



Repeal of two operational SEPPs

*Explanation of
Intended Effect
October 2017*



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Executive Summary

This Explanation of Intended Effect (EIE) has been prepared for the purposes of section 38 of the *Environmental Planning and Assessment Act, 1979* (the Act) to explain the intended effect of the repeal of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 (MCP SEPP).

The proposed repeal of SEPP 1 and the MCP SEPP is possible because the Standard Instrument Local Environmental Plan (Standard Instrument LEP) contains equivalent provisions to those in SEPP 1 and the MCP SEPP which currently apply to more than 99.8 per cent of the lands of NSW.

It is proposed to amend the older LEPs (**Attachment B**) that continue to apply to the remaining 0.2 per cent of the State by inserting into them the equivalent Standard Instrument LEP's clauses for:

- Exceptions to development standards (Clause 4.6)
- Subdivision (Clause 2.6)
- Demolition (Clause 2.7)
- Temporary use of land (Clause 2.8)
- Conversion of fire alarms (Clause 5.8)

It is also proposed to amend a small number of SEPPs (**Attachments C and E**) that were made before the introduction of the Standard Instrument LEP by inserting into them the five equivalent provisions. SEPP 1 and the MCP SEPP can then be repealed.

Highlights of the proposals in this document include:

- The elimination of the parallel operation of two development standards variation mechanisms in favour of a single mechanism, *Clause 4.6 Exceptions to development standards* from the Standard Instrument LEP. Clause 4.6 will then apply everywhere in NSW.
- Reducing the volume of State policy and providing uniformity in the relevant planning provisions applying across NSW.
- Completing the transfer of development consent requirements for demolition, subdivision, temporary use of land and fire alarm systems from State instruments into local instruments and making these provisions uniform within each local government area.

The proposed repeal of SEPP 1 and the MCP SEPP will reduce the number of State Environmental Planning Policies by transferring the provisions to the most appropriate level in the planning system making them easier to use for all stakeholders. This is consistent with the Government's objective for a clear, contemporary and transparent planning system.

These reform proposals will be further considered and refined following stakeholder consultation and consideration of public submissions.

This EIE is presented in the following parts:

Part 1 - SEPP No. 1 – Development Standards

Part 1 outlines the background and purpose of SEPP 1 and explains its limited application. It sets out how the SEPP can be repealed while retaining its function by inserting Clause 4.6 from the Standard Instrument LEP into older LEPs and SEPPs.

Part 2 - SEPP (Miscellaneous Consent Provisions) 2007

Part 2 outlines the background and purpose of the MCP SEPP and explains its limited application. It sets out how the SEPP can be repealed while retaining its functions by inserting four clauses from the Standard Instrument LEP into older LEPs and SEPPs.

Part 1: SEPP No. 1 – Development Standards

Background

SEPP 1 has been in place since 1980. It is aimed at providing flexibility in the application of certain planning controls by allowing councils to approve a development application that does not comply with a development standard where it can be shown that compliance is unreasonable or unnecessary.

Development standards are generally numerical planning controls that a development should be consistent with. The general rule is that developments must comply with development standards. However, strict compliance with these standards is not always warranted, and some developments may achieve planning objectives despite not meeting the standards.

SEPP 1 allows an application to be made to the relevant planning authority, such as the local council, that demonstrates compliance with the standard is unreasonable or unnecessary. SEPP 1 provides the flexibility to allow these developments to proceed by varying development standards where merit can be demonstrated.

Application of SEPP 1

In 2006 the Standard Instrument LEP was introduced. It contains Clause 4.6 – *Exceptions to development standards* to allow variation to development standards. Where a Standard Instrument LEP has been adopted by a local council or a form of Clause 4.6 was included in a new SEPP, SEPP 1 no longer applies. In more than 99.8 per cent of NSW, and in most SEPPs that contain development standards, Clause 4.6 is the applicable development standards variation mechanism.

SEPP 1 only applies to small proportions of the Local Government Areas (LGAs) where lands were deferred from the application of the Standard Instrument LEP and to eight older SEPPs. These deferred areas represent less than 0.2 per cent of NSW and many are in the process of being incorporated into the relevant Standard Instrument LEPs. Planning issues that caused these lands to be deferred from the Standard Instrument LEPs can be highly complex and some are unlikely to be resolved in the short term.

Repealing SEPP 1 and replacing the intent of the SEPP with the Standard Instrument clause to the 0.2 per cent of NSW will help to simplify the planning system and transfer controls to the most appropriate level in the planning system. The councils affected by the proposal have raised no objection.

Proposed amendments to environmental planning instruments

The proposed repeal of SEPP 1 only impacts deferred areas and a small number of older SEPPs.

It is proposed that the Standard Instrument LEP's Clause 4.6 be inserted into all planning instruments applying to deferred areas. Clause 4.6 is at **Attachment A**.

A list of LEPs where SEPP 1 still applies is at **Attachment B**. Note that the list includes some "deemed environmental planning instruments" such as 'Planning Scheme Ordinances' and 'Interim Development Orders' which were in place prior to the commencement of the Act.

Clause 4.6(6) will be amended to suit the older LEPs that apply to deferred areas. Where a deferred area contains rural and/or environmental protection zoned lands, the references to rural and environment zones in Clause 4.6(6) will need to be amended to match the rural and environmental protection zones in the deferred area (if any).

Clause 4.6(8) creates an opportunity for local councils to list the clauses in their LEP that they do not want to be capable of being varied by Clause 4.6. Councils have been invited to nominate the clauses in the LEPs applying to deferred areas that they want excluded under subclause (8). The Department will continue to work with councils to achieve acceptable provisions.

As SEPP 1 also applies to a small number of older SEPPs which have development standards, a variation mechanism for those development standards is needed. It is proposed that an amended form of Clause 4.6 will be inserted into the SEPPs identified in **Attachment C**.

Once these amendments have been made, SEPP 1 will be repealed.

Part 2: SEPP (Miscellaneous Consent Provisions) 2007

Background

SEPP (Miscellaneous Consent Provisions) 2007 (MCP SEPP) was made to ensure that the demolition of buildings, the subdivision of land and the conversion of fire alarm systems were matters that required development consent. The MCP SEPP makes these forms of development require consent across NSW. In 2007 some, but not all, LGAs had LEPs with provisions which did make these forms of development require consent.

The MCP SEPP also introduced State-wide provisions to enable:

- the erection of temporary structures with development consent, and
- limited changes of use in certain business zones to occur without development consent.

The Standard Instrument LEP contains standard clauses that were intended to supersede the clauses of the MCP SEPP (see **Table 1** below). As this has occurred, the MCP SEPP has applied to fewer LGAs.

Table 1 – MCP SEPP clauses and their Standard Instrument LEP equivalent

MCP SEPP clause	Standard Instrument LEP clause
Cl. 11 Permissibility of erection of temporary structures	Cl. 2.8 Temporary Use of land (optional)
Cl. 14 Subdivision	Cl. 2.6 Subdivision (compulsory)
Cl. 14A Demolition of a building or a work	Cl. 2.7 Demolition (compulsory)
Cl. 14C Fire alarm communication link works	Cl. 5.8 Conversion of fire alarms (compulsory)

The full text of the clauses in Table 1 is at **Attachment D**.

In addition, Clause 5.4 of SEPP (Exempt and Complying Development Codes) 2008 has superseded the provision of the MCP SEPP relating to change of use in certain business zones.

Application of the MCP SEPP

Like SEPP 1, the MCP SEPP now only applies:

- on lands that are not subject to a Standard Instrument LEP, that is, deferred areas where an older LEP still applies, and
- in a small number of older SEPPs that do not have clauses addressing demolition, subdivision, temporary use of land and fire alarm systems.

Proposed amendments to environmental planning instruments

It is proposed that Standard Instrument LEP clauses 2.6 (Subdivision), 2.7 (Demolition) and 5.8 (Conversion of fire alarms) be inserted into all the older LEPs applying to deferred areas so that there is uniformity across NSW. The LGAs listed in **Attachment B** have the older LEPs where the MCP SEPP still applies.

The Standard Instrument LEP clause, *Clause 2.8 - Temporary use of land*, allows councils to grant consent to the use of land for activities such as community markets on a limited number of days per year. Its adoption is optional and councils are also free to nominate the number of days per year. In the LGAs with deferred areas the days per year range from 14 to 106 days, though most councils have adopted the standard 52 days.

It is proposed that LEPs applying to deferred areas be amended to match the temporary use provision in the respective LGA's Standard Instrument LEP. Where a council has not adopted Clause 2.8, the clause will not be inserted into the LEP applying to its deferred areas. This applies to Fairfield LEP 1994 only.

Additionally, it is proposed that Standard Instrument LEP Clauses 2.6, 2.7, 2.8 and 5.8 will be inserted into the SEPPs identified in **Attachment E**.

Once these amendments have been made, the MCP SEPP will be repealed.

Attachment A – Clause 4.6 of the SI LEP

The clause to be inserted into instruments applying to deferred areas will be based on *Clause 4.6 Exceptions to development standards* from the Standard Instrument LEP. When inserted into the relevant instruments, Clause 4.6 will be amended as follows:

- the number of the clause to match its location,
- the references to rural and environment zones in subclause (6) will be amended to match the equivalent rural and/or environmental protection zones applying to the deferred area.
- under subclause (8), councils may nominate clauses in their instrument/s which contain development standards they do not wish to be varied, and
- subclause (8)(c), which refers to another Standard Instrument LEP clause, will be deleted.

Clause 4.6 as contained in the Standard Instrument LEP is shown below.

4.6 Exceptions to development standards [compulsory]

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*

Direction. *Additional exclusions may be added.*

Attachment B – LEPs applying to deferred areas to be amended

Ballina LGA - Ballina LEP 1987

Bayside LGA - Botany Bay LEP 1995

Bega Valley LGA - Bega Valley LEP 2002

Blue Mountains LGA - Blue Mountains LEP No. 4, Blue Mountains LEPs 1995 and 2002

Byron LGA - Byron LEP 1988

Campbelltown LGA - Campbelltown (Urban Area) LEP 2002 and LEP District 8 (Central Hills Lands)

Central Coast LGA - Gosford Planning Scheme Ordinance (PSO) and Gosford Interim Development Order (IDO) No. 122

Coffs Harbour LGA - Coffs Harbour City LEP 2000

Edwards River LGA - Deniliquin LEP 1997

Eurobodalla LGA - Eurobodalla Rural LEP 1987

Fairfield LGA - Fairfield LEP 1994

Forbes LGA - Forbes LEP 1996

Georges River LGA - Hurstville LEP 1994

Hilltops LGA - Young LEP 1991 - Urban Lands

Inner West LGA - Leichhardt LEP 2000

Ku-ring-gai LGA - Ku-ring-gai PSO

Kyogle LGA - Kyogle IDO No. 1 and Terania IDO No.1

Lake Macquarie - Lake Macquarie LEPs 1984 and 2004

Lismore LGA - Lismore LEP 2000

Penrith LGA - Penrith LEP 1998 (Urban Land), LEP No. 201 (Rural Lands), IDO Nos. 43 and 97

Queanbeyan-Palerang LGA - Queanbeyan LEPs 1991 and 1998 and Yarrowlumla LEP 2002

Shellharbour LGA - Shellharbour LEP 2000 and Shellharbour Rural LEP 2004

Shoalhaven LGA - Shoalhaven LEP 1985 and Shoalhaven IDO No. 1

Singleton LGA - Singleton LEP 1996

Sutherland LGA - Sutherland Shire LEPs 2000 and 2006

Tweed LGA - Tweed LEPs 1987 and 2000

Wollongong LGA - Wollongong LEP 1990 and LEP No. 38

Attachment C – SEPPs affected by repeal of SEPP 1

SEPP (Affordable Rental Housing) 2009

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Kurnell Peninsula) 1989

SEPP (Penrith Lakes Scheme) 1989

SEPP (State Significant Precincts) 2005 (Schedule 3)

SEPP (Three Ports) 2013

SREP No 16 - Walsh Bay

SREP No 26 - City West

Attachment D – MCP SEPP clauses and their replacement Standard Instrument LEP clauses

MCP SEPP Clause	Standard Instrument LEP Clause
<p>11 Permissibility of erection of temporary structures</p> <p>(1) Development comprising the erection of a temporary structure may be carried out only with development consent, except as otherwise provided by any other environmental planning instrument that specifies that development as exempt or complying development.</p> <p>(2) Subclause (1) does not apply to development comprising the erection of a temporary structure that is exempt development or complying development, or is prohibited, under another environmental planning instrument.</p> <p>(3) For the purposes of subclause (2), the existing provisions of an environmental planning instrument are taken to prohibit development comprising the erection of a temporary structure only if, in doing so, temporary structures or a relevant class of temporary structures are expressly referred to.</p> <p>(4) In this clause:</p> <p><i>existing provisions of an environmental planning instrument</i> means provisions of the environmental planning instrument:</p>	<p>2.8 Temporary use of land [optional]</p> <p>(1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.</p> <p>(2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 [or another number] days (whether or not consecutive days) in any period of 12 months.</p> <p>(3) Development consent must not be granted unless the consent authority is satisfied that:</p> <p>(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and</p> <p>(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and</p>

MCP SEPP Clause	Standard Instrument LEP Clause
<p>(a) as in force immediately before 26 October 2007, or</p> <p>(b) as amended on or after 26 October 2007, but before 26 October 2008, by some other environmental planning instrument that, immediately before 26 October 2007, was the subject of:</p> <p>(i) a decision under section 54 of the Act, or</p> <p>(ii) a direction under section 55 of the Act to make such a decision, or</p> <p>(c) as inserted in the environmental planning instrument on or after 26 October 2007, but before 26 October 2008, by some other environmental planning instrument that, immediately before 26 October 2007, was the subject of:</p> <p>(i) a decision under section 54 of the Act, or</p> <p>(ii) a direction under section 55 of the Act to make such a decision.</p>	<p>(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and</p> <p>(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.</p> <p>(4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.</p> <p>(5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).</p> <p>Direction. Other specific exceptions to subclause (2) may be added.</p>
<p>14 Subdivision of land</p> <p>(1) A person may subdivide land to which this Part applies, but only with development consent.</p> <p>(2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated that would result in the secondary dwelling being on a different lot of land to the principal dwelling unless each proposed lot on which</p>	<p>2.6 Subdivision—consent requirements [compulsory]</p> <p>(1) Land to which this Plan applies may be subdivided, but only with development consent.</p>

MCP SEPP Clause	Standard Instrument LEP Clause
<p>those dwellings would be situated would comply with the minimum lot size (if any) required by an environmental planning instrument applying to the land.</p>	
<p>14A Demolition of a building or work</p> <p>A person may demolish a building or work on land to which this Part applies, but only with development consent.</p>	<p>2.7 Demolition requires development consent [compulsory]</p> <p>The demolition of a building or work may be carried out only with development consent.</p>
<p>14C Fire alarm communication link works</p> <p>(1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.</p> <p>(2) The following development may be carried out, but only with development consent:</p> <p>(a) the conversion of a fire alarm system from connection with the fire alarm monitoring network of Fire and Rescue NSW to connection with the fire alarm monitoring network of a private service provider,</p> <p>(b) the conversion of a fire alarm system from connection with the fire alarm monitoring network of a private service provider to the fire alarm monitoring network of another private service provider,</p>	<p>5.8 Conversion of fire alarms [compulsory]</p> <p>(1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.</p> <p>(2) The following development may be carried out, but only with development consent:</p> <p>(a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,</p> <p>(b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,</p>

MCP SEPP Clause

(c) the conversion of a fire alarm communication link from a connection with the fire alarm monitoring network of a private service provider to another fire alarm monitoring network of another private service provider.

(3) In this clause:

fire alarm communication link has the same meaning as in the *Environmental Planning and Assessment Regulation 2000*.

private service provider has the same meaning as in the *Environmental Planning and Assessment Regulation 2000*.

Standard Instrument LEP Clause

(c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.

(3) Development to which subclause (2) applies is complying development if it consists only of:

(a) internal alterations to a building, or

(b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.

(4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.

(5) In this clause:

private service provider means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

Attachment E – SEPPs affected by repeal of the MCP SEPP

State Environmental Planning Policy (Kurnell Peninsula) 1989

State Environmental Planning Policy (State Significant Precincts) 2005

Sydney Regional Environmental Plan No 26—City West

Sydney Regional Environmental Plan No 33—Cooks Cove

State Environmental Planning Policy No 47—Moore Park Showground