

"NINE COMMANDMENTS" FOR THE NSW PLANNING SYSTEM: PLANNING MINISTER ANNOUNCES FURTHER PLANNING REFORMS

Date: 7 December 2021

Australia Real Estate Alert

By: Larissa Hauser, Kirstie Richards, Luke Salem

Authors' Note: The Planning Principles announced by Minister Stokes were due to commence on 1 March 2022, but were reportedly scrapped by the new Minister Roberts as the new Minister for Planning on 14 March 2022.

The NSW Government recently announced the next stage of NSW's ongoing planning reforms which consist of:

- New ministerial planning principles intended to guide strategic decisions and planning policies; and
- Further consolidation and review of the existing State Environmental Planning Policies (SEPPs).

This article outlines the key reforms to the NSW planning system announced last week.

NINE PRINCIPLES FOR THE PLANNING SYSTEM

On 2 December 2021, the NSW Government released [*The Minister's Planning Principles: A Plan for Sustainable Development*](#). As the Hon. Rob Stokes MP (somewhat immodestly) stated "God gave Moses the 10 Commandments, and today I give the planning system Nine Commandments." The Minister's Planning Principles create a principles-based approach to planning which must be applied to guide strategic planning policies, including State, regional, district and local policies, guidelines, Local Environmental Plans and SEPPs. The Planning Principles are not required to be directly considered by consent authorities when they determine development applications.

The principles seek to achieve the following outcomes across nine policy focus areas:

1. Planning systems: A strategic and inclusive planning system for the community and the environment
2. Design and place: Delivering well-designed places that enhance quality of life, the environment and the economy
3. Biodiversity and conservation: Preserving, conserving and managing NSW's natural environment and heritage
4. Resilience and hazards: Managing risks and building resilience in the face of hazards
5. Transport and infrastructure: Providing well-designed and located transport and infrastructure integrated with land use
6. Housing: Delivering a sufficient supply of safe, diverse and affordable housing

7. Industry and employment: Growing a competitive and resilient economy that is adaptive, innovative and delivers jobs
8. Resources and energy: Promoting the sustainable use of NSW's resources and transitioning to renewable energy
9. Primary production: Protecting and supporting agricultural lands and opportunities for primary production

The central theme of the Planning Principles is "sustainable development" having regard to:

- Social, environmental and economic objectives;
- Connecting with Country; and
- Addressing climate change.

The Planning Principles will be given legal effect by way of a Ministerial direction under section 9.1 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

CONSOLIDATION OF SEPPS

As part of the reforms, the Minister also announced that from 1 March 2022 the 54 existing State Environmental Planning Policies (SEPPs) will be consolidated into just 14 policies which align with the 9 focus areas in the new Planning Principles. This continues and expands the work commenced by the recently consolidated Housing SEPP which commenced on 26 November 2021.

No substantive policy changes have been made to the SEPPs as part of the consolidation. Rather, the provisions within the existing SEPPs have been transferred to the new SEPPs and the intent and provisions remain largely unchanged. Accordingly, the consolidation is aimed squarely at reducing the number of separate planning instruments to improve the usability of the current policies.

More information about the consolidation of SEPPs is available on the Department's website [here](#).

IMPLICATIONS

The changes outlined represent the next stage of NSW's ongoing planning reforms.

It is likely that substantive reforms to the consolidated SEPPs and other planning instruments and policies will follow to give effect to the Minister's Planning Principles.

These further reforms are likely to include new or amended planning controls focusing on key issues such as:

- Achieving net zero emissions by 2050;
- Reducing greenhouse gas emissions "as far as practicable";
- Consultation and participation in design with Aboriginal people;
- Building resilience against natural hazards and risks;
- Increased measures to coordinate development with transport and infrastructure projects; and
- Targets for the supply of housing.

We expect that the Department of Planning, Industry and Environment will implement a consultation process to enable all stakeholders, including industry and developers, to provide feedback before making any material amendments to the consolidated SEPPs to give effect to the new Minister's Planning Principles.

In the meantime, the Minister's Planning Principles are unlikely to give rise to material new appeal risks for Councils who prepare local environmental plans or industry and developers who rely on these to support their development applications in light of the existing privative clause in section 9.1(5) of the EP&A Act which prevents local environmental plans and planning proposals from being legally challenged based on Ministerial directions.

The K&L Gates Planning and Environment team is very experienced in advising on planning issues for major projects and other developments and will be carefully tracking the ongoing progress of the NSW planning reforms.

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