

# Improving Effectiveness and Efficiency of Approval Processes for Significant Infrastructure Projects

Balancing national and regional infrastructure needs against social, environmental, community and individual interests is almost always a vexed issue.

Past experience has shown that with good long term asset management planning, and with extensive and robust consultation processes, well developed infrastructure proposals can and do proceed successfully through the RMA process. But the costs are often extremely high, and, in some cases, infrastructure projects of national significance can take up to a decade or more before they are eventually approved. Not only does this inhibit New Zealand's productive capacity, such delays also constrain the social and environmental benefits of improved infrastructure. The key questions are whether existing processes are adequate to enable timely decisions to meet the nation's infrastructure needs and how can they be improved to provide for integrated and balanced consideration of community needs against wider, social, environmental and economic imperatives?

This three part paper is focussed on addressing these key questions. Part One looks at challenges that the RMA and other legislation pose for sustainable infrastructure development in New Zealand. Part two canvasses the approach taken in overseas jurisdictions who, like New Zealand, have introduced reforms to streamline decision making for infrastructure projects. Finally, Part Three set outs an option for reform of the RMA and other statutory processes. The recommended "Project Consent" provides an alternative and optional consenting path that would integrate most, if not all, statutory approvals and facilitate timely and more participatory consultation and approval processes for projects of national significance.<sup>1</sup>

## Part One

### Perceived Problems with the RMA

The RMA is often cited as a major impediment to infrastructure delivery in New Zealand. The following factors contribute to this perception:

- Lack of express recognition of the national significance of essential infrastructure and/or the importance providing significant infrastructure supporting community needs within the RMA purpose and principles section (particularly under Section 6 - Matters of National Importance);

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<sup>1</sup> This paper is prepared by Stephen Selwood in May 2010 and represents the policy position of the New Zealand Council for Infrastructure Development on desirable reforms to the Resource Management Act.

- The emphasis in the Act on adverse environmental effects needs to be better balanced with the wider economic, social and environmental benefits of improved infrastructure provision.
- Lack of sufficient leadership at the national and regional level to promote infrastructure development. Regional Policy Statements generally reference the importance of infrastructure but concentrate on avoiding adverse effects rather than giving specific direction to address trade-offs between the economic, social and environmental outcomes. The 2005 Amendment Act requires Regional Councils to take greater responsibility for the integration of essential infrastructure with land use. This was an important step, but it remains to be seen how this function will be transferred to regional leadership through Regional Councils through second generation Regional Policy Statements;
- The lack of national guidance or standards on issues such as noise, physical separation, storm water, run off, erosion and sediment control, construction-dust controls or vibration.
- The need for RMA consents to be approved by both regional and territorial authorities for most major infrastructure projects, and the consequent inevitable overlapping of the effects considered by each authority.
- Inconsistencies in approach and interpretation across different local authorities. There remains insufficient resourcing and experience within some territorial and regional authorities to enable effective management and development of major infrastructure;
- The role of often-vociferous public interest groups and “nimbys” using environmental concerns as a proxy for self interest;
- Focus on the environmental effects of a project rather than on the societal benefits of a project
- Time delays. An urban project such as the Wellington Inner City Bypass took more than a decade to progress from inception (in 1993) through to construction in 2004. A significant proportion of the time was expended in the two-stage RMA process involving consideration by Council following by a Court process can add large costs as well as delays;
- Lack of monitoring of RMA effectiveness (particularly for major projects);

## Use of Call In as a means to streamline consent processes in New Zealand

The changes to the RMA in 2009 have made it easier to call in projects of national significance enabling direct referral to the Environment Court or to a Board of Inquiry. However, it remains to be seen

whether applicants will want to pursue this option as there are a number of risks posed by the call in process.

Most significantly, the one stop nature of the process means there is little room for error. At least with a two step process involving Council hearings, the applicant can be much better prepared having been exposed to matters raised and the approach taken by objectors. In some respects, Council hearings provide a significant and robust form of community engagement that can provide an early test of the applicants case.

Moreover, the adversarial nature of Environmental Court hearings or Planning Board hearings is not a conducive environment for achieving positive resolution of differences. Nor is it a particularly satisfactory environment for those objecting to a proposal and who are unfamiliar with the legal process.

The RMA legal process tends to be focussed on technical issues relating to environmental effects which may or may not go to the core issue of whether or not an infrastructure proposal has merit, or not. Often objectors are wanting to debate the fundamental issues around whether or not a project is justified but are unable to address these issues directly.

Finally, although call in may streamline approval processes under the RMA, this may still mean further litigation under other legislation that may be relevant to a project including the various Acts described earlier in this paper. Consideration of a single consenting process, incorporating one dominant set of provisions governing essential infrastructure, would potentially streamline the consent process and remove duplicity.

## It's not just the RMA that's the problem

There are a number of other Acts that significantly impact the statutory approval of infrastructure projects. On occasions these have been used iteratively to hold up or prevent projects from proceeding in a timely manner. In some instances this has resulted in projects not proceeding or major increases in project costs which have in turn caused difficulties in gaining the requisite funding approvals to enable projects to proceed.<sup>2</sup>

Examples of relevant legislation can include:

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<sup>2</sup> Examples of such projects have included Wellington Inner City Bypass, SH20 Mt Roskill Extension, SH1 Northern Gateway, SH1 Victoria Park Tunnel

- **The Historic Places Act 1993 (HPA).** Archaeological Authorities are required under the HPA for a number of projects. The Wellington Inner City Bypass for example required two Environment Court processes, one under the RMA and one under the HPA.
- **The Reserves Act 1981.** Where a project requires land from a Reserve under the Reserves Act, the specific approval of the Minister of Conservation is required. This effectively could prevent implementation of a project, even though consents may have been gained through the RMA;
- **Local Government Act 2002.** Often a road needs to be stopped in order to implement another transport solution. Where the road to be stopped lies outside of the designation, a road-stopping process under the Local Government Act is required. This process has an appeal right to the Environment Court;
- **The Public Works Act 1981.** Often one of the key issues of project delay is land assembly. Even though the designation may be in place, there is still an appeal right to the Environment Court over the process;
- **Foreshore and Seabed Act 2004.** Where foreshore or seabed is required, there may be specific approvals required;
- **Reserves and Other Land Disposal and Public Bodies Empowering Act 1915,** In the case of the SH20 Mount Roskill which took ten years to be fully consented and funded, it was found that this Act, was relevant to construction. Further cost and eighteen months delay was added to the project in order to resolve this anomaly;
- **The Land Transport Management Act 2003.** In the case of major projects constructed in the last six years, further assessment had to be carried out after other approvals were in place, to ensure that projects contributed to the purposes and principles of this Act. Theoretically a project can be further delayed by judicial review if this process is not carried out.

## Evidence of Protracted Approval and Consent Processes

There are a number of examples where the time taken and the cost of progressing a proposal through RMA or other approval process have been considerable.

One that illustrates both the time and complexity of a consenting programme is the Wellington Inner City Bypass.

## Case Study: Wellington Inner City Bypass

The approval process for the Wellington Inner City Bypass started in 1994 when Transit made a decision to abandon the previously planned larger city link project between the Terrace and Mount Victoria tunnels. A revised, reduced-scale proposal was developed and submitted for consideration to Wellington City Council for designation; and subsequently to Wellington Regional Council (WRC) for regional resource consents early in 1996. After receiving 1500 submissions, commissioners conducted a two-week hearing later that year with a positive recommendation towards the end of 1996. Transit confirmed the recommendation in 1997 and WRC granted the consents. A number of appeals were received. Some of these were withdrawn, and the remaining parties unsuccessfully attempted to resolve their issues through a voluntary mediation process that ceased later in 1997. The Environment Court sat for three weeks in late 1998 and approved the designation in 1999. A minor High Court matter was resolved later.

### Impact of Historic Places Act

In 2001, after detailed design had been completed, Transit submitted applications for archaeological authorisation to the NZ Historic Places Trust (NZHPT); which determined that the whole project was of such significance that public notification was required under the Historic Places Act. After considerable deliberation, the Historic Places Trust duly confirmed the authorisations, which were then appealed by primarily the same party as had appealed under the RMA. The Environment Court's decision upheld the archaeological authority granted by the NZHPT.<sup>3</sup>

As the NZHPT noted in their submission to the Treasury Towards and National Infrastructure Plan Facts and Issues report <sup>4</sup> this case set an important precedent in respect of who has standing under the HPA:

In making its decision, the Court examined the limited appeal rights of third parties in relation to section 20(1) of the Historic Places Act. This section states that only any person who is 'directly affected' by an archaeological authority decision may make an appeal to the Environment Court. The Court found that CBC and THT were not 'directly affected' and that the scope of 'directly affected' under the Historic Places Act was limited to mean:

- Any person with a proprietary interest in the land.
- The applicant for the authority the subject of the appeal.

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<sup>3</sup> *Te Aro Heritage Trust, Campaign for a Better City Incorp v NZHPT* (Environment Court, W52/2003, 30 July 2003)

<sup>4</sup> Available at [www.infrastructure.govt.nz/plan/submissions/pdfs/s-ifi-nzhpt-oct09.pdf](http://www.infrastructure.govt.nz/plan/submissions/pdfs/s-ifi-nzhpt-oct09.pdf)

- Tangata whenua who are linked to the site through their ancestry.

Other persons without a proprietary interest in the land such as children and grandchildren being directly affected by a proposal to dig up a grandparent's grave, whether any such person was 'directly affected' would be determined on the evidence.<sup>5</sup>

This decision created a helpful precedent in terms of determining, and limiting, which parties are directly affected under the Act. That said, there remains a strong possibility that national projects could involve directly affected parties, as now defined, who might stop or delay progress through iterative use of HPA in concert with RMA approvals and other legislation that can apply to major projects, including exercising appeal rights in each case here possible.

### **Impact of Land Transport Management Act 2003**

Prior to any approvals for funding, the LTMA was enacted. As this was a new piece of legislation that altered the focus of transport provision and administration, Transit carried out an independent review of the project to ensure that it met the principles of the LTMA. Funding was eventually approved in 2004 and the project commenced later that year, a full decade after the project was conceived. Given the project had a benefit cost ratio calculated at the time to be 3.8:1, the opportunity costs of delay would have been substantial.

It is important to recognise that this project was a highly complex urban roading improvement in a central city environment. There was also significant opposition, and real social and environmental issues to be considered. The whole process, while lengthy in time from inception to implementation, required a number of issues to be addressed, worked on, improved and alternatives assessed.

### **Other Examples of Project Delay and Complexity of Process**

While the Inner City Bypass is an example of the length it took one controversial project, there are numerous examples of lengthy approval processes. Some examples include:-

- The Kapiti Western Link Road that had two Environment Court and two High Court hearings before RMA approvals were gained. Various other consents and authorities have been, or are required. The project has subsequently been superseded.

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<sup>5</sup> *ibid*, p 50

- The Orewa to Puhoi Northern Gateway (ALPURT B2) project, that had a lengthy environment court history and required tolling consultation and ministerial approval under the LTMA.
- The SH20 Mount Roskill Extension also required High Court approvals and consideration under the provision Reserves and Other Land Disposal and Public Bodies Empowering Act 1915.
- It took six years from original application to a successful appeal to the Environment Court for Contact Energy to re-consent the company's operation of its Hawea, Roxburgh and Clyde Hydro dams
- It took six years after its initial application and an appeal to the Environment Court for Contact Energy to re-consent its existing geothermal plants at Wairakei and Poihipi near Taupo
- Meridian Energy discontinued and failed to gain consents for two major electricity generation projects in the South Island – Project Aqua (which was discontinued after four years in development) and Project Hayes wind farm which is under appeal four years after initial lodgement
- The Hunter Downs Irrigation proposal lodged in October 2006 received local Council approval in April 2010
- Cost, duplication, complexity of process when considering proposals falling under both the Conservation Act 1987 and Resource Management Act 1991: Both Acts consider the nature of natural and physical resources affected by a proposal, their significance, and options to avoid, remedy, or mitigate adverse effects. While the legal tests under the two Acts are different, each and every value that falls to be considered for the purposes of these tests in the Conservation Act, also has to be considered under the Resource Management Act. However, projects are normally processed in two stages which lead to delay and increase in cost. For example, Meridian's Gumfields wind farm proposed in Northland is located on both privately owned land and conservation estate. The concession was lodged in February 2006 (after Meridian successfully won the tender in October 2005) and is awaiting a formal determination prior to lodging the resource consent applications. Similarly, Meridian's Mokihinui hydro project (adjourned in April 2009 and having just received a positive Council decision) is also subject to the Conservation Act;
- Ongoing compliance once projects are built: Greater regulation in relation to national environmental standards that prescribe technical standards would be of assistance. For example, Standards New Zealand have revised NZ6808 Acoustic - Wind farm noise which stipulates the level of sound that is reasonable. However, the issue as to what is 'reasonable' seems to be a matter of ongoing debate and this is despite compliance of resource consent

conditions, agreement between independent experts, satisfaction of NZ standards together with applying the best practicable options.

- Reverse sensitivity: Due to the lengthy timeframe for consenting wind farm projects, Council is likely to receive applications for other activities on adjacent land before a decision on the wind farm application has been made. The proposed subsequent activity may have the potential to unfairly compromise the wind farm project due to the potential for such an applicant to subsequently raise concerns about reverse sensitivity effects. For example, Meridian considers itself to be an affected party because of the potential for reverse sensitivity issues to arise between proposed dwellings and the proposed wind farms in respect of consent applications for subdivision and residential developments on land adjacent to, or nearby, proposed farms.

It must be stressed that there are often other issues unrelated to the various legislative requirements that contribute to the length of time from inception to completion. These can often include property, engineering and funding issues. Moreover, it is not simply that approving authorities and processes are at fault. Often problems relate to poor planning and consultation by project proponents as well. Nevertheless, the examples are illustrative of the interplay between investment decisions, the confidence to invest, and complexities of the legislative and regulatory processes. It is perhaps unsurprising that anecdotal feedback often suggests that New Zealand is seen as a difficult place to invest in from an infrastructure perspective and why New Zealand's infrastructure rankings are consistently so low on the World Economic Forum Global Competitiveness surveys.

## Fear of Litigation as a Driver of Projects Costs

The Ministerial Report on Roothing Costs undertaken in 2006 clearly identified that the costs of a number of major roading projects undertaken in recent years have escalated significantly (sometimes by more than double). By and large this was the result of attempts by Transit New Zealand to avoid litigious delays to resolve political and community concerns in regard to environmental and community impacts of the projects.

The advisory group found that scope change resulting from community and environmental impact mitigation measures were a key driver of cost increases for the a number of roading projects that they studied:

<b>Project</b>	<b>Time to Approve</b>	<b>Cost Change in \$millions as identified in 2006</b>
Northern Gateway (Alpur B2 Toll Road)	9 years, 1997 to 2006	82 to 340
Victoria Park Tunnel	5 years, 2001 to 2006	165 to 320
Waterview Connection	14 years, 1996 to current (The project is to be called in under the RMA in 2010)	72 to 1,380
Manukau Extension	6 years, 2000 to 2006	125 to 225

The group reported on two key projects in detail. In respect of the Northern Gateway project the Group found that:

“It appears that the environmental enhancements incorporated in ALPUR B2 at a cost of \$65 million were in response to the risk that the Manu Waiata Restoration Protection Society (the Society) would challenge the project’s compliance with the requirements of the LTMA. In response to a February 2004 letter from the Society, the Board looked for environmental enhancements to the project, which ultimately led to the inclusion of the Nukumea viaduct and Johnsons Hill tunnels. The inclusion of these features appeared to the Advisory Group to be in order to expedite the project, and ultimately resulted in a significant cost increase.”<sup>6</sup>

In respect of the Victoria Park Tunnel (Option D) which is now under construction the group found that:

An objective assessment of environmental effects prepared in September 2002 for Transit NZ showed that ‘Option D [northbound tunnel option] retains the status quo within Victoria Park, and therefore has no significant reduction in effects compared to Option A [viaduct option]’. On this basis, there appears

<sup>6</sup> Ministerial Roading Advisory Group on Roading Costs Final Report August 2006 p13

to be no objective reason to provide additional funds to construct Option D instead of Option A. In fact, analysis indicates that significant environmental improvement will only occur if all traffic is moved underground. However, there is currently no plan to replace the existing viaduct.

And that...

Transit NZ appears to be making decisions to speed up projects that have high cost implications. There does not seem to have been a systematic process to establish the scope of this project based on the assessment of environmental effects.<sup>7</sup>

The full history of project scope changes for two of the case studies analysed by the group are included in the appendices.

While not explicitly stated in the report, it seems reasonable to conclude that the behaviour of Transit New Zealand in selecting project design options was and arguably still is (as evidenced by the design of the Waterview tunnels) being significantly influenced by risks and time costs associated with protracted legal processes, involving both RMA and other legislative requirements. In other words, while it might be possible to gain necessary approvals for projects by taking an adversarial approach through the courts, the costs of delay and the political risks associated with the contentiousness of the process make it easier and faster (if not necessarily cheaper) to make the necessary changes to the project scope.

The key question to be addressed is whether this approach is achieving an optimal balance between economic, social and environmental imperatives, and whether a more streamlined integrated approach to project approvals might yield a better outcome.

This has been the approach adopted by a number of other jurisdictions including England, Ireland, and the State governments of Australia which are summarised in the following section.

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<sup>7</sup> Ministerial Roading Advisory Group on Roading Costs Final Report August 2006 p15

## Part Two

### Key Features of International Approaches to Major Infrastructure/Project Assessment

The Ministry for the Environment has reviewed a number of alternative approaches to Assessment and decision making on major infrastructure projects in Ireland, Australia and the United Kingdom. The detailed review is included in the appendices to this report and is recommended reading by way of background and identification of possible solutions to the challenges that we face in New Zealand. The key points to note from this analysis are summarised below:

1. Like New Zealand, Ireland, the United Kingdom, and the Australian states have experienced issues associated with the time and cost of approval processes for major infrastructure projects
2. All jurisdictions have a dedicated path for infrastructure projects but Ireland England and the Australian States have more integrated processes for considering critical infrastructure projects
3. Procedures in other jurisdictions almost always include independent assessment and hearings for significant projects
4. Criteria are set to determine whether or not major projects are of regional or national significance and whether or not they should be considered centrally or locally
5. The purpose of declaring a project as having regional or national significance is to ensure that its potential value and impacts on the local and regional context are recognised and managed accordingly
6. In Ireland the “An Board Pleanala” the independent planning appeals board makes all planning approval decisions on strategic infrastructure projects, however it does not fully integrate approvals under other relevant legislation that may apply to a project. There is no appeal unless there are grounds for judicial review by the High Court
7. In England an independent authority set up under the Labour government – the Infrastructure Planning Commission (IPC) – makes decision on strategic infrastructure projects. The IPC has jurisdiction where there are national policies and standards in place, otherwise the Minister decides an application on advice from the IPC. The IPC development consent order process avoids the need for many of the range of separate consents which previously had to be obtained under separate legislation and from different government agencies, departments and local authorities.

The newly elected Conservative Liberal Democrat coalition government aims to bring forward legislation next year to replace the Infrastructure Planning Commission with a Major Infrastructure Unit as part of a revised Communities and Local Government structure that

includes the Planning Inspectorate. Recommendations on nationally significant infrastructure projects will be made to Secretaries of State for final decisions.

8. Unlike New Zealand and Ireland where either local authorities, a Planning Tribunal, or the Environment Court or make the final decision, in most Australian states and in England (when there are no national policy standards in place) the relevant Minister decides, but usually on advice from an independent panel of experts. There are usually no appeal rights on decisions made by the Minister, apart from judicial review of legal process.
9. Extensive pre-application consultation with affected communities, local government and relevant authorities is either required or encouraged for major projects
10. A detailed Environmental Impact Statement (EIS) or the New Zealand equivalent Assessment of Environmental Effects (AEE) is required in advance of an application being made and these are open to public comment
11. It is a common feature of such legislative processes to allow a form of concept plan approval. This involves public participation and identification of issues at an early stage and for detailed plans to be approved by the relevant authority at a later date. The ability to defer such a matters is intended to eliminate unnecessary duplication in the assessment process and provides the ability to delegate decisions on matters of detail, thereby speeding up the process.
12. Early consultation and subsequent concept approval processes provide for the environmental, social and cultural outcomes that will be required of any project to be specified early in the design development phase, thereby incentivising innovation in the design and delivery of the project to meet or exceed the standards that have been set

In contrast to New Zealand, key features of overseas practice are that major projects almost always go through a dedicated and often independent approval or recommendation process and are not considered by local authorities. The regional and national economic, social and environmental benefits are considered in substance, as well as the environmental effects. Public participation is focussed at the front end of the process on the overall merits of the project, rather than being involved in the detail of environmental regulation. Concept approval processes are the norm, rather than the exception and innovation in project design and delivery is incentivised.

The most significant recent development has been the establishment and proposed disestablishment of the independent Infrastructure Planning Commission in England which currently provides a “one stop shop” review process for nationally significant projects. The role of IPC and the reforms proposed by the new Conservative Liberal Democrat coalition government is discussed in the following section.

## Infrastructure Planning and Consents in England and Wales

The Infrastructure Planning Commission (IPC) was set up by the former Labour Government under the Planning Act 2008. It is an independent public body with the dedicated task of examining and deciding applications for nationally significant infrastructure projects. The IPC currently acts in accordance with new National Policy Statements being prepared for each type of infrastructure in the five general fields of energy, transport, water, waste water and waste. The system applies across England and to some cross border oil and gas pipelines into Scotland. In Wales the IPC only deals with applications for ports and energy projects.

Applications to the IPC include nuclear and fossil fuel power stations, onshore and offshore wind farms, major improvements to the national grid, railways and roads, reservoirs, harbours, airports and sewage treatment works. Projects are dealt with by the IPC if they are of a certain size and importance which are set out in detail within the Act. The Secretary of State may also direct a proposal within the five general fields to the IPC, even if it does not meet the statutory criteria, if it is considered to be of national significance. The IPC does not consider applications in other areas, such as retail or housing development.

### One Stop Consents Shop

The IPC process provides for a “development consent order”. This is a new single consent intended to simplify and speed up the planning process for national infrastructure and means all stakeholders, including local authorities and the public, have one, single process in which to engage.

A development consent order avoids the need for many of the range of separate consents which previously had to be obtained under separate legislation and from different government agencies, departments and local authorities. Examples include planning permission, authorisation for compulsory acquisition of land, approvals under a range of Acts including Green Belt (London and Home Counties) Act 1938; the Pipelines Act 1962; the Gas Act 1965; the Energy Act 1976; the Ancient Monuments and Archaeological Areas Act 1979; the Electricity Act 1989; the Listed Buildings Act; the Harbours Act 1964; the Transport and Works Act 1992; the Highways Act 1980; the New Roads and Street Works Act 1991.

### Conservative Liberal Democrat Coalition Government plans to replace IPC

The establishment of the IPC has been highly controversial. Opponents have complained that the process overrides rights of participation by local communities. Prior to the election, the Conservative Party campaigned on its intention to abolish the IPC. Accordingly, following the election, the Queen's Speech on 25th May 2010 included the Decentralisation and Localism Bill, one of the objectives of

which is to “abolish the IPC and replace it with an “efficient and democratically accountable system that provides a fast-track process for major infrastructure projects”<sup>8</sup>.

In practice, according to a recent comment by Sir Michael Pitt, chairman of the IPC, “the expertise, processes and special character of the IPC will be retained by creating a Major Infrastructure Unit as part of a revised Communities and Local Government (CLG) structure that includes the Planning Inspectorate”<sup>9</sup>.

The likely changes are:

- NPSs will have to be debated and approved by both houses of Parliament.
- All decisions will have to be ratified by the Secretary of State, rather than just those where there is no relevant NPS.
- Private or hybrid Bills are likely to be used for very major linear projects

The changes are designed to redress the “democratic deficit” which the coalition partners perceive as being a major problem with the IPC, as currently constituted. It is understood that the Decentralisation and Localism Bill could be published as early as autumn 2010, in which case it is likely to become law by summer 2011 and the IPC could be formally abolished and the new specialist unit operating from autumn 2011. Large scale energy, transport, waste or water projects are likely to continue to be dealt with by the IPC at least until autumn 2011.

## Participation processes under the existing IPC process

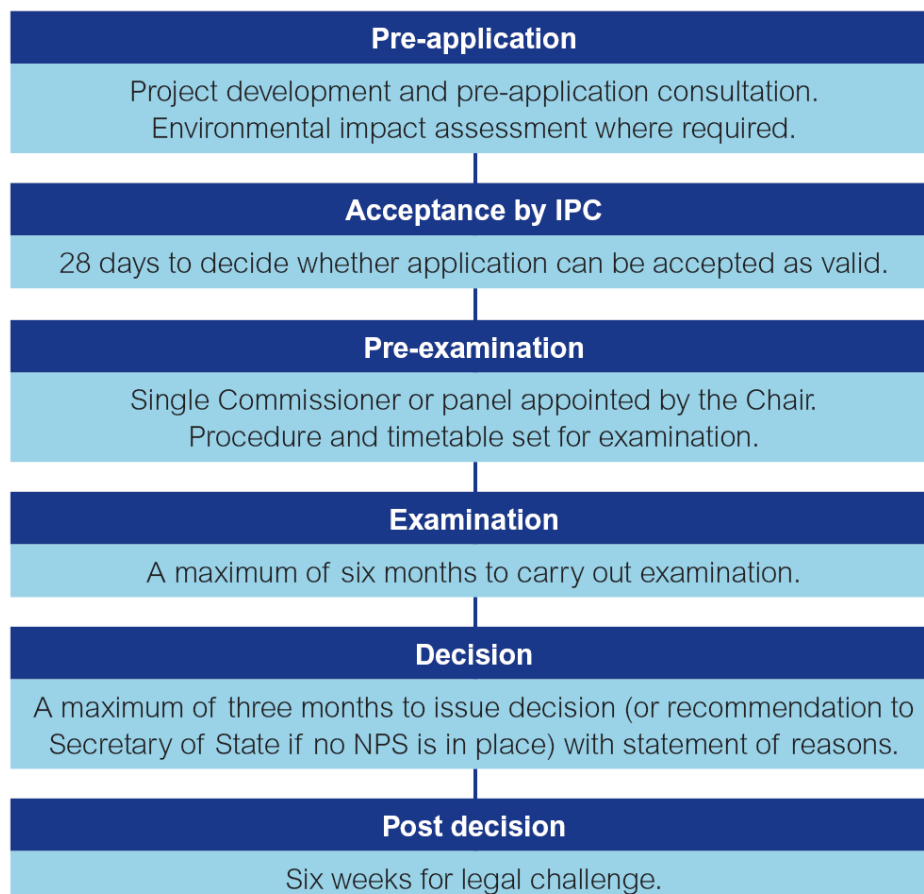
Notwithstanding the political heat surrounding the IPC, a review of the process implemented by the IPC since its inception does actually provide for extensive opportunities for public engagement. Heavy front-loading means that applicants are required to carry out extensive consultation with local communities ahead of submitting an application. The IPC can provide advice and guidance to potential applicants on questions of process (not on the merits of the proposal itself) before they apply. All this advice is published.

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<sup>8</sup> Quote from UK government coalition agreement: “The Coalition: our programme for government” p11 available at [www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

<sup>9</sup> Sir Michael Pitt, Message from the Chair, May 2010, available at [http://infrastructure.independent.gov.uk/?page\\_id=8](http://infrastructure.independent.gov.uk/?page_id=8)

The application process for a nationally significant infrastructure project, as summarised below, involves a series of stages, including extensive pre-application consultation, publicity and community engagement that must be undertaken by the applicant:



After the conclusion of the examination process the Infrastructure Planning Commission may refuse the proposal, or it may grant a development consent order which may contain a list of requirements with which the development must comply.

#### Local Authority Participation

In the regime administered by the IPC, all local authorities with an interest are consulted and, by law, local impacts must be balanced against national benefits. Local authorities have a role in the system at all stages, including:

- The development of National Policy Statements

- The requirement for promoters to consult local authorities, as well as other bodies and the local community, before they submit an application to the IPC
- Commissioners must take account of the views of the local authority and others on the adequacy of the promoter's publicity and consultation in deciding whether an application can be accepted as valid.
- The local authority may submit a Local Impact Report (LIR) to the IPC. The LIR describes the likely effects of the proposed development on the local authority's area. Commissioners must have regard to the LIR in deciding an application, and may reject the application, even if it is in accordance with a relevant National Policy Statement, if the adverse impacts outweigh the benefits.

### Public Participation

The regime is intended to provide better opportunities for the public and local communities to get involved in decisions that affect them. There are three opportunities to get involved:

- in the debate about what national policy means for planning decisions
- in the development of specific projects and
- the examination of applications for development consent – both by making written representations and appearing at the IPC's hearings

Promoters must carry out extensive public consultation before they make their application to the IPC. Engagement with the local community and a range of other bodies at the pre-application stage is a very important aspect of the new system. Further consultation takes place following the submission of the scheme to the IPC.

The system is designed to ensure that applications are prepared to a high standard – they must demonstrate that they have taken into account responses from consultation. Commissioners are empowered to refuse to accept any applications that are inadequate in significant areas including public consultation and environmental impact assessment.

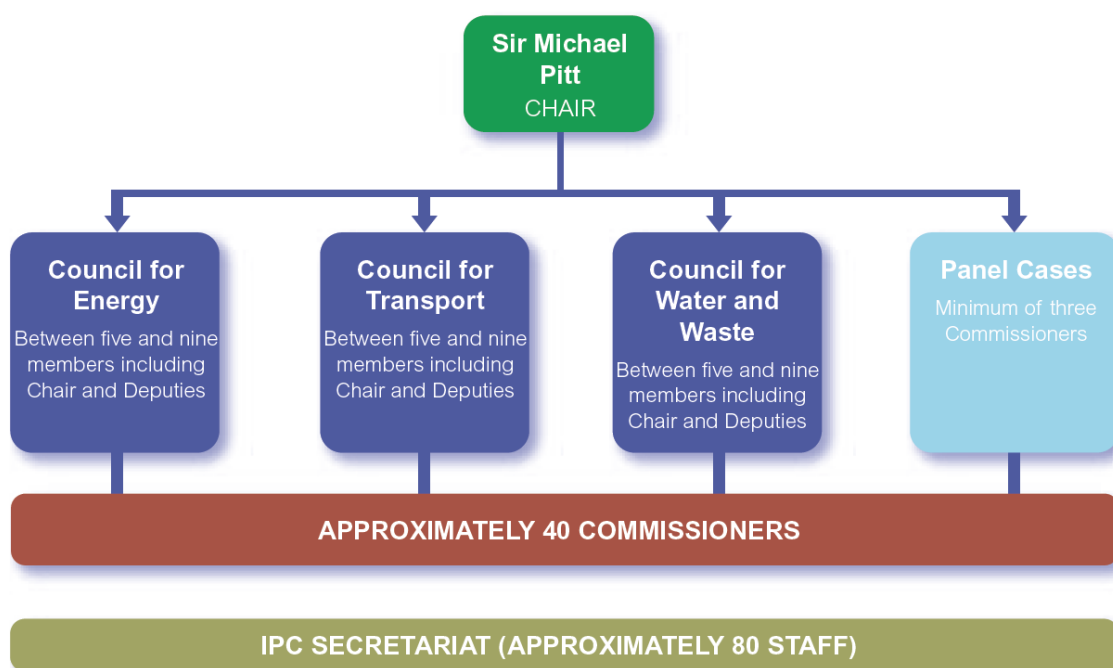
Once an application has been accepted as valid by the IPC, the applicant must publicise this, and the public will have a further opportunity to express their views by making written representations to the IPC. The IPC must make all representations public and allow interested parties the opportunity to comment on them.

### Public Hearing

Public hearings are held at which the evidence will be examined by the Commissioner who chairs the meeting. The principal approach to testing the evidence is inquisitorial – the Commissioner puts questions to the applicant and others. The Commissioner must ensure that the evidence is properly

considered, allowing cross-examination when appropriate, and make sure that everyone has fair opportunities to make their views known and influence the outcome.

Commissioners of the Infrastructure Planning Commission, tasked with conducting fair and open examinations, are chosen for their knowledge of public engagement and inclusion as well as their technical and professional skills. They must consider the evidence and government policy, and act independently when making their decisions on individual applications. Commissioners are accountable to the courts; they work to a strict code of ethics and are free of political interference. Applications are examined either by a panel of Commissioners or by a single Commissioner, depending on the size and nature of the project. Applications examined by a single Commissioner are decided by one of three IPC Councils. The following chart gives a summary:



Commissioners are appointed by the Secretary of State

Although the new government in England has seen fit to provide for greater political involvement in decision about major projects, the IPC process is illustrative of potential improvements to statutory processes in New Zealand. In particular the emphasis on extensive early public consultation and engagement, rigorous pre-application assessment, and integration of statutory processes warrants further consideration in the New Zealand context. The development of integrated hearing processes has also been a feature of reforms in Australia and Ireland.

## Australian States and Ireland also consolidate approvals under various Acts for infrastructure projects

In 2005 the New South Wales State government amended their Environmental Planning and Assessment Act to streamline consents for critical infrastructure projects. The changes were aimed at streamlining approvals, without compromising on environmental outcomes. The Act consolidates 15 approvals under nine Acts into a single assessment process and approval given under the Environmental Planning and Assessment Act. The assessment and approvals are co-ordinated by the Department of Infrastructure, Planning and Natural Resources. The provisions relating to the assessment and management of impacts on critical habitats, and threatened species, populations and ecological communities and their habitats under the Fisheries Management Act, the Threatened Species Conservation Act and the National Parks and Wildlife Act are integrated into the assessment under the Act.

In addition, the environmental protection provisions under eight different Acts are integrated into one approval. Those provisions relate to impacts on waterways, riparian zones and coastal processes, including from the use of water, water management works, dredging and aquifer interference under the Rivers and Foreshores Improvement Act 1948, the Water Management Act 2000 and the Coastal Protection Act 1979; impacts on aquatic ecology, including from dredging, obstructions in waterways or disturbance of mangroves under the Fisheries Management Act 1994; impacts on terrestrial ecology under the Native Vegetation Act 2003 and the National Parks and Wildlife Act 1974; bushfire risks under the Rural Fires Act 1997; impacts on Aboriginal items or places under the National Parks and Wildlife Act 1974; and impacts on heritage values, including in relation to excavation under the Heritage Act 1979.

Projects may still require a licence for ongoing operations under the Protection of the Environment Operations Act, an approval under the Roads Act, an aquaculture permit, mining or petroleum production lease or approval under the Mine Subsidence Compensation Act as is relevant. In these circumstances, there is a joint assessment with the agencies contributing to the one assessment. Once the Minister has determined the project, any subsequent approval must be substantially consistent with the Minister's approval. This requirement applies in relation to any appeal over those authorisations.

The process ensures a focused integrated assessment and consultation regime is undertaken prior to a decision to proceed being made. In most circumstances, a concept approval will be obtained to establish the environmental performance requirements for a project which must then be delivered in accordance with that approval. The decision is not appealable except if the appeal is initiated or approved by the State government. The reforms were designed to ensure timely and efficient delivery of critical infrastructure projects; provide certainty in the delivery of key infrastructure projects; ensure appropriate environmental benefits; focus on outcomes rather than process and encourage innovation in design to achieve the outcomes sought.

The Irish Government introduced the Planning and Development Strategic Infrastructure Act 2006. This established a new Strategic Infrastructure Division of the National Planning Board which provides a streamlined consent process (with provision for consultation with the decision makers) for energy, transport, waste and water infrastructure projects. Projects go straight to the Board, rather than first having to get local authority approval, thus reducing the length of time it takes to get development consent planning permission. Although not as all encompassing as the English and Australian approval processes, the Act also empowers the Board to replace the Minister for Transport as the consenting authority for Railway Orders. The effect of this is that proposals for rail infrastructure are submitted directly to the Board.

## Part Three

### Conclusion: Towards a consolidated consent process for New Zealand

In recommending an improved infrastructure planning and approval process for New Zealand the Technical Advisory Group has the opportunity to capitalise on both domestic and international best practice. NZCID recommends that this would see the development of a system which provides:

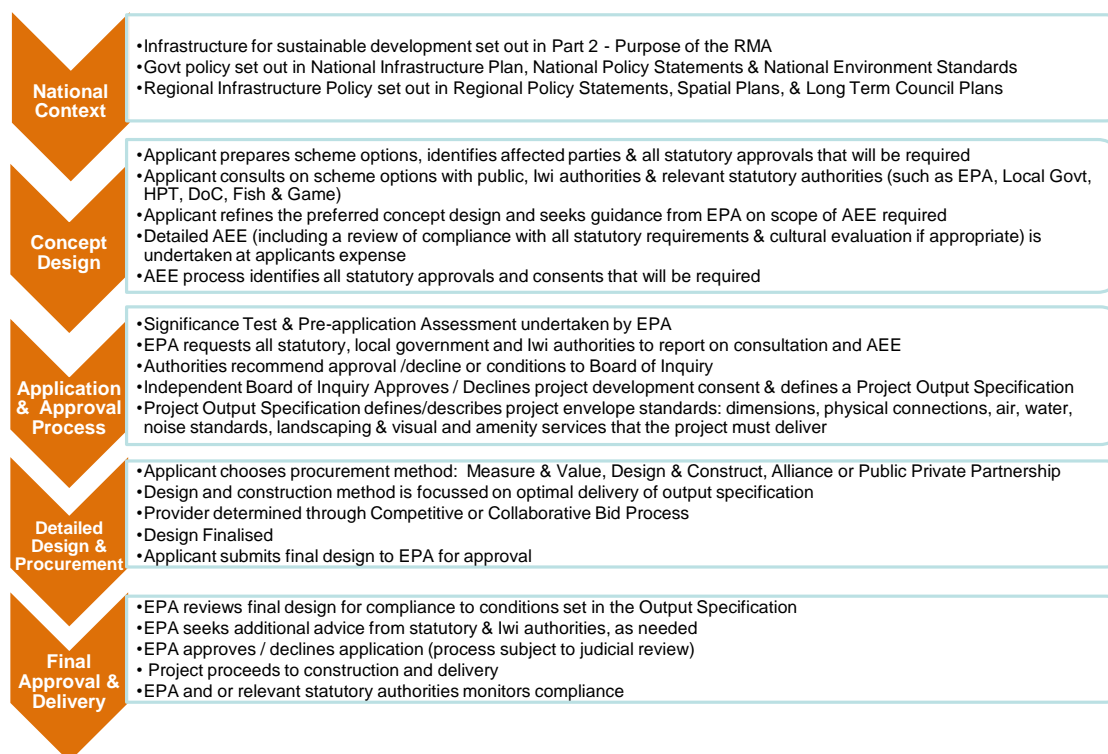
1. Recognition of the importance of the provision of infrastructure services as being of national significance and intrinsic to meeting the sustainable development purpose of the Act and to enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety as set out in Part 5 of the Act
2. An independent and balanced assessment of economic, social, cultural, and environmental imperatives required by the RMA and other relevant legislation
3. Integrated assessment of legislative requirements and corresponding removal of duplicity of process for national and regionally significant infrastructure
4. Clear policy guidance and standards established by central government through National Policy Statements and National Environmental Standards
5. Extensive pre-application consultation with affected communities, local government and relevant authorities to enable communities and stakeholders to flag key issues that will need to be addressed and to influence the conceptual design approach
6. Appraisal of community impact and environmental effects, both positive and negative, via a detailed Assessment of Environmental Effects (AEE) undertaken in advance of an application being made and which is open to public comment

7. Acceptance of applications for assessment to be conditional upon a detailed AEE and consultation process having been undertaken and that the project is of national or regional significance
8. Concept approvals involving public participation and identification of issues and for detailed plans to be approved by the relevant authority(ies) at a later date.
9. Focus on specification of outputs that will deliver environmental social cultural expectations of the communities that the infrastructure will serve and to encourage innovation in design and delivery to meet or exceed those agreed community outcomes

## Project Consent – an optional consent path for significant infrastructure projects

Adopting these policy principles NZCID recommends that the RMA be amended to provide project sponsors with the option to proceed to an integrated planning consent process to be known as a “Project Consent” as illustrated and discussed below.

### Integrated “Project Consent” for significant infrastructure projects



A Project Consent would be a new single consent which is intended to simplify and speed up the planning process for significant infrastructure. It would mean that all stakeholders, including local authorities and the public, have one, single process in which to engage. Like call in, the Project Consent path would be optional. Project sponsors could elect to go down the Project Consent path, or they could choose to use the alternative consenting processes currently provided under the Act.

It is envisaged, although not essential, that the proposed change would be supported by changes to Section 6 of the Act to recognise the importance of significant infrastructure such as transport, energy, telecommunications, water, waste infrastructure and essential community services in meeting the purpose of the Act to “enable people and communities to provide for their social, economic, and cultural well-being and for their health” as asset out in Section 5 of the Act.

It is also envisaged that Government policy for the provision of significant infrastructure would be set out in National Infrastructure Plan, and in the development of National Policy Statements & National Environment Standards. Similarly, regional infrastructure policy would be set out in Regional Policy Statements, Spatial Plans, & Long Term Council Plans. These documents would provide the statutory context for the development and consideration of specific infrastructure projects.

A key feature of the Project Consent process, as envisaged, is that public engagement is focussed at the beginning of the project life cycle where the public is most qualified to provide input. The debate of the merits of the project and the outcomes and envelope of effects that it must deliver are resolved at the beginning, by means of an integrated Board of Inquiry process, before expensive detailed design is entered into.

Having identified the project outcomes that must be met, including necessary environmental, social and legislative imperatives, the design and project delivery focus is centred on meeting or exceeding the output specification at the least cost. This is intended to drive innovation around value for money outcomes through either competitive or collaborative procurement methods.

The Project Consent would avoid the need for many of the range of separate consents which currently have to be obtained under separate legislation and from different government agencies, departments and local authorities. The envelope of effects will be described (and where possible standards defined) by the Board of Inquiry process in the form of a Project Consent output specification. Final approvals will be given by the Environment Protection Agency, on advice from the relevant statutory authorities in respect of any other legislative approvals applied for. These might include, for example, approvals under the Historic Places Act, Foreshore & Seabed Act, Reserves Act, Public Works Act, the Local Government Act, and others.

A designation and Project Consent approval could go hand in hand, or where a designation is already held, the Project Consent would be approved within the conditions set by the designation. The Boards

of Inquiry would be supported by the EPA, and all other processes regarding their appointment and authority would remain the same as currently provided under the RMA section 6AA.

#### Local Authority Participation

In the new regime, all local authorities with an interest would be consulted and, by law, local impacts would be balanced against national benefits. Local authorities would have a role in the system at all stages, including:

- The development of National Policy Statements
- The requirement for applicants to consult local authorities, as well as other bodies and the local community, before they submit an application to the EPA
- The EPA would be required to take account of the views of the local authority and others on the adequacy of the applicants publicity and consultation in deciding whether an application can be accepted as valid.
- The local authority may submit a Local Impact Report (LIR) to the Board of Inquiry. The LIR would describe the likely effects of the proposed development on the local authority's area. The Board would have regard to the LIR in deciding an application, and may reject the application, if the adverse impacts outweigh the benefits.

#### Public Participation

The regime is intended to provide better opportunities for the public, Iwi and local communities to get involved in decisions that affect them. There are three opportunities to get involved:

- in the debate about what national and regional policy means for planning decisions
- in the development of specific projects and
- the examination of applications for Project Consent – both by making written representations and appearing at the Board of Inquiry hearings

Applicants would be required to carry out extensive public consultation before making application to the EPA. Engagement with the local community, Iwi and a range of other bodies at the pre-application stage would be a very important aspect of the new system. Further consultation would take place following the submission of the scheme to the EPA.

The system is designed to ensure that applications are prepared to a high standard – they would have to demonstrate that they have taken into account responses from consultation. The EPA and or the Board of Inquiry would be empowered to refuse to accept or consider any applications that are inadequate in significant areas including public consultation and environmental impact assessment.

Once an application has been accepted as valid by the EPA, the applicant would be required to publicise this, and the public will have a further opportunity to express their views by making written representations to the Board. The Board would be required to make all representations public and allow interested parties the opportunity to comment on them.

In summary this process is designed to achieve the necessary balance between streamlining decision making for projects of national significance whilst providing full and open opportunity for public participation in the decision making process. It provides for integration of decisions across all relevant statutes utilising the skills and expertise of the relevant statutory authorities and recommending authorities. It ensures substantive and extensive opportunities for public engagement and consultation during the critical project development phase, through the public hearing process and through consideration of local impact reports prepared by affected local authorities. The focus on outcomes, as opposed to inputs, is designed to ensure that opportunities to drive innovation can be maximised. The approval process is centred on delivering infrastructure services that meet or exceed New Zealander's expectations for sustainable social environmental and economic development of the nation.

Appendix 1<sup>10</sup>**History of scope change and cost estimates for ALPURT B2**

The cost estimates over time for ALPURT B2 were as follows:

Year	1997	1999	2001	2004	2005
Cost \$ million	82	98	138	218	359*

*\* This does not include an additional \$78 million of capitalised interest required to service the debt component of the funding for this project.*

- **1999:** The scope for ALPURT B2 was established—two lanes, 80 km/hour, state highway. This scope was maintained until June 2004.
- **1999–2003:** A rigorous consent process was completed, including public hearings, appeals, Environment Court hearings and High Court proceedings. All necessary consents were obtained by early 2003.
- **Late 2003:** ALPURT B2 moved from being 26th in national priority to having funding approved. There appears to have been a strong desire to have the project built quickly.
- **January 2004:** Transit NZ's consultants, Anel Consultants, assessed ALPURT B2 for compliance with the recently enacted LTMA. The consultants recommended no changes in scope.
- **February 2004:** A paper provided to the Transit NZ Board, indicated that appellants to the ALPURT B2 resource consent: argued to have the Nukumea Stream bridged and a tunnel constructed through Johnsons Hill. For both suggestions, the paper concluded that 'this argument has been considered by the Transit Board [in October 2002] and rejected'. No decisions relating to the project's scope appear in the Board minutes.
- **March 2004:** It was reported to the Transit NZ Board that 'An existing significant risk has been brought to our attention in the last month. The Manu Waiata Restoration Protection Society (the Society) have written to the Board summarising its concerns with ALPURT B2, which are of an environmental nature. The Society have a long association with ALPURT B2 and have campaigned for much higher standards of mitigation to environmental impacts on the ALPURT B2 design than those included in the December 2003 specimen design (of B2). While the Society presents a number of arguments around legal aspects of the project and approval process, its underlying motive is to achieve higher levels of mitigation of environmental impacts.'
- **April 2004:** The Transit NZ Board noted that 'as per the Board's wishes, one of the first tasks for the Alliance [the contracting alliance building ALPURT B2] is to prepare an environmental risk register. This register will be used to assess opportunities for environmental enhancement over the current specimen design which will include, amongst other issues, an assessment of tunnelling through Johnsons Hill and bridging the Nukumea Stream.'
- **June 2004:** The Transit NZ Board was presented with 'opportunities to achieve enhanced environmental outcomes' developed by the Alliance, focusing on the Nukumea viaduct and Johnsons Hill tunnels (and related relocation of the northern termination). The Board resolved to include the Nukumea viaduct in the project scope, and to continue the investigations of the Johnsons Hill tunnels and relocated northern termination.
- Transit NZ's decisions to include the Nukumea viaduct and Johnsons Hill tunnels in the project appear to be on the basis of compliance with the LTMA. However, the January 2004 Transit Major Projects Review of ALPURT B2 for compliance with the LTMA did not identify the need for the scope change.

<sup>10</sup> Extract from Ministerial Roadway Advisory Group on Roadway Costs Final Report August 2006 p 14

## Appendix 2

### History of scope change and cost estimates for Victoria Park Tunnel

Year	2001	2002	2003	2004	2005	2006
Cost \$ million	90–110	105	155	160	369.6	320

- November 2001:** The Transit NZ Board released three options for public consultation from five short-listed options. It was noted by the Transit NZ Board that Option B (new depressed roadway) and Option C (full or partial tunnel) offered no roading benefits additional to Option A (widened or new viaduct), and that it was likely that only Option A would be fully fundable.
- June 2002:** It was reported to the Transit NZ Board that preliminary feedback from key stakeholders indicated general preference for Option A. It was also reported that feedback from Auckland City Council officers indicated a tunnel was the preferred option but that it was unlikely to be funded.
- September 2002:** The Transit NZ Board was presented with a social and environmental evaluation of four options. In summary, Option B (partially covered trench) and Option C (full tunnel) offered some amenity benefits, at a cost of \$165 million to \$180 million more than Option A (widened or new viaduct). Option D (northbound tunnel) only offered modest amenity benefits, at an additional cost of \$100 million.
- November 2002:** The Transit NZ Board resolved that '...Transit cannot justify the additional costs of either a full tunnel or a northbound tunnel without local funding to meet the additional costs'.
- December 2002:** The Auckland City Council Transport Committee resolved that:
  - Option A was unacceptable
  - the Council expected the improvements to fully mitigate the impacts of this project by trenching and tunnelling
  - funding through a combination of tolls and debt funding should be investigated.
 There was also pressure on Transit NZ at the time to deliver this project as soon as possible in order to realise the benefits of other major motorway projects due to be opened.
- December 2004:** The Transit NZ Board was presented with a single option—Option D (northbound tunnel). 'While it may seem somewhat deterministic to advocate a specific approach to this transport issue, we would make it clear that we see this as a political decision'. A northbound tunnel became the preferred option, and is the basis of the project at this time.
- April 2005:** Land Transport NZ reviewed the project and approved design funding to further evaluate the northbound tunnel option. The incremental costs and benefits of each option were not clearly presented.

## Appendix 3

**RMII – I****International Approaches to Major Infrastructure/Project Assessment****Report Prepared by Ministry for the Environment March 2009**

This paper reviews a number of alternative approaches to assessment and decision-making on major infrastructure projects in Ireland, Australia and the United Kingdom<sup>11</sup>. The information focuses on the questions: who decides, what rights are involved, and how are applications for major infrastructure development decided.

**Summary of International Approaches**

<b>Country /State</b>	<b>Rights involved</b>	<b>Who decides?</b>	<b>How is decision made?</b>
<b>Ireland:</b>			
Strategic infrastructure development	Direct application to Strategic Infrastructure Division of the Board for development which meets criteria; public notification of application, EIS & decision; public submissions process; no appeal unless grounds for judicial review by High Court	Three members of An Bord Pleanála (the independent Planning Appeals Board)	Area plans, regional / national interests and guidelines, and environmental effects of proposed development; decision due within 18 weeks unless time extended
<b>New South Wales</b>			
Major Development State Environmental Policy (SEPP)	Proponent can lodge full project application plan for full approval, or concept plan for staged approval; comprehensive environmental assessment, public consultation and submissions	Planning Assessment Commission (PAC) or Minister of Planning	Minister of Planning can declare a project as major development; Department of Planning must provide environmental assessment report to guide determination by either PAC or Minister

<sup>11</sup> Information on examples from Ireland, Australia and United Kingdom is drawn from publications produced by relevant government agencies

	processes; appeal possible in certain circumstances		
Infrastructure SEPP	Environmental assessment, public consultation and submissions processes	Infrastructure providers for smaller projects, local council or Minister of Planning for larger projects	Infrastructure providers must perform environmental assessment of proposed facilities and conform to applicable codes & standards
Critical infrastructure	No appeal possible	Minister of Planning	Minister can declare major development to also be critical infrastructure
<b>Victoria</b>			
Priority Development Projects	Projects which meet criteria are referred to Priority Development Panel (PDP) for assessment, or can be called-in by Minister PDP report may be released at Minister's discretion No appeal possible	Minister for Planning	Priority Development Panel provides independent advice to Minister for Planning Minister will consider the PDP's report in making statutory decisions or issuing advice about a project
<b>Queensland</b>			
Projects of State Significance	Environmental Impact Statement may be required before application lodged	Assessment agency, Co-ordinator General or Minister of Planning	Minister can declare project to be of State Significance. Environmental Impact Statement must be done & considered by decision maker
<b>South Australia</b>			
Specified projects under Development Act	Projects which meet criteria are referred to DAC, which is subject to same appeal rights as council Development Assessment Panels	Minister for Planning	DAC provides independent advice to Minister for Planning Minister will consider their report in making final decisions
Declared Major Development Proposals	Projects which meet criteria may be referred by Minister to DAC; public has ability to comment on EIS; no	Governor on advice of State Cabinet, having regard to Assessment Report	Environmental Impact Statement (EIS) must be prepared by proponent & assessed with proposal by

	appeal possible		Minister, who prepares an Assessment Report
<b>United Kingdom</b>			
Nationally significant infrastructure projects	Projects which meet criteria are referred to IPC for assessment against relevant NPSs; public consultation at 3 stages; appeal possible through courts if IPC act unreasonably	Infrastructure Planning Commission (IPC)	IPC assesses benefits & adverse impacts of proposal

## Ireland

Ireland's planning system was introduced in 1964, when the Local Government (Planning and Development) Act 1963 came into effect. The large body of planning legislation and regulations in the years since then, including the Planning and Development Act of 2000, reflects the expansion of the statutory development control system to meet the demands arising from economic growth, rising public concern in the area of environmental control, also, a desire on the part of the public for a statutory and independent planning appeals system. The physical planning system in Ireland is the responsibility of local planning authorities (County Councils, Town Councils, etc).

Ireland has an independent third party planning appeals system which is operated by An Bord Pleanála<sup>12</sup> (the Planning Appeals Board). All planning decisions made by planning authorities may be subject to independent review by An Bord Pleanála.

In addition the regional authorities have responsibility for drawing up and implementing Regional Planning Guidelines to support strategies for regional development. The Minister for the Environment, Heritage and Local Government is responsible for planning legislation while the Department of Environment is also responsible for the national planning framework (see below) and for the issuing as required guidance documents in respect of national issues such as Rural Housing, Wind Energy, Retailing, etc.

The Environmental Protection Agency<sup>13</sup> (EPA), a statutory body funded by the Department of the Environment, is responsible for protecting the environment. Its role is to protect and improve the environment taking into account the environmental, social and economic principles of sustainable development. It is responsible for

<sup>12</sup> [www.pleanala.ie](http://www.pleanala.ie)

<sup>13</sup> [www.epa.ie](http://www.epa.ie)

licencing and controlling large scale waste and industrial activities, overseeing local authority environmental protection responsibilities, compliance, and assessing the impact of proposed major developments on the environment.

In November 2002 a National Spatial Strategy was published by the Department of Environment, Heritage and Local Government to provide an overall framework for planning in Ireland. Plans at regional and local level must have regard to the National Spatial Strategy.

To speed up the process for obtaining planning approval and consents for strategic infrastructure, the Planning and Development (Strategic Infrastructure) Act 2006 made significant changes to the way strategic infrastructure developments are determined within the planning system. Strategic infrastructure development is defined as development which meets one or more of the following criteria:

- is of strategic economic or social importance to the State or a region;
- would contribute significantly to the fulfilment of any of the objectives of the National Spatial Strategy or any regional planning guidelines in force in an area
- would have a significant effects on the area of more than one planning authority.

Planning applications for certain large scale private development, generally of a class which requires environmental impact assessment (EIA) and which the Board certifies as meeting the criteria referred to above, will be made directly to the Strategic Infrastructure Division of An Bord Pleanála (the Board). These are listed in the 7th Schedule of the 2000 Planning Act which was inserted by the 2006 Act<sup>14</sup> (referred to as 7th Schedule development). The Schedule lists certain classes of projects related to major energy, transport and environmental infrastructure. Previously such planning applications were made to the local planning authority (e.g. county council) with a right of appeal to the Board. Applications for approval of gas infrastructure and railways will also be made to the Board generally by the relevant utility providers.

In addition to 7th Schedule development, strategic infrastructure development includes: proposed development by local authorities in their own functional area which requires EIA; certain EIA developments by the State which previously did not require planning permission; major gas pipelines and their associated terminals, buildings and installations; high voltage electricity transmission lines and interconnectors; motorways and other major roads; development by or on behalf of a local authority on the foreshore; railway works including light rail and metro systems

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<sup>14</sup> <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2006/a2706.pdf>

and certain associated commercial development on adjacent land; and compulsory acquisition of land associated with certain of the above developments.

While the procedures for all cases may vary, in general there will be a three-step process:

- (i) Consultations: where a prospective applicant for permission / approval / other consent requests pre-application consultations with the Board,
- (ii) Scoping: where a prospective applicant requests the Board to ‘scope’ the EIS for the project (see Q9), and
- (iii) Application: where the applicant submits an application for planning permission, approval or other consent to the Board.

*(Note: a flowchart of Ireland’s Strategic Infrastructure Development process is provided in Appendix 1 below.)*

The Planning and Development (Strategic Infrastructure) Act makes provision for wide-ranging public participation in relation to strategic infrastructure development:

- before applying to the Board, the prospective applicant must publish notice of the proposed application in one or more newspapers and by site notices. These notices will indicate the nature and location of the proposed development, that an EIS has been prepared (where required), the times and places where the application (and EIS) can be inspected, that an application is to be made to the Board for planning permission / approval, the types of decision which the Board may make and that submissions may be made to the Board by the public and others e.g. prescribed bodies
- the Board will also include notice of receipt of the application in its weekly list of new cases and post it on its website
- the applicant must make the application and the EIS available for inspection and for purchase, for a period of at least six weeks, at the Board’s offices and those of the planning authority in whose jurisdiction the proposed development would be located
- any person or body may make submissions to the Board (for a fee of €50) within the period allowed for the application to be inspected (minimum of six weeks) in relation to the implications of the proposed development on the proper planning and sustainable development and the likely effects on the environment of the proposed development
- the applicant and any person who makes submissions to the Board in relation to the application can request the holding of an oral hearing. The Board has an absolute discretion whether to hold an oral hearing of any application

- where meetings have been held between the Board and prospective applicants (and in certain cases other bodies/persons who, in the opinion of the Board, may have relevant information), the record of any such meetings will be made available for inspection
- where the Board requests further significant information in relation to the application, this information will be made available for public inspection
- All those involved in the application including those who made submissions or were heard at the oral hearing will be notified of the decision by mail and the decision will be posted on the Board's website.

The Board will make a decision on an application on the same basis as normal planning appeals, i.e. the proper planning and sustainable development of the area and the effects, if any, the proposed development would have on the environment. The Board will have regard to such matters as the policies and objectives of the local development plan(s), Ministerial planning guidelines, regional planning guidelines, the National Spatial Strategy, the policies and objectives of the Government and the national interest. In addition, the Board must consider the application which is before it, including the EIS (if any), any submissions made to the Board in relation to the application, the report of the local planning authority(s), including any recommendations submitted by the elected members of the authority, and the report and recommendation of the Board's inspector on the application/oral hearing.

The Board has a statutory objective to determine strategic infrastructure cases within eighteen weeks commencing on the last day for receipt of submissions from the public. Where it is not possible or appropriate to determine the case within that time frame, the Board will notify all concerned and give a revised date by which it intends to determine the matter.

There is no appeal against the decision of the Board on an application to carry out strategic infrastructure development. Its validity may only be challenged by way of judicial review in the High Court within 8 weeks of the decision. The Court will not re-open the planning merits of the case and may only give leave to pursue the review process where it is satisfied that there are substantial grounds for contending that the Board's decision is invalid or ought to be quashed and that the person seeking the judicial review has a substantial interest in the matter.

The Board has no powers of enforcement (except for railway orders). Enforcement of planning decisions and interpretation of conditions imposed in decisions are primarily the responsibility of the local planning authority, which must follow up on complaints made regarding unauthorised development including non-compliance with planning decisions. Any person may apply to the High or Circuit Court for an injunction in relation to unauthorised development in certain circumstances.

## Australia

### New South Wales

The legislative framework for planning in NSW was established under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and amended by the *Environmental Planning and Assessment Amendment Act 2008* and its *Regulations* in 2009.

The revised planning system operates through a series of planning instruments, which include State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs). These documents form a hierarchy of legal instruments which regulate land use and development.

Proposals are considered under different parts of the Act, including:

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

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

The State Government has simplified the planning system by removing over 2000 concurrences and referrals to government agencies, thus reducing timeframes. It has made a range of housing, infrastructure, commercial, industrial and other projects “complying development” so that they can obtain an approval in 10 days if they comply with prescribed criteria.

The new NSW Housing Code outlines how new detached single and two-storey houses and home alterations and additions on specific lot sizes and zones can be approved within 10 days. It also outlines how 40 different types of minor improvements, such as garden sheds or rainwater tanks, can proceed without planning or construction approval.

The recent changes to the development application process aim to provide greater certainty of the timeframes for the assessment of different types of development applications. The focus is on ensuring that the applicant provides the appropriate information to the consent authority so that the application can be assessed and determined in a timely manner.

A further package of amendments to the development assessment process in Part 4 of the EP&A Act and its Regulations is out for consultation (August 2009). The package introduces changes to the procedures for making and assessing development applications. The key changes are<sup>15</sup>:-

- The removal of the “stop of the clock” provisions;
- Setting assessment periods of 50 days, 70 days and 90 days for different types of development applications before they are deemed to be refused and able to be appealed to the Land and Environment Court for the application to be determined - tailoring assessment timeframes to reasonably reflect the complexity of the application or the processes by which it is assessed;
- Setting clear milestones for different stages of the assessment process, including responses from Government Agencies;
- Providing guidance on the information required for the preparation and assessment of development applications before they are submitted; and
- Enabling applications triggering regional issues, or applications where Council is the proponent for works or has a conflict of interest, to be determined by a Joint Regional Planning Panel (JRPP).

Draft Development Assessment Guidelines under this legislation have been prepared for applicants and Councils, and outline the revised development assessment processes and the matters which must be included in a Statement of Environmental Effects to accompany all development applications.

### ***Development assessment process***

The development assessment processes are tailored to reasonably reflect the complexity of the application. The development application (DA) processes only apply when a development application is required for a proposed development. A development application is required when:

- an environmental planning instrument i.e. a Local Environmental Plan (LEP) or State Environmental Planning Policy (SEPP) applying to the land, identifies the proposed development as permissible with consent, or
- the development on the land enjoys existing uses rights (i.e. it is an existing development which previously was permitted on the site and is now prohibited by the zoning) and the development is proposed to be altered or extended.

These Development Assessment Guidelines do not apply to an application for development that is ‘complying development’, ‘exempt development’ or matters assessed under Part 5 of the EP&A Act, or is prohibited under a LEP or SEPP and does not have existing use rights.

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<sup>15</sup> NSW Development Assessment Guidelines Part A Consultation Draft - <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=IPWikV92xZQ%3D&tabid=339>

'Complying development' was introduced in the EP&A Act as a fast and simple approval process for routine development. The purpose of complying development is to create an 'as-of-right' development application process subject to pre-set standards. A person undertaking a 'complying development' can choose either the council or an accredited certifier to certify that the proposal complies with the standards. Examples of 'complying development' include single dwelling houses on average sized lots, bed and breakfast accommodation and commercial fit-outs.

'Exempt development' was introduced for minor forms of development where, subject to pre-set standards, there is no need for development consent to be obtained. Current examples of 'exempt development' include non-structural internal alterations to a house, rural sheds set back from the boundary, flag poles less than six metres in height and some fences.

### ***Responsibility for determining DAs***

All development applications (DAs), or applications to modify an existing development consent, will be determined by *Council* unless determined by:-

- *Joint Regional Planning Panels (JRPP)* - which determine DAs for 'regionally significant development' based on the criteria in the Major Development SEPP; or Crown DAs referred to it for determination, or
- *Minister for Planning* – who determines DAs of a class of development nominated in the Major Development SEPP or other instruments or legislation; or Crown DAs which may be referred to the Minister for determination.

### ***Types of development applications***

#### Regionally significant development

Regionally significant developments are assessed by Councils and determined by the JRPP. They include developments which are not 'major projects' and meet the following criteria:

- All developments worth over \$10 million, which are not classed as 'major projects' to be determined by the Minister
- Subdivisions of land over 250 lots
- Certain coastal developments, particularly in sensitive areas. These developments can include buildings over 13 metres in height, some subdivisions of land and some recreational and tourism facilities
- 'Designated developments' that need particular scrutiny because of their nature or potential environmental impacts. These developments require an environmental impact statement
- Development worth more than \$5 million including public and private infrastructure; such as community facilities, child care centres and places of public worship; developments where the council is involved or has a conflict of interest; Crown development; and ecotourism.

### Designated development

Designated development is listed in Schedule 3 of the EP&A Regulations or in environmental planning instruments. If a proposal is 'designated development', the development application will need to be accompanied by an Environmental Impact Statement (EIS) addressing matters prescribed by the Department of Planning. The JRPPs will determine all 'designated developments'.

### **Timeframe for assessing DAs**

The EP&A Act gives a consent authority a minimum time period to undertake an assessment before an applicant can appeal to the Land and Environment Court for the application to be determined. This is termed the "deemed refusal period". It does not mean that the application has been refused, but the applicant has a right to appeal to the court to take over the consent role.

The 50, 70 and 90 day assessment periods recognise that different classes of development will generate different issues, or have a level of public interest or follow different processes for assessment and hence should have different minimum timeframes.

The time period is counted in calendar days and commences once the development application has been "accepted" by the consent authority (i.e. up to 7 days after lodgement).

### **Planning Assessment Commission**

The NSW Planning Assessment Commission (the Commission) began operations in November 2008, as part of the NSW Government's planning reforms.

*The Environmental Planning and Assessment Act 1979* (EP&A Act) details the functions of the Commission which includes the review of project applications, when those matters are delegated to it by the Minister for Planning. Another function of the Commission is to provide advice to the Minister on a range of planning and development matters, as defined in the EP&A Act. It is a statutory body representing the Crown.

The Commission's responsibilities are:

- To determine, or review and advise the Minister of Planning on applications for approval of Part 3A projects and concept plans as delegated by the Minister for Planning with the exception of *critical infrastructure projects*
- To review any aspect of a major project under Part 3A
- To review the environmental aspects of a proposed development the subject of a development application
- To review a proposal to constitute, alter or abolish a development area
- To act as a Joint Regional Planning Panel (JRPP), an independent hearing and assessment panel, or a planning assessment panel

- To advise the Minister on planning or development matters, environmental planning instrument, or the administration of implementation of the provisions of the EP&A Act.

The Planning Assessment Commission is to consist of a Chair and between 3 and 8 members appointed by the Minister for Planning. Each member must have expertise in at least one of these disciplines: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism, or government and public administration.

### **NSW Major Development Assessment System<sup>16</sup>**

A particular development or development type may be declared a major development to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The approval of the Minister for Planning is required for these projects to be declared a major development, and they are normally assessed by the Department of Planning. Major developments are identified either in:

- State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP), or
- an order by the Minister for Planning published in the NSW Government Gazette.

The Minister may also decide whether to authorise or require a concept plan to be lodged for a project, which provides a broad overview of the proposal. If a concept plan is approved, further approvals will be required before the project can proceed further.

Any development that is declared to be a major development to which Part 3A applies, may also be declared to be a *critical infrastructure project* if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons

#### **Development types**

Schedule 1 of the Major Development SEPP describes the types (also known as classes) of development that may be declared a Part 3A project, including:

- agriculture, timber, food and related industries
- mining, petroleum production, quarries and associated processing industries
- chemical, manufacturing and related industries
- general manufacturing, distribution and storage facilities
- residential, commercial or retail projects
- tourism and recreational facilities
- health and public service facilities

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<sup>16</sup> A community guide - NSW major projects assessment system, March 2006:  
[http://www.planning.nsw.gov.au/assessingdev/pdf/part3a\\_communityguide.pdf](http://www.planning.nsw.gov.au/assessingdev/pdf/part3a_communityguide.pdf)

- transport communications, energy and water infrastructure
- resource and waste related industries.

Schedule 1 commonly sets thresholds (such as a total capital investment value or the number of operational employees) before a proposal may be considered a major project. In relation to proposed residential, commercial or retail projects, the threshold is that such projects must have a capital investment value of more than \$100 million. For other types of development (e.g. a proposed timber mill) the relevant threshold is that it employs more than 100 people full time or has a capital investment value of more than \$30 million.

If the Minister forms the opinion that a proposal meets the threshold, then it is declared a major project under Part 3A of the EP&A Act.

For specified types of development (such as development related to railway corridors and infrastructure, marina facilities in selected areas or for performing arts facilities), the Minister forms an opinion as to the planning significance of the proposal, as well as whether it meets the relevant threshold, before declaring the proposal to be a major project under Part 3A of the EP&A Act.

#### **Specified sites**

Schedules 2 and 3 of the Major Development SEPP list the types of developments that are considered projects under Part 3A of the EP&A Act because of where they are located, including:

- major subdivisions of land within the NSW Government's mapped coastal zone, which allows a consistent approach to be developed in the assessment of these proposals and the objectives of the NSW Coastal Policy to be more easily implemented
- certain development within mapped areas or State significant sites.

If the Minister forms the opinion that a proposal meets the location and other requirements set out in the Major Development SEPP, then it is declared a major project under Part 3A of the EP&A Act.

#### **Major Development Assessment Process**

A comprehensive environmental assessment, public consultation and submissions process is set down in the EP&A Act. The Director-general of Planning must provide an environmental assessment report to the Minister of Planning to guide the Minister's consideration of the project application.

#### **Determination**

The Minister of Planning may request the Planning Assessment Commission (PAC) to determine, review or advise on any aspect of a major project or concept plan. The PAC or the Minister may approve or disapprove the carrying out of the project and determines the conditions that apply to the implementation of the project. The Minister determines *critical infrastructure projects*.

Note: the declaration of a project as a *critical infrastructure project* excludes:

- proponent or objector appeals in respect of the determination of an application for approval of the project
- with respect to the project all environmental planning instruments (other than SEPPs that specifically relate to the project) and certain council orders
- third-party appeals against the project under this Act or other environment protection legislation.

In addition, the NSW Government has passed more recently the State Environmental Planning Policy (Infrastructure) 2007 (known as the Infrastructure SEPP) (see later in this paper). Therefore, NSW now distinguishes between *major developments*, *infrastructure projects* and *more routine projects*.

### *Environmental Assessment Process*

The new laws ensure a focused, robust and consistent assessment of a major project's potential environmental impact. Under the new regime, the Department of Planning prepares and makes publicly available the key issues that a proponent must address in an environmental assessment of the proposal.

In preparing the environmental assessment, the proponent is also encouraged to consult with the community, relevant councils and agencies. The environmental assessment is generally required to include a written statement of commitments outlining how the project's likely environmental impacts will be minimised or managed. If the project is approved, the proponent will be required to honour these commitments as part of the conditions of approval. Once the proponent has prepared the environmental assessment, it is exhibited for public comment for a minimum of 30 days.

The proponent can be required to respond to issues raised in submissions and provide a preferred project report, which outlines any proposed changes to the project to minimise its environmental impact. If it is determined that the proposed changes significantly alter the nature of the project, the proponent may be required to make the preferred project report available to the public. All key project documents, including project declarations, applications and environmental assessments must be made publicly available.

### *Critical infrastructure*

Any development that is declared a major project under Part 3A of the EP&A Act may also be declared a *critical infrastructure project* if, in the opinion of the Minister, the project is essential for the State for economic, environmental or social reasons. The same assessment process applies as for other major projects.

### *Concept plans*

There are a number of ways to propose to carry out a major project. One is to lodge a project application that contains detailed information about the project. Another option is to submit a concept plan, which provides a broader overview of what is proposed. Approval of the concept plan would establish the framework for more detailed development of the proposal, and may include the need for further approvals. Project applications and concept plan applications, including those for critical infrastructure, are subject to the Part 3A environmental assessment process.

### *Independent hearing and assessment panels*

As part of the planning reforms, provisions have been made in the EP&A Act for the use of independent hearings and assessment panels (IHAPs) to strengthen the assessment process. This could be a panel of experts or a panel of officers representing the Department of Planning and other relevant public authorities. The Minister can decide to convene an IHAP and appoint panel members at any stage in the assessment process to provide important advice on issues of concern. Public hearings may also be undertaken to provide input into the panel's assessment and recommendations. The IHAP then produces a report outlining the issues and making recommendations which are determined by the Minister.

### *Appeals*

Both proponents and objectors can appeal decisions made under the Part 3A assessment system, under certain circumstances. A proponent of a major project who is dissatisfied with the determination of the Minister can, within three months of receiving notification of the determination, appeal to the Land and Environment Court.

Objectors may also have appeal rights in respect of a major project determination. Any appeal must be commenced within 28 days of the notice of determination being issued. Objectors do not have a right of appeal where a concept plan has been approved for the project.

Both proponent and objector appeals cannot be pursued where projects have been the subject of either a Commission of Inquiry or a report prepared by a panel of experts, or when the project has been declared critical infrastructure. This is similar to the situation which existed before the creation of the Part 3A system.

## **NSW State Environmental Planning Policy (Infrastructure) 2007<sup>17</sup>**

The State Environmental Planning Policy (Infrastructure) 2007 (known as the Infrastructure SEPP) assists in providing new infrastructure by introducing updated planning provisions to improve efficiency and service delivery. The Infrastructure SEPP assists local government, the NSW Government and the communities they support, by simplifying the process for providing essential infrastructure in areas such as education, hospitals, roads and railways, emergency services, water supply and electricity delivery.

The Infrastructure SEPP has specific planning provisions and development controls for the following types of infrastructure works or facilities:

- affordable housing developments
- air transport facilities
- correctional centres
- educational establishments
- electricity generating works
- electricity transmission and distribution
- emergency services facilities and bushfire hazard reduction
- flood mitigation works
- forestry activities
- gas transmission and distribution
- health services facilities
- housing and group homes
- metro rail corridors
- parks and other public reserves
- port, wharf and boating facilities
- public administration buildings and buildings of the Crown
- rail infrastructure facilities
- research stations
- road and traffic facilities
- schools facilities
- sewerage systems
- soil conservation works
- stormwater management systems
- telecommunications networks
- travelling stock reserves
- waste or resource management facilities

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<sup>17</sup> NSW Planning for Infrastructure - A Community Guide to SEPP (Infrastructure) 2007, January 2008:  
[http://www.planning.nsw.gov.au/planningsystem/pdf/dop08\\_005\\_infra\\_sepp\\_communityguide.pdf](http://www.planning.nsw.gov.au/planningsystem/pdf/dop08_005_infra_sepp_communityguide.pdf)

- water supply systems
- waterway or foreshore management activities

The Infrastructure SEPP outlines the planning rules for these works and facilities, including:

- Where such development can be undertaken;
- What type of infrastructure development can be approved by a public authority under Part 5 of the Environmental Planning and Assessment Act (EP&A Act) following an environmental assessment (known as ‘development without consent’);
- What type of development can be approved by the relevant local council, Minister for Planning or Department of Planning under Part 4 of the EP&A Act (known as ‘development with consent’);
- What type of development is exempt or complying development;
- The relationship of other statutory planning instruments to the Infrastructure SEPP.

The planning system supports an efficient and robust assessment of new infrastructure proposals. Before the introduction of the Infrastructure SEPP, many proposals were being delayed by the former planning regime for infrastructure proposals, which often caused unjustifiable delays.

The Infrastructure SEPP identifies projects that can be determined by infrastructure providers and those that still require assessment through the traditional development application process. Infrastructure providers will now be able to determine an increased number of smaller-scale building works, freeing up council planning resources to concentrate on larger projects and strategic planning. However, where infrastructure providers can approve their own works, the responsible agency and other determining authorities will still be required to undertake a proper environmental assessment of proposed new facilities. There are also increased consultation requirements imposed on such providers.

The Infrastructure SEPP overrides most other environmental planning instruments under the EP&A Act including local environmental plans, regional environmental plans, and other State environmental planning policies. However, the Infrastructure SEPP does not alter the major developments assessment system (Part 3A of the EP&A Act and the Major Developments SEPP).

## **Victoria**

Significant projects in Victoria are referred to the Priority Development Panel (PDP)<sup>18</sup>. The PDP is an advisory committee established by the Minister for Planning under section 151 of the Planning and Environment Act. It is a multi-disciplinary panel of experts with skills and experience in planning and planning-related fields, such as urban design and architecture, land economics, social research, transport planning and engineering.

The PDP is an advisory body, not a decision maker, and provides independent advice to the Minister for Planning, who ultimately makes decisions on major projects. The PDP has been established to:

- identify ways to provide faster approvals processes for developments of State or regional significance
- work closely with project proponents and local government to speed up decision-making
- provide expert advice to assist in resolving issues and facilitating strategic planning outcomes.

In many instances the projects being considered by the PDP are projects proposed by the State Government. There is a real sense of the state ‘owning’ major projects at senior ministerial level.

Projects considered by the PDP must meet a majority of the following criteria:

- Be of genuine State or regional significance, for example it:
  - may have substantial effects on the achievement or development of State and regional planning objectives
  - could have significant effects beyond its immediate locality or in more than one municipality
  - raises a major issue of State or regional policy or public interest, such as the implementation of Melbourne 2030 objectives.
- Relate to the planning or development of:
  - a Transit City, Principal and Major Activity Centre
  - a key strategic redevelopment site as defined in Melbourne 2030, and
  - give effect to environmental, social and economic objectives for sustainable development for those locations.

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<sup>18</sup> Priority Development Panels, Department of Planning and Community Development, State of Victoria: <http://www.dse.vic.gov.au/DSE/nrenpl.nsf/LinkView/772B4917A2450378CA256FA9007AD632706E7682A0D0E6C9CA2572FF000BF58E>

- Include one or a combination of the following:
  - development and implementation of a Structure Plan or Urban Design Framework
  - a proposal for a substantial mixed use development
  - a proposal for use of the Priority Development Zone.
- Be of a scale or level of complexity that requires special management arrangements, for example:
  - requiring coordination across Government agencies to facilitate outcomes
  - requiring an integrated assessment of issues
  - where standard approval processes may cause substantial delay or cost to the project.

The Minister may seek the advice of the Priority Development Panel at any stage during the planning process. However, requests made early in the process enable issues to be identified and resolved and opportunities for facilitation explored.

A referral may be prompted by a range of planning processes, including requests to the Minister to:

- provide advice to the responsible authority or planning authority about a planning permit, planning scheme amendment or the appropriate planning scheme provisions to be applied
- authorise or make a Ministerial decision in relation to a planning scheme amendment
- prepare a Ministerial amendment under the provisions of the Planning and Environment Act 1987
- ‘call-in’ an application.

Each project referred to the Priority Development Panel will result in a written report that may be released at the Minister’s discretion. The Priority Development Panel must report to the Minister within a time agreed with the Minister. The Minister will consider the Priority Development Panel’s report in making statutory decisions or issuing advice about a project.

The process of gaining approvals for major projects remains complex, however the PDP process does provide extra focus and attention to how to ensure a fair process, but also achieve regulatory approval in a reasonable timeframe.

## **Queensland – Department of Infrastructure & Planning**

The *Integrated Planning Act 1997* (IPA) is the key piece of legislation that governs planning and development throughout Queensland.

The IPA requires that specific land use controls are set out by the local governments and form part of their Planning Schemes which are required to be prepared and revised regularly (i.e. every eight years). IPA specifies that these Planning Schemes are to have regard to such core matters as land use and development, infrastructure and valuable features.

The State Government is also involved in Queensland's development landscape providing input into the preparation of Planning Schemes as well as being a 'Referral Agency' for a certain variety of development proposals to ensure that the development will not compromise State interests and planning initiatives.

### *Development Approvals, including 'Preliminary Approval'*

Development consent under IPA takes the form of a 'Development Approvals'. There are two types of Development Approvals:

- *Development Permit* - where development is able to proceed subject to conditions but not until any subsequent required approvals (e.g. Building Works Approval, Operational Works Approval etc.) are in place. This is similar to the approach taken under the RMA.
- *Preliminary Approval* - where 'in principle' approval is given; however, development cannot proceed until a subsequent Development Permit has been granted.

*Example - A preliminary approval may seek a conceptual approval for a "residential precinct" or an "industrial precinct", but may not state the nature or density of the development. The approval only goes so far as to approve the concept of a residential or industrial use for the premises, but does not authorise the nature, scale or density. These aspects of the development would be the subject of further preliminary approvals or development permits.*

The benefit of Preliminary Approvals is that they can be used to override the Planning Scheme, essentially varying the effect of the Scheme and its application to the subject site/development, i.e. to set out different development guidelines/outcomes to that specified in the Planning Scheme. It can also be used to reduce the level of assessment that would be applied to certain future development as a result of the Preliminary Approval. The closest comparison in the NZ context is where a preliminary approval would be given to a non-complying activity 'in principle' – thus then allowing the applicant to proceed investigating the detailed effects of an

activity with this certainty. This scenario could equally be compared to a site specific private plan change.

It is noted that in addition to the two types of approval noted above, a refusal may be issued in which the proposed development is not approved.

The IPA has recently been replaced by the Queensland Sustainable Planning Act 2009 which retains the concept of 'preliminary approvals'. The new Act was scheduled to commence in Queensland late 2009. The new system attempts to fine-tune planning and development assessment in Queensland and introduced changes including standard planning scheme provisions, the introduction of new assessment processes and approvals, and increased court powers to process development applications.

The new Act also introduced stronger Ministerial powers to direct an assessment manager or a concurrence agency to decide an application or take an action with a specified period if the development involves a State interest, and the ability to assess a called-in application against state interests only or to require the assessment manager to assess the application on behalf of the Minister<sup>19</sup>.

#### *Declaration of 'State Significance'*

Many large infrastructure proposals can also be declared as 'Significant Projects' under S.26 of the *State Development and Public Works Organisation Act 1971*. This is a recognition that these are likely to be complex or contentious projects; with a different approach to planning such that an EIS must usually be prepared before any planning applications are lodged, so as to 'front end' likely requirements for mitigation in a coordinated manner.

Under the Act, major projects (including large-scale infrastructure and others) can be declared to have 'State Significance' based on one or more of the following criteria:

- complex approval requirements, including multi-level Government involvement
- a high level of investment in the State
- potential effects on infrastructure and/or the environment□
- provision of substantial employment opportunities
- strategic significance to a locality, region or the state.

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<sup>19</sup> Further work is needed to assess the nature and extent of the changes under the new legislation.

Once a project is declared as being of State significance, generally an EIS is required to ensure that the project's environmental, social and economic impacts are appropriately considered and mitigated.

There are two types of declaration for a 'significant project' under the Act:

1. Requiring an environmental impact statement under s26(1)(a) of the Act – Projects that are declared as significant are generally considered to be the most important or complex. Declaration of a project as significant does not mean Queensland Government backing. Rather, it signals that the project warrants an environmental impact statement.
2. Not requiring an environmental impact statement under s26(1)(b) of the Act - A project can be declared significant but not requiring an environmental impact statement. This recognises the significant nature of the project to either the region or the State. Applications under other statutes, such as the Water Act 2000 and the Vegetation Management Act 1999 require a project to be of a significant nature before detailed consideration can be made.

The purpose of declaring a project as having State significance is to ensure that its potential value and impacts on the local and regional context are recognised and managed accordingly. It is also a mechanism to provide flexibility within the local and State planning framework to be able to respond to important development projects that require a high degree of attention on a range of matters from a variety of stakeholders and specialists.

The Act was amended in late 2006 to strengthen the powers of the Coordinator-General of Planning. This gave the Coordinator-General the power to step in where decision makers (state departments or councils) fail to make a decision on a key project.

## **South Australia – Department of Planning and Local Government**

The processes for making development applications and assessing those applications are laid out in the Development Act 1993 and Development Regulations 2008. The vast majority (around 90 percent) of development applications are determined by Local Councils in their role as assessment authorities.

Some specified kinds of development application are determined by an independent Development Assessment Commission (see below), while a small number of declared Major Developments are determined by the Governor, on the advice of State Cabinet, after going through the Major Developments proposal process, which involves a detailed environmental assessment.

### *Development Assessment Panels<sup>20</sup>*

Since July 2001, all local Councils have been required to establish Development Assessment Panels (DAPs) in order to increase the impartiality and certainty of development assessment decisions. Under the changes to the Development Act in February 2007 a council **must** delegate its powers and functions as a relevant authority with respect to determining whether or not to grant provisional development plan consent under the Act to:

- its council development assessment panel (see below for information on changes to the composition of such panels); or
- a council officer (but not an elected member); or
- a regional development assessment panel (if one exists).

Panels are required to have a membership of seven (there are some exceptions) with majority independent membership.

### *Provisional development consent with deferral of specific matters*

A relevant authority, when assessing a development proposal in the form of an application for either a development approval or a provisional development plan (PDP) consent, can defer its decision on a specific matter of the proposal. The assessment of the deferred matter can be completed during the assessment for the provisional building rules (PBR) consent, or one of the other consents that may be relevant under the Act.

For example, the development of a major tourist accommodation complex in a rural area requires development approval. Some of the factors that need to be addressed by the relevant authority include the treatment and disposal of effluent and the layout of landscaping. Preliminary information on such matters is all that would be required

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<sup>20</sup> Department of Planning and Local Government, State of South Australia:  
<http://www.planning.sa.gov.au/go/panelsbill2006>

as part of the assessment for the PDP consent, to assure the relevant authority of the proposed development's consistency with the provisions of the relevant Development Plan. The applicant could then provide the full details on such matters during the assessment for the PBR consent. At that stage, the applicant has a greater degree of certainty in respect of the proposed development and would be more inclined to commit resources towards providing the required detailed information to the relevant authority, but without wasting resources prematurely.

The ability to defer such matters can help to eliminate unnecessary duplication in the assessment process and provides the opportunity to delegate decisions on matters of detail, thereby speeding up the decision making process. However, deferral should only relate to relatively non-controversial details, and matters of a fundamental nature should not be deferred. In all cases, deferred matters must be resolved prior to issue of final development approval.

#### *Development Assessment Commission<sup>21</sup>*

The Development Assessment Commission (DAC) is an independent statutory authority, consisting of a group of people with a variety of expertise, which assesses and determines specified kinds of development applications in South Australia. These are prescribed in the Development Act and Development Regulations and include:

- waste management or disposal applications
- certain developments of significant regional impact
- certain types of development in key areas of the State, including the Hills Face Zone, the River Murray Flood Zone, the Adelaide Park Lands, various Conservation Zones and the Adelaide Hills water catchments
- most Housing SA and Land Management Corporation applications
- certain types of development by councils themselves or involving council land, and
- applications where the council requests – and the Minister for Urban Development and Planning agrees – that the DAC be the assessing authority.

In its decision-making role, the Commission:

- operates under the same law, and must apply the same Development Plan policy as would a council development assessment panel
- is subject to the same appeal provisions, and has the same enforcement powers as a council development assessment panel
- normally handles planning issues itself, but delegates building assessment to the relevant council, and

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<sup>21</sup> Department of Planning and Local Government, State of South Australia:  
<http://www.planning.sa.gov.au/index.cfm?objectid=E9F1EB7C-96B8-CC2B-6F950E32775384C8>

- can establish delegated committees for certain matters or development within particular areas.

The DAC assesses all applications for Crown development and public infrastructure development, providing a report to the Minister for Urban Development and Planning, who makes the final decision.

The Commission has a role in dealing, together with councils, with applications specifically contrary to Development Plans. Where a council considers that a proposal warrants approval despite it being 'non-complying' with the Development Plan, the council may grant approval provided the DAC agrees.

The DAC also has a role at the start of the Major Development proposal assessment process, setting the level of assessment for appropriately declared proposals and providing detailed Guidelines for assessment. The Commission can also act as the Governor's delegate for assessing variations for approved Major Developments.

### *Major Development Proposals<sup>22</sup>*

The Minister for Urban Development and Planning can 'declare' a proposed development a 'Major Development' if he or she believes: (1) such a declaration is appropriate or necessary for proper assessment of the proposed development; and (2) where the proposal is considered to be of major economic, social or environmental importance. This triggers a thorough, state-run assessment process with opportunity for public comment before any decision is made on whether the proposal warrants an approval.

In most instances, the proponent of a proposal writes to the Minister to request a proposal be assessed using the Major Development provisions. However, the Minister may also be asked by members of the community to consider making a declaration, or simply become aware of what appear to be important social, environmental, or economic issues associated with a development or project.

A declaration of 'Major Development' means the Minister (assisted by Planning South Australia) will comprehensively assess the proposal and its impact using the following process:

#### *Stage 1 - Referral to the Development Assessment Commission (DAC) for setting of assessment level and guidelines*

Once a proposal has been declared a Major Development proposal by the Minister, it is referred to the DAC, which will consider the application and identify the key social,

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<sup>22</sup> Department of Planning and Local Government, State of South Australia:

<http://www.planning.sa.gov.au/index.cfm?objectid=B0D6F25D-96B8-CC2B-63BE28584A11F809>

environmental and economic issues relevant to the assessment of the proposed development. It will then determine which level of further detailed assessment is required and will publicly issue a Guidelines document to the proponent stating what level of assessment is required and what issues that assessment should address. This concludes the DAC's role.

The three possible levels of detailed assessment which can be required by the DAC are:

- An *Environmental Impact Statement* (EIS). This is the level of assessment required for the most complex proposals, where there is a wide range of issues to be investigated in depth.
- A *Public Environmental Report* (PER). This level of assessment, sometimes referred to as a 'targeted EIS', applies where the issues surrounding the proposal require investigation in depth but are narrower in scope and relatively well known, or there is existing information available.
- A *Development Report* (DR). This is the least complex level of assessment, which relies principally on existing information.

#### *Stage 2 - Proponent prepares and releases an Assessment document*

The proponent will prepare an EIS, a PER or a DR, as directed by the Development Assessment Commission. The length of time it takes a proponent to prepare the assessment document depends upon the level of assessment, the complexity of the proposal and the sensitivity of the site. Once it is complete, the EIS, PER or DR is released for public and agency comment.

#### *Stage 3 - Responding to public comment on an EIS, PER or DR*

After the appropriate public comment period on an EIS or PER, the proponent will then be required to respond to any public or agency comments (this is optional for a DR). The proponent's Response Document will be released for public information.

#### *Stage 4 - Assessing the proposal*

The Minister (with the assistance of Planning SA) will then assess the whole proposal, and detail that assessment in an Assessment Report. It is common that a proposal will be refined in response to the Assessment Report.

#### *Stage 5 - Decision*

The Governor will make a decision on the final proposal (on the advice of the Minister and Cabinet) having regard to the Assessment Report and other documentation. The decision may take a variety of forms, including approving or rejecting the proposal, or approving with conditions attached. Some matters of detail

may also be reserved for a later decision. There are no appeal rights against the decision of the Governor.

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## UK – Outline Planning Permission

The type of preliminary approval known as the ‘Outline Planning Permission’ (OPP) was established by the Town & Country Planning Act (1990). An outline application is appropriate where a person or company wants to have permission ‘in principle’ for the erection of a building, before going to the expense of having detailed plans prepared. Outline planning permission may only be granted for building operations, not for engineering, mining or other operations, nor for changes of use.

In May 2006, the UK Government introduced changes to the planning applications process and modified the outline planning permission regime in relation to the information to be provided at the outline application stage and the matters that may be reserved for future approval.

Applications for OPP should include information on:

- *Use* - the use or uses proposed for the development and any distinct development zones within the site identified.
- *Amount of development* - the amount of development proposed for each use.
- *Indicative layout* - an indicative layout with separate development zones proposed within the site boundary where appropriate.
- *Scale parameters* - an indication of the upper and lower limits for height, width and length of each building within the site boundary.
- *Indicative access points* - an area or areas in which the access point or points to the site will be situated.

The new definition of ‘reserved matters’ is as follows:

- *Layout* - the way in which buildings, routes and open spaces are provided within the development and their relationship to buildings and spaces outside the development.
- *Scale* - the height, width and length of each building proposed in relation to its surroundings.
- *Appearance* - the aspects of a building or place which determine the visual impression it makes, excluding the external built form of the development.

- *Access* - this covers accessibility to and within the site for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.
- *Landscaping* - this is the treatment of private and public space to enhance or protect the site's amenity through hard and soft measures, for example, through planting of trees or hedges or screening by fences or walls.

An OPP is not a permission to start work on site. The permission notice states which matters have been reserved for later approval. Once an OPP has been granted, the buyer of the building site has three years during which they must submit the 'reserved matters' application otherwise the entire process begins again. Work may begin on site when all of the reserved matters have been approved. The permission lasts for two years from the date of approval of the last of the reserved matters.

## **UK – Infrastructure Planning Commission**

The Planning Act (2008) introduced a new, simpler planning system for applications to build nationally significant infrastructure facilities in England and Wales. The new system covers applications for major energy generation, railways, ports, major roads, airports and water and waste infrastructure. Smaller infrastructure projects which fall below the thresholds set out in the Act, and other developments such as housing or retail, continue to be dealt with under the existing planning systems.

There are three key elements to the new procedures for national infrastructure projects:

1. Ministers will issue National Policy Statements (NPSs) about the infrastructure that the country needs for the next 10-25 years. These will be finalised by the Government after appraisal of their sustainability, followed by public consultation and Parliamentary scrutiny. This will make sure that people have early input into the formulation of the policy, rather than repeating the same arguments in different local enquiries.
2. Numerous and sometimes overlapping "consent regimes" for major infrastructure projects are replaced with a single system. This will provide a clear and accessible application process.
3. A new, independent, Infrastructure Planning Commission (IPC) will be created. This will bring together experts from key sectors - including planners, lawyers, environmentalists and communities. The Commission will examine and decide applications for new infrastructure development, using the criteria on national need, benefits and impacts set out in the NPSs, and consideration of evidence put forward on potential local effects. Where the Commission approves an

application it will be able to specify measures to mitigate the impact on a local area. It will be accountable to ministers and Parliament for its performance. The aim is to bring greater objectivity, transparency and accountability to the decision-making process. Under the new process the time taken from application to decision is expected to be under a year in the majority of cases.

NPSs will establish the national need and set out policy for infrastructure; explain how they take account of the Government's relevant social, economic and environmental policies; and show how they contribute to tackling climate change. There will be NPSs for the following types of infrastructure:

- *Energy* - power stations; renewables – electricity generation (e.g. wind farms); electricity networks (i.e. power lines etc.); fossil fuel – electricity generation (e.g. gas and coal power stations); oil and gas infrastructure (e.g. pipelines and storage)
- *Transport* - ports
- *National networks* (i.e. strategic roads and railways, including strategic rail freight interchanges); airports; water and waste; waste water (e.g. sewage treatment infrastructure); hazardous waste (e.g. high temperature incineration); water supply (e.g. reservoirs).

The first NPSs on nuclear power, renewable energy, electricity networks, fossil fuel generation, oil and gas infrastructure, and ports and national networks are expected this autumn<sup>23</sup>.

The IPC will be established from October 2009 and accepting applications from the energy and transport sectors from 1 March 2010. Where a relevant NPS is in place, the IPC will use it to make the decision, with the focus on the issues related to that particular planning application rather than the wider issues of need. If the relevant NPS has yet to be designated, the IPC will instead report with a recommendation to ministers.

The IPC will operate a one-stop development consent process for nationally significant infrastructure projects. It will decide whether to grant consent on the basis of the policies set out in the NPSs, taking into account domestic and European law, reports from affected local authorities, and evidence put forward by local communities and other interested parties during examination. In making its decision the IPC will weigh up the benefits and adverse impacts of the application. The IPC will have to give detailed reasons for its decisions and can be challenged in the courts if people think it has acted unreasonably.

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<sup>23</sup> Planning, the Journal of the Royal Town Planning Institute, 16 October 2009

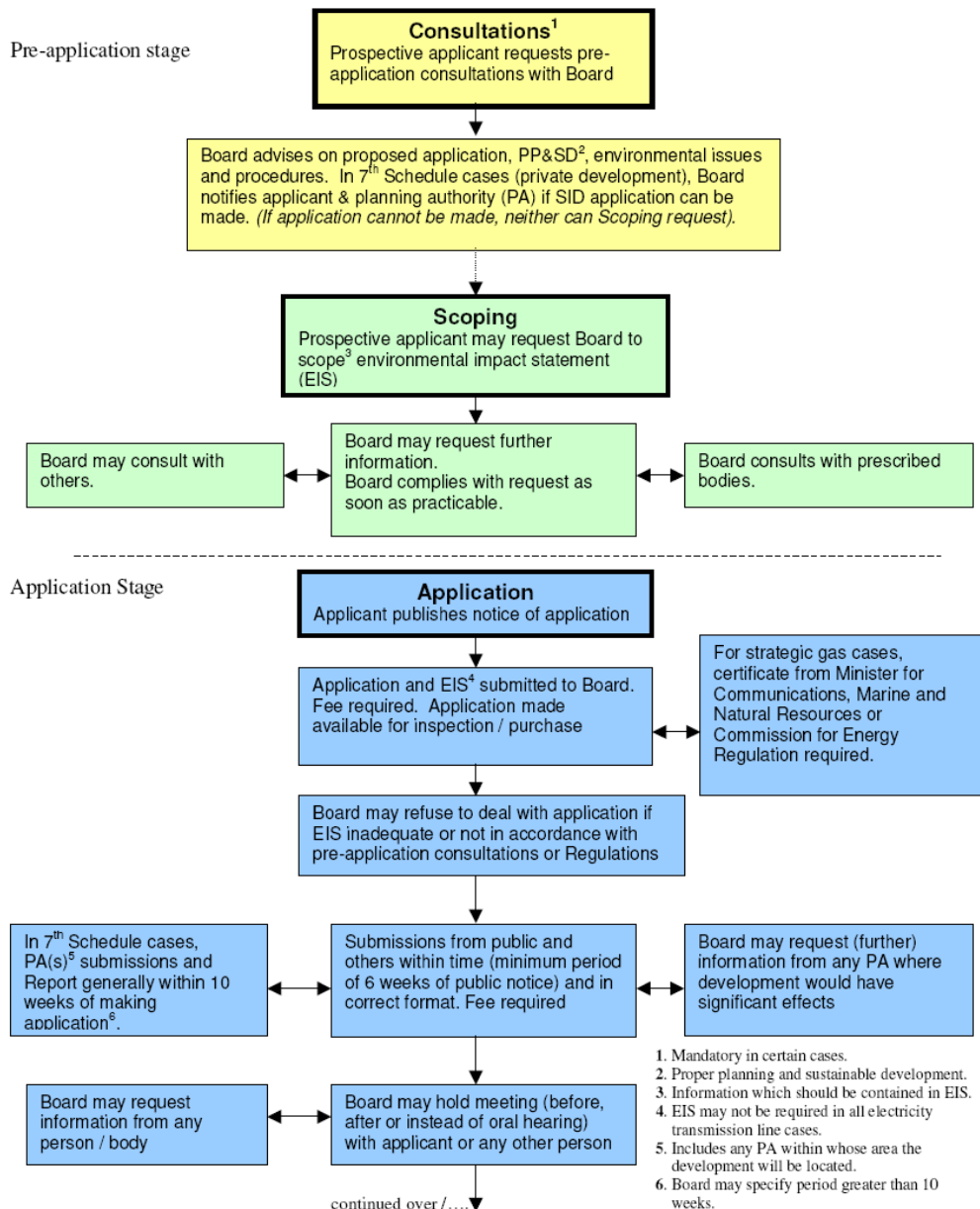
The new process will provide clearer and better opportunities for the public and local communities to get involved from an early stage in decisions that will affect them. There will now be three opportunities for individuals and groups to have their say. They are:

- *during the public consultations on the draft NPSs* - this will provide an opportunity for debate on the national need for the various types of infrastructure, rather than repeating this when each large infrastructure application is considered by the IPC;
- *when applications are being prepared for submission to the IPC* – at this stage developers are required to consult with local communities about what they plan to do; and
- *during the IPC’s examination of applications* – when individuals and groups can submit evidence in writing as well as in person at hearings held by the IPC.

## Appendix 1 – Ireland’s Strategic Infrastructure Development Process<sup>24</sup>

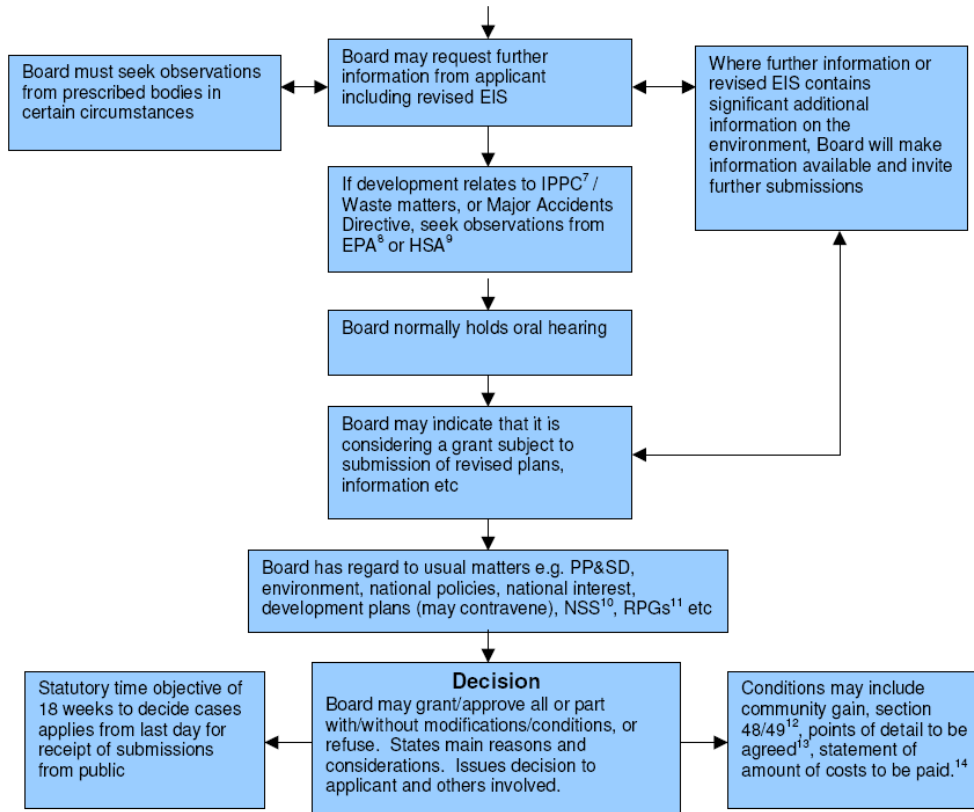
### Strategic Infrastructure Development (SID) Flowchart

(This flowchart gives a general indication of the stages involved in SID cases. However, procedures can vary depending on the particular type of SID involved)



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<sup>24</sup> <http://www.pleanala.ie/sid/flowchart.htm>



Post-decision stage

Board may amend decision to correct clerical error or to clarify what it intended to convey. May invite submissions from relevant persons. Change may not result in material alteration to development as permitted /approved.

Developer may request alteration to development

Board considers whether alteration would be material or have significant effects on the environment. If not, makes decision.

If alteration is material, Board directs that information is made available to specified persons, class of persons or public, and seeks observations. Makes decision on request.

If alteration would have significant effects on the environment, general EIA provisions will apply including new EIS, public notice, fresh submissions from public etc.

- 7. Integrated pollution prevention and control.
- 8. Environmental Protection Agency.
- 9. Health and Safety Authority.
- 10. National Spatial Strategy.
- 11. Regional Planning Guidelines
- 12. Section 48/49 financial contribution conditions.
- 13. Only applies to 7<sup>th</sup> Schedule cases.
- 14. Must issue with 7<sup>th</sup> Schedule decision. In other cases, where it applies, it may issue at a later date.

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Last updated 6 March 2007