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Welcome to the January edition of the JBA Alert!

The JBA ALERT is a regular newsletter from JBA Urban Planning Consultants to our key clients and contacts.

In this edition, we congratulate Lend Lease Development on its selection as Developer for Stage 1 of Barangaroo. We also look back at JBA's achievements over the past year, and consider the implications of foreshadowed amendments to the NSW planning system. We report on recent advice from the Department of Planning regarding the processing of applications under Part 3A of the *Environmental Planning and Assessment Act 1979* and the implications of a recent Land and Environment Court case that casts doubt on the validity of new LEPs and the status of draft LEPs.

We are pleased to announce the promotion of **Oliver Klein** to Associate, **Stephanie Ballango** to Associate and **Kate Tudehope** to Urban Planner and showcase some of their recent projects.

Are you interested in more information on what we do at JBA? Visit the "News" section of our [website](#) to browse other editions of the JBA Alert.

Kathryn Werner (editor)

JBA underway on Barangaroo



JBA is pleased to congratulate Lend Lease Development on its selection by the Barangaroo Delivery Authority, on behalf of the NSW Government, as Developer for Stage 1 of Barangaroo, one of the largest CBD developments in the history of Sydney. With an end value of approximately \$6 billion, the project is expected to be completed over the next 10 to 15 years, with construction commencing in late 2010. JBA has been working with Lend Lease on its winning Barangaroo proposal since early 2008 and is looking forward to assisting in the ongoing planning and delivery of this exciting project.

Source: Lend Lease

LEC case casts doubt on draft LEPs

In July 2009, the local environmental plan making process was amended through changes to Part 3 of the EP&A Act. Under the new system, known as the 'gateway' plan-making process, certain pending draft LEPs, that were in preparation prior to 1 July 2009, are able to continue to be made under the repealed plan-making provisions of the EP&A Act.

In January 2010, Justice Lloyd of the Land and Environment Court of NSW handed down a decision in [Capital Airport Group Pty Ltd v Director-General of the Department of Planning \[2010\] NSWLEC 5](#). The decision related to the definition of what was 'pending LEP' under clause 12 of the EP&A Regulation 2000 and in particular, the status of the draft LEP for South Tralee. The Director-General had relied on the definition of 'pending LEP' to cover all draft LEPs including those where the Director-General had been notified by a local council of their intention to prepare (under section 54 of the EP&A Act) prior to 1 July 2009. This is a very early stage in the plan-making process.

However, Justice Lloyd determined the definition of 'pending LEP' was limited to only those draft LEPs which had been submitted prior to 1 July 2009 by Council to the Director-General under section 64 of the EP&A Act requesting a certificate to publically exhibit. The draft LEP for South Tralee was submitted to the Director-General in September 2009, seeking permission to publically exhibit. The certificate to exhibit issued by a delegate of the Director-General was deemed invalid as the Court held that the Council and the Department of Planning should have followed the new 'gateway' process.

This judgement provides that all draft LEPs that had not been submitted to the Director-General, under section 64 prior to 1 July 2009, are to proceed under the new 'gateway' plan-making process. Minister Kelly indicated in a recent [media release](#), that this judgement would not affect any other proposed draft LEPs. It is expected the Regulations will be amended in the near future to make it clear which draft LEPs may continue to be processed under the former plan-making provisions.

JBA in 2009...

2009 was an exciting year for JBA. Here we take a look back at some of the highlights.

- In September, JBA Partner **Gordon Kirkby** was announced as one of three State members appointed to the Western Joint Regional Planning Panel. So far, six applications lodged with councils have been referred to the Western Region JRPP for determination.
- In early 2009, JBA was engaged by the Department of Planning to review nine of the 34 requests from NSW Councils for an exemption to the \$20,000 per lot / dwelling cap for local development contributions (section 94 contributions). JBA found about half of the requests for exemption to the cap were not justified.
- Since March 2009, JBA has been actively involved in implementing the Commonwealth Government's Building the Education Revolution program. JBA worked with the NSW Department of Premier and Cabinet in preparing the planning framework and assessment procedures for education, social housing and other projects under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009* (NBJP Act) and is now working closely with managing contractors to deliver projects at almost 1,000 primary schools across NSW.
- JBA prepared Part 3A Concept Plans for some of NSW's most significant projects, including the Cobaki Lakes State, Kings Forest, Costco Australia's headquarters, and major upgrades to the UTS City Campus.
- We also prepared development applications for new commercial and residential buildings at Top Ryde Shopping Centre and Project Applications for the redevelopment of the Frasers Broadway site in the City of Sydney and the Knauf glass wool manufacturing plant at the Steel River Estate.
- JBA has been working with councils and the State Government to develop some exciting strategic plans, including amendments to the Sydney Region Growth Centres SEPP for the Oran Park, Turner Road and Marsden Park release areas, and is working with Ashfield and Strathfield Councils to prepare local planning strategies to accommodate new residential and commercial growth over the next 25 years.
- JBA's staff continue to be recognised by their peers for their contribution to the industry:
- **Julie Bindon's** tenure as NSW President of the Planning Institute of Australia continued;
- **Bernard Gallagher** was recognised as a Property Leader late last year when he was inducted into the Australian Property Institute; and
- **Stephanie Ballango** received the Planning Institute of Australia's NSW Award for Urban Planning Achievement.

We look forward to working with our clients on even more exciting projects in 2010!

DoP Code of Conduct

A new [Code of Practice](#) to regulate and record meetings between Department of Planning and developers, lobbyists and their representatives commenced on 1 December 2009. The Code applies to both "Face to Face Meetings" and "Telephone Discussions" for planning and development proposals.

The Code outlines the steps to be followed by Departmental staff when arranging and conducting a meeting or taking a telephone call. Meeting requests from applicants and their representatives must now be made in writing to the Department of Planning and the meeting must be conducted at a Government office, a council or at the relevant development / project site.

Comprehensive minutes of the meeting must be made and retained by the Department and the attendance of registered lobbyists must be noted.

The Department of Planning introduced the Code after the Land and Environment Court found two planning decisions were tainted due to "apprehended bias" by a former Minister for Planning and the Parliamentary Inquiry into Badgerys Creek land dealings and planning decisions.

It is useful to note the Code does not currently apply to local councillors or staff, the Minister for Planning or the Minister's staff.

EPIs Gazetted

[Maitland Local Environmental Plan 1993 \(Amendment No 101\)](#) – this Plan rezones certain land known as the Gillieston Heights Urban Release Area.

[Randwick Local Environmental Plan 1998 \(Amendment No 41\)](#) – this Plan consolidates existing planning controls in the City of Randwick including amendments to the land use tables, development standards, definitions and the LEP provisions generally.

New assessment process for Part 3A applications

JBA Associates **Stephanie Ballango** and **Oliver Klein** recently met with the officers of the Department of Planning to discuss changes to the way applications lodged under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), such as Concept Plans and Project Applications, are assessed.

New "Clause 6" Panel

The Department of Planning has established an internal panel to determine if the application is a project to which Part 3A of the Act applies before forwarding it to the Director-General of the Department of Planning or Minister for Planning to issue a formal declaration under clause 6 of State Environmental Planning Policy (Major Development) 2005 (the Major Development SEPP). The objective of the Panel is to ensure consistent application of the Major Development SEPP across the Department of Planning. Currently there is no opportunity for proponents to attend Panel meetings. The statutory timeframe for the Department of Planning to issue the Director-General's Environmental Assessment Requirements is currently 28 days.

New timeframes to assess major projects

Since mid 2009, the Department of Planning has been providing weekly reports to the Minister for Planning on the time taken to assess Part 3A projects. Indicative timeframes to complete the assessment of major projects are:

- 85% of all projects must be completed within 3 months;
- 95% of all projects must be completed within 5 months;
- All projects must be completed within 9 months.

These timeframes assume one month is utilised for exhibition / consultation. The remaining time (i.e. 2, 4 or 8 months) is the assessment period of the Preferred Project Report (PPR) from the time the Department *accepts the PPR and places it on its website*, to the finalisation of the Department's internal assessment. The quoted timeframes do not include the time the application is in the Minister's Office for determination (which can be several weeks).

Although there are no guidelines regulating the types or classes of projects that might be subject to each of the timeframes, JBA assumes more straight forward and compliant projects will be assigned a faster assessment timeframe, while particularly complex applications such as Concept Plans and State Significant Applications would be subject to the longer assessment timeframe.

Contact JBA Associate **Stephanie Ballango** for more information.

JBA Projects

Figtrees on the Manning

JBA is assisting Chase Taree Developments Pty Ltd, Hocana Pty Ltd and Spychalla Pty Ltd to secure approval of a Part 3A Concept Plan application for "Figtrees on the Manning", a 22 hectare residential, commercial, retail and marina development on the banks of the Manning River in Taree.

The Concept Plan seeks approval for up to 157,000m² of floor space comprising residential, commercial, marina, adaptive reuse of heritage buildings for cultural uses, public squares, riverside parks, a restored wetland and significant foreshore pedestrian connections.

The proposal would enable currently underutilised riverfront land to be developed for housing and commercial uses to support the economic development and ongoing renewal of Taree and to promote tourism related economic activity in proximity to the Manning River.

JBA's significant experience with Part 3A and coastal planning has enabled the team to provide ongoing strategic advice on the approval pathway for this \$310 million project. Visit the Department of Planning [website](#) or contact JBA Associate **Clare Swan** for more details.



Source: Sutera Architects

2 Morton Street, Parramatta

JBA and Frasers Property Australia have been successful in progressing a rezoning through Parramatta Council and utilizing the Department's new LEP Gateway Process for an industrial site at 2 Morton Street Parramatta. The Planning Proposal will rezone Frasers' land from its current Employment and Open Space zoning, to a predominantly higher density residential use, with a component of mixed use, foreshore open space and waterways. The resolution to send the Planning Proposal to the Department was unanimously endorsed by Parramatta Council in October 2009. The Planning Proposal received LEP Gateway Determination on 30 December 2009. The [LEP Gateway Determination](#) sets a timeframe for gazettal of the draft LEP of 6 months.

Top Ryde Shopping Centre

On completion, the Top Ryde Shopping Centre Redevelopment will be a 130,000m² mixed use development comprising retail, community, entertainment, commercial and residential uses. The first phase of the development opened in November 2009 and is successfully trading, while construction works for Stage 1 are continuing. Stage 1 of the redevelopment is valued at over \$440 million and will consist of a 78,000m² shopping centre and entertainment precinct that is planned for completion in late 2010. JBA has worked with Beville Group since 2005 by providing inception planning advice, assisting to rezone the site, and preparing the Main Stage 1 DA and numerous residential and commercial DAs.



Source: Bovis Lend Lease

Thomas Street, Chatswood

A Project Application for the redevelopment of the Thomas Street Chatswood carpark prepared by JBA for Welles Thomas, is now on exhibition. The mixed use development will include 22,910m² of residential floor space, and 24,690m² commercial and retail floor space in two new towers. The development also includes 5 levels of public and private carparking and a pedestrian link to the adjacent Chatswood CBD. Visit the Department of Planning [website](#) for more information.



Source: PTW Architects

UTS City Campus

In late December 2009, the Minister for Planning approved the Part 3A Concept Plan for the Broadway Precinct of the UTS City Campus. The approved Concept Plan includes 84,750m² of floor space for education, sporting and social facilities. The Minister also approved a Project Application for a new 14 storey tower above the Peter Johnson Building on Harris Street which will provide accommodation for up to 720 students. Click [here](#) for more information.

JBA Profile

Oliver Klein joined JBA in October 2007 and was promoted to the position of Associate in January 2010. In 2009, Oliver led a small team which assisted the NSW Department of Premier and Cabinet prepare the planning framework and assessment procedures for education and social housing projects under the NBJP Act before assisting Brookfield Multiplex deliver approvals for over 300 school projects.



Oliver Klein

Stephanie Ballango joined JBA in February 2008 and was promoted to the position of Associate in January 2010. Some of Stephanie's most recent projects include new residential development and regional parklands at Bungarribee Estate; and the Tweed City Centre Revitalisation Strategy including a new LEP, new development control plan and development contributions framework.



Stephanie Ballango

Kate Tudehope joined JBA in July 2008 and was promoted to Urban Planner in January 2010. Kate is currently in the final year of her Bachelor of Planning degree at UNSW. Kate's projects include the \$80 million fit-out of commercial tenancies at Darling Walk, DAs for the Chatswood Community Health Facility and upgrades to the Wenona School.



Kate Tudehope

