

DPA's and development assessment commencement regulations Gazetted – the PDI Act is marching on.

On 28 February 2019, the *Planning, Development and Infrastructure (Transitional Provisions) Code Variation Regulations 2019* were Gazetted. We summarise the key outcomes of these new Regulations, and their effect on councils, below.

1. Development Plan Amendments

- 1.1 New Regulations 7 and 8 explain how Development Plan Amendments under the *Development Act 1993* will be transitioned into the *Planning, Development and Infrastructure Act 2016*.
- 1.2 These Regulations provide that where a DPA has been prepared by a council and public consultation has occurred in accordance with the *Development Act*, the Minister can:
 - 1.2.1 after consultation with the State Planning Commission, determine the DPA; and
 - 1.2.2 if the Minister decides to adopt the DPA (either as submitted or with alterations), the Minister can amend the Planning and Design Code under the *PDI Act* to reflect the DPA.
- 1.3 This means that DPA's commenced but not completed prior to the introduction of the Planning and Design Code in your area will not be 'for nothing'. They can be incorporated as amendments to the Code by the Minister.

2. Staged commencement of development assessment under the PDI Act

- 2.1 Late last year it was announced that the Planning and Design Code (and therefore the PDI Act assessment provisions) would commence in three stages.
- 2.2 The Regulations facilitate this process by providing for the ability of the Minister to revoke a Development Plan. Upon revocation of a Development Plan, development will be assessed against the Planning and Design Code.
- 2.3 Development applications which are lodged prior to the revocation of a Development Plan will be assessed and determined under the *Development Act*, however:
 - 2.3.1 notice of the determination of the application; and
 - 2.3.2 conditions will be imposed,under the *PDI Act* and the relevant decision will be taken to have been a decision made under the *PDI Act*. This will allow a relatively 'seamless' transition for live development applications to be determined and proceed to final development approval under the *PDI Act* at commencement.
- 2.4 Similar provisions exist for major development and projects, Crown developments and other matters.

3. **Local Heritage and Significant Trees**

- 3.1 When a Development Plan is revoked, a local heritage place listed in that Development Plan will be taken to be a place of local heritage value in the Planning and Design Code.
- 3.2 Likewise, Significant Trees listed in that Development Plan will be taken to be Significant Trees in the Planning and Design Code.
- 3.3 These provisions allow for existing local heritage places and Development Plan-listed Significant Trees to be recognised, seamlessly, in the Planning and Design Code.

4. **Appeals to the ERD Court**

- 4.1 Where a development application lodged under the *Development Act* is determined after the commencement of the *PDI Act*, appeals will be commenced and undertaken under the *Development Act*.
- 4.2 This provision ensures that applicants and representors are not prejudiced in respect of any appeal rights for development applications made under the *Development Act* once the *PDI Act* commences.

We will continue to keep you updated about further Gazettals of Regulations and other measures to facilitate the commencement of the *PDI Act*.

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