



Planning circular

PLANNING SYSTEM

EP&A Regulation amendment – major projects

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Changes to State significant development and State significant infrastructure

This circular advises councils, agencies, industry and the community of the commencement of the Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021 and related policies and guidelines. These changes will come into effect over three stages, the first stage commencing on 1 July 2021.

Introduction

The Rapid Assessment Framework (RAF) is a comprehensive set of reforms aimed at ensuring State significant development (SSD) and State significant infrastructure (SSI) (State significant projects) are supported by better quality assessment, better coordination and better engagement with the community.

The RAF reforms are the most significant changes to the State significant project system since it was introduced in 2011. The reforms will improve the quality, efficiency and transparency of SSD and SSI assessments and administration, ensure applications and reports are prepared to a consistently high standard, improve the quality of community engagement, and introduce formal quality assurance measures for environmental assessment reports.

The purpose of this circular is to explain when and how the RAF regulation changes, guidelines and supporting material will be applied to the assessment of State significant projects.

RAF package

The RAF package updates the State significant project system to introduce regulation, policies, systems and practices to support improved assessments, well-informed decision making and achieve better on-ground planning outcomes.

The RAF package includes:

- amendments to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) relating to State significant projects
- Industry-specific Secretary's environmental assessment requirements (SEARs) for SSD
- SSD and SSI Guidelines to support the assessment of State significant projects

- other environmental impact assessment (EIA) guidelines on engagement, social impact assessment and cumulative impact assessment
- registered environmental assessment practitioner (REAP) scheme to provide quality assurance on environmental impact statements (EISs) for State significant projects
- ePlanning and online services upgrades.

These initiatives embed lasting benefits into the State significant projects system through improved efficiency, transparency and quality of assessment, as well as improving community engagement and customer service.

EP&A Regulation changes

The Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021 was made on 1 July 2021 and will amend the EP&A Regulation in three stages (see below for staging).

The regulation amendments apply to Part 1, Part 6, Part 10, Part 15, Part 17 and Schedule 2 of the EP&A Regulation, and include changes to:

- require SSD and SSI applications and modification applications to be lodged on the NSW Planning Portal, in an approved form;
- set out lodgement requirements for other SSD and SSI documents (i.e. requests for SEARs, amendments to applications, response to submissions reports);
- enable fees for SSI to be determined within 14 days of the EIS being submitted;
- provide powers for the Secretary to reject SSD applications and modification applications if they are considered to be incomplete;

- limit requirements to consult with public authorities when preparing SEARs to certain SSD projects;
- introduce a two-year expiry on SEARs for SSD and SSI projects;
- require SSD applicants and SSI proponents to have regard to guidelines when preparing EISs and other documents provided throughout the assessment of the project; and
- require EIS declarations for SSD and SSI to be provided by environmental assessment practitioners who are registered or certified under certain professional schemes.

Note. The RAF reforms, including the changes to the EP&A Regulation made by the Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021, will only apply to State significant projects. Other development assessed under the *Environmental Planning and Assessment Act 1979* (EP&A Act) will not be affected by the changes, including designated development and Part 5 activities that require an EIS.

Staged Commencement

The above amendments to the EP&A Regulation will commence in three stages:

- Stage 1 (commencing **1 July 2021**) – SEARs expiry provisions and changes to when SSI fees are determined
- Stage 2 (commencing **1 October 2021**) – Majority of changes including online lodgement, standard forms, application of guidelines, strengthened rejection powers, and changes to agency consultation on SEARs
- Stage 3 (commencing **1 July 2022**) – REAP EIS declaration requirements commence.

SEARs expiry

The first changes to take effect (on 1 July 2021) include the new SEARs expiry provisions for SSD and SSI. These provisions will:

- introduce an automatic expiry on SEARs for SSD and SSI projects two (2) years after they have been issued, to ensure that EISs are based on relevant and up-to-date environmental considerations and to provide a mechanism to encourage proposals to progress to assessment in a timely manner;
- provide for the Secretary to extend the expiry date of SEARs by up to a further two years if the proponent makes a written request for extension before the SEARs expire; and
- apply sunset dates to expire SEARs that have already been issued (prior to 1 July 2021) to remove long-standing proposals that have been in the system for several years, and to reduce the uncertainty felt by local communities around the future uses of land in their area.

Note. The date of issue of SEARs is taken to be the date the Planning Secretary last gave notice:

- under clause 3(5) of Schedule 2 of the EP&A Regulation for SSD SEARs; and
- under section 5.16(4) of the EP&A Act for SSI SEARs.

The SEARs sunset dates are:

- **1 July 2021** – All SEARs issued after this date will have a two-year expiry (with Secretary discretion to provide extensions)
- **30 November 2021** – All SEARs issued before 1 July 2019 will expire 30 November 2021
- **1 July 2023** – All SEARs issued from 1 July 2019 up to 30 June 2021 will expire 1 July 2023.

Up until the sunset dates are reached, if an EIS has not been submitted two years after the SEARs were issued, the SSD applicant or SSI proponent will need to consult with the Department on the preparation of their EIS.

After the relevant sunset dates have passed, the SEARs will expire and the SSD applicant or SSI proponent will need to apply for new SEARs.

Industry-specific SEARs

The EP&A Regulation will be amended on 1 October 2021 to only require consultation with public authorities on the preparation of SEARs on a project-by-project basis for SSD projects that:

- would be designated development but for s4.10(2) of the EP&A Act, or
- are partly or wholly prohibited, or
- are a concept development application.

For other types of SSD projects, the Department will be able to issue 'industry-specific SEARs' that have been developed in advance in consultation with relevant public authorities. The Department will be able to issue industry-specific SEARs in just 7 days, instead the 28-day timeframe otherwise provided.

These ready-made assessment requirements have been tailored to common categories of SSD including: key sites and identified precincts; hospitals, medical centres and health research facilities; warehouses and distribution centres; cultural, recreation and tourist facilities; schools; tertiary institutions; build to rent housing; data storage centres; and correctional centres and complexes.

Industry-specific SEARs will make the issuing of SEARs faster and more efficient for the majority of SSD projects. It will take 21 days off the end-to-end assessment timeframe for projects that are consistent with the underlying land use zoning and include impacts that are well understood and can be mitigated. It also means that the Department and other public authorities can focus time and effort on preparing project-specific SEARs for higher risk and higher impact SSD and SSI projects.

Industry-specific SEARs will require community engagement, as well as consultation with relevant

public authorities and local councils as part of the preparation of the EIS for State significant projects.

www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Rapid-Assessment-Framework/Streamlining-major-project-assessment

Better quality assessment: SSD & SSI Guidelines

As of 1 October 2021, new *State Significant Development Guidelines* and *State Significant Infrastructure Guidelines* will also come into effect.

The EP&A Regulation will require SSD applicants and SSI proponents to have regard to these guidelines when requesting SEARs, preparing EISs, responding to submissions, amending applications, and seeking to modify SSD consents and SSI approvals.

The guidelines will provide clear guidance on assessment processes through a series of sub-guide appendices covering the following matters:

- *Preparing a Scoping Report*
- *Preparing an Environmental Impact Statement*
- *Preparing a Submissions Report*
- *Preparing an Amendment Report*
- *Preparing a Preferred Infrastructure Report (SSI only)*
- *Preparing a Modification Report.*

The guidelines set out advice, requirements and standards for the form, structure, content and technical aspects of State significant project documents.

The guidelines are intended to improve the quality of environmental assessment documents and improve the efficiency of State significant project assessment.

Of particular note, the guidelines will ensure that EISs are succinct, easy to understand, technically robust, reflect community views and provide a comprehensive evaluation of the project.

While the guidelines will take effect on 1 October 2021, a six-month transitional period (up to 31 March 2022) will allow EISs to be submitted to the Department that were prepared in line with previous requirements. Where SEARs have been issued on or after 1 October 2021 the preparation of an EIS and other assessment documents will benefit from advice and guidance provided by these new guidelines.

www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Rapid-Assessment-Framework/Improving-assessment-guidance

Better community engagement and assessment of social and cumulative impacts

Additional guidelines have also been prepared to support better assessment and better engagement on State significant projects:

- *Undertaking Engagement Guidelines*
- *Cumulative Impact Assessment Guidelines*
- *Social Impact Assessment Guideline.*

These guidelines will be applied to the assessment of State significant projects from 1 October 2021.

The *Undertaking Engagement Guidelines* require upfront and ongoing engagement on State significant projects to provide a better understanding of potential issues and to be able to consider responses to issues as a part of the project development and delivery. The guidelines encourage engagement to be undertaken at appropriate times throughout the life cycle of a project, including scoping, planning, assessment and delivery of State significant projects, rather than relying solely on statutory consultation requirements.

The *Cumulative Impact Assessment Guidelines* aim to strengthen project-level cumulative impact assessment (CIA) for State significant projects. The guidelines provide advice on scoping cumulative impacts and methodologies for identifying and taking into account the combined impacts (including environmental, social and economic impacts) of past, present and reasonably foreseeable future projects. Better information on cumulative impacts will encourage improved project design to reduce impacts, support informed and appropriate decision-making, and achieve better on-ground planning outcomes.

The *Social Impact Assessment (SIA) Guideline* standardises the approach to considering and managing social impacts for State significant projects and provides greater clarity and certainty for proponents and the community. The Guideline builds on the policy foundations set by the Department's 2017 *Social Impact Assessment Guideline for State significant mining, petroleum production and extractive industry development*.

The SIA Guideline provides a framework for social impact assessment that can be adapted to different types and scales of State significant projects to ensure that the level of assessment is proportionate to potential impacts.

www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Rapid-Assessment-Framework/Improving-assessment-guidance

Quality assurance for EIS preparation: the REAP Scheme

The REAP Scheme provides environmental assessment quality assurance for State significant projects and supports informed and appropriate decision making.

The EP&A Regulation will be amended on 1 July 2022 to require EISs for State significant projects to contain a declaration prepared by a registered environmental assessment practitioner (REAP) stating that the EIS meets certain requirements.

REAPs are environmental assessment practitioners that are registered or certified under specific

professional schemes that have been accredited by the Planning Secretary.

Two REAP schemes have been accredited:

- *PIA Registered Planner Plus (EIA) Scheme* (administered by the Planning Institute of Australia)
- *CEnvP Impact Assessment REAP Scheme* (administered by the Certified Environmental Practitioner Scheme).

Environmental assessment practitioners can already apply to be registered or certified as a REAP. This will allow time for adequate take up by practitioners under each scheme prior to the regulatory provisions commencing on 1 July 2022. The Planning Institute of Australia and the Certified Environmental Practitioner Scheme can be contacted for further details.

EIS declaration requirements (that apply to all EISs) will be extended on 1 July 2022 to include additional quality assurance matters for SSD and SSI as set out in the *Registered Environmental Assessment Practitioner Guidelines* published on Department's website. These will include REAP checks on whether the EIS addresses statutory requirements, SEARs and relevant EIA Guidelines, and whether it adequately and accurately summarises the project, technical assessments, and the findings of any community engagement.

The REAP Scheme will provide an in-built quality assurance measure for State significant projects by ensuring suitably skilled, qualified and experienced EIA professionals are involved in the preparation and finalisation of EISs before being submitted to the Department.

While the REAP declaration requirement will take effect on 1 July 2022, a six-month transitional period (up to 31 December 2022) will allow EISs to be submitted to the Department without complying with the new REAP declaration requirements. This transitional period will only apply however if the SEARs for the EIS were issued before 1 July 2022.

For further information on the REAP Scheme visit www.planningportal.nsw.gov.au/assessment/REAP

Savings & transitional provisions

Most RAF changes will apply to State significant projects already in the system (i.e. where SEARs have already been issued or applications lodged or exhibited). This means that new provisions such as online lodgement, standardised forms and having regard to guidelines for various assessment documents will apply to new and existing projects.

As an example, new assessment requirements for amending applications, responding to submissions and modifying consents and approvals will apply to SSD and SSI applications that have already been made at the time the new provisions commence (1 October 2021).

The main exception to this is for EIS documents, due to the long timeframes required to prepare them.

As outlined further above (under **SSD and SSI Guidelines** and **REAP Scheme**), where SEARs have already been issued prior to the new provisions commencing, a six-month window is available to allow EISs to be submitted to the Department without having to comply with the new requirements.

ePlanning upgrades

The RAF reforms will be supported by a series of ePlanning upgrades that will:

- facilitate the issuing of industry-specific SEARs for certain projects within seven (7) days of a SEARs request;
- introduce a streamlined, single-stage process for requesting SEARs and lodging modification reports for all State significant projects.

Combined with other refinements and process improvements, these changes are intended to make online lodgement simpler and more efficient for users.

The ePlanning changes will take effect on 1 October 2021.

Further information

The RAF reform documents including assessment guidelines, industry-specific SEARs and additional advice can be found at

www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Rapid-Assessment-Framework

Additional information on the NSW REAP Scheme can be found at

www.planningportal.nsw.gov.au/assessment/REAP

For information on making applications for State significant projects visit the NSW Planning Portal at www.planningportal.nsw.gov.au/major-projects.

For the latest version of the NSW EP&A Regulation, visit the Parliamentary Counsel's Office website:

www.legislation.nsw.gov.au

Department of Planning, Industry and Environment circulars are available at:

planning.nsw.gov.au/circulars

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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