

Planning certificates

Summary of changes

Planning certificates are a key source of information for the public. They provide information about planning and other development controls that apply to a specific parcel of land. The key role of planning certificates is to ensure that landowners, applicants and purchasers have clear, accurate and reliable information about the land to which the certificate relates. Anyone can buy a planning certificate from a council at any time and for any purpose.

The *Environmental Planning and Assessment Act 1979* (the Act) provides two types of information in planning certificates:

- Section 10.7(2) requires councils to include matters prescribed in the *Environmental Planning and Assessment Regulation 2000* (the 2000 Regulation) on a planning certificate. This includes:
 - land zoning
 - applicable planning instruments and policies
 - planning controls
 - hazards and risks.

This certificate must be attached to a contract for the sale of the land.

- Section 10.7(5) allows councils to voluntarily include advice on any other relevant matters affecting the land. These matters cannot be prescribed in the Regulation. Certificates issued under this section are not required to be attached to a contract for the sale of the land.

Schedule 4 of the 2000 Regulation specifies the matters that must be included in a Section 10.7(2) certificate.

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

Changes to planning certificates

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

- streamline the matters that can be included in section 10.7(2) certificates. This involves:
 - Refining and reordering the list of matters in Schedule 4. The content of section 10.7(2) certificates focuses on key planning matters, land use and development controls essential to conveyancing.
 - Retaining the matters in section 10.7(2) certificates based on the following factors:
 - Significance and implications for land use and development on the site.
 - Bearing of the information on the conveyancing process and legal requirements for disclosure under conveyancing regulations.
 - Whether the information is readily available elsewhere (e.g. land titles or through the NSW Planning Portal).

- Updating sections to provide greater clarity, address gaps, and remove information that is not useful to incoming purchasers or can be found elsewhere.

The specific amendments to Schedule 4 of the 2000 Regulation (reflected in the new Schedule 2 of the 2021 EP&A Regulation) are summarised below.

NOTE: The Department also considered developing a prescribed form for planning certificates, however further consultation would need to be undertaken to ensure any template is fit for purpose and allows sufficient flexibility for councils to address local matters. The Department is planning to undertake further consultation with councils in 2022 to inform the development of a template that can be used to standardise planning certificates.

Clause 1 - Names of relevant planning instruments and Development Control Plans (DCP)

- requires councils to include draft DCPs on planning certificates.
- provides that draft environmental planning instruments (EPIs) and draft DCPs that have not been made within three years from the date they were last on public exhibition do not need to be included on planning certificates. These draft EPIs and draft DCPs are not required to be taken into consideration when determining a development application, and therefore do not need to be included in planning certificates.

See Section 1 of Schedule 2 under the 2021 EP&A Regulation.

Clause 2 - Zoning and land use under relevant Local Environmental Plans (LEPs)

- requires information about whether any additional permitted uses apply to the land under the relevant LEP.
- consolidates this Clause with Clause 2A (below). This ensures the one section covers zoning and land use under both LEPs and State Environmental Planning Policies (SEPPs).

See Section 2 of Schedule 2 under the 2021 EP&A Regulation.

Clause 2A - Zoning and land use under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*

The 2021 EP&A Regulation requires councils to include information on all SEPPs that zone land. This addresses an existing gap and ensure landowners, prospective purchasers, and interested parties obtain accurate information on zoning in a planning certificate.

See Section 2 of Schedule 2 under the 2021 EP&A Regulation.

Clause 3 - Complying development

The 2021 EP&A Regulation:

- expands Clause 3 to include whether the land is subject to a variation under Clause 1.12 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) that affects the ability to carry out complying development under any of the codes. This addresses an existing gap and provide greater certainty to applicants and certifiers about what development can lawfully occur under the codes.
- includes a new Section, similar to Clause 3, that includes key land use classifications that affect the ability to undertake exempt development under the Codes SEPP. Expanding the

matter to require councils to provide this information is in line with the purpose of the Clause for complying development and addresses an existing gap. As it only focuses on key restrictions in the Codes SEPP (i.e. rather than outlining all types of exempt development that can be carried out on a site), the expansion of the Clause for this purpose does not undermine the objective of simplifying and streamlining planning certificates.

See Section 4 of Schedule 2 under the 2021 EP&A Regulation.

Clause 7 - Council and other public authority policies on hazard risk restrictions, including landslip, bushfire, tidal inundation, subsidence, acid sulfate soils or any other risk (other than flooding)

The 2021 EP&A Regulation expressly includes contamination, aircraft noise, salinity, and coastal hazards and sea level rise in the list of risks under this Clause. This is to ensure consistency across planning certificates and to highlight common hazard risk restrictions.

See Section 10 of Schedule 2 under the 2021 EP&A Regulation.

Clause 9 – Contributions plans

The 2021 EP&A Regulation requires councils to indicate whether the land is in a special contributions area and to note whether any draft contributions plans apply to the land.

See Section 3 of Schedule 2 under the 2021 EP&A Regulation.

Removal of requirements for councils to provide information on:

- Native vegetation clearing set asides (Clause 10a)
- Directions under Part 3a (Clause 14)
- Site compatibility certificates and conditions for seniors housing (Clause 15)
- Site compatibility certificates and conditions for affordable rental housing (Clause 17)
- Site verification certificates (SVCs) (Clause 19)

Reordering of matters

The 2021 EP&A Regulation reorders the matters in the Schedule 4 of the 2000 Regulation (the new Schedule 2) in order of importance and applicability as follows:

1. Names of relevant planning instruments and development control plans
2. Zoning and land use under relevant planning instruments
3. Contributions plans
4. Complying development
5. Exempt development
6. Affected building notices and building product rectification orders
7. Land reserved for acquisition
8. Road widening or road realignment
9. Flood related development controls
10. Council and other public authority policies on hazard risk restrictions
11. Bush fire prone land
12. Loose-fill asbestos insulation
13. Mine subsidence
14. Paper subdivision information
15. Property vegetation plans

16. Biodiversity stewardship sites
17. Biodiversity certified land
18. Orders under Trees (Disputes Between Neighbours) Act 2006
19. Annual charges under Local Government Act 1993 for coastal protection services that relate to existing coastal protection works
20. State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
21. Development consent conditions for seniors housing
22. Site compatibility certificates and development consent conditions for affordable rental housing

The note in Schedule 4 of the 2000 Regulation related to additional matters that must be specified in a planning certificate under section 59(2) of the *Contaminated Land Management Act 1997* has been relocated to section 290 of the 2021 EP&A Regulation.

What are the benefits of these changes?

The 2021 EP&A Regulation provides improved convenience to landowners and prospective buyers. It reduces the complexity of planning certificates and focus the matters contained in planning certificates to those relevant to land use and development controls relevant to conveyancing. It also provides greater clarity regarding the purpose of certain sections and the information they require councils to provide, address information gaps, and remove information that is not useful to incoming purchasers or can be found elsewhere. As well as providing improved convenience by refining the list of matters to be included in a planning certificate, the 2021 EP&A Regulation also reduces the legal risks associated with issuing invalid or out-of-date certificates.

Commencement

The 2021 EP&A Regulation commences on 1 March 2022. The 2000 Reg, clause 279 and Schedule 4, as in force immediately before 1 March 2022, continues to apply until the end of 31 September 2022. Section 290 applies on and from the beginning of 1 October 2022

The delayed commencement of Schedule 2 provides further time for councils to update their systems, for the Department to work with councils on developing a standard template, and to analyse other issues raised with the planning certificate provisions.

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