

Designated development

Summary of changes

Designated development is a category of development under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) that involves a higher level of assessment and scrutiny due to the potential risk it poses to the environment.

Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (2000 Regulation) and some environmental planning instruments (e.g. a state environmental planning policy - SEPP) specify when a proposal is designated development and outlines the relevant assessment and public participation requirements.

NOTE: The Parliamentary Counsel's Office (PCO) has initiated a change whereby clauses within remade regulations will now be referred to as 'sections'. Therefore, this guide uses 'sections' for the 2021 EP&A Regulation and 'clauses' when referring to provisions in the 2000 Regulation.

Changes to designated development

The *Environmental Planning and Assessment Regulation 2021* (2021 EP&A Regulation):

Revises categories that trigger designated development

Includes new designated development categories for emerging technologies where they also require an environmental protection licence (EPL):

- energy recovery from waste (facilities requiring an EPL under Schedule 1, Clause 18 of the *Protection of the Environment Operations Act 1997* (POEO Act)).
- contaminated groundwater treatment (activities requiring an EPL under Schedule 1, Clause 15A of the POEO Act).
- oil or petroleum waste storage (facilities requiring an EPL under Schedule 1, Clause 42 of the POEO Act).

Includes other emerging technologies which may also require an EPL or other licence from the EPA in certain circumstances:

- large-scale battery storage facilities - facilities that supply, or are capable of supplying, more than 30 megawatts of electrical power.
- geosequestration as defined in Schedule 1, Clause 8 of the State and Regional Development SEPP.
- desalination systems or works:
 - that have a processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day, or
 - that have a processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located:
 - on a floodplain, or
 - within a coastal dune field, or
 - within a drinking water catchment, or

- within 100 metres of a natural waterbody or wetland, or
- within 250 metres of a dwelling not associated with the development.

Excludes lower risk activities from being designated development and update categories based on industry changes

- Updates the photovoltaic (PV) solar energy category so that solar power generators are only designated if they provide more than 30 megawatts of electrical power and are located on a flood plain.
- Introduces a 10,000 bird threshold to exclude smaller poultry farms that are not in sensitive locations.
- Amends the breweries and distilleries category to exempt certain small-scale operations.
- Amends the concrete works category to exempt small-scale activities.
- Introduces a new category for mixed feedlots of multiple species.

Aligns with POEO Act activities

- Increases certain designated development thresholds to align with POEO thresholds where appropriate.
- Aligns terminology with POEO Act provisions for some industries.
- Aligns petroleum provisions with the POEO Act and other related legislation.

Updates location-based triggers for designated development

- Replaces the environmentally sensitive areas (ESA) term and definition with a revised definition of environmentally sensitive areas of State significance (ESASS).
- Standardises wetland buffer to 100 metres (current buffers range from 40 – 100 metres).
- Updates the definition of drinking water catchment.
- Clarifies that certain 'associated works' do not trigger designated development.

Updates designated development exclusions

- Clarifies existing provisions applying to development applications (DAs) for alterations and additions.
- Removes reference to the out-of-date Newcastle LEP 1987.

Make housekeeping and miscellaneous updates

- Revises definitions, phrasing and make improvements to Section structure.
- Updates cross references to legislation and policy.
- Makes minor drafting clarifications and corrections.

What are the benefits of these changes?

By adding new categories to capture emerging technologies and by updating thresholds and definitions, the 2021 EP&A Regulation supports improved environmental protection.

Updates to development categories allow the 2021 EP&A Regulation to better align with current technological and industry standards to support a modern planning system.

Removing lower risk development types helps ensure that proposals receive the right level of assessment and oversight. This helps proponents and consent authorities to save time and costs as designated development requirements only apply to higher risk proposals.

Changes such as revising and clarifying provisions support a modern planning system that is easier to understand and use. They simplify the 2000 Regulation and increase consistency across the legislative framework.

Commencement

The 2021 EP&A Regulation commences on 1 March 2022. See Section 5 of Schedule 6 for savings, transitional and other provisions.

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