



PLANNING SYSTEM

Local planning

Circular	PS 07-010
Issued	1 August 2007
Related	

Heads of consideration for the Minister to appoint a planning administrator or panel for unsatisfactory performance

This circular is to advise of the gazettal of heads of consideration for the exercise of power under section 118 of the *Environmental Planning and Assessment Act 1979* to appoint a planning administrator or panel to exercise the functions of a council where there is unsatisfactory performance in dealing with planning and development matters.

Introduction

The *Environmental Planning and Assessment Act 1979* (EP&A Act) has long provided for the appointment of a planning administrator to perform all or part of a council's functions, where a council has been responsible for technical breaches of State planning law.

A new provision was included in the EP&A Act in 2006 to also allow the Minister for Planning to appoint a planning assessment panel to undertake a council's consent authority role or to prepare environmental planning instruments. This provision is to ensure satisfactory and appropriate performance by local councils in their undertaking of legislative functions that relate to planning and development matters. This is essential in the public interest for good environmental, social and economic outcomes.

Under section 118 of the EP&A Act the Minister for Planning may appoint a planning administrator or panel, or both, if:

- council has failed to comply with its obligations under the planning legislation, or
- performance of a council in dealing with planning and development matters is unsatisfactory, or
- council agrees to the appointment, or
- the Independent Commission Against Corruption recommends it because of serious corrupt conduct by any councillors.

Appointment where the performance of a council in dealing with planning and development matters is unsatisfactory

Section 118(1)(b) of the EP&A Act allows the Minister for Planning to appoint a planning administrator or a panel to exercise the functions of a council if the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect.

Under section 118(9) of the EP&A Act, the Minister for Planning may only appoint a planning administrator or panel under section 118(1)(b) if the Minister has gazetted 'heads of consideration' and taken them into account before making a decision.

On 19 July 2007, the Minister for Planning made the Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007 (Order). The Order sets out the heads of consideration for the purposes of section 118 of the EP&A Act and will take effect on 1 August 2007.

The heads of consideration include:

- The nature of findings or recommendations as a result of a review, investigation or inquiry made by the NSW Ombudsman, the Department of Local Government, the Independent Commission Against Corruption or a person or persons appointed by the Minister for Planning or the Minister for Local Government.
- In respect of local environmental plans (LEPs) and development control plans (DCPs):
 - the number of LEPs proposed for spot rezonings and/or minor amendments
 - the time a council takes in exercising its functions in making LEPs or DCPs
 - the nature and extent of classes of development identified as exempt and complying development in LEPs and DCPs
 - how a council considers and responds to public submissions on draft LEPs and DCPs.
- In respect of development applications and modification applications:
 - the time a council takes to assess and determine those applications
 - the number and percentage of those applications determined under delegation
 - the nature and extent of determinations that do not comply with relevant development standards
 - how a council complies with the relevant advertising and notification requirements for those applications
 - how a council considers and responds to public submissions
 - the nature and extent of determinations that are contrary to recommendations made by council staff or an advisory/independent panel
 - the number and outcome of reviews undertaken pursuant to section 82A of the EP&A Act.
- The number, cost and nature of legal proceedings or orders issued under section 121B of the EP&A Act concerning planning and development matters and how a council ensures conditions of development consent are complied with.
- The nature and extent of the systems, policies, procedures and resources which support a council's administration of planning and development matters.
- Whether a council has complied with:
 - State environmental planning policies and regional environmental plans
 - other strategies and policies endorsed by the NSW Government, the Minister for Planning or the Department of Planning concerning planning and development matters

- directions issued by the Minister for Planning under section 117 of the EP&A Act.
- Whether a council has complied with requirements in the EP&A Act concerning the levying, collection and management of development contributions.
- The manner in which a council or councillors manage conflicts of interests concerning planning and development matters.
- The time and manner in which a council provides information to the Department of Planning in accordance with any program for local development performance monitoring.
- The public interest.

How panels will be established

Section 118AA provides that planning assessment panels will consist of three to five members, appointed by the Minister, who have relevant skills and knowledge in planning and development matters. The Minister will appoint a chairperson for each panel, and the panel members may appoint a deputy chairperson.

To establish a panel, the Minister will list the panel in Schedule 5B of the EP&A Act by Order published in the Gazette.

Under section 118, a panel may not exercise a council's functions for more than five years continuously. A panel's appointment and functions is to be reviewed (in consultation with the Minister for Local Government, the Local Government and Shires Associations and other relevant industry organisations) after it has been in place for more than two years.

Appointment where council agrees to the appointment

In addition to the appointment of a panel or administrator by the Minister under section 118(1)(b), a council may request the appointment of a planning administrator or panel under section 118(1)(c).

Such a request might arise where the appointment of a planning panel or administrator would assist in achieving State planning objectives or where the council has conflict of interests in relation to planning and development matters.

Further information

Attached for your information is a copy of the gazetted Order. (Note the Special Supplement Government Gazette No. 93 of 20 July 2007 is included in the Government Gazette for 27 July 2007.)

The *Environmental Planning and Assessment Act 1979* is available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z In Force').

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad
Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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**ENVIRONMENTAL PLANNING AND ASSESSMENT (UNSATISFACTORY COUNCIL
PERFORMANCE) ORDER 2007**

under the

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

I, FRANK SARTOR, the Minister for Planning, in pursuance of section 118 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 19th day of July 2007.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this order is to provide for the heads of consideration that the Minister is to take into account in determining whether to appoint a planning administrator or planning assessment panel to exercise the functions of a council because the performance of a council in planning and development matters is unsatisfactory.

This Order is made under section 118 of the Environmental Planning and Assessment Act 1979.

Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007

under the

Environmental Planning and Assessment Act 1979

1. Name of Order

This Order is the Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007.

2. Commencement

This Order commences on 1 August 2007.

3. Definitions

(a) In this Order:

the Act means the *Environmental Planning and Assessment Act 1979*.

councillor has the same meaning it has in the *Local Government Act 1993*.

DCP means development control plan.

development contribution means any contribution imposed or obtained by a council under Part 4, Division 6 of the Act.

LEP means local environmental plan.

modification application means an application to modify a development consent under sections 96 and 96AA of the Act.

(b) Words used in this Order have the same meaning as words used in the Act.

4. Heads of Consideration for Appointment of Planning Administrator or Panel

The heads of consideration for the Minister to take into account before appointing a planning administrator or planning assessment panel under section 118(1)(b) are:

(a) The nature of any findings or recommendations as a result of a review, investigation or inquiry made by:

(i) the New South Wales Ombudsman,

(ii) the Department of Local Government,

(iii) the Independent Commission Against Corruption, or

(iv) a person or persons appointed by the Minister for Planning, or

(v) the Minister for Local Government.

- (b) For LEPs and DCPs:
 - (i) the number of local environmental plans a council determines to prepare under section 54 of the Act, publicly exhibits under section 66 of the Act or submits to the Director-General under section 68 of the Act which comprise minor amendments of a principal LEP or a spot rezoning,
 - (ii) the time a council takes in exercising its functions in making LEPs or DCPs
 - (iii) the nature and extent of the classes of development identified as exempt and complying development in LEPs and DCPs, and
 - (iv) how a council considers and responds to public submissions on draft LEPs and DCPs.
- (c) For development applications and modification applications:
 - (i) the time a council takes to assess and determine those applications,
 - (ii) the number and percentage of those applications determined under delegation,
 - (iii) the nature and extent of determinations of development applications that do not comply with relevant development standards,
 - (iv) how a council complies with the relevant advertising and notification requirements for those applications,
 - (v) how a council considers and responds to public submissions on those applications,
 - (vi) the nature and extent of determinations that are contrary to recommendations made by council staff or an advisory or independent panel, and
 - (vii) the number and outcome of reviews of development applications under section 82A of the Act.
- (d) the number, cost or nature of legal proceedings or orders issued under section 121B of the Act concerning planning and development matters and how a council exercises its functions to ensure conditions of development consent are complied with.
- (e) the nature and extent of the systems, policies, procedures or resources which support a council's administration of planning and development matters.
- (f) whether a council has complied with:
 - (i) State Environmental Planning Policies and Regional Environmental Plans,
 - (ii) other strategies and policies endorsed by the New South Wales Government, the Minister for Planning or the Department of Planning concerning planning and development matters, and
 - (iii) directions issued by the Minister for Planning under section 117 of the Act.
- (g) whether a council has complied with requirements in the Act concerning the levying, collection and management of development contributions.
- (h) the manner in which a council or councillors manage conflicts of interests concerning planning and development matters.
- (i) the time and manner in which a council provides information to the Department in accordance with any program for local development performance monitoring.
- (j) the public interest.