



PLANNING SYSTEM

State environmental planning policies

Circular	PS 08–001
Issued	31 January 2008
Related	Revokes Circular F4 (10 June 1997)

State Environmental Planning Policy (Infrastructure) 2007

This circular is to advise councils, State agencies and the public of the key planning provisions under State Environmental Planning Policy (Infrastructure) 2007.

Overview of the SEPP

The efficient provision of public infrastructure is essential for the welfare, growth and prosperity of communities in NSW. Infrastructure includes hospitals, schools, railways, roads, power and water supplies, and other services necessary to maintain the State’s economy and the wellbeing of its communities.

State Environmental Planning Policy (Infrastructure) 2007 (the SEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

Prior to the SEPP being introduced, planning for infrastructure was regulated through a complex array of local, regional and State statutory planning instruments and overlapping legislation.

The new Infrastructure SEPP provides a consistent planning regime under the *Environmental Planning and Assessment Act 1979* (the Act) that:

- provides greater flexibility in the location of infrastructure and services by identifying a broad range of zones where types of infrastructure are permitted
- allows for the efficient development, redevelopment or disposal of Government-owned land. This is achieved by permitting additional uses on State land and allowing adjacent land uses to be undertaken on State land (except conservation lands) if the uses are compatible with surrounding land uses
- outlines the approval process and assessment requirements for infrastructure proposals
- identifies works of minimal environmental impact as exempt or complying development

to improve turnaround times for maintenance and minor upgrades.

Infrastructure types

The Infrastructure SEPP has specific planning provisions and development controls for the following types (sectors) of infrastructure:

- air transport facilities
- correctional centres
- educational establishments
- electricity generating works
- electricity transmission and distribution
- emergency services facilities and bushfire hazard reduction
- flood mitigation works
- forestry activities
- gas transmission and distribution
- health services facilities
- housing and group homes
- parks and other public reserves
- port, wharf and boating facilities
- public administration buildings
- rail infrastructure facilities
- research stations
- road and traffic facilities
- sewerage systems
- soil conservation works
- stormwater management systems
- telecommunications networks
- travelling stock reserves

waste or resource management facilities
 water supply systems
 waterway or foreshore management activities.

Infrastructure planning provisions

The SEPP provides permissibility and development assessment provisions which apply across the State for each infrastructure sector. The SEPP outlines:

- land use zones where particular types of infrastructure are permissible
- infrastructure works requiring development consent (under Part 4 of the Act)
- infrastructure works that do not require consent and may require assessment under Part 5 of the Act
- infrastructure works that may be undertaken as complying development, once a complying development certificate has been obtained
- infrastructure works that may be undertaken as exempt development.

As an example, the SEPP deals with zoning and approval matters for public utilities such as local sewerage systems. Under the policy, councils' sewerage treatment plants may be located in 'prescribed zones' (e.g. in certain rural, industrial or special use zones) and do not require consent but an assessment under Part 5 of the Act. In contrast, sewerage treatment plants undertaken by private developers continue to require consent from the relevant consent authority.

The SEPP also provides zoning and approval provisions for public administration buildings such as council chambers. The policy includes expanded provisions for minor additions and restoration works to buildings, so that basic office upgrades can be undertaken without needing to lodge a development application.

The SEPP also includes exempt development provisions for basic works such as fencing, security, landscaping, car parks, awnings, and minor building alterations and maintenance works at council and State government sites.

Figure 1 outlines the planning processes for infrastructure projects under Part 3A, Part 4, Part 5 and exempt development of the Act.

Infrastructure zoning in LEPs

A number of approaches have previously been taken in zoning land for infrastructure purposes in local environmental plans (LEPs). In many instances however, these zoning methods were restrictive and prevented effective provision of infrastructure services at new sites or the redevelopment of existing sites for alternative public uses or for the disposal of surplus public land.

The new approach adopted in the Infrastructure SEPP allows for greater flexibility and adaptive management of State government land.

Future zoning of State land in new standard local environmental plans should adopt this new approach. For information on zoning, please refer to the standard instrument for local environmental plans (LEPs) and the Department of Planning website at www.planning.nsw.gov.au.

Site compatibility certificates

The Infrastructure SEPP allows for additional uses to be undertaken on certain land where it would otherwise be prohibited under an LEP, if those uses are compatible with surrounding land uses.

To ensure that any additional land uses are appropriate for a given site, a site compatibility certificate must first be obtained from the Director-General of the Department of Planning before a development application can be lodged with council.

The site compatibility certificate process is a mechanism to ensure that any additional uses or redevelopment of government sites are not incompatible with the surrounding land uses.

There are three scenarios under the Infrastructure SEPP where additional land uses may be permitted through a site compatibility certificate. They are outlined here:

Additional uses on State land

Under clause 18 of the SEPP, additional uses may be undertaken on State land where it would otherwise be prohibited under an LEP, if the uses are permissible on adjacent land, and a site compatibility certificate is obtained from the Director-General of the Department of Planning.

'State land' means Crown land under the *Crown Lands Act 1989*, other land of the Crown or land vested in a Minister on behalf of the Crown, and land owned by a public authority other than a council.

It is important to note that these provisions do not apply to:

- State land reserved for conservation or other environmental protection purposes; or
- in council areas where a new principal local environmental plan is in place.

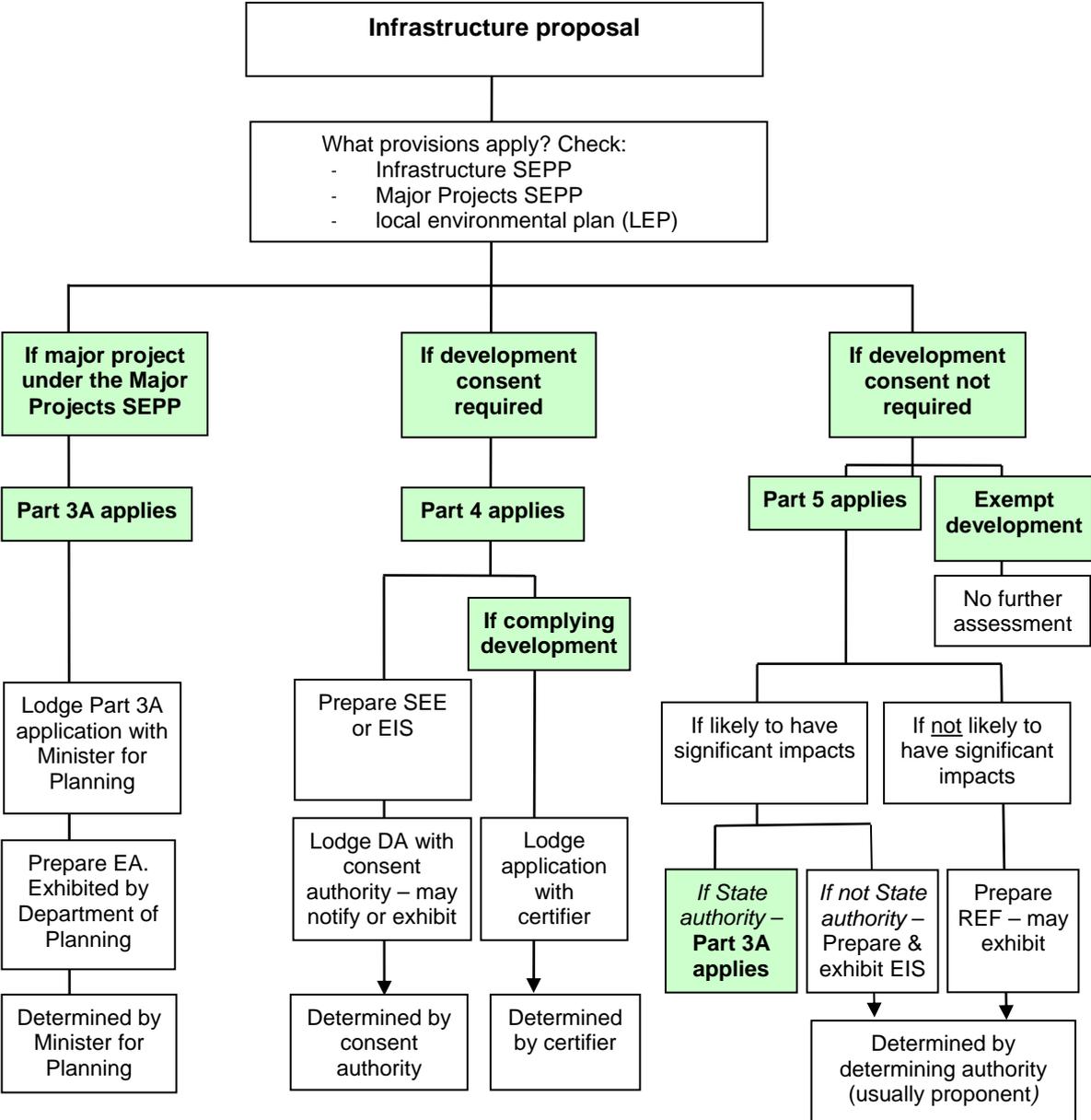
Co-location at health services facilities

Under clause 57(2) of the SEPP, additional uses are permitted on land zoned 'special use' for a health services facility by or on behalf of a public authority.

The additional uses that are permitted include:

- biotechnology research or development industries,
- business premises or retail facilities to cater for patients, staff or visitors
- multi-dwelling housing.

Figure 1. Planning process for NSW infrastructure proposals



As with clause 18 development above, consent must not be granted for development under clause 57(2) unless the consent authority is satisfied that the Director-General has certified in a site compatibility certificate that the development is compatible with the surrounding land uses.

Multi-dwelling housing near key rail stations

The SEPP also allows for a public authority or social housing provider to carry out multi-dwelling housing developments with consent within 800 metres of 18 key metropolitan railway stations (listed in clause 62 of the SEPP) in prescribed zones (e.g. certain residential or mixed use zones).

If the subject land is a special use zone or road reservation however, a site compatibility certificate must be obtained from the Director-General of the Department of Planning.

Applying for a site compatibility certificate

For more information on site compatibility certificates, including application forms, please refer to the guideline document *SEPP (Infrastructure) 2007: Director-General's site compatibility certificates – guideline for applications* on the Department of Planning website at www.planning.nsw.gov.au.

Consultation provisions

Consultation with councils

The SEPP requires public authorities to consult with councils when determining certain works under Part 5 of the Act if the works may affect:

- council infrastructure or services
 - stormwater management services
 - local road system
 - sewerage or water supply services
 - if a temporary structure in a public place
- local heritage items or conservation area
- flood liable land or changes to flooding patterns.

For details on the relevant consultation requirements, statutory timeframes and exemption from these provisions refer to clauses 13, 14, 15 and 17 of the SEPP.

Consultation with other public authorities

The SEPP also outlines requirements in clause 16 for consultation with other Government authorities in certain circumstances, such as for:

- development adjacent to national parks or aquatic reserves – Department of Environment and Climate Change
- development adjacent to a marine park – Marine Parks Authority
- development in the Sydney Harbour Foreshore Authority area – Sydney Harbour Foreshore Authority

- fixed or floating structures in or over navigable waters – NSW Maritime
- educational establishment, health services facility, correctional centre or group home, or residential purposes in an area that is bush fire prone land – NSW Rural Fire Service

Notifications for certain development

The Infrastructure SEPP requires that where a public authority is proposing to undertake development without consent for the following purposes:

- a new or existing electricity substation, or
- certain educational facilities such as single storey classrooms, administration facilities, sporting facilities or car parks

the proponent must notify the council and the occupiers of adjoining land of the intention to carry out the development. The authority is to take into consideration any response to the notice received within 21 days.

For details on the relevant consultation requirements and statutory timeframes refer to clause 42 (for electricity substations) and clause 30 (education facilities) of the SEPP.

Provisions applying to development adjacent to infrastructure

Development near specified gas pipelines

The SEPP contains requirements (under clause 55) for a consent authority to consider the potential safety risks or risks to the integrity of the gas pipeline that are associated with proposed development adjacent to key gas pipeline corridors listed in the SEPP.

Development involving level crossings

Clause 84 of the SEPP contains specific requirements for development involving:

- a new rail level crossing, or
- the conversion into a public road of a private access road across a rail level crossing, or
- a likely significant increase in the total number of vehicles or the number of trucks using a rail level crossing that is in the vicinity of the development.

The SEPP requires that concurrence be obtained from the rail authority before consent may be granted to the proposed development. For details on the relevant consultation and concurrence requirements and statutory timeframes refer to clause 84 of the SEPP.

Safety risks to development along rail corridors

The SEPP requires consent authorities to consider the following impacts of development in or immediately adjacent to rail corridors:

- rail safety and electricity infrastructure

- potential electrolysis impacts associated with metal finishes on structures (including buildings) near the corridor, and
- risks associated with crane use in air space above a rail corridor.

The SEPP requires notification to the rail authority for such proposed developments. For details on the consultation requirements and statutory timeframes refer to clause 85 of the SEPP.

Excavation in or adjacent to rail corridors

The SEPP includes provisions to protect and maintain the safety or structural integrity of existing or proposed rail infrastructure facilities in the corridor and ensuring their safe and effective operation.

Clause 86 applies to excavation ('penetration of the ground to a depth of at least 2 metres below ground level'):

- within or above a rail corridor, or
- within 25 metres of a rail corridor, or
- within 25 metres directly above an underground rail corridor.

The SEPP requires that concurrence be obtained from the rail authority before consent may be granted for such excavation activities. For details on the relevant consultation and concurrence requirements and statutory timeframes refer to clause 86 of the SEPP.

Interim Metropolitan Rail Expansion corridors

Interim Metropolitan Rail Expansion (IMREP) corridors are lands associated with the proposed expansion to the metropolitan rail network. These corridors have a specific 'protection regime' associated with them under the SEPP.

Although similar to the general requirements under clause 86 (see above), these IMREP corridors have different criteria (see clause 88) applying to them depending on whether the section of the corridor where the development is proposed is a tunnel or is above ground.

The SEPP requires that concurrence be obtained from the rail authority before consent may be granted for certain development within the IMREP corridors. For details on the consultation and concurrence requirements and statutory timeframes refer to clause 88 of the SEPP.

Development along road corridors

The SEPP contains provisions under clause 100 to prevent inappropriate development in corridors or road reservations for proposed classified roads, prior to the land being declared to be a classified road.

This provision applies to:

- subdivision that results in the creation of an additional lot with dwelling entitlements
- development with a capital investment value greater than \$150,000

- development for the purpose of dwellings that are, or any building that is to be held under strata title.

The SEPP requires that concurrence be obtained from the Roads and Traffic Authority (RTA) before consent may be granted for certain development on land reserved for the purposes of a classified road. For details on consultation and concurrence requirements and statutory timeframes refer to clause 100 of the SEPP.

Excavation along road corridors

Clause 103 of the SEPP applies to development involving the penetration of the ground to a depth of at least 3 metres on land that is the road corridor of specific roads or road projects including: the Eastern Distributor, Cross City Tunnel, Lane Cove Tunnel, Tugun Bypass, Liverpool – Parramatta Transitway or North-West Sydney Transitway Network.

The SEPP requires notification to the RTA for such proposed developments. For details on the consultation requirements and statutory timeframes refer to clause 103 of the SEPP.

Noise and vibration impacts near railways

The aim of clause 87 in the SEPP is to ensure that *noise sensitive development* proposed in or adjacent to a rail corridor is not adversely affected by rail noise or vibration. Such development includes: residential buildings, places of public worship, hospitals, educational establishments and child care centres.

Before determining noise sensitive development that is likely to be affected by rail noise or vibration, consent authorities must take into account any relevant guidelines that are issued by the Director-General.

Where the development is for residential use and is located in or adjacent to a rail corridor, a consent authority must not grant consent unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- in any bedroom in the building – 35dB(A) at any time between 10.00 p.m. and 7.00 a.m.
- anywhere else in the building (other than a garage, kitchen, bathroom or hallway) – 40dB(A) at any time.

Noise and vibration impacts along roads

Similar to clause 87, clause 102 includes provisions to ensure that *noise sensitive development* proposed in or adjacent to certain road corridors is not adversely affected by road noise or vibration.

These road corridors include freeways, tollways or transitways or any other roads with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the RTA website) and that the

consent authority considers is likely to be affected by road noise or vibration.

Before determining noise sensitive development that is likely to be affected by road noise or vibration, consent authorities must take into account any relevant guidelines that are issued by the Director-General.

Where the development is for residential use and is located in or adjacent to a relevant road corridor, a consent authority must not grant consent unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- in any bedroom in the building – 35dB(A) at any time between 10.00 p.m. and 7.00 a.m.
- anywhere else in the building (other than a garage, kitchen, bathroom or hallway) – 40dB (A) at any time.

Traffic generating development

SEPP 11 – Traffic Generating Developments has been repealed. The planning provisions previously in SEPP 11 have been updated and carried over into the Infrastructure SEPP.

Clause 104 of the Infrastructure SEPP outlines the planning requirements for traffic generating development listed in Schedule 3 of the SEPP.

As previously with SEPP 11, if development is proposed that meets the traffic generating criteria in Schedule 3, the RTA must be consulted. For details on consultation requirements and statutory timeframes refer to the SEPP (clause 104).

Exempt and complying development

The SEPP updates and consolidates provisions relating to exempt development for certain classes of public infrastructure. The exempt development requirements are outlined in clause 20 of the SEPP and the general provisions (e.g. development standards) are listed in Schedule 1.

The general provisions cover works such as security fittings, safety and OH&S works, signage, fencing, and minor building repairs and alterations. The SEPP also includes additional exempt provisions for specific types of infrastructure (e.g. ports, schools, electricity and gas supplies, parks and other public reserves).

Complying development provisions previously in SEPP 61 – Exempt and Complying Development for White Bay and Glebe Island Ports have been updated and incorporated into the Infrastructure SEPP, and now apply to land in the area of a port managed by a Port Corporation.

Relationship with other EPIs

In the event of an inconsistency, the Infrastructure SEPP overrides the provisions of most environmental planning instruments (e.g. local environmental plans). The exceptions to this include SEPP (Major Projects) 2005, SEPP 14 and SEPP 26. The SEPP (Major Projects) 2005 prevails over the Infrastructure SEPP to the extent of any inconsistency.

The provisions in the Infrastructure SEPP replace the provisions previously in the Environmental Planning and Assessment Model Provisions 1980, which had been transferred into the LEP Standard Instrument. These provisions have now been deleted from the LEP Standard Instrument.

In addition the following SEPPs have now been repealed, and their provisions updated and incorporated into the Infrastructure SEPP:

- SEPP 3 — Castlereagh Liquid Waste Disposal Depot 1981
- SEPP 7 — Port Kembla Coal Loader 1982
- SEPP 8 — Surplus Public Land 1983
- SEPP 9 — Group Homes 1983
- SEPP 11 — Traffic Generating Development 1985
- SEPP 16 — Tertiary Institutions 1985
- SEPP 27 — Prison Sites 1989
- SEPP 31 — Sydney (Kingsford Smith) Airport 1990
- SEPP 35 — Maintenance Dredging of Tidal Waterways 1993
- SEPP 43 — New Southern Railway 1994
- SEPP 48 — Major Putrescible Landfill Sites 1995
- SEPP 51 — Eastern Distributor 1997
- SEPP 54 — Northside Storage Tunnel 1997
- SEPP 61 — Exempt and Complying Development for White Bay and Glebe Island Ports 2000
- SEPP 63 — Major Transport Projects 2001
- SEPP 67 — Macquarie Generation Industrial Development Strategy 2001
- SEPP 69 — Major Electricity Supply Projects 2001
- SEPP 72 — Linear Telecommunications Development – Broadband 2002
- SEPP — ARTC Rail Infrastructure 2004
- SEPP — Sydney Metropolitan Water Supply 2004

Relationship to other legislation

The Infrastructure SEPP does not change any existing requirements for proponents to obtain relevant approvals under other legislation. This includes approvals under: *Fisheries Management Act 1994*, *Forestry Act 1916*, *Heritage Act 1977*, *Mine Subsidence Compensation Act 1961*, *Mining Act 1992*, *National Parks and Wildlife Act 1974*, *Protection of the Environment Operations Act 1997*, *Roads Act 1993*, *Rural Fires Act 1997* and *Water Management Act 2000*.

The Infrastructure SEPP does however continue the suspension of certain legislation related to the Northside storage tunnel, airport railway line and certain water supply works.

Further information

A link to the SEPP can be found on the Department of Planning's website at: www.planning.nsw.gov.au

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the Department's web at www.planning.nsw.gov.au/planningsystem/practicenotes

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Important note

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