

Designated development

Summary of changes

Designated development is a category of development under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) that involves a higher level of assessment and scrutiny due to the potential risk it poses to the environment.

Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (2000 Regulation) and some environmental planning instruments (e.g. a state environmental planning policy - SEPP) specify when a proposal is designated development and outlines the relevant assessment and public participation requirements.

What changes are proposed?

The proposed Environmental Planning and Assessment Regulation 2021 (proposed 2021 Regulation) proposes to:

Revise categories that trigger designated development

Include new designated development categories for emerging technologies where they also require an environmental protection license (EPL):

- energy recovery from waste (facilities requiring an EPL under Schedule 1, clause 18 of the Protection of the Environment Operations Act 1997 (POEO Act).
- contaminated groundwater treatment (activities requiring an EPL under Schedule 1, clause 15A of the POEO Act).
- oil or petroleum waste storage (facilities requiring an EPL under Schedule 1, clause 42 of the POEO Act).

Include other emerging technologies which may also require an EPL or other licence from the EPA in certain circumstances:

- large-scale battery storage facilities - facilities that supply, or are capable of supplying, more than 30 megawatts of electrical power.
- geosequestration as defined in Schedule 1, clause 8 of the State and Regional Development SEPP.
- desalination systems or works:
 - that have a processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day, or
 - that have a processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located:
 - on a floodplain, or
 - within a coastal dune field, or
 - within a drinking water catchment, or
 - within 100 metres of a natural waterbody or wetland, or
 - within 250 metres of a dwelling not associated with the development.

Exclude lower risk activities from being designated development and update categories based on industry changes

- Update the photovoltaic (PV) solar energy category so that solar power generators are only designated if they provide more than 30 megawatts of electrical power and are located on a flood plain.
- Introduce a 10,000 bird threshold to exclude smaller poultry farms that are not in sensitive locations.
- Amend the breweries and distilleries category to exempt certain small-scale operations.
- Amend the concrete works category to exempt small-scale activities.
- Introduce a new category for mixed feedlots of multiple species.

Align with POEO Act activities

- Increase certain designated development thresholds to align with POEO thresholds where appropriate.
- Align terminology with POEO Act provisions for some industries.
- Align petroleum provisions with the POEO Act and other related legislation.

Update location-based triggers for designated development

- Replace the ESA term and definition with a revised definition of environmentally sensitive areas of State significance (ESASS).
- Standardise wetland buffer to 100 metres (current buffers range from 40 – 100 metres).
- Update the definition of drinking water catchment.
- Clarify that certain 'associated works' do not trigger designated development.

Update designated development exclusions

- Clarify existing provisions applying to DAs for alterations and additions.
- Remove reference to the out-of-date Newcastle LEP 1987.

Make housekeeping and miscellaneous updates

- Revise definitions, phrasing and make improvements to clause structure.
- Update cross references to legislation and policy.
- Make minor drafting clarifications and corrections.

What are the benefits of these changes?

By adding new categories to capture emerging technologies and by updating thresholds and definitions, the proposed 2021 Regulation will support improved environmental protection.

Updates to development categories will better align with current technological and industry standards to support a modern planning system.

Removing lower risk development types helps ensure proposals receive the right level of assessment and oversight. Proponents and consent authorities will save time and costs as designated development requirements only apply to higher risk proposals.

Changes such as revising and clarifying provisions support a modern planning system that is easier to understand and use. They simplify the 2000 Regulation and increase consistency across the legislative framework.

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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