Property NSW– ISEPP Submission

Part /Division	Amendment	Comment/Rationale
Part 2, Division 1 - Consultation	*Clause 15 (2) (b) Omit the paragraph. Insert instead:* *(b) taken into consideration any responses to the notice that are received from the council and State Emergency Service within 21 days after the notice is given.*	There is the potential that the requirement to consult with the SES in addition to a local council could be problematic with respect to nature of notification responses that might be received and the additional and potentially unnecessary requirements that may be placed on a development. Councils are responsible for flood risk planning in their local area and are best placed and qualified to respond on flooding issues. PNSW questions whether it is therefore necessary to notify SES in addition to the local council. This notification requirement may also place additional strain on SES resources.
Part 2, Division 5 – Complying development	*Omit clause 20B (2) (b). Insert instead:* *(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out, and* *Note. Accordingly, development that is permitted to be carried out without consent is not complying development.*	This provision implies that complying development is not available if a development without consent planning pathway exists. This is likely to create confusion, particularly where a division of the SEPP contains both complying and development without consent provisions and a public authority could use either pathway for a particular project (eg for correctional centres). This needs to be clarified so there is no confusion regarding when a public authority can use the complying development provisions.
Part 3 Division 2 – Correctional centres and correctional complexes	Clause 26 Development permitted without consent *Omit "land within a prescribed zone". Insert instead "any land".*	PNSW is supportive of removing the prescribed zone restrictions for existing correctional centres. The legacy of poor strategic planning (or inappropriately zoned land which conflicts with the actual land use) can be problematic in delivering essential public infrastructure.

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	26B Complying development	As per a previous comment (and reference to cl 20B above), PNSW are seeking that ISEPP clarify when clause 26B can be applied. Depending on the scale of the development; *the replacement of, construction of, or alterations or additions to accommodation, administration or other facilities* can be undertaken as development without consent under clause 26 or as complying development under clause 26B. However the proposed changes to cl 20B states that complying development cannot be used when development without consent provisions are available.
Part 3 - Division 6: Emergency and police services facilities and bushfire hazard reduction	Clause 48 (2) (a) Omit the paragraph. Insert instead: *(a) alterations of or additions to an existing police or emergency services facility (other than a police station)*	PNSW is supportive of broadening the range of development that an emergency services organisation is able to undertake to an existing emergency services facility without consent on any land. This will facilitate infrastructure works where the land zoning is inconsistent with the actual land use (ie where the existing facility is not within a prescribed zone).
Part 3 – Division 4: Electricity generating works or solar energy systems	No content related amendment is currently proposed.	Cl 36 (3) (b) restricts development without consent for photovoltaic electricity generating systems to below 100kW. It is recommended that this be expanded to at least 1MW, preferably 2MW, allowing for the considerable efficiency gains of solar photovoltaic technology in recent years. This will also allow government to efficiently pursue development opportunities land that would otherwise be effectively sterile, such as on former land fills. Cl 37 (2) (e) (i) provides that ground mounted solar energy systems may be complying development if it occupies an area of not more than 500sqm. It is recommended that this be increased up to 20,000sqm. It is noted that an area of 500sqm is of no use for even small feasibility projects. These comments are made primarily with former landfills in mind, so perhaps an alternative approach is to consider

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		provisions related directly for former landfill areas (for example, an SP2 zone) and allowing for greater areas for solar energy systems to constitute complying development.
Part 3 Division 12 Parks and other public reserves	Clause 65 (2) (d) Omit the subclause. Insert instead: *(d) on land that is a Crown reserve by or on behalf of the Minister administering Crown Lands Act 1989, the Lands Administration Ministerial Corporation or a reserve trust that is constituted in respect of the reserve and whose affairs are managed by any of the following:* *(i) the Minister administering that Act or the Lands Administration* *Ministerial Corporation,* *(ii) an administrator appointed under section 117 of that Act,* *(iii) a council,*	PNSW is supportive of this amendment which expands the development without consent provisions to Crown reserves and removes the requirement for exempt development to be for the purposes of implementing a plan of management.
	Clause 65 (3) (3) omit the subclause. Insert instead: (3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council: (a) development for any of the following purposes: (i) roads, cycleways, single storey car parks, ticketing facilities, viewing platforms and pedestrian bridges, (ii) recreation areas and recreation facilities (outdoor), but not including grandstands, (iii) information boards and other information facilities (except for visitors' centres),	It is suggested that instead of being restricted to development on behalf of or by a council that this be expanded to include the Crown. There are instances where the Crown may wish to undertake these works and could benefit from such provisions.

Part /Division	Amendment	Comment/Rationale
	(iv) lighting, if light spill and artificial sky glow is minimised in accordance with AS/NZS 1158 Set:2010, Lighting for roads and public spaces, (v) landscaping, including landscape structures or features (such as art work) and irrigation systems, (vi) amenities for people using the reserve, including toilets and change rooms, (vii) food preparation and related facilities for people using the reserve, (viii) maintenance depots used solely for the maintenance of the reserve, (b) environmental management works, (c) demolition of buildings (other than any building that is, or is part of, a State or local heritage item or is within a heritage conservation area) so long as the footprint of the building covers an area no greater than 250 square metres. Note. The term building is defined in the Environmental Planning and Assessment Act 1979 as including any structure.	
Division 13 Port, wharf or boating facilities	Clause 68 development without consent	Whilst it is clear under clause 68 that dredging an existing navigation channel for safety reasons is permissible without consent, the ISEPP is silent as to whether the disposal of material resulting from the dredging activity is also permissible without consent. It would be beneficial to have a provision under this division to clearly identify that disposal of dredged material either offshore, nearshore or on land (beach nourishment) can be undertaken as development without consent, without needing to rely on the provisions in Division 25, which do not always adequately capture the disposal of dredged material.
	Clause 77 Development permitted without consent	PNSW is supportive of broadening the range of development for the purposes of a public administration

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Division 14 Public administration buildings and buildings of the Crown	Omit clause 77 (1) (a). Insert instead: *(a) alterations of or additions to a public administration building,*	building that can be undertaken without consent on any land. This will better streamline infrastructure delivery via the Part 5 planning pathway and limit the need for DA consent through local councils.
	77A Exempt development – inclusion of new exempt development provisions	PNSW is supportive of the change of use from commercial to public administration as exempt development.
Part 2 - Division 17 Roads and traffic, Subdivision 2 and Schedule 3	Omit clause 104 (2). Insert instead *(2A) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has:* *(a) given written notice of the intention to carry out the development to* *RMS in relation to the development, and* *(b) taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.* Add a requirement to notify RMS for certain traffic generating development which is permitted without development consent, including the following: *(a) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3*	This amendment requires notification to RMS for any development of any size or capacity that has direct pedestrian or vehicle access or a connection within 90m to a classified road. Changing the threshold for development for 'any other purpose' from 200 or more vehicles to 'any size or capacity' will capture a lot of development (including minor development) that it may not have intended to. It would essentially mean that any development adjacent to a classified road would need to seek notification to RMS. It is suggested that this be revised to include a threshold (as per the existing provisions) to prevent onerous notification requirements. It is suggested that the requirements for educational establishments be removed from Schedule 3 as this is addressed in the new Education SEPP and thus avoids duplication.
Division 18 Sewerage systems	Clause 106 development permitted without or without consent	PNSW proposes that a new clause be included to facilitate development to existing STPs or biosolid treatment facilities which do not fall within prescribed zones. There are many examples in regional NSW where STPs have been zoned

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		inappropriately under LEPs. In most circumstances a LEP amendment can be the only way to facilitate works to an existing plant. It is therefore suggested that STP be afforded the same flexibility as other infrastructure (ie correctional centres), to undertake works to existing facilities without being constrained by prescribed land zones. It is suggested that the following additional provision be included under clause 106; *Development for the purpose of sewage treatment plants or biosolids treatment facilities may be carried out by or on behalf of a public authority or any person licensed under the Water Industry Competition Act 2006 without consent on any land if it is in connection with an existing sewage treatment plant or biosolids treatment facility*
	Omit clause 107 (c) (viii). Insert instead: *(viii) maintenance or replacement of sewerage system components other than for the purpose of substantially increasing capacity*,	Whilst PNSW strongly supports the maintenance of sewerage systems as exempt development, it is requested that a definition or guidance is provided on *substantially increasing capacity*, as this has the potential for large STP upgrades to occur as exempt development.
Division 23 Waste or resource management facilities	Not related to proposed amendment.	It is recommended that strong consideration be given to inserting a 'development permitted without consent' clause within this division. PNSW recommend that this clause contains a reference to having waste or resource transfer stations being permitted without development consent in particular zones; for instance, within light industrial and heavy industrial zones. Over the next few years, State involvement in the waste industry will be especially dynamic and this added provision would aid in ensuring swift and efficient action can be undertaken.

Part /Division	Amendment	Comment/Rationale
		It is recommended that recreational uses be permitted on former landfills that have been rehabilitated. The contents of such an amendment may be included in this division or division 12. Currently, such proposals usually have to go through local council which can be a timely, expensive and inefficient process, despite benefiting from Crown development provisions. The inefficiencies typically relate to the relationship between EPA requirements (such as monitoring, water drainage) and the desires of council which can be incompatible despite seeking the same ultimate objective.
		Clause 123 (c) should include former landfill cells as a relevant consideration for the determination of a landfill application. Given the spatial constraints of Sydney, it is a very real possibility that former landfills are considered for 'reopening' with expanded capacity.
Division 24 Water supply systems	Clause 125 Development permitted without consent *(3A) Development for the purpose of water treatment facilities may be carried out by or on behalf of a public authority without consent on land in a prescribed zone.*	PNSW proposes that a new clause be included to facilitate development to existing water treatment facilities which do not fall within prescribed zones. There are many examples in regional NSW where WTPs have been inappropriately zoned under LEPs. In many circumstances a LEP amendment can be the only way to facilitate works to an existing plant. It is therefore suggested that WTP be afforded the same flexibility as other infrastructure (ie correctional centres), to undertake works to existing facilities without being constrained by prescribed land zones. It is suggested that the following additional provision be included under clause 125; *Development for the purpose of water treatment facilities may be carried out by or on behalf of a public authority without consent on any land if it is in connection with an existing water treatment facility*

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	(3B) Routine maintenance works for the purpose of water treatment facilities may be carried out by or on behalf of a public authority without consent on land in any zone.	It is noted that routine maintenance works for the purpose of a water supply system are permitted as exempt development under Clause 127. It is not known what 'routine maintenance works' this amendment is intended to capture given the existing exempt development provisions. PNSW are thus seeking clarification in this regard. The new clause suggested for inclusion (see previous comment) would capture (as development without consent) works to existing WTPs on any land where they do not meet exempt development criteria.
	Clause 127 (l)–(m2) Omit clause 127 (l) and (m). Insert instead: *(m) maintenance or replacement of components of water supply systems other than for the purpose of substantially increasing capacity,*	Whilst PNSW strongly supports the maintenance of water supply systems as exempt development, it is requested that a definition or guidance is provided on *substantially increasing capacity*, as this has the potential for large upgrades to occur as exempt development.