



PLANNING SYSTEM

Act and regulation changes

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Related	

Environmental Planning Legislation Amendment Act 2006

This circular is to advise local councils, relevant State agencies and the community of the commencement of various provisions of the *Environmental Planning Legislation Amendment Act 2006*.

Introduction

The *Environmental Planning Legislation Amendment Act 2006* (the Amending Act) was assented to on 4 December 2006.

The Act continues the NSW Government's ongoing reform of the State's planning system. It amends various Acts, including the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *City of Sydney Act 1988* (CoS Act) and the *Local and Environmental Planning and Assessment Amendment Act (Transfer of Functions) Act 2001* (ToF Act).

A number of provisions in the Amending Act commenced on assent. The remaining provisions will commence on proclamation. The first proclamation appeared in the Government Gazette on 12 January 2007.

The purpose of this circular is to provide a brief summary of the main provisions in the Amending Act. Unless otherwise stated, the amendments commenced on 4 December 2006.

Amendments to the EP&A Act

Part 3A

The Amending Act makes a number of changes to Part 3A of the EP&A Act for major projects. These changes arise from a review of Part 3A after its first year of operation.

The amendments to Part 3A, which took effect on 4 December:

- simplify the major projects declaration procedures to allow Part 3A declarations to be

made by way of an order that amends a State environmental planning policy (SEPP)

- remove any doubt that Part 3A declarations can be made in respect of 'classes' of development
- simplify the provisions relating to critical infrastructure declarations so that such declarations can be made either through a SEPP or by an order.

The changes to Part 3A that will commence on 12 January 2007 deal with:

- the circumstances in which the Minister can determine Part 3A applications
- securing undertakings made by proponents in Statements of Commitments for the provision of public benefits
- streamlining processes for concept plan and projects applications
- certification of Part 3A projects.

The remaining changes to Part 3A will commence later in 2007, including amendments relating to:

- the application of prohibitions and restrictions in environmental planning instruments to Part 3A projects
- consolidation of existing approvals and consents under Part 3A.

Development contributions

The Amending Act strengthens the EP&A Act provisions dealing with development contributions and voluntary planning agreements (VPA).

In relation to VPAs, the amendments:

- clarify that the VPA provisions introduced in 2005 do not affect the operation of

'satisfactory arrangement' provisions in environmental planning agreements, and remove any doubt that a VPA may be entered into in satisfaction of such a provision

- provide that a VPA may only exclude the application of section 94 or 94A of the EP&A Act where the relevant council or the Minister is a party to the VPA.

The Amending Act also makes provision for section 94, 94A and special infrastructure contributions to be used for public amenities, public services and infrastructure outside NSW, subject to the Minister's approval. These provisions recognise that in some instances it may be appropriate for development contributions to be utilised in adjoining areas outside NSW, but only where the public infrastructure provided from those contributions would significantly benefit the residents of the NSW local government areas in which the development is undertaken.

The Amending Act also makes minor changes to the special infrastructure contribution provisions of the EP&A Act to ensure the more efficient management of these funds. These include allowing those parts of special infrastructure contributions that relate to:

- public services and amenities to be provided by a council to be paid direct to the council, thereby ensuring such infrastructure is provided without delay
- activities to be undertaken by the Department of Planning to be paid direct to the Department, again cutting red tape.

Enforcement

In 2005, a new set of investigative, compliance and enforcement provisions were introduced to strengthen the Department of Planning's enforcement powers.

The Amending Act includes additional provisions to complement these powers, including:

- allowing authorised officers when entering premises to be accompanied by persons (e.g. environmental experts) who can assist them in their investigations—the previous provisions only allowed authorised officers to be accompanied by police officers
- empowering authorised officers to compel persons who are subject to investigation to attend interviews, answer questions and for interviews to be recorded
- amending the provisions dealing with the period within which proceedings for offences must be commenced. Now proceedings may be commenced within two years of the date on which evidence of the alleged offence first came to the attention of an authorised officer of the Department—previously proceedings had to be commenced no later than two years after the offence was alleged to have been committed.

Lapsing of deferred commencement consents

The Amending Act introduces a new 'lapsing provision' in respect of development consents that are subject to a deferred commencement condition. This will mean those consents are subject to similar lapsing provisions as those applying to other types development consents.

The new provision means that a development consent will lapse after five years of the granting of consent (or any shorter period specified in the consent) if the applicant, within that time, fails to satisfy the consent authority about the matter specified in the deferred commencement condition.

Savings and transitional apply to this new provision so that consents granted before 4 December 2006 that are subject to a deferred commencement condition will lapse either five years after the date the consent was granted or 4 December 2008, whichever is the later, if the applicant fails to satisfy the consent authority in that time.

Crown development applications

The Amending Act also makes changes to the EP&A Act provisions dealing with Crown development. These changes are designed to streamline the assessment and determination procedures applying to Crown development applications (Crown DAs) to ensure such development can proceed with a minimum of delay for the benefit of the community.

The changes reduce the time period within which:

- councils or government agencies can refer a Crown DA to the Minister for Planning for negotiation of outstanding issues from 60 to 40 days
- council must notify the Minister of any proposed conditions on consent from 40 to 21 days.

These amendments do not apply to Crown DAs made, but not determined, before 4 December 2006.

Certification

The Amending Act makes a number of minor amendments relating to building certification, including clarifying that, although an accredited certifier may decline an appointment as principal certifying authority (PCA), a council cannot. This also extends to appointment as a replacement PCA. This amendment will commence on 12 January 2007.

The remaining amendments relating to certification will commence later in 2007.

Other minor changes

The Amending Act also includes minor amendments to:

- standardise the environmental assessment requirements under Part 5 applying to routine activities, modifications of activities that reduce environmental impact, and activities already assessed by a determining authority
- allow the Department of Planning to impose fees in connection with plan-making and other statutory functions.

Amendments to the City of Sydney Act

The Amending Act includes amendments to the CoS Act to support the effective operation of the Central Sydney Planning Committee (CSPC), including:

- simplifying the procedures for appointing government members and their alternates to the CSPC
- reinstating requirements for Railcorp concurrence for major development in the central business district
- standardising the conflict of interest provisions for CSPC members with the *Local Government Act 1993* provisions
- allowing two members of the CSPC to nominate agenda items for CSPC meetings.

Amendments to the Transfer of Functions Act

The Amending Act includes provisions to facilitate the *Local and Environmental Planning and Assessment Amendment Act (Transfer of Functions) Act 2001*, as a means to transfer the approval process for the installation of temporary structures and use of places of public entertainment from the Local Government Act to the EP&A Act.

The Amending Act:

- introduces a regulation-making power in respect of temporary structures, places of public entertainment, and domestic oil or solid fuel heating appliances
- extends the time period in which provisions relating to conditions on approvals for places of public entertainment and temporary structures apply.

Further information

A fact sheet *Environmental Planning Legislation Amendment Act 2006* (Department of Planning 2006) is available from the Department's website at www.planning.nsw.gov.au/planning_reforms.

A copy of the *Environmental Planning Legislation Amendment Act 2006* is available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z 'As Made').

Copies of the *Environmental Planning and Assessment Act 1979*, the *City of Sydney Act 1988* and the *Local and Environmental Planning and Assessment Amendment Act (Transfer of Functions) Act 2001* can also be accessed from Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z In Force').

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

Authorised by:

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Important note

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

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