



Planning circular

PLANNING SYSTEM

Concept development applications; Planning Systems

Circular	PS 21-024
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Related	Replaces PS 17-003

Amendment to provisions for concept (formerly ‘staged’) development applications

This circular advises councils, applicants and practitioners of certain amendments to the *Environmental Planning and Assessment Act 1979* to do with concept development applications (formerly known as staged development applications). These changes commenced on 14 August 2017.

Introduction

The purpose of this circular is to advise councils, applicants and practitioners of amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) relating to the provisions for concept (formerly ‘staged’) development applications. The changes commenced on 14 August 2017.

The purpose of the amendments is to restore assessment practices for these types of development applications to the way they were prior to the Court of Appeal’s decision in *Bay Simmer Investments Pty Ltd v State of New South Wales*.

The amendments replace the provisions for staged development applications. While they mostly replicate the previous provisions, there are some key amendments to provide clarity around development staging and the timing of assessment of construction impacts by consent authorities.

The changes include:

- Renaming these types of applications ‘concept development applications’, to better reflect what they are in practice.
- Clarifying that a concept approval may be followed by only one second stage development application.
- Enabling a consent authority to determine when to consider construction related impacts for concept applications that do not seek approval to carry out works.

The amendments apply to pending development applications, as well as development consents previously granted.

Requirement for only one second stage development application

Following the Court of Appeal’s decision two or more second stage development applications were required for a development to be categorised as a staged development under the EP&A Act.

The amendments clarify that a concept proposal may be followed by only a single development application for the whole of the site. This is consistent with industry practice prior to the Court of Appeal’s decision.

Consideration of construction related impacts

As a result of the Court of Appeal’s decision, a consent authority was required to assess construction impacts at the concept application stage, even for applications that did not seek approval to commence works.

A new provision (section 4.22(5)) makes it clear that a consent authority need not consider the likely impact of development that may be the subject of subsequent development applications when determining a concept development application. For example, if the concept proposal does not include physical works, the impact of those works can be deferred until a subsequent development application for those works is made.

The amendments enable the consent authority to determine the most appropriate time to assess construction impacts, based on the individual proposal and the level of detail known.

Consent authorities may choose to consider construction impacts in part at the concept stage and then again at the subsequent development application

stage, or in full when the subsequent development application is made.

This approach is consistent with the way the law operated prior to the Court of Appeal's decision.

Note: The amendments do not affect the decision in *Bay Simmer Investments Pty Ltd v State of New South Wales* or validate the second stage of the development application for the Walsh Bay Arts Precinct.

Further information

For further information please contact Service NSW on 13 77 88.

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