



NSW GOVERNMENT
Department of Planning

PLANNING FOR INFRASTRUCTURE

A COMMUNITY GUIDE TO
THE STATE ENVIRONMENTAL PLANNING
POLICY (INFRASTRUCTURE) 2007

JANUARY 2008



Contents

| | |
|--|----------|
| INTRODUCTION | 1 |
| WHY THE INFRASTRUCTURE SEPP WAS INTRODUCED | 2 |
| Reducing the number of State planning policies | 2 |
| Updating planning approval provisions | 3 |
| Improving flexibility in the location of infrastructure | 4 |
| Supporting exempt development | 5 |
| Assisting councils in the delivery of infrastructure and services | 5 |
| Increasing public safety | 6 |
| Improving noise management outcomes along transport corridors | 6 |
| Consultation with councils | 7 |
| Reasonable co-location | 7 |
| Permitting compatible uses on State land | 7 |
| HOW THE SEPP RELATES TO OTHER LAWS AND POLICIES | 9 |

Planning for infrastructure: A community guide to the State Environmental
Planning Policy (Infrastructure) 2007

ISBN 978 0 7347 5942 9

© NSW Government 2008

NSW Department of Planning

January 2008

www.planning.nsw.gov.au

DP 08_005

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

Introduction

As outlined in the NSW Government's State Infrastructure Strategy, more than \$110 billion is expected to be spent on infrastructure projects over the coming decade. Average annual spending alone is expected to top \$10 billion.

The State Environmental Planning Policy (Infrastructure) 2007 (known as the Infrastructure SEPP) assists in providing this new infrastructure by introducing updated planning provisions to improve efficiency and service delivery.

The Infrastructure SEPP assists local government, the NSW Government and the communities they support, by simplifying the process for providing essential infrastructure in areas such as education, hospitals, roads and railways, emergency services, water supply and electricity delivery.

The Infrastructure SEPP has specific planning provisions and development controls for 25 types of infrastructure works or facilities:

- 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 and buildings of the Crown
- 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

The Infrastructure SEPP outlines the planning rules for these works and facilities, including:

- Where such development can be undertaken;
- What type of infrastructure development can be approved by a public authority under Part 5 of the Environmental Planning and Assessment Act (EP&A Act) following an environmental assessment (known as 'development without consent');
- What type of development can be approved by the relevant local council, Minister for Planning or Department of Planning under Part 4 of the EP&A Act (known as 'development with consent');
- What type of development is exempt or complying development;
- The relationship of other statutory planning instruments to the Infrastructure SEPP.



Why the Infrastructure SEPP was introduced

It is important that our planning system supports an efficient and robust assessment of new infrastructure proposals. Many proposals however were being delayed by the former planning regime for infrastructure proposals, which often caused unjustifiable delays. Before the introduction of the Infrastructure SEPP, planning for infrastructure was regulated through a complicated and confusing array of local, regional and State statutory planning instruments as well as overlapping legislation. This guide lists the key issues the Infrastructure SEPP aims to address.

REDUCING THE NUMBER OF STATE PLANNING POLICIES

The Infrastructure SEPP replaces 20 State environmental planning policies (SEPPs) which had been made to provide planning provisions for different types of infrastructure projects. Some of these SEPPs dealt with general infrastructure and service issues (such as dams, sewage treatment plants, freeways, electricity transmission lines, regional landfills and maintenance dredging) while others dealt with specific projects (such as the Eastern Distributor).

The numerous and complicated provisions in each different SEPP made it difficult to follow a coherent set of planning controls for a given infrastructure project.

CASE STUDY: DELIVERY OF NEW RAILWAY FACILITIES



Under the standard provisions in local environmental plans (LEPs), any new railway line previously needed development consent from each local council area through which it passed. With the upgrade of existing rail lines, consent was also required for the railway station and other building works with the rail authority able to self assess and approve other components. These provisions were cumbersome and inappropriate for the delivery of new rail facilities of importance to the region or the State.

Over the years, the planning provisions for railway infrastructure in LEPs were supplemented by three SEPPs. These SEPPs were required to provide for the delivery of important rail projects, such as:

- Sydney's rail clearways program;
- The airport rail link, and;
- Assisting the Australian Rail Track Corporation to take responsibility for the construction, operation and maintenance of freight and country rail lines in NSW.

To provide a more systematic and efficient approach in the delivery of the NSW Government's transport plans, including investment in the metropolitan rail expansion corridors and the upgrading of the country regional rail network, the planning regime needed to be simplified. The Infrastructure SEPP performs this function.

It rationalises the existing three SEPPs and updates the provisions applying to the delivery of new services and augmentation of existing infrastructure. With the new policy regime in place, project-specific policies are no longer required to 'patch-up' the previously outdated provisions.

In addition, the Infrastructure SEPP provides for the protection of existing rail corridors and the proposed metropolitan rail expansion corridors. Currently only the South West and City of Sydney sections of the metropolitan rail network have been identified in maps for protection. The North West and Sydney CBD to Chatswood sections of the networks will be added to the protected corridors in the Infrastructure SEPP when the corridors have been approved by the Minister for Planning following an assessment under Part 3A of the EP&A Act.



The Infrastructure SEPP introduces a simplified planning regime for local councils, the NSW Government and other infrastructure providers to follow. It creates one consolidated set of State rules and development controls, to make it far easier to find out project-specific planning provisions for infrastructure in the one document.

UPDATING PLANNING APPROVAL PROVISIONS

Before the introduction of the Infrastructure SEPP, many of the planning provisions relating to infrastructure dated back more than 80 years to the Local Government Act 1919. At the time, it was considered necessary for councils to oversee construction of buildings (including buildings associated with the delivery of services) because of concerns about safe building practices. Greater trust however was placed in the delivery of civil engineering projects such as new electricity transmission networks, roads, water supply and sewerage systems. Traditionally engineers on these types of works were able to approve their own projects.

In the late 1970s, these early approval approaches were brought across into the establishment of assessment regimes in the EP&A Act, along with the production of the 'model provisions' for councils' local environmental plans.

While the major projects assessment system (Part 3A of the EP&A Act and the Major Projects SEPP) in 2005 updated this approach for large-scale infrastructure projects, there have been few significant reforms to the assessment system for smaller-scale projects.

Building construction is now overseen by far more detailed codes and standards, such as the Building Code of Australia, than existed 80 years ago. These codes and standards reduce the need for smaller-scale infrastructure projects to be subject to a development application process, which can considerably add to time delays and costs.

The Infrastructure SEPP identifies projects that can be determined by infrastructure providers and those that still require assessment through the traditional development application process. Infrastructure providers will now be able to determine an increased number of smaller-scale building works, freeing up council planning resources to concentrate on larger projects and strategic planning.

However, where infrastructure providers can approve their own works, the responsible agency and other determining authorities will still be required to undertake a proper environmental assessment of proposed new facilities. There are also increased consultation requirements imposed on such providers (see page 7).



CASE STUDY: EDUCATION FACILITIES



Minor infrastructure works are regularly required to maintain or improve the standard of school and technical education facilities. However, works such as relatively small new covered outdoor learning areas, sporting fields, building extensions, security fences and shade structures often previously required lodgement of a development application and were taking an average of nearly 100 days to approve.

With the introduction of the Infrastructure SEPP, the Department of Education and Training will be able to determine its own minor works including replacement of portable classrooms, construction of one-storey libraries, outdoor learning areas and sporting facilities. Any works that increase the capacity of the establishment by more than 10 per cent, are less than 5m from a property boundary, or impact on traffic and transport arrangements will continue to require lodgement of a development application.

Furthermore, awnings or canopies that are not within 5m of any property can usually proceed as exempt development.



IMPROVED FLEXIBILITY IN INFRASTRUCTURE LOCATION

Public infrastructure has typically been constructed in 'special use' zones in local planning instruments. These zones have usually been drawn around existing facilities, such as hospitals, schools or police or fire stations, rather than being strategically sited based on sound town planning principles. Local planning instruments (with a few exceptions) prohibit or restrict new public infrastructure in many other parts of the council area.

This has limited the opportunities to provide the public with infrastructure and services outside existing locations. Many of the existing sites contain facilities which have become inefficient, crowded or outdated and are badly in need of upgrading or replacement. In other locations, new services may be required due to demographic changes.

To provide new facilities, infrastructure providers have had to purchase or control new land, and lodge site-specific proposals to the local council to have

the land rezoned to permit the infrastructure facility. In some cases, this rezoning step was taking up to five years to achieve. Then, if successful, a development application was required to be lodged to build the facility. This two step process increased delays and costs to taxpayers rather than helping to provide new infrastructure in a cost effective and timely manner.

The Infrastructure SEPP prescribes a number of zones where particular types of infrastructure may be located without the need for a rezoning. However even if an infrastructure facility is permissible in a certain zone, it does not mean that it will automatically be approved on any site within that zone. There will still need to be an assessment either by a consent authority or infrastructure provider to determine the acceptability of the proposed infrastructure facility on the particular site.



SUPPORTING EXEMPT DEVELOPMENT

Under the EP&A Act, development which is considered to have minor or no impacts on the environment can be classed as exempt development and not require either development consent from local councils or an assessment and approval. Councils typically list minor commercial and residential works, including pergolas, fences below set heights, rural sheds, home occupations or backyard fixed barbecues, as exempt development.

However, many sorts of minor works undertaken by councils and NSW Government previously still required assessment or approval even though there were unlikely to be any environmental or amenity impacts. Many basic installations such as flag poles, security fencing, wheelchair access ramps and decks and awnings had not been classed as exempt development in local planning instruments, and had therefore by default required unnecessary approvals causing delays in installation.

The Infrastructure SEPP has been introduced to allow public authorities to undertake a range of minor works without needing to obtain approvals under the EP&A Act. All such works however must be of minimal environmental impact, must not impact on heritage or the amenity of surrounding areas, and must meet strict development standards including compliance with the Building Code of Australia and other relevant controls set out in the Infrastructure SEPP.

ASSISTING COUNCILS DELIVERING INFRASTRUCTURE AND SERVICES

One of the primary benefits of the Infrastructure SEPP includes assistance to local councils' engineering works and services departments in providing essential urban utilities including new or updated water supplies, sewerage systems, waste disposal services, stormwater infrastructure and local road infrastructure. The policy benefits to local councils include providing more flexibility as to where services can be provided, reducing the complexity of planning rules applying when installing new facilities and increasing the scope of exempt development so that basic works can be undertaken efficiently with less time and money wasted on administrative red tape.

Of particular interest in rural areas, the Infrastructure SEPP expands provisions for local councils to deal with protecting emergency water supplies during drought periods, managing the impacts of flooding, soil conservation works, and undertaking riparian corridor and river management works.



INCREASING PUBLIC SAFETY

The Infrastructure SEPP contains provisions to support the safe operation of major roads, railway lines, gas pipelines and electricity transmission facilities. For instance, relevant rail authorities must be consulted about proposed new developments which could significantly increase vehicle and truck numbers using a level crossing, or result in conversion of a private crossing to a public crossing or the construction of a new level crossing. It also strengthens planning provisions by requiring local or State infrastructure proponents to consider the effect of their development on the flooding or bushfire status of surrounding land or navigation safety within waterways.

The policy also makes it simpler and easier for government agencies to respond to emergencies, conduct essential maintenance, and install safety and security features associated with public infrastructure (e.g. fencing, locked gates, safety barriers and warning signs).

IMPROVING NOISE MANAGEMENT OUTCOMES ALONG TRANSPORT CORRIDORS

Over time, it is expected that land near railway lines and major roads will be subject to ongoing land-use intensification. This is especially the case in the Sydney metropolitan area, where 60–70 per cent of new homes are expected to be built in existing areas in the next two decades. It is important that these dwellings have a high standard of residential amenity.

The Infrastructure SEPP introduces noise standards for new residential developments along rail corridors and freeways, tollways, transitways and any other roads with an annual average daily traffic volume of more than 40,000 vehicles. Before approving a residential development in these corridors, the consent authority must be satisfied that measures have been taken to ensure bedroom noise will not be greater than 35 decibels at any time between 10pm and 7am and noise in other rooms is no greater than 40 decibels at any time. Measures such as sound attenuation in windows and doors or appropriate building design and layout could be used to meet these noise limits.

The consent authority must also take into consideration any guidelines that are issued by the Director-General of the Department of Planning.



CONSULTATION WITH COUNCILS

The Infrastructure SEPP also increases consultation requirements for public infrastructure providers when determining their own works. These agencies must consult councils (including giving 21 days for comments) if the proposed development will strain the capacity of the road system, is located on flood-prone land, or has substantial impacts on stormwater, sewerage or water supply systems.

Councils should also be consulted and a heritage assessment prepared when the development will impact on a local heritage item or heritage conservation area. Clause 17 of the Infrastructure SEPP lists the exceptions to these consultation requirements, including for emergency works or development done under a code of practice.

REASONABLE CO-LOCATION

It has been difficult in the past for some infrastructure providers to co-locate compatible facilities on infrastructure lands (because of the zoning restrictions outlined above) unless those facilities were specifically permitted on the site.

The Infrastructure SEPP however introduces co-location provisions to allow compatible and related services to be located with other infrastructure services despite the provisions of a local environmental plan.

For instance, it allows biotechnology research facilities, some business premises and multi-dwelling housing by or on behalf of a public authority (subject to the site compatibility certificate and development approval process outlined below) to be located on hospital grounds. This allows doctors, nurses and families of in-patients to access living quarters near hospital facilities, rather than relying on accommodation some distance away. It will also allow doctors' surgeries and offices to be located on-site, benefiting patients and their families.

It also makes permissible multi-dwelling housing by a public authority or social housing provider in certain zones within 800 metres of 18 key metropolitan railway stations (also subject to the site compatibility certificate and development approval process), to assist in the creation of low-cost housing in accessible locations.

Furthermore, the Infrastructure SEPP allows for co-location of industry and electricity generating works to provide opportunities to increase energy efficiency and promote cogeneration. The SEPP also allows for co-location of sewage treatment and electricity generating works to encourage the use of sewage waste in energy generation, thereby reducing the use of conventional electricity sources and promoting greener energy sources.

PERMITTING COMPATIBLE LAND USE ON STATE LAND

The Infrastructure SEPP updates and improves some provisions of SEPP 8 (Surplus Public Land), which has been repealed.

Under SEPP 8, new residential or commercial developments, or those on adjoining land-uses, were allowed on surplus public land. However, the Infrastructure SEPP limits new uses on State lands (excluding conservation lands) to those only on adjoining land-uses if a site compatibility certificate has been issued by the Department of Planning. This avoids the creation of new inappropriate industrial or commercial estates on surplus NSW Government land, when the adjacent land-uses are residential, causing land-use conflict.



The Infrastructure SEPP requires site compatibility certificates as an alternative to a rezoning for the following development proposals on the following State and other lands to ensure compatibility with surrounding land-uses:

- Uses permitted on adjoining land on any State lands (excluding conservation lands);
- Biotechnology research facilities or business premises and multi-dwelling housing by or on behalf of a public authority on hospital grounds (as outlined above);
- Multi-dwelling housing by a public authority or social housing provider in certain zones within 800 metres of 18 key metropolitan railway stations (also outlined above).

The Infrastructure SEPP provides that before a development application can be lodged to develop or redevelop these State and other lands, a site compatibility certificate must be issued by the Director-General of the Department of Planning, in consultation with the local council. A site compatibility certificate is a notice stating that a proposed land use for a given site is compatible with surrounding land uses and appropriate in terms of the bulk and scale of the development, and its potential impacts on local services and infrastructure. Those proposing to develop the land then lodge a development application (with the site compatibility certificate) usually with the local council for a decision.



How the Infrastructure SEPP relates to other laws and policies

Other legislation associated with delivering public infrastructure and services is not affected by the Infrastructure SEPP. Relevant approvals, licences or permits under other legislation must still be obtained for infrastructure works. This includes approvals under the 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. However the legislation listed in Clause 9 of the Infrastructure SEPP which was previously suspended in order to deliver the northside storage tunnel, airport railway link and certain water supply works will continue to be suspended in relation to those infrastructure facilities.

The Infrastructure SEPP overrides most other environmental planning instruments under the EP&A Act including local environmental plans, regional environmental plans, and other State environmental planning policies. The following policies however override the Infrastructure SEPP:

- SEPP (Major Projects) 2005,
- SEPP 14—Coastal Wetlands
- SEPP 26—Littoral Rainforests

The SEPP 14 and SEPP 26 policies prevail over the Infrastructure SEPP in the event of any inconsistency. However, emergency works and essential maintenance activities along electricity, rail and road corridors, may be undertaken despite SEPP 14 and SEPP 26 provisions, but only if adverse affects are minimised in these protected coastal areas.

The Infrastructure SEPP includes relevant provisions from the following SEPPs which have been revoked.

- SEPP No 3 – Castlereagh Liquid Waste Disposal Depot
- SEPP No 7 – Port Kembla Coal Loader
- SEPP No 8 – Surplus Public Land
- SEPP No 9 – Group Homes
- SEPP No 11 – Traffic Generating Developments
- SEPP No 16 – Tertiary Institutions
- SEPP No 27 – Prison Sites
- SEPP No 31 – Sydney (Kingsford Smith) Airport
- SEPP No 35 – Maintenance Dredging of Tidal Waterways
- SEPP No 43 – New Southern Railway
- SEPP No 48 – Major Putrescible Landfill Sites
- SEPP No 51 – Eastern Distributor
- SEPP No 54 – Northside Storage Tunnel
- SEPP No 61 – Exempt and Complying Development for White Bay and Glebe Island Ports
- SEPP No 63 – Major Transport Projects
- SEPP No 67 – Macquarie Generation Industrial Development Strategy
- SEPP No 69 – Major Electricity Supply Projects
- SEPP No 72 – Linear Telecommunications Development – Broadband
- SEPP (ARTC Rail Infrastructure) 2004
- SEPP (Sydney Metropolitan Water Supply) 2004

The Infrastructure SEPP does not alter the major projects assessment system (Part 3A of the EP&A Act and the Major Projects SEPP). This system was introduced in 2005 to assess and determine projects of regional and State significance including critical infrastructure projects. The Part 3A planning process provides a system of assessment and determination through the Department of Planning, with the Minister for Planning as the independent approval authority.



