NSW GOVERNMENT

Review of the Environmental Planning and Assessment Regulation 2000

Issues Paper
September 2017

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Foreword

This issues paper seeks feedback from stakeholders to inform the Government's review of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

It has been seventeen years since the Regulation was first made and it has been amended on over 40 occasions since then. It is now due for a comprehensive review. This is an opportunity to remove any unnecessary complexities or outdated rules which make the system hard to use.

This review follows proposed changes to the Regulation's parent act, the *Environmental Planning and Assessment Act 1979* (EP&A Act). While the EP&A Act provides the overarching framework for the planning system in NSW, the Regulation supports the day-to-day requirements of this system. It supplements the broader provisions of the Act, and covers matters such as local environmental plans and development control plans, which are used by councils to manage growth and development through the use of land use zoning, development standards and other planning mechanisms. It also contains key operational provisions relating to the development assessment and consent process, requirements associated with development contributions, and fees for planning services.

Earlier in 2017, we asked for views on proposed updates to the EP&A Act. The amendments, which are expected to be considered by Parliament later this year, will help to create a planning system that enhances community participation, promotes strategic planning, increases probity and transparency in decision-making, and makes the planning system simpler and faster for all participants.

This will allow NSW to better accommodate growth, new housing, and economic development across the state, while protecting the environment.

The Department of Planning and Environment is considering feedback on these proposed changes from industry, community members and expert practitioners – council staff, planners, lawyers and consultants – about how to best implement the changes. This feedback is helping us to ensure the changes work in practice, and are flexible enough to meet the needs of different stakeholders.

At the same time, we are proceeding with a review of the Regulation. This review will provide a basis for a new Regulation that complements the updates to the EP&A Act.

We look forward to receiving your feedback, to help us to modernise the Regulation and make the planning system easier to navigate for all.

Anthony Roberts
Minister for Planning
Minister for Housing
Special Minister of State

Introduction

Overview of the current legislative framework

The EP&A Act is the primary legislation covering land use planning and development assessment in NSW. The Act sets out a framework which, among other things:

- Creates a system of land use plans and planning instruments that provide the context and rules for decision-making about development
- Makes local councils and the State Government jointly responsible for the preparation of those plans and the assessment of development
- Establishes assessment processes to suit the type and significance of development — from small-scale works to regionally and state significant development
- Ensures construction of development can be certified against set standards.

The Regulation is the EP&A Act's primary subordinate legislation. It commenced on 1 January 2001 and is due for review.

The Regulation contains key operational provisions for the NSW planning system, including those relating to:

- Planning instruments, including requirements and procedures for planning proposals and procedures for making and amending development control plans
- Procedures relating to development applications for local development and complying development certificates
- Existing uses and designated development
- Requirements for environmental assessment under Part 5 of the Act and applications for state significant infrastructure
- Environmental impact statements (requirements that apply to designated development, state significant development, state significant infrastructure, and certain other activities under Part 5 of the Act)
- Building regulation and subdivision certification, including provisions for construction certificates, occupation certificates and subdivision certificates, as well as fire safety and Building Code of Australia (BCA) matters
  - Note: the review of the Regulation will not examine these building and certification provisions, as broader building regulation reforms are being pursued separately (see 'Related initiative' Box 1 for further information)
- Fees and charges, including for development applications and building certificates, as well as other planning services
- Development contributions, including the preparation of contributions plans
- Planning certificates which provide information about land
- Other miscellaneous matters, including amounts for penalty notices (or fines) that may be issued for breaches of EP&A Act and the Regulation, provisions for planning bodies (the Planning Assessment Commission and Independent Hearing and Assessment Panels), development by the Crown, and record keeping requirements for councils.

This review of the Regulation follows on from a broader review of the EP&A Act, which will also result in some consequential changes to the Regulation (subject to the passage of the Environmental Planning and Assessment Bill 2017 through Parliament later this year). This will include elevating some regulatory provisions relating to community participation and the Planning and Assessment Commission to the EP&A Act. More information on the proposed updates to the EP&A Act can be found at: www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates.

Box 1: Related initiative – Reforms to strengthen NSW's building regulation and certification system

The Government is fast tracking reforms to building regulation by pursuing a separate package of amendments to the building regulation and certification provisions in the Regulation. The amendments will be subject to separate consultation, and will confirm the Government's commitment to achieve a better building regulation system for NSW and address safety issues relating to new and existing buildings.

The reforms are part of delivering on the Government's response to the Independent Review of the *Building Professionals Act 2005* (the Lambert Review). Further information on the Lambert Review, including the Government's response, can be found on the Department's website: www.planning.nsw.gov.au/Policy-and-Legislation/Buildings/Building-Regulation-and-Certification-Reform?acc_section=certifier_regulation_reform.

Key fire safety reform documents can also be accessed on the Department's website, at the above link.

Objectives of the review

The review of the Regulation presents an opportunity to build on the proposed changes to the EP&A Act and further improve the architecture of the planning system.

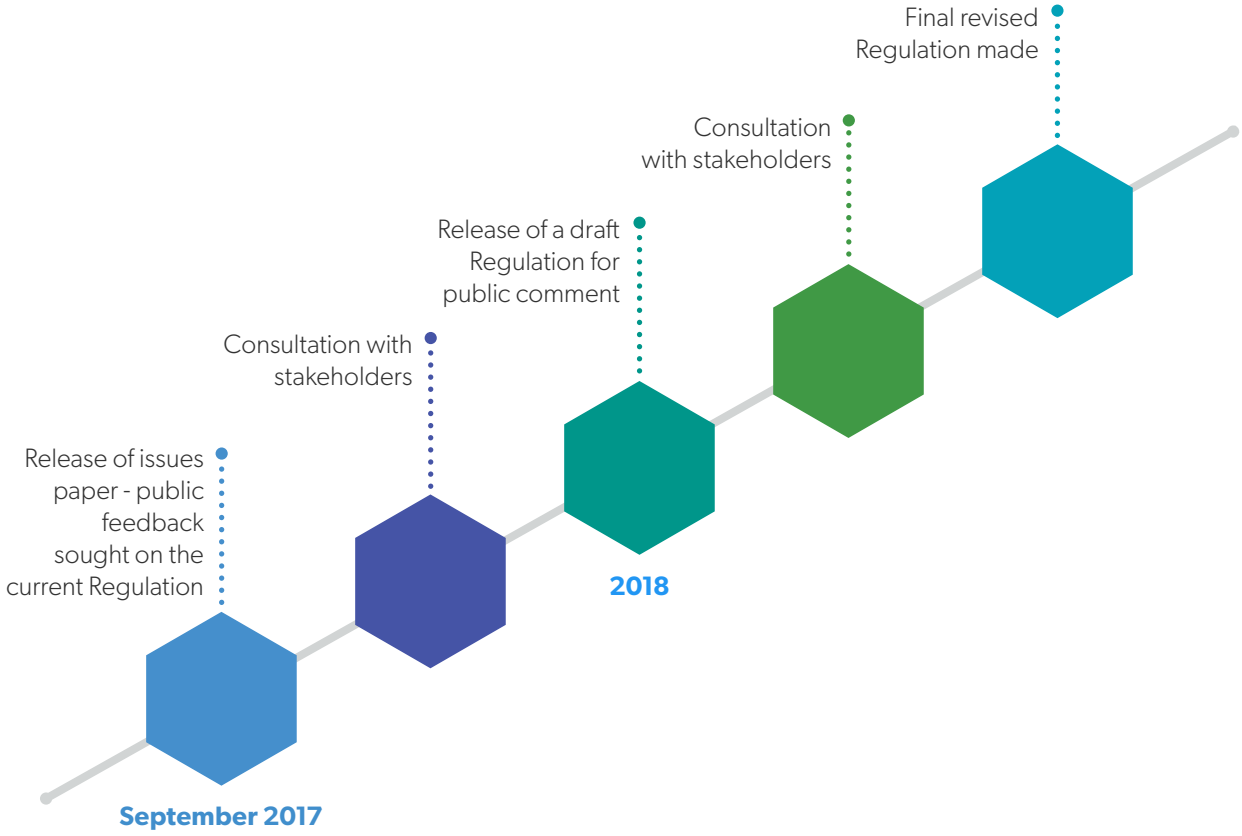
The objectives are to undertake a comprehensive review of the Regulation in order to:

- Reduce administrative burden and increase procedural efficiency
- Reduce complexity
- Establish a simpler, more modern and transparent planning system.

Stakeholder guide – responding to the issues paper

As a first step, the Department is seeking feedback from stakeholders on the current Regulation. Feedback received in response to this issues paper will be used to inform the preparation of a draft Regulation, which will be released for consultation in 2018. The key steps for the review of the Regulation, and the opportunities for stakeholders to provide input, are set out below.

Opportunities for stakeholder input



Questions to consider

The questions below have been included to provide guidance on the type of feedback the Department is seeking in relation to the current Regulation. However these are not exhaustive – we are interested in receiving any feedback you may have on the Regulation.

- Are there known issues or inefficiencies to address?
- Can the provisions be reformed to better achieve the objects of the EP&A Act and the Government's relevant policy priorities, including:
  - increasing housing supply to meet current and future needs of the State
  - facilitating faster and more efficient housing approvals, including through the uptake of the complying development pathway.
- Can the provisions be simplified, consolidated, or otherwise reformed to reduce regulatory and administrative burden?
- Are there digital solutions which could be used to make requirements easier to meet?

Box 2: Objects of the EP&A Act

The objects of the EP&A Act are:

- *To encourage:*
  - *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment*
  - *The promotion and co-ordination of the orderly and economic use and development of land*
  - *The protection, provision and co-ordination of communication and utility services*
  - *The provision of land for public purposes*
  - *The provision and co-ordination of community services and facilities, and*
  - *The protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
  - *Ecologically sustainable development, and*
  - *The provision and maintenance of affordable housing*
- *To promote the sharing of the responsibility for environmental planning between the different levels of government in the State*
- *To provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The draft Environmental Planning and Assessment Bill 2017 (exhibited in January this year) proposes some updates to modernise these objects. These updates are not intended to change the intent or effect of the objects, except for the inclusion of new objects in relation to heritage and good design. For more information on the proposed updates to the objects of the EP&A Act, visit www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates.

Box 3: How to make a submission

You can make a submission to provide feedback on the current Regulation in two ways. These are:

1. Complete the online feedback form available on the Department's website using the link www.planning.nsw.gov.au/regulationreview.
2. Email or forward a written submission to the Department at Regulation.Review@planning.nsw.gov.au.

Context – understanding the assessment pathways in the NSW planning system

The diagram on the next page describes the main planning assessment pathways in NSW.

This is provided to assist stakeholders in understanding the terminology used in this paper, the provisions of the current Regulation, and the issues that have been identified.

Box 4: The assessment pathways in the NSW planning system

Exempt development

Many types of minor renovations and small building projects don't need planning approval. This is called exempt development.

Development without consent

Some other types of development don't require a planning approval, but may still need another licence or permit from a public authority, and may need to undergo an environmental assessment.

This includes some low impact or routine activities such as development carried out by a public authority as part of its everyday responsibilities.

Complying development

Certain low impact development (e.g. alterations to residential dwellings) can be fast tracked for approval and don't require detailed assessment.

The development must meet specific criteria and requires a complying development certificate, which can be issued by a council or a private certifier.

Local development

Local development is all other development which is not classified as exempt or complying under the relevant Local Environmental Plan, and is not of regional or state significance. Local development is assessed by the council.

Some local development in Greater Sydney and Wollongong may be assessed by an IHAP.

Integrated development

Integrated development refers to local development which also requires a licence, permit or other approval from a public authority before consent can be granted e.g. aquaculture.

Designated development

Designated development is a category of local development which is subject to a higher level of assessment and scrutiny due to the potential risk it poses to the environment.

Depending on the capital investment value (CIV) and intensity of the development, it may instead be declared to be state significant development.

Regional development

This refers to development that is deemed to be regionally significant, due to its size, economic value or potential impacts. Extractive industries, waste facilities and marinas that are designated development also fall into this category.

Regional development is assessed by the local council and then determined by the relevant Joint Regional Planning Panel.

Updates to the EP&A Act have been proposed to refresh the thresholds for regional development, www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates.

State significant projects

Some large developments and infrastructure projects are deemed to be state significant due to their size, economic value or potential impacts. These applications are assessed by the Department and fall into one of two categories (see below).

State significant development (SSD)

Examples of SSD include educational facilities, large mining and extracting operations, and other developments which exceed a certain CIV or are in an environmentally sensitive area.

State significant infrastructure (SSI)

Examples of SSI include pipelines, water storage and treatment plants and road or rail infrastructure.

Existing Part 3A development

This refers to a historical type of development which is now classified as SSD or SSI. Part 3A was repealed in 2011, with transitional arrangements put in place. The Department's proposed amendments to the EP&A Act seek to end these transitional arrangements.

How to use this document

Box 5 outlines the overall structure of this issues paper, which is divided into:

- An introductory section examining opportunities to update the Regulation generally
- Sections examining existing provisions and identifying known issues with specific provisions of the Regulation.

Box 5: Structure of the Issues Paper

Sections as they relate to parts of the current Regulation Title of section:	Relates to:
This part of the issues paper relates to all aspects of the Regulation.	• Discusses opportunities to: – Modernise outdated provisions – Update definitions – Remove redundant provisions – Simplify and consolidate existing regulatory provisions as appropriate – Employ digital solutions to make requirements easier to meet.
Examining existing provisions and identifying known issues	
This part of the issues paper is broken down into sections relating to discrete parts of the Regulation, as outlined in Box 5 *Sections as they relate to parts of the current Regulation*.	• Outlines the key operational provisions of the current Regulation and seeks: 1. Stakeholder views on known issues with the current Regulation 2. Stakeholder feedback to help identify and provide feedback on other issues, including suggestions to: – Improve the function of key operational provisions – Reduce unnecessary regulatory and administrative burdens – Better achieve the Government's policy objectives.
Sections as they relate to parts of the current Regulation **Title of section:**	**Relates to:**
1. Planning instruments	• Part 2 Environmental planning instruments • Part 3 Development control plans.
2. Development assessment and consent Note: this section covers: • Local development • Regional development • State significant development (SSD), and transitional Part 3A projects.	• Part 1A Transitional Part 3A projects • Part 5 Existing uses • Part 6 Procedures relating to development applications • Schedule 1 Forms • Part 7 Procedures relating to complying development certificates • Part 13A Supplementary provisions for development requiring consent • Schedule 3 Designated development.

Box 5: Structure of the Issues Paper (cont.)

Sections as they relate to parts of the current Regulation Title of section:	Relates to:
3. Environmental assessment	• Part 10 state significant infrastructure • Part 14 Environmental assessment under Part 5 of the Act • Schedule 2 environmental impact statements (EISs). Note: Environmental impact statements are mandatory for state significant development, state significant infrastructure and designated development. An EIS may also required for other activities that are assessed under Part 5 of the Act.
4. Environmental assessment	• Part 10 state significant infrastructure • Part 14 Environmental assessment under Part 5 of the Act • Schedule 2 environmental impact statements (EISs). Note: Environmental impact statements are mandatory for state significant development, state significant infrastructure and designated development. An EIS may also required for other activities that are assessed under Part 5 of the Act.
5. Development contributions	• Part 4 Development contributions.
6. Fees and charges	• Part 15 Fees and charges.
7. Planning certificates	• Schedule 4 Planning certificates.
8. Environmental assessment	• Part 10 state significant infrastructure • Part 14 Environmental assessment under Part 5 of the Act • Schedule 2 environmental impact statements (EISs). Note: Environmental impact statements are mandatory for state significant development, state significant infrastructure and designated development. An EIS may also required for other activities that are assessed under Part 5 of the Act
9. Miscellaneous operational and administrative provisions	• Part 13 Development by the Crown • Part 16 Registers and other records • Part 16A Provisions arising from commencement of *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* • Part 16B Planning bodies • Part 16C Paper subdivisions • Part 17 Miscellaneous • Schedule 3A Entertainment venues • Schedule 5 Penalty notice offences • Schedule 6 Special provisions relating to ski resort areas • Schedule 7 Savings and transitional provisions.

.Note: the review of the Regulation will not examine the building regulation and certification provisions in Part 8 (Certification of development), Part 9 (Fire safety and matters concerning the Building Code of Australia), or Part 12 (Accreditation of building products and systems), as broader building regulation reforms are being pursued separately (see 'Box 1: Related initiative' on page 4 for further information).

A more modern and accessible Regulation

The Regulation has not been comprehensively reviewed since it came into effect in 2001. As a result, it contains a number of outdated provisions and requirements that are no longer necessary.

Part of making the NSW planning system easier to use is updating these provisions and improving the structure of the Regulation. To help achieve this, the review will consider a range of updates and other housekeeping and structural changes, such as to:

- Simplify provisions to reduce administrative burden
- Standardise and consolidate provisions governing the administration of the planning system
- Update definitions and preliminary provisions in Part 1 of the Regulation
- Remove redundant provisions
- Update the numbering and names of parts, divisions, sections and schedules
- Refine some terms and definitions to clarify policy intent
- Update provisions to reflect advancements in technology, innovation, and communication methods, and the NSW Planning Portal, which provides online access to planning information, tools and services.

Box 6: Making a submission on a planning matter

Under the EP&A Act, interested members of the community can make submissions to planning authorities in relation to a range of planning matters, including individual development applications and planning instruments (e.g. local environmental plans).

While submissions are generally made by email, by post or online (e.g. via the Department's website), advancements in technology and communication methods mean that feedback on planning and development proposals can be provided in increasingly diverse ways.

The review of the Regulation provides an opportunity to outline the process and methods (or channels) for making a formal submission to a planning authority, including to clarify what requirements need to be met to ensure the submission is considered. This could include requirements for submissions to be made in writing, to be clearly marked as a submission and to include the submitters full name.

We want your feedback on the issue in Box 6, but also to help identify provisions in the Regulation which you think are outdated, administratively burdensome, or are no longer necessary.

For example, this could include unnecessary reporting requirements or provisions which have been superseded by the introduction of e-planning services or other advances in technology, innovation, and communication methods. The review provides an opportunity to update and simplify these types of provisions, including by using the NSW Planning Portal to improve accessibility of planning documents and reduce administrative burden.

Box 7: Examples of outdated/administratively burdensome provisions

Examples of outdated or administratively burdensome provisions in the Regulation include:

- Requirements for consent authorities to post notices of determination to submitters, where they have not opted to be contacted by email. This places a significant burden on consent authorities, who need to print and post a large number of documents to each submitter. The Regulation could instead allow for this notification to occur via email, with applicants and submitters invited to view the documents online via the Planning Portal. *See clauses 100 and 101 of the Regulation, and a more detailed explanation of this issue in section 2.5 of this paper.*
- Requirements for councils to maintain a copy of final voluntary planning agreements (known as VPAs) at their offices, rather than on the Planning Portal. *See clause 25F of the Regulation and section 5.2 of this paper.*
- Requirements for copies of environmental impact statements (EISs) and proposed modifications to state significant development to be made available for public inspection at the Sydney office of the Environment Centre (New South Wales) Pty Ltd (now known as the Nature Conservation Council). While any community organisation can house copies of these types of documents at their offices, it is probably unnecessary to have a regulatory requirement relating to one particular environmental group. EISs and other material associated state significant developments can already be accessed at the Department's offices and through the Planning Portal. *See clauses 235(c) and 240(d) of the Regulation.*

Are there other examples of outdated or administratively burdensome provisions that you've come across? Please let us know by making a submission.

Box 8: Related initiative - NSW Planning Portal and ePlanning Amendment Regulation

The NSW planning database has been established as an electronic repository of planning information, and the NSW Planning Portal is designed to be a single point of contact for advice, guidance, tools and services to help the community navigate and engage with the planning system.

In February this year, the draft Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017 (ePlanning Amendment Regulation) was released for public consultation. The ePlanning Amendment Regulation proposes changes to the Regulation to support online lodgement of development applications and online notification and publication of development control plans and contributions plans via the NSW Planning Portal.

More information on the NSW Planning Portal and the ePlanning Amendment Regulation can be found at www.planningportal.nsw.gov.au.

Examining existing provisions and identifying known issues

This part of the issues paper outlines the key operational provisions of the current Regulation and sets out known issues with the current Regulation. We want your feedback on these issues, and we also want your help to identify and provide feedback on other issues. This could include suggestions to improve the function of key operational provisions, reduce unnecessary regulatory and administrative burdens, and better achieve the objects of the Act (these are outlined on page 6).

1. Planning instruments

The key land use planning instruments in NSW are environmental planning instruments (EPIs). The EP&A Act provides for two types of EPIs:

- Local environmental plans (LEPs), which deal with local planning matters and are prepared by relevant planning authorities (mainly councils and the Greater Sydney Commission) and made by the Minister
- State environmental planning policies (SEPPs), which deal with matters of state or regional significance and are prepared by the Minister and made by the Governor.

EPIs may be made for the purpose of achieving any of the objects of the EP&A Act, including by making provision for protecting the environment, controlling development, reserving land for public purposes and providing, maintaining, retaining, and regulating affordable housing.

The Act also provides for supplementary planning documents such as development control plans (DCPs). Unlike EPIs, DCPs are not legally binding, but can be prepared by councils to support and provide guidance on planning controls contained in EPIs. DCPs may identify more detailed development controls and standards for addressing development issues at a local level and achieving the aims of an EPI. These plans can be applied more flexibly than LEPs.

Box 9 outlines the provisions of the Regulation that are relevant to planning instruments.

Box 9: Provisions relating to planning instruments in the current Regulation

Environmental planning instruments

The Regulation contains limited provisions in relation to EPIs, as the Act prescribes the process for preparing, publicly exhibiting, making, reviewing and amending these instruments. The provisions are in Part 2 of the Regulation and include:

- Provisions to allow a joint regional planning panel (JRPP) to be a relevant planning authority for a proposed LEP
- A requirement for planning proposals identifying land for reservation to obtain concurrence of the public authority designated in a proposed LEP as being responsible for its acquisition
- Notification requirements where a council does not support a written request for the preparation of a planning proposal under Part 3 of the Act
- Provision for a relevant planning authority's costs and expenses of undertaking studies and other matters relating to a planning proposal to be dealt with via an agreement with the person who requested preparation of the planning proposal
- The continuation of former provisions for making and amending LEPs and various other saving and transitional provisions for EPIs, including clarification of the status of regional environmental plans (which are now deemed to be SEPPs under the Act).

Development control plans

While the Act outlines the purpose and status of DCPs, and their relationship to EPIs, the procedures for preparing, publicly exhibiting, making and amending DCPs are prescribed in the Regulation, along with other ancillary matters.

Specifically, Part 3 of the Regulation outlines:

- The prescribed form and content requirements of a DCP
- Public exhibition, public access and public submission provisions for a draft DCP
- Procedural requirements for a DCP to be made, amended, repealed, revoked and made available to the public and the Secretary
- Provisions for councils to request further DCP-related information and DCP assessment and preparation fees from landowners (for DCPs prepared by or on behalf of landowners under section 74D of the Act).

Box 10: Related initiative – Standard format Development Control Plans

The current variations in structure and format between DCPs can make them difficult to understand and apply. Such variations also limit the opportunity to embed DCP controls in the NSW Planning Portal alongside other planning controls, such as those included in LEPs.

To address this complexity and confusion, updates to the EP&A Act have been proposed to require DCPs to follow a standard format. This will improve consistency across local councils and improve user navigation of the planning system and its controls. It will also allow DCPs to be spatially represented on the NSW Planning Portal. A standard format for DCPs will be a critical step to reducing red tape for industry and increasing transparency for the community.

The Department will work with councils to develop an approach to how the standard format DCP could be implemented, to ensure DCPs have the right balance of consistency and flexibility to capture local contexts. This work will investigate how statewide and locally specific provisions could be constructed, and develop an appropriate online platform using the NSW Planning Portal.

Further information on this initiative can be found in the Summary of Proposals document exhibited with the draft Environmental Planning and Assessment Bill in January this year, www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates.

Issues relating to planning instrument provisions

1.1 Notification of determination

Where a council does not support a written request for the preparation of a planning proposal under Part 3 of the Act, it must notify the person in writing as soon as practicable. To provide greater certainty to the person applying, the review could consider prescribing a time period for giving this notice.
See clause 10A of the Regulation.

1.2 Requirements for exhibition of DCPs

After considering any submissions about a draft DCP, the Regulation allows a plan to be approved with any 'such alterations as the council thinks fit'. To improve transparency, the review could consider a requirement for the re-exhibition of an amended plan in certain circumstances. For example, re-exhibition could be required where amendments substantially alter the form or objectives of the draft DCP.
See clause 21 of the Regulation.

2 Development assessment and consent

Development that requires consent is assessed and determined under Part 4 of the EP&A Act. Box 11 outlines the provisions of the Regulation that are relevant to the development assessment and consent process, both for major projects (state significant development and transitional projects under Part 3A of the Act) and local development.

As state significant infrastructure and certain other activities are assessed under Part 5 of the EP&A Act, the assessment process for these activities is outlined in the following section of the paper (section 3).

Box 11: Provisions relating to the development assessment and consent process in the current Regulation

The provisions that are central to the development assessment and consent process can be found in:

- Part 1A which sets out procedures for assessing project and concept plan applications for transitional projects under Part 3A of the Act
- Part 6 which sets out development application procedures for development assessed under Part 4 of the Act, including provisions relating to:
  - Public participation
  - Rejection of development applications
  - Withdrawal of development applications
  - Requests for additional information
  - Procedures for amending a development application
  - For development applications relating to mining or petroleum development on strategic agricultural land—requirements for a gateway certificate or a site verification certificate
  - Development applications requiring concurrence
  - Development applications for integrated development
  - Prescribed timeframes for development application procedures
  - Extension, completion and modification of development consents
  - Procedures for calling in development as state significant development
  - Additional matters that consent authorities must consider when determining development applications in accordance with section 79C (1) (a) (iv) of the Act.
- Schedule 1 which sets out information and documentation requirements for development applications and complying development certificates
- Schedule 3 which lists classes of designated development
- Part 7 which sets out procedures for complying development.

Other relevant provisions are contained in:

- Part 5, which relates to the regulation of existing uses under section 108 (1) of the Act, with respect to:
  - The carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use
  - The change of an existing use to another use
  - The enlargement or expansion or intensification of an existing use.
- Part 13A, which includes requirements to erect and maintain signage on sites where works are being undertaken pursuant to a development consent or complying development certificate.

Issues relating to development assessment and consent provisions

2.1 Prescribed policy guidance documents for state significant development

For state significant development, the current Regulation does not require an environmental impact assessment to consider factors referred to in applicable guidelines. Instead, consideration of these guidelines is generally required through the Secretary's Environmental Assessment Requirements (SEARs) for a particular project.

The review could consider introducing a regulatory requirement to ensure proponents for state significant developments consider and comply with key guidelines at an early stage (e.g. as part of the proponent's request for SEARs). This would streamline assessment requirements and provide more certainty to proponents around how particular issues are likely to be approached in the assessment and determination process, in advance of a request for SEARs. This would still allow project-specific SEARs to require consideration of additional relevant guidelines, to ensure that the level of environmental assessment of scrutiny is not reduced.

2.2 Provision for a modification application to be rejected or withdrawn

The Regulation allows a consent authority to reject a development application in certain circumstances, as outlined in clause 51. It also allows an applicant to withdraw a development application at any time prior to its determination, in accordance with clause 52.

These provisions do not currently extend to modification applications. The review provides an opportunity to address this gap, to provide an avenue for the formal rejection or withdrawal of these applications in appropriate circumstances.

2.3 Provision to allow for the surrender of a development consent or a Part 3A approval where one or more landowners do not consent

The surrender of a development consent or a transitional Part 3A approval requires consent of the landowners. This can be overly onerous, and sometimes impossible, where the making of the original development application did not require the owners' consent. For example, where the development application was for 'public notification development' under clause 49 of the Regulation, or consent was not required under clause 8F of the Regulation.

This causes an issue if more than one approval applies to the same activity on the same area of land. *See clauses 97 and 8P of the Regulation.*

2.4 Locating public exhibition requirements

Changes to the EP&A Act have been proposed to include mandatory community participation requirements, including minimum public exhibition requirements for development applications. These mandatory minimum requirements will be included in the Act itself, and will apply where a stricter minimum exhibition requirement is not already in place for a particular type of development.

There are currently a number of public exhibition requirements which apply to specific types of development (e.g. aquaculture), and are spread across a range of different instruments, including various State Environmental Planning Policies and the Regulation.

The review of the Regulation will consider streamlining and consolidating these requirements for greater clarity and ease of access.

Further information on the proposed community participation provisions can be found in the Summary of Proposals document exhibited with the draft Environmental Planning and Assessment Bill in January this year, www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates.

2.5 Requirements for notices of determination

Section 83 of the EP&A Act provides that a consent to a development application becomes effective and operates from the date endorsed on the notice of determination, which must be provided to the applicant and all submitters.

The requirements for what a notice of determination is to contain are set out in clauses 100 and 101 of the Regulation.

Box 12: Requirements for a notice of determination (clauses 100 and 101 of the Regulation)

Clauses 100 and 101 of the Regulation require the following information to be included in a notice of determination:

- The registered application number
- Whether the application has been granted or refused
- The conditions imposed under section 80A
- The reasons for the conditions
- The relevant plans endorsed by the consent authority
- The date on which the determination was made
- The date from which the development consent operates
- The date on which the development consent lapses
- Whether the applicant has a right to request a review under section 82A
- If the development involves a building but does not require a construction certificate, the class of building under the National Construction Code
- Whether the Planning Assessment Commission (PAC) has held a public hearing
- Other approval bodies which have given approval under section 93
- Whether the applicant has a right of review or a right of appeal against the determination
- Whether the objector has a right of appeal against the determination
- Where a section 94 or section 94A condition has been imposed, the specific public amenity or service in respect of which the condition is imposed (for section 94 conditions), the contributions plan or the reason why there is not contributions plan, the address where the contributions plan may be inspected.

These requirements are overly prescriptive and place a significant burden on consent authorities where submitters have not indicated that they can be contacted by email in accordance with section 153(1)(c) of the EP&A Act. In practice, this means that consent authorities need to print and post a large number of documents separately to each submitter.

The review could look at streamlining these requirements and allowing for this notification to occur via email, with applicants and submitters invited to view the notice of determination and the most relevant documents online via the Planning Portal.

The proposed updates to the EP&A Act would require all decision-makers to publish reasons for their decisions. This practice will provide greater transparency around how planning decisions are made and how community views have been taken into account, and may reduce the need for a number requirements in Box 12. The Department could consider requiring these reasons to be included in the notice of determination.

2.6 Notification of internal review decision

Clause 123G provides that, after a council determines an internal review under section 82A of the Act, written notice of the result must be provided to the applicant as soon as practicable. The Regulation does not currently require the council to notify any person who made a submission of the result of the review.

An amendment to include such a requirement could be considered as part of the review.

2.7 Classes of designated development

Designated development refers to high impact developments (e.g. those that are likely to generate pollution) or developments located in or near an environmentally sensitive area (e.g. a wetland). There are two ways a development can be categorised as designated development:

- The class of development can be listed in Schedule 3 of the Regulation as being designated development, or
- A Local Environmental Plan (LEP) or State Environmental Planning Policy (SEPP) can declare certain types of development to be designated.

If a development application is categorised as designated development, it is subject to a higher level of assessment and scrutiny due to the potential risk it poses to the environment. Specifically, a development application for designated development:

- Must be accompanied by an environmental impact statement (EIS)
- Must be publicly exhibited for at least 30 days
- Can be the subject of a merits appeal to the Land and Environment Court by objectors.

Examples of designated development include chemical factories, livestock intensive industries (e.g. feedlots and piggeries), large marinas, aircraft facilities, quarries, mining operations, and sewerage treatment works. In some cases, depending on the capital investment value and intensity of the development, it may otherwise be declared to be state significant development.

Historically, the classes of designated development under Schedule 3 of the Regulation corresponded closely to the activities listed in Schedule 1 of the *Protection of the Environment Operations Act 1997* (POEO Act), which require an environmental protection licence.

The review provides an opportunity to consider whether the current classes of designated development in Schedule 3 remain appropriate, and to review the level of alignment between these activities and those listed in Schedule 1 of the POEO Act.

2.8 Definition of an environmentally sensitive area in Schedule 3

As mentioned above, proximity to an environmentally sensitive area can trigger certain types of development to be classified as designated development under Schedule 3. This schedule of the Regulation defines the term 'environmentally sensitive area' to include:

(a) Land identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitat, plant communities, escarpments, wetland or foreshore or land protected or preserved under *State Environmental Planning Policy No 14—Coastal Wetlands or State Environmental Planning Policy No 26—Littoral Rainforests*, or

(b) Land reserved as national parks or historic sites or dedicated as nature reserves or declared as wilderness under the *National Parks and Wildlife Act 1974*, or

(c) An area declared to be an aquatic reserve under Division 2 of Part 5 of the *Marine Estate Management Act 2014*, or

(d) Land reserved or dedicated within the meaning of the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or

(e) Land declared as wilderness under the *Wilderness Act 1987*.

In addition, for certain types of projects, Schedule 3 also lists specific locations or environmental features that apply to make the proposal designated development. For example, any commercial poultry farm that requires development consent and is within a drinking water catchment will become a designated development, regardless of the size of the operation.

The Department would like to seek feedback from stakeholders on whether:

- The definition of 'environmentally sensitive area' in Schedule 3 remains appropriate
- The use of specific locations or environmental criteria for some classes of development should continue.

3 Environmental assessment

Environmental assessment for state significant infrastructure and certain other activities

Part 5 of the Act sets out requirements for certain 'activities' that are not otherwise assessed through the development assessment process under Part 4 but still need to undergo an environmental assessment before works can be undertaken. These activities are referred to as 'development without consent' and include:

- Activities undertaken by government departments or agencies as part of their everyday responsibilities that do not need development consent (e.g. water supply infrastructure being constructed by a water utility). Many of these activities can be carried out under the *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP).
- Some low impact or routine activities such as home businesses in a residential zone, environmental protection works in an environmental conservation zone, or markets in a public recreation zone. The LEP/SEPP that apply to the area or activity will list all developments that are permitted without consent. Where these activities need a licence, permit or other approval from a public authority under another statutory scheme, the public authority will also assess the environmental impact of the activity under Part 5 of the EP&A Act.

While all of these activities are subject to a level of environmental impact assessment, only some activities require an environmental impact statement (EIS). Generally, this includes activities which are likely to significantly affect the environment.

Requirements for environmental impact statements

An EIS is mandatory for designated development, state significant development and state significant infrastructure. An EIS may also be required for certain other activities under Part 5 of the Act.

Box 13 outlines the provisions of the Regulation that are relevant to environmental assessment.

Box 13: Provisions relating to environmental assessment in the current Regulation

Environmental assessment for state significant infrastructure and certain other activities

The provisions of the Regulation that are relevant to environmental assessment under Part 5 of the Act generally can be found in Part 14. This part prescribes:

- Certain works that are not considered activities and therefore do not require assessment under Part 5 of the Act
- The factors that need to be considered when assessing the impact of an activity on the environment (known as the Review of Environmental Factors (REF)
- Public participation and public access for EISs
- Reporting requirements for determining authorities
- Special provisions relating to fisheries management and the Australian Rail Track Corporation (ARTC).

Specific requirements for state significant infrastructure

The provisions of the Regulation that are specifically relevant to state significant infrastructure are included in Part 11. This part prescribes:

- Requirements for an application to carry out state significant infrastructure, including the ability to amend an application before it is determined
- Circumstances where the consent of the owner of the land on which state significant infrastructure is to be carried out is and is not required (e.g. consent is not required where the proponent is a public authority)
- Where the land owner's consent is not required—a requirement to notify the land owner or give notice in a newspaper circulating in the area in which the infrastructure is to be carried out
- Requirements for notification and public exhibition, and surrender of approvals or existing use rights
- A requirement for an EIS for state significant infrastructure on land less than 200 kilometres from the Siding Spring Observatory to take into consideration the Dark Sky Planning Guideline
- Timeframes for completion of the Secretary's environmental assessment report.

Box 13: Provisions relating to environmental assessment in the current Regulation (cont.)

Requirements for environmental impact statements

Schedule 2 of the Regulation includes requirements that apply to EISs generally, along with special provisions for state significant infrastructure.

Schedule 2 prescribes:

- Requirements for the Secretary's Environmental Assessment Requirements (commonly referred to as SEARs), including:
  - Those applying to the applicant or proponent responsible for preparing an environmental impact statement
  - Those applying to the Secretary of the Department of Planning and Environment and approval bodies, including a requirement for the Secretary to consult relevant public authorities in the preparation of environmental assessment requirements, and timeframes for notifying the applicant/proponent of the applicable environmental assessment requirements
  - Additional requirements for integrated development
- Form, content and preparation requirements for an EIS
- Provisions for the sale of copies of an EIS to members of the public
- Special provisions relating to state significant infrastructure, including a requirement for the proponent to consult further with the Secretary if an EIS is not submitted within two years of the environmental assessment requirements being issued.

Issue relating to environmental assessment provisions

3.1 Requirement for public agencies to make their environmental assessments publicly available

Clause 228 of the Regulation outlines the factors that a public agency must take into account when considering the environmental impacts of their activities pursuant to section 115 of the Act.

As there is no legislative requirement for these assessments to be recorded on a register or to be made publicly available, it can be difficult for the public (and other agencies and councils) to ascertain whether a Review of Environmental Factors has been done, and what the outcome of that assessment was.

To improve transparency, the review could consider inserting a requirement for public agencies to make their environmental assessments publicly available.

Box 14: Related initiative - Environmental Impact Assessment Improvement Project

The Department is currently reviewing EIA for state significant projects in NSW in response to feedback from stakeholders and the community ('the EIA Improvement Project').

The project is looking at the entire process for SSD and SSI projects, including project development, government agency and public consultation, exhibition of EISs, the assessment and determination of projects, and the post approval phase when projects are constructed and operated.

In October 2016, the Department released a discussion paper with ideas to improve the assessment of state significant projects, including:

- Earlier and better engagement with affected communities
- Improving the quality and consistency of EIA documents
- Developing a standard approach for applying conditions to projects
- Providing greater certainty and efficiency around decision-making, including assessment time frames
- Strengthening monitoring and reporting on project compliance
- Improving the accountability of EIA professionals.

Feedback received during the consultation period for the discussion paper helped to develop a series of draft guidelines, which were exhibited from 5 July to 1 September 2017. The Department is now reviewing submissions received during this period.

As part of the review of the Regulation, the Department will consider regulatory changes to support improvements to the EIA process proposed as part of this project.

To view the discussion paper and the draft guidelines, please visit the Department's website www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Environmental-Impact-Assessment-Improvement-Project.

4. Fees and charges

The EP&A Act establishes a framework for consent authorities (including councils and the Department) to receive, process, assess and determine development applications. In doing so, a consent authority must assess each application on its merits. This involves a complete assessment of the likely social, environmental and economic impacts of each proposed development, including consideration of the principles of ecologically sustainable development and the public interest.

Along with the services associated with development applications, consent authorities also provide other planning services which have cost and resourcing implications, including receiving, processing, assessing and determining development applications. This includes the provision of planning certificates (as outlined in Section 6) and building certificates.

To meet the costs of providing various planning services to applicants, consent authorities charge fees which are set out in the Regulation.

Box 15: Provisions relating to fees and charges in the current Regulation

Part 15 of the Regulation sets:

- Fees for development applications assessed by local councils or IHAPS, including the development application fee, notification and advertising fees, and fees associated with referrals to state agencies
- Fees for development applications assessed by the Department (state significant development, state significant infrastructure and transitional Part 3A projects), including the development application fee, fees associated with modifying a development consent and fees for public hearings by the Planning Assessment Commission
- An additional fee for development or infrastructure exceeding an estimated cost of $50,000, to help fund planning reform in NSW
- Fees for building, occupation, construction and subdivision certificates
- Fees for planning certificates and site compatibility certificates
- Fees for a review of a determination or a review of a decision to reject a development application.

Some of these fees are based on the estimated cost of the development proposal or the capital investment value of the project being assessed, with a sliding scale used to calculate the fees payable. Other fees, such as those for subdivisions and marinas, include a base fee plus an additional fee which is multiplied according to the size of the development (e.g. the number of lots created by a subdivision). There are also a number of additional set fees applying to particular classes of development (e.g. those that are designated or integrated development), and applications requiring design review panel advice, advertising, or concurrence.

The review of the Regulation provides an opportunity to examine whether the existing fee regime remains appropriate. To assist with this review, the Department is seeking feedback on all fees and charges set out in Part 15 of the current Regulation.

5. Development contributions

Development contributions are payments made by a developer to a consent authority to contribute to shared local infrastructure, facilities or services and certain types of state infrastructure. Development contributions may be in the form of money, land, buildings, or works in kind.

The EP&A Act (Part 4, Divisions 6 and 6A) establishes the framework for development contributions, including:

- Section 94 contributions – direct charges on development which has a demonstrable nexus to the need for new local infrastructure, often charged on the basis of additional floor space or dwellings.
- Section 94A levies – an indirect levy on development charged as a proportion of the cost of works of development. There is no requirement for nexus between the development and the infrastructure funded by the levy to be demonstrated.
- Planning agreements – voluntary agreements (referred to as Voluntary Planning Agreements or VPAs) negotiated between the developer and the planning authority outlining the agreed developer contribution towards a public purpose. These are used as an alternative or in addition to other types of development contributions.

- Affordable housing contributions – levy collected by the council in designated areas where there is a demonstrated need for affordable housing.
- Special infrastructure contributions (SICs) – paid into an infrastructure fund established by the NSW Government for designated growth centres. SICs help to fund the regional infrastructure that supports different communities across the state.

The Regulation contains a range of additional requirements for development contributions. These are outlined in Box 16.

Box 16: Provisions relating to development contributions in the current Regulation

Part 4 of the Regulation includes provisions which relate to:

Voluntary Planning Agreements (VPAs)

- The form and subject matter that can be included in a VPA
- Making, amending and revoking VPAs
- The issue of practice notes on VPAs
- Requirements for public notice of VPAs, including the preparation of an explanatory note
- Requirements for both councils and the Secretary of the Department to keep a register of VPAs and make these registers publicly accessible.

Development consent contributions

- The indexation of monetary section 94 contributions
- How the proposed cost of development is to be determined by the consent authority for the purposes of section 94A contributions
- The maximum percentage of the proposed cost of carrying out development that may be imposed under a section 94A contribution.

Preparation of contributions plans

- The form of a contributions plan, including a requirement to have regard to any relevant practice notes
- A restriction providing that councils must not approve a contributions plan that is inconsistent with any direction issued under section 94E of the Act
- Requirements for what a contributions plan must include, such as the purpose of the plan, the land to which the plan applies, the relationship between the expected types of development and the demand for infrastructure, the formulas used for determining the contributions and the rates for different types of development.

Public participation

- Public exhibition of a draft contributions plan, including a requirement for copies to be made available to interested persons
- Provides for any person to make a submission on the draft contributions plan.

Approval, amendment and repeal of contributions plans

- Sets out the process for the approval, amendment, review and repeal of contributions plans by council.

Accounting of contributions and public access to records

- Requirements for councils to:
  - Maintain a contributions register
  - Maintain accounting records for contributions (section 94, section 94A and planning agreements) that are distinguishable from all other council money
  - Maintain records identifying the infrastructure for which the expenditure is authorised, the contributions received and any pooling or progressive application of the contributions
  - Disclose certain information for each contributions plan in the notes to its annual report, including the opening and closing balances, the total amounts received by way of monetary contributions, the total amount spent and the outstanding obligations of councils
  - Make their contributions plans, annual statements and contributions registers available for public access.

Issues relating to development contribution provisions

5.1 Practice notes for VPAs

Clause 25B(2) provides for the Secretary to issue practice notes to assist parties in the preparation of VPAs. However, the Regulation does not require consideration of these practice notes.

The review could consider amending the Regulation to ensure planning authorities and developers consider practice notes when parties enter into a VPA.

The Department exhibited a draft revised practice note for VPAs late last year, outlining fundamental principles and best practice in their use and administration (see Box 17). Among other things, the practice note recommends that explanatory notes accompanying VPAs are written in plain English. This aims to increase transparency and address stakeholder concerns that explanatory notes are often written in technical or legal terms that are difficult to understand.

5.2 Public inspection of draft and final planning agreements

The Regulation requires planning authorities to maintain a register of final planning agreements and have hard copies available for public inspection at their offices. In line with other initiatives to update the Regulation (described on page 10). The review will consider requiring all draft and final planning agreements to be exhibited on the Planning Portal, to improve accessibility and transparency around these agreements. *See clause 25F of the Regulation.*

5.3 Council policies on VPAs

The Regulation does not currently include a requirement for planning authorities to publish policies and procedures to guide and explain their use of VPAs.

The Department's draft practice note for VPAs recommends that planning authorities—particularly councils—publish policies addressing a range of fundamental principles for VPAs, including the circumstances in which an authority would ordinarily consider entering into a VPA, and how this fits within the context of its broader corporate strategic planning and land use planning policies.

It is intended that these policies would help to explain the role of VPAs in infrastructure delivery within a council's planning framework and set clear standards on the process and procedures for entering into a VPA with the council.

The review could consider introducing a regulatory provision to formalise this requirement, to increase accountability and transparency around public benefits that are funded and delivered through VPAs, and to provide greater certainty to developers. *See clause 25F of the Regulation.*

Box 17: Related Initiative - Policy framework for Voluntary Planning Agreements

The Department has exhibited a draft policy framework for VPAs, which is intended to improve transparency around the use of VPAs in the planning system and support their role in delivering strategically identified infrastructure needs for local communities. Although VPAs are an agreement between a planning authority and a developer, the community needs to be confident that VPAs are entered into on the basis of a fair, transparent and reasonable negotiation process, and with regard not only to the public benefit arising from the VPA, but also the broader planning impacts of the related development.

For further information on the draft policy framework for VPAs, please visit the Department's website, www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Improving-Voluntary-Planning-Agreements.

6. Planning Certificates

Planning certificates are a key source of information that the public can access about planning and other development controls applying to a specific parcel of land. Section 149(1) of the EP&A Act provides that any person may, on payment of the prescribed fee, apply to a council for a planning certificate with respect to any land within the area of the council.

Section 149(2) of the EP&A Act requires councils to include matters prescribed in the Regulation on a planning certificate, and section 149(5) allows councils to include advice on any other relevant matters affecting the land (e.g. advice in relation to development consents and relevant policies).

Planning certificates including only the prescribed matters set out in the Regulation are referred to as section 149(2) planning certificates, or basic planning certificates, and are required to be attached to contracts for the sale of land during conveyancing.

More comprehensive planning certificates which include both the information prescribed in the Regulation as well as advice on other matters affecting the land are often referred to as section 149(5) planning certificates or full planning certificates.

The information that is required to be included on a planning certificate is set out in detail in Schedule 4 of the Regulation (see Box 18). The intent of these provisions is to ensure that applicants and land owners have access to clear and accurate information about their land.

Box 18: Provisions relating to planning certificates in the current Regulation

Clause 279 of the Regulation requires information prescribed in Schedule 4 to be included on a planning certificate.

Schedule 4 includes matters relating to:

- Relevant environmental planning instruments and development control plans
- Zoning and land use provisions
- Complying development
- Coastal protection (including annual charges under the Local Government Act 1993 for certain coastal protection services)
- Mine subsidence
- Road widening and road realignment
- Hazard risk restrictions
- Flood-related development controls
- Land reserved for acquisition
- Contributions plans
- Biodiversity certified land
- Biobanking agreements
- Bushfire prone land
- Property vegetation plans
- Tree orders
- Directions under Part 3A
- Site compatibility certificates and conditions for affordable rental housing
- Paper subdivision information
- Site verification certificates
- Loose-fill asbestos insulation.

Issues relating to planning certificate provisions

The Department is aware of a number of issues with planning certificates, ranging from the type of information that is included on certificates to how that information is expressed. Many stakeholders have suggested that planning certificates lack consistency and can be lengthy and overly complex.

The Department is keen to hear stakeholder views on how these certificates can be improved. Stakeholders may like to consider the following key questions when providing feedback:

- What should the role of planning certificates be?
- What information should be included on planning certificates?
  - For example, should planning certificates identify whether a parcel of land is subject to a State Infrastructure Contribution (SIC) scheme, or is identified as 'potentially contaminated land'?
- Should the Regulation prescribe the language or format in which information should appear?
- Could hard copy planning certificates be replaced with an online system through the NSW Planning Portal?

7. Miscellaneous operational and administrative provisions

The Regulation contains a range of other miscellaneous provisions and schedules, which have not been discussed in the other sections of this paper. These are outlined in Box 19.

Box 19: Miscellaneous operational and administrative provisions in the current Regulation

Planning bodies

Part 16B of the Regulation sets out provisions for planning bodies and arbitrators set up by the Act, in particular for the Planning Assessment Commission (PAC), Independent Hearing and Assessment Panels (IHAPs), and other committees established by the Minister or the Secretary.

Specifically, Part 16B of the Regulation includes:

- Provisions regarding general procedures for planning bodies including quorum, presiding member, voting, public meetings, and transactions of business outside meetings or by telephone
- Provisions regarding remuneration of committee members, alternate committee members, minutes of meetings and provision of information by regional panels
- Provisions regarding workings of the PAC particularly with respect to attendance of witnesses, public hearings, notice of reviews and recommendations and reports by the PAC special provisions related to water approvals, and publication of evidence
- A provision setting out the information that IHAPs must provide to councils.

Paper subdivision provisions

Part 16C describes the form and procedure for developing or making amendments to a paper subdivision, and the process for seeking consent from co-owners by consent ballot. The term 'paper subdivision' is used to describe land containing lots which have recognition on paper but have yet to be developed.

Crown development provisions

Part 13 of the Regulation identifies the prescribed persons (or bodies) which benefit from the Crown development provisions in sections 89 and 89A of the Act of the Act. These Act provisions facilitate the approval process for Crown developments to assist in timely delivery of public infrastructure and services.

Part 13 also links the Building Code of Australia (BCA) to requirements under the Act for Crown building works be certified by or on behalf of the Crown as complying with the technical provisions of the state's building laws.

Registers and records

Section 100 of the Act requires councils to maintain a register containing prescribed details of development applications, development consents and complying development certificate applications, as well as any decisions on appeal from any determination. Part 16 of the Regulation prescribes the specific requirements for these registers, including the documents they must contain.

Entertainment venues

Schedule 3A contains provisions relating to the safe operating procedure of entertainment venues, including regulation of emergency evacuation plans for these venues.

Penalty notice offences

Schedule 5 specifies amounts for penalty notices (or fines) that may be issued for breaches of EP&A Act and the Regulation.

Special provisions relating to ski resort areas

Schedule 6 describes transitional arrangements for approvals which were granted for ski resort areas under Part 5 of the Act, including the circumstances in which a Part 5 approval is taken to be a development consent.

Box 19 : Miscellaneous operational and administrative provisions in the current Regulation (cont)

Saving, transitional and miscellaneous administrative provisions

Part 17 contains saving, transitional and miscellaneous administrative provisions. This includes clauses covering the following matters:

- Requirements for notification of proposals to constitute a development area
- Provisions concerning contributions plans for specific sites
- Consideration for prescribing guidelines for bush fire protection when assessing DAs
- Release area provisions under Sydney Regional Environmental Plan No. 30
- Specific application requirements for certain development in the North West and South West Growth Centres in Sydney
- Release of precincts for urban development for the Growth Centres SEPP
- Provisions enabling the Australian Rail Track Corporation Ltd, the Western Lands Commissioner, and certain other organisations such as universities to be treated as public authorities
- Provisions setting out the formula for assessment of loan commitments of councils
- Provisions setting out matters specified in a planning certificate in reference to Schedule 4 (discussed in the previous section)
- Application details and the prescribed form of a building certificate
- Requirements for orders relating to building work or subdivision work for which the consent authority is not the principal certifying authority
- Content requirements for compliance cost notices, and restrictions on the maximum amount that may be required to be paid
- Requirements for the Secretary to certify certain documents
- An offence for false or misleading statements in connection with a planning matter
- Provisions for issuing penalty notices under section 127A of the Act
- Various savings and transitional provisions.

Other savings and transitional provisions are also included in Schedule 7 of the Regulation.

Box 20: Related initiative – proposed changes to provisions of the EP&A Act relating to the PAC

Under the EP&A Act, the role of the PAC is to determine applications for state significant proposals under delegation from the Minister, and to provide independent expert advice (or review) on a range of planning and development matters.

As mentioned in the Introduction (see 'Overview of the current legislative framework'), the draft Environmental Planning and Assessment Bill 2017 (released for consultation in January this year) proposes a range of amendments to the EP&A Act. These include changes to provisions relating to the PAC.

For example, the draft Bill proposes changes to the PAC's name and functions, to reflect its independent, expert nature, and to emphasise its primary role of determining state significant proposals.

Subject to the passage of this Bill, changes to the Act will result in some consequential amendments to the provisions in Part 16B of the Regulation.

Box 21: Related initiative – changes to provisions of the EP&A Act relating to IHAPs

Under the EP&A Act, IHAPs are panels of independent experts that determine certain categories of development applications on behalf of a council, and provide other advice to council on planning proposals such as rezonings.

Under recent changes to the EP&A Act, determinative IHAPs will be mandatory for councils in the Greater Sydney Region and for Wollongong City Council from 1 March 2018. Each IHAP will consist of a chair, two other expert members and a community representative. The Act sets out some key requirements for how panels must operate. The panels will determine higher risk or more sensitive development applications, while routine development applications will be determined by council staff under delegation.

More information about these changes can be found on the Department's website at www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Independent-Hearing-and-Assessment-Panels.

Box 22: How to make a submission

You can make a submission to provide feedback on the current Regulation in two ways. These are:

1. Complete the online feedback form available on the Department's website using the link www.planning.nsw.gov.au/regulationreview.
2. Email or forward a written submission to the Department at Regulation.Review@planning.nsw.gov.au.

For more information about the review of the Environmental Planning and Assessment Regulation 2000 visit www.planning.nsw.gov.au/legislative-updates