



## PLANNING SYSTEM

State environmental planning policies

<b>Circular</b>	PS 08–015
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<b>Related</b>	

# SEPP (Repeal of Concurrence and Referral Provisions) 2008

This circular provides advice on the commencement of a new State environmental planning policy which removes certain State government concurrence and referral requirements when councils prepare draft local environmental plans and assess development applications.

### Overview

State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008 (Concurrence Repeal SEPP) was gazetted on 12 December and commences on 15 December 2008. The SEPP aims to improve efficiency in the planning system by removing duplicative or unnecessary requirements in environmental planning instruments (EPIs) to consult with State agencies (government departments) on planning decisions.

### Aims of the SEPP

The Concurrence Repeal SEPP is an ‘amending instrument’ that removes or modifies referral and concurrence clauses within local environmental plans (LEPs), regional environmental plans (REPs) and State environmental planning policies (SEPPs).

The aims of the Concurrence Repeal SEPP are to:

- amend EPIs referred to in Schedules 1–3 of the SEPP so as to omit provisions requiring consent authorities to obtain certain concurrences under section 30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) or to refer certain matters to various persons or bodies
- replace certain concurrence or referral provisions within EPIs with matters for the relevant council’s consideration
- omit provisions in certain regional environmental plans referred to in Schedule 2 of the SEPP that relate to policies for the preparation of draft local environmental plans and consultation requirements
- make other miscellaneous changes to EPIs.

### What is ‘concurrence’ and ‘referral’?

The primary purpose of the Concurrence Repeal SEPP is to remove unnecessary concurrence and referral provisions in EPIs requiring consultation with State agencies.

*Concurrence* is a term used in the EP&A Act to identify a requirement that an agreement be obtained (normally from a State agency) before a consent authority can decide to grant consent to a development application.

A State agency *referral* generally denotes a requirement for a consent authority to seek and have regard to any advice provided by a State agency. Unlike concurrence, a consent authority may still be able to approve a development without a response or support from the referral agency.

### Scope of the SEPP

The Concurrence Repeal SEPP amends some 1336 individual clauses within 229 EPIs. The following figures indicate the scope of the SEPP, including the number of changes to local environmental plans (LEPs), planning scheme ordinances (PSOs), regional environmental plans (REPs) and State environmental planning policies (SEPPs).

Number of EPIs affected

LEPs (and PSOs) amended:	203
REPs amended:	19
SEPPs amended:	7
Total EPIs amended	229

Number of EPI provisions affected

clauses in LEPs (and PSOs) deleted or edited:	1183
clauses in REPs deleted or edited:	138
clauses in SEPPs deleted or edited:	15
Total clauses in EPIs deleted, edited or modified	1336

The Concurrence Repeal SEPP amends EPIs that previously required State agency input to planning decisions on:

- roads and transport issues
- development on lands identified for acquisition
- arrangements for water and sewerage infrastructure
- Aboriginal sites and archaeological sites of significance
- other heritage sites and archaeological sites of significance
- development near national parks
- tourism development and protected lands
- land stability, soil issues and contaminated lands
- flood liable land
- acid sulfate soils
- water supply, water quality and river management issues
- onsite sewage disposal, waste water and drainage management
- mineral and extractive resources, and mine subsidence
- subdivision of rural lands, agriculture, travelling stock routes and forestry.

Councils are advised to review their own EPIs to identify any changes to concurrence and referral processes that may affect development assessment and plan making processes in their local government area.

Councils should note that the Concurrence Repeal SEPP does not remove all concurrence and referral provisions in EPIs. Some referrals have been retained in LEPs for specific local issues. In addition, some State agency referrals in SEPPs have also been retained, including SEPP 14 – Coastal Wetlands, SEPP 26 – Littoral Rainforests, SEPP 44 – Koala Habitat, SEPP 62 – Sustainable Aquaculture, SEPP 71 – Coastal Protection, SEPP (Kosciuszko National Park) 2007 and SEPP (Infrastructure) 2008.

## Why remove concurrence and referral provisions?

Development assessment and plan-making in NSW can be quite lengthy processes. Timeframes can become excessive however where inefficiencies are introduced into the planning system such as requiring additional State agency approvals or referrals that may not be necessary (e.g. duplicating other approvals or over-regulating certain matters).

A comprehensive review was undertaken from October 2007 to April 2008 to identify all State agency concurrence and referral processes in the planning system.

The review identified three main reasons for removing referrals in EPIs:

- duplication of assessment requirements
- outdated referrals that no longer apply or have been superseded by other assessment mechanisms
- plan-making referrals being replaced by the Planning Reform 'Gateway' process.

### Duplication of assessment requirements

A large number of the issues listed above are already considered by State agencies through approvals or permitting systems under other legislation. This includes issues covered under section 91 of the EP&A Act (integrated development), as well as State agency approvals under other legislation such as the *Roads Act 1993*, compliance certificates for water and sewage infrastructure and approvals for development in travelling stock routes, to name a few.

Integrated development approvals include consideration of issues by State agencies during the development (DA) assessment process for applications that trigger requirements under the following legislation:

- *Fisheries Management Act 1994*
- *Heritage Act 1979*
- *Mine Subsidence Compensation Act 1961*
- *Mining Act 1992*
- *National Parks and Wildlife Act 1974*
- *Petroleum (Onshore) Act 1991*
- *Protection of the Environment Operations Act 1997*
- *Roads Act 1993*
- *Rural Fires Act 1997*
- *Water Management Act 2000*.

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**NB:** It is important to note that the Concurrence Repeal SEPP **does not** remove any concurrence or approval requirements under other legislation, including all State agency approvals required under integrated development (section 91 of the EP&A Act).

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There are also referral provisions in LEPs which duplicate State agency referrals under other EPIs such as the Infrastructure SEPP 2007, e.g. Roads and Traffic Authority (RTA) referrals for traffic-generating development, major project assessment for certain development in coastal zones, RTA and RailCorp referrals for road and rail acquisition corridors.

This duplication has made the approval process confusing for users, more time consuming and ultimately increases red tape by requiring assessment of issues that are or will already be

assessed as part of the normal development approval process.

### **Outdated referrals**

It is often the case that State agency input into development assessment for particular issues is no longer required. In these instances, concurrence and referral provisions can be removed completely from the planning system.

The concurrence and referral provisions of many older LEPs (made more than 10 years ago) have since been overtaken by new assessment processes and mechanisms that reflect contemporary thinking and best practice.

Many environmental issues that were previously dealt with through State agency referrals are now outlined in State agency guidelines that have been prepared for use by councils. These include planning and environmental matters such as:

- heritage items that are not covered under the State Heritage Register or provided for under the Heritage Act
- development on land adjoining National Parks and other Department of Environment and Climate Change lands
- land stability, soils and contaminated lands
- flood liable land management
- acid sulfate soil management
- onsite sewage disposal, waste water and drainage management
- subdivision of rural lands and development affecting prime crop and pasture land and other agricultural land uses.

Improved industry practices, State agency guidelines and refined council assessment mechanisms have over time reduced the need to consult individually with State agencies on a case-by-case basis.

### **Plan-making referrals**

REPs have previously been used to advise councils on which State agencies should be consulted when developing draft LEPs.

With the development of Regional Strategies however, many environmental and planning issues previously addressed by these agencies are now dealt with in a strategic manner in the strategies, and implemented through LEPs.

The NSW 2008 Planning Reforms program has also introduced a new process for preparing draft LEPs. Termed the 'Gateway', this streamlined process will determine when State agencies will be requested to provide input into the local plan-making process.

Section 117 ministerial directions will also continue to be used to advise councils on the procedures for developing draft LEPs and the consideration of various environmental and planning issues at the strategic level.

## **Benefits for local government**

One of the primary benefits that will stem from the Concurrence Repeal SEPP will be greater council autonomy over planning decisions.

Reducing the number of matters that need to be referred to State agencies will strengthen the decision-making powers of local councils, allowing them to do their work in a more efficient and effective manner.

The removal of unnecessary State agency referrals should improve the development assessment process and LEP turnaround timeframes for councils, as well as reducing assessment costs and resourcing requirements for State agencies.

Councils can still refer development applications and inquiries to State agencies for advice, however it will no longer be a compulsory requirement to do so if the statutory requirement has been removed. The important distinction is that these consultation processes will be discretionary and should not delay the assessment and processing of a development application or the preparation of a draft LEP.

## **Benefits for development applicants**

Importantly, improved efficiency in development assessment will benefit proponents. This includes home owners and small business applicants who often submit minor proposals that would otherwise be delayed by generic bureaucratic steps that should not always apply to every type of development proposal.

Analysis has shown that when development applications are referred to a State agency, an average of 48 days is added to the processing time for the development application.

Many minor developments are regulated under other legislation that already requires additional permits, licences and approvals by State agencies, in addition to obtaining development consent from council.

Furthermore, councils have reported significantly longer delays in rezoning land for housing or industry due to extended periods of consultation with various State agencies.

It is anticipated that the Concurrence Repeal SEPP will assist in speeding up development approval and spot rezoning processes thereby helping to deliver new housing as well as investment in businesses in NSW.

## **Adequate assessment will still occur**

As mentioned above, many issues that previously required concurrence of a State agency still require government input through separate permit or licensing processes under other legislation.

Section 79C of the EP&A Act also continues to require the consent authority to consider impacts on natural and built environments, social and economic impacts in the locality, the suitability of the site for the development, and the public interest. Councils are required to consider these matters irrespective of whether any individual State agency has a formal concurrence or consultation role.

There are also many NSW government guidelines that have over the years been developed specifically to assist councils in assessing particular environmental and socio-economic issues associated with proposed developments.

### **Register of development assessment guidelines**

The numerous guidelines that have been prepared by State agencies have now been made available on a public directory called the Register of Development Assessment Guidelines hosted on the Department of Planning website.

The Register provides a single point-of-reference to access NSW government guidelines and other relevant documents covering various aspects of development assessment and plan-making.

The Register will allow councils, developers, consultants and the public to readily obtain the latest information on environmental impact assessment, development control, and best practice advice on a whole range of land uses, development types and environmental issues.

### **Further information**

A copy of State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008 is available on the NSW Parliamentary Counsel's Office website:

<http://www.legislation.nsw.gov.au>.

The Register of Development Assessment Guidelines can be accessed on the Department of Planning website: <http://www.planning.nsw.gov.au>

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### **Authorised by:**

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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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