on North Sydney LEP

North Sydney Council must re-exhibit their draft LEP for the North Sydney CBD following a decision from the [Land and Environment Court](#) that Council did not follow the appropriate procedures for exhibiting and considering public submissions on the draft LEP.

According to the decision of Lloyd J, Council is required to provide new responses to certain directions issued under section 117 of the EP&A Act, and revised section 68 report on the draft LEP to the Department of Planning.

## How to Manage the Relationship between Councils and Industry

The potentially contentious relationship between local government and the development industry was the subject of a joint Planning Institute of Australia, University of Sydney and Australian Institute of Urban Studies seminar held in early April.

Over 200 attendees heard panellists Noel Hemmings QC (Counsel assisting ICAC in the Wollongong Inquiry), Gabrielle Kibble (current Administrator to Liverpool Council), Prof Ed Blakely (Professor of Urban and Regional Planning at the University of Sydney) and JBA Partner **Julie Bindon** (as NSW President of the Planning Institute of Australia) discuss issues arising out of the Independent Commission into Corruption inquiry into Wollongong Council including probity, ethics and corruption.

The seminar considered issues of significant importance to the planners and the development industry, including what legally constitutes corruption, and how councils and planners may make their organisations as corruption-proof as possible.

Contact JBA Partner **Julie Bindon** for more information.

## JBA at PIA Conference

This month's Planning Institute of Australia National Congress saw over 600 delegates hear a presentation by Dr Stephen Schneider, former advisor on climate change to US Presidents Clinton and Bush, on whether we can define, let alone fix, "dangerous" climate change.

JBA showcased the proposed concept plan for the Barangaroo redevelopment at their stand, which attracted plenty of interest throughout the 3-day conference.

JBA Partner and PIA NSW President **Julie Bindon** (who was also part of the organising committee for the Congress), guided a site tour showcasing the changing face of planning along Sydney Harbour and the Parramatta River, and JBA Urban Planner and NSW Young Planners Chair **Andrew Guyton** led delegates on the Rocks to Riches Challenge through the Sydney CBD prior to the conference.



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Project approval was granted for a new medical research facility at Wollstonecraft for St Vincents & Mater Health, Sydney and the Central Sydney Planning Committee has recommended the approval of the proposed new 6 Green Star commercial tower at 1 Richard Johnson Square be supported.

Recently on exhibition:

- Part 3A application for site remediation, permanent stabilisation of heritage items, archaeological works and protection of site services for Frasers Broadway (former CUB Site).
- Stage 1 DA for a new 30-storey commercial office tower at 200 George Street Sydney for the Mirvac Group.
- Development application for 7-10 storey mixed use development including 11,697m<sup>2</sup> residential and 933m<sup>2</sup> retail uses, demolition, excavation and public domain improvements at 30-36 O'Dea Ave, Waterloo for Feheni Pty Ltd.
- Stage 1 DA for a new 40,396m<sup>2</sup> mixed use development comprising residential, commercial and retail uses at Waterloo, for Country State Group Pty Ltd.
- Development application for a new boutique art gallery in the Sydney CBD, for Moran Health Care Group.



*New medical research facility – Wollstonecraft*



*Mixed use development – 30-36 O'Dea Ave, Waterloo*

## JBA Staff

JBA Partner **Lesley Bull** welcomed daughter **Hannah Nancy Mansell**, born Thursday 10 April 2008 at 3:06 pm. Hannah weighed in at 3.414 kg and was 52 cm long. Mother and daughter are doing well.



## JBA Profile



**Kirk Osborne** holds a Bachelor of Arts (Human Geography) from Macquarie University and Master of Urban and Regional Planning from the University of Sydney. A Principal Planner at JBA, Kirk has particular interest and expertise in economic development and employment lands. Prior to joining JBA in 2005, Kirk worked at the Department of Planning, where he was a member of the Sydney Region East team.

Some of Kirk's recent projects include Part 3A Concept Plans for Darling Walk, Penrith Lakes and Kings Forest (Tweed Heads) and Mixed Use developments at Green Square. Kirk is also a member of the Property Council of Australia and Planning Institute of Australia's economic development committees.

Outside work, Kirk is kept busy by his 3 and 6 year old boys and weekend sporting activities, going to the gym and trying to improve his golf game.

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