

PLANNING SYSTEM

Local planning

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Related	

Changes to the Environmental Planning and Assessment Regulation 2000 – draft LEPs notified to the Director-General before 1 July 2009

The purpose of this circular is to advise planning authorities of an amendment to the *Environmental Planning and Assessment Regulation 2000* that ensures planning authorities can continue to prepare draft local environmental plans notified to the Director-General before 1 July 2009 under the local plan-making provisions of the *Environmental Planning & Assessment Act 1979* which applied before 1 July 2009.

Introduction

The *Environmental Planning and Assessment Amendment (Transitional Arrangements) Regulation 2010* ('amending Regulation') commenced on 12 February 2010.

The amending Regulation takes effect on commencement.

Only applies to draft LEPs notified under s54 before 1 July 2009

The amending Regulation *only applies* to draft local environmental plans where the planning authority notified the Director-General of its intention to prepare the plan before 1 July 2009, under the former section 54 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act').

However, the amending Regulation *does not apply* to draft local environmental plans that a planning authority commenced to prepare under the new local plan-making provisions of Part 3 of the EP&A Act from 1 July 2009 onwards.

Steps in LEP making carried out between 30 June 2009 and 12 February 2010 do not have to be repeated

The amending Regulation has been made following the Land & Environment Court's decision in *Capital Airport Group v Director General of the Department of Planning* [2010] NSWLEC 5 on 13 January 2010.

The object of the amending Regulation is to ensure that planning authorities do not have to repeat any steps in the plan-making process that occurred after 30 June 2009 and before 12 February 2010 for draft local environmental plans notified under the former section 54 of the EP&A Act to the Director General before 1 July 2009, as a result of the Court's decision.

For those draft local environmental plans, any steps in the preparation of those plans undertaken by a planning authority during that period, such as:

- consultation with State or Commonwealth agencies (under the former section 62),
- submission to the Department (under the former section 64),
- public exhibition (under the former section 66), or
- consideration of submissions and submission to the Director-General of an amended draft plan (under the former section 68)

are taken to have validly occurred to enable the plan making process to be completed.

Similarly, during that period:

- the issue of a certificate by the Director General (under the former section 65), or
- the making of a submission by a member of the community (under the former section 67)

are taken to have validly occurred to enable the plan making process to be completed.

The amending regulation will enable planning authorities and the Department to complete the plan-making process for these draft local environmental plans without the need to repeat the various steps already undertaken in the plan-making process.

However, this provision of the amending Regulation does not apply to the draft local environmental plan relating to South Tralee that was submitted to the Director-General on or about 6 November 2009 by Queanbeyan City Council, which was the subject of the Land & Environment Court's decision.

Transitional period not extended

The amending Regulation does not extend the existing transitional period for draft amending local environmental plans notified to the Director-General before 1 July 2009.

These draft plans must still be made by 1 July 2010, or where no section 65 certificate had been issued before 1 July 2009, they must be made by 1 January 2011.

There remains no time limit on the making of draft principal local environmental plans being prepared under the former plan making provisions of the EP&A Act.

Preparation of planning proposals have not changed

The amending regulation does not affect the current legal framework for the preparation and making of a local environmental plan under the new Part 3 of the EP&A Act, including the preparation of a planning proposal and the requirement for a gateway determination.

The new Part 3 continues to apply unchanged to a proposed local environmental plan only where the planning authority had not notified the Director-General of its intention to prepare the plan before 1 July 2009.

Further information

A copy of the *Environmental Planning and Assessment Amendment (Transitional Arrangements) Regulation 2010* is available on the NSW Government's legislation website:

<http://www.legislation.nsw.gov.au>

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Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

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