

Facilitating temporary uses in Future Infrastructure Corridors

Explanation of Intended Effect of the proposed amendment of *State Environmental Planning Policy (Transport and Infrastructure) 2021* and consequential amendments to the *Environmental Planning and Assessment Regulation 2021*

August 2022

Acknowledgement

The Department of Planning and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We recognise Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and rich contribution to society.

Aboriginal people take a holistic view of land, water and culture and see them as one, not in isolation from each other. This document is based on the premise upheld by Aboriginal people that if we care for Country, it will care for us.

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Artwork (left) by Nikita Ridgeway

Introduction

Facilitating the temporary use of Major Infrastructure Corridors

Corridor protection uses the planning system to safeguard land for the future delivery of major infrastructure. Protecting land for future infrastructure facilitates delivery in the right place and at the right time to support future jobs and housing. For many projects, corridors that are protected today will facilitate the delivery of infrastructure in 10 to 20 years. Identifying the location of future infrastructure also enables appropriate land use planning around corridors, equating to a cohesive approach to infrastructure and land use planning.

Chapter 4 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (the Transport and Infrastructure SEPP) identifies and protects land for future infrastructure corridors. At the time of preparing this Explanation of Intended Effect, the Department of Planning and Environment (the Department) has protected the Western Sydney Freight Line (Stage 1), North South Rail Line and South West Rail Link extension under the Transport and Infrastructure SEPP and is considering the consultation outcomes of a separate Explanation of Intended Effect (exhibited between 12 July and 27 September 2021) seeking to protect land for the Lower Hunter Freight Corridor.

The existing provisions of the Transport and Infrastructure SEPP facilitate the continued use of land consistent with uses that were permissible prior to the protection of a corridor. Whilst these provisions benefit locations where there are no planned changes in land use character, additional provisions are required that allow an adaptive response to surrounding land uses changes in areas that will undergo change during the time that a corridor is protected. Some corridors will remain protected for 10-20 years prior to infrastructure delivery. In some cases, the land uses surrounding a corridor will change over this period of time. It's important that land within corridors can be used in the interim in ways that are appropriate to the surrounding land

at a particular point in time while still maintaining deliverability of the future infrastructure.

Additional flexible provisions will facilitate interim economic, urban design and place making opportunities of a temporary nature for land within major infrastructure corridors prior to the delivery of infrastructure.

It is also proposed that the Transport and Infrastructure SEPP clarify the relationship between Chapter 4 of the instrument and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP), to confirm which complying development codes under the Codes SEPP apply to land identified as a future infrastructure corridor. The intent of this amendment is to streamline the approvals process for minor works, where the provisions under Chapter 4 of the Transport and Infrastructure SEPP are considered unnecessary due to the nature of specified minor works as considered low risk on impacting the viability of the corridor. For example, the construction of a new awning for an existing shop.

This Explanation of Intended Effect seeks to provide flexibility for areas that are undergoing land use change by proposing additional provisions to facilitate the temporary use of corridor land whilst still meeting the protection objectives of the Transport and Infrastructure SEPP.

Corridor protection

Corridor protection involves the early identification and safeguarding of land to facilitate the future delivery of infrastructure. The term 'protection' involves using the planning system to manage land use outcomes. The purpose of protection is to ensure that the future delivery of infrastructure is not compromised as a result of land being 'built out' or the alignment no longer suitable due to incompatible land uses in or around the corridor.

The early protection of an infrastructure corridor provides greater certainty and enhanced planning outcomes for infrastructure agencies and the community. Protecting corridors also aims to minimise

social disruption when infrastructure is delivered in developed areas.

The process of corridor protection involves collaboration between infrastructure and planning agencies and the community to manage land uses around an infrastructure corridor to optimise future infrastructure use and avoid land use conflicts. Corridor protection is a separate planning phase to the infrastructure delivery phase. The infrastructure delivery phase involves detailed design and engineering work, allowing a detailed assessment of the impacts associated with construction and operation of the infrastructure.

About the proposed SEPP amendment

The proposed amendment to the Transport and Infrastructure SEPP will:

- Establish additional provisions under Chapter 4 of the Transport and Infrastructure SEPP that expand on the ability to use and develop land identified as a major infrastructure corridor, where that development is temporary in nature and compatible with surrounding land uses
- Establish matters to be considered by the consent authority and the infrastructure agency responsible for the delivery of future infrastructure in relation to the temporary use of a future infrastructure corridor
- Require the consent authority to consider a plan of management prepared by the proponent, which will reflect input from the relevant infrastructure agency and deal with matters such as the duration of the temporary use and the appropriate restoration of the land by the proponent at the end of the temporary use period
- Clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) and confirm which complying development codes under the Codes SEPP are available to land identified as a future infrastructure corridor. Complying development codes that allow minor works considered as non-threatening to the future delivery of infrastructure will be specified as available, for example Part 4 Housing alterations code and Subdivision 1 Building alterations (internal) of Part 5 Industrial and business alterations code (this is not a conclusive list).

- Clarify that the proposed temporary use pathway under the SEPP will not switch off any existing temporary use pathways under clause 2.8 of the *Standard Instrument—Principal Local Environmental Plan* (the Standard Instrument), where this clause has been adopted under the relevant Local Environmental Plan and the temporary development meets the provisions of the relevant Local Environmental Plan.

It is proposed that these provisions will apply to all land identified as a future infrastructure corridor and zoned SP2 Infrastructure under Chapter 4 of the Transport and Infrastructure SEPP. The proposed provisions will be additional to all existing provisions under the Transport and Infrastructure SEPP which relate to the use and development of land.

It is also proposed to amend the *Environmental Planning and Assessment Regulation 2021* to give effect to this proposed pathway to:

- require any development application for the proposed temporary use to be accompanied by a plan of management prepared by the proponent, and
- prescribe, as conditions of development consent, the use of the land in accordance with a plan of management.

About this Explanation of Intended Effect

This Explanation of Intended Effect sets out proposed additional provisions for land identified as a future infrastructure corridor under Chapter 4 of the Transport and Infrastructure SEPP. The proposed provisions will facilitate the temporary use of a corridor where it is considered that the development will not impact the timing or cost of future infrastructure delivery.

The consultation of this Explanation of Intended Effect will allow the public to provide feedback and comment on the proposed additional provisions relating to future infrastructure corridors.

Part 1 describes intentions of the amendment to balance and manage development outcomes prior to infrastructure delivery. Part 2 explains the objectives and the intended effect of the proposed SEPP and the next steps.

Part 1

Managing development outcomes prior to infrastructure delivery

Balancing protection and interim land use outcomes

The purpose of corridor protection is to manage land from development that would otherwise be incompatible with the delivery of future major infrastructure. Corridor protection seeks to mitigate against scenarios where the optimal location for infrastructure is 'built out', or where land around the optimal location for infrastructure is developed for uses that are incompatible with the future operation of the infrastructure. These scenarios can cause delays to delivery, or even risk the delivery of infrastructure entirely due to the cost prohibitive nature of acquiring corridor land that is built up or more impactful due to incompatible development. The consequences of not securing the optimal corridor can result in infrastructure demand going unmet.

Corridor protection involves identifying the optimal location for future infrastructure early. In some cases, protection can occur 10 to 20 years before the intended delivery timeframe. An important aspect of corridor protection is facilitating the continued use and development of a corridor in the interim, prior to infrastructure delivery. The intent of corridor protection is not to sterilise land, but to manage it so that the nature and scale of temporary development will not contribute considerably to the cost or constructability of infrastructure.

Existing provisions for previously permissible development

Major infrastructure corridors are identified and zoned SP2 Infrastructure under Chapter 4 of the Transport and Infrastructure SEPP. Provisions under the Transport and Infrastructure SEPP allow landowners to lodge development applications for land uses that were permissible under the former zoning that

applied to the land immediately before it was rezoned for a future infrastructure corridor.

The Transport and Infrastructure SEPP establishes a framework for assessing development applications under these provisions. Where development has a capital investment value of more than \$200,000, Transport for NSW are to provide concurrence before the consent authority can determine the application. In deciding whether to grant concurrence, Transport for NSW must consider the need to carry out the proposed development on the land, the timing of carrying out the development and proposed timing of infrastructure delivery, and the likely additional costs of constructing the infrastructure resulting from carrying out the proposed development.

The provisions for previously permissible uses are useful in locations that will retain a consistent land use character during the period of protection. However, an adaptive response is required where land surrounding a corridor is likely to undergo changes prior to infrastructure delivery. A flexible approach is required for considering the temporary use of a corridor in response to a change in land use character of a broader area.

Additional provisions will allow temporary uses to remain relevant and appropriate to an area at any given time.

Under the proposed amendment, the existing provisions will remain in place for the corridors that are protected under the SEPP. The proposed additional provisions apply a flexible approach for allowing temporary development in corridors that is appropriate and relevant to the context of the surrounding land.

Part 2

About the proposed SEPP amendment

Purpose

The proposed amendment to Chapter 4 of the Transport and Infrastructure SEPP will include additional provisions to allow the temporary use of corridor land. The amendment will facilitate economic, urban design and place making outcomes on corridor land prior to infrastructure delivery.

Part 1 of this Explanation of Intended Effect describes the existing provisions under the Transport and Infrastructure SEPP that facilitate development for uses that were previously permissible prior to the protection of the corridor. The purpose of this amendment is to provide additional flexibility in response to the changing land uses character of an area between the time that a corridor is protected and when the infrastructure is delivered.

In areas where land surrounding a corridor is changing in character due to new zoning and development provisions, the existing provisions under the Transport and Infrastructure SEPP can fall short of facilitating interim outcomes for corridor land. This is because the land uses facilitated under section 4.7 Development in future infrastructure corridor for previously permitted uses of land of the Transport and Infrastructure SEPP are reflective of the zoning prior to protection. Depending on the time of protection, these provisions won't always reflect the changing character and vision for land surrounding the corridor. The amendment seeks to address this issue by proposing additional provisions to facilitate the temporary use of corridor land whilst still meeting the protection objectives of the Transport and Infrastructure SEPP. A scenario of changing land use character surrounding a corridor is depicted in Figure 1.

The objectives of the new provision are to:

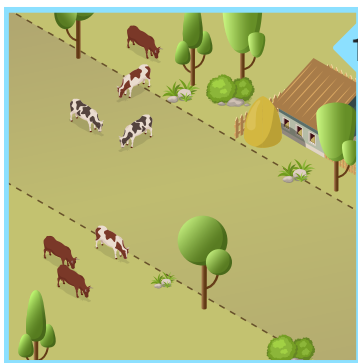
1. Maintain protection of future infrastructure corridors so that temporary development does not compromise future delivery of city shaping infrastructure or contribute to delivery costs to government
2. Facilitate development outcomes on land that is transitioning prior to the delivery of future infrastructure

The amendment will overcome land use permissibility issues by providing a merit-based approach for determining appropriate temporary land uses. To ensure the ongoing protection of the corridor, appropriate timeframes for the use will be informed by the infrastructure agency. The onus to remove any temporary structure or land disturbance and restore the corridor land to its original state, falls on the development proponent.

The purpose of the amendment is also to clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and:

- Codes SEPP - the proposed amendment will clarify which complying development codes under the Codes SEPP are available to land that is identified as a future infrastructure corridor.
- Clause 2.8 of the Standard Instrument – temporary development can be undertaken under clause 2.8 of a relevant Local Environmental Plan in circumstances where this clause has been adopted and the proposed development is consistent with the temporary development provisions in the relevant Local Environmental Plan.

Figure 1: Scenario depicting changing land use character around a corridor



1

A passenger rail corridor is identified and protected in a rural area. The corridor is protected approximately 10-20 years prior to the delivery of the infrastructure.



2

The area is identified for urban growth and change to support strategic planning priorities. The area will transition over time for urban use.



3

The interim use provisions facilitate temporary uses in the corridor that support surrounding land use changes. Temporary uses provide interim economic, urban design and place making opportunities that respond to local needs at a particular point in time.



4

The temporary uses are removed from the corridor and the passenger rail is delivered to support new jobs and housing in the planned growth area.

10-20 years

Proposed effect

Application of temporary use provisions

It is proposed that the new temporary use provisions will apply to all land within a future infrastructure corridor under the Transport and Infrastructure SEPP. New development under these provisions will be subject to a development application to determine the merits of the proposed land use, as well as specific arrangements for the temporary uses and any structures, and the duration for which the temporary use will be permitted. Any approval under the temporary use provisions will be required to consider the timeframe for future infrastructure delivery and any access to the land necessary to undertake investigations to inform the delivery of the future infrastructure.

Permissible land uses

The new provisions will not specify whether a specific land use is permissible or prohibited in the corridor, as each section of a corridor is likely to have a different land use context. Temporary uses that are appropriate in one section of a corridor may not be appropriate in another. The appropriateness of a use may also change over time in response to changes in a local area. In determining the appropriateness of a use, consideration should be given to meeting the zoning objectives of the land immediately surrounding the corridor. The purpose of this approach is to facilitate temporary uses that are complementary and considerate of neighbourhood character and amenity.

This approach also provides flexibility for scenarios where land use zones immediately surrounding a future infrastructure change overtime, prior to infrastructure delivery.

Temporary structures

Any structures proposed under the temporary provisions are to be temporary in nature and removed at the proponent's cost. Through the development application process, the proponent is to demonstrate the removal arrangements for any built form or structures.

The proposed temporary use is not to be relied upon to meet permanent or long-term site or building requirements for development adjacent to the future infrastructure corridor.



Examples of temporary structures

Matters to be considered in a Plan of Management

To benefit from the proposed temporary use pathway in the Transport and Infrastructure SEPP, applicants will be required to prepare a Plan of Management outlining the temporary use of land. It should address matters relating to the ongoing protection of a corridor and the timely delivery of future infrastructure. The Plan of Management is to accompany any development application for a temporary use, with specific arrangements to be conditioned as part of any development consent. It is proposed to amend the EP&A Regulation to facilitate this.

A draft Plan of Management template is provided at Appendix A of this Explanation of Intended Effect (note the ultimate form and content of this Plan is subject to change).

As illustrated in Appendix A, the key matters to be considered in the Plan of Management include:

- Duration of the temporary use
- Servicing
- Removal of structures and restoration of land, including timing
- Operational and management details for the temporary use

Development assessment

Development applications will be assessed in accordance with the requirements of section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is noted that this includes an evaluation of the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The amendment will make it clear that temporary development can also be assessed under the provisions of clause 2.8 of the relevant Local Environmental Plan (where this clause has been adopted). Clause 2.8 of the Standard Instrument provides a similar merit-based assessment framework for considering temporary development across all land to which the Local Environmental Plan applies. It applies a maximum time period per year for temporary development. Where a proposed temporary use complies with the relevant Local Environmental Plan provisions, a development application can be lodged under these provisions, without requiring the concurrence of the relevant infrastructure agency under the Transport and Infrastructure SEPP temporary use provisions. It is noted that all other concurrence provisions under the Chapter 4 of the Transport and Infrastructure SEPP would apply, for example, where excavation greater than 2 metres is proposed.

Complying development

It is proposed that the amendment will clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and the Codes SEPP and confirm which complying development codes under the Codes SEPP can be accessed on land identified as a future infrastructure corridor. The intent of this amendment is to streamline the approvals process for minor works, where the provisions under Chapter 4 of the Transport and Infrastructure SEPP are considered unnecessary and where the works would not threaten the degree of protection over a corridor.

Examples of minor works that can otherwise be undertaken as complying development (subject to the provisions of the Codes SEPP) and would not reduce the degree of protection over the corridor, include the construction of a new awning of an existing shop or the change of use of a temporary development from an approved shop to a business premises. It is noted that development that requires concurrence under an Environmental Planning Instrument cannot be undertaken as complying development.



Next steps

Have your say



This Explanation of Intended Effect is available on the Department of Planning and Environment's website:

www.planning.nsw.gov.au/onexhibition

You can make a submission online at the website or you can write to:



Manager, Corridor Protection
Infrastructure Partnerships and Agreements
NSW Department of Planning and Environment
Locked Bag 5022
Parramatta
NSW 2124

All submissions received will be made public in line with the Department of Planning and Environment's objective to promote an open and transparent planning system.

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The Department of Planning and Environment will consider any feedback, comments or submissions provided regarding the proposed amendment to the Transport and Infrastructure SEPP received through the exhibited period.



Example of temporary markets

Appendix A

Plan of Management Template

Part 1: Proposed temporary use

- Identify the site and locality, including the surrounding land use context
- Details of the proposed land uses and structures, inclusive of plans identify the locations of structures
- Detail the proposed duration of temporary use and associated structures*
- Account of engagement undertaken with relevant Infrastructure Agency

Part 2: Installation and removal of temporary structures

- Detail access arrangement to the site for the installation of temporary structures
- Identify the servicing arrangements and locations of servicing
- Detail the arrangements for the removal of any structures and identify where the restoration of land will be required**
- Public signage and communications regarding the temporary nature of the development and any proposed arrangements for the relocation of the use following the temporary use period

Part 3: Operation and management of temporary use

- Detail the proposed operational aspects of the temporary use as relevant. For example, hours of operation, event capacity limits, etc
- Detail the management arrangements for the use, including where relevant:
 - Noise management
 - Waste management
 - Traffic management
 - Security management.***

*Note: This is to consider anticipated timing of infrastructure delivery, as well as the timing of any early works or investigations to support the delivery of infrastructure (such as site testing etc).

** Note: sufficient details should be provided to enable the infrastructure agency to assess any conflicts between site servicing and any early works associated with infrastructure delivery.

***Note: The proposed day to day operation and management of a temporary use will be subject to the consideration of relevant Local Council Policies, such as the relevant Development Control Plan.

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