



# Update

## Planning & Environment

1 July 2009

### Important changes - Plan making and joint regional planning panels

Today amendments to the Environmental Planning and Assessment Act 1979 (NSW) (**EP&A Act**) and State Environmental Planning Policy (Major Development) 2005 (formerly Major Projects) commence which affect how environmental planning instruments are made and establish joint regional planning panels (**Regional Panels**). The Regional Panels will act as the consent authority for particular types of development.

#### Changes to how environmental planning instruments are made

In NSW there were three types of environmental planning instruments which control development. These were local environmental plans (**LEP**), regional environmental plans (**REP**) and State environmental planning policies (**SEPP**). Today REPs are abolished and all existing REPs become SEPPs. There will also be new streamlined provisions for the making of SEPPs.

More substantial changes have been made to the way LEPs are made and these include:

- Councils are now required to prepare a "planning proposal" which sets out a justification as to why a LEP should be amended.
- The Director-General can prepare a LEP rather than the Council in certain circumstances and if directed to do so by the Minister.
- Where a landowner requests a Council to exercise its functions to amend a LEP the Council can require the landowner to carry out studies or pay for the costs of the preparation of the planning proposal.
- The planning proposal is then sent to the Minister for the "Gateway determination".
- The Gateway determination by the Minister:
  - considers whether the proposal should proceed, and
  - what level of community consultation is required and whether a public hearing or other consultation is required.

After community consultation is held (if required) the planning proposal may be amended (with or without further community consultation) and then the LEP may be made by the Minister.

The above provisions are aimed at streamlining the making of LEPs and providing flexibility so that uncontroversial proposals or proposals with minimal environmental impact can be processed with a lesser degree of regulation than other proposals.

#### Regional Panels

Regional Panels are established on 1 July 2009. Currently, the State is divided into six regions, five of which will be established on 1 July 2009 with a Western Division panel (for western NSW) to be established shortly.

The Regional Panels will have a number of functions including acting as a consent authority to grant development consents under Part 4 of the EP&A Act as well as to provide advice to the Minister when directed to do so on planning and environmental matters.

The Regional Panels will rely on council staff for administrative matters and for the preparation of environmental assessment reports for development applications. The Panels also have the power to prepare their own environmental assessment reports.

Amendments to the Major Development SEPP set out matters for which the Regional Panels will act as a consent authority. Generally, these include:

- Development with a capital investment value (**CIV**) of more than \$10m.
- Development for various infrastructure development, Crown development and ecotourism facilities with a CIV of more than \$5m.
- Designated development (development that requires an environmental impact statement).
- Subdivision of land into more than 250 lots.
- Where Council is the applicant for development, where development is carried out on Council owned land or the development is to be carried out by the Council.
- Where the Council is a party to any agreement or arrangement relating to the development (other than voluntary planning agreements).
- Certain tourist and visitor accommodation, buildings and subdivision in the coastal zone.



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### Appeals and reviews

Developers will still be able to appeal to the Land and Environment Court if they are dissatisfied with the decision of a Regional Panel and this is consistent with current appeal rights in relation to council determined matters.

Provisions which allow objectors to seek a review of a Regional Panel's decision to the NSW Planning Assessment Commission have not yet commenced.

### Key Contacts

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