



New South Wales

Environmental Planning and Assessment Amendment (Staged Development Applications) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to confirm the manner in which the staged development application provisions of that Act have operated prior to a recent decision of the Supreme Court that invalidated a State significant development consent for the Walsh Bay Arts Precinct. That decision invalidates a staged development consent where a concept approval is followed by only 1 detailed development application or where the concept approval does not consider construction and other impacts arising from (and required to be assessed in connection with) the subsequent detailed development application. The Bill validates previous decisions but does not render valid the development consent that the Court declared invalid in relation to the Walsh Bay Arts Precinct nor any subsequent development application lodged in reliance on that development consent.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

Schedule 1 [1] substitutes Division 2A of Part 4 of the Act that deals with staged development applications. The substituted Division:

- (a) describes the special procedures as procedures concerning concept development applications rather than procedures concerning staged development applications (to confirm they deal with concept proposals rather than with the staging of different parts of the development), and
- (b) confirms that a concept approval may be followed by a single development application for the whole development to which the concept approval relates, and
- (c) provides that a consent authority, when considering under section 79C of the Act 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.

The detailed proposals for development of a site that is subject to a concept approval will require further consideration under section 79C of the Act when a subsequent development application is lodged for consent for the detailed proposals.

Schedule 1 [2]–[5] make consequential amendments.

Schedule 1 [6] applies the amendments made by the Bill to pending staged development applications and validates anything previously done that would have been valid if the amendments had been in force when the thing was done. However, a development consent invalidated by a court before 30 June 2017 (being the date of announcement of the proposed Bill) is not rendered valid. Accordingly, the development consent relating to the Walsh Bay Arts Precinct that was declared invalid in *Bay Simmer Investments Pty Ltd v The State of New South Wales* [2017] NSWCA 135, and any subsequent development applications lodged in reliance on that development consent, are not validated.

Schedule 2 Consequential amendments

Schedule 2 makes consequential amendments to the *Biodiversity Conservation Act 2016* and the *Environmental Planning and Assessment Regulation 2000*.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1	
Amendment of Environmental Planning and Assessment Act 1979 No 203	3
Schedule 2	
Consequential amendments	6



New South Wales

Environmental Planning and Assessment Amendment (Staged Development Applications) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to staged development applications; and to amend other legislation consequentially.

The Legislature of New South Wales enacts:

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1 Name of Act

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

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2 Commencement

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

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Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 No 203	1
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[1]	Part 4 Development assessment, Division 2A Special procedures concerning staged development applications	3
	Omit the Division. Insert instead:	4
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	Division 2A Special procedures concerning concept development applications	6
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83A	Application of this Division	8
	This Division applies to concept development applications and to consents granted on the determination of those applications.	9
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83B	Concept development applications	11
(1)	For the purposes of this Act, a <i>concept development application</i> 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.	12
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(2)	In the case of a staged development, the application may set out detailed proposals for the first stage of development.	17
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(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.	19
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(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:	22
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(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	25
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(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.	28
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	The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.	31
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(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.	33
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	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)).	39
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83C	Concept development applications as alternative to DCP required by environmental planning instruments	42
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(1)	An environmental planning instrument cannot require the making of a concept development application before development is carried out.	44
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(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.	1 2 3 4
	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.	5 6 7
(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.	8 9 10
83D	Status of concept development applications and consents	11
(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.	12 13 14 15
(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.	16 17 18 19
(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.	20 21 22
	Note. See section 95 (2) which prevents a reduction in the 5-year period of a development consent.	23 24
[2]	Section 74D, note	25
	Omit “staged development application”. Insert instead “concept development application”.	26
[3]	Section 80 (5), note	27
	Omit “staged development applications”.	28
	Insert instead “concept development applications”.	29
[4]	Section 89D Minister consent authority for State significant development	30
	Omit “staged development application” from section 89D (2).	31
	Insert instead “concept development application”.	32
[5]	Section 95 Lapsing of consent	33
	Omit “staged development application” from section 95 (2).	34
	Insert instead “concept development application”.	35

[6] Schedule 6 Savings, transitional and other provisions	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
Part Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017	3 4 5
Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017</i> .	8 9
Pending staged development applications and consents	10
(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.	11 12 13 14 15 16
(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.	17 18 19 20 21
Validation	22
(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.	23 24 25 26
(2) However, subclause (1) does not render valid:	27
(a) a development consent that was, before 30 June 2017, declared by a court to be invalid, or	28 29
(b) a development application that was lodged after (and in reliance on) the grant of such a development consent.	30 31
Superseded references	32
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.	33 34 35

Schedule 2	Consequential amendments	1
2.1	Biodiversity Conservation Act 2016 No 63	2
	Section 7.13 Development other than State significant development or infrastructure	3
	Omit “staged development application” from section 7.13 (5).	4
	Insert instead “concept development application”.	5
2.2	Environmental Planning and Assessment Regulation 2000	6
[1]	Part 6, Division 3A, heading	7
	Omit “staged development applications”.	8
	Insert instead “concept development applications”.	9
[2]	Clauses 70A, 70B, 100 (1) (c2), 256B and 256KA (3) (a) and the definition of “staged application” in clause 256C	10
	Omit “staged development application” wherever occurring.	11
	Insert instead “concept development application”.	12
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