

Development assessment and complying Development

Summary of changes

Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) is the primary part that relates to a development application (DA) and development consent processes. An environmental planning instrument (EPI) determines whether consent is required for different kinds of development. Development that requires consent is assessed by the relevant authority who determines whether consent will be granted (with or without conditions) or refused.

The *Environmental Planning and Assessment Regulation 2021* (2021 EP&A Regulation) amends what is known as:

- 'Local development', which is the most common type of development in NSW. Local development includes designated development, integrated development, threatened species development, and Class 1 aquaculture development. It also includes development requiring concurrence.
- Complying development, which is subject to a combined planning and construction approval. The type of development is defined under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). It is relatively straightforward and can be determined through a fast-tracked assessment by a council certifier or private accredited certifier.

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 *Environmental Planning and Assessment Regulation 2000* (2000 Regulation).

Development applications

Information included in a DA and rejection provisions

The 2021 EP&A Regulation requires all DAs to be made in the approved form and to include all the information and documents specified in the approved form or required by the Act and the Regulation (see sections 24(1) and 99(1)). The consent authority is able to reject any application that does not contain this information (see sections 39(1)(b) and 114(1)(c)).

The 2021 EP&A Regulation transfers the DA requirements that were formerly set out in Schedule 1 of the 2000 Regulation to the approved form, which is located on the NSW Planning Portal.

The Department will undertake consultation with councils to develop improvements to the approved form. This includes updates to application requirements to simplify the provisions, remove/update outdated requirements and include new or more specific requirements for particular applications, to improve the quality of information provided with DAs and reduce administrative burden.

NOTE: amendments to application requirements as part the remake of the Regulation (and subsequent improvements to the online form) relate to local DAs only and do not affect any changes to requirements for State significant development or State significant infrastructure.

Withdrawal and rejection provisions for modification applications

The 2021 EP&A Regulation clarifies that:

- the consent authority can reject a modification application in certain circumstances.
- withdrawal provisions afforded to DAs also apply to all modification applications.

Information included in applications to amend DAs and modification applications

The 2021 EP&A Regulation improves the quality of modification applications and applications to amend DAs that are under assessment by prescribing clear and detailed application requirements.

It requires applicants to provide details of proposed changes, including the name, number, and date of any plans that have changed. This enables the consent authority to compare the proposed development with the development originally proposed (in the case of a DA that is still under assessment) or approved (in the case of a modification application).

Landowner consent requirements for surrenders and modifications

For surrenders and modifications of a development consent, the 2021 EP&A Regulation removes the requirement for landowner's consent where the original DA could have been made without the consent of the landowner.

Assessment timeframes - stop the clock and deemed refusal periods

The 2021 EP&A Regulation clarifies and restructures the provisions for calculating assessment periods and stop the clock rules to increase certainty about when an assessment period begins and ends. These changes:

- eliminate unnecessary concessional delays in assessment period.
- remove unnecessary requirements to notify concurrence authorities and approval bodies. This includes specifying that:
 - certain minor modification applications do not need to be referred to concurrence or approval bodies unless they propose changes to conditions or terms of approval imposed by these bodies.
 - the consent authority does not need to notify concurrence or approval bodies of the lodgement of a DA or a modification application where the application is withdrawn or rejected.
 - the consent authority does not need to notify concurrence or approval bodies of the withdrawal or rejection of a DA or a modification application where the concurrence or approval body is yet to be notified of the application in the first place.
- reduce unnecessary delays and provide greater certainty around the period for providing additional information, by requiring authorities to specify a reasonable period within which the information is to be provided.
- provide greater certainty around the day that the clock stops when an information request has been issued.
- clarify when the clock restarts in circumstances when an application is amended.
- provide that the assessment clock starts when payment is received (unless payment is waived) and clarify that someone can make a payment on behalf of the applicant.
- facilitate a shared understanding of elapsed time in the deemed refusal period by requiring that, when issuing an information request, the consent authority must outline the number of

days that have elapsed in the assessment period to date and notify the applicant that the clock will cease to run while the request remains unanswered.

Notices of determination

The 2021 EP&A Regulation:

- requires a consent authority who approves a modification to provide the applicant with a modified development consent that complies with any requirements specified by the Planning Secretary. This provides a consistent approach to modifying a development consent and ensure development consents are iteratively updated to reflect subsequent modifications.
- distinguishes between a notice of determination issued to an applicant and a notice issued to any other party. This ensures that, even where a submitter has not provided an email contact, the consent authority would only need to post that person a letter (rather than the full list of information that the 2000 Regulation required to be sent to all parties).
- allows notices of determination to be sent to approval bodies through the NSW Planning Portal.

Determinations of internal review applications

The 2021 EP&A Regulation requires consent authorities to notify submitters of determinations on internal review applications.

Complying development

CDC applications

The 2021 EP&A Regulation requires complying development certificate (CDC) applications to include:

- details on site configuration and building envelope of the proposed building(s) or works.
- detailed engineering plans for telecommunications or electricity works.
- a site plan that is drawn to scale and shows the location of any registered easements on the land.
- the maximum site coverage of the land.

Note on other new application requirements for CDC applications:

Section 120(1) of the 2021 EP&A Regulation provides that an application for a CDC must be in the approved form and include all the information and documents specified in the approved form (or required by the Act or the Regulation). CDC applications are also required to provide:

- Previous DA reference numbers for change of use CDC applications.
- Additional information on prior approvals (approvals granted under the *Local Government Act 1993*, *Road Act 1993* or approval for removal of a tree issued within the last 20 years, when such information is readily available or accessible).

CDC applications – contaminated land

The 2021 EP&A Regulation requires a statement by a qualified person to certify that the land has been appropriately investigated in accordance with the guidelines made or approved by the NSW EPA under section 105 of the *Contaminated Land Management Act 1997*. It also clarifies what is meant by a qualified person for the purpose of contaminated land requirements

CDC approvals

- The 2021 EP&A Regulation requires a detailed list of reports, studies, plans and documentation relied upon to determine the CDC application to be listed on the CDC, with sufficient guidance on how and where the documents can be accessed.
- The 2021 EP&A Regulation also requires pre-approval notices given to neighbours and the council to identify the relevant SEPP or the relevant code in the Codes SEPP application which the CDC has been proposed and include the site plan that accompanied the application.

Other

The section relating to documents required for traffic generating complying development has been updated to reflect the fact that there is more than one roads authority.

What are the benefits of these changes?

- The changes provide increased certainty for consent authorities and applicants. Improving certainty and consistency in application requirements and assessment processes helps applicants to make investment decisions based on an increased ability to predict the time and costs associated with DAs. The changes to modification applications promote consistency and greater certainty between proponents and consent authorities.
- The changes reduce administrative burden for consent authorities and reduce the likelihood of delays in assessment. The 2021 EP&A Regulation prescribes clearer and more detailed application requirements for modification applications and proposed amendments to development applications that are still under assessment. This may help councils and the Department to save time and resources in checking applications at the time of lodgement to make sure they are complete and in requesting further information after lodgement. It may also help to avoid delays in assessments consent authorities are more likely to have the information required to assess an application up-front.
- The 2021 EP&A Regulation also helps to reduce the number of disputes over assessment periods by simplifying provisions relating to the calculation of the assessment periods and concurrence and referral procedures. Simpler provisions facilitate a shared understanding of when the assessment period begins and ends to help reduce disputes over the calculation of the deemed refusal period. This will provide time, cost, and resource savings.
- The 2021 EP&A Regulation also improves the quality of CDC applications by requiring them to include further detailed information as well as details of previous DA references and details of prior approvals. It also provides increased consistency in the application of restrictions on contaminated land for CDCs, which will also ensure human health and safety is protected.

Commencement

The 2021 EP&A Regulation commences on 1 March 2022. The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022. See Section 5 of Schedule 6 Savings, transitional and other provisions for further detail.

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