



Amendment to State Environmental Planning Policy (Infrastructure) 2007 and related amendment to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

Explanation of intended effect

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Acknowledgment of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Introduction

Infrastructure is the foundation upon which our economy and society are built. It supports jobs, travel and quality of life. It is therefore essential that our planning system supports an efficient, effective and transparent assessment of new infrastructure proposals.

Recognising this, the Department of Planning, Industry and Environment (the Department) is proposing legislative amendments that will:

- better enable the timely delivery of infrastructure, including the acceleration of projects that benefit the community, create jobs and support economic growth
- do so in a way that protects residential amenity, the environment and heritage items from any impacts related to this delivery
- help ensure a consistent approach between different infrastructure activities with similar characteristics and impacts
- provide more clarity for users of *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP)
- support the continued modernisation, improved usability and increased transparency of the planning system via the NSW Planning Portal.

Amendments are proposed to the Infrastructure SEPP to:

- improve its effective operation by updating the provisions for transport related infrastructure (including interim corridor protection of the Sydney Metro West corridor from the Bays Precinct to CBD)
- streamline development and improve consistency and clarity through a range of miscellaneous housekeeping changes. Similar amendments are also proposed to the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP).

Strategic justification

NSW continues to adapt to the social and economic impacts of the COVID-19 pandemic. The planning system can help to accelerate our economic recovery by facilitating the delivery of infrastructure projects and other development to keep the economy moving and people in jobs.

The NSW Government has introduced a suite of reforms to create a better planning system for NSW. Work is underway through the *NSW Planning Reform Action Plan* to improve assessment timeframes and reduce complexity.

The proposed amendments seek to contribute to these reforms by streamlining assessment pathways, standardising approaches and supporting improved transparency through the NSW Planning Portal.

About the Infrastructure SEPP

State Environmental Planning Policies created under the *Environmental Planning and Assessment Act 1979* (EP&A Act) facilitate the protection, improvement or utilisation of land in NSW.

The Infrastructure SEPP facilitates flexible and orderly planning pathways for infrastructure development in NSW. It provides regulatory assurance to the development of key infrastructure projects by prescribing matters for consideration and requiring consultation with authorities responsible for key infrastructure projects in the determination of adjacent developments.

In this way the Infrastructure SEPP assists local government, the NSW Government and the communities they support, by simplifying the process for the delivery of essential infrastructure such

as hospitals, roads and railways, telecommunications, emergency services, water supply and electricity networks.

Key aims of the Infrastructure SEPP which support the proposed amendments include:

- identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development
- providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

Further to the aims of the Infrastructure SEPP, this proposed amendment also supports the following object of the EP&A Act:

- to promote the orderly and economic use and development of land.

The proposed amendments also respond to Clause 12 of the Infrastructure SEPP, which requires its provisions to be regularly reviewed.

Proposed amendments

Specific amendment proposals are outlined in two attachments, which also include more information on the context for change:

Section A – Transport

Section B – Miscellaneous

Section A: Transport

Introduction

Transport infrastructure plays a critical role in driving economic growth and wellbeing. Integrated transport networks, including road, train, metro, bus, ferry, light rail, cycling and walking provide access to workplaces, and help to connect us to each other and to travel around New South Wales.

Certain transport infrastructure projects which give rise to limited impacts currently require development consent, with assessment processes that can slow the implementation of these important projects. Often, this assessment time is justified, as impacts must be fully considered during the development application process. However, there is various smaller-scale infrastructure, commonplace for transport facilities, which is not captured under existing provisions and can be unnecessarily delayed through this process.

The proposed amendments aim to match the level of planning assessment with the scale of a development's impact. This could reduce costly project delays while enabling the timely delivery of essential transport infrastructure.

It will also support the NSW Government's current reform measures to create a more streamlined, certain, and transparent planning system.

Proposed amendments

The proposed amendments to the Infrastructure SEPP include amendments to transport (port, road and rail) infrastructure.

The proposed amendments aim to:

- provide a consistent and efficient planning regime for the development of transport infrastructure
- provide definitions to better explain terminology used or for consistency
- provide for Sydney Metro as a rail infrastructure facility provider
- provide interim corridor protections for the proposed Bays Precinct to CBD section of the Sydney Metro West project by identifying this section as applying to clause 88 of the Infrastructure SEPP. This will require consent authorities to refer development applications that are within the interim corridor and penetrate the ground at least 2m to Sydney Metro for concurrence before determining.
- revoke interim corridor protections for the Westmead to the Bays Precinct section of the Sydney Metro West project as this section of the project has been determined and granted development approval
- provide additional exempt development for minor railway station infrastructure and works
- provide the ability for TfNSW to use the provisions of Division 12 (Parks and other public reserves) when providing for open space
- provide for maintenance, management and use of decommissioned heritage assets
- provide complying development provisions for some commercial uses and refine planning pathways for other commercial uses on an existing railway station platform or railway complex or car park
- provide for weed and invasive plant removal in existing stormwater management systems as exempt development
- provide clarity in terms of whether or not provisions for particular uses are exempt or permitted without consent

- provide clarity to particular clauses by separating clauses into two clauses, or rewording clauses
- allow for general housekeeping updates, including nomenclature.

The proposed amendments will update legislative definitions and propose amendments to four planning pathways:

- **development with consent** – development that is assessed and determined by a relevant consent authority (usually a local council)
- **development without consent** – development undertaken by a public authority such as Transport for NSW that can be self-assessed and self-determined
- **complying development** – development that must comply with prescribed conditions within an environmental planning instrument and will be certified by an approved authority
- **exempt development** – minor development not subject to assessment or consent.

Part 1 Preliminary and Part 2 General

Proposed amendment	Effect of proposed amendment
Update references in Division 13 (Port, wharf or boating facilities) to the Newcastle Port Corporation that is now known as “Ports Authority of NSW”.	This amendment replaces an outdated reference of “Newcastle Port Corporation” to be “Ports Authority of NSW”.
Update the definition of ‘freight’ within Clause 78.	This amendment will broaden the definition of ‘freight’ in the Infrastructure SEPP to better reflect what is currently moved on NSW railways.
Update the references in Division 15 (Railways) to “Rail Authority” due to changes of TfNSW and its cluster agencies amalgamation.	This amendment replaces an outdated reference to the rail authority.
Provide a definition for rail heritage assets in Division 15 clause 78.	This amendment adds “rail heritage assets” to the railway infrastructure facilities definition in Clause 78 in order to provide for a planning approval pathway for such assets.
Include “Sydney Metro purposes” in the existing definitions in Division 15 related to railways.	This provides clarity that Sydney Metro is included in the railway definitions in clause 78.
Amend Subclause (3) of Clause 15AA (Consultation with State Emergency Service) to exclude the requirement for consultation in relation to minor road or rail upgrades.	This amendment means that consultation with State Emergency Services is not required for minor road or rail upgrades.

Development permitted with consent

Proposed amendment	Effect or proposed amendment
<p>Delete Subclause (3)(a) of Clause 79 (Development Permitted without Consent) and insert the Subclause into Clause 82A (Exempt Development – any persons) with the condition it has minimal impact on the number of vehicle spaces in the car park used by commuters. The Subclause relates to types of commercial uses permitted in commuter car parks.</p>	<p>The amendment will provide that such commercial uses are exempt development.</p> <p>The commercial uses include (i) vehicle share car parking; (ii) vehicle hire; (iii) vehicle servicing and cleaning in commuter carparks that are owned, leased, managed or controlled by a rail authority; where the uses have minimal impact on the vehicle spaces in the car park.</p>
<p>Delete Subclause (3)(b) of Clause 79 (Development Permitted without Consent) and insert an amended subclause into Clause 81(1) (Development permitted with consent). The Subclause relates to markets (and is amended to also include other community or public/commercial events on railway land).</p>	<p>The amendment will provide that markets and other community or public/commercial events are permitted with consent on land used for the purpose of a railway station, commuter car park or on any land that is owned, leased, managed or controlled by a rail authority.</p>
<p>Amend Subclause (1) in Clause 81 (Development permitted with consent) in Division 15 (Railways) to provide for additional commercial uses, markets and other community activities, and more flexibility in terms of location.</p>	<p>The amendment to Clause 81(1) provides more flexibility with regard to the location of specific development and provides for additional commercial type uses.</p>
<p>Amend Subclause (2)(a)(i) in Clause 79 to read: <i>(i) Temporary crushing plants, or temporary concrete batching plants, that are in or adjacent to a rail corridor or associated with railway infrastructure that is in a prescribed zone and used solely in connection with the construction of a railway, and</i></p>	<p>The amendment will expand the locations that temporary crushing plants, or temporary concrete batching plants can be located in - to be also located on land “associated with rail infrastructure (provided the plant is a prescribed zone)”. Such a provision would provide consistency with the SRD SEPP – however would condition the expanded location to “prescribed zones”.</p>
<p>Amend Subclauses (1) and (2) in Clause 99 (Highway service centres in road corridors) (development with consent) to include additional road corridor types such as ‘highway’.</p>	<p>The amendment will broaden the locations within which a highway service centre may be located to include additional road corridor types such as ‘highways’.</p>
<p>Amend Subclauses (3)(b)(ii)(B) in Clause 104 (Traffic-generating development) in Division 17 (Roads and traffic) to provide for travel mode shifts.</p>	<p>This referral amendment strengthens focus on travel mode shifts.</p>
<p>Amend Subclause (3)(b)(iii) in Clause 104 (Traffic-generating development) in Division 17 (Roads and traffic) to include additional matters for consideration.</p>	<p>This referral amendment provides for additional matters for consideration reflecting shifts in travel mode.</p>

Development permitted without consent

Proposed amendment	Effect or proposed amendment
Amend Clause 65 (Development permitted without consent) to include TfNSW as a public authority that can use the provisions of the Clause in order to provide open space, and to require consultation with local councils by TfNSW when providing such open space.	This amendment expands the providers of open space to TfNSW, and requires TfNSW to consult with local councils.
Amend Subclause (2)(b) in Clause 79 (Development permitted without consent) by qualifying that the emergency works are to protect railway infrastructure facilities, the environment or the public.	This amendment standardises the manner in which emergency works are referenced in clauses 79 and 82.
Amend Subclause (2) in Clause 94 (Development permitted without consent) to provide clarity that pedestrian pathways, cycleways, and pedestrian and cycleway bridges are Development permitted without consent.	This will provide clarity to the interpretation of a particular Subclause, and ensures environmental impact assessments are undertaken for such infrastructure.

Exempt development provisions

Proposed amendment	Effect of proposed amendment
Amend Subclause (p) in Clause 70 (Exempt Development) in Division 13 (Port, wharf or boating facilities) to add parking monitoring and monitoring of other vehicles.	The amendment will expand the exempt development provisions to include parking monitoring and monitoring of other vehicles.
Add a new Subclause z3(1) in Clause 70 (Exempt development) in Division 13 (Port, wharf or boating facilities) to add installation of “navigational lateral marks” and a definition as follows: navigational lateral marks means port and starboard marks used to define the sides of a channel or waterway. Such marks may be flashing”. The clause is to provide for the installation of new, including maintenance, removal and replacement.	The amendment will expand the exempt development provisions to include installation of navigational lateral marks.
Add a new Subclause z5 in Clause 70 (70 (Exempt development) in Division 13 (Port, wharf or boating facilities) to add “removal of obstructions to navigation (as defined under the <i>Marine Safety Act 1998</i>)	The amendment will expand the exempt development provisions to include removal of obstructions to navigation (as defined under the <i>Marine Safety Act 1998</i>).
Amend Subclause (1)(iv) in Clause 97 (Exempt development) to provide clarity that pedestrian pathways or cycleways are not exempt development.	This will provide clarity to the interpretation of a particular subclause and ensures environmental impact assessments are undertaken for such infrastructure.

Proposed amendment	Effect of proposed amendment
<p>Separate Subclause (1)(v) in Clause 97 (Exempt development) into two subclauses in order to clarify that minor road safety works are not related to slope stability works.</p>	<p>This will provide clarity to the interpretation of a particular subclause.</p>
<p>Amend Subclause (1)l in Clause 112 by adding the removal of weeds, invasive exotic and agricultural plants or invasive vegetation growth but only through hand removal or judicious use of biodegradable herbicides, and waste to be disposed of at a waste facility and no burning of vegetation waste as exempt development in stormwater management systems.</p>	<p>This amendment assists with ensuring that stormwater management systems work as required.</p>
<p>Amend Clause 82 (Exempt development) by adding a provision for bush regeneration and a definition.</p>	<p>This amendment would include bush regeneration as Exempt development in Clause 82. A definition of bush regeneration would mean <i>the practice of restoring bushland by focussing on reinstating and reinforcing the system's ongoing natural regeneration processes including carrying out of the following works: weed removal by hand, and revegetation with endemic or native species. The creation of access tracks or burning of vegetation is not included.</i></p>
<p>Add to Subclause (1) in Clause 82 (Exempt development – public authorities) a provision for minor station infrastructure including:</p> <ul style="list-style-type: none"> • Installation, upgrade, maintenance and removal of minor station infrastructure that is wholly contained within a rail station complex, including (but not limited to) – <ul style="list-style-type: none"> (iv) fixed – seats, commuter pay stations/ticketing and gates, audio or visual facilities for station announcements, security cameras, waste bins, water fountains, tactile indicators, help points and emergency contact equipment, communications equipment, audio frequency induction loop; (ii) landscaping, including landscaping structures and features (such as art work); (iii) bird proofing (including spikes and netting); (iv) minor platform pavement works (such as patching, sealing and re-sealing). 	<p>This amendment would provide that minor railway station infrastructure is exempt development when carried out by or on behalf of a public authority.</p>

Proposed amendment	Effect of proposed amendment
Delete clause 82A (exempt development – any persons)	New complying development provisions are provided for “any persons” and there is no need for the provisions in clause 82A. Also new exempt development provisions are provided in clause 82(1) for public authorities.
Add to Subclause (1) in clause 82 (Exempt development – public authorities) the same provisions as in the new “complying development” provisions – but delete “if it is carried out by any person” and replace with “carried out by or on behalf of a public authority”.	This will allow for “a public authority” to have the same provisions as “any persons” in the new complying development provisions. These provisions are for the purposes of commercial premises, community facilities, or public administration buildings including minor building alterations for such uses where they are located in an existing railway station platform building or a room in an existing building in a railway complex used by commuters to gain access to station platforms.
Amend Schedule 1 Development Purpose - ‘Investigations’ to read: <i>Investigations (including geotechnical and other testing, surveying and the placement of survey marks, and sampling) relating to proposed development or for the purposes of infrastructure system development (such as water supply systems) or determining the safety or condition of infrastructure</i>	The amendment clarifies the intent of the development purpose of ‘investigations’.

Complying development provisions

Proposed amendment	Effect of proposed amendment
<p>Create a complying development provision within Division 15 Subdivision 1 (Railways and rail infrastructure facilities) to include the following complying development clause:</p> <p>Development located in an existing railway station platform building or a room in an existing building in a railway complex used by commuters to gain access to station platforms is complying development if it is carried out by any person, and consists of -</p> <p>(a) the use, non-structural alteration or fit-out of a room in an existing railway platform building or a room in an existing railway concession building in areas of a railway complex used by commuters to gain access to station platforms for the purposes of commercial premises, community facility, or public administration building, including any alterations but only if -</p> <ul style="list-style-type: none"> (i) the room was initially used for railway purposes; and (ii) the alterations are non-structural and include alterations such as replacement doors, wall, ceiling or floor linings or deteriorated frame members with equivalent or improved quality materials, and inclusion of built-in fixtures; and (iii) the alterations do not affect the load-bearing capacity of any load-bearing component of the existing building; and (iv) the completed floor to ceiling height is no less than 2.4m and no more than 3m, and (v) the completed area is 200m² or less; and (vi) in relation to food premises, the premises are designed, constructed and fitted-out in accordance with Australian Standard AS 4674—2004, Design, construction and fit-out of food premises; and (vii) the alterations do not extend or enlarge an existing building; and (viii) the alterations do not involve the use of external combustible cladding (within the meaning of the <i>Environmental Planning and Assessment Regulation 2000</i>). 	<p>This will allow for “any person” to use the complying development provisions for the purposes of commercial premises, community facilities, or public administration buildings including minor building alterations for such uses where they are located in an existing railway station platform building or a room in an existing building in a railway complex used by commuters to gain access to station platforms.</p>

Development in or adjacent to rail corridors and interim rail corridors – notification and other requirements – Sydney Metro West

Proposed amendment	Effect of proposed amendment
<p>Clause 88(1)(c) specifically identified the ‘Sydney Metro West Tunnel’ for interim corridor protections under Clause 88 where proposals involve the ground penetration of at least 2m. The protective framework under clause 88 sets out a requirement that concurrence of the relevant rail authority (Sydney Metro) is to be provided before development proposals can be approved by a relevant consent authority. It also sets out considerations for the relevant rail authority (Sydney Metro) when determining whether to provide concurrence for a project.</p> <p>It is proposed to:</p> <ol style="list-style-type: none"> 1. Insert a new zoned area to be shown on “Sydney Metro West Tunnel” Maps, being the new rail interim corridor for Stage 2 of the Sydney Metro West Project (Maps 1 and 2). 2. Remove the existing zoned area (Westmead to the Bays) shown on the current “Sydney Metro West Tunnel” Maps (LAP_013 to LAP_019). Planning approval has already been given to this section of rail and interim corridor protections are no longer required. 	<p>The proposed interim corridor is shown in Maps 1 and 2.</p> <p>The proposed amendment will update an existing concurrence provision and is designed to protect the proposed rail corridor (the Bays to Sydney CBD) for Stage 2 of the Sydney Metro West Project by ensuring certain development gives appropriate regard to the corridor.</p> <p>The proposed amendment will add a temporary extra level of consideration for the determination of developments that may affect the viability of the Sydney Metro West (Stage 2) Project. Proponents proposing to develop within the proposed interim rail corridor will need to receive concurrence from Sydney Metro before a development application can be approved.</p> <p>The interim protection maps for Stage 1 (Westmead to the Bays) will be revoked as the State Significant Infrastructure approval means that the interim protection is no longer required.</p>

Section B: Miscellaneous

Introduction

To ensure the Infrastructure and Education SEPPs remain as effective as possible, a series of general housekeeping amendments are proposed which aim to:

- standardise and streamline assessment pathways for infrastructure activities with similar characteristics and impacts
- apply consistent protections against inappropriate development
- provide more clarity and consistency for proponents
- modernise and simplify to improve effectiveness, usability and transparency.

Proposed amendments

The proposals will update legislative definitions and make changes to three planning pathways:

- **development without consent** – development undertaken by a public authority that can be self-assessed and self-determined
- **complying development** – development that must comply with prescribed conditions within an environmental planning instrument and will be certified by an approved authority
- **exempt development** – minor development not subject to assessment or consent.

The proposed amendments will also include:

- minor corrections and updates to ensure accuracy
- general improvements to aid clarity and usability, without affecting the policy content. These include changes to simplify structure and standardise language where possible.

Part 1 Preliminary, Part 2 General and definitions

Proposed amendment	Effect of proposed amendment
<p>Change the title of Clause 15 to “<i>Notification of councils and State Emergency Service—development on flood liable land</i>” and amend to read as follows:</p> <p>(1) <i>A public authority, or a person acting on behalf of a public authority, must not carry out development on flood liable land that may be carried out without development consent and that will change flood patterns other than to a minor extent unless the authority or person has—</i></p> <p>(a) <i>given written notice of the intention to carry out the development (together with a scope of works) to the council for the area in which the land is located and the State Emergency Service, and</i></p> <p>(b) <i>taken into consideration any responses to the notice that are received from the</i></p>	<p>This will ensure that where there are impacts on flood liable land, the same thresholds apply to trigger consultation requirements between different infrastructure types.</p> <p>It will also raise the threshold for the types of development which require consultation, making the planning system more efficient by removing referrals for works with minimal impacts on flood liable land.</p>

Proposed amendment	Effect of proposed amendment
<p><i>council and State Emergency Service within 21 days after the notice is given.</i></p> <p>(2) <i>In this clause, flood liable land means land that is susceptible to flooding by the probable maximum flood event, identified in accordance with the principles set out in the manual entitled Floodplain Development Manual: the management of flood liable land published by the New South Wales Government and as in force from time to time.</i></p> <p>(3) <i>This clause does not apply in relation to the carrying out of minor alterations or additions to, or the demolition of, a building, emergency works, maintenance or routine maintenance.</i></p> <p>Add a new Subclause (4) which states:</p> <p><i>Consultation with the State Emergency Service is only required for development that may be carried out without development consent under a relevant provision. Any of the following provisions in Part 3 is a relevant provision -</i></p> <ul style="list-style-type: none"> <i>(a) Division 1 (Air transport facilities),</i> <i>(b) Division 2 (Correctional centres and correctional complexes),</i> <i>(c) Division 6 (Emergency services facilities and bush fire hazard reduction),</i> <i>(d) Division 10 (Health services facilities),</i> <i>(e) Division 14 (Public administration buildings and buildings of the Crown),</i> <i>(f) Division 15 (Railways),</i> <i>(g) Division 16 (Research and monitoring stations),</i> <i>(h) Division 17 (Roads and traffic),</i> <i>(i) Division 20 (Stormwater management systems).</i> <p>Repeal Clause 15AA Consultation with State Emergency Service—development with impacts on flood liable land</p>	
<p>Amend the exceptions to consultation requirements as follows:</p> <p>Amend Subclause (1) (e) under Clause 17 to include the following conditions for emergency works that:</p>	<p>This will ensure that different infrastructure types adhere to the same standard of consultation where they have similar levels of impacts.</p> <p>It will also streamline consultation by removing requirements to consult where provisions are</p>

Proposed amendment	Effect of proposed amendment
<p>(i) involve no greater disturbance to soil or vegetation than necessary, and</p> <p>(ii) are carried out in accordance with all applicable requirements of the Blue Book.</p>	<p>already in place to ensure works are carried out to an appropriate standard.</p>
<p>Amend the definition of 'emergency works' in Clause 5(2) as follows:</p> <p><i>“Emergency works means works carried out in response to an actual or imminent occurrence of</i></p> <p><i>(a) a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or</i></p> <p><i>(b) accident, equipment failure or structural collapse, or</i></p> <p><i>(c) damage caused by vandalism, arson or a pollution incident,</i></p> <p><i>where the works must be carried out without delay to protect –</i></p> <p><i>i) the safety or health of persons, or</i></p> <p><i>ii) the environment, or</i></p> <p><i>iii) property, or</i></p> <p><i>iv) essential infrastructure from failure or a significant disruption to service.”</i></p> <p>Update or repeal relevant clauses to remove obsolete references to what is being protected, as this is now covered under the new definition.</p>	<p>This will clarify in what situations emergency works can take place. It will also provide some limited flexibility for works to be carried out in advance to mitigate the impacts of an imminent emergency event.</p> <p>The new definition will mean that some existing wording in relation to emergency works is no longer required and can be removed from the relevant clauses.</p>
<p>Amend Subclause (2) in clause 5 (Interpretation – general) in Part 1 (Preliminary) by deleting the term “maintenance” and replacing with two terms as follows:</p> <p>Maintenance means any one or combination of inspection, testing, replacement, repair, defect rectification, overhaul and reconstruction to restore to the original operating design parameters.</p> <p>Routine maintenance means regular or scheduled inspections and investigations to determine the safety or condition of infrastructure, minor repairs and upkeep to keep the infrastructure operating in a safe working condition.</p>	<p>The terms maintenance and routine maintenance are used inconsistently between different divisions. This amendment provides clarity as to the meaning of the terms throughout the Infrastructure SEPP.</p> <p>A standard definition of maintenance will support its use as the higher impact activity and preferred term in relation to development permitted without consent.</p> <p>A standard definition of routine maintenance will support its use as the lower impact activity and preferred term in relation to exempt development.</p>
<p>Amend Clause 5(4) to delete the word 'routine' before the word “maintenance” and also before the word before the word “repairs” in Subclause (4)(a).</p> <p>Amend Clause 8(4) as follows:</p>	<p>These updates will ensure that the override of the Coastal Management SEPP provided for in 8(4) will continue to operate in the same way, despite the new definitions and standard application of the terms 'maintenance' and 'routine maintenance'</p>

Proposed amendment	Effect of proposed amendment
<p><i>A provision of this Policy that permits development for the purpose of maintenance works to be carried out without consent, or that provides that development for the purposes of emergency works or routine maintenance is exempt development, prevails over clauses 10 and 11 of State Environmental Planning Policy (Coastal Management) 2018 to the extent of any inconsistency, but only if any adverse effect on the land concerned is restricted to the minimum possible to allow the works to be carried out.</i></p>	
<p>Include a new definition of ‘amenities’ in Clause 5(2) as follows:</p> <p><i>‘Amenities means toilet block, showers, and change rooms but does not include food preparation and related facilities such as bbqs, or garbage areas’.</i></p>	<p>This clarifies what is included within the term amenities, which is used in various clauses throughout the Infrastructure SEPP</p>
<p>Amend Clause 5(3) to add a new subclause (j) under “construction works” as follows:</p> <p><i>(j) Preliminary minor impact works in connection with the construction of infrastructure, including:</i></p> <ul style="list-style-type: none"> <i>i) Preliminary archaeological, environmental or contamination investigations.</i> <i>ii) the construction of temporary access tracks and temporary site facilities to allow for the carrying out of tests or investigations described in i)</i> <i>iii) carrying out surveys of existing and future utilities</i> <i>iv) adjustments to, or relocation of, existing utilities infrastructure and installation of new utilities infrastructure</i> <i>v) the establishment of temporary access roads, access tracks, car parks, fences and signage and construction compounds including the erection of temporary buildings and the provision of associated facilities</i> 	<p>This will support accelerated delivery of State Significant Infrastructure by allowing preliminary works relating to the construction of those projects to be undertaken as development without consent before an SSI assessment is determined, where those works are of a minor impact.</p>
<p>Remove the reference to “ringbarking” in Subclause (3) (f) under Clause 5.</p>	<p>This will clarify the terms used in relation to the clearing of vegetation when undertaking construction works as development permitted without consent.</p>

Development permitted without consent

Proposed amendment	Effect of proposed amendment
<p>Allow for maintenance as development permitted without consent by:</p> <p>Adding a new Subclause (3) (c) under Clause 22 in Part 3, Division 1 Air transport facilities.</p> <p>Adding a new Subclause (3) (i) under Clause 25 in Part 3, Division 2 Correctional centres and correctional complexes.</p> <p>Adding a new Subclause (3) (d) under Clause 48 in Part 3, Division 6 Emergency services facilities and bush fire hazard reduction.</p> <p>Adding a new Subclause (1) (f) under Clause 58 in Part 3, Division 10 Health services facilities to allow '<i>maintenance of health services facilities</i>'.</p> <p>Adding a new Subclause (3) (d) under Clause 65 in Part 3, Division 12 Parks and other public reserves.</p> <p>Adding a new Subclause (1) (e) under Clause 77 in Part 3, Division 14 Public administration buildings and buildings of the Crown.</p> <p>Adding a new Subclause (2) (a) under Clause 92 in Part 3, Division 16 Research and monitoring stations to allow '<i>maintenance of a monitoring station</i>'</p> <p>Replacing the term "routine maintenance" with "maintenance", where occurring in development without consent clauses.</p>	<p>This will ensure that the term 'maintenance' is used consistently to apply to development permitted without consent.</p> <p>It will also ensure that 'maintenance' can be undertaken as development permitted without consent more widely and consistently by increasing the number of infrastructure divisions which can access this provision.</p>
<p>Amend clauses which require notification of the intention to carry out development without consent so that a "scope of works" must also be provided.</p>	<p>This will ensure that consultation requirements under specific infrastructure divisions are carried out in a consistent manner to those under Division 1 Consultation and will make it easier for notified parties to provide a timely response.</p>
<p>Separating Subclause (2) (f) under Clause 52 of Part 3, Division 8 Forestry as follows:</p> <p><i>(f) outdoor recreational facilities for visitors to forests (such as viewing platforms and garbage collection areas).</i></p> <p><i>(f1) amenities related to recreational facilities for visitors to forests.</i></p>	<p>This recognises that amenities are different to outdoor recreational facilities.</p>
<p>Separating Subclause (1) (c) under Clause 58H of Part 3, Division 11 Public authority precincts as follows:</p>	<p>This recognises that amenities are different to food preparation facilities.</p>

Proposed amendment	Effect of proposed amendment
<p><i>(c) amenity facilities, including toilets and change rooms for persons using public spaces within the site</i></p> <p><i>(c1) food preparation and related facilities for persons using public spaces within the site</i></p>	
<p>Repeal Subclause (3) (a) (v) under Clause 65 in Part 3, Division 12 Parks and other public reserves.</p>	<p>This removes the provision for landscaping works to be undertaken as development permitted without consent, noting that a separate amendment will make such works exempt development.</p>
<p>Include additional subclauses as construction works within Clause 68 in Division 13 Port, wharf or boating facilities as follows:</p> <ul style="list-style-type: none"> - <i>investigations for the purposes of dredging</i> - <i>minor geotechnical and engineering investigations for the purposes of the berth and pipeline design</i> <p>Include additional Subclauses as construction works within Clause 79 in Division 15 Subdivision 1 Railways and rail infrastructure facilities as follows:</p> <p><i>vi) the delivery or storage of tracks, sleepers, ballast, posts or culverts within the existing rail corridor,</i></p> <p><i>vii) if existing water flows within or through the existing rail corridor will not be permanently affected—the adjustment, relocation, upgrade or replacement of existing utilities infrastructure.</i></p>	<p>This will support accelerated delivery of State Significant Infrastructure by allowing preliminary works relating to the construction of those projects to be undertaken as development without consent before an SSI assessment is determined, where appropriate.</p>

Exempt development provisions

Proposed amendment	Effect of proposed amendment
<p>Amend Subclause (2) (e) under Clause 20 General requirements for exempt development, to add the words “<i>and be in accordance with any applicable heritage conservation management plan</i>” at the end.</p> <p>Amend Subclause (2) (e1) of Clause 20 to add a reference that exempt development must not involve the demolition of a building or work that is within a heritage conservation area</p> <p>Remove the reference “<i>(unless the building is a State or local heritage item or is within a heritage conservation area)</i>” from Subclause (1) (j) under Clause 58H of Part 3, Division 11 Public authority precincts.</p>	<p>This will apply consistent development standards in relation to heritage items and heritage conservation areas to ensure works involve no more than a minimal impact and do not involve demolition.</p>
<p>Repeal Subclause (1) (g) (i) under Clause 43 in Division 5, Subdivision 1 Electricity transmission or distribution networks, which requires demolition to be carried out in accordance with AS 2601—2001, <i>Demolition of structures</i>.</p>	<p>This will remove an unnecessary duplication of the general requirement outlined in Clause 20.</p>
<p>Amend Schedule 1 General exempt development to allow demolition of buildings or structures the erection of which is exempt development under this or any other Environmental Planning Instrument</p>	<p>This will provide a more streamlined pathway for demolition of certain low impact development.</p>
<p>Add emergency works as a new development purpose to column 1 of the table in Schedule 1 Exempt development – general.</p> <p>Add the following development standard to column 2 of the table in Schedule 1 Exempt development – general:</p> <p><i>“Works must involve no greater soil or vegetation disturbance than necessary”</i></p> <p>Remove references where emergency works provisions occurring within specific infrastructure divisions in Part 3 now duplicate the new provision under Schedule 1.</p> <p>Remove references to “emergency works” under development without consent clauses, where occurring within specific infrastructure divisions in Part 3.</p>	<p>This will ensure expanded and more consistent access for emergency works to be undertaken as exempt development, across different infrastructure types, whilst minimising the impact of such works on soil and vegetation.</p> <p>It will also remove individual references to emergency works as exempt development that will become obsolete because of the above change.</p> <p>See also the new definition of emergency works outlined above.</p>

Proposed amendment	Effect of proposed amendment
<p>Add “routine maintenance” as a new development purpose to column 1 of the table in Schedule 1 Exempt development – general.</p> <p>Remove references where routine maintenance provisions occurring within specific infrastructure divisions in Part 3 now duplicate the new provision under Schedule 1.</p> <p>Remove references to “routine maintenance” under development without consent clauses, where occurring within specific infrastructure divisions, as no longer being required.</p> <p>Remove wording relating to ‘<i>emergency maintenance</i>’ in Subclause (a) under Clause 127 in Part 3, Division 24 Water supply systems.</p>	<p>This will ensure expanded and more consistent access for routine maintenance works to be undertaken as exempt development, across different infrastructure types.</p> <p>It will also remove individual references to routine maintenance that will become obsolete because of the above change.</p> <p>See also the new definition of routine maintenance.</p>
<p>Add a new Subclause (1) (d) under Clause 66 in Part 3, Division 12 Parks and other public reserves to allow “<i>landscaping, including landscape structures or features (such as artwork) and irrigation systems (whether or not they use recycled water)</i>” as exempt development</p> <p>Remove the words “including landscaping” from the Subclauses (1) (b) and (1) (c) under Clause 66 in Part 3, Division 12 Parks and other public reserves</p> <p>Amend Subclause (1) (d) under Clause 58B in Part 3, Division 10 Health services facilities to include the wording “<i>(whether or not they use recycled water)</i>” after “<i>irrigation systems</i>”.</p> <p>Amend Subclause (h1) under Clause 70 in Part 3, Division 13 Port, wharf or boating facilities to allow “<i>irrigation systems (whether or not they use recycled water)</i>”</p> <p>Amend Subclause (a) under Clause 77 in Part 3, Division 14 Public administration buildings and buildings of the Crown to allow “<i>irrigation systems (whether or not they use recycled water)</i>”</p>	<p>This will clarify that exempt development is the preferred pathway for landscaping works and ensure that irrigation systems are included consistently within such works.</p>

Proposed amendment	Effect of proposed amendment
Add a new subclause under Clause 20 General requirements for exempt development relating to compliance with the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</i> published by the Department of Environment, Climate Change and Water and dated 13 September 2010	This will ensure that there is a suitable procedure in place to protect any aboriginal objects discovered during exempt development works such as investigations.
Add a new subclause under Clause 20 General requirements for exempt development to state that it “ <i>must not impact on threatened species, threatened ecological communities or their habitats</i> ”	This reflects obligations under the Biodiversity Conservation Act 2016.

Complying development provisions

Proposed amendment	Effect of proposed amendment
Add a new subclause under Clause 20B General requirements for complying development to state that it “ <i>must not impact on threatened species, threatened ecological communities or their habitats</i> ”	This reflects obligations under the Biodiversity Conservation Act 2016.
Adding a condition to Subclause (1) (l) in Clause 71 of Part 3, Division 13 Port, wharf or boating facilities that ‘ <i>it is designed so that any surface water run-off is directed to a storm-water management system</i> ’	This will ensure consistency with other references to paving.
Remove the wording “ <i>carried out in accordance with Australian Standard AS 2601—2001, The demolition of structures</i> ” from Subclause 71 (1) (c) in Division 13 Port, wharf or boating facilities Repeal Subclause (5) under Clause 131 in Division 26 Special Provisions, which requires complying development to be carried out in accordance with AS 2601—2001, <i>The demolition of structures</i> .	This will remove unnecessary duplication of the general requirement for demolition work to be carried out in accordance with this standard, which already exists under Clause 20C (7A).
Repeal Subclause 2 (c) under Clause 116A in Division 21 Telecommunications and other communication facilities.	This will remove unnecessary duplication of an existing requirement within Clause 1.17A of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> , that complying development should not be on land that is within an environmentally sensitive area.

Corrections and updates

Proposed amendment	Effect of proposed amendment
Change the references in Part 3, Division 12 Parks and other public reserves, Clause 66(1)(a)(ii) from “bicycle” to “cycle”.	This will align with other references to “cycle” which is the term used elsewhere.
Standardise language relating to stormwater drainage, where occurring, to ensure that development: <i>“...does not result in an increase in stormwater drainage or run-off from the site concerned.”</i>	This will provide consistent wording across different infrastructure types to support a common approach to stormwater management. The selected wording represents commonly used language in the Infrastructure SEPP.
Amend references to “native vegetation”, where occurring, to simply state “vegetation”	This will provide consistent wording across different infrastructure types. The removal of references to vegetation being “native” reflects that non-native vegetation can still provide habitat for native or threatened species and can also assist in other ecological processes such as preventing erosion.
Remove references to development consent under the Native Vegetation Act in notes under Clauses 20 and 20B and replace as follows: <i>“An approval for the removal of native vegetation may be granted under the Local Land Services Act 2013.”</i>	This will reflect current legislation.
Replace the term “square metres” with m ² , where occurring.	This will ensure consistent use of the symbol m ² to indicate square metres
Remove the words “ <i>Despite Clause 129A</i> ” from Clause 129 (1) in Division 25 Waterway or foreshore management activities	This will remove an obsolete reference to Clause 129A which has been repealed.
Update references to Guidelines and Standards, where occurring.	References to guidelines and standards will be updated to ensure they are to current versions.
Update defunct organisation names and Local Government Areas, where occurring.	This will ensure that the correct organisations and Local Government Areas are referenced, where relevant.
Update savings provisions	This will ensure that necessary savings provisions are in place.

General improvements

Proposed amendment	Effect of proposed amendment
Replacement of pdf mapping with an interactive mapping solution.	This will make the NSW Planning Portal spatial viewer the default location for Infrastructure SEPP mapping.
Standardise references to notification and consultation	This will establish standard wording where the requirements for notification and consultation processes are the same.

Amendments to the Education SEPP

As with the Infrastructure SEPP above, a series of general housekeeping amendments to the Education SEPP are proposed that will ensure consistency where appropriate. Better alignment will help to make the planning system simpler, more effective and more transparent.

Part 1 Preliminary and Part 2 General

Proposed amendment	Effect of proposed amendment
<p>Update Clause 12 Notification of councils and State Emergency Service—development on flood liable land, to read as follows:</p> <ul style="list-style-type: none"> (1) A public authority, or a person acting on behalf of a public authority, must not carry out development on flood liable land that may be carried out without development consent and that will change flood patterns other than to a minor extent unless the authority or person has— <ul style="list-style-type: none"> (c) given written notice of the intention to carry out the development (together with a scope of works) to the council for the area in which the land is located and the State Emergency Service, and (d) taken into consideration any responses to the notice that are received from the council and State Emergency Service within 21 days after the notice is given. (2) In this clause, flood liable land means land that is susceptible to flooding by the probable maximum flood event, identified in accordance with the principles set out in the manual entitled Floodplain Development Manual: the management of flood liable land published by the New South Wales Government and as in force from time to time. <p>This clause does not apply in relation to the carrying out of minor alterations or additions to, or the demolition of, a building, emergency works, maintenance or routine maintenance.</p>	<p>This will ensure that where there are impacts on flood liable land, the same thresholds apply to trigger consultation requirements between different infrastructure types.</p> <p>It will also raise the threshold for the types of development which require consultation, making the planning system more efficient by removing referrals for works with minimal impacts on flood liable land.</p>
<p>Amend the exceptions to consultation requirements as follows:</p> <p>Amend Subclause (1) (d) under Clause 14 to include complying development</p>	<p>This will ensure that different infrastructure types adhere to the same standard of consultation where they have the same level of impacts.</p> <p>It will also streamline consultation by removing requirements to consult where provisions are already in place to ensure works are carried out to an appropriate standard.</p>

Proposed amendment	Effect of proposed amendment
<p>Add a new definition of 'emergency works' in Clause 5 interpretation to read:</p> <p><i>“Emergency works means works carried out in response to an actual or imminent occurrence of</i></p> <ul style="list-style-type: none"> <i>(d) a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or</i> <i>(e) accident, equipment failure or structural collapse, or</i> <i>(f) damage caused by vandalism, arson or a pollution incident,</i> <p><i>where the works must be carried out without delay to protect –</i></p> <ul style="list-style-type: none"> <i>v) the safety or health of persons, or</i> <i>vi) the environment, or</i> <i>vii) property, or</i> <i>viii) essential infrastructure from failure or a significant disruption to service.”</i> <p>Delete the existing definition of “emergency works” from Clause 14(2).</p> 	<p>This will clarify in what situations emergency works can take place. It will also provide some limited flexibility for works to be carried out in advance to mitigate the impacts of an imminent emergency event.</p> <p>The new definition will mean that some existing wording in relation to emergency works is no longer required and can be removed from various Education SEPP clauses.</p>

Exempt development provisions

Proposed amendment	Effect of proposed amendment
<p>Add a new Subclause (2) (e1) under Clause 17 General requirements for exempt development, as follows:</p> <p><i>“must not involve the demolition of a building or work that is, or is part of, a State or local heritage item, or within a heritage conservation area.”</i></p> <p>Remove the specific requirements relating to the above which already exist in Clauses 38, 48 and 55.</p>	<p>This will apply consistent development standards in relation to heritage items and heritage conservation areas to ensure works involve no more than a minimal impact and do not involve demolition.</p> <p>It will also remove any unnecessary duplication of the general requirement within individual divisions</p>
<p>Add a new subclause in Clause 17, general requirements for exempt development, requiring that demolition must be carried out in accordance with Australian Standard AS 2601—2001, <i>The demolition of structures</i></p> <p>Remove the specific requirements relating to the above which already exist in Clauses 38, 48 and 55.</p>	<p>This will align Education SEPP and Infrastructure SEPP general requirements for exempt development and consistently apply the development standard that already exists under Schedule 1.</p> <p>It will also repeal any unnecessary duplication of the general requirement within individual divisions.</p>

Proposed amendment	Effect of proposed amendment
Add a new subclause under Clause 17 General requirements for exempt development to state that it <i>“must not impact on threatened species, threatened ecological communities or their habitats”</i>	This reflects obligations under the Biodiversity Conservation Act 2016.
Add a new subclause under Clause 17 General requirements for exempt development relating to compliance with the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</i> published by the Department of Environment, Climate Change and Water and dated 13 September 2010	This will ensure that there is a suitable procedure in place to protect any aboriginal objects discovered during exempt development works such as investigations.
Amend Schedule 1 General exempt development to allow demolition of buildings or structures the erection of which is exempt development under this or any other Environmental Planning Instrument	This will provide a more streamlined pathway for demolition of certain low impact development.
Add emergency works provisions to Clauses 38 (existing schools), 48 (existing universities) and 55 (existing TAFE establishments).	This will ensure expanded and more consistent access for emergency works to be undertaken as exempt development, across different infrastructure types, whilst minimising the impact of such works on soil and vegetation. See also the new definition of emergency works outlined above.

Complying development provisions

Proposed amendment	Effect of proposed amendment
Amend Division 5 to include new Subclauses under Clause 19 which require that development must: <ul style="list-style-type: none"> - <i>“be carried out in accordance with the relevant provisions of the Blue Book”.</i> - <i>“before the complying development certificate is issued, have written consent from the relevant roads authority, if required by the Roads Act 1993—</i> <ul style="list-style-type: none"> <i>(i) for each opening of a public road required by the development, and</i> <i>(ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve.”</i> - <i>“not involve the removal of asbestos, unless that removal is undertaken in accordance with How To Safely Remove</i> 	To ensure the general requirements for complying development and general conditions of complying development certificates are consistent in the level of protections applicable to different infrastructure types in both the Infrastructure and Education SEPPs, as appropriate.

Proposed amendment	Effect of proposed amendment
<p>Asbestos: Code of Practice (ISBN 978 0 642 33317 9) published by Safe Work Australia.”</p> <ul style="list-style-type: none"> - “if it is the alteration or erection of improvements on land in a mine subsidence district within the meaning of the Mine Subsidence Compensation Act 1961, have the prior approval of Subsidence Advisory NSW” - “not impact on threatened species, threatened ecological communities or their habitats” <p>Amend Division 5 to include a new Subclause under Clause 21 which requires that “If works involve the demolition of a building, demolition must be carried out in accordance with Australian Standard AS 2601—2001, The demolition of structures.”</p> <p>Repeal Subclauses (a) and (c) under Clause 41 in Part 4 Schools – specific development controls.</p>	

Corrections and updates

Proposed amendment	Effect of proposed amendment
<p>Replace the term “ground level (mean)”, where occurring with “ground level (existing)”</p> <p>Repeal Clause 1 (2) of Schedule 2, Schools – complying development.</p> <p>Repeal Clause 1 (2) of Schedule 3, Universities and TAFE establishments – complying development.</p>	<p>This will that ensure that ground level (existing) is used consistently within the Education SEPP as it is for the Infrastructure SEPP and will remove references to ground level (mean) and ground level (finished) to avoid confusion.</p>
<p>Amend references to “native vegetation”, where occurring, to simply state “vegetation”</p>	<p>This will provide consistent wording across different infrastructure types. The removal of references to vegetation being “native” reflects that non-native vegetation can still provide habitat for native or threatened species and can also assist in other ecological processes such as preventing erosion.</p>
<p>Replace the term “square metres” with m², where occurring.</p>	<p>This will ensure consistent use of the symbol m² to indicate square metres</p>
<p>Update references to Guidelines and Standards, where occurring.</p>	<p>References to guidelines and standards will be updated to ensure they are to current versions.</p>

Proposed amendment	Effect of proposed amendment
Update defunct organisation names and Local Government Areas, where occurring.	This will ensure that the correct organisations and Local Government Areas are referenced, where relevant.
Update savings provisions	This will ensure that necessary savings provisions are in place.

How to get involved

This explanation of intended effect is exhibited in line with the department's Community Participation Plan, which aims to involve more people in decisions relating to the NSW planning system.

To make a submission on the amendments proposed in this document please go to the [NSW Planning Portal](#) and complete the submission form.