

Development Assessment and Complying Development

Summary of changes

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

The changes in the proposed Environmental Planning and Assessment Regulation 2021 (proposed 2021 Regulation) relate to what is known as:

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

What changes are proposed?

The changes included in the proposed 2021 Regulation are summarised below.

Development applications

Information included in a DA and rejection provisions

The proposed 2021 Regulation requires all development applications (DAs) to be made in the approved form, and to include all the information and documents specified in the approved form or required by the Act and the Regulation (see clause 24(1)). The consent authority will be able to reject any application that does not contain this information (see clause 36(1)(b)).

As part of the remake of the Regulation, the DA requirements that are currently set out in Schedule 1 of the 2000 Regulation will be transferred across to the approved form, which is located on the NSW Planning Portal.

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 This will include updates to application requirements to simplify the provisions, remove/update outdated requirements and include new or more specific requirements for particular applications, to improve the quality of information provided with DAs and reduce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

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

proposed as part of the draft [Environmental Planning and Assessment Amendment \(Major Projects\) Regulation 2020](#).

Withdrawal and rejection provisions for modification applications

The proposed 2021 Regulation will clarify that:

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

Information included in applications to amend DAs and modification applications

To improve the quality of modification applications and applications to amend DAs that are under assessment, the proposed 2021 Regulation will prescribe clearer and more detailed application requirements.

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

Landowner consent requirements for surrenders and modifications

For surrenders and modifications of a development consent, the proposed 2021 Regulation will remove the requirement for landowner's consent where the original DA could have been made without the consent of the landowner.

Assessment timeframes - stop the clock and deemed refusal periods

Provisions for calculating assessment periods and stop the clock rules will be restructured and made clearer. Notification requirements relating to information requests and counting assessment days will include additional information to increase certainty about when assessment periods begin and end.

The changes will:

- Eliminate unnecessary concessional delays in assessment period.
- Remove unnecessary requirements to notify concurrence authorities and approval bodies. This will include specifying that:
 - Certain minor modification applications do not need to be referred to concurrence or approval bodies unless they propose changes to conditions or terms of approval imposed by these bodies.
 - The consent authority does not need to notify concurrence or approval bodies of the lodgement of a DA or a modification application where the application is withdrawn or rejected.
 - The consent authority does not need to notify concurrence or approval bodies of the withdrawal or rejection of a DA or a modification application where the concurrence or approval body is yet to be notified of the application in the first place.
- Reduce unnecessary delays and provide greater certainty around the period for providing additional information, by requiring authorities to specify a reasonable period within which the information is to be provided.
- Provide greater certainty around the day that the clock stops when an information request has been issued.
- Clarify when the clock restarts in circumstances when an application is amended.

- Provide that the assessment clock starts when payment is received (unless payment is waived) and clarify that someone can make a payment on behalf of the applicant.
- Facilitate a shared understanding of elapsed time in the deemed refusal period by requiring that, when issuing an information request, the consent authority must outline the number of days that have elapsed in the assessment period to date and notify the applicant that the clock will cease to run while the request remains unanswered.

Notices of determination

The proposed 2021 Regulation will:

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

Determinations of internal review applications

The proposed 2021 Regulation will require consent authorities to notify submitters of determinations on internal review applications.

Complying development

CDC applications

Under the proposed 2021 Regulation, complying development certificate (CDC) applications will be required to include:

- Details on site configuration and building envelope.
- Detailed engineering plans for telecommunications or electricity works.
- A site plan that is drawn to scale.
- The maximum site coverage of the land.

Note on other new application requirements for CDC applications:

New clause 104(1) of the proposed 2021 Regulation provides that an application for a CDC must be in the approved form and include all the information and documents specified in the approved form (or required by the Act or the Regulation). The form will be updated so that CDC applications are also required to provide:

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

CDC applications – contaminated land

- New CDC applications on land declared as contaminated under section 60 of the *Contaminated Land Management Act 1997* will be required to be accompanied by a site audit statement from an accredited auditor.

- A CDC will be required to comply with the site audit statement recommendations as a condition of approval.

CDC approvals

- A detailed list of reports, studies, plans and documentation relied upon to determine the CDC application will need to be listed on the CDC, with sufficient guidance on how and where the documents can be accessed.
- Pre-approval notices given to neighbours and the council will need to identify the relevant SEPP or the relevant code in the Codes SEPP under which the CDC has been proposed, and include the site plan that accompanied the application.

Requirements for neighbour notification before the issue of a modified complying development certificate

Duplicative requirements for neighbour notification of a modified CDC will be removed. Neighbour notification of a proposed modification to an existing complying development certificate will not be required, where neighbours were notified of the original application.

Other

The clause relating documents required for traffic generating complying development will be updated to reflect the fact that there is more than one roads authority.

What are the benefits of these changes?

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

When will these changes commence?

The proposed 2021 Regulation is expected to commence 1 March 2022. Transitional arrangements may apply.

How can I have my say?

We invite you to make a submission on the proposed 2021 Regulation via our website during the exhibition period: www.planningportal.nsw.gov.au/EPA-regulation-review

If you would like to speak with us in a language other than English, call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.

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