

Bulletin

Monday, 7 May 2007

Changes to existing use rights

Since our October 2006 newsletter (accessible through www.makdap.com.au/docs/property_newsletter3.pdf), there have been further changes to the *Environmental Planning and Assessment Regulation* (EP&A Regulation) to extend existing use rights further.

An 'existing use' is a use that was lawfully commenced but subsequently becomes a prohibited use as a result of a rezoning or some other environmental planning instrument.

In 2006, Parliament amended the *Environmental Planning and Assessment Act (EP&A Act)* to remove significant rights enjoyed by owners or occupiers of properties which had the benefit of an 'existing use'.

Following a review of those changes, the Government has determined that the 2006 amendments to the EP&A Act went too far in its attempt to balance the potential hardship and dislocation that could result if landowners or occupiers were required to discontinue uses no longer permitted under current planning controls, against the need to transition to the new and preferred planning regime for the area.

As a result, the amendments to the EP&A Regulation came into effect on 9 February 2007 and extend existing use rights generally as follows:

- Where there is an existing commercial use, then that use can be changed to another commercial

use including one that would otherwise be prohibited under the EP&A Act.

- If the existing use is a light industrial one, then again this use may be changed to another light industrial use or a commercial use including those that would otherwise be prohibited under the EP&A Act.
- DAs can be approved to give effect to previous approvals relating to the existing use (eg staged consents for building granted prior to 29 March 2006 and fit-outs or detailed design to implement a consent that relied on existing use rights).

The amendment to the EP&A Regulation defines some relevant expressions as follows:

- **Commercial use** means the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument (Local Environmental Plans) Order 2006).

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- **Light industrial use** means the use of a building, work or land for the purpose of light industry (again within the meaning of the Standard Instrument (Local Environmental Plans) Order 2006).

Even though the existing rights provisions have been extended significantly in relation to existing commercial and light industrial uses, there are restrictions which are essentially as follows:

- Alterations or additions must be minor in nature.
- Floor space should not increase by more than 10%.
- The application should not involve the rebuilding of the premises associated with the existing use.
- There should not be significant intensification of the existing use.
- The extension of existing use rights relates only to premises that have a floor space of less than 1,000 square metres.

Time will tell whether there will be more concessions granted to those who benefit from existing use rights.

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Assistance

If we are able to assist you in relation to the matters contained in this Bulletin or other property matters, please contact one of our Property & Construction Practice Group Team:

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