

Barton Deakin Brief: Environmental Planning and Assessment Act Amendments

30 August 2017

The NSW Parliament passed two Bills yesterday evening to amend the Environment Planning and Assessment Act 1979 with respect to local and regional planning panels, and to amend the Parliamentary Electorates and Elections Act 1912 and the Local Government Act 1993 with respect to enforcement of local government election requirements.

This Barton Deakin Brief outlines the Parliamentary changes to planning legislation in New South Wales.

Overview

The Minister for Planning, Minister for Housing and Special Minister for State, the Hon Anthony Roberts MP along with The Minister for Local Government, the Hon Gabrielle Upton MP together announced August 8, 2017 that the Government would introduce a bill to make Independent Hearing and Assessment Panels (IHAPs) mandatory in the process of assessing Development Applications (DAs) at the local government level for specific councils in Sydney and Wollongong.

Changes in new planning legislation: Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017

Local Planning Panels, or Independent Hearing and Assessment Panels (**IHAPs**) as they were formally known, are now mandatory for all councils in Greater Sydney and Wollongong after the [Environmental Planning and Assessment and Electoral Legislation Amendment \(Planning Panels and Enforcement\) Bill 2017](#) passed the NSW Parliament on 9 August 2017. The DAs determined by the panel will include:

- Any DA valued at between \$5 million and \$30 million;
- Any DA where the applicant or landowner is the council or affiliated with the council, or is a State or Federal member of Parliament; and
- Any DA that receives 10 or more objections.

Property developers, as defined under the [Election Funding and Disclosures Amendment \(Property Developers Prohibition\) Bill 2009](#), and real estate agents, will not be able to sit on the Panels under the amendments.

Under this model, DAs are determined on behalf of a council by a panel of independent persons with appropriate expertise. Councils are required to appoint a single local planning panel for the whole area of the council, that will be responsible for advising the council on planning or development matters that are to be determined by the council, and to provide advice on whether to approve a DA based on a technical assessment of its merit in light of the planning controls. Currently, 15 councils in NSW have already successfully adopted mechanisms to reduce this risk by employing the IHAP model.



The law will officially come into practice on 1 March 2018, however councils that already had IHAPs will need to continue with their current panel until 1 March 2018.

Changes also include amendments to the [Parliamentary Electorates and Elections Act 1912](#) and the [Local Government Act 1993](#) to ensure that the NSW Electoral Commission has sufficient powers to enforce local government electoral laws. This is to give the Electoral Commission the ability to exercise its investigative powers under the [Election Funding, Expenditure and Disclosures Act 1981](#) in regards to local government elections, for example, inspecting and taking copies of bank records.

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

Concept Development Applications

[Staged Development Applications \(DAs\)](#) will be replaced with ‘concept DAs’ and consent will be granted on the determination of those applications.

The previous ‘staged DA’ process provided assurance that if an initial concept for development is approved, any subsequent development that is consistent with that concept will also be authorised. The new ‘concept DA’ model will require an applicant to set out concept proposals for the development of a site, with any further details to be the subject of a subsequent DA. This means that applicants will now need to provide much greater information at an earlier stage of the DA process. Other than the replacement of staged DAs with concept DAs, the amendment to the [Environmental Planning and Assessment Act 1979](#) will involve two key amendments:

- A concept DA may only be followed by one additional DA for the site as opposed to a number of applications; and
- The impacts of carrying out the development may be considered when the concept proposal is assessed, but must be considered where approval to actually carry out works is sought.

Further Information

Minister’s media release, “IHAPs LEGISLATION PASSES INTO LAW,” [here](#).

Further information regarding the legislative amendment for concept proposals can be found [here](#).

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