

## Water Management Amendment Act 2004

The *Water Management Amendment Act 2004* (NSW) commenced on 1 July 2004. The amending Act contains substantial changes which were required to implement the new licensing and approvals system for water including amendments relating to:

- the duration and extension of management plans;
- the judicial review of management plans;
- domestic and stock rights and water usage;
- temporary water restrictions;
- wasting water;
- the water access licence register;
- dealings and other matters that must be recorded in the access register;
- the registration of security interests and caveats;
- searching of the access register;
- compensation; and
- the transfer of access licences.

In addition, a new *Water Management (General) Regulation 2004* (NSW) contains various procedural matters including specific exemptions from the need to hold an access licence or an approval in certain circumstances.

The implementation of the 31 water sharing plans and the licensing and approval provisions of the Act on 1 July 2004 could affect water management arrangements which apply to you. From this date water licences, which have previously been an incident of land tenure, have become separate licences held in the Water Access Licence Register administered by the Department of Lands LPI Division on behalf of the Department of Infrastructure, Planning and Natural Resources ("DIPNR"). If land is within an area covered by an operational water sharing plan, the licensing arrangements will now be determined by the new Act.

To determine whether land is within a water sharing plan area, one should review the new DIPNR website at: [www.dipnr.nsw.gov.au/water](http://www.dipnr.nsw.gov.au/water) (see attached example), or contact DIPNR directly. If land is outside these areas, it is important to remember that the *Water Act 1912* (NSW) may still apply.

## State Environmental Planning Policy (Seniors Living) 2004

State Environmental Planning Policy (Seniors Living) 2004 ("the Seniors SEPP") which was introduced on 31 March 2004 repeals State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability ("SEPP5"). Savings and Transitional provisions mean that SEPP 5 continues to apply to applications made under that policy before 18 February 2004. After that, the Seniors SEPP applies.

The aims of the Seniors SEPP are consistent with those of SEPP 5, to increase the supply and diversity of housing for seniors and people with disability, make efficient use of existing infrastructure and be of good design. The main difference between the two policies is that the types of development permitted under the Seniors SEPP are clearly identified. The Seniors SEPP permits development for the following purposes:

*Residential care facilities* – accommodation where there are meal and cleaning services, personal or nursing care services or both and appropriate staffing and equipment to provide that care.

*Hostels* – accommodation where there are meals, laundering, cleaning and other facilities on a shared basis and at least one staff member on site 24 hours a day to provide management services.

*Self contained dwellings* – self contained for cooking, sleeping, washing but where those facilities (washing etc) may be provided on a shared basis.

*In fill self-care housing* – seniors housing on land zoned primarily for urban purposes that consists of 2 or more self contained dwellings with no services.

*Serviced self care housing* – self contained dwellings where services are provided on site.

*Vertical Villages* – there are additional provisions for development on land zoned residential or commercial which permit development with a density of 1:1 (expressed as a floor space ratio) provided there are on-site services and 10% of the housing in the development is affordable.

The Seniors SEPP applies to land zoned primarily for urban purposes or land adjoining that zoned primarily for urban purposes and on which development for dwelling houses, residential flat buildings, hospitals and special uses (including churches, convents and educational establishments) is permissible. This is consistent with SEPP 5. However, the only types of housing which are permissible with consent on land adjoining that zoned urban are serviced self care housing, hostels and residential care facilities. Accordingly, self contained dwellings and in fill self-care housing are only permissible on land zoned for urban purposes. In addition, for serviced self care housing to be approved on land adjoining that zoned urban, the consent authority must be satisfied that the residents will have reasonable access to home delivered meals, care and assistance with housework.

The Seniors SEPP specifies that development allowed under it must be for the accommodation of seniors (people aged 55 years and over) and disabled people and their carers, people who live with seniors and disabled people and staff employed to administer and provide services to the seniors and disabled people will occupy the development. The Seniors SEPP requires councils to impose a condition of consent in relation to the occupancy of the development. It will be interesting to see whether this mandatory condition is complied with in the future and how seriously local councils enforce compliance with this condition.

The design of development carried out under the Seniors SEPP is dealt with in great detail. Division 2, Part 3, Chapter 3 deals with the design principles which should be followed eg amenity and streetscape, privacy, solar access, stormwater, crime prevention, accessibility and waste management. Part 4, Chapter 3 sets out the relevant development standards. The standards are very detailed and identify requirements like sizes of car parks, width of doorways, compliance with Australian Standards and requirements for bathrooms.

It will be interesting to see how the Seniors Policy impacts on local development. Although the policy is not radically different to SEPP 5, there are enough changes to suggest that differing interpretations by developers and local councils may result in conflict and we should see some interesting decisions in relation to the Seniors SEPP coming out of the Land & Environment Court in the future.

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## WESTERN AUSTRALIA

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### Environmental Harm and Clearing Laws Commence

The remaining sections of the *Environmental Protection Amendment Act 2003* (WA) came into operation on 8 July 2004. The new laws include the offences of serious and material environmental harm, the new clearing regime and the requirements to advertise works approval and licence applications.

The laws were awaiting finalisation of the regulations to support the clearing regime. These have now been finalised and were amended substantially since the draft (which we described in the last NELR). Some new exemptions now apply and significant changes have been made to others. For example, in many cases clearing is now only exempt to the extent that no more than 1 ha is cleared on a property within any financial year. Codes of practice may be prepared in the coming months to replace some of the temporary exemptions that apply under the regulations.

The effect of the transitional provisions relating to the 'Notice of Intent' procedure under the (now repealed) Soil and Land Conservation Act is that any notices of intent to clear that were issued in the 90 days before 8 July 2004 are taken to be applications for clearing permits under the new regime. Further, the commencement of these laws will enable the Department of Environment (DoE) to take enforcement action in respect of any unlawful clearing that occurred since 26 June 2002. Related amendments to the *Country Areas Water Supply (Clearing Licence) Regulations 1981* (WA) also commenced on 8 July 2004.