

Special Activation Precincts - Potentially Hazardous Development Guideline

The purpose of this guideline is to outline the process, timing and responsibilities associated with approval by the Planning Secretary under Section 3.11 of *State Environmental Planning Policy (Precincts – Regional) 2021*

Background

Complying development on land within a Special Activation Precinct (**SAP**) for the purposes of a potentially hazardous industry that requires an Activation Precinct Certificate (**APC**) is subject to the provisions of Section 3.11 of *State Environmental Planning Policy (Precincts Regional) 2021* (Precincts – Regional SEPP).

In accordance with Section 3.11(1), the Regional Growth Development Corporation (**Development Corporation**) must not issue an APC that relates to complying development for the purposes of a potentially hazardous industry without the approval of the Planning Secretary of the Department of Planning, Housing and Infrastructure (**DPHI**).

Before issuing any approval under Section 3.11(2), the Planning Secretary must be satisfied that the development does not pose an unacceptable risk in the locality to human health, life, property or the biophysical environment.

Prior to making an application for an APC that relates to complying development, an applicant must consult with DPHI, and obtain written advice on whether a proposed development that is a potentially hazardous industry is categorised as ‘low hazard’, ‘medium hazard’, or ‘high hazard’.

For a proposal categorised as ‘low hazard’ or ‘medium hazard’, the Planning Secretary may approve the issue of an APC.

The Planning Secretary will not approve the issue of an APC that relates to complying development for the purposes of a proposal deemed to be ‘high hazard’. ‘High hazard’ development is not capable of consideration as complying development and a development application (DA) must be lodged with DPHI.

The process is illustrated in **Figure 1** of this guideline and described in detail below.

Process

Site Selection

1. Prior to site selection, applicants are encouraged to discuss their application with the Development Corporation. This consultation is required to ensure development that is potentially hazardous is consistent with the Master Plan and Delivery Plan as it relates (in the first instance) to land use safety.
2. Applicants must consider if the proposal is above or below the dangerous goods threshold tests in *Hazardous and Offensive Development Application Guidelines Applying SEPP 33* (Applying SEPP 33).

Development Enquiry

3. A development enquiry to the Development Corporation is required to confirm the characterisation of the use, permissibility under Precincts – Regional SEPP and suitability of the selected site.
4. At the enquiry stage, applicants must provide a project scoping document that describes the project, identifies any key site constraints, and includes a plan(s) illustrating the conceptual physical layout and design of the project, relevant process diagram(s), details of surrounding land uses and location of nearby sensitive receivers.
5. Once the proposal scope is provided, DPPI will provide written advice as to whether the development is likely to be 'low hazard', 'medium hazard' or 'high hazard' and if the development is suitable for a complying development pathway.
6. For a proposal that is considered 'low hazard' or 'medium hazard', a complying development pathway can be pursued and DPPI will issue requirements for the preparation of the following safety studies:
 - a. Hazard Analysis, in accordance with *Hazardous Industry Planning Advisory Paper No 6 – Hazard Analysis*, or *Assessment Guideline Multi-Level Risk Assessment (2011)*
 - b. A Fire Safety Study would provide adequate information to justify the adequacy of fire fighting requirements and demonstrate it meets the relevant requirements under *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines and Environmental Planning & Assessment Regulation 2021* concerning fire safety.
7. Applicants are expected to provide final design details for the construction and operation of the development with the complying development certificate (CDC) application. As such, the

scope of the information provided to DPHI is expected to be final in terms of technology, throughput, storage, layout, firefighting capabilities and requirements.

8. If the proposal is deemed to be 'high hazard', a traditional DA pathway must be followed.
9. A development is likely to be categorised as 'high hazard' if the proposal involves:
 - a. chemical manufacturing and processing (e.g. hydrogen production)
 - b. storage of toxic materials, as defined under Schedule 15 of Work Health Safety Regulation 2017, at quantities above the thresholds set out in Applying SEPP 33
 - c. an extractive industry involving the processing of extractive materials, as defined in the Standard Instrument
 - d. 'hazardous industry' as defined in the Standard Instrument
 - e. significant dangerous goods storage that would be characterised as a Major Hazards Facility (MHF) (defined by the *Work Health and Safety Regulation 2017*).
10. In simple terms, if a proposal requires ongoing auditing and/or monitoring to ensure continual safety, the proposal is likely to be deemed 'high hazard' and continuance down a complying development pathway would not be appropriate.

Note: DPHI – Industry Assessments will consider the principles in HIPAP 12 when deciding which hazard category applies to a proposal.

Note: Consistent with Applying SEPP 33, if development is for the storage and handling of LPG (which is classified as DG Class 2.1) only and its storage quantity is below the MHF threshold quantity, it is expected to demonstrate compliance with the relevant Australian Standard. Therefore, any proposal for the storage and handling of LPG only that is below the MHF thresholds is permitted to be carried out as complying development.

Pre-lodgement

11. Applicants must engage a suitably qualified consultant to prepare all safety studies.
12. After the issue of the DPHI requirements, the applicant must submit the safety studies (identified in item 5, above) to DPHI for adequacy review. This aims to avoid any potential delays due to inadequate information or deficiencies in the safety studies identified during the detailed merit assessment of the studies.
13. Comments will be provided by DPHI to the applicant following review of the safety studies.
14. DPHI will advise the Development Corporation when the studies are ready for lodgement.

Lodgement and Assessment

15. All information that has undergone adequacy review during the pre-lodgement stage is lodged with the application for an APC to the Development Corporation (via the Planning Portal) and referred to DPHI for their consideration under section 3.11 of the Precincts – Regional SEPP.
16. DPHI will carry out a merit assessment of the safety studies and will provide advice on the suitability of the studies. DPHI may request additional information from the applicant to complete its assessment of the safety studies.
17. Following the completion of its merit assessment of the relevant safety studies, the Planning Secretary will issue its formal approval under section 3.11 of the Precincts Regional SEPP.
18. The Planning Secretary's approval may also provide advice on which of the fixed set of conditions (as prescribed in Schedule 1E, Part 3 of the Precincts-Regional SEPP) are relevant for the development. The intent is for the applicant to be able to demonstrate to the certifier that certain post-approval requirements are not required. The Development Corporation will append DPHI's advice to the APC and CDC.
19. In the event a development is found to be 'high hazard' following the merit review of the safety studies, the Planning Secretary will provide written advice that it cannot issue an approval under section 3.11.
20. Where the application is a 'high hazard' the applicant is to be advised of the next steps for lodgement of a DA.
21. The Applicant may seek to make changes to the development to reduce the hazard categorisation from 'high hazard' to 'medium hazard' or 'low hazard'. DPHI will carry out a subsequent merit review of the development and associated studies and advise if the hazard categorisation can be reduced.

Note: Industries that may be potentially hazardous development should follow Applying SEPP 33 to determine whether the development may be potentially hazardous. Examples of industries that trigger Chapter 3 of Resilience and Hazards SEPP (formerly known as SEPP 33) are also provided in Appendix 3 of Applying SEPP 33.

Determination

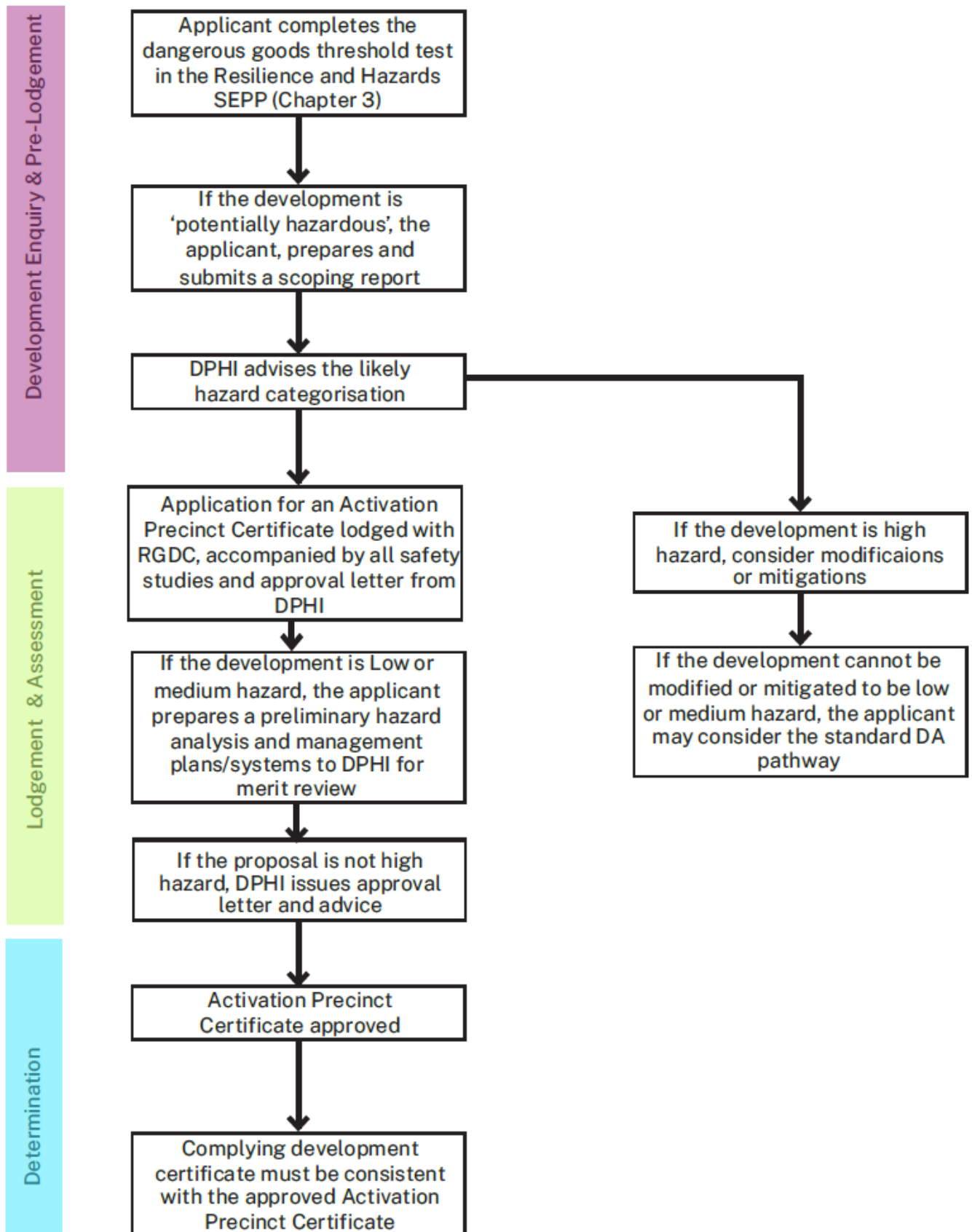
22. The Development Corporation determine the Activation Precinct certificate in accordance with Section 3.10 of Precincts – Regional SEPP.

23. The Activation Precinct certificate is to be issued with a classification of the development as 'low hazard', or 'medium hazard'. DPHI's advice regarding hazard categorisation is to be appended to the Activation Precinct certificate and CDC.
24. Where the application is a 'high hazard' development the applicant is to be advised of the next steps for lodgement of a DA.

Timing

25. Upon lodgement of the application for an APC through the Planning Portal, the Development Corporation refer the application to DPHI. DPHI has 28 days to review the application and approve or request additional information. The request for additional information is to be a request to the Development Corporation who will liaise with the applicant to obtain the additional information.
26. DPHI will have 14 days to assess any additional information received from the applicant and issue its approval.
27. The Development Corporation has 30 days (inclusive of DPHI's review of the application) to determine the application for an APC once the application is accepted and no additional information or modification of the application is required (Section 3.10 Precincts – Regional SEPP).

Figure 1: Planning Secretary Decision Process under Section 3.11 of the Precincts Regional SEPP



Important Note

The Guideline does not take into consideration the separate yet concurrent process that may be required for an Environmental Protection Licence (EPL) for owners or operators of various industrial premises under the *Protection of the Environment Operations Act 1997* (POEO Act) and 'potentially offensive development'. Licence conditions relate to pollution prevention and monitoring, and cleaner production through recycling and reuse and the implementation of best practice.

If you think you may require an EPL, consult the [Guide to Licensing](#). You can apply for an EPL via [eConnect EPA](#) the EPA's online licensing tool. Read more about [how to apply online using eConnect EPA](#).