

FAQs - Updates to the Environmental Planning and Assessment Act 1979

September 2018

This table of frequently asked questions has been composed in response to questions put to the Department of Planning and Environment (the Department). This document will be updated as new questions are raised with the Department.

No.	Question	Answer
1	When will the major new measures in the Act be implemented?	<p>The NSW Government is taking a staged approach to the implementation of the updated the <i>Environmental Planning and Assessment Act 1979</i>. The following has been introduced:</p> <ul style="list-style-type: none"> – Ending transitional arrangements for Part 3A – 1 March 2018 – Local planning panels / independent hearing and assessment panels – 1 March 2018 – Publicly notifying planning decisions with reasons - 1 July 2018 <p>The following key measures are still to come:</p> <ul style="list-style-type: none"> – Changes to concurrences and referrals – Late 2018 – Changes to conditions for major projects – Late 2018 – Enforceable undertakings – Late 2018 – Local strategic planning statements – Mid to late 2019 (Greater Sydney) and mid 2020 (regions) – LEP check – Late 2019 – Community participation plans – Late 2019 – Improvements to complying development – Late 2019 – Building and subdivision - Late 2019 – Building Manual – proposed for 2020 – Standard format development control plans - Mid 2020
2	How do I know what has commenced and what is delayed?	<p>The <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i> includes provisions that postpone the commencement of sections within the <i>Environmental Planning and Assessment Act 1979</i>, and specifies which parts of the old Act continue to operate.</p>
3	Why has the Government introduced mandatory independent hearing and assessment panels in Greater Sydney and Wollongong?	<p>Independent Commission Against Corruption (ICAC) has regularly undertaken investigations into corruption in the planning system and planning matters constitute the second largest number of complaints made to ICAC. To date there have been 20 completed investigations in this area.</p> <p>75% of these investigations involved councils in the Greater Sydney Region, with most of these relating to potentially inappropriate relationships between applicants and decision makers.</p> <p>Mandatory IHAPs have been introduced to strengthen the use of panels beyond a voluntary mechanism and to build standardised, additional</p>

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		safeguards into the model to ensure their independence and consistent, transparent, merit based decision making.
4	What role will councillors play in the planning system in Greater Sydney and Wollongong?	<p>The role of councillors remains critical in the planning system and is enhanced by these reforms.</p> <p>By removing the function of determining individual development applications from councils, this will free councils to focus on longer term, higher-level strategic planning and on setting the rules for the local area within which the experts will make technical development decisions. This facilitates councillors providing leadership on the economic, environmental and socially sustainable future of their local area.</p> <p>The elected council retains a strong role in relation to establishing its IHAP (local planning panel), including:</p> <ul style="list-style-type: none"> – setting the strategic planning framework and development controls within which the panel makes decisions – selecting most and appointing all panel members – council’s get to select the expert members (from a Minister approved pool) and the community representatives – nominating suitable persons to be assessed for inclusion in the expert pool – remaining the authority to which the panels are accountable.
5	What happens to new or existing development applications (DAs) that require a determination in Greater Sydney and Wollongong from 1 March 2018?	<p>In Sydney and Wollongong councillors no longer have a determination function under the <i>Environmental Planning and Assessment Act 1979</i>. All DAs will be determined by either council staff, IHAPs or by the relevant Sydney district and regional planning panels.</p> <p>Regional councils continue to determine DA as before (either by councillors or under delegation to council staff), unless the DA meets the criteria for being determined by the regional planning panel.</p> <p>Applications identified as regionally significant under the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> will be determined by the relevant Sydney District and Regional Planning Panels.</p> <p>Development applications that are captured by the IHAP referral criteria issued by the Minister on 23 February 2018 must be determined by the council’s IHAP. These criteria capture development applications that are subject to a conflict of interest, are controversial, depart from the development standard or are a high risk of corruption.</p> <p>In Sydney, all other local DAs will be determined by council staff.</p>

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6	What is the new threshold for DAs to be determined by a Sydney district or regional planning panel, and what will happen to existing projects?	<p>The threshold for development applications to be determined by the Sydney district and regional planning panels is listed under Clause 2 of Schedule 7 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i>. From 1 March 2018, the threshold increased from \$20 million to \$30 million.</p> <p>DAs that are valued between \$20 and \$30 million that are currently going to a district or regional panel will remain in this determination pathway.</p> <p>Future DAs over \$30 million will go to these panels, those valued at less than \$30 million will be determined by either the council, council's IHAP in Greater Sydney and Wollongong or by council staff under delegation.</p>
7	What has happened to Part 3A projects?	<p>The transitional arrangements for former Part 3A projects have ended, with all future modifications to these projects assessed under the State Significant Development (SSD) or State Significant Infrastructure (SSI) pathways.</p> <p>This means modification will be assessed under the "substantially the same development" test, rather than the more liberal section 75W test. The "substantially the same development" test will be applied to the project as last modified, rather than at project inception.</p> <p>Project proponents had up until the 28 February 2018 to lodge any final requests to modify under the old pathway.</p>
8	When will councils and other practitioners need to have their forms and templates updated?	<p>Stakeholders are encouraged to update their forms and templates. The <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i> provides that a reference to an old section is a reference to a new section. As such, forms and templates referencing the old section numbers of the <i>Environmental Planning and Assessment Act 1979</i> will continue to be able to be used. Equally, references to new sections that are yet to commence can be considered a reference to the old section.</p> <p>Not all of the provisions of the updated <i>Environmental Planning and Assessment Act 1979</i> have commenced – for example, Part 6 (except Division 6.7 which has commenced) won't commence until 1 September 2019. In such cases, the old provisions and numbering are still in force, and should be referred to until the new ones come into effect.</p>
10	What has happened to the consultation requirements for	<p>Under the changes to the <i>Environmental Planning and Assessment Act 1979</i>, consultation requirements will soon be contained in each council's community participation plan. The Act and supporting regulation include</p>

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	DAs and strategic plans?	<p>mandatory notification and exhibition requirements which will be required to be included within these plans.</p> <p>The new community consultation requirements for matters, including development applications and local strategic plans, are set out in Part 2 and Schedule 1 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>These plans do not have to be prepared and made under late 2019.</p>
11	When will the mandatory requirements for community participation in Schedule 1 commence?	<p>The mandatory community participation requirements in Schedule 1 have largely commenced, including minimum exhibition timeframes and a requirement to notify the public of decisions on specified development and modification applications.</p> <p>The requirements relating to community participation plans will not commence until a council has prepared and published their community consultation plan as identified under clause 16 of the <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>.</p> <p>Councils and other planning authorities are not required to prepare and publish a community participation plan until 1 December 2019.</p>
12	What is the sequencing for the roll out of Local Environmental Plans (LEPs) updates?	<p>This is to be managed by councils and is generally at their discretion.</p> <p>It is noted that for councils located in the Greater Sydney Region, the Greater Sydney Commission recently released the District Plans. Under Section 3.8(3) of the <i>Environmental Planning and Assessment Act 1979</i>, councils are required to review their LEP "as soon as practicable after a district strategic plan is made". As such, Sydney councils have already started their first review.</p>
13	What is the frequency of Local Environmental Plan health checks?	At least every 5 years.
14	How will Local Strategic Planning Statements translate into improved development assessment?	<p>Local Strategic Planning Statements will set out the 20-year vision for land-use in the local area, the special character and values that are to be preserved and how change will be managed into the future.</p> <p>They will provide a direct connection between regional or district plans and the council's local environmental plan. This will strengthen the strategic foundation on which the planning controls for an area are based, and minimise opportunities for spot rezonings that are inconsistent with land use priorities.</p>

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		With a clearer, more robust strategic direction, proposals are likely to be more in line with controls and decision-making is likely to be more consistent and streamlined. Overall, this should result in reduced DA processing times and more consistent and transparent decision-making.
15	What mechanisms are in place to reduce corruption in the new mandatory IHAPs and district and regional planning panels?	Both the mandatory IHAPs and the district and regional panel members are subject to a code of conduct, which includes conflicts of interest disclosure requirements. The Panel Secretariat at the Department is also available to help councils and panels.
16	Will NSW move towards code based planning?	The changes to the <i>Environmental Planning and Assessment Act 1979</i> do not seek to modify what types of development are captured by complying development provisions. This is a matter that is being reviewed under the broader State Environmental Planning Policies review program. The changes do, however, seek to strengthen the compliance and enforcement framework for complying development to give the community confidence that what is allowed or approved under the code pathway is what is being built.
17	How is NSW Government improving community confidence in complying development?	<p>The Department is currently working to provide councils with the ability to issue a notice to suspend work on a complying development for up to 7 days. This provides councils with another tool to investigate if what is being built is in line with the complying development certificate.</p> <p>The Department is also investigating options to set a compliance levy for complying development. The levy will fund expanded council monitoring and enforcement of complying development standards. The regulations will prescribe the amount councils can charge under the levy. Further details on levy proposals will be released later in the year.</p> <p>In addition to operationalising these changes the courts now have the ability to declare a CDC to be invalid.</p>
18	What is happening with Part 6 ?	<p>The New building and subdivision provisions under Part 6 provisions of the <i>Environmental Planning and Assessment Act 1979</i> is being postponed until 1 September 2019.</p> <p>The new building provisions in Part 6 of the Act:</p> <ul style="list-style-type: none"> - remove interim occupation certificates (but not the ability to stage occupation) - create a new certificate for subdivision works, separating them from construction certificates

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		<ul style="list-style-type: none"> allow principal certifiers to issue directions to address non-compliant development. <p>The new building provisions were due to commence on 1 September 2018 but will be deferred until 1 September 2019. The NSW Government has listened to concerns that industry and councils need more time to prepare for these changes in light of the significant reform program underway in building regulation, fire safety and the regulation of the building professionals industry.</p> <p>The Department will undertake in-depth stakeholder consultation with industry and councils to support implementation of these new building provisions through to the <i>Environmental Planning and Assessment Regulation 2000</i>.</p> <p>In the meantime, it's business as usual. The current building processes, being the provisions that were in force prior to 1 March 2018, continue to apply. The deferred provisions include the former section 86 and Part 4A of the <i>Environmental Planning and Assessment Act 1979</i>, and the regulations made under Part 4A.</p> <p>The former section 121ZP of the <i>Environmental Planning and Assessment Act 1979</i> has been continued through clause 41 of Schedule 5 of the Act. This allows councils to continue to issue certificates as to whether there are outstanding orders or notices for a site.</p> <p>The only division of the new Part 6 of the <i>Environmental Planning and Assessment Act 1979</i> that has not been deferred is Division 6.7 (Building information certificates). This division applies as of 1 March 2018 and repeals all former building certificate provisions.</p>
19	What is a Building Manual and the threshold for 'significant buildings'?	A Building Manual will be required to be prepared for specified buildings, so that important information about a building is more easily available. This requirement is proposed to take effect from 2020. The Department will publish further information and guidance on Building Manuals closer to the implementation date.

How do I find out more?

You can find out more about these changes by:

- calling our Information Centre on 1300 305 695 or
- emailing us at legislativeupdates@planning.nsw.gov.au