NSW GOVERNMENT
Department of Planning

State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008

November 2008 | Better regulation statement

State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008: better regulation statement

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Preface

A Better Regulation Statement is required for significant new and amending Bills and Regulations and must be certified by the Minister for Regulatory Reform as adequate.

A Better Regulation Statement must demonstrate that the better regulation principles have been applied in the development of a regulatory proposal.

This Better Regulation Statement applies to the proposed *SEPP (Repeal of Concurrence and Referral Provisions) 2008*, which has been identified by the Minister for Regulatory Reform as a **significant** regulatory proposal.

The Better Regulation Statement has been prepared in accordance with the NSW Government's *Guide to Better Regulation*, and documents the analysis undertaken to apply the better regulation principles and to ensure the regulatory proposal is required, reasonable and responsive.

The Better Regulation Statement demonstrates that:

a) the proposed *SEPP (Repeal of Concurrence and Referral Provisions) 2008* is justified and better than alternative ways of addressing the problem, and
b) that sound regulatory development and consultation processes were followed in developing the regulatory proposal, and
c) the impacts of the regulatory proposal, including compliance costs, are well understood.

1. Executive summary

The proposed *State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008* (the 'proposed SEPP') is a key component of the 2008 NSW Planning Reform program.

The primary objective of making the proposed SEPP is to reduce red tape in the planning system by simplifying the regulatory regime around concurrence and other State agency referrals under Parts 3 and 4 of the *Environmental Planning and Assessment 1979* (the EP&A Act).

Specifically, the proposed SEPP aims to improve efficiency in plan making and development assessment processes by removing clauses in environmental planning instruments that require concurrence from or referral to State government agencies. This includes removal of referral provisions where those referrals are considered to be no longer necessary or are duplicated elsewhere in the planning system.

The proposed SEPP will be an 'amending instrument' that will repeal or amend some 1336 regulatory provisions in 207 local environmental plans, 19 regional environmental plans and 7 State environmental planning policies.

The proposed SEPP will also be used as a mechanism to make other miscellaneous amendments to environmental planning instruments including administrative amendments to certain State environmental planning policies, and policy changes to various regional environmental plans as part of a broader review of these instruments.

This Better Regulation Statement focuses specifically on the *concurrence and referral* amendments outlined in the proposed SEPP, as these policy aspects constitute the 'significant' regulatory proposal that requires the preparation of this Statement.

The following seven better regulation principles are the cornerstone of the Government's commitment to good regulation and have been applied in the development of this regulatory proposal:

1. The need for government action should be established
2. The objective of government action should be clear
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
4. Government action should be effective and proportional
5. Consultation with business and the community should inform regulatory development
6. The simplification, repeal, reform or consolidation of existing regulation should be considered
7. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

The application of the above principles in the development of this regulatory proposal is detailed below.

2. Principle 1 – need for government action

The Independent Pricing and Regulatory Tribunal (IPART) released a report *Investigation into the Burden of Regulation and Improving Regulatory Efficiency* in October 2006 which listed recommendations for the Government to implement in order to achieve regulatory reform. Recommendation 62 of the IPART report recommends that the Department of Planning seek to realise opportunities for regulatory efficiency gains by, among other things:

- working with concurrence agencies to identify whether there are opportunities to further streamline the concurrence process, and
- working with other regulatory agencies to determine whether there are opportunities to further identify and remove any unnecessary concurrence requirements.

The need for Government action has been formally recognised within the NSW State Plan with *Cutting Red Tape* identified as a key priority area (Priority P3) for growing prosperity in NSW. The regulatory proposal (the proposed SEPP) specifically aims to deliver on the State Plan's Priority P3 by implementing IPART's recommendations for removing unnecessary concurrence requirements in planning and development assessment.

The primary purpose of the proposed SEPP is to remove any unnecessary concurrence or referral provisions in environmental planning instruments (EPIs) that require consultation with State government agencies. The proposed SEPP targets concurrence or referrals of development applications that already require other licences, permits or secondary approvals under other legislation (what are termed 'duplicative' referral provisions).

The proposed SEPP also identifies referral provisions in EPIs that refer development applications and draft local environmental plans to State agencies to be assessed in relation to various other environmental planning matters. Generally speaking, these referrals have been identified as 'unnecessary' if the issue which triggers the referral is not considered to be a matter for the State to assess (e.g. local issues such as flooding and stormwater that are a council's responsibility), or the relevant State agency no longer exists and the relevant functions of that former agency are not replicated in the new State government structure or

those functions are no longer part of the agency's core business (e.g. specific functions of the former Department of Public Works, Soil Conservation Service etc).

When a concurrence or referral provision is outlined in an EPI, it becomes a compulsory (rather than discretionary) step, thereby adding to the time and resources needed to assess the development application or review a draft LEP. This increased level of bureaucracy can introduce unnecessary 'red tape' when the concurrence or referral is not necessary or duplicates another requirement for consultation.

In many circumstances, consultation could be undertaken at the discretion of the consent authority. In most cases EPIs incorporate specific requirements to take the subject matter of the State agency consultation into consideration when determining the development application. In addition, all applications under Part 4 s79C(1)(b) of the EP&A Act require assessment of environmental, social and economic impacts.

A previous review of concurrence and referrals in EPIs was undertaken in September 2004. The review found that over 1130 concurrence provisions were unnecessary and, as an outcome of the review, were removed from the relevant LEPs, REPs and SEPPs.

There still remain however over 1500 clauses in EPIs requiring referral to or concurrence of State agencies for plan making and development applications.

A second review of State agency concurrence and referral requirements was undertaken between October 2007 and April 2008. The review indicated that referrals and concurrences added to the inefficiency of plan making and development assessment processes. The 'stop the clock' process when referral and concurrence agencies may request more information adds on average an additional 64 days to the development application process. This includes an average period of 48 days, for responses by State agencies to consent authorities, when their referrals and concurrences are required.

The review indicated that very often the concurrence or referral requirement duplicated requirements under other legislation. In other cases, the provisions related to matters now covered by comprehensive guidelines or other assessment mechanisms introduced more recently (e.g. SEPPs), thereby removing the need to consult with agencies on a case by case basis.

The 2008 review identified a further estimated 1336 concurrence and referral provisions ('clauses') that could be removed from EPIs. The clauses cover issues such as:

- 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, marine parks and aquatic reserves
- 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
- general plan making provisions (referrals to State agencies for various issues related to the preparation of draft LEPs).
- mineral and extractive resources, and mine subsidence
- subdivision of rural lands, agriculture, travelling stock routes and forestry

3. Principle 2 – objective of government action

The primary objective of making the proposed SEPP is to reduce red tape in the planning system by simplifying the regulatory regime around Part 3 (plan making) and Part 4 (development assessment) of the EP&A Act.

3.1 Referrals in Part 3 of the EP&A Act – plan making

Part 3 of the EP&A Act sets out the legislative process for making an environmental planning instrument (EPI). This includes the making of State environmental planning policies, regional environmental plans and local environmental plans.

Some regional environmental plans incorporate provisions for making local environmental plans, and include requirements to consult with various State government agencies on particular issues. These REP provisions often duplicate or otherwise overlap with consultation provisions in section 117 Ministerial Directions (directions given to councils to advise on certain procedures for making EPIs).

In 2008 legislative changes to Part 3 of the EP&A Act were passed by Parliament. Under these legislative changes the concept of a 'Gateway' for plan making was introduced to streamline and give greater certainty to the plan making process for local environmental plans. The Gateway process for making each local environmental plan will be tailored to match the complexity of the plan proposed, with proposed plans passing through a series of ‘gates’ relevant to the plan rather than a ‘one size fits all’ approach with mandatory referrals to State agencies. The reforms also remove regional environmental plans from the planning system, and relevant provisions should be transferred to local environmental plans, State environmental planning policies or Ministerial Directions issued under section 117 of the Act.

The introduction of the ‘Gateway’ process for determination of Part 3 planning proposals will be used to review and identify the level of consultation required for planning proposals, including consultation with State or Commonwealth public authorities that will or may be adversely affected by the proposed instrument.

The Gateway will be used to review planning proposals, to ensure that land use changes are being pursued strategically and to identify key environmental issues requiring consideration. Key to the Gateway process will be the section 117 Ministerial directions, which will identify the circumstances where local environmental plans can or cannot be made.

With section 117 Ministerial Directions and the introduction of the Gateway process, REPs will no longer be required to direct State agency consultation in the plan making process.

3.2 Referrals in Part 4 of the EP&A Act – development assessment

Part 4 of the EP&A Act sets out the legislative process for assessing proposed developments. Most developments under Part 4 of the EP&A Act are assessed and approved by local government councils.

Section 79B of the Act requires that, before a DA is approved, the consent authority must consult with or obtain concurrence from State government authorities (or other persons) in accordance with requirements to do so in environmental planning instruments.

There are currently over 1200 individual clauses spread over 229 EPIs related to consultation requirements for consent authorities when assessing development applications. The proposed SEPP will repeal or otherwise amend a great many of these consultation clauses to remove the requirement for a consent authority to formally consult with various

State government agencies where there is duplication or the need for a referral is addressed in an alternative way.

It is intended that the proposed SEPP will improve efficiency in plan making and development assessment processes by removing unnecessary requirements in environmental planning instruments requiring concurrence from or referral to State government agencies.

The aims of the proposed SEPP are specifically:

- to amend environmental planning instruments so as to omit provisions requiring consent authorities to obtain certain concurrences under section 30 of the EP&A Act or to refer certain matters to various persons or bodies, where these are not justified,
- to replace certain concurrence or referral provisions within environmental planning instruments with matters for the relevant consent authority's consideration when assessing a development application,
- to omit provisions in certain regional environmental plans that relate to policies for the preparation of draft local environmental plans and consultation requirements,
- to make other miscellaneous amendments to environmental planning instruments.

The policy aims outlined above are consistent with existing government policies. In particular, they align with the NSW Government's commitment to reduce regulatory red tape outlined in Priority P3 of the NSW State Plan.

4. Principle 3 – consideration of options

4.1 Option 1 – Concurrence and compulsory referrals (status quo)

The first option considered in the preparation of this regulatory proposal was to maintain the status quo by retaining the concurrence and referral provisions in EPIs. Each type of referral and concurrence clause was reviewed to determine whether the provision should remain.

(a) Where Option 1 is the preferred option

After reviewing the more than 1500 consultation clauses in EPIs, it was found that in certain instances the State agency referral was still required. In some cases, a consent authority may not have the expertise to make an assessment on a specific issue or the matter for consideration was of sufficient importance that it continues to require a formal concurrence or referral (as opposed to an informal referral – see Option 2 below).

During the review of consultation provisions, Option 1 to retain the consultation provisions was identified as the preferred option in approximately 15% of cases, including:

- State agency consultation for significant environmental issues under key State environmental policies including SEPP 14 – Coastal Wetlands, SEPP 26 – Littoral Rainforests, SEPP 44 – Koala Habitat, SEPP 62 – Sustainable Aquaculture, SEPP 71 – Coastal Protection and SEPP (Kosciuszko National Park) 2007.
- Consultation with Department of Environment and Climate Change in LEPs for development in certain environmentally sensitive locations – e.g. proposed National Parks, key wildlife corridors, rainforest areas and other key areas of high biodiversity
- State agency consultation under the Infrastructure SEPP for development without consent on DECC estate, adjacent to marine parks and aquatic reserves, foreshore works, development in navigable waters, and certain bush fire prone areas
- RTA and RailCorp concurrence for development along proposed road and rail corridors, and RTA consultation for traffic-generating development under the Infrastructure SEPP

- Miscellaneous clauses in LEPs with site specific requirements for State agency referrals.

In addition, the proposed SEPP will not affect the existing concurrence provisions outlined under s79B of the Act which require concurrence of the Director-General of the Department of Environment and Climate Change relating to threatened species and the Director General of the Department of Primary Industries for aquatic threatened species.

There are also no proposed changes to the procedures for obtaining concurrence or for consultation outlined under section 79B of the Act and Part 6 of the EP&A Regulations.

Furthermore, the proposed SEPP does not affect any State agency referral mechanisms outlined in section 117 Ministerial directions for draft local environmental plans.

Where Option 1 is implemented, it is estimated that there will be no significant change in the current costs and benefits associated with the regulatory proposal. The time and resources taken to implement the regulation would remain relatively the same as is currently the case.

(b) Where Option 1 is not the preferred the option

In most other cases (those not listed above) it is recommended that Option 1 not be adopted. Specifically, it is preferred that duplicated or out-dated consultation provisions be removed from EPIs to reduce unnecessary red tape in the planning system (see Options 2 and 3).

If Option 1 was adopted for the remaining provisions (over 1300 clauses in EPIs), the existing duplication of consultation requirements with State government agencies would remain and the overall effect of the NSW Planning Reforms to improve efficiency in the assessment of development under Part 4 of the EP&A Act would be significantly reduced.

While development turn-around times may be improved through Regulation changes to statutory timeframes, and increases in the use of exempt and complying development provisions, there will remain significant bottlenecks in the assessment of development applications and in plan making.

It is proposed in future to amend the *Standard Instrument – Principal Local Environmental Plan* to ensure that unnecessary concurrence and referral provisions are no longer introduced into Principal LEPs. In the interim however, there will be a lag time of up to four years (to 2011) or beyond before all new Principal LEPs will be in place. Until such time, State government concurrences and referrals (whether necessary or not) will continue to be a statutory requirement.

4.2 Option 2 – Discretionary referrals

The second option considered in the review of concurrences and referrals was to amend the current consultation provisions to be a discretionary rather than a compulsory requirement.

(a) Possible benefits of Option 2

In Option 2, clauses in EPIs could be redrafted to remove the compulsory requirement to refer draft local environmental plans or development applications to State agencies. The compulsory referrals could be replaced with provisions requiring consent authorities to consider whether referrals should be made.

In this way, the consent authority would have the discretion to decide whether to refer the draft local environmental plan or development application to the State agency. For instance, a consent authority may consider referring an application to a State agency if the consent authority considered it necessary to do so (e.g. because the potential impacts might be

significant or the issue requires technical expertise the council does not have). In this sense, it would be up to each individual consent authority to determine whether the referral is necessary or whether the issue is minor and could be assessed adequately by council staff.

In this option, the regulatory burden would be reduced because there would not be an automatic referral to a State agency for every type of development application submitted. A system of preliminary sorting and assessment by council could be undertaken before the development application is forwarded to the relevant agency for a more detailed assessment.

Discretionary referrals mean that issues which are too significant or too difficult for a council to assess can still be referred to the State government, while minor developments of low risk can be assessed *in-house* by the consent authority without being referred for detailed assessment by the State.

(b) Why Option 2 is not a preferred option

The difficulty with taken the approach in Option 2 is that it may not result in any noticeable reduction in referrals. In practice, discretionary referrals are generally treated in the same manner as a compulsory referral. Councils do not always differentiate between 'must' and 'may' in subordinate legislation and if a reference is made in an LEP to obtain input from a State agency, the referral is commonly triggered irrespective of whether it is compulsory or not.

There may be an element of risk aversion in a council's approach to dealing with discretionary referrals. In many instances it may seem safer for a council to automatically refer a development application to a State agency for consideration of an issue (no matter how minor) rather than assessing the issue at the local level.

In Option 2, as with Option 1 (status quo), it is estimated that there would be no significant change in the current costs and benefits associated with the regulatory proposal. The time and resources taken to implement the regulation would remain relatively the same as is currently the case.

It is recognised that there will be instances where certain issues will be too complex for a council to assess on its own and State agency input could be beneficial. This is most likely to be the case in one-off situations where technical expertise of State agency staff would be preferable.

It must be noted however that whether or not an EPI identifies a referral to a State agency as either compulsory or discretionary, a consent authority has the option to forward a DA to a state agency for its input and consideration. Consultation can be undertaken between a consent authority and a State agency, irrespective of whether the local environmental plan contains an express provision in respect of referral.

Given that Option 2 does not provide any significant change to the current situation, it was not recommended for adoption in the proposed SEPP.

4.3 Option 3 – Removal of concurrence and referrals (preferred option)

The third option considered was to remove the State agency referral clauses from EPIs. For particular issues, the referrals would be replaced with heads of consideration for the consent authority to use in the assessment of development applications. For some development proposals, such as those involving heritage items or development adjoining DECC estate, it is proposed to replace the State agency referral with a reference to DA assessment guidelines that a consent authority can use to assess the issues in place of the State agency.

Option 3 (to remove concurrence and referrals) is the preferred regulatory option in the great majority of cases (approximately 85% of instances), and was found to provide the best outcome in a cost benefit analysis, when compared to Options 1 and 2.

Option 1 (to retain concurrence and referrals) is the preferred option for the remaining (15%) clauses in environmental planning instruments.

(a) Compliance costs for business

There are no identified additional potential costs arising from Option 3 - the regulatory proposal - for business or the development industry in general. The level of information required to be provided by the applicant to the consent authority will remain the same.

An identified benefit for business and the development industry is that there will be a slight reduction in costs to applicants under Part 4 of the EP&A Act (i.e. no concurrence fee).

The primary benefit to business and the development industry however is the potential savings derived from faster approval times. Whilst there is no available data to adequately quantify these financial benefits, they are likely to be quite significant for business and the development industry. There is already qualitative evidence that indicates that delays in the development assessment process can have an adverse impact on the financial viability of proposed development (see box below).

Case Study – Costs to business for excessive DA assessment timeframes

The Urban Development Institute of Australia NSW (UDIA NSW) modelled the potential impacts caused by time delays for determination of a development application for a standard 100 unit apartment in a major city centre (e.g. Parramatta). The modelling analysed sensitivity to the increases in the time taken to determine the DA.

The study found that such development applications determined **within 60 days were viable** and provided development **margins above 20%.** As the approval timeframe increased to 150 days, the gross profit and development margin reduced to marginal levels. Approval periods of **240 days** or more showed substantial reductions in gross profit, with development **margins dropping to 14.1%** making the development unfeasible. In the model the increase in costs to developers is primarily due to holding costs which significantly increase over time.

Source: UDIA (2007) *NSW Development Assessment Reform Discussion Paper*.

It is important to note however that excessive DA turn-around timeframes can be caused by many factors, delays in State government assessment timeframes being only one example.

While the removal of State agency concurrences and referrals may streamline the consultation process of any given DA, approval timeframes of DAs are also influenced by the statutory timeframes under the EP&A Act and regulations. For instance, as part of the broader 2008 Planning Reform program, the legislation will be amended to remove mechanisms such as the ‘stop the clock’ provisions in Part 4 of the Act and introduce ‘deemed approval’ for concurrences (i.e. a State agency’s concurrence will be considered to have been granted if they do not respond within the statutory timeframe).

(b) Compliance costs for State government

There is no significant predicted change in compliance costs for the State government. Any applications for development proposals that were already referred to State Government agencies under integrated development, designated development, Part 3A, dual consents or for any other approvals under other legislation will still be required to be assessed. The level of State government resourcing required to assess these development applications will not be changed by this regulatory proposal.

There is potential for a very minor reduction in compliance costs for the various State government agencies that will no longer be required to assess individual development applications (but only for issues that were not already duplicated or covered under other assessment or approvals processes).

These occur in only a small number of total referrals (approximately 30% of the clauses to be amended). Examples of these referrals include consultation with the Heritage Council for sites that are not listed on the State Heritage Register or covered by an Interim Heritage Order (IHO), or for referrals to DECC for development adjoining national parks. In both these instances, the referral clauses have been replaced with a reference to DA assessment guidelines (issued by the State agency) to be used by councils when they assess the potential impacts of the development proposal.

(c) Compliance costs for local government

There may be a moderate increase in compliance costs for local government in relation to the assessment of relevant development applications for certain issues (e.g. those for heritage or development adjoining DECC lands). These DAs would previously have been referred to the State government for assessment (as mentioned above). The time and resources required to assess the issue would be transferred instead to the consent authority.

The resultant change in compliance costs to Government overall would effectively be zero (i.e increased compliance costs to the consent authority to assess a particular issue for an individual DA would be offset by the marginal decrease in compliance costs for the State government authority).

(d) Administrative costs

Any increase in compliance costs to councils may be offset by minor savings due to a reduction in administrative costs (related to the transfer and handling of DAs between agencies).

Administrative costs for State government agencies will be reduced for all referrals and concurrences that were not already captured under integrated development, designated development, Part 3A, dual consents or approval requirements under other legislation.

(e) Competition impacts and other costs

There are no predicted competition restrictions for any of the proposed options, including the preferred option (Option 3).

There are no other discernable direct or indirect social costs or impacts on the community or the environment identified for the preferred option.

There is increased autonomy for councils in the development approval process. This is coupled with increased responsibility for those councils to ensure that social, economic and environmental concerns are fully addressed in the assessment of development applications.

Section 79C of the EP&A Act already requires 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 must consider these matters irrespective of whether any individual State agency has a formal concurrence or consultation role.

The regulatory proposal (Option 3) in some instances will explicitly place the onus on council to consider specific aspects of environmental, social or economic concern, in addition to the general considerations under s79C of the EP&A Act.

There is an extensive list of government guidelines that have over the years been developed specifically to assist councils in assessing particular environmental and socio-economic issues of proposed developments. These guidelines will be made available on a public Register of DA Assessment Guidelines hosted on the Department of Planning website and the register will be regularly updated.

It is important to note that the removal of compulsory concurrence and consultation processes does not prevent a consent authority from liaising with the relevant State agency on any matter of interest. Neither will the regulatory proposal prevent State agencies from providing input on the assessment of a development application or the preparation of a draft LEP.

The important distinction is that these consultation processes will be *discretionary* and will not result in formal delays to the assessment and processing of a development application or the preparation of an LEP.

(f) Implementation and compliance

It is proposed to remove the referral in approximately 85% of cases, with 15% of referrals to be retained (Option 1).

Removal of referrals will be implemented through the proposed SEPP which will be an 'amending instrument' that will repeal some 1336 regulatory provisions in 229 environmental planning instruments, including 203 local environmental plans, 19 regional environmental plans and 7 State environmental planning policies.

The amendments will take effect, once the SEPP is gazetted, on the date of commencement outlined in the SEPP.

It will be the responsibility of each consent authority to follow the new provisions outlined in each amended EPI.

It will be the responsibility of the Department of Planning to ensure that the Register of DA Assessment Guidelines is made available to councils and the public. The Department will be responsible for liaising with the State government agencies to ensure that the guidelines are appropriate for the task.

There no penalties being introduced with the regulatory proposal.

5. Principle 4 – effective and proportional action

As outlined in the NSW Government's *Guide to Better Regulation*, effective government action will ensure regulation achieves its objectives without imposing unnecessary costs, and the scope of any regulatory proposal should be proportionate to the seriousness of the problem being addressed.

The direct amendment of local environmental plans is the most effective method of ensuring that the regulatory proposal is implemented at a local level and maximises local awareness of the policy changes.

The proposed SEPP will amend local environmental plans rather than imposing an over-arching regulation to effect the same regulatory changes. While local environmental plans are a regulatory mechanism, they are subordinate legislation to both the EP&A Act and the regulations, and their use in this instance is proportionate to the seriousness of the issue.

While a significant amount of effort has gone into the preparation of this regulatory proposal, this type of policy work is core business and the Department has been able to optimise existing resources to deliver the end product.

The delivery and implementation of the regulatory proposal once approved will not require additional Government resources.

6. Principle 5 – consultation

The proposed SEPP was originally outlined to Cabinet in November 2007 where support for the regulatory proposal was first sought. A second Cabinet Minute was tabled in April 2008 and provided further details on the regulatory proposal, including a draft SEPP indicating the type of EPI amendments being proposed.

Following consultation with affected State government agencies and an extensive period of legal drafting through Parliamentary Counsel's Office, an 'exposure draft' of the proposed SEPP was exhibited for public comment for 28 days (between 23 July to 22 August 2008).

A communication strategy was implemented and included the:

- SEPP public exhibition process and supporting documentation, including a Community Consultation Guide and Q&A advisory sheet available on the Department's website.
- Circulation within Government of a comprehensive *Schedule of SEPP Policy Changes* document which outlined the agencies affected by the policy and what measures have been put in place to replace each of the referral and concurrence provisions proposed to be repealed.
- Formal consultation undertaken through the section 37 Minister consultation process for the making of draft SEPPs. This included notification to the Premier, Minister for Climate Change and the Environment, Minister for Education and Training, Minister for Health, Minister for Primary Industries and Mineral Resources, Minister for Lands, Minister for Water and Emergency Services, Minister for Ports & Waterways and Regulatory Reform, Minister for Local Government and Minister for Roads

- Written notification to the CEOs of each of the following State Government agencies inviting comment on the proposed SEPP:

Department of Environment and Climate Change
Department of Primary Industries
Roads and Traffic Authority
Sydney Catchment Authority
Department of Water and Energy
RailCorp
Department of Lands
Department of Local Government
Sydney Water
Sydney Harbour Foreshore Authority
Sydney Olympic Park Authority
Ministry of Transport
NSW Rural Fire Service
NSW Fire Brigade
Rous Water
Department of Education and Training
NSW Health
Department of Community Services
Heritage Council
Rural Lands Protection Boards State Council
Mine Subsidence Board
Integral Energy
Transport and Infrastructure Development Corporation

During the exhibition period, **52** submissions were received including **37** from government representatives (local councils, State agencies and Ministers) and **15** from non-government organisations or individuals.

77% of submissions provided full support or conditional support to the proposed SEPP. Submissions providing conditional support generally included support for the underlying principles of the SEPP and included recommendations to retain or modify specific clauses or provisions within the policy. 13 submissions were received from local government, including submissions requesting further removal of concurrence and referral provisions (beyond those identified in the draft SEPP) to allow councils to assess and determine local development without continued involvement of State agencies.

12 submissions (23%) presented objections to the policy or raised significant concerns. The primary issue raised was that the State government should be increasing its involvement in assessing potential environmental impacts of development – not reducing it. There was a concerns among objectors that the SEPP may lead to a decline in environmental outcomes, especially in relation to the protection and management of sensitive environmental areas and coastal environments.

A common issue raised in submissions from councils was that the Department of Planning must ensure that a *Register of Assessment Guidelines* is made available to councils so that council staff can readily access State agency DA assessment tools. The Department of Planning has commenced a review of assessment guidelines in conjunction with the relevant State agencies, and will establish the Register on the Department's website shortly.

7. Principle 6 – simplification, repeal, reform and consolidation

Broadly speaking, there are three main reasons why the proposed SEPP has been prepared to remove concurrence and referral provisions:

1. The majority of referral requirements in EPIs duplicate other approval mechanisms
2. There are many unnecessary or out-dated provisions that no longer apply or have been superseded by other assessment mechanisms
3. Plan making referrals are being replaced by the Planning Reform 'Gateway' process.

7.1 Removing duplication

In most instances the referral provisions proposed to be removed duplicate other approval mechanisms. This includes concurrence and notification provisions currently outlined in other EPIs or permit and approval requirements in other legislation.

This duplication has made the approval process confusing for users and ultimately increases red tape by requiring assessment of issues that are already assessed as part of the normal development approval process.

One of the more common types of duplication are approvals covered under **Integrated Development** (Part 4 Division 5 of the EP&A Act). Integrated Development was specifically designed to simplify the planning process for developments that require more than one type of approval. For development applications that are covered under Integrated Development, removing any additional concurrence or referral provisions will not affect the State agencies' role. When an application triggers the Integrated Development process, there will be no substantial change to the current level of scrutiny given to relevant development applications by local government and State agencies.

7.2 Removing unnecessary or out-dated referrals

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

Many issues that were previously dealt with through State agency referrals are now covered by comprehensive State government guidelines that have been prepared for use by councils when assessing development applications. Guidelines and other council assessment mechanisms in many instances will remove the need to consult individually with State agencies on a case by case basis.

In some instances, appropriate outcomes can still be achieved through a council assessment of a given matter, rather than needing to refer the development application to a State agency.

Where appropriate, the proposed SEPP will include new references to additional assessment matters (e.g. sea level rise and climate change issues) for councils to consider when assessing development applications.

7.3 Gateway process for plan making

All automatic concurrence and referral requirements for draft LEPs will be removed from REPs. This is to be consistent with the new strategic planning processes under the NSW Planning Reform program.

Termed the 'Gateway', the process for making each proposed plan (i.e. LEP) will be tailored to match the complexity of the plan being proposed.

There will no longer be mandatory referrals to State agencies for each proposed plan, except in relation to threatened species conservation.

The streamlined Gateway process for plan making will lead to the following outcomes:

- Certainty earlier in the process
- Reduce time by half – now 2-5 years
- Reduce costs of rezoning - Avoiding unnecessary studies
- Net benefits estimated at $200 million over 5 years from 2008-09

The Department of Planning is currently developing a strategy for identifying the extent of State agency consultation required for various types of planning proposals.

8. Principle 7 – evaluation and review

The NSW Government is committed to a program of ongoing review of all regulation unless it has a minimal impact. In this context, the proposed SEPP is considered to have minimal impact as it is an 'amending instrument' which makes only minor changes to environmental planning instruments.

The SEPP does not significantly impact on individuals, the community, business or impose restrictions on competition or significant administrative costs to government.

The SEPP is primarily an interim measure to modify existing environmental planning instruments prior to the establishment of 'Principal LEPs' which are due to be in place by 2011. Any remaining State agency concurrence provisions will be monitored by the Department of Planning, and State agencies will report to the Department on processing timeframes for concurrence as an ongoing measure.

The Department of Planning will continue to review draft LEPs prior to finalisation, to ensure that unnecessary or duplicative referrals are not re-introduced into Principals LEPs.

The proposed SEPP itself will no longer operate once the amendments have been made and may consequently be repealed following its commencement. As such, it is not necessary to conduct regular reviews of the SEPP.

9. Summary of regulatory proposal

The proposed SEPP is the preferred regulatory proposal for reducing red tape in planning approval processes and plan making because:
a) this approach retains key State agency concurrence and referrals that are still required, while removing a significant amount of duplicated or out-dated State agency referrals
b) it is appropriate to use an 'amending instrument' to reduce regulation in other EPIs as it is the most direct mechanism for affecting the regulatory change required
c) it is a responsive method of removing red tape and can take immediate effect once the proposed SEPP is made.

Some of the primary benefits that will stem from the proposed SEPP include reduced red tape for applicants and giving local councils greater 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 an efficient and effective manner.

The removal of unnecessary State agency referrals will improve the development application and LEP turn-around timeframes for councils, as well as reducing assessment costs and resourcing requirements for State agencies. In relation to assessment costs, these primarily relate to savings in administrative costs (not compliance costs).

Councils can still refer development applications and inquiries to State agencies for advice, however it would no longer be a compulsory requirement to do so.

Importantly, improved efficiency in development assessment will benefit proponents including community members 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.