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Update Summary

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ESTATE AGENTS' PRACTICE MANUAL NEW SOUTH WALES

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Updated Commentary

Chapter 17 “Land use planning and development control” has been reviewed and updated by Guy Dwyer. See [17.10]-[17.3100].

Modern planning law in New South Wales – law reform agenda of the current New South Wales Government

A consultation draft of the *Environmental Planning and Assessment Amendment Bill 2017* (NSW) (EPA Draft Bill) was released by the Department of Planning and Environment for public consultation on 9 January 2017. The Department of Planning and Environment has produced a summary document to provide a high level overview of the changes proposed in the EPA Draft Bill. In that document, the proposed reforms are divided into several main themes, including:

- enhancing community participation;
- completing the strategic planning framework;
- better processes for local development;
- better processes for State-significant development;
- fair and consistent planning agreements;
- confidence in decision-making;
- clearer building provisions;
- elevating the role of design; and
- enhancing the enforcement toolkit.

See [17.20].

Classifications of development – permissible without consent: development that may be carried out without development consent

Some restrictions relating to size, height or specific location may apply (if the development is “exempt development” for the purposes of s 76(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act), rather

than generally permissible “without the need for development consent” under s 76(1) of the EPA Act). Any such restrictions are set out in the relevant environmental planning instrument (EPI) and must be complied with in order for the development to remain “exempt development”. If a given development exceeds these restrictions, this may result in the development falling under one of the other classifications of development. See [17.340].

Modification, revocation and lapsing of development consent

Consents can lapse in certain circumstances. The general position is that consent lapses after five years. Development consent for the erection of a building, the subdivision of land, or the carrying out of a work does not lapse if building, engineering or construction work has physically commenced on the land before the date on which the consent would otherwise lapse. If building, engineering or construction work is commenced in breach of any issued development consent, either because it does not come under the consent or because a condition of consent is not met, the development is unlawful. Such work therefore does not prevent the consent from lapsing. See *Benedict Industries Pty Ltd v Minister for Planning* [2016] NSWLEC 122. See [17.1300].

Legislation

Strata Schemes Management Act 2015 (NSW)

The Strata Schemes Management Act 2015 (NSW) (Act 50 of 2015) replaces the Strata Schemes Management Act 1996 (NSW) (Act 138 of 1996), which was repealed on 30 November 2016. The Strata Schemes Management Act 2015 (NSW) received assent on 5 November 2015 (effective 30 November 2016).

The Strata Schemes Management Act 2015 (NSW) is the result of lengthy consultations with the public (particularly those occupying buildings the subject of strata schemes whether residential, commercial, industrial or mixed), with representatives of those involved in strata management and the development industry generally. The 2015 Act is notable for some major reforms – in particular the introduction of Pt 11 in relation to building defects and the abolition of the role of the adjudicator in relation to the settlement of disputes and complaints and a whole host of minor reforms particularly in relation to the management of property by an owners corporation.

Strata Schemes Management Regulation 2016 (NSW)

The Strata Schemes Management Regulation 2016 (NSW) (Reg 501 of 2016, published LW 12 August 2016; effective 30 November 2016, except for Pt 8 which will commence 1 July 2017) replaces the Strata Schemes Management Regulation (NSW) (Reg 492 of 2010), which was repealed on 30 November 2016.

According to the Government's *Regulatory Impact Statement*, the Regulations necessarily provide administrative and procedural detail with a view to ensuring the objectives of the Act can be achieved efficiently and effectively. These objectives are to be met by:

- mechanisms for nomination and appointment of strata committee members;
- allowing the use of modern forms of communication for voting on motions and elections;
- prescribing operational detail for the new defect bond scheme due to commence 1 July 2017;
- providing fair and reasonable model by-laws that can be adopted or adapted by strata schemes; and
- prescribing the necessary forms and fees.

One of the significant changes in the new regime will be encouraging greater tenant participation in the management of strata schemes. Under the new provisions, all schemes where 50% (or more) of the lots are occupied by a tenant, a meeting for all eligible tenants is to be convened at least 14 days prior to the Annual General Meeting (AGM) of the owners corporation. An eligible tenant, in turn, is defined as a tenant who has been notified to the owners corporation by a Tenancy Notice. At the meeting held for eligible tenants, a representative, called the Tenant Representative, must be elected to represent the eligible tenants at all future meetings held by the owners corporation.

Naturally the Tenant Representative's powers are limited, notably:

- they are not entitled to:
 - vote on decisions or put forth a motion to the committee; or
 - nominate a person for office, to be counted in determining whether the quorum (the minimum number of members required for a meeting to proceed) is met.
- committee members of the owners corporation may remove a Tenant Representative from a meeting of the owners corporation (or a portion of the meeting) which deals with:
 - financial statements or reports of the scheme;
 - levy contributions; or
 - strata renewal proposals.

Landlord and Tenant Regulation 2015

Purpose of amendments

To amend the Regulation in relation to statement by lessee and form for statement by lessee as a consequence of the amendment to the *Landlord and Tenant (Amendment) Act 1948*.

Amended provisions

Repealed: cl 4, Sch 1

Amending legislation

Statute Law (Miscellaneous Provisions) Act (No 2) 2016 (NSW) (Act No 55 of 2016) – with effect from 6 January 2017.

Property, Stock and Business Agents Regulation 2014

Purpose of amendments

To amend the Regulation to update references to the *Strata Schemes Management Act 1996* (which is repealed on 30 November 2016) with references to the *Strata Schemes Management Act 2015*.

Amended provisions

Amended: cl 33A

Amending legislation

Statute Law (Miscellaneous Provisions) Act (No 2) 2016 (NSW) (Act No 55 of 2016) – with effect from 6 January 2017.

Residential Tenancies Act 2010

Purpose of amendments

To amend the Act to require that a warrant for possession issued by the principal registrar of the Civil and Administrative Tribunal to be in the form approved by the registrar, to remove facsimile transmission as a means by which a notice or other document may be served on a Public Service agency and to remove unnecessary punctuation.

Amended provisions

Amended: ss 121, 223

Amending legislation

Statute Law (Miscellaneous Provisions) Act (No 2) 2016 (NSW) (Act No 55 of 2016) – with effect from 6 January 2017.

Purpose of amendments

To amend the Act to encourage the use of the online rental bond service by ensuring that a landlord or agent cannot require or receive a rental bond from a tenant unless the landlord or agent is registered as a user of the online service and has invited the tenant to use the online service to deposit the rental bond.

Amended provisions

Amended: s 159

Amending legislation

Regulatory and Other Legislation (Amendments and Repeals) Act 2016 (NSW) (Act No 60 of 2016) – with effect from 30 January 2017.

Property, Stock and Business Agents Act 2002

Purpose of amendments

To amend the Act in relation to property, stock and business agents and conditions of employment for their staff.

Amended provisions

Amended: ss 3, 10, 11, 32, Heading to Div 3, 43, 72, 73A, 73B, 76A, 115, 118

Inserted: ss 11A, 40A

Substituted: ss 44, 45

Amending legislation

Regulatory and Other Legislation (Amendments and Repeals) Act 2016 (NSW) (Act No 60 of 2016) – with effect from 16 December 2016.

Purpose of amendments

To amend the Act in relation to definitions.

Amended provisions

Amended: s 3

Amending legislation

Strata Schemes Development Act 2015 (NSW) (Act No 51 of 2015) – with effect from 30 November 2016.

Purpose of amendments

To make consequential amendments to the Act in relation to definitions.

Amended provisions

Amended: ss 3, 109, 190

Amending legislation

Strata Schemes Management Act 2015 (NSW) (Act No 50 of 2015) – with effect from 30 November 2016.

Conveyancing Act 1919**Purpose of amendments**

To amend the Act in relation to definitions, building management statements and to make other consequential amendments.

Amended provisions

Amended: s 66Q

Amending legislation

Strata Schemes Development Act 2015 (NSW) (Act No 51 of 2015) – with effect from 30 November 2016.

Residential Tenancies Regulation 2010**Purpose of amendments**

To amend the Regulation to prescribe to tenants that the residential premises are listed on the LFAI Register and to require landlords to advise tenants if premises are listed on the LFAI Register.

Amended provisions

Amended: Sch 1

Amending legislation

Residential Tenancies Amendment (Loose-fill Asbestos Insulation) Regulation 2016 (NSW) (Reg No 267 of 2016) – with effect from 30 October 2016.