



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*.