



PLANNING SYSTEM

Act and regulation changes

Circular	PS 07-009
Issued	18 July 2007
Related	PS 07-002

Environmental Planning Legislation Amendment Act 2006 and EP&AA (Miscellaneous) Regulation 2007

This circular is to advise councils, relevant State agencies and the community of the commencement of the remaining provisions of the *Environmental Planning Legislation Amendment Act 2006* and associated amendments to the Environmental Planning and Assessment Regulation 2000.

Introduction

The *Environmental Planning Legislation Amendment Act 2006* (Amending Act) was assented to on 4 December 2006 (refer to circular PS 07-002). The majority of the Amending Act provisions commenced either on assent (4 December 2006) or by way of proclamation on 12 January 2007. The remaining provisions of that Act will commence by proclamation on 20 July 2007.

The Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2007 (Amending Regulation) makes changes to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) that are required in order to commence the remaining provisions of the Amending Act.

Amendments to the EP&A Act and other Acts

The following changes the *Environmental Planning and Assessment Act 1979* (EP&A Act) will commence on 20 July 2007:

Major project assessment

- amendments to provisions dealing with the application of prohibitions and restrictions in environmental planning instruments (EPIs) to projects assessed under Part 3A of the EP&A Act
- amendments to allow for consolidation of existing approvals and consents under Part 3A

Certification

- amendments relating to building certification to clarify that certifying authorities are subject to an objective standard when undertaking functions related to the issuing of compliance, construction, occupation and subdivision certificates under the EP&A Act.

Similar amendments to the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* in respect to the issuing of strata certificates will also commence on 20 July 2007.

These amendments have been introduced following a decision of the Land and Environment Court in which it was held that the test for certifiers in issuing certificates is whether the certifying authority is 'satisfied' of certain criteria and not whether this judgment is objectively reasonable. The amendments ensure that certifiers are subject to an objective standard in issuing certificates.

Amendments to the EP&A Regulation

The following changes to the EP&A Regulation will commence on 20 July 2007:

Major project assessment

- identification of classes of development (excluding critical infrastructure projects) for which the Minister for Planning is precluded from granting project or concept plan approval, including:

- projects and concept plans for development located in environmentally sensitive areas of State significance and sensitive coastal locations that would (but for Part 3A) be prohibited by a local environmental plan (LEP) or a regional environmental plan (REP)
- projects involving development that would (but for Part 3A) be prohibited by an LEP or REP, except where a concept plan has been authorised or required
- additional transitional provisions relating to development that may have been subject to actions under Parts 4 or 5 of the EP&A Act prior to being declared to be a major project
- provisions setting out the procedures for the surrender of Part 3A approvals and existing use rights when required as a condition of a Part 3A approval.

Other minor changes

- amendments to clarify that certifiers are subject to an objective standard when undertaking functions related to the issuing of compliance, construction, occupation and subdivision certificates
- minor changes to the provisions relating to the notification requirements for planning agreements
- clarification that development contribution plans may include provisions relating to the public amenities or public services in another state or territory in certain circumstances
- identification of an additional matter to be included in section 149 certificates (being directions issued by the Minister for Planning that provisions of an EPI do not apply to certain Part 4 development where a concept plan has been approved under Part 3A);
- provision for additional penalty infringement notices to be issued for certain offences.

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.

Copies of the Amending Act and Amending Regulation are available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z As Made').

Copies of NSW Acts and Regulations, including the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*, 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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