



New South Wales

Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017 No 38

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Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017 No 38

Act No 38, 2017

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to staged development applications; and to amend other legislation consequentially. [Assented to 14 August 2017]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

[1] Part 4 Development assessment, Division 2A Special procedures concerning staged development applications

Omit the Division. Insert instead:

Division 2A Special procedures concerning concept development applications

83A Application of this Division

This Division applies to concept development applications and to consents granted on the determination of those applications.

83B Concept development applications

- (1) For the purposes of this Act, a *concept development application* is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.
- (2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.
- (3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.
- (4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:
 - (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or
 - (b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

- (5) The consent authority, when considering under section 79C the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

Note. The proposals for detailed development of the site will require further consideration under section 79C when a subsequent development application is lodged (subject to subsection (2)).

83C Concept development applications as alternative to DCP required by environmental planning instruments

- (1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.

- (2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

Note. Section 74D (5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

- (3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

83D Status of concept development applications and consents

- (1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.

- (2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.

- (3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.

Note. See section 95 (2) which prevents a reduction in the 5-year period of a development consent.

[2] Section 74D, note

Omit “staged development application”. Insert instead “concept development application”.

[3] Section 80 (5), note

Omit “staged development applications”.

Insert instead “concept development applications”.

[4] Section 89D Minister consent authority for State significant development

Omit “staged development application” from section 89D (2).

Insert instead “concept development application”.

[5] Section 95 Lapsing of consent

Omit “staged development application” from section 95 (2).

Insert instead “concept development application”.

[6] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Environmental Planning and Assessment
Amendment (Staged Development Applications)
Act 2017**

Definition

In this Part:

amending Act means the *Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017*.

Pending staged development applications and consents

- (1) A staged development application that, immediately before the commencement of the amending Act, was pending under Division 2A of Part 4 of this Act (as in force before the substitution of that Division by the amending Act) is, on and from that substitution, taken to be a concept development application under that Division (as so substituted), and may be dealt with accordingly.
- (2) A consent granted to a staged development application under Division 2A of Part 4 of this Act (as in force before the substitution of that Division by the amending Act) is, on and from that substitution, taken to be a consent granted to a concept development application under that Division (as so substituted), and has effect accordingly.

Validation

- (1) Anything done or omitted to be done before the commencement of the amending Act that would have been valid if this Act, as amended by the amending Act, had been in force when the thing was done or omitted to be done is validated.
- (2) However, subclause (1) does not render valid:
 - (a) a development consent that was, before 30 June 2017, declared by a court to be invalid, or
 - (b) a development application that was lodged after (and in reliance on) the grant of such a development consent.

Superseded references

A reference in any other Act or in any statutory or other instrument, or in any contract or agreement, to a staged development application under this Act is to be read as a reference to a concept development application under this Act.

Schedule 2 Consequential amendments

2.1 Biodiversity Conservation Act 2016 No 63

Section 7.13 Development other than State significant development or infrastructure

Omit “staged development application” from section 7.13 (5).

Insert instead “concept development application”.

2.2 Environmental Planning and Assessment Regulation 2000

[1] Part 6, Division 3A, heading

Omit “staged development applications”.

Insert instead “concept development applications”.

[2] Clauses 70A, 70B, 100 (1) (c2), 256B and 256KA (3) (a) and the definition of “staged application” in clause 256C

Omit “staged development application” wherever occurring.

Insert instead “concept development application”.

[Second reading speech made in—

Legislative Assembly on 2 August 2017

Legislative Council on 8 August 2017]