



PLANNING SYSTEM

Act and regulation changes

Circular	PS 08-008
Issued	22 August 2008
Related	PS 08-006 issued 24 July 2008

Commencement of further provisions of the Environmental Planning and Assessment Amendment Act 2008

The purpose of this circular is to advise councils, accredited certifiers and the community of the provisions of the *Environmental Planning and Assessment Amendment Act 2008* that will commence on 1 September 2008.

Introduction

A number of provisions of the *Environmental Planning and Assessment Amendment Act 2008* and the *Building Professionals Amendment Act 2008* (the Amendment Acts) commenced on 1 August 2008, as outlined in Circular PS 08-006 – *Commencement of certain provisions of the EP&A Amendment Act 2008 and the BP Amendment Act 2008*, issued by the Department on 24 July 2008.

Further changes, which require minor savings and transitional provisions, are to commence **on 1 September 2008**. The relevant savings and transitional provisions are contained in the Environmental Planning and Assessment Amendment (Savings and Transitional) Regulation 2008 (Savings and Transitional Regulation).

The balance of the provisions in the Amendment Acts will be commenced in stages, to be completed by mid-2009, as necessary regulations, guidelines and changes to the accreditation scheme are prepared.

Councils and accredited certifiers should familiarise themselves with the requirements of the Amendment Acts and the Savings and Transitional Regulation.

Amendments to the Environmental Planning and Assessment Act

Changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) that will commence on 1 September are as follows.

Repeal of provisions relating to the Local Government Liaison Committee

Section 20 of the EP&A Act will be repealed, along with the provisions of Schedules 3 and 5 of the EP&A Act which relate to the procedures of the Local Government Liaison Committee and section 22 committees. A savings and transitional provision has also been inserted into the EP&A Act in relation to current members of the Local Government Liaison Committee.

Costs in applicant appeals to the Land and Environment Court

In merit appeals commenced by an applicant under section 97 of the EP&A Act, where the Land and Environment Court allows the applicant to file an amended development application (other than to make a minor amendment), the court will be required to make an order that the applicant pay the costs 'thrown away' by the consent authority occasioned by the amendment. This amendment will only apply to appeals commenced on or after 1 September 2008.

Consent authorities often incur unnecessary costs assessing development applications, and defending decisions to refuse development consent, which, had the amended application been put forward at the outset, may have been approved by the consent authority without any need for court proceedings. This change is intended to minimise the costs borne by consent authorities in assessing developments which, because of amendments during the court process,

the applicant does not ultimately seek approval for from the court.

Appointment of principal certifying authorities

For development involving both building work and subdivision work authorised by the same development consent, a separate appointment of a principal certifying authority (PCA) for each type of work is required (section 109E(1)).

As a result, from 1 September 2008, for development involving both building and subdivision work that is authorised by the same development consent, the EP&A Act will require the appointment of either:

- one PCA for the building work and another PCA for the subdivision work, or
- the same PCA for both the building work and the subdivision work.

The instrument/s of appointment must provide a clear, separate appointment of PCA for each type of work, and the Notice of Appointment of PCA (required under section 81A(2)(b1) and (4)(b1) of the EP&A Act and given to the consent authority and council) must also provide a clear indication as to who has been appointed as the PCA for the building work and who has been appointed as the PCA for the subdivision work.

It should be noted that currently in most local government areas, unless an EPI otherwise provides, only the council can issue subdivision certificates and be appointed the PCA for subdivision work.

The Savings and Transitional Regulation provides that any existing appointments of a PCA made before 1 September 2008 are not affected by the amendment. However, where a change of PCA occurs in relation to a development involving both building and subdivision work the subject of the same development consent, after 1 September 2008 a separate appointment of the new PCA(s) for the building and subdivision work will be required as per the new requirement.

Power of authorised persons to require answers and record evidence

Additional investigation powers for councils are introduced to enable the council to exercise its functions under the EP&A Act. Council can now require a person, including an accredited certifier or a person carrying out development, to answer questions and to provide information to enable the council to exercise its functions under the EP&A Act, such as ensuring compliance with conditions of consent and taking enforcement action to remedy or prevent a breach of development consent (section 118BA). The council may also require any other person they suspect on reasonable grounds to have knowledge of matters in respect of which information is required to answer questions. Such information may be recorded using sound recording or audio visual

equipment (section 118BA(6)), and a copy of the record is to be provided to the person as soon as practicable (section 118BA(7)).

The council may also require a person involved in carrying out the development to attend at a specified time and place to answer questions if necessary (section 118BA(3)).

It is an offence for a person to fail to provide information, wilfully obstruct an authorised officer or to provide false or misleading information to a council exercising its functions under the EP&A Act (maximum penalty – 20 penalty units) (section 118N).

Amendments to the Environmental Planning and Assessment Regulation

Changes to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) that will commence on 1 September 2008 are as follows:

Applications for construction certificates, occupation certificates and subdivision certificates

From 1 September 2008, only a person who is eligible to appoint a PCA for a development may make an application for a construction certificate or occupation certificate (clauses 139(1A) and 149(2B) respectively). Under section 109E(1) of the EP&A Act a person who is eligible to appoint the PCA is the person having the benefit of the development consent.

Similarly, from 1 September 2008 only the land owner or person with the land owner's written consent may make an application for a subdivision certificate (clause 157(2A)). At present there are no equivalent restrictions on who may apply for a Part 4A certificate.

The Savings and Transitional Regulation provides that the new provisions do not apply to applications for construction certificates, occupation certificates or subdivision certificates made before 1 September 2008.

Fees for building certificates

The maximum fee that may be charged for an application for a building certificate under section 149 of the EP&A Act is, in certain circumstances, increased.

The increased fee may be imposed only where the building to which the application relates has been completed within the past 24 months, the applicant for the certificate was responsible for the work, and the work was not authorised to be carried out under the EP&A Act.

The maximum fee is equivalent to the maximum fee that may be imposed if the application was for a combined development application/construction certificate application, or a complying development application (whichever is relevant),

for the building or part of the building the result of the unauthorised work (clause 260).

Under the Savings and Transitional Regulation, the higher fee may not be charged for an application for a building certificate made before 1 September 2008.

Applying for a strata certificate

New sections have been inserted into the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* requiring an application for a strata certificate to be made by the owner of the land to which the application relates, or by a person with consent in writing of the owner of the land (sections 36A and 65A respectively). At present there is no equivalent restriction on who may apply for a strata certificate.

Under the Savings and Transitional Regulation, these provisions do not apply to applications for strata certificates made before 1 September 2008.

Further information

The Amendment Acts, Savings and Transitional Regulation and proclamations are available online at www.legislation.nsw.gov.au.

If you require more information on the certification changes outlined in this circular, please contact the Building Professionals Board on (02) 9895 5950 or email bpb@bpb.nsw.gov.au.

Authorised by:

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Director-General

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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