Draft Environmental Planning and Assessment Regulation - Regulatory Impact Statement

August 2021

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Executive Summary

The *Environmental Planning and Assessment Regulation 2000* (2000 Regulation) is scheduled for automatic repeal on 1 March 2022 under the *Subordinate Legislation Act 1989*.

The 2000 Regulation was made to support the *Environmental Planning and Assessment Act 1979* (Act), which establishes the land use planning and development assessment framework for NSW. It includes the procedures for the making of Environmental Planning Instruments (EPIs), assessment of development proposals, the levying of development contributions, and compliance and enforcement powers.

It is proposed that the draft Environmental Planning and Assessment Regulation 2021 (proposed 2021 Regulation) be made, retaining many of the existing provisions while making amendments to:

- reduce administrative burden and increase procedural efficiency.
- establish a simpler, more modern and transparent planning system.

The main purpose of the proposed 2021 Regulation will be to provide the legislative support for the operation of the Act. Key changes in the proposed 2021 Regulation are as follows:

- A broad range of changes will be made to reduce administrative burden in the processes and requirements for development applications (DAs) and modification applications. This will include updating application requirements and refining notification requirements.
- Improvements to DA processes will simplify the stop the clock provisions and concurrence and referral procedures, and provide greater certainty around calculation of the assessment and deemed refusal periods.
- Simplifying and refining requirements for planning certificates to focus the content on land use and development controls essential to conveyancing.
- Improving application requirements for complying development certificate (CDC) applications, and information disclosure in approvals and notifications to support increased transparency for this assessment system.
- Improving transparency by requiring publication of environmental assessments for certain infrastructure proposals.
- Improving designated development provisions to modernise this assessment system. Revisions to the development categories and definitions respond to recent changes in industry and technology and broader policy reforms. Removing lower risk development types (e.g. lower risk solar farms and poultry farms) from designated development will support economic productivity.

The proposed 2021 Regulation does not incorporate any changes made to the 2000 Regulation since 30 June 2021. These will be incorporated when the proposed 2021 Regulation is finalised.

This Regulatory Impact Statement (RIS) sets out the rationale and objectives of the proposed 2021 Regulation. It includes alternative options and an assessment of the costs and benefits of each of these options. The proposed 2021 Regulation is the option which is considered to provide the greatest net public benefit.

The RIS also provides a discussion on important aspects of the proposed 2021 Regulation and seeks feedback from stakeholders and the community. There will be a six-week public consultation period on the proposed 2021 Regulation and submissions are invited on any of the matters raised in the RIS or anything else contained in the proposed 2021 Regulation. All submissions will be considered and any necessary changes will be made to address the issues identified before the proposed 2021 Regulation is finalised.

This RIS should be read in conjunction with the proposed 2021 Regulation.

Contents

1. Introduction

The draft Environmental Planning and Assessment Regulation 2021 (proposed 2021 Regulation) has been prepared to replace the 2000 Regulation upon repeal.

This Regulatory Impact Statement (RIS) has been prepared by the Department of Planning, Industry and Environment (Department) on behalf of the Minister for Planning and Public Spaces to assess the potential regulatory impacts of the proposed 2021 Regulation. This includes assessing the expected costs and benefits, evaluating the potential costs and benefits of alternative options, and determining which options have the greatest net benefit or the least net cost to the community.

This RIS supports the public exhibition and invites stakeholder views on the proposed 2021 Regulation.

Title of the proposed regulation

The Environmental Planning and Assessment Regulation 2021.

Name of proponent and responsible Minister

The Hon. (Rob) Robert Gordon Stokes, MP, Minister for Planning and Public Spaces.

Relevant Act and regulation making power

Section 10.13 of the *Environmental Planning and Assessment Act 1979* (the Act) provides a general regulation making power.

Requirements of a Regulatory Impact Statement

Under the *Subordinate Legislation Act 1989* (Subordinate Legislation Act), a RIS must be prepared before a principal statutory rule is made. This RIS addresses the following requirements for the proposed 2021 Regulation:

- A statement of the objectives sought to be achieved and the reasons for them.
- An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
- An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration, and compliance.
- An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- A statement of the consultation program to be undertaken.

The proposed 2021 Regulation was prepared in accordance with the NSW Treasury's *NSW Government Guide to Better Regulation (TPP 19-001)*, including the following seven better regulation principles:

1. The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform, modernisation, or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary, reformed, to ensure its continued efficiency and effectiveness.

Consultation

In accordance with the requirements of the Subordinate Legislation Act, the proposed 2021 Regulation and RIS will be notified in the NSW Government Gazette and at least one daily NSW-wide newspaper.

All NSW councils, relevant NSW Government agencies, and non-government bodies that are likely to be directly affected by the proposed 2021 Regulation will be notified where practical.

A copy of the exhibition draft of the proposed 2021 Regulation will be available on the Department's website at http://www.planning.nsw.gov.au during the exhibition period or by calling the Department on 1300 305 695.

To make a submission:

- visit https://www.planningportal.nsw.gov.au/draftplans/on-exhibition, or
- email Regulation.Review@planning.nsw.gov.au, or
- mail your submission to

  Director, Regulatory Policy
  Planning System Policy Branch
  Department of Planning, Industry and Environment
  Locked Bag 5022
  Parramatta NSW 2124

2. Regulatory proposal — overview

The Act is the primary legislation covering land use planning and development assessment in NSW. The Act's objects are achieved through a planning framework that:

- creates a system of land use plans and planning instruments that provide the context and rules for decision-making about development.
- makes local councils and the NSW Government responsible for the preparation of those plans and the assessment of development.
- establishes variable assessment processes to suit the type and significance of development — from minor small-scale works to regionally and State significant development (SSD).
- establishes mechanisms for consent and planning authorities to collect infrastructure contributions from developers.
- establishes investigative powers that enable consent authorities to monitor and enforce compliance with the Act.
- ensures construction of development can be certified against set standards.

The 2000 Regulation commenced on 1 January 2001 and is the primary subordinate legislation to the Act. It is distinct from the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

The 2000 Regulation supports the Act by prescribing matters listed in Table 2.5.

Objective of the regulatory proposal

This comprehensive review of the 2000 Regulation builds on significant reforms made to the Act in 2018 to improve the planning system. The review's objectives are to:

- Reduce administrative burden and increase procedural efficiency by removing outdated provisions that make the system harder to use
- Reduce complexity
- Establish a simpler, more modern, and transparent planning system.

The 2000 Regulation is due for automatic repeal under the Subordinate Legislation Act on 1 March 2022. The intention is to continue to have a planning regulation in place that supports the relevant Act provisions upon the repeal of the current 2000 Regulation – at least 3 months before that repeal.

Prescribing land use planning and development assessment matters in regulations provides clear and accessible guidance and certainty to users of the planning system. It provides standards, timeframes, costs, and resource expectations for compliance with the provisions of the Act. The proposed 2021 Regulation is the preferred option to achieve this. It will largely carry over existing provisions of the 2000 Regulation, with changes broadly summarised under the topics below. A detailed explanation of these changes can be found in the corresponding topic chapters later in this RIS.

Existing use rights

- Replace the term 'floor space' with 'gross floor area' for the purpose of considering whether an existing use can be changed and adopt the *Standard Instrument—Principal Local Environmental Plan* (Standard Instrument) definition of this term. This will deliver consistency in the way floor area is calculated by applicants and consent authorities when considering applications to increase the floor area of premises that have the benefit of existing use rights.

Development applications (other than complying development)

- Improve the quality of applications and reduce administrative burden
  - Update application requirements, including to simplify the provisions and remove/update outdated requirements.
  - Prescribe additional requirements for modification applications and proposed amendments to development applications that are still under assessment, to improve the quality of information submitted with these applications and reduce administrative burden.
  - NOTE: the amendments to application requirements as part the remake of the Regulation relate to local development applications and will not affect any changes to requirements for SSD and State significant infrastructure (SSI) that have been made through the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021 – see Tables 2.1 and 2.2 below*.
- Remove the requirement for landowner's consent for the surrender or modification of a development consent, where the original development application (DA) could have been made without the consent of the landowner.
- Clarify that the consent authority is able to reject a modification application in certain circumstances.
- Clarify that withdrawal provisions afforded to DAs also apply to all modification applications.
- 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.
- Require consent authorities to notify submitters of determinations on internal review applications.

Simplify the calculation of assessment and deemed refusal periods and stop the clock provisions and concurrence and referrals provisions

- Simplify the drafting of stop the clock provisions to clarify complex rules and remove redundant provisions.
- Eliminate unnecessary concessional delays in assessment period e.g. by removing the two concessional days occurring while the concurrence authority or approval body's request for additional information remains unanswered (provided under cl 110(1)(a) and (b)), to reflect the use of emails and instant uploads of reports and to simplify the calculation of assessment periods.
- Remove unnecessary requirements to notify concurrence authorities and approval bodies, including by providing that modification applications under section 4.55(1) and (1A) of the EP&A Act do not need to be referred, except where they propose changes to conditions imposed by the concurrence authority or the general terms of approval of the relevant approval body.
- Provide greater certainty around the day that the clock stops when an information request has been issued.
- Reduce unnecessary delays and provide greater certainty around the period for providing additional information, by requiring authorities to specify a reasonable period in which the information must be provided.
- 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 allow someone else to make a payment on behalf of the applicant.

- Facilitate a shared understanding of elapsed time in the deemed refusal period, by providing that an information request issued by the consent authority must:
  - specify the number of days that have elapsed in the assessment period, and
  - inform the applicant that the assessment period ceases to run between the date the request is issued and the date the applicant provides the information or notifies (or is taken to have notified) the consent authority that the information will not be provided.

Reduce administrative burden associated with post-determination notifications

- 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).
- Clarify that the requirement for a consent authority to send a copy of its notice of determination to the approval body can be satisfied by uploading the notice to the NSW Planning Portal (the Planning Portal).

Table 2.1 – further detail on initiative to improve quality of DAs

Related initiative – updates to application requirements to improve the quality of DAs and reduce administrative burden

The proposed 2021 Regulation requires all 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 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 SSD and SSI that have been made through the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021* – see Table 2.2 below for further details.

Table 2.2 – recent amendments to regulatory provisions relating to major projects

Recent amendments to regulatory provisions relating to major projects

The *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021* (Major Projects Regulation) has made a number of amendments to increase the efficiency and transparency of major projects administration and assessment, ensure applications and reports are prepared to a consistently high standard, and introduce formal quality assurance measures for EISs.

The amendments have been made to Part 1, Part 6, Part 10, Part 17, and Schedule 2 of the 2000 Regulation. While some of these amendments commenced on 1 July, others will commence later in the year.

These amendments are not yet reflected in the proposed 2021 Regulation as they were made after the consultation draft was finalised, but they will be incorporated into the final Regulation before it is made.

A summary of the key amendments is included in Attachment A, but readers should refer to the Major Projects Regulation for full details.

Complying development certificates

- Improve information provision and disclosure for CDC applications by:
  - requiring the following to be included in CDC applications:
    - 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.
  - requiring all titles of reports, studies, plans and documentation relied upon to determine the CDC application to be listed on the CDC with sufficient guidance on how and where the documents can be accessed.
  - requiring pre-approval notices to identify the relevant SEPP or the relevant code in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) under which the CDC has been proposed.
  - requiring disclosure of site plans in a pre-approval notice.
- Require a CDC application on land that is declared as contaminated under section 60 of the *Contaminated Land Management Act 1997* (CLM Act) to be accompanied by a site audit statement from an accredited auditor.
- Require that any CDC approved on land that is declared as contaminated under section 60 of the CLM Act must contain a condition that any site audit statement recommendations relating to the use of the land for the purpose of the CDC must be complied with.
- Remove duplicate requirements for neighbour notification prior to the issue of a modified CDC (where neighbours were notified of the original application).
- **Note on other new application requirements for CDC applications**: New clause 102(1) provides that an application for a complying development certificate 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).

Environmental assessment under Part 5 of the Act

Amendments to improve the transparency and operation of environmental impact assessment of activities under Part 5 of the Act

- Retitle the relevant clause (currently clause 228 ‘What factors must be taken into account concerning the impact of an activity on the environment?’) to clearly reference a ‘review of environmental factors’ (known as a ‘REF’). This will distinguish the process from the Environmental Impact Statements (EIS) process and give statutory recognition to a widely used phrase.
- Allow the Secretary to prescribe guidelines for the form of environmental assessment for activities that do not require an EIS.
- Require agencies to publish environmental impact assessment (EIA) reports (documenting their REFs) for activities that meet a specified threshold.

- Insert two additional requirements for agencies to consider:
  - any environmental factors that may be relevant to the likely impact of an activity on the environment and not just those factors listed in clause 228.
  - any strategic plans made under Part 3 of the Act, including local strategic planning statements, regional and district plans.
- Remove redundant clauses, including provisions relating to fisheries management and the Australian Rail Track Corporation Ltd.
- Update the requirements for publication of EIS decision reports.

Designated development

- Add new categories to capture emerging technologies – see Table 2.3.
- Remove low risk photovoltaic solar energy generation and smaller scale poultry farms, breweries and distilleries.
- Align designated development categories with the POEO Act where appropriate, to:
  - match thresholds and clause coverage.
  - adopt definitions and terminology.
  - align petroleum works with related legislation.
- Vary the concrete works and intensive livestock agriculture categories based on industry specific changes.
- Alter location-based triggers to:
  - replace the 'environmentally sensitive areas' (ESA) definition with an updated 'environmentally sensitive areas of State significance' (ESASS) definition.
  - increase wetland buffers.
  - revise the drinking water catchment definition.
  - clarify that associated works (e.g. an access road) are not triggers.
- Alter exclusions to designated development to clarify provisions around DAs for alterations and additions and removing certain LEP and REP exemptions.
- Include housekeeping and miscellaneous updates to revise definitions, improve phrasing and clause structure, remove outdated clauses, update cross-references to agencies, legislation, and external documents, and refine wording to clarify policy intent.

Table 2.3 – further detail on new designated development categories

New designated development categories for emerging technologies – interaction with environmental protection legislation

• Under the proposed 2021 Regulation, energy recovery from waste facilities, oil or petroleum waste storage facilities and contaminated groundwater treatment activities will only be designated development where they also require an EPL.
• The other new categories listed below are included because they require a higher level of environmental assessment:
  ○ **Large-scale battery storage facilities:** lithium-ion and lead-acid batteries are classified as dangerous goods and therefore require an assessment of risk. An EPL would be required where a facility has the capacity to use more than 1,000 tonnes of batteries over a year.
  ○ **Geosequestration:** requires an assessment of impacts on groundwater, and may also trigger an EPL or dangerous goods licence for certain activities relating to chemical production, storage, waste disposal and transport – particularly in relation to carbon dioxide.

New designated development categories for emerging technologies – interaction with environmental protection legislation

- **Large scale desalination systems or works:** may have water quality impacts and also a proponent may apply for an EPL to authorise discharge of desalination brine into waterways or to transport and dispose of this waste at another premises.

Planning certificates

Amendments to reduce the complexity of planning certificates and improve clarity and consistency, reduce administrative burden and remove unnecessary regulatory requirements and ensure interested parties can readily access information on land that is relevant, accurate, and easy to interpret

- Refine and reorder the list of matters in Schedule 4 (see Schedule 3 under the proposed 2021 Regulation), to focus the content of section 10.7(2) certificates on land use and development controls essential to conveyancing. Relegate all other matters to 10.7(5) certificates through non-statutory guidelines.
- Retain the requirement to list all relevant planning instruments and development control plans (DCPs) (and also require councils to include draft DCPs) but require councils to provide further explanation of the information provided.
- Require councils to include information on all SEPPs that zone land.
- Specify 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.
- Rename and reword the complying development clause to clarify the purpose of clause and the information it requires councils to provide.
- Add a new clause which requires councils to include key land use classifications that affect the ability to undertake exempt development under the Codes SEPP.
- Update the provisions related to hazard risk restrictions to explicitly include contamination, aircraft noise, salinity, and coastal hazard and sea level rise in the list of risks. Including contamination in particular will require councils to include a statement as to whether a policy adopted by the council or another public authority restricts the development of the land due to the likelihood of contamination. Currently this information is included on some planning certificates but not others, at the discretion of the relevant council.
- Require councils to indicate whether the land is in a special contributions area and to note whether any draft contributions plans apply to the land.
- Require councils to identify on planning certificates whether any additional permitted uses apply to the land under the relevant LEP.

Fees and charges

- Amend the fee provisions to include movements in the consumer price index (CPI) that have occurred since the last CPI increase to fees in the Regulation in 2011, and to allow for ongoing minor adjustments in fixed fees[1] either annually or biannually. This will allow fixed fees to gradually increase over time to better reflect the cost of providing planning services.

[1] The term 'fixed fees' is used to encompass base fees and fees, or components of fees, which are a fixed or set amount. This means that the fee, or the component of the fee, does not change based on factors such as the size or estimated cost or investment value of the proposal.

Under the proposed 2021 Regulation, the first increase to these fees will not be applied until 1 July 2023, which is the first full financial year after the intended commencement of the proposed 2021 Regulation.

Electronic communication methods

- Remove requirements for hard copies of documents to be made available for free or for a fee and instead require that this information to be made available online or electronically.
- Clarify that clauses that require a document to be delivered or posted can be met through electronic methods.
- Allow publication requirements to be met through electronic communication methods.

Miscellaneous (including definitions)

- Amend the Regulation so a large boarding house, seniors housing, a group home or a hostel does not have to obtain a BASIX certificate. This is because these types of developments are class 3 buildings and are already subject to energy efficiency requirements under the Building Code of Australia (BCA) and water efficiency requirements under the National Construction Code (NCC) and Australian Standard AS/NZS 3500.
- Update the definition of urban release area so that maps can be published online.

Alternative options considered

Consistent with the Subordinate Legislation Act and the Better Regulation principles, the proposed 2021 Regulation has considered the following options:

1. **No Regulation:** the existing 2000 Regulation would be allowed to lapse without remaking it, and regulations would not be made to replace it.
2. **Remaking the existing 2000 Regulation** without modification.
3. **Making the new proposed 2021 Regulation:** carrying over most of the 2000 Regulation provisions, modifying some provisions, and introducing a small number of new provisions.

Structure of the report

The chapters below analyse these alternative options and identify the preferred option for the substantive matters of the Regulation to achieve the objectives of the regulatory proposal. This analysis includes:

- an assessment of the costs and benefits relating to resource allocation, administration, and compliance of the proposed 2021 Regulation as well as each alternative option.
- an identification of which options involve the greatest net benefit or least net cost to the community.

Each relevant part of the proposed 2021 Regulation contains a cost-benefit analysis and reports the differences in benefits and costs between option 1 versus option 2, and option 2 versus 3.

Each section details the base case under the No Regulation option and compares this with the current 2000 Regulation. Where the proposed 2021 Regulation involves amendments to the current 2000 Regulation, the relevant section compares the costs and benefits of these two options.

Status quo provisions

Table 2.5 identifies parts of the 2000 Regulation that will be carried across into the proposed 2021 Regulation with no policy change. These parts are considered fit-for-purpose as is or may be subject to separate current or upcoming reform processes.

With the exception of Part 2 (Environmental planning instruments), the RIS does not include a cost benefit analysis for these parts, but retention under option 3 is preferred. These parts of the Regulation provide a net benefit by helping ensure smooth operation of the planning system consistent with the objects of the Act. These parts include erection of temporary structures, paper subdivisions, and the Schedules for EISs, entertainment venues, and penalty notice offences.

For EPIs (Part 2 under the 2000 Regulation), a cost benefit analysis is included in chapter 3 of the RIS (plan making).

Proposed 2021 Regulation structure

To simplify and modernise the planning system, the proposed 2021 Regulation will be restructured to better align with the order of the Act. The new structure is detailed in Table 2.4.

Table 0.4 Structure of the proposed 2021 Regulation

Part	Title under the proposed 2021 Regulation
Part 1	Preliminary
Part 2	Planning instruments
Part 3	Development applications
Part 4	Determination of development applications
Part 5	Modification of development consents
Part 6	Complying development
Part 7	Existing uses—the Act, Div 4.11
Part 8	Infrastructure and environmental impact assessment
Part 9	Infrastructure contributions and finance
Part 10	Paper subdivisions— the Act, Sch 7
Part 11	Registers and other records—the Act, s 4.58
Part 12	Reviews and appeals
Part 13	Fees
Part 14	Miscellaneous
Schedule 1	Public authorities
Schedule 2	Designated development
Schedule 3	Planning certificates
Schedule 4	Fees
Schedule 5	Penalty notice offences

Schedule 6	Amendment of Environmental Planning and Assessment Regulation 2021 commencing on 1 July 2022

Table 2.5 outlines how the new parts of the proposed 2021 Regulation correspond to the parts of the current Regulation. This table also indicates where proposed changes are minor or substantial. 'Minor changes' are relatively small adjustments to, or clarifications of, existing policy.

Table 0.5 Comparison between the 2000 Regulation and proposed 2021 Regulation and extent of changes proposed

2000 Regulation	Current title	Corresponding part of the proposed 2021 Regulation	Extent of proposed changes in 2021 Regulation[i]
Part 1	Preliminary	Part 1 Preliminary	Minor
Part 2	Environmental planning instruments	Part 2, Planning instruments (Division 1 – Local environmental plans)	Nil
Part 3	Development control plans	Part 2, Planning instruments (Division 2 – Development control plans)	Nil
Part 4	Development contributions	Part 9 Infrastructure contributions and finance	Minor
Part 5	Existing uses	Part 7 Existing uses—the Act, Div 4.11	Minor
Part 6	**Procedures relating to development applications**	**Part 3 Development applications** **Part 4 Determination of development applications** **Part 5 Modification of development consents** **Part 12 Reviews and appeals**	**Moderate**
Part 7	**Procedures relating to complying development**	**Part 6 Complying development**	**Moderate**
Part 10	State significant infrastructure	Part 8, Infrastructure and environmental impact assessment (Division 3 Approval of State significant infrastructure—the Act, Div 5.2, Division 4 - Environmental assessment for State significant infrastructure—the Act, Div 5.2)	Minor
Part 14	**Environmental assessment under Part 5 of the Act**	**Part 8 Infrastructure and environmental impact assessment, Divisions 1-2**	**Moderate**

2000 Regulation	Current title	Corresponding part of the proposed 2021 Regulation	Extent of proposed changes in 2021 Regulation[i]
Part 15	**Fees and charges**	**Part 13 Fees** **Schedule 4 Fees**	**Moderate**
Part 16	Registers and other records	Part 11 Registers and other records	Minor
Part 16C	Paper subdivisions	Part 10 Paper subdivisions	Minor
Part 17	Miscellaneous	Part 14 Miscellaneous Schedule 1 Public authorities	Minor
Schedule 1	**Forms**	**Various, including Part 3, Part 6 and approved forms for development applications and complying development certificates available on the Planning Portal**	**Moderate**
Schedule 2	Environmental impact statements	Part 8 Infrastructure and environmental impact assessment, Division 5 Environmental impact statements	Minor
Schedule 3	**Designated development**	**Schedule 2 Designated development**	**Moderate**
Schedule 3A	Entertainment venues	Clause 69 Entertainment venues	Minor
Schedule 4	**Planning certificates**	**Schedule 3 Planning certificates**	**Moderate**
Schedule 5	Penalty notice offences	Schedule 5 Penalty notice offences	Minor

[i] *excluding non-substantial matters such as clause renumbering.*

Provisions of the 2000 Regulation that are made under the EP&A Act, Part 6 and section 10.13(1)(d) are not considered further in this RIS as they will be transferred to the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (the 'Development Certification and Fire Safety Regulation'). These include provisions in:

- Part 6 clauses 103, 103A and 104
- Part 8 (Certification of development)
- Part 9 (Fire safety and Building Code of Australia)
- Part 12 (Accreditation of building products and systems)
- Part 13 (Development by the Crown), except subclause 226(1)
- Part 13A (Signs on development sites)
- Part 16A (Erection of temporary structures)
- Schedule 1 Part 3 (Construction certificates)

The Development Certification and Fire Safety Regulation has not yet been made, but is expected to be made before the proposed 2021 Regulation is made.

Other changes made to the 2000 Regulation during 2020 and the first half of 2021

Over 200 amendments have been made to the 2000 Regulation since it was first made, including over 20 separate amending regulations in the last year and a half since 1 January 2020. As not all readers of the RIS will be familiar with these amendments, **Attachment A** provides a summary of the most recent changes (those made during 2020 and the first half of 2021).

Other than the most recent changes made by the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021*, the amendments have been carried over to the proposed 2021 Regulation but are not discussed further throughout this RIS. The amendments made by the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021* are not yet reflected in the proposed 2021 Regulation, as they were made after the consultation draft was finalised. They will be incorporated in the final 2021 Regulation before it is made.

3. Plan making

Background

EPIs can be made for the purposes of achieving the objects of the Act. EPIs may cover matters such as protecting the environment, controlling development, and reserving land for public purposes.

EPIs include local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs). LEPs cover local planning matters and are prepared by relevant planning authorities (mainly councils) and are made by the Minister. SEPPs deal with matters of State or regional significance and are made by the NSW Governor.

The process for preparing, publicly exhibiting, making, reviewing, and amending EPIs is outlined in the Act. Part 2 of the 2000 Regulation prescribes a small number of matters in relation to EPIs.

Development control plans (DCPs) are non-statutory plans that provide detailed planning and design guidelines to support the planning controls in an LEP developed by a council. Each council is required to publish their DCP(s) on the Planning Portal.

The Act outlines the relationship between EPIs and DCPs, restrictions on the application of DCPs, public access requirements to DCPs and other related matters. In contrast to EPIs, the procedures for preparing, publicly exhibiting, making, and amending DCPs are prescribed in the 2000 Regulation (Part 3), along with other DCP matters.

2000 Regulation

EPI provisions in Part 2

The 2000 Regulation:

- requires that land identified in a planning proposal can only be reserved for acquisition under a proposed LEP only with the concurrence of the designated public authority.
- requires that if a council does not support a planning proposal, it must notify the person who made it as soon as practicable in writing.
- provides that the relevant planning authorities and the person making the planning proposal may enter into an agreement regarding costs and expenses.
- contains provisions for how the fee payable for these costs and expenses should be calculated, when the fee is due, and other minor details.
- provides that the Lord Howe Island Board is a planning proposal authority.

DCP provisions in Part 3

The 2000 Regulation:

- prescribes the form and certain content requirements of a DCP.
- contains public exhibition and public submission provisions for a draft DCP.
- contains procedural requirements for a DCP to be made, amended, repealed or amended, or revoked by the Minister and public notice requirements for these processes.
- contains requirements for the approval of DCPs relating to residential apartment development.
- clarifies that Part 3 applies to DCPs prepared by the Planning Secretary with some modifications.
- contains miscellaneous provisions including:
    - the ability of a planning authority to request further information.

- provisions related to assessment and preparation fees from landowners.
- provisions related to making DCPs available to the Planning Secretary and making them available for purchase.

2021 Regulation

The proposed 2021 Regulation will carry over the EPI and DCP provisions in Parts 2 and 3 of the current 2000 Regulation.

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Under a No Regulation scenario for EPIs, there would be minimal difference to LEP processes and no difference to SEPP processes, because the Act largely prescribes EPI-making processes. Regulatory requirements that would be removed include:

- the need to obtain public authority concurrence when identifying them as acquiring authorities in planning proposals for proposed LEPs.
- the requirement to notify an applicant when a council does not support a planning proposal.
- the right of relevant planning authorities such as councils to enter into agreements with persons to pay the fees for planning proposal studies.
- the provision that the Lord Howe Island Board is a planning proposal authority.

Under a No Regulation scenario for DCPs, relevant planning authorities such as councils would have greater control of their form and content. They would have similar control of procedures for making, amending and repealing these plans, and for making plans accessible to the public.

Public participation requirements would still be in place for LEPs because these are derived from the Act. However, councils would have control (subject to political accountability) over how they choose to provide for public participation in preparing a draft DCP.

Table 3.1 below summarises the potential benefits and costs of this option.

Table 0.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Reduced costs to councils for DCP preparation, studies to support planning proposals, and the recoupment of DCP assessment and preparation costs through fees. • Consistent channels of public participation and better decision-making across councils in the development of DCPs.	• Higher administrative costs to councils from notice and public participation requirements. • Higher administrative costs to other public authorities.

Benefit — reduced costs of plan preparation and assessment

Under the 2000 Regulation, councils can rely on clear instructions for their preparation of DCPs. This expedites plan making, leading to marginally lower administrative costs. The extent of these possible cost savings has not been quantified as these would depend on specific assumptions about what might occur under a No Regulation option.

The 2000 Regulation also allows for:

- the recoupment of planning authority costs associated with studies to support planning proposals.

- some costs associated with assessing draft DCPs prepared by landowners or preparing DCPs on behalf of landowners through fees determined by the planning authority.

The 2000 Regulation facilitates more efficient cost allocation for plan making.

Benefit — consistent channels of public participation across councils and better decision making

Public participation procedures and access requirements for DCPs in the 2000 Regulation ensure greater accountability and transparency, facilitating better quality decision making. Other provisions promoting better decision making through public participation include:

- LEP provisions requiring concurrence of proposed acquiring authorities — these ensure public authorities provide feedback on the preparation of an LEP. Public authorities designated as an acquiring authority for reserved lands need to be able to concur with such provisions, as land reservation and acquisition can have significant cost implications for those agencies.
- provisions involving approval, amendment and repeal of DCPs — these increase awareness among interested parties of when a DCP is being made or amended, thus increasing opportunities for feedback.

Councils could voluntarily establish such processes under a No Regulation option, however varied uptake would lead to inconsistent processes across NSW.

Cost — higher administrative costs to councils

The public participation provisions for DCPs impose obligations on councils make notices for approval, amendment, and repeal of DCPs available to the public. The resulting increased costs include publishing copies of DCPs and draft DCPs on the council's website, as well as administrative and resourcing costs in reviewing and responding to submissions. Costs vary depending on location and the level of public interest in a draft DCP.

Cost — higher administrative costs to other public authorities

Public authorities must allocate resources to respond to council requests for concurrence for the reservation of land. However, these administrative and specialist assessment costs are offset by the benefits. These benefits include the opportunity for public authorities to obtain concurrence regarding a proposal to reserve land under an EPI. This concurrence is important as there may be significant financial implications for acquiring authorities.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

The proposed 2021 Regulation will carry over EPI and DCP provisions of Parts 2 and 3 of the 2000 Regulation. The proposed ePlanning changes will amend Part 3 clauses containing outdated communication requirements. These are considered broadly in Chapter 9 and will have a net benefit. Benefits include reducing administrative costs and making information available electronically where it is not already required to be.

Therefore, making the proposed 2021 Regulation would result in additional benefits through amendments that reflect advancement in technology and improve operational efficiency.

Conclusion and preferred option

The DCP and EPI provisions of the 2000 Regulation promote better decision making through public participation and reduced plan making costs relative to a No Regulation option. Therefore, remaking the 2000 Regulation is preferred over No Regulation. Since the proposed 2021 Regulation will carry over the provisions of the 2000 Regulation but also include the beneficial ePlanning changes, it is the preferred option.

4. Development contributions

Background

Development contributions fund infrastructure and services triggered by new development. Contributions may be in the form of monetary payments, dedication of land, or the provision of a material public benefit.

Development contributions, planning agreements, conditions for affordable housing, and Special Infrastructure Contributions (SICs) are included in Part 7 of the Act.

The Act establishes the framework for:

- the NSW government to levy SICs.
- local councils to levy local infrastructure contributions.
- consent authorities to enter into planning agreements.
- consent authorities to impose affordable housing contributions.

Other mechanisms for funding local infrastructure include rates levied under the *Local Government Act 1993*.

2000 Regulation

Part 4 of the 2000 Regulation:

- prescribes the form and subject matter of planning agreements as well as requirements for making, amending and revoking them. It includes requirements for public notice and explanatory notes. It also requires planning authorities such as councils and the Planning Secretary to keep registers of planning agreements and to make these publicly available.
- details the method of indexation for s. 7.11 development consent contributions and determination of the cost of development and maximum contribution percentage for the s. 7.12 levy.
- prescribes the form and content requirements for contributions plans including that they have regard to practice notes and that councils must not approve them without adhering to any directions from the Minister.
- requires that explanatory notes be prepared in accordance with a practice note prepared by the Secretary.
- requires that draft contributions plans are publicly exhibited, copies are made available and that any person can make a submission.
- sets out the process for the approval, amendment, review and repeal of contributions plans by councils including any public notice requirements.
- requires councils to maintain registers and accounting records in a specified format for contributions and planning agreements, and records for inclusion in council's annual financial report and annual statements.
- identifies public access requirements for contributions plans and their records.

Other initiatives relating to development contributions

Upcoming amendments to the EP&A Act

The *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* proposes to amend the EP&A Act in relation to contributions. The Bill will lay the legislative foundation for making the NSW contributions system more certain, efficient, simple, transparent and consistent in line with 29 Government-approved NSW Productivity Commission recommendations (2020). It will amend the EP&A Act to change the way local and State infrastructure contributions are planned, collected and spent including by:

- Introducing a new land value contribution mechanism.
- Establishing a regional infrastructure contributions scheme, applied as a low and flat charge in metropolitan regions benefiting from State government infrastructure, replacing existing special infrastructure contributions.
- Making consequential amendments to allow planning instruments and subordinate legislation, including the *Environmental Planning and Assessment Regulation 2000,* to implement the Productivity Commissioner's recommendations.

Recent amendments to the development contribution provisions in the Regulation

In February 2021, amendments were made to the development contribution provisions in the 2000 Regulation as part of a package of infrastructure contributions system improvements. These included new reporting requirements for councils and planning authorities to improve transparency about receipt and expenditure of infrastructure contributions received under local contributions plans and planning agreements.

Changes were made to:

- Introduce more detailed reporting requirements on the receipt and expenditure of contributions received under local contributions plans and planning agreements.
- Make information more readily accessible, by including new requirements for councils and planning authorities to make documents related to infrastructure contributions (such as contributions plans, registers and reports) available online through their websites and the NSW Planning Portal.
- Transfer existing guidance for drafting planning agreement explanatory notes from the Regulation into a Planning Agreement Practice Note to provide clearer direction for planning authorities when drafting planning agreements. This change includes a requirement for councils to consider the Planning Agreement Practice Note when drafting planning agreements and for all planning authorities to consider the explanatory note requirements.
- Amend clause 25K to limit the maximum percentage charge for section 7.12 levies in Gosford City Centre to 1%, to align with the introduction of the Gosford special infrastructure contribution (SIC) on 12 October 2018.
- Update outdated references to instruments in clause 25K by:
    - Replacing the reference to 'Wollongong City Centre Local Environmental Plan 2007' with 'Wollongong Local Environmental Plan 2009'.
    - Replacing the reference to 'Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011' with 'Willoughby Local Infrastructure Contributions Plan 2019'.

Further information on these changes is available in the Planning circular PS 21-002: Reporting and accounting requirements for infrastructure contributions, the Infrastructure contributions: Frequently Asked Questions, and on the Department's website.

2021 Regulation

The proposed 2021 Regulation will carry over the existing provisions of the 2000 Regulation and the amendments made by the Development Contributions Regulation (see box above), along with two minor amendments. Clause 26 (clause 192 under the proposed 2021 Regulation) will be amended to specify that practice notes related to contributions plans are to be published online rather than made available for inspection and purchase. Clause 269 (clause 202 under the proposed 2021 Regulation) will also be amended to remove requirements to post or deliver documents, which will clarify that the notice of proposal to constitute a development area can be sent electronically.

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Repealing the 2000 Regulation would remove the consistent and rigorous system that focuses on the equitable distribution of infrastructure costs for new development. It would remove requirements on councils regarding the essential content of contributions plans and the monitoring and accounting systems.

Planning agreements could still apply under a No Regulation option as they don't rely on the existence of a contributions plan. However, the 2000 Regulation also contains provisions governing the content and notification of planning agreements that would be removed if the 2000 Regulations were repealed.

Ministerial Directions and SICs would continue to apply under both options.

Table 4.1 below summarises the potential benefits and costs of this option.

Table 0.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Greater direction and transparency on practical application of the contributions system. • Accountability and monitoring within the contributions system. • Encouraging efficient infrastructure provision for development.	• Increased administrative costs for councils.

Benefit — greater direction and transparency on practical application of the contributions system

Most requirements for practical application of the contributions system are contained in the 2000 Regulation. Retention of these provisions ensures transparency and consistency within the system, assisting all stakeholders in identifying what they can expect from the system and how it should be applied.

Benefit — accountability and monitoring within the contributions system

The role played by contributions in council income and expenditure will vary significantly depending on spatial development patterns. Regardless of the amounts received by councils, probity, and governance is essential to ensure the contributions system fulfils its intended function under the Act.

The 2000 Regulation contains requirements for councils to achieve accountability and monitoring within the system. This includes the way funds received are managed, requirements for record-

keeping, public participation requirements, and the procedures for approving, amending, reviewing, and repealing contributions plans. If the 2000 Regulation were not remade these provisions wouldn't be in place to facilitate necessary probity and governance processes.

Benefit — encouraging efficient infrastructure provision for development

The Act requires a contributions plan to be in place before a council levies a contribution towards the provision of infrastructure. The 2000 Regulation provides detailed requirements for the contents of contributions plans that ensure the efficient and effective provision of infrastructure. The Act also allows the cost of such infrastructure to be passed on to the developer. This ensures the cost of providing infrastructure is considered in the decision on whether to proceed with the development. The 2000 Regulation sets out a scheme whereby these costs are passed on in an equitable manner.

Through the enabling provisions of the Act and the detailed requirements of the 2000 Regulation, economies of scale can be achieved as infrastructure is planned in a strategic and orderly way rather than on a development-by-development basis. It also reduces the need for individual developers to undertake individual negotiations with other developers regarding the provision of larger infrastructure items.

Cost — increased administrative costs for councils

The 2000 Regulation requires councils to maintain registers of development contributions and planning agreements and to publish their contributions plans, rates and annual statements on the Planning Portal. This may increase the administrative burden on local councils, however the benefits of this reporting for transparency, accountability, and monitoring greatly outweigh any administrative costs.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

As noted above, the proposed 2021 Regulation will carry over development contributions provisions of the current 2000 Regulation. The proposed 2021 Regulation will make contribution plan practice notes adopted by the Planning Secretary available online. It will also remove the requirement for these to be made available for inspection and purchase. These communication changes are considered broadly in Chapter 9 and will reduce administration costs. Making the proposed 2021 Regulation would largely result in equivalent costs and benefits, with an additional benefit of updated communication requirements.

Conclusion and preferred option

On balance, the 2000 Regulation provisions supporting the developer contributions provisions in the Act have a substantial net benefit. Since the proposed 2021 Regulation will mostly carry over the provisions of the 2000 Regulation, the proposed 2021 Regulation is the preferred option.

5. Existing use rights

Background

Part 4 of the Act provides for the use of buildings, works, or land in their current form despite being prohibited in an EPI. These are known as existing use rights (EUR).

- Section 4.66 of the Act allows for the continuance of existing uses.
- Section 4.67 of the Act includes a regulation-making power to cover other matters such as alterations and additions, change of an existing use to another use, and enlarging or expanding a building or work subject to EUR.

EUR provisions balance the potential hardship and dislocation that could result if landowners or occupiers were required to discontinue uses no longer permitted under current planning controls, against the need to transition to the new and preferred planning regime for the area. EUR provide for the continuation of previously lawful uses until those previous uses cease for other reasons.

2000 Regulation

Part 5 of the 2000 Regulation:

- allows existing uses to be enlarged, expanded or intensified, altered or extended, rebuilt, or changed to certain other uses.
- limits application and extent of these allowances, e.g. limits the type of changes that are permitted for commercial and light industrial uses.
- requires development consent for various changes to existing uses.

2021 Regulation

The proposed 2021 Regulation will carry over the provisions for existing uses in the 2000 Regulation except for one minor amendment. The amendment will replace the term ‘floor space’ with ‘gross floor area’ (see clause 148(2)(b) of the proposed 2021 Regulation) and adopt the Standard Instrument definition of this term (see the definition of ‘gross floor area’ in the Dictionary in the proposed 2021 Regulation).

Floor space is not defined in the Act, the 2000 Regulation or the Standard Instrument. As ‘gross floor area’ is defined in the Standard Instrument, this definition will be applied for the purposes of existing use rights to deliver consistency.

This amendment will deliver consistency in the way floor area is calculated by applicants and consent authorities when considering applications to increase the floor area of premises.

As a consequence of this amendment, the definition of gross floor area will also be added to the Dictionary in the proposed 2021 Regulation.

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Without the 2000 Regulation, there would be no means of extending EUR unless individual councils decided to amend their LEPs to introduce such provisions. While councils could amend their EPIs to allow for expansion of EUR, the analysis here assumes there would be few or no cases where EPIs continue to permit alterations, additions, expansions, and changes of use of existing uses.

Table 5.1 below summarises the potential benefits and costs of this option.

Table 5.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Greater efficiencies of land and building use	• Processing additional DAs • Slower transition to preferred strategic land use

Benefit — greater efficiencies of land and building use

Without the 2000 Regulation, development on land subject to the introduction of land use prohibitions (e.g. through LEP rezoning) could not be altered, rebuilt, or otherwise modified. Rezoning would effectively prevent landowners from undertaking minor variations to the use of their land. Relative to a No Regulation option, the 2000 Regulation confers greater rights and flexibility for landowners or applicants by providing circumstances in which alterations or changes of use are possible, even after rezonings prohibit the uses being undertaken. This flexibility provides economic benefits such as the potential for higher value development on the land.

Cost — processing additional DAs

Changes that applicants may wish to make would still be subject to routine processes of scrutiny under the assessment system. Therefore, under the 2000 Regulation, there would be a marginally greater number of DAs submitted to consent authorities (usually councils) every year for consent to modify existing uses. Councils would bear the costs of processing these although the usual DA assessment fees are payable.

Cost – slower transition to preferred strategic land use

EUR DAs must be assessed despite newly introduced LEP provisions indicating council's interest in bringing about a strategic shift to other land uses. Allowing for further changes of uses and greater flexibility in existing uses in effect delays this transition.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 5.2 below summarises the potential benefits and costs of this option.

Table 5.2 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
Improved regulatory clarity	Minimal

Benefit — improved regulatory clarity

The proposed minor amendment to EUR provisions improves clarity since 'floor space' is not defined in the planning legislation. 'Gross Floor Area' is defined in the Standard Instrument and should be applied in this context to deliver consistency in the way floor area is calculated by applicants and consent authorities.

Cost – minimal

The costs associated with the proposed 2021 Regulation in relation to existing use rights are minimal and are unlikely to result in administrative or resourcing costs for consent authorities.

Conclusion and preferred option

There are net benefits from the provisions in the 2000 Regulation. Such provisions facilitate additional opportunities for landowners to use their land more efficiently where this can be achieved by changing or expanding existing uses. These benefits come at little cost because:

- such use can be subject to conditions as specified in the 2000 Regulation to ensure that the overall consistency of restrictions in EPIs is not undermined.
- proposals for such changes to existing uses are still subject to impact assessment.

The minor amendment proposed in the proposed 2021 Regulation will clarify and allow for more efficient application of EUR provisions. Therefore, the proposed 2021 Regulation is the preferred option.

6. Development assessment and complying development

Background

Part 4 of the EP&A Act is the primary part that relates to DA and development consent processes. An 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. This chapter primarily covers 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.

Chapter 6 also covers 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*. It is relatively straightforward and can be determined through a fast-tracked assessment by a council certifier or private accredited certifier.

2000 Regulation

Part 6 of the 2000 Regulation contains provisions related to DA procedures and includes:

- who may make a DA and how an application should be made.
- how a DA should be determined, including provisions related to the imposition of conditions.
- what matters should be included in a notice of determination and the validity of consents.
- when certain aspects of the DA process are required to be completed by and when a DA under assessment is deemed to be refused (i.e. the 'stop the clock' provisions).
- the functions of a regional panel and the procedural matters of Local Planning Panels (LPPs).
- provisions related to extending, completing, and modifying a DA, as well as review processes and conditions.
- special provisions related to mining and petroleum developments on strategic agricultural land.
- provisions relating to the processes for development requiring concurrence and integrated development, as well as provisions relating to land within Activation Precincts.
- the information to be included in concept DAs.
- provisions relating to the rejection, withdrawal, assessment, and amendment of DAs.
- provisions relating to BASIX requirements.
- community participation and notification requirements.
- requirements for designated development, SSD, nominated integrated development, threatened species development, and Class 1 aquaculture development.

Part 7 contains procedures relating to CDCs and includes:

- how an application for a CDC should be made and how a CDC can be modified.
- special provisions relating to CDCs for the Western Sydney Aerotropolis and land within Activation precincts.
- provisions related to BASIX requirements.
- restrictions for CDCs relating to certain kinds of development.
- requirements to be met prior to the issue of a CDC.

- record-keeping provisions.
- the time limit within which a CDC application should be determined.
- CDC notification and communication requirements.
- development standards for certain kinds of development.
- the form, conditions, and validity of a CDC.
- Schedule 1 sets out the minimum information and documentation requirements for DAs and CDCs.

As an indication of the importance of provisions discussed in this chapter, Table 6.1 below identifies the number of CDCs and DAs processed in 2018-2019.

Table 0.1 Number of CDCs and DAs and modification applications determined

Application type	Number of applications determined in 2018-2019
Number of CDCs determined by councils or private certifiers	31,464
Number of DAs determined	56,211
Number of section 4.55 modification of consent applications determined	14,180

Source: Local development performance monitoring 2018-2019.

2021 Regulation - DAs

The proposed 2021 Regulation carries over the provisions of the 2000 Regulation and includes further proposed changes. These are summarised in Table 6.2 and detailed further in Appendix A.

Table 0.2 Overview of proposed changes to DA applications and procedures

Planning process	Proposed 2021 Regulation
Information included in a DA and rejection provisions	The proposed 2021 Regulation requires all 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 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 SSD and SSI that have been made through the

Planning process	Proposed 2021 Regulation
	Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021.
Withdrawal and rejection provisions for modification applications	The proposed 2021 Regulation will clarify that: • The consent authority is able to reject a modification application in certain circumstances (see clause 100 'Rejection of applications for modifications' under the proposed 2021 Regulation). • Withdrawal provisions afforded to DAs also apply to all modification applications (see clause 101 'Withdrawal of applications for modifications' under the proposed 2021 Regulation).
Information included in applications to amend DAs	• To improve the quality of amendments proposed to DAs under assessment and reduce administrative burden, 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, to enable the consent authority to compare the proposed development with the development originally proposed (see clause 35(5) 'Amendment of development application' under the proposed 2021 Regulation).
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. ○ See clauses 64 'Modification or surrender of development consent or existing use right', 65 'Voluntary surrender of development consent' and 90 'Persons who may make modification applications' under the proposed 2021 Regulation).
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 (see clause 84 under the proposed 2021 Regulation). This change includes removing the two concessional days at the current clauses 110(1)(a) and (b) relating to an agency's request for additional information as well as the two concessional days at lodgement of an application (current clause 107). • 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.

Planning process	Proposed 2021 Regulation
	See clause 98 'Notification of concurrence authorities and approval bodies' under the proposed 2021 Regulation. ○ 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. ▪ See clauses 39 'Consent authority to seek general terms of approval', 47 'Consent authority to seek concurrence' and 98 'Notification of concurrence authorities and approval bodies' under the proposed 2021 Regulation. ○ 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. ▪ See clauses 36 (Rejection of development applications), 37 (Withdrawal of development applications), 100 (Rejection of applications for modifications) and 101 (Withdrawal of applications for modifications) under the proposed 2021 Regulation). • 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. ○ See clauses 34 (Consent authority may request additional information from applicant), 49 (Concurrence authority may request additional information from consent authority) and 40 (Approval body may request additional information from consent authority) under the proposed 2021 Regulation. • Clarify when the clock restarts in circumstances when an application is amended (see clause 34 'Consent authority may request additional information from applicant' under the proposed 2021 Regulation). • Provide greater certainty around the day that the clock stops when an information request has been issued (see clause 86 'Circumstances in which the assessment period ceases to run' under the proposed 2021 Regulation). • 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 (see clause 24 'Content of development applications' under the proposed 2021 Regulation). • 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. ○ See clauses 34 'Consent authority may request additional information from applicant', 49 'Concurrence authority may request additional information from consent authority', 40 'Approval body may request additional information from consent authority', 41 'Notice of proposed consultations about Aboriginal

Planning process	Proposed 2021 Regulation
	heritage impact under *National Parks and Wildlife Act 1974*' under the proposed 2021 Regulation.
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 (see clause 104 'Notice of determination of application to modify development consent' under the proposed 2021 Regulation). This will provide a consistent approach to modifying a development consent and ensure development consents are iteratively updated to reflect subsequent modifications. Further detail on the rationale for this change is provided below. • 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). See clauses 79 'Content of notice of determination for applicants' and 81 'Content of notice of determination for persons who made submissions' under the proposed 2021 Regulation. • Allow notices of determination to be sent to approval bodies through the Planning Portal (see clause 82 'Notice to approval bodies of determination of development application for integrated development' under the proposed 2021 Regulation).
Determinations of internal review applications	The proposed 2021 Regulation will require consent authorities to notify submitters of determinations on internal review applications (see clause 227 'Notice of consent authority's review—the Act, Div 8.2' under the proposed 2021 Regulation).

■ Table 6.3 – further detail on the proposed amendment relating to the form of a development consent following a modification

Providing a consistent approach to modifying a development consent

The EP&A Act and the 2000 Regulation prescribe a number of requirements for determining a modification application, and for notifying stakeholders of a determination. However, the 2000 Regulation does not specifically prescribe the form of a modification determination, or stipulate that the original consent must be updated to reflect the modification if the application is approved. As a result, and possibly for historical reasons, there are varying practices followed by different consent authorities. These include:

- issuing a notice outlining the modified aspects of the development consent, without updating the original development consent.
- issuing a notice of modification, outlining the modified aspects the development consent, along with a consolidated version of the development consent including all modifications that have taken place since the original consent was issued.
- issuing a combined notice of determination and updated development consent.

Where the original development consent is not updated to reflect subsequent modifications, it can be difficult for the proponent, members of the community, and the regulator (e.g. councils and the Department), to readily determine what has been authorised on a given site.

A regulatory amendment is proposed, to require that a consent authority who grants an application for modification of a development consent must provide a modified development consent to the applicant that complies with any requirements specified by the Planning Secretary in relation to the form and content of modified development consents. This will:

- provide a consistent approach to modifying a development consent and ensure development consents are iteratively updated to reflect subsequent modifications.
- ensure regulators, proponents, and interested members of the community can readily determine what has been authorised under a development consent that has subsequently been modified. This is in line with the Government's goal of making the planning system simpler, more transparent and easier to use.
- ensure the development consent is a dynamic instrument, thereby reducing regulatory and administrative burdens associated with reviewing multiple documents to determine what has been authorised.
- potentially reduce the risk of non-compliance, by providing greater clarity and certainty as to the conditions that apply on a given site (i.e. proponents only need to refer to one document to determine the applicable current conditions).

This approach is consistent with that taken under the equivalent statutory schemes in Victoria and Queensland.

2021 Regulation – CDC applications

The proposed 2021 Regulation largely replicates the 2000 Regulation provisions but includes minor amendments to CDC requirements.

Table 6.4 below summarises the potential benefits and costs of this option.

Table 3.4. Overview of changes to CDC applications and procedures

Planning process	Proposed 2021 Regulation
CDC applications	Under the proposed 2021 Regulation, CDC applications will be required to include: • Details on site configuration and building envelope (see clause 107(3) 'Plans and drawings to accompany complying development certificate application' under the proposed 2021 Regulation). • Detailed engineering plans for telecommunications or electricity works (see clause 111 'Documents required for complying development involving telecommunications facilities or electricity power lines' under the proposed 2021 Regulation). • A site plan that is drawn to scale (see clause 107(2) 'Plans and drawings to accompany complying development certificate application' under the proposed 2021 Regulation). • The maximum site coverage of the land (see clause 108(3)(a)(iv) 'Documents required for complying development involving building work' under the proposed 2021 Regulation). **Note on other new application requirements for CDC applications** New clause 106(1)(a) 'Application for complying development certificate' under the proposed 2021 Regulation provides that an application for a complying development certificate 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 the CLM Act will be required to be accompanied by a site audit statement from an accredited auditor (see clause 115(3) 'Documents required for complying development on contaminated land' under the proposed 2021 Regulation). • A CDC will be required to comply with the site audit statement recommendations as a condition of approval (see clause 141 'Development on contaminated land' under the proposed 2021 Regulation).

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 (see clause 122(2)(a) 'Form of complying development certificate' under the proposed 2021 Regulation). • Pre-approval notices given to neighbours and the council will need to include the name of each relevant EPI, including the relevant complying development code under which the CDC has been proposed, as well as the site plan that accompanied the application (see clause 120(4) 'Notice to neighbours and councils' under the proposed 2021 Regulation).
Requirements for neighbour notification prior to 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 CDC will not be required, where neighbours were notified of the original application (see clause 120(5) 'Notice to neighbours and councils' under the proposed 2021 Regulation).
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 (see clause 140 'Traffic generating development' under the proposed 2021 Regulation).

Cost–benefit analysis of options

This section provides a qualitative review of the benefits and costs. The analysis focuses on the major differences between options and does not include a detailed analysis of some of the minor administrative changes that will not have substantive impacts. The cost benefit analysis is divided into the following subsections:

- Processes for DAs under Part 4 of the Act.
- Processes for complying development applications.

Remaking the 2000 Regulation compared with No Regulation - DAs

Under the No Regulation option, consent authorities would have control over some procedures for receiving, rejecting, amending, notifying, advertising, assessing and determining DAs, as well as modifications to consents. Consent authorities would be able to set minimum standards of performance and establish procedures and protocols for assessing applications.

Table 6.5 below summarises the potential costs and benefits of this option.

Table 0.5 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Increased certainty for applicants • Faster flow of economic services from developments • Improved decision making	• Increased administrative costs for decision makers

Benefit — increased certainty for applicants

The 2000 Regulation provides state-wide consistency in relation to the minimum standards and procedural requirements for a DA. This increases certainty for applicants by making it easier to

anticipate application requirements, assessment timeframes and relevant processes. This certainty reduces the time and resources expended by applicants and their consultants, who would otherwise have to learn the standards and procedures specific to each council. This results in a better environment for investment and business decision making.

The Regulation also prescribes assessment timeframes after which a DA may be deemed to be refused. This enables applicants to clearly understand how to proceed if a consent authority does not meet the prescribed timeframes and ensures that they are standardised across the state and readily known to the public.

Benefit — faster flow of economic services from developments

Compared to a No Regulation option, the 2000 Regulation speeds up processes and leads to lower average development assessment times. This can result in economic gains from faster access to goods and services from approved developments. The 2000 Regulation does so by prescribing:

- Requirements that define responsibilities, decision-making steps and assessment timeframes, including timeframes that apply where there is more than one decision-making body is involved in the assessment (i.e. concurrence authorities and integrated development approval bodies).
- Requirements for what should be submitted with a DA, which reduces incidences of deficient applications being lodged and saves resources and time expended by applicants in relodging applications. This also saves time for consent authorities in having to receive, check, and reject inadequate applications.

Benefit — improved decision making

Several provisions in the 2000 Regulation assist in improving quality of decision making by councils, these include:

- Notification requirements, which increase opportunities for public participation in assessing DAs and ensure that the level and detail of advertising/notification required is appropriate to the likely extent of impact of the proposed development. This can mean greater accountability and better decision making by consent authorities that take account of submitters' concerns.
- Additional matters that a consent authority must consider, including specific document requirements, which ensure that any wider externalities are taken into consideration in the assessment process.
- 'Stop the clock' provisions, which allow councils and other consent authorities to request further information without overstepping assessment timeframes. These provisions enable thorough and robust assessment.
- The 2000 Regulation provides significant benefits over the No Regulation option. However, performance monitoring by the Department suggests that there are further efficiencies that can be made. Many councils identified that the quality of submitted DAs could be improved and that this would help speed up DA processing times. Some of these concerns are addressed in the option to make the proposed 2021 Regulation.

Cost — increased administrative costs for decision makers

Under the 2000 Regulation, consent authorities must comply with the procedural requirements for processing DAs. The administrative costs of the 2000 Regulation include:

- Costs of giving notice (the Regulation prescribes advertising requirements for applications).
- Costs of coordinating decision-making between consent authorities, concurrence authorities and approval bodies resulting from concurrence and integrated development provisions (e.g. forwarding applications, submissions, additional information and notifications of decisions).

- Costs associated with reprioritisation of consent authority work in order to meet the deadlines prescribed in the 2000 Regulation for processing of DAs.

These administrative costs may not otherwise be incurred in the absence of the 2000 Regulation. However, the costs are offset by the likelihood that consent authorities would set minimum standards of performance and establish their own procedures and protocols for assessing applications. These practices would likely include similar administrative costs.

Remaking the 2000 Regulation compared with No Regulation – CDC applications

Repealing the 2000 Regulation would remove CDC provisions, which ensure that CDC applications follow consistent procedures related to their submission, determination, exclusions that apply, notification, conditions of consent, the form of a CDC, and their validity. There would also be no mandated requirements related to the documents that should accompany a CDC application.

Table 6.5 below summarises the potential benefits and costs of this option.

Table 0.6 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Increased certainty for users • Reduced administrative burden for private certifiers • Increased efficiency in processing applications	• Increased administrative costs to decision-makers

Benefit — increased certainty for users

The 2000 Regulation contains provisions that apply across the State relating to the form and procedures for CDC applications. Under a No Regulation scenario councils and certifiers would have discretion as to the documents required to be submitted with a CDC. The 2000 Regulation provides certainty related to the type of information included in a CDC, such as the identity of the certifier that issued it and the date on which the certificate lapses. This consistency increases certainty for applicants by providing clear and accessible information to applicants.

Benefit — reduced administrative burden for private certifiers

Unlike council certifiers, private certifiers work across multiple council areas. Under a No Regulation scenario, this means that they would be required to become familiar with each council's document requirements and procedures in order to assess a CDC application. By prescribing consistent requirements and procedures, the 2000 Regulation reduces the administrative burden for private certifiers and helps the system function more efficiently.

Benefit — Increased efficiency in processing applications

The 2000 Regulation specifies the time frames by which a CDC application should be determined. In the absence of the 2000 Regulation, there would be no certainty as to when a CDC should be issued. As well as providing certainty for users, the 2000 Regulation sets expectations that help to facilitate timely and efficient processing of applications.

Cost - Increased administrative costs for decision-makers

The 2000 Regulation causes councils to incur administrative and resource costs by requiring that consent authorities adhere to minimum standards related to the forms and procedures for CDC applications. These include costs related to checking and lodging applications and sending out

notices. However, councils would likely incur these costs under a No Regulation scenario as they work to increase their internal efficiencies.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation - DAs

A summary of the potential impacts of making the proposed 2021 Regulation relative to remaking the 2000 Regulation is set out in Table 6.6 below.

Table 0.7 Overview of benefits and costs of making the proposed 2021 Regulation

Potential Benefits	Potential Costs
• Reduced uncertainty for consent authorities and applicants • Reduced administrative burden on councils • Improved decision making by consent authorities and other relevant authorities • Reduced number of disputes over assessment periods	• Increased risk that applicants will need to re-lodge inadequate applications • Increased administrative burden on councils during transitional period

Benefit — reduced uncertainty 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 2021 Regulation will clarify provisions for lodging and assessing DAs. This will help facilitate a shared understanding between proponents and consent authorities and promote greater certainty by:

- improving transparency around how the assessment and deemed refusal periods are calculated and notified.
- providing a clear regulatory pathway for proponents to withdraw modification applications.
- allowing the Secretary to prescribe requirements or guidelines for the form of a development consent following a modification, which will ensure consistency and provide greater transparency.
- requiring 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.

Benefit — reduced administrative burden on consent authorities and reduced likelihood of delays in assessment

The proposed 2021 Regulation will prescribe clearer and more detailed application requirements for amendment applications. 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 assessment, as consent authorities are more likely to have the information required to assess an application up-front.

The proposed 2021 Regulation will also specifically allow a modification application to be withdrawn or rejected, which may help to speed up the process of lodging and assessing these applications.

The proposed 2021 Regulation also removes duplicative, unnecessary or outdated provisions for post-determination notifications, thereby enabling faster, more efficient processes for assessing DAs. This includes allowing consent authorities to provide notices or information electronically where possible and removing unnecessary requirements to refer an application to concurrence authorities.

Benefit — reduced number of disputes over assessment periods

The 2000 Regulation's 'stop the clock' provisions are complex. The complexities associated with the existing stop the clock procedures make it difficult to calculate the various assessment periods and determine when the 'deemed refusal period' starts and ends. This has important implications for appeal rights and can contribute to uncertainty for applicants and consent authorities and delays in the assessment process. This has resulted in several Land and Environment Court (LEC) cases over whether an applicant has the right to bring an appeal.

The proposed 2021 Regulation will simplify stop the clock, concurrence and referral procedures, and the calculation of the assessment periods. While the policy intent and assessment timeframes will not change, the proposed 2021 Regulation will make minor changes to improve clarity. Under the proposed 2021 Regulation:

- Provisions for calculating assessment periods and stop the clock rules will be restructured and made clearer. See Part 4, Division 4 'Time for determining development applications' under the proposed 2021 Regulation.
- Notification requirements relating to information requests and counting assessment days will include additional information to increase certainty about when assessment periods begin and end. For example, when issuing an information request, the consent authority will need to 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. See clause 34 'Consent authority may request additional information from applicant' under the proposed 2021 Regulation.
- Unnecessary concessional delays in the assessment period will be removed (see clause 84 under the proposed 2021 Regulation). This includes removing the two concessional days at the current clauses 110(1)(a) and (b) relating to an agency's request for additional information as well as the two concessional days at lodgement of an application (current clause 107).
- Unnecessary requirements to notify concurrence authorities and approval bodies will be removed. For example, the Regulation will specify 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. See clause 98 'Notification of concurrence authorities and approval bodies' under the proposed 2021 Regulation.
- Amendments will be made to provide greater certainty around the day that the clock stops when an information request has been issued (see clause 86 'Circumstances in which the assessment period ceases to run' under the proposed 2021 Regulation).
- Authorities will need to specify a reasonable period within which additional information is to be provided, to reduce unnecessary delays and provide greater certainty. See clauses 34 (Consent authority may request additional information from applicant), 49 (Concurrence authority may request additional information from consent authority) and 40 (Approval body may request additional information from consent authority) under the proposed 2021 Regulation.
- Provisions will be introduced to clarify when the clock restarts in circumstances when an application is amended. See clause 34 'Consent authority may request additional information from applicant' under the proposed 2021 Regulation.

These changes will reduce disputes over the calculation of the deemed refusal period. They will also provide time, cost, and resources savings to proponents, consent authorities and the Land

and Environment Court. Deemed refusal periods will be easier to calculate, allowing appeals to be lodged within the appropriate legal timeframes.

Separate to this draft Regulation, the Department is investigating the issue of delays that occur between an applicant uploading a DA in the planning portal (submission) and when a DA is accepted and actioned by a council (lodgement). The Department is aware that some councils have extensive pre-assessment days between submission and lodgement which add to the overall assessment time frame and are outside the officially counted days within the assessment period. Systems improvements or potential further amendments to the Regulation will be considered to address this issue.

Cost — increased costs to re-lodge inadequate applications

Prescribe clearer and more detailed application requirements for amendment applications and explicitly providing the ability for the consent authority to reject a modification application may lead to a higher frequency of applications being rejected.

Applicants that fail to provide a complete amendment or modification application may be required to relodge the application. In these circumstances, a consent authority will generally refund any application fees paid in connection with the rejected application. For this reason, costs are limited to additional work required for the application to meet minimum standards. It possible for costs to be incurred from delays to commencing the application process, however it is likely this is offset by the time and cost savings benefits associated with applications that meet minimum standards.

It is also likely that these costs would decrease over time. As applicants adjust their expectations about the minimum standards required to lodge an application, the quality of amendment applications and modification applications is likely to improve.

Cost — increased administrative burden on councils during transitional period

The proposed 2021 Regulation may result in additional resourcing implications in the transitional period as councils adjust existing procedural requirements for assessing DAs and notification requirements. This is also more likely in cases where the consent authority does not already have processes in place to update development consents that have been modified.

These costs to consent authorities will likely be offset by the cost savings associated with the proposed 2021 Regulation following this transitional period.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation – CDC applications

A summary of the potential impacts of making the proposed 2021 Regulation relative to remaking the 2000 Regulation is set out in Table 6.7 below.

Table 0.8 Overview of benefits and costs of making the proposed 2021 Regulation

Potential Benefits	Potential Costs
• Reduced administrative burden for certifiers and councils • Increased consistency in application of restrictions on contaminated land	• Marginally higher costs to applicants submitting CDCs

Benefit — reduced administrative burden for certifiers and councils

Parties that rely on previously submitted CDCs for information such as developers, builders and certifying authorities will likely benefit from the increased information content introduced by the new requirements to:

- provide details on engineering plans, site configuration, and building envelopes in complying applications.
- list the titles of reports, studies, plans and documentation relied upon to determine the application on the CDC approval.
- include site plans and identify the relevant EPI or the relevant code in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- include the DA reference number for previous development consents on the land for complying development applications for change of use. Better understanding of existing lawful use will make certifier determination of complying development applications involving change of use easier.

Benefit – increased consistency in application of restrictions on contaminated land

The proposed 2021 Regulation will expand the application of CDC condition requirements so that any CDC approved on land declared as contaminated under the section 60 of the CLM Act:

- must be accompanied by a site audit statement (SAS) from an accredited auditor.
- have as a condition of the CDC that any site audit statement recommendations around use of the land for the purpose of the CDC are complied with as a condition of the CDC.

This change will replace current arrangements where production of a SAS and compliance with said SAS as a CDC condition were only requirements for commercial and industrial CDCs. As risks to human health associated with contaminated land does not discriminate between land uses, this change will ensure human health and safety is protected and considered appropriately.

Cost — marginally higher costs to applicants submitting CDCs

The proposed requirements for documentation and standards for complying development applications will likely impose marginally higher compliance costs on applicants. This may be offset by benefits associated with providing better quality information to assist certifiers in issuing CDCs faster and a lower incidence of legal challenges to the validity of the CDC.

Conclusion and preferred option

The primary incremental benefits arising from making the proposed 2021 Regulation relative to a 2000 Regulation scenario are improved clarity and certainty for proponents and consent authorities and further streamlining of the development assessment process.

The provisions of the 2000 Regulation lead to a net benefit relative to having no Regulation, while the main benefits of making the proposed 2021 Regulation are the potential savings in development assessment timeframes and clearer regulatory pathways and standards relative to the 2000 Regulation. While there is an increased probability of applications being rejected by councils if they do not meet minimum standards, this is offset by the savings facilitated by faster assessment times.

For these reasons, making the proposed 2021 Regulation is the preferred option when considering the incremental benefits and costs associated with its amendments to development assessment related provisions.

7. Infrastructure and environmental impact assessment

Background

Part 5 of the Act sets out environmental assessment requirements for certain 'activities' that are not otherwise assessed under other parts of the Act. These activities commonly include infrastructure works undertaken by public authorities that do not need development consent but still require environmental assessment. Part 5 of the Act also applies to private development that requires other government approvals other than development consent, such as a lease, licence or permit from a government agency.

2000 Regulation

Part 14 of the 2000 Regulation:

- specifies that certain works that are not considered 'activities' and so do not require assessment under Part 5 of the Act.
- includes factors to be considered when assessing the impact of an activity on the environment – known in practice as a 'review of environmental factors' (REF).
- contains public participation and public access for Environmental Impact Statements (EISs).
- contains reporting requirements for determining authorities.
- lists special provisions relating to fisheries management, the Australian Rail Track Corporation (ARTC), electricity distributors and transmission operators, and non-government schools.

The form, content, and preparation requirements for EISs prepared under Part 5 of the Act are contained in Schedule 2. These provisions aim to ensure consistent and comprehensive assessments of potential environmental impacts.

2021 Regulation

The proposed 2021 Regulation will:

- Retitle the relevant clause (currently clause 228 'What factors must be taken into account concerning the impact of an activity on the environment?') to clearly reference a 'review of environmental factors'. This will distinguish the process from the EIS process and give statutory recognition to a widely used phrase (see clause 156 'Review of environmental factors—the Act, s 5.10(a)' under the proposed 2021 Regulation).
- Require certain reports that determine whether an activity is likely to have a significant environmental impact (i.e. REFs) to be published. Reports will need to be published on the determining authority's website or the Planning Portal before the activity commences, but this requirement will only apply to activities meeting specified criteria (see clause 156(4) 'Review of environmental factors—the Act, s 5.10(a)' under the proposed 2021 Regulation).
- Allow the Secretary to prescribe guidelines for the format of a REF (see clause 155 'Planning Secretary guidelines about review of environmental factors—the Act, s 5.10(a)' under the proposed 2021 Regulation).
- Ensure that only relevant factors are considered, and provide that the current list of relevant factors to consider in the assessment of activities is not exhaustive (i.e. any other factors relevant to that activity must also be considered). See clause 156(2)(r) 'Review of environmental factors—the Act, s 5.10(a)' under the proposed 2021 Regulation.

- Require authorities to have regard to strategic planning documents under Part 3 of the Act (see 156(2)(q) 'Review of environmental factors—the Act, s 5.10(a)' under the proposed 2021 Regulation).
- Require specific or general guidelines be published on the Planning Portal (see clause 155(2) 'Planning Secretary guidelines about review of environmental factors—the Act, s 5.10(a) under the proposed 2021 Regulation).
- Remove environmental assessment savings provisions for fishing activities that are no longer required (formerly clauses 244A and 244B).
- Amend ARTC-specific provisions, including removal of provisions that are no longer required for wetlands affected development and rail infrastructure facilities (formerly clause 244I).
- Make minor housekeeping amendments to update an Act reference (see clause 178 'Reports about activities under the Act, Division 5.1' under the proposed 2021 Regulation) and delete a redundant subclause related to EIS decision report publication requirements (formerly clause 243(6)(a)).

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Requirements to assess the environmental impacts of activities are imposed by provisions in Part 5 of the Act, so in the absence of the 2000 Regulation, proponents would still be required to assess the impacts of a proposed activity and prepare an EIS if required.

Without the 2000 Regulation, determining authorities would have greater discretion in preparing environmental assessments for Part 5 activities. Determining authorities could also have increased discretion on public participation for EISs. The special provisions outlined earlier would also be unavailable but could be legislated for separately.

Table 7.1 below summarises the potential benefits and costs of this option.

Table 7.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Increased certainty and consistency for interested parties • Better informed decision making • Better management of social and environmental impacts	• Increased administrative costs to determining authorities

Benefit — increased certainty and consistency for interested parties

The 2000 Regulation has standardised rules for the factors that must be considered when assessing the significance of potential impacts, and the form and contents of an EIS. This provides transparency and confidence in minimum standards of environmental assessment across the state and between proponents. It helps ensure the interests of potentially affected parties are considered in the decision-making process.

Benefit — better informed decision making

Prescribing requirements for public notification of EISs promotes public awareness and gives adequate notice to provide submissions. This in turn ensures the determining authority can better consider the views of stakeholders when determining the activity.

Benefit — better management of social and environmental impacts

The requirement to assess the potential impacts of an activity using the specified factors ensures consideration of a wide range of social and environmental issues at the planning stage of an activity. This should lead to development and implementation of mitigation measures to better manage adverse impacts during construction and operation, ultimately benefiting society and the environment. Without these factors, there would be a higher risk of inconsistent and inadequate assessment of activities.

Cost — increased administrative costs to determining authorities

The public participation provisions impose costs, though these requirements come from the Act. In the absence of these provisions, a best practice determining authority may still have their own public participation processes. Costs include advertising associated with public notices of EISs.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 7.2 below summarises the potential costs and benefits of this option.

Table 7.2 Overview of benefits and costs of making the proposed 2021 Regulation

Potential Benefits	Potential Costs
• Improved clarity and procedural efficiency for determining authorities. • Improved transparency from criteria-based publication requirements. • Better consideration of environmental and strategic planning issues. • Improved clarity from update or removal of redundant provisions.	• Minor additional assessment costs for proponents and administrative costs for determining authorities.

Benefit — improved clarity and procedural efficiency for determining authorities

This proposed 2021 Regulation will improve clarity and procedural efficiency for determining authorities by:

a) distinguishing REF factors from EIS requirements

There is stakeholder uncertainty whether certain clauses apply to all assessments undertaken under Part 5 of the Act or whether they only apply to activities requiring preparation of an EIS. This confusion is due to the misleading heading of clause 228 in the current 2000 Regulation. Practitioners commonly refer to 'REF' preparation and understand that the factors outlined are there to guide the assessment of activities and to assist in determining whether an EIS is required (i.e. if there is likely to be significant environmental impacts). Amending the heading will clarify those provisions apply to all activity assessments under Part 5.

b) ensuring only relevant factors are considered

The list of clause 228 factors are neither exhaustive nor necessarily always relevant to any given activity being assessed. Proposed amendments will ensure only relevant factors are considered and any other unlisted relevant factors must also be considered.

c) requiring specific or general guidelines be published on the Planning Portal

Requiring specific or general guidelines be published on the Planning Portal will mean the government's 1996 guideline *Is an EIS Required?* will no longer be in force as it will not be

published. It will also ensure that any guidelines in force will be easily accessible by practitioners, assessment authorities and the general public.

These proposals will result in time and cost savings from improved clarity and procedural efficiency.

Benefit — improved transparency from criteria-based publication requirements

Documentation of all REFs and publication of those meet certain criteria will improve the transparency of the Part 5 assessment process. It will help inform stakeholders that an activity has been determined and document how it was assessed. It will give confidence that proponents are considering and managing the impacts of their activities. Increased transparency through publication will also assist in minimising unintended outcomes such as avoidable construction-related conflicts or community contention. The publication criteria will ensure the proposal also supports efficient delivery of infrastructure.

Benefit — better consideration of environmental and strategic planning issues

The proposed 2021 Regulation will ensure that a comprehensive range of relevant factors will be considered, which will benefit the environment through better management of impacts. This will also be consistent with the intent of section 5.5 of the Act to 'examine and take into account…all [environmental] matters'. The requirement to consider strategic planning documents will support aligning infrastructure delivery with planned land use changes.

Once developed, best practice format guidance will improve assessment consistency and quality. Guidance will also improve transparency for how proponents are assessing and managing their activity impacts – in conjunction with the publication requirements proposal. Guidance will be sufficiently flexible so to ensure standardisation provides efficiency gains.

Benefit — improved clarity from update or removal of redundant provisions

The 2000 Regulation contains provisions that are no longer needed or have outdated references. These are due to changes in other legislation or where the provisions addressed temporary issues. The proposed 2021 Regulation will update or remove these redundant provisions, which will modernise and simplify the planning system. This benefits users by making the Regulation easier to interpret and apply.

Cost — minor additional assessment and administrative costs

The proposed 2021 Regulation will not involve significant costs to either determining authorities or proponents. Proposal reforms will refine existing processes but do not introduce fundamental changes.

The requirement to publish REFs is an ongoing but minor cost for determining authorities. Publication would apply only to activities meeting specified higher impact or significance criteria and publication will be online only.

REF format guidelines will allow the Secretary to prescribe guidelines and endorse public agencies' own guidelines. Where agencies choose the latter, it is not expected to result in major costs. There will be minimal costs for the Department related to staff time associated with processing endorsements. Otherwise, temporary adjustment costs may apply as proponents revise their environmental assessment processes to meet the new guidelines.

The requirement to consider strategic planning documents is not expected to impose any significant additional costs. Assessment against this factor is likely to be straightforward, as infrastructure proposals typically align with these plans.

Conclusion and preferred option

Remaking the 2000 Regulation supports identification and management of environmental impacts. Specifying assessment factors delivers better informed decision making and avoids environmental costs.

The proposed 2021 Regulation is expected to provide a net benefit relative to the 2000 Regulation. It will improve and clarify the Part 5 environmental assessment process and simplify the Regulation by removing several outdated provisions. The proposed 2021 Regulation is therefore the preferred option as it delivers the outcomes of a modern, transparent planning system while not leading to substantial incremental costs.

8. Fees and Charges

Background

The Act establishes a framework for consent authorities (including councils and the Department) to receive, process, assess and determine DAs. In doing so, a consent authority must assess each application on its merits. This involves a complete assessment of the likely social, environmental and economic impacts of each proposed development, including consideration of the principles of ecologically sustainable development and the public interest.

Similarly, other planning services provided by councils and other planning bodies have cost and resourcing implications, such as the provision of planning certificates and site compatibility certificates.

To partially offset the costs of providing these services to applicants, consent authorities charge fees that are set out in the Regulation.

2000 Regulation

Part 15 of the 2000 Regulation contains fees relating to:

- transitional Part 3A projects.
- DAs under Part 4 of the Act.
- SSD and SSI.
- other services such as the issuing of planning certificates and site compatibility certificates.

Some of these fees are based on the estimated cost of the development proposal or the capital investment value of the project being assessed, with a sliding scale used to calculate the fees payable. Other fees, such as those for subdivisions and marinas, include a base fee, which is fixed, plus an additional fee, which is multiplied according to the size of the development (e.g. the number of lots created by a subdivision). There are also a number of other fees such as those for administrative services (e.g. advertising) or classes of development (e.g. designated development) that are a fixed or set amount.

In the following section, the term ‘fixed fees’ is used to encompass base fees and other fees, or components of fees, which are a fixed or set amount. This means that the fee, or the component of the fee, does not change based on factors such as the size or estimated cost or investment value of the proposal.

2021 Regulation

Fixed fees

The proposed 2021 Regulation proposes changes to allow for minor adjustments in fixed fees each year, to account for movements in the consumer price index (CPI). It will do this by representing fixed fees in the Regulation in terms of ‘fee units’ instead of dollar amounts. These fixed units will be indexed annually for inflation, bringing them in line with movements in the CPI. Expressing the fixed fees in terms of fee units is an efficient way of increasing fees in line with CPI, as it allows the fees to be adjusted each year without the need for amendments to update the provisions in the Regulation.

Under the proposed 2021 Regulation, the existing fees will be increased to account for CPI increases since the last CPI adjustment was made to the 2000 Regulation in 2011. After making the proposed 2021 Regulation, the first CPI increase to these fees will not be applied until 1 July 2023, which is the first full financial year after the proposed 2021 Regulation is anticipated to be

made. At that point, minor increases to each fixed fee will be applied to reflect CPI increases over the period from 1 July 2022 and 1 July 2023. Fees will then be adjusted each year after that, in line with movements in CPI. Consideration is also being given to adjusting fees biannually instead of annually, to reduce administrative burdens on authorities that will need to publish fee schedules and adjust systems to account for fee changes.

The proposed changes will allow fixed fees to gradually increase over time to better reflect the true cost of providing planning services, without having any significant adverse impact on industry or the wider community. These fees have remained largely unchanged over the last 10 years and currently do not reflect changes to CPI over this period. The revenue generated from the proposed increases in fees will enable consent authorities to cover a greater proportion of the costs associated with providing these services.

Increasing these fees in line with CPI follows the general government principle that fees should be cost-reflective, transparent and predictable.

Fees in the Regulation

The 2000 Regulation sets the fees and charges for various planning related services offered by councils and other consent authorities. As mentioned above, the two types of fees applied in the Regulation are:

- Fixed or flat fees, and
- Sliding scale fees based on the estimated costs of development, known as 'ad valorem' fees.

The draft Regulation proposes to apply CPI adjustments to only the fixed fees in the Regulation. The ad valorem component of development application (DA) fees allows for an inbuilt and ongoing increase in the total amount of maximum DA fees payable by applicants due to the increasing cost of development.

The cost of building a house, townhouse or apartment in NSW increased by 53.2%, 71.3% and 52.6% respectively between 2004 and 2019[1] , with an average increase in house construction costs of approximately 3.2% per annum since the EP&A Regulation commenced in 2001. The vast majority of DAs submitted to consent authorities are for residential development, with 72% of total DAs lodged between June 2020-2021 being for residential development of all types. Similar increases in the cost of construction have also occurred in the commercial and industrial sectors, which represented 10% of the total DAs lodged in 2020/2021. Accordingly, the fees for the majority of DAs lodged have increased over the years in line with increase in building and development costs. .

The draft Regulation proposes to apply CPI adjustments to the fixed fees on an annual or biannual basis, which will be in addition to natural increases in the ad valorem component of DA fees due to ongoing rises in construction costs, noting that CPI has increased on average 2.5% per annum since commencement of the Regulation. These two factors combined will deliver moderate increases to DA fees over time that will keep pace with the cost of doing business.

Additionally, since the current Regulation commenced, there have been significant advancements and improvements to planning systems and processes that have resulted in efficiencies and reductions in the cost of delivering planning services by councils and other consent authorities. For example:

- the ongoing expansion of the complying development pathway has reduced the number of routine and low impact DAs submitted to council, thus freeing up available council resources to focus on complex and large-scale development proposals.
- the continued roll-out and expansion of the NSW Planning Portal has streamlined processes and significantly reduced administrative burdens on councils. The Planning Portal now facilitates the on-line lodgement and payment of fees for development applications and associated certificates; faster communication between council, applicants and other state agencies regarding DAs.

Fees in the Regulation

- the ePlanning spatial viewer provides the public with a significant amount of planning information relating to their property, reducing enquiries to councils.
- advancements in geographic information systems (GIS) provide council officers and applicants greater access to current and detailed technical information required for assessment of development applications.
- the introduction of modern communication methods such as online advertising and email notification for certain matters in place of former requirements for costly newspaper advertisements and posted letters will provide efficiencies for council administrative and professional staff.

[1] *https://www.abs.gov.au/articles/characteristics-new-residential-dwellings-15-year-summary*

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Under the No Regulation option, consent authorities and other planning bodies would have discretion to set their own fees and develop their own systems of tracking and recovering costs. Planning bodies would still have incentives to develop their own systems for tracking costs and revenue given the public demand for probity and transparency.

Table 8.1 below summarises the potential benefits and costs of this option.

Table 8.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
Increased support for development and efficiency gains	Reduced flexibility to planning bodies in fee setting and scope for regulatory error

Benefit — Increased support for development and efficiency gains

The general economic climate for development is boosted by confidence in the planning system having a safeguard against excessive DA fees. Without regulation, there may be an incentive for planning bodies to use fees as a revenue raising mechanism rather than for partial cost recovery for the mandatory assessment service provision. Freedom in setting fees would be partially constrained by public authority accountability, and the potential to undesirably limit economic development by discouraging DA lodgement and other planning service requests. They would also have fewer incentives to seek out efficiency gains.

Cost — reduced flexibility to planning bodies in fee setting and scope for regulatory error

While there is some scope for variability in fees reflecting the cost of processing some applications, this is more restricted than would be possible in a No Regulation option. This restriction means maximum fees allowed may not reflect the full range of costs incurred by consent authorities. However, councils can also levy fees under the *Local Government Act 1993* for various planning services that are not already covered under the planning regulations.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 8.2 below summarises the potential benefits and costs of this option.

Table 8.2 Overview of benefits and costs of making the proposed 2021 Regulation

Potential Benefits	Potential Costs
• Greater capacity for consent authorities (including councils and the Department) to recover costs for planning services.	• Some increases in costs for applicants. • Some administrative costs for councils associated with updating their fee schedules annually/biannually.

Benefit — greater capacity for consent authorities to recover costs for planning services

The CPI is the most comprehensive measure of inflation for goods and services. The indexing of fixed fees according to the CPI would therefore follow a well-established formula for calculating fee changes. Adjusting the fixed fees in the 2000 Regulation with inflation will ensure that fees and charges reflect the present day. Indexing the fixed fees is a standard practice in many settings and means that consent authorities can recoup a greater proportion of the costs incurred in delivering planning services. This means that the fees specified in the 2021 Regulation will better reflect the efficient costs to councils and the NSW Government in processing DAs.

Cost — increased costs for applicants

The gradual increases to fixed fees over time will result in some increased costs for applicants. However, as these fees have remained substantially unchanged since 2011 and the proposed 2021 Regulation will only reflect changes to CPI over this period, these increases are considered reasonable. The proposed changes would see incremental and proportionate increases over time, in line with inflation. These changes are expected to deliver a net benefit to applicants over time, as they will aid in the ability of consent authorities to deliver planning services efficiently.

Cost — administrative costs for councils

The proposed 2021 Regulation will require councils to annually or biannually update their schedules of fees and charges as well as any fee calculators. This will require some administrative and resource costs. However, the adjusted fees will follow a set formula meaning calculating fee increases will be straightforward. Any administrative costs in doing so are expected to be offset by the increase in fees to consent authorities for planning services.

Conclusion and preferred option

Remaking the 2000 Regulation (and carrying over the same maximum fees) may not account for all cost considerations and could potentially reduce council resources relative to a No Regulation scenario. However, allowing for gradual increases to static fees in line with CPI (under the proposed 2021 Regulation option) will enable consent authorities to cover a greater proportion of the costs associated with providing these services (compared to the option of Remaking the 2000 Regulation), without having any significant adverse impact on industry or the wider community. This option will also provide certainty to developers compared to the No Regulation scenario, as fees will be consistent across local government areas, and increases will be incremental and proportionate to increases in CPI. It will also avoid the potential costs of service inefficiencies associated with councils setting their own fees.

Overall, there are net benefits from the proposed 2021 Regulation fee provisions. This is the preferred option.

9. Electronic communication methods

Background

The NSW Government is currently upgrading its digital capabilities. The NSW Digital Government Strategy seeks to deliver changes across the NSW Government, including the NSW planning system.

The NSW Digital Government Strategy identifies priorities for the government to focus on, including amendments to existing legislative provisions to enable the use of digital technology and support the release of—and access to—better quality data. The strategy notes that legislation should:

- be easy to use, meaning that it should be easy to find out what obligations apply.
- provide certainty, by ensuring legislation is simple to interpret and accessible to the public.
- be smart and flexible, meaning that new legislation and reviews of existing legislation should consider emerging technology and new digital business models, and enable digital compliance methods.

In line with the NSW Digital Government Strategy, the Department's ePlanning program was established to improve the delivery of planning and development services for all users of the system and includes the Planning Portal. This program aims to increase transparency and sharing of information, make government data openly available to the community and industry, and modernise the planning system through the use of technology and the digitisation of planning services.

However, the 2000 Regulation contains requirements that need updating to:

- reflect advancements in technology, communication methods, and the existence of the Planning Portal.
- better align with the NSW Digital Government Strategy.
- remove certain outdated terminology and concepts.

2000 Regulation

The 2000 Regulation provides numerous requirements relating to how information is provided and advertised. This chapter discusses proposals that affect the requirements listed below.

- Requirements for documents or copies of documents to be made available for a fee or for free. These requirements fall into two categories: copies of documents to be made available for public inspection at a physical office, and copies of documents to be made available either free of charge or on payment of reasonable copying charges.
- Requirements using outdated terminology or restricting the use of electronic methods. This includes duly signed and delivered notices and delivery of documents 'by hand' or 'by post'. While the *Electronic Transactions Act 2000* (Electronic Transactions Act) allows requirements to be satisfied electronically, outdated provisions remain in the Regulation and may cause confusion for applicants and members of the community who are not familiar with the provisions of this Act.

2021 Regulation

The proposed 2021 Regulation seeks to update provisions to account for advancements in technology, communication methods and the Planning Portal. The proposed 2021 Regulation will:

- Consolidate provisions relating to the method of public exhibition for DAs. This will simplify the public exhibition provisions and make them easier to understand and apply.

  See clause 53 'Notice of development applications' under the proposed 2021 Regulation.
- Remove certain provisions requiring hard copy documents to be made available for free or for a fee (for example, at an office of the Department or a council) and require that this information be made available electronically.
  - See, for example, clauses relating to urban release area maps (see clause 252 'Definitions'), the inspection of modification applications (see clause 96 'Notice of modification applications for designated development, State significant development and other development') and practice notes for contributions plans (see clause 192 'Form of contributions plan').
- Remove outdated terminology that restricts the use of electronic methods – including delivered notices or delivery of documents 'by hand' or 'by post'. See, for example:
  - Clause 202 'Notice of proposal to constitute development area—the Act, s 7.38(4)' under the proposed 2021 Regulation (formerly clause 269 - Proposal to constitute development area), which has been updated to remove requirements to post or deliver documents. The clause now only requires notice to be provided in writing.
  - Clauses 65 'Voluntary surrender of development consent' (formerly clause 97 'Modification or surrender of development consent or existing use right') and 171 'Surrender of approvals or existing use rights—the Act, s 5.28(4) (formerly clause 197 'Surrender of approvals or existing use rights'), which have been updated to remove references to outdated terminology ('duly signed and delivered notices'). The updated clauses retain requirements for notice to be in writing and to be given to the consent authority. These requirements can be met electronically.
- Clarify that the requirement for a consent authority to send a copy of its notice of determination to the approval body can be satisfied by uploading the notice to the Planning Portal.
  - See clause 82 'Notice to approval bodies of determination of development application for integrated development' under the proposed 2021 Regulation, which now requires a notice under section 4.47(6) of the Act to be given (rather than sent) to the approval body within 14 days after the date of the determination of the relevant DA. This new provision has been drafted to allow the notice to be provided by email or post or by lodging the notice on the Planning Portal.
- Enable a person to make an online payment on behalf of an applicant (see clause 24(2)(a) 'Content of development applications' under the proposed 2021 Regulation, which provides sufficient flexibility to allow payment to be made by another person on behalf of the applicant).

The proposed 2021 Regulation aligns with the NSW Digital Government Strategy and acknowledges the capacity of current systems and the need to provide options for members of the community that are not digitally connected.

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Table 9.1 below summarises the potential benefits and costs of this option.

Table 9.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
Consistent access to relevant information	Administrative costs associated with providing hard copy and mailed information

Benefit — consistent access to relevant information

Relative to the base case of No Regulation, the 2000 Regulation provides consistency regarding publicly available information on DAs and EPIs. The 2000 Regulation requires councils and the Department to publish information online relating to draft and approved DCPs, contributions plans, as well as DAs, CDCs, EISs and related environmental assessment requirements, and draft or adopted development plans. The 2000 Regulation also requires that certain documents be available as hard copies for public inspection for free or for a fee. It also requires that some documents be delivered or posted.

Under a No Regulation scenario, there would be no regulatory requirement for making this information available. Instead, the method of access, communication, or consultation would be nominated by each individual council. This would lead to no minimum assurances about the methods of communication or consultation and cause varying degrees of public access to information. A benefit of remaking the 2000 Regulation would be that the public has consistent access to relevant information.

Cost — administrative costs related to providing hard copy and mailed information

While the costs of providing hard copies, mailing, or delivering information varies, the requirement to make hard copies available and to post information places the financial costs on planning authorities, which disproportionately affects regional councils.

Remaking the 2000 Regulation is likely to maintain these additional costs. As the use of online methods of communication continue to increase, it may set the expectation for authorities to use both paper-based and online mediums to notify the public of planning information. This would result in some increase in administrative burden and costs.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 9.2 below summarises the potential benefits and costs of this option.

Table 9.2 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• A modernised and simplified planning system • Increased accessibility of information and reduced administrative burden • Reduced ambiguity	• Initial costs in administration and resourcing associated with implementing changes

Benefit — a modernised and simplified planning system

The overall effect of modernising the provisions of the Regulation is a more streamlined and transparent system for applicants and community stakeholders.

The proposed 2021 Regulation reflects advancements in technology and communication methods and supports the establishment of the Planning Portal to accommodate its continual development.

Benefits to applicants can include reduced administrative costs for councils and proponents associated with enabling digital compliance and notification options and facilitating online access to information.

Benefit — increased accessibility of information and reduced administrative burden

The proposed 2021 Regulation proposes to update clauses to require the information to be made available online/electronically and remove requirements to make hard copies available. This will remove administrative burden for councils to make hard copy documents available for inspection. This will set a minimum expectation and ensure information on all DAs and planning instruments is consistently and widely available online.

Benefit — reduced ambiguity

The 2000 Regulation contains requirements that restrict the use of electronic methods. At the same time, the *Electronic Transactions Act 2000* allows these requirements to give information in writing, provide a signature, produce a document, deliver documents by hand and send documents by post to be met in electronic form. This means that amendments to these clauses under the proposed 2021 Regulation are not strictly required. However, retaining the outdated terminology and concepts in the 2000 Regulation is not in line with the NSW Digital Government Strategy. While retaining the existing terminology will not increase administrative burden in cases where clauses are covered by the *Electronic Transactions Act 2000*, it also won't reduce it, nor will it enhance flexibility or efficiency.

The proposed 2021 Regulation will remove any ambiguity and uncertainty around the interpretation of these clauses, particularly for interested parties who are not familiar with the provisions of the Electronic Transactions Act.

Cost — initial costs in administration and resourcing associated with changes

Under the proposed 2021 Regulation, there will be no regulatory requirement for any communication other than that which is provided online. Any additional forms of communication and consultation options nominated by the Department or councils would likely be reflected in community participation plans (CPPs). This may result in administration and resourcing changes associated with adapting to the new requirements and identifying and developing appropriate notification requirements. However, this process would already form part of the process of councils developing their CPP and identifying how and when they engage the community.

Conclusion and preferred option

Relative to the No Regulation scenario, there are substantial benefits from making the proposed 2021 Regulation. These benefits include modernising and simplifying the planning system, ensuring information is widely accessible, reducing administrative burden, enhancing flexibility, as well as reducing ambiguity. Compared to remaking the 2000 Regulation, the proposed 2021 Regulation would also reduce the costs, delays, and administrative burden associated with providing information in hardcopy. Therefore, the proposed 2021 Regulation is the preferred option.

10. Planning bodies

Background

The 2000 Regulation sets out provisions regarding planning bodies set up under Part 2 the Act. This includes the Independent Planning Commission (IPC), Regional Planning Panels (RPPs), the Sydney Planning Panel, Local Planning Panels (LPPs) and other committees established by the Minister or the Secretary.

The IPC was established as a standalone agency under Part 2, Division 2.3 of the Act in 2018, replacing the former Planning Assessment Commission.

The key functions of the Commission are to:

- determine SSD applications where there is significant opposition from the community.
- conduct public hearings for DAs and other planning and development matters.
- provide independent expert advice on any planning and development matter, when requested by the Minister for Planning and Public Spaces or Secretary of the Department of Planning, Industry and Environment.

The IPC may also undertake any function of a Sydney district or regional planning panel or a LPP for a particular matter if requested by the Minister for Planning and Public Spaces. These functions may also be carried out by the IPC if a Sydney district or regional planning panel has not been appointed for any part of the State.

LPPs are set out in Division 2.5 of the Act and are mandatory for all Sydney councils, Wollongong City Council, Central Coast Council and Wingecarribee Shire Council. LPPs improve transparency and accountability for assessment processes and determination of DAs with a high corruption risk, sensitivity or strategic importance. Panel members include a chair and two independent experts appointed by council from a Minister-endorsed pool of independent, qualified people, plus a community representative.

Regional Panels (i.e. a Sydney district or regional planning panel) are independent bodies that focus on district and regionally significant DAs. The functions of Regional and Sydney planning panels are delivered primarily through Division 2.4 of the Act and via SEPPs.

2000 Regulation

Most provisions relating to the functions and operation of planning panels are set out under the Act. The 2000 Regulation contains other provisions aimed at ensuring panels can carry out their functions effectively. This includes:

- setting rules around fees relating to a regional panel carrying out its functions and the IPC undertaking a review on any matter or holding a public hearing in relation to a DA.
- provisions that allow the IPC to provide advice on SSD that has been called in by the Minister.
- provisions to assist local planning panels to exercise consent authority functions such as undertaking consultation under section 4.55 (2) (b) of the Act relating to modifying a development consent and obtaining additional information to determine a DA.
- clarifying assessment and administrative processes where a regional panel is exercising consent authority functions.
- that a council from any area must constitute a local planning panel, if prescribed by the Regulation.
- outlining the allocation of costs and process for cost recovery in situations where the Minister has constituted an LPP because a council has failed to do so.

2021 Regulation

The proposed 2021 Regulation will carry over the provisions of the 2000 Regulation that relate to planning panels, without amendment. Minor amendments may be made as part of broader changes discussed elsewhere in this document (i.e. enabling online information).

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

The provisions of the 2000 Regulation put in place administrative and procedural mechanisms that support the operation of the Independent Planning Commission, Sydney District and Regional Planning Panels, and Local Planning Panels as set out in the Act.

Without the 2000 Regulation, the operation of these planning bodies would be less than fully effective and efficient and there would be less certainty about administrative processes that allow a panel to carry out its functions. There is also reduced certainty for communities and industry whether an LPP will be constituted in a non-compliant local government area without the Regulation's provisions that enable the Minister to do so if required.

Therefore, without the 2000 Regulation, planning bodies provided for in the Act would be less effective and efficient and the benefits associated with the establishment of these bodies would be reduced.

Table 10.1 below summarises the potential benefits and costs of this option.

Table 10.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
Orderly decision making	Administrative costs of operating the various planning bodies

Benefit — orderly decision making

The IPC and planning panels are supported by the administrative and operational provisions in the 2000 Regulation serve an important function in providing independent planning advice. The IPC provides an additional level of expert scrutiny in determining certain major development proposals, particularly those where there is significant opposition from the community. Both the IPC and the planning panels assist to build community confidence and trust in the decision-making process for major development and land-use planning at the regional, Sydney district and local level.

The 2000 Regulation makes these planning bodies more effective in performing their roles, by ensuring that relevant administrative and procedural matters are in place.

Cost — administrative costs of operating the various planning bodies

The main costs associated with the 2000 Regulation provisions for planning bodies include costs to council of constituting and operating LPPs. This is limited to Greater Sydney, Wollongong, Central Coast and Wingecarribee councils under the Act, however the Regulation enables the Minister to constitute an LPP where a council has not done so and may prescribe an LPP for additional councils in Division 17.

While panel and council performance vary across each local government area, they may add extra days to the assessment timeframes for a DA compared to council staff assessment timeframes. This may be because panels are tasked with determining projects that pose higher risk or

complexity. This cost may be nullified as without an LPP, these projects would be determined by councillors (not council staff) and subject to similar timeframes.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

The proposed 2021 Regulation will carry over the provisions of the 2000 Regulation, with only minor amendment. Therefore, its incremental costs and benefits relative to the 2000 Regulation are the same as those of remaking the 2000 Regulation relative to the base case (i.e. there is limited difference between the costs and benefits of making the proposed 2021 Regulation and remaking the 2000 Regulation).

Conclusion and preferred option

The proposed 2021 Regulation will carry over the provisions of the 2000 Regulation, with minor amendments to improve functionality. For this reason, making the proposed 2021 Regulation is the preferred option.

11. Planning certificates

Background

Planning certificates are a key source of information that the public can access about planning and other development controls applying 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. Planning certificates may be purchased from a council by anyone at any time and for any purpose.

The Act and the 2000 Regulation nominally identify three kinds of planning certificates:

- Basic planning certificates – these planning certificates include only the prescribed matters set out in the 2000 Regulation. They are referred to as section 10.7(2) planning certificates, or "basic" planning certificates, and are required by the *Conveyancing Act 1919* to be attached to contracts for the sale of land during conveyancing. Schedule 4 of the 2000 Regulation (Schedule 3 under the proposed 2021 Regulation) sets out the mandatory matters to be included in a basic planning certificate.
- Full planning certificates - these planning certificates include both the information prescribed in the 2000 Regulation as well as advice on other matters affecting the land that the council is aware of. These are often referred to as section 10.7(5) planning certificates, or "full" planning certificates. These certificates can provide additional advice for buying and valuing property, refinancing and verifying planning controls when preparing DAs.
- Complying development planning certificates – these certificates only contain information that indicate whether complying development is permitted on the land, addressing matters under clause 3 of Schedule 4 of the 2000 Regulation (now clause 4 of Schedule 3 under the proposed 2021 Regulation). These certificates can be obtained prior to lodging a CDC application.

2000 Regulation

Clause 279 of the 2000 Regulation requires information prescribed in Schedule 4 to be included on a section 10.7(2) planning certificate. Schedule 4 of the 2000 Regulation includes matters relating to:

- relevant EPIs and DCPs
- zoning and land use provisions
- complying development
- coastal protection (including annual charges under the *Local Government Act 1993* (LG Act) for certain coastal protection services)
- mine subsidence
- road widening and road realignment
- hazard risk restrictions
- flood-related development controls
- land reserved for acquisition
- contributions plans
- biodiversity certified land
- biobanking agreements
- bushfire prone land
- property vegetation plans

- tree orders
- directions under Part 3A of the Act
- site compatibility certificates and conditions for affordable rental housing
- paper subdivision information
- site verification certificates
- loose-fill asbestos insulation

Note: section 59(2) of the CLM Act also prescribes additional matters to be specified in a planning certificate.

2021 Regulation

The proposed 2021 Regulation will:

- Streamline the matters that can be included on 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 will focus 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 Planning Portal).
- Update clauses in Schedule 4 to provide greater clarity, address gaps and remove information that is not useful to incoming purchasers or can be found elsewhere. This will involve:
  - Clarifying the purpose of certain clauses and the information they require councils to provide.
  - Addressing information gaps.
  - Removing requirements to provide information that is not useful to incoming purchasers or can be found elsewhere (e.g. on the title to the land).

The amendments to Schedule 4 (now Schedule 3 under the proposed 2021 Regulation) are summarised below.

Former clause 1 - Names of relevant planning instruments and DCPs (see clause 1 of Schedule 3 under proposed 2021 Regulation)

- Require councils to include draft DCPs that are or have been subject to community consultation or public exhibition on planning certificates.
- Provide that draft 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 DA, and therefore do not need to be included in planning certificates.

Former clause 2 - Zoning and land use under relevant LEPs (see clause 2 of Schedule 3 under proposed 2021 Regulation)

- Require information about whether there are any additional permitted uses that apply to the land under the relevant LEP.
- Consolidate this clause with clause 2A (see below) so that the one clause covers zoning and land use under both LEPs and SEPPs.

Former clause 2A - Zoning and land use under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (see clause 2 of Schedule 3 under proposed 2021 Regulation)

- Require councils to include information on all SEPPs that zone land. This will address an existing gap and ensure landowners, prospective purchasers, and interested parties obtain accurate information on zoning in a planning certificate.

Former clause 3 - Complying development (see clauses 4 and 5 of Schedule 3 under proposed 2021 Regulation)

- Rename and reword clause 3, to clarify the purpose of this clause and the information it requires councils to provide.
- Expand 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* that affects the ability to carry out complying development under any of the codes. This will address an existing gap and provide greater certainty to applicants and certifiers about what development can lawfully occur under the codes.
- Include a new clause, similar to clause 3, which includes key land use classifications that affect the ability to undertake exempt development under the Codes SEPP. Expanding the clause to require councils to provide this information is in line with the purpose of the current clause for complying development and will address an existing gap. As it will only focus 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 will not undermine the objective of simplifying and streamlining planning certificates.

Former clause 7 - Council and other public authority policies on hazard risk restrictions, including land slip, bushfire, tidal inundation, subsidence, acid sulfate soils or any other risk (other than flooding) (see clause 10 of Schedule 3 under proposed 2021 Regulation)

- Expressly include contamination, aircraft noise, salinity, and coastal hazards and sea level rise in the list of risks under this clause. This will be to ensure consistency across planning certificates and to highlight common hazard risk restrictions.

Former clause 9 – Contributions plans (see clause 3 of Schedule 3 under proposed 2021 Regulation)

- Require councils to indicate whether the land is in a special contributions area and to note whether any draft contributions plans apply to the land.

Changes are also proposed to remove requirements for councils to provide information on:

- Native vegetation clearing set asides (former clause 10a).
- Directions under Part 3a (former clause 14).
- Site compatibility certificates and conditions for seniors housing (former clause 15).
- Site compatibility certificates for infrastructure, schools or TAFE establishments (former clause 16).
- Site compatibility certificates and conditions for affordable rental housing (former clause 17).
- SVCs (former clause 19).

Other recent amendments to planning certificate provisions

The flood related development controls clause in Schedule 4 (Planning certificates) of the 2000 Regulation was recently amended by the *Environmental Planning and Assessment Amendment (Flood Planning) Regulation 2021.*

These amendments commenced on 14 July 2021 and replaced the previous clause relating to flood related development controls (former cl 7A of the 2000 Regulation) with the following updated clause. These changes have been incorporated in the draft 2021 Regulation (see cl 9 of Schedule 3).

7A Flood related development controls

(1) If the land or part of the land is within the flood planning area and subject to flood related development controls.

(2) If the land or part of the land is between the flood planning area and the probable maximum flood and subject to flood related development controls.

(3) In this clause—

flood planning area has the same meaning as in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

probable maximum flood has the same meaning as in the Floodplain Development Manual.

Reordering of clauses in (amended) Schedule 4

The proposed 2021 Regulation will reorder the matters in the current Schedule 4 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

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

The provisions of the 2000 Regulation prescribe the matters to be provided in a section 10.7(2) certificate. In the absence of this Regulation, councils would have complete discretion about what

matters should be included in a planning certificate. This would lead to inconsistencies between local councils in terms of the information to be provided on planning certificates, as well as inconsistencies in the length and complexity of information provided. Consequently, there would be no guarantee under a No Regulation scenario that all the essential information that interested parties need to make an informed decision would be provided on a section 10.7(2) planning certificate.

Table 11.1 below summarises the potential benefits and costs of this option.

- **Table 11.1 Overview of benefits and costs of remaking the 2000 Regulation**

Potential Benefits	Potential Costs
Consistent information about land for interested parties	Higher administrative costs from meeting information requirements on planning certificates

Benefit — consistent information about land for interested parties

Having the Regulation prescribe the contents of section 10.7(2) planning certificates means that interested parties can readily access different kinds of planning information relative to the base case where important pieces of information may be left off planning certificates. Planning certificates provide an overview of key planning controls that apply to the subject land. This increases the capacity for informed decision-making to occur, particularly in the case of land transactions. It also reduces the costs of making land transactions by reducing the need for vendors and land purchasers (and their consultants and conveyancers) to seek additional information.

Overall, the search and transaction costs for vendors and purchasers are reduced because planning information of interest to vendors, buyers, and other interested parties is provided centrally on planning certificates.

Cost — higher administrative costs from meeting information requirements on planning certificates

Relative to the base case, councils incur relatively higher administrative costs under the 2000 Regulation as they issue planning certificates. While wages and other on-costs associated with planning certificates would be partly offset by the administrative fees for planning certificates, the fees may not cover all costs associated with on-going data management. The current prescribed fee for a basic planning certificate is $53. The prescribed fee for a section 10.7(5) certificate is up to a maximum of $80. In addition, councils are required to update their IT services when there are new legislative changes affecting planning certificates. To implement these changes, councils may incur costs associated with resourcing and technical infrastructure.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 11.2 below summarises the potential benefits and costs of this option.

- **Table 0.2 Overview of benefits and costs of making the proposed 2021 Regulation**

Potential Benefits	Potential Costs

• Improved convenience to landowners and prospective buyers • Reduced legal risks to councils, purchasers, and sellers of land • CPI increase to the fee (discussed in chapter 8 above) will enable councils to recoup a greater amount of the cost.	• Initial database set up costs for councils

Benefit — improved convenience to landowners and prospective buyers

The proposed 2021 Regulation will reduce the complexity of planning certificates. The amount of information required to be disclosed on a planning certificate has grown significantly in recent years and many items are of marginal utility to incoming purchasers. The large amount of information that is required to be provided means that planning certificates have increased in size and complexity.

The proposed 2021 Regulation will also ensure interested persons can readily access information about land that is relevant and easy to understand. By standardising the format and language in planning certificates by requiring them to be issued in a prescribed form, the proposed 2021 Regulation will increase consistency across LGAs. Refining the list of matters prescribed for inclusion under section 10.7(2) will enable planning certificates to better serve the information needs of landowners and prospective purchasers by providing a more relevant and focused set of property information, while also addressing concerns relating to the length and complexity of certificates. The proposed 2021 Regulation will also provide greater clarity regarding the purpose of certain clauses 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.

Benefit — reduced legal risks to councils, purchasers, and sellers of land

A refined section 10.7(2) certificate would reduce the legal risks associated with issuing invalid or out-of-date certificates. Councils owe a duty of care to a purchaser of a certificate and others who rely on a certificate to provide this advice in good faith. If a council negligently provides inaccurate information, they can be sued for negligent misstatement and may be liable to pay damages to the purchaser of the certificate, any person who relies on the certificate when purchasing a property, and those who lend money in reliance on the certificate.

The more information required to be listed on certificates, the greater the risk of out-of-date or invalid certificates being issued. During the sale of property, if an invalid section 10.7(2) certificate has been attached to the contract of sale, a purchaser could argue that the vendor has not fully complied with the disclosure requirements under conveyancing laws, and potentially argue the right to rescind the contract.

The proposed 2021 Regulation will refine the list of matters in Schedule 4 to focus the content of planning certificates on key planning matters and land use and development controls essential to conveyancing. This will reduce the risk contracts being rescinded and represents a potential saving to the community in avoided legal costs.

Cost — initial database set up costs for councils

The proposed 2021 Regulation will require councils to amend their planning certificate templates and the data that sits behind these templates This may result in initial costs for some councils that need to invest extra resources and technical infrastructure to support the changes. These additional costs will vary from council to council depending on the ease of transition. It is anticipated that these initial costs may impact regional councils to a higher degree. To address these costs, the proposed 2021 Regulation will ensure that there is an adequate transitional period between the making of the proposed 2021 Regulation and the commencement of the provisions.

Conclusion and preferred option

Relative to the No Regulation scenario, there are substantial benefits from making the proposed 2021 Regulation. These benefits include providing consistent information about planning and conveyancing matters to interested parties, better serving the needs of landowners and prospective purchasers by reducing the complexity and length of planning certificates, and a potential reduction in legal costs to purchasers and sellers of land.

In the absence of the 2000 Regulation, councils would continue to issue planning certificates, there would however be no minimum assurances about the contents of planning certificates. This would result in less informed decision-making for interested parties. This would also mean that issues regarding the length, complexity, and inconsistency of planning certificates would remain.

The proposed 2021 Regulation improves on the net incremental benefits of the current Regulation. The proposed 2021 Regulation is therefore the preferred option.

12. Designated development

Background

Designated development is a category of development under Part 4 of the Act that involves a higher level of assessment and scrutiny due to the potential risk it poses to the environment.

If a DA is categorised as designated development, it:

- must be accompanied by an EIS.
- must be publicly exhibited for at least 30 days.
- can be the subject of a merits appeal to the Land and Environment Court by objectors.

The primary role of Schedule 3 to the 2000 Regulation is to define thresholds that trigger a proposal to become designated development. Thresholds in Schedule 3 vary by industry and may be spatial (e.g. where developments are located in or near an environmentally sensitive area) or quantitative (e.g. volume).

2000 Regulation

Schedule 3 specifies:

- industry-specific thresholds that classify certain proposals as designated development.
- whether alterations or additions to developments are designated development.
- exceptions to designated development classification.
- definitions for terms used.
- details about how distances are measured.

2021 Regulation

The proposed 2021 Regulation includes the following improvements to the designated development assessment pathway:

Modernising development categories that trigger designated development by including new categories for emerging technologies which have the potential to cause significant environmental impacts. This risk will be managed through categorisation as designated development, which results in requirements such as a more comprehensive assessment (i.e. an environmental impact statement required by section 4.12 of the EP&A Act) and increased planning oversight (e.g. longer minimum public exhibition period under Schedule 1 of the EP&A Act, and the provision for objector appeal rights under section 8.8 of the EP&A Act). The changes include:

- New categories for emerging technologies which also require an Environmental Protection Licence (EPL) from the Environment Protection Authority to operate in addition to development consent. These are:
    - Energy recovery from waste (facilities requiring an EPL under Schedule 1, clause 18 of the *Protection of the Environment Operations Act 1997* (POEO Act) (see clause 21 ‘Energy recovery facilities’ of Schedule 2 under the proposed 2021 Regulation). Designation is justified due to the substantial level of community concern about this development type, and the significant uncertainties around mitigation measures and human health impacts. These provisions are not intended to apply to Special Activation Precincts in regional NSW which have bespoke planning provisions arising from master plans and delivery plans for each precinct.
    - Contaminated groundwater treatment (activities requiring an EPL under Schedule 1, clause 15A of the POEO Act) (see clause 33 ‘Contaminated groundwater treatment works’

of Schedule 2 under the proposed 2021 Regulation). Designation is justified to ensure the EPA can use an EIS to adequately assess EPL applications for this development type.

- Oil or petroleum waste storage (facilities requiring an EPL under Schedule 1, clause 42 of the POEO Act) (see clause 43 'Oil and petroleum waste storage works' of Schedule 2 under the proposed 2021 Regulation). Designated is justified to ensure better alignment of petroleum development types with the EPL requirements in the POEO Act.

- New categories for other emerging technologies, which require a greater level of assessment for planning reasons and may also require an EPL or another licence from the EPA in certain circumstances. These are:
  - Large-scale battery storage facilities (facilities that supply, or are capable of supplying, more than 30 megawatts of electrical power) (see clause 19 'Battery storage facilities' of Schedule 2 under the proposed 2021 Regulation). Designation is justified to manage significant risks such as fire and explosion, and due to a lack of operational experience and reliable information on environmental impacts.
  - Geosequestration (existing SSD category) as defined in Schedule 1, clause 8 of the *State Environmental Planning Policy (State and Regional Development) 2011* (see clause 42 'Geosequestration' of Schedule 2 under the proposed 2021 Regulation). As geosequestration is an existing SSD category, these activities are already subject to a higher level of environmental assessment and scrutiny, but classification as designated development would also attract third party merit appeal rights. Designation to enable third party merit appeal rights is justified for this development type as these activities can result in significant environmental impacts.
  - Desalination systems or works (existing SSD category):
    - 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 (see clause 22 'Desalination plants' of Schedule 2 under the proposed 2021 Regulation).

    Although desalination systems or works is an existing SSD category, the proposed criteria for when these activities would be classified as designated development (see above) is different to the criteria for SSD under the State Environmental Planning Policy (State and Regional Development) 2011. This is because the trigger for SSD is based on the capital investment value of the project, whereas designated development categories are designed to factor in development scale, intensity and location as predictors of potential environmental impacts. Nevertheless, many desalination systems or works will already be subject to a higher level of environmental assessment and scrutiny (where they also trigger SSD), but classification of these activities as designated development will mean they are also subject to third party merit appeal rights. As for geosequestration, designation to enable third party merit appeal rights for this development type is justified as these activities can result in significant environmental impacts.

- Updating categories based on industry changes and to exclude lower risk activities. Changes include:

- Updating the existing category for photovoltaic (PV) solar energy so that solar power generators are only captured if they provide more than 30 megawatts of electrical power and are located on a flood plain (see clause 20(2) 'Electricity generating stations' of Schedule 2 under the proposed 2021 Regulation). This delivers cost and time savings in the planning of low-risk PV energy generation developments.
- Introducing a 10,000 bird threshold to exclude smaller poultry farms that are not in sensitive locations from being designated development (see clause 10 'Poultry farms' of Schedule 2 under the proposed 2021 Regulation). This delivers cost and time savings in the planning of low-risk farms.
- Introducing a definition of 'poultry farm' by inserting the Standard Instrument definition (see clause 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation). This provides clarity for stakeholders as to how hatcheries are regulated.
- Introducing a new category for mixed feedlots of multiple species (see clause 8(1) 'Feedlots' of Schedule 2 under the proposed 2021 Regulation). This addresses feedlot impacts where large numbers of animals are present, but the numbers of any individual species falls below the designated development threshold for that species (e.g. an operation running cattle and sheep).
- Amending breweries and distilleries category to exempt certain small-scale operations (see clause 6 'Breweries and distilleries' of Schedule 2 under the proposed 2021 Regulation). Environmental and amenity effects on neighbourhoods (e.g. odour, noise, traffic and waste) are likely to be considerably lower for these compared to other industrial developments.
- Amending concrete works category to exempt small-scale activities (see clause 28(1) 'Concrete works' of Schedule 2 under the proposed 2021 Regulation). This ensures very small-scale activities that utilise concrete are not inadvertently captured (such as facilities which make concrete barriers, stormwater drain covers, garden gnomes and statues).

The above proposals respond to changes in industry and technology to ensure the planning system remains current and efficiently manages new and emerging development types with an appropriate level of assessment.

Alignment with POEO Act activities

- Increase designated development thresholds to align with POEO thresholds:
  - Add a threshold (150 tonnes/day or 30,000 tonnes/year) for certain cement works (see clause 24(1) 'Cement works' of Schedule 2 under the proposed 2021 Regulation).
  - Add a threshold (1 tonne/year) for pharmaceutical or veterinary products (see 26(1)(h) 'Chemical industrial facilities and works' of Schedule 2 under the proposed 2021 Regulation).
  - Change units of measure for slaughter of animals (see clause 14(1) 'Livestock processing facilities' of Schedule 2 under the proposed 2021 Regulation).
  - Add a threshold (2 tonnes/year) for tanneries and fellmongeries (see clause 14(3)(a) ''Livestock processing facilities' of Schedule 2 under the proposed 2021 Regulation).
- Minor changes to the following categories to align terminology with POEO Act provisions for some industries:
  - agricultural produce industries (see clause 3(1) 'Agricultural produce processing facilities' of Schedule 2 under the proposed 2021 Regulation).
  - rubber industries or works sub-category (under chemical industries and works) to match the equivalent POEO definitions and terminology (see clause 26(1)(j)(ii) and (4) 'Chemical industrial facilities and works' of Schedule 2 under the proposed 2021 Regulation).
  - composting facilities (see clause 47 'Composting facilities or works' of Schedule 2 under the proposed 2021 Regulation).

  - drum and container reconditioning (see clause 35 'Container reconditioning works' of Schedule 2 under the proposed 2021 Regulation).
  - mineral processing or metallurgical works (see clause 36(3)(a 'Mineral processing or metallurgical works') of Schedule 2 under the proposed 2021 Regulation).
  - waste management facilities (see clauses 1 'Definitions' and 46(1)(a) 'Waste management facilities or works' of Schedule 2 under the proposed 2021 Regulation).
- Update the 'contaminated soil' definition in the existing clause 38 to match the definition for 'contaminated soil' in the POEO Act (see clauses 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation).
- Align petroleum provisions with POEO Act and other related legislation (see clause 44 'Petroleum works' of Schedule 2 under the proposed 2021 Regulation).

Location based triggers for designated development

- Update the environmentally sensitive area (ESA) term to 'environmentally sensitive areas of State significance' to align with the Mining SEPP and State and Regional Development SEPP (see Schedule 2 under the proposed 2021 Regulation).
- Replace the ESA definition with a revised definition of environmentally sensitive areas of State significance (ESASS) (see clause 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation). This change will improve consistency across legislative definitions of environmental areas and improve the coverage of protections around key environmental areas.
- Standardise wetland buffers to 100 metres across Schedule 2 (current buffers range from 40 – 100 metres) See the following clauses of Schedule 2 under the proposed 2021 Regulation:
  - 4(1)(b)(ii) 'Artificial waterbodies'
  - 17(2)(c) 'Railway freight terminals'
  - 25(1)(b)(ii) 'Ceramic and glass manufacturing'
  - 26(3)(b) 'Chemical industrial facilities and works'
  - 27(2)(b) 'Chemical storage facilities'
  - 30(1)(b)(iii) 'Wood or timber milling'
  - 32(2)(b) 'Crushing, grinding or separating works'
  - 36(5)(\b) 'Mineral processing or metallurgical works'
  - 37(2)(b) 'Mines'
  - 38(3)(b) 'Coal mines'
  - 39(1)(e) 'Coal works'
  - 40(3)(b) 'Extractive industries'
  - 41(2)(b) and 41(4)(b)(ii) 'Limestone mines and works'
  - 44(3)(d) 'Petroleum works'

  This supports adequate protections for wetlands from higher risk development types and better aligns with the Coastal Management SEPP.
- Update the definition of drinking water catchment (see clause 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation). The improved definition will help manage risks to water quality, focus on water utility operations, remove ambiguity of the term 'potable', and ensure relevant groundwater works are included.
- Clarify that certain 'associated works' do not trigger designated development (see clause 2(3)(a) 'Measuring distances' of Schedule 2 under the proposed 2021 Regulation). This helps ensure designated development applies as intended. For example, an access road in proximity to a dwelling should not (of itself) trigger the requirement for an EIS.

Designated development exclusions

- Clarify existing provisions applying to DAs for alterations and additions.

- A review of clause 35 found judicial criticism of how the provision is interpreted and applied by consent authorities, including suggestions that the provision does not make sense and is circular. The 2021 Regulation proposes changes to the wording of this clause, to reduce any ambiguity around the application of the significant impact test. These changes are proposed to ensure the legislative drafting correctly reflects the policy intent, rather than to change the scope of exclusions from designated development. The proposed 2021 Regulation will provide that development involving alterations or additions is not designated development if the alterations or additions do not significantly increase the environmental impacts of the existing or approved development (see clause 48 'Alterations or additions to existing or approved development' of Schedule 2 under the proposed 2021 Regulation). The new wording clarifies the policy intent of the clause, to ensure alterations or additions of minimal environmental impact are not unnecessarily subject to designated development requirements.
- The proposed 2021 Regulation will clarify that Part 2 (clauses 35 and 36 of the 2000 Regulation, clause 48 of the proposed 2021 Regulation) does not apply to modification applications. It only applies to development applications for alterations and additions to existing or approved developments. This has been achieved by addition of a note in clause 48 'Alterations or additions to existing or approved development' of Schedule 2 under the proposed 2021 Regulation. The effect is that the significant impact test in Part 2 wouldn't apply to a modification application. Therefore, a modification application would never be subject to the potential exemption from designated development in Part 2. This is consistent with the current policy intent of the provisions under the 2000 Regulation, but the inclusion of a note in the new clause 48 clarifies this.
- Stakeholder feedback has identified there is confusion about whether the significant impact test in Part 2 applies more broadly to Schedule 3 (i.e. not just development applications for alterations and additions). It is intended that the significant impact test only applies to development applications for alterations or additions to development. This will be made clear in the proposed 2021 Regulation by merging clauses 35 and 36 (see clause 48 'Alterations or additions to existing or approved development' of Schedule 2 under the proposed 2021 Regulation).

- Remove the *Newcastle Local Environmental Plan 1987* exclusion since this LEP has been repealed (formerly clause 37 of the 2000 Regulation).

Housekeeping and miscellaneous updates

- Revise definitions, phrasing, and make improvements to clause structure:
  - Clarify that the definition of "wetland" has the same meaning as in the Standard Instrument (see clause 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation).
  - Update definitions for "waste tyres", "sodic soils", and clarify the term "sludge" (see clause 1 'Definitions' of Schedule 2 under the proposed 2021 Regulation).
  - Update definition for "composting organics" (see clause 47(3) 'Composting facilities or works' of Schedule 2 under the proposed 2021 Regulation).
  - Correct minor drafting errors in certain clauses which include reference to residential zones. See the following clauses of Schedule 2 under the proposed 2021 Regulation:
    - 17(3)(a)(i) 'Railway freight terminals'
    - 23(2)(b) 'Bitumen pre-mix and hot-mix facilities'
    - 24(3)(b), 'Cement works'
    - 25(1)(b)(iii) 'Ceramic and glass manufacturing'
    - 28(2)(b)(ii) 'Concrete works'
    - 41(2)(c)(ii) 'Limestone mines and works'
    - 32(2)(c) 'Crushing, grinding or separating works'
    - 37(2)(d) 'Mines'
  - Remove duplicate criteria (e.g. clause 25(b) provision for waterbodies and wetlands) (see clause 37 'Mines' of Schedule 2 under the proposed 2021 Regulation).
- Update references to external documents, agencies, SEPPs and other EPIs (see clauses 1 'Definitions', 38(2)(b) 'Coal Mines', and 41(1) 'Limestone mines and works' of Schedule 2 under the proposed 2021 Regulation).
- Minor drafting clarifications and corrections to remove ambiguity in phrasing, replacing "intended processing capacity" with "capacity to process" (see clause 32(1) 'Crushing, grinding or separating works' of Schedule 2 under the proposed 2021 Regulation).

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

Under the No Regulation scenario, developments would only be classed as designated development through EPIs. This would likely lead to:

- Inconsistent classification across the state.
- Reduced transparency and certainty for developers in relation to assessment requirements, public participation requirements and third-party appeal rights.

Table 12.1 below summarises the potential benefits and costs of this option.

Table 0.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Improved environmental assessment by requiring EISs and greater public scrutiny for classes of development which pose significant environmental risks or otherwise have the potential to cause significant environmental and/or planning impacts.	• Costs of preparing and reviewing an EIS. • Increased administrative costs to decision makers.

Benefit — improved environmental assessment by requiring EISs and greater public scrutiny for certain classes of development

Under the No Regulation option, fewer developments would be classed as designated development. The 2000 Regulation provides environmental benefits by specifying requirements for assessing and managing environmental impacts. This includes Act provisions in relation to EIS requirements, public exhibition and third-party appeals.

This framework and the pre-specified form and content of EISs provides significant benefits through:

- Certainty for applicants who are informed of the requirements for an EIS in advance and can know the requirements that apply consistently across the state.
- Improved environment assessment by requiring EISs.
- Greater public scrutiny of the assessment through public notice and advertising requirements.
- Certainty from the absence of applicant review rights after the consent authority has made a determination.
- Fairness in the ability to appeal against a determination in court if an objection is lodged during public exhibition.

Cost — costs of preparing and reviewing an EIS

Under the No Regulation option, many classes of development listed in Schedule 3 could still be identified as designated development in EPIs. If EPIs were not used for this purpose, the incremental costs associated with the designated development schedule in the 2000 Regulation are:

- Costs incurred by applicants for EIS preparation.
- Additional fees for applicants for designated development.
- Costs to councils from reviewing EISs and sending out notices for public consultations.

The cost of producing an EIS can be significant. However, as the EIS requirement originates in the Act these costs cannot be fully attributed to the Regulation.

Cost — increased administrative costs to decision makers

Assessment and compliance of designated development is typically more resource intensive than ‘regular’ DAs, resulting in higher staffing costs for consent authorities. However, this cost is appropriate to ensure adequate assessment and risk management of these complex proposals. Potential savings from less designated development could therefore be more than offset by remediation costs from inadequate risk management.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 12.2 below summarises the potential benefits and costs of this option.

Table 0.2 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
• Better environmental protection • Avoided costs for proponents and consent authorities through delisting lower-risk proposals • Increased efficiency and effective application of provisions through miscellaneous adjustments	• Increased planning costs for proposals now categorised as designated development

Benefit — better environmental protection

The proposed 2021 Regulation will provide improved environmental protection by:

- Adding new categories to capture emerging technologies. This ensures these newer development types of high environmental risk are subject to adequate impact assessment through an EIS. Typically, an EIS involves a comprehensive and detailed study of potential environmental impacts, including input from a range of specialists. This results in measures that minimise impacts on the environment such as refinement of the project scope or implementation of targeted impact mitigation.
- Adding a 5000-head threshold for mixed feedlots to the intensive livestock agriculture category to capture feedlots with cumulative effects on noise, odour and traffic comparable to single species feedlots of similar size. For example, a feedlot with 900 cattle, 3,900 sheep and 1,000 goats would not trigger the designated development thresholds for feedlot animals, but still have significant impacts from 5,800 animals total.
- Replacing the definition of an ESA with more expansive amended ESASS definition, to cover proposals not triggered by one of the currently listed criteria. This ensures the definition provides a more comprehensive coverage of significant areas recognised in other legislation such as marine parks, areas of outstanding biodiversity value and State heritage register listings.
- Increasing wetland buffers for certain categories from 40m to 100m, supporting NSW Government coastal policy reforms in 2018 by providing better protection from offsite impacts.

Benefit — avoided costs for proponents and consent authorities through delisting lower-risk proposals

The proposed 2021 Regulation will focus the coverage of designated development by:

- Removing low risk photovoltaic solar energy generation.
- Aligning thresholds with the POEO Act by adding minimum thresholds for certain ‘cement works’, pharmaceutical and veterinary products under the ‘chemical industries and works’ category, and tanneries and fellmongeries under the ‘livestock processing industries’ category.
- Setting a minimum threshold for development under the ‘concrete works’ category and providing exemptions for certain ‘breweries and distilleries (those defined as ‘artisan food and drink industries’ in the Standard Instrument).
- Clarifying that ‘associated works’ (e.g. an access road) do not trigger designated development. For example, a proposal for an extractive industry development may include a new road with a

route in proximity to a dwelling. This access road should not (of itself) trigger designated development under the extractive industry category location trigger. The intent is for the extractive industry activity (e.g. extraction, stockpiling or processing of materials) to trigger designated development.

- Adding a minimum 10,000-bird threshold to the poultry provisions of the intensive livestock agriculture category.

These changes support an efficient planning system by better aligning the level of environmental assessment with the potential impact of a development.

Proposals that are no longer designated development would instead proceed through the regular DA pathway. This delivers substantial time and cost savings for proponents though avoiding designated development-specific planning requirements such as EIS preparation. Lower planning costs will increase the viability of proposals, which supports economic activity. In addition, the changes will likely result in administrative savings for consent authorities through removal of designated development-specific procedural tasks such as preparing assessment requirements and reviewing EISs.

Benefit — increased efficiency and effective application of provisions through miscellaneous adjustments

The proposed 2021 Regulation will:

- Align thresholds, definitions and terminology to match those in the POEO Act, e.g. updating the contaminated soil definition.
- Better characterise petroleum works.
- Clarify alterations and additions provisions.
- Revise definitions and phrasing of clauses, update cross-references, and remove outdated clauses.

These changes modernise and simplify the 2000 Regulation and increase consistency across the legislative framework. The revised drinking water catchment definition ensures it is being applied appropriately for effective management of these areas. The proposed 2021 Regulation will therefore deliver efficiency benefits to stakeholders by making the Regulation easier to use.

Additionally, by aligning designated development categories with those that require an EPL under the POEO Act, efficiencies are gained for applicants and the EPA by producing much of the assessment information required to issue an EPL in the EIS required at the DA stage. This gives a better indication that the EPL may be issued after development consent has been granted (or identifies what may be required in order to obtain an EPL), thus also minimising the risk that an approved development may need to be modified due to requirements or conditions on the EPL.

Cost — increased planning costs for proposals now categorised as designated development

The proposed 2021 Regulation will make moderate changes to the designated development provisions, which captures a relatively small number of proposals assessed under the Act. The overall net costs from the changes are expected to be minimal.

The increased designated development coverage that will result from some of the changes will result in additional costs, as proponents will need to prepare an EIS where they did not before. However, this cost is justified by the need to adequately manage the risks of these proposals. Preparing and publicly exhibiting an EIS supports a comprehensive assessment, minimising the occurrence of unexpected impacts that can require expensive remediation action.

Replacing the ESA definition with an amended ESASS definition will likely capture only a small number of additional proposals. Close to 90 per cent of triggers for designated development are

not location-based but based on other criteria. There is also overlap between the ESASS and existing ESA criteria. Therefore, proposals may already be subject to designated development provisions regardless of the redefinition.

Differences between the existing ESASS and 2000 Regulation ESA criteria are likely due to the varying age of the legislation where they are located, with each definition likely including the set of criteria considered at the time to constitute key areas of environmental significance. Both terms are used to apply approval pathways with adequate oversight and assessment requirements to manage the higher environmental risks of certain development. For example, ESA triggers designated development and ESASS triggers state significant development in the State and Regional Development SEPP. Therefore, standardisation is appropriate.

Conclusion and preferred option

As designated development is a planning approval pathway, many of the benefits and costs of remaking the 2000 Regulation compared to a No Regulation option overlap with those listed in Chapter 6 for the assessment of DAs. There is a net benefit in having a separate and more highly scrutinised planning pathway for potentially higher impact development to help avoid significant environmental damage.

The changes proposed in the proposed 2021 Regulation ensure the designated development schedule (Schedule 2 under the proposed 2021 Regulation) more accurately reflects proposals that should be subject to designated development, supporting system integrity. Aligning thresholds, fixing legislative cross-references, revising definitions, and redrafting provisions will contribute to improved regulation clarity and currency.

The proposed 2021 Regulation will assist in maintaining an effective designated development framework and is therefore the preferred option.

13. Miscellaneous provisions

Background

This chapter covers miscellaneous provisions primarily found in in Parts 1 and 17 of the 2000 Regulation. These include preliminary provisions such as definitions, and miscellaneous administrative, savings and transitional provisions.

2000 Regulation

Part 1 primarily includes a range of definitions and clauses to clarify the meaning of terms and processes used in the provisions of the Regulation.

Part 17 contains:

- requirements for notification of proposals to constitute a development area.
- various contributions plan provisions for specific sites.
- provisions prescribing guidelines for bush fire protection and other requirements relating to bush fire prone land.
- release area provisions under *Sydney Regional Environmental Plan No. 30.*
- matters to be taken into consideration by consent authorities in regard development in the North West and South West Growth Centres in Sydney and the North and South-East Wilton Precincts.
- matters to accompany a development application in the Mamre Road Precinct and the Western Sydney Aerotropolis.
- provisions enabling the Minister to declare an urban release precinct and for development codes.
- provisions enabling specific infrastructure and education providers to be treated as public authorities.
- provisions setting out the formula for assessment of loan commitments of councils.
- provisions setting out matters required in a planning certificate.
- application details and form of a building certificate.
- format requirements for compliance cost notices and maximum payment amounts.
- a provision for the Planning Secretary to certify certain documents under the Act.
- provisions for orders, offences, penalties and enforcement.
- a modification of Part 8.3 of the POEO Act (Court orders regarding offences).
- special provisions for ski areas, the Sydney Opera House and major events.
- various savings and transitional provisions.
- provisions related to the deemed refusal period for Court appeals.
- provisions related to the use of the Planning Portal.
- requirements related to the power of investigation officers to require answers and record evidence.

2021 Regulation

The proposed 2021 Regulation includes the 2000 Regulation provisions for Part 1 and Part 17 with amendments to:

Part 1

- clarify that a 'BASIX affected building' does not include a boarding house that accommodates more than 12 lodgers or that has a gross floor area exceeding 300 square metres, seniors housing, a group home or hostel (all within the meaning of the Standard Instrument) (see Dictionary under the proposed 2021 Regulation).
- insert a definition of 'gross floor area' by referencing the definition for 'gross floor area' in the Standard Instrument (see Dictionary under the proposed 2021 Regulation). The costs and benefits of this change are detailed in Chapter 5, as it is associated with an amendment to the existing use rights provisions.

Note: under the proposed 2021 Regulation, these definitions are contained in the Dictionary at the end of the Regulation, rather than in Part 1.

Part 17

- to include a change to the definition of urban release area so that maps can be published online (see clause 252 'Definitions' under the proposed 2021 Regulation). The costs and benefits of this change are discussed in Chapter 9 along with other proposals relating to electronic communication methods.

Cost–benefit analysis of options

Remaking the 2000 Regulation compared with No Regulation

The definitions in Part 1 of the 2000 Regulation facilitate the understanding and application of the provisions in the 2000 Reg. Part 17 helps to expedite various administrative processes in the planning system. Part 17 also includes various savings and transitional provisions that allow councils to adjust to changes to the planning system.

Table 13.1 below summarises the potential benefits and costs of clarifying development types that do not fall within the definition of a BASIX affected building.

Table 13.1 Overview of benefits and costs of remaking the 2000 Regulation

Potential Benefits	Potential Costs
Reduced administrative costs and better decision making	Minimal

Benefit — reduced administrative costs and better decision making

The main benefits of these provisions are in reducing administrative costs to councils and other decision makers.

Cost – minimal

The administrative costs associated with these provisions are minimal as they coordinate procedures within the planning system for which administrative costs have already been incurred.

Making the proposed 2021 Regulation compared with remaking the 2000 Regulation

Table 13.2 below summarises the potential benefits and costs of this option.

- **Table 13.2 Overview of benefits and costs of remaking the 2000 Regulation**

Potential Benefits	Potential Costs
Simplified requirements for applicants	Minimal

Benefit — simplified requirements for applicants

The proposed 2021 Regulation will make a minor amendment to the Part 1 definitions so that development for a boarding house that accommodates more than 12 lodgers or that has a gross floor area exceeding 300 square metres, seniors housing, a group home or hostel does not have to obtain a BASIX certificate.

This is because these types of developments are class 3 buildings and are therefore already subject to energy efficiency requirements under the Building Code of Australia (BCA) and water efficiency requirements under the National Construction Code (NCC) and Australian Standard AS/NZS 3500. The requirements for a BASIX certificate are substantially the same as the energy and water efficiency requirements under the BCA and NCC.

The proposed 2021 Regulation will therefore remove multiple requirements applying to the same development. It will also remove the need for an applicant to obtain a BASIX certificate where they are already required to comply with comparable requirements for energy and water efficiency. This will help simplify provisions and make the planning system easier to use. It will also result in minor savings for applicants related to the cost of obtaining a BASIX certificate.

Cost — minimal

The costs associated with the change in definition under the proposed 2021 Regulation will be minimal.

Conclusion and preferred option

The proposed 2021 Regulation will make minor amendments to miscellaneous provisions of the 2000 Regulation, primarily Part 1 and 17. The amendments, including the changes to the BASIX affected building definition that are discussed in this chapter, will assist in making the planning system easier to use. Combined, the amendments to Part 1 and Part 17 will lead to an incremental net benefit relative to the 2000 Regulation. Making the proposed 2021 Regulation is the preferred option.

Conclusion

The proposed 2021 Regulation will largely carry over provisions in the 2000 Regulation with improvements via additional, amended or repealed clauses. The proposed 2021 Regulation will support the Act upon the repeal of the 2000 Regulation.

The analysis above found remaking the 2000 Regulation (Option 2) led to a net incremental benefit relative to a No Regulation scenario (Option 1). Most of the incremental benefits derive from the 2000 Regulation's detailed operational requirements. These requirements help implement and increase the effectiveness of the Act.

Without the 2000 Regulation, the Act would continue to operate. The Act would still set out requirements for public consultation, notification and some elements of due process in the making of plans, determination of DA and State significant project applications. The Act would continue to set out other functions exercised by consent authorities and other planning bodies for land use. However, the operational detail in the 2000 Regulation adds significant value in enhancing the timeliness, accountability and transparency of decision making. It also delivers consistency in council procedures and fees across every local government area in NSW, that would otherwise vary significantly without regulation. Therefore, Option 1 is not preferred.

The incremental benefits and costs of Option 3 were assessed relative to Option 2, by considering the proposed 2021 Regulation and the 2000 Regulation. Changes proposed in the proposed 2021 Regulation are summarised in Chapter 2.

The comparative cost–benefit analysis found the proposed 2021 Regulation will lead to net incremental benefits relative to remaking the 2000 Regulation. The proposed 2021 Regulation is the preferred option for achieving the objectives stated in Chapter 2. Therefore, making the proposed 2021 Regulation (Option 3) is the preferred option and delivers the greatest net benefit to the community.

Appendix A - Amendments made to the 2000 Regulation in the period since 1 January 2020

Table A1. Summary of amendments to the 2000 Regulation since 1 January 2020

Amending legislation	Summary of amendments
Environmental Planning and Assessment Amendment (Modifications) Regulation 2021	The *Environmental Planning and Assessment Amendment (Modifications) Regulation 2021* made amendments to clarify that applications for modification of development consents can be amended after lodgement, subject to the approval of the consent authority.
Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021	The *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021* (Major Projects Regulation) has made a number of amendments to increase the efficiency and transparency of major projects administration and assessment, ensure applications and reports are prepared to a consistently high standard, and introduce formal quality assurance measures for EISs. The amendments have been made to Part 1, Part 6, Part 10, Part 17, and Schedule 2 of the 2000 Regulation. While some of these amendments commenced on 1 July, others will commence later in the year. These amendments are not yet reflected in the proposed 2021 Regulation as they were made after the consultation draft was finalised, but they will be incorporated into the final Regulation before it is made. A summary of the key amendments is included below, but readers should refer to the Department's website and the Major Projects Regulation on the NSW Legislation website for full details of the changes. The amendments: **Efficient lodgement processes** • require SSD and SSI applications and modification applications and requests to be lodged on the NSW Planning Portal, and provided in the form approved by the Planning Secretary and made publicly available on the portal. • set out submission requirements for other major projects documents (i.e. requests for SEARs, applications to amend or vary development applications and response to submissions reports). • switch-off existing development application requirements in Schedule 1 of the EP&A Regulation for SSD and consolidate SSD application requirements into a single SSD application form available on the NSW Planning Portal. • enabling the fee for an SSI application to be determined within 14 days of the EIS being lodged.

Amending legislation	Summary of amendments

	• provide expanded powers for the Planning Secretary to reject SSD applications and SSD modification applications if they are considered to be incomplete.
	
	EIA guidelines
	
	• require consideration of the *State Significant Development Guidelines* and the *State Significant Infrastructure Guidelines* when requesting SEARs, preparing EISs, responding to submissions, amending applications, and seeking to modify SSD consents and SSI approvals.
	
	• provide for the EIA guidelines to be amended from time to time and be made available on the Department's website.
	
	Fit-for-purpose SEARs
	
	• in order to facilitate the use of 'industry-specific SEARs', limit the mandatory requirement to consult with relevant public authorities when preparing SEARs to only SSD projects that:
	  ○ would be designated development but for s4.10(2) of the EP&A Act, or
	  ○ are partly or wholly prohibited, or
	  ○ are a concept development application.
	
	• introduce an automatic expiry on SEARs for SSD and SSI projects two (2) years after they have been issued, to ensure that EISs are based on relevant and up-to-date environmental considerations and to provide a mechanism to encourage proposals to progress to assessment in a timely manner.
	
	• provide for the Secretary to extend the expiry date of SEARs by up to two years if the proponent makes a written request for extension before the SEARs expire.
	
	• apply sunset dates to SEARs that have already been issued (prior to the proposed Regulation commencing) to remove long-standing proposals that have been in the system for several years, and to reduce the uncertainty felt by local communities around the future uses of land within an area.
	
	Registered practitioners
	
	• recognise certain environmental assessment practitioners as 'registered environmental assessment practitioners' (REAPs) if they are registered or certified under a professional scheme that is specified as a 'REAP Scheme' in the document *Accredited Registered Environmental Assessment Practitioner (REAP) Schemes* that will be published on the NSW Planning Portal on 1 July 2021.
	
	• provide that declarations be provided by a REAP in respect of EISs for SSD and SSI.
	
	• extend the current EIS declaration requirements to include additional quality assurance matters for SSD and SSI as set out in the *Registered Environmental Assessment Practitioner Guidelines* (REAP Guidelines) and made available on the Department's website.

Amending legislation	Summary of amendments
	Savings for EISs already in preparation • provide a six-month transitional period to allow EISs (where SEARs have already been issued) to be submitted to the Department without having to comply with the new regulation requirements.
Environmental Planning and Assessment Amendment (Flood Planning) Regulation 2021	This made changes to the flood related development controls clause in Schedule 4 Planning certificates. These amendments commenced on 14 July 2021 and replaced the previous clause relating to flood related development controls (cl 7A of the 2000 Regulation) with the following (updated) clause. These changes are also reflected in the draft 2021 Regulation (see cl 9 of Schedule 3). **7A Flood related development controls** (1) If the land or part of the land is within the flood planning area and subject to flood related development controls. (2) If the land or part of the land is between the flood planning area and the probable maximum flood and subject to flood related development controls. (3) In this clause— ***flood planning area*** has the same meaning as in the Floodplain Development Manual. ***Floodplain Development Manual*** means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005. ***probable maximum flood*** has the same meaning as in the Floodplain Development Manual.
Environmental Planning and Assessment Amendment (Wingecarribee Shire Council Local Planning Panel) Regulation 2021	This made changes so that the councils of two local government areas, Central Coast and Wingecarribee, are required to constitute a single local planning panel.
Environmental Planning and Assessment Amendment (Wagga Wagga Activation Precinct) Regulation 2021 (SI 234)	This made changes to require a consent authority, when determining a development application for development on land to which Wagga Wagga Local Environmental Plan 2010 applies, to consider whether or not the development is consistent with the Wagga Wagga Special Activation Precinct Master Plan, published by the Department of Planning, Industry and Environment in April 2021. This applies until 31 December 2021 when the Wagga Wagga Activation Precinct is declared under State Environmental Planning Policy (Activation Precincts) 2020. It also provides that certain development on land within the Regional Enterprise Zone in the Wagga Wagga Activation Precinct is not designated development.

Amending legislation	Summary of amendments
Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2021	This made further provision for the use of the NSW Planning Portal (the Planning Portal), including by providing for the fees to be paid for the use of the Portal, by: • replacing the term 'building certificate' with 'building information certificate' in various clauses and in Schedule 6, for consistency with the EP&A Act section 6.22. • amending cl 25B(1)(b) so planning agreements are required to be lodged via the Planning Portal, and (from 1/7/21) are subject to a prescribed fee. • amending cls 51 and 52 to require notification to consent authorities of the rejection (cl 51) or withdrawal (cl 52) of a DA by a consent authority via the Planning Portal. • amending cl 102(3) to ensure failure to publish notice of a determination does not affect the validity of the notice or the development consent. • adding cl 114(2) to require applications for extension of a development consent to be lodged on the Planning Portal. • amending cls 256 & 256E to change the start date of the 14-day period within which the determination of a DA (cl 256), SSD, or SSI application (cl 256E) fee must be made, to be when the consent authority receives the application rather than when it is lodged on the Planning Portal. • inserting cl 263B (commencing on 1/7/21) which sets out fees payable for lodging various planning and building applications and certificates, review request, planning agreements and paying contributions/levies via the Planning Portal. • amending the cl 281 heading to 'Form and issue of building information certificate'. • inserting cl 281(2) to require that a building information certificate must be issued via the Planning Portal. • replacing cl 19(2)(a) of Schedule 3 to replace reference to the repealed Western Div*ision Regional Environmental Plan No 1—Extractive Industries* with extractive industries on land in the Western Division, within the meaning of the *Crown Land Management Act 2016.* Note: The *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2021* also made amendments to clauses that will be moved to the Building and Subdivision Regulation. As such, these have not been included above.
Environmental Planning and Assessment Amendment (Short-term Rental Accommodatio	This amendment inserted a new part for fire safety provisions for short term rental accommodation premises that are dwellings and apartment buildings. These provisions commence on 30 July 2021.

Amending legislation	Summary of amendments
n) Regulation 2021	
COVID-19 Recovery Act 2021	Removed redundant provisions at clauses: • 294A which related to an extension to the COVID-19 prescribed period. • 298 which provided powers to investigation officers to use audio/visual links during the prescribed period. These clauses are no longer needed as the COVID-19 prescribed period has ended.
Environmental Planning and Assessment Amendment (Build-to-rent Housing) Regulation 2021	Inserted cl 98F to prescribe conditions of a development consent involving the use of a building as build-to-rent housing. This change means development on certain land during the prescribed period: • must contain a certain number of dwellings under residential tenancy agreements. • is subject to subdivision restrictions. must be owned and controlled by one person and operated by one on-site managing agent.
Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021	This amendment makes the following changes: 1) Allows for flexibility and improves the quality of explanatory notes for voluntary planning agreements (VPAs) by: • cl 22E(2)-(4) to remove prescriptive requirements for explanatory notes, and • cl 25B(2) to require that a council negotiating or entering into a planning agreement must consider any relevant practice note. 2) Makes information more readily accessible by removing outdated requirements for making hard copy documents available for inspection and instead requiring these be made online. Changes were made to: • omit the requirements at cls 25F(3), 25G(3), and 25H(3) for planning authorities (councils, the Planning Secretary, other planning authorities) to keep planning agreement registers, planning agreements and explanatory notes available for in-person inspection. • cls 25F(3), 25G(3), and 25H(3) to require that these documents be made available online instead. • replace cl 37(2) to require council to make certain records available on the Planning Portal and council's website, instead of at council's office. Note: the above changes will commence on 1 July 2022 to allow planning authorities time to implement the changes. 3) Improves reporting and accounting requirements for infrastructure contributions received under contributions plans and planning agreements by councils and other planning authorities. This includes more detailed reporting requirements on the receipt and expenditure of contributions. Changes relate to:

Amending legislation	Summary of amendments
	Planning agreements • cls 25F(2),25G(2) and 25H(2) to require planning authorities to include a description of the development in their planning agreement registers. This change has commenced. • cls 25F(3)(d), 25G(3)(d), and 25H(3)(d) to expand the publication requirements to include financial reports and annual statements. • cls 25F(3)(d)(i), 25G(3)(d)(i), and 25H(3)(d)(i) to require annual statements to include monetary amounts received. • cls 25F(3)(d)(ii), 25G(3)(d)(ii), and 25H(3)(d)(ii) to require annual statements to include the value of works. contributed under planning agreements, including assets given in relation to the works. • cls 25F(3)(d)(iii), 25G(3)(d)(iii), and 25H(3)(d)(iii) to require annual statements to include the land that has been dedicated free of cost. Note: These changes will commence on 1 July 2022. *Contributions registers* • cl 34 to expand the list of matters that a council must make publicly available in its contributions register. Changes were made to: ○ cl 34(2)(a)(ii) and (iii) to include the relevant DA, consent authority, and the date of development consent. ○ cl 34(2)(b)(i) to require that this register includes the purpose of the contribution. ○ cls 34(2)(b)(ii) and (iii) to require that this register include the value and location of dedication of land or material public benefit. ○ cls 34(2)(b)(iii) and (iv) to require that this register include the total of the contribution or levy payable and received. • cl 35A to require that information related to s 7.11 contributions and levies is included in councils' annual statements. Note: The above changes will commence on 1 July 2022. *Annual reports* • cl 35A to include a list of matters that must be included in the annual reports of councils. This includes the insertion of: ○ cl 35A(1) to require disclosure of how s 7.11 contributions or s 7.12 levies have been used or expended for each contributions plan. ○ cl 35A(2) to require details of: ▪ (a) the project identification number and description. ▪ (b) the kind of public amenity or service to which the project relates (c) the amount of monetary contributions or levies used or expended on the project. ▪ (d) the percentage of the cost of the project funded by contributions or levies.

Amending legislation	Summary of amendments
	▪ (e) the amounts expended that have been temporarily borrowed from money to be expended for another purpose. ▪ (f) the value of land and material public benefit other than money or land used for the project. ▪ (g) whether the project is complete. Note: the above changes will commence on 1 July 2022. *Accounting records* Changes to cl 35 inserted subclause (1A) to expand the information to be included in the accounting records for contributions plans. This includes all contributions received by a council under the plan. The information requirements were made by changes to insert: • cl 35(1A)(a) to specify whether the contributions were in the form of money, land, a material public benefit, or a combination of these. • cl 35(3)(a1) to require that the notes of a council's financial report include the value contributed of land and material public benefits (other than land or money). Note: the above changes will commence on 1 July 2022. • cl 36(2) to update the clause under which information is required to be included in the notes to a council's financial report. • cl 37(a1) to insert a requirement to keep current contributions rates under each plan publicly available. 4) Makes other improvements to the infrastructure contributions system • cl 25K was updated to remove reference to the repealed *Wollongong City Centre Local Environmental Plan 2007* and instead refer to the current *Wollongong Local Environmental Plan 2009*. • cl 25K(1)(b) was updated to: ○ replace reference to the Chatswood Central Business District (CBD) s 94A Development Contributions Plan 2011 with the newer Willoughby Local Infrastructure Contributions Plan 2019. ○ omit the reference to Gosford City Centre so that the provisions are consistent with a Special Infrastructure Contribution for the Gosford City Centre made in 2018. • cl 25K(1A) was inserted to specify that the information under the Table in (1)(b) continues to apply even if a LEP or contributions plan used to describe the land is repealed. • Other minor changes were made to headings.
Environmental Planning and Assessment Amendment (Social	Inserted a requirement into Schedule 1 that a DA for a manor house or multi-dwelling housing under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* must be accompanied with a statement of verification and evidence demonstrating whether the development is likely to result in the loss of low-rental dwellings.

Amending legislation	Summary of amendments
Housing) Regulation 2020	
Liquor Amendment (Night-time Economy) Act 2020	Amended cl 7 to vary the application of the Building Code of Australia, including inserting a definition for small live music or arts venues. This change was part of a broader reform to support NSW's night-time economy including live music and entertainment, and to improve regulation of the industry.
Planning and Environment Legislation Amendment (COVID-19) Regulation 2020	Inserted a new cl 298 to allow investigation officers to use audio or audio-visual links to take evidence and answers to questions during the COVID-19 prescribed period – i.e. until 26 March 2021.
Environmental Planning and Assessment Regulation 2020	This amended cl 50 to remove unnecessary notification requirements for environmental impact statements (EISs) for designated development. The provision now requires that EISs be forwarded only to council (where they are not the consent authority), rather than being sent to both the council and the Minister/Planning Secretary. This also amended cl 92 and Schedule 1 cl 4 to: • replace the reference to the *Medium Density Design Guide* (MDDG) with the *Low Rise Housing Diversity Design Guide* in relation to complying development. in relation to DAs: replace reference to the MDDG with the *Low Rise Housing Diversity Design Guide for Development Applications*.
Statute Law (Miscellaneous Provisions) Act 2020	Amended: • cl 130(2B) to correct a grammatical error. • cls 136I and Schedule 1 cl 4(1)(j1) and (k) to remove outdated agency references by updating the name of "Roads and Maritime Services" to "Transport for NSW". Note: The *Statute Law (Miscellaneous Provisions) Act 2020* also made amendments to a clause that will be moved to the Building and Subdivision Regulation. As such, this has not been included above.
Environmental Planning and Assessment Amendment (COVID-19 Prescribed Period)	Inserted cl 294A to extend the prescribed period defined in s 10.17 of the Act to 25 March 2021. This allowed various special COVID-19-related arrangements to continue such as Ministerial authorisation of development and digital publication of certain documents for inspection.

Amending legislation	Summary of amendments
Regulation 2020	
Environmental Planning and Assessment Amendment (Western Sydney Aerotropolis) Regulation 2020	Inserted new requirements for development on land under the *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* (Aerotropolis SEPP). Amendments were made to insert: • cl 128 to require that a complying development certificate in the Western Sydney Aerotropolis to be accompanied by a current Aerotropolis certificate. • cl 271 to require a contributions plan to be approved before a DA can be determined by the consent authority for specified land in the Western Sydney Aerotropolis. Exemptions apply for minor DAs and situations where an applicant has entered into a planning agreement for the matters that would have been subject to the contributions plan. • cl 275C to require that DAs in the Western Sydney Aerotropolis be accompanied by an assessment against the Western Sydney Aerotropolis plan and any precinct plan that applies to the land. • cl 22 into Schedule 4 to require that specified matters affecting the land to which the Aerotropolis SEPP applies be listed on s 10.7(2) planning certificates.
Environmental Planning and Assessment Amendment (Kensington and Kingsford Town Centres Development Consent Levies) Regulation 2020	Inserted under cl 25K(1)(b) a maximum rate of the contributions levy for development on land subject to a contributions plan in the Kensington and Kingsford Town Centres.
Environmental Planning and Assessment Amendment (Modification of Consent) Regulation 2020	Replaced cl 123BA to allow a council to carry out a regional planning panel's functions to determine a modification application, except if the application: • proposes to change a consent condition which was added or amended by the panel. • meets the referral criteria relating to conflicts of interest, contentious development. • proposes departures from development standards.
Environmental Planning and Assessment Amendment (Planning Portal)	Makes amendments to clarify and simplify DA process requirements, including changing the way that information, documents, and applications are lodged, submitted, notified, and determined. It removed outdated requirements that restricted the use of electronic methods. The changes reflect the expanded use of the Planning Portal for lodging and processing DAs, CDCs, and other kinds of applications.

Amending legislation	Summary of amendments
Regulation 2020	Changes were made relating to: 1) DAs and modification applications • cl 48 to update the heading to “Development application information”, reflecting the content of the clause. • cl 48(b) and (c) to remove the requirement for the consent authority to make blank copies of the DA form available. • cl 49 to omit the requirement for landowner consent for a DA to be “in writing”. • cl 49(4A) to insert a subclause stating that landowner consent under the clause is not required to be in writing. • cl 50(1) to mandate that a DA be lodged on the Planning Portal as opposed to being delivered by hand, by post, or electronically. Also provides that form of the DA is to be approved by the Secretary, rather than the consent authority. • cl 50(3) to omit the subclause, which required a DA to be registered with a distinctive number and for written notice to be provided to an applicant once a DA is received. • insert cl 50(8) and (9) to require that the applicant be notified by the Planning Portal when a DA has been lodged and that the fee must be paid before the DA is taken to be lodged. • cl 50B to remove a reference to another clause that no longer exists due to minor restructuring. • cl 51 to clarify that a DA can be rejected if it does not contain all the information that is specified in the approved form or required by the Act or this Regulation. • cl 52 to allow an applicant to withdraw a DA by lodging notice of the withdrawal on the Planning Portal, rather than by service of a signed notice. • omit cl 53 to remove the ability of the consent authority to require additional copies of a DA and supporting documents. • cl 54 so consent authorities make requests for additional information via the Planning Portal, and to allow an applicant to notify a consent authority via the Planning Portal (rather than by “in writing”) that they will not be providing further information. • cl 55(1) so amendments or variations are lodged via the Planning Portal. • cl 55(2) amendment or variation are included (instead of ‘written’) in the application. • cl 56(2) to require extracts of a DA to be made available on the Planning Portal rather than made available by the consent authority. • cl 102 to specify that the notification of a determination should be provided on the Planning Portal.

Amending legislation	Summary of amendments
	• cls 107, 109(2), and 111(2), and 113 to specify the Planning Portal as the place where a DA is lodged rather than with the consent authority. • cl 114 to remove the requirement for an application to extend the lapse date of a DA to be made in writing. • cl 114(2) to insert a new subclause to allow an application to extend the DA lapse period to be lodged on the Planning Portal. • cl 115 to remove the requirement for a statement of land owner's consent to be signed for modification applications. • cl 115(1) to remove the option for the consent authority to require the application to be in a form approved by the authority. • cl 115(1A) to require that a modification application be lodged via the form available on the Planning Portal and be accompanied by the information and documents specified under the Act and Regulation. • insert 115A to require modifications to pay the relevant fee before lodgement is recognised. • cl 116 to remove this clause, which required that s 4.56 modification applications are to be lodged with consent authorities. • cl 122 to insert a requirement to notify applicants of the determination of a modification application on the Planning Portal. • replace cl 123G to require that an application for a review of a DA be lodged via the form on the Planning Portal. This clause also inserts a requirement for an applicant to be notified of the determination of the application via the Planning Portal. • cl 123H to replace the written requirement for notice to be given to an applicant of review application determination with a requirement for the notice to be sent via the Planning Portal. • cl 123I to insert reference to the Planning Portal. • Sch 1 to remove the information required to be submitted in a DA, CDC, CC, and subdivision works certificate application. This information has instead been incorporated into the forms prescribed by the Secretary on the Planning Portal. 2) Complying development certificates (CDCs) • cl 126 to require that to require that a CDC must be lodged via the form available on the Planning Portal and be accompanied by the information and documents specified under the Act and Regulation. Also, to require that a notice of lodgement be provided via the Planning Portal. • cl 126 to transfer existing CDC requirements regarding contamination from Schedule 1. • omit cl 128 to remove the requirement for blank copies of CDC application forms to be provided. • cl 129C to require notice of records of complying development site inspections to be provided on the Planning Portal.

Amending legislation	Summary of amendments
	• cl 129E to require the Secretary to determine the form for applications to modify a CDC or CDC application. • cl 130 to require registered certifiers to notify applicant and council of determination of CDC via the Planning Portal. • cl 137 to clarify that certificates issued by a registered certifier must be published on the relevant council's website. • Sch 1 clause 4B to remove reference to clause 3(i) of the Schedule as the provisions in Schedule 3 have been omitted and transferred to the Planning Portal. • Sch 5 to remove a reference to a penalty notice offence for clause 126(2). This has the effect of removing the penalty related to the requirement for a council or certifier to endorse an application with the date of its receipt. A change has also been made to cl 284 to remove this reference. 3) Fees • cl 246A to provide that a DA is not lodged until the relevant fees notified to the applicant have been paid via the Planning Portal. • cl 256 and 256E to update headings and specify that determination of fees occurs via the Planning Portal. • cl 263(2) to update the subclause to note that an application is lodged via the Planning Portal. 4) Other • Part 6 to omit Division 1A related to communications under Divisions 2 and 3 through the Planning Portal. A change has been made to reword and transfer these provisions to a newly inserted cl 295. • clause 70A to refer to the updated list of DA requirements under cl 50. • cl 103 to remove the option for the consent authority to require a notice of appointment of principal certifier to be in an approved form. • cl 103A to require a notice of critical stage inspections to be lodged on the Planning Portal. • cl 113 to remove the reference to cl 85A related to submissions for State Significant Development, which was repealed by the *Environmental Planning and Assessment Amendment (Public Exhibition) Regulation 2020.* A change was made to refer to the latest clause. • cl 115(9) to remove the subclause to reflect a minor restructure of provisions relating to fees. • cl 296 to insert a savings and transition clause for the amending regulation that operates until 1 July 2021. These provisions allow some consent authorities to process applications as though the amendments have not been made. • Sch 1, cl 4(1)(l) to update a cross reference to reflect minor restructuring. Note: The *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020* also made amendments to clauses that will be moved to

Amending legislation	Summary of amendments
	the Building and Subdivision Regulation. As such, these have not been included above.
Environmental Planning and Assessment Amendment (Activation Precincts) Regulation 2020	This inserted cls 50C and 129 to require that DAs and CDCs in Activation Precincts under the *State Environmental Planning Policy (Activation Precincts) 2020* must be accompanied by a current Activation Precinct certificate. It also inserted cl 37B to provide that certain development within Regional Enterprise Zone land in the Parkes Activation Precinct is not designated development.
Environmental Planning and Assessment Amendment (Mamre Road Precinct) Regulation 2020	This made a change to insert cl 275B to require DAs in the Mamre Road Precinct under the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* to be accompanied by an assessment of consistency with the Mamre Road Precinct Structure Plan. It also corrected a reference in cl 270 related to who a development must enter a planning agreement with from a “consent authority” to a “planning authority”.
Environmental Planning and Assessment Amendment (Lapsing of Consent) Regulation 2020	This inserted cl 124AA to specify a list of minor works that are not considered to trigger “physical commencement” for the purpose of determining when a development consent has lapsed.
Environmental Planning and Assessment Amendment (Penrith Lakes Development Corporation) Regulation 2020	This made a change to cl 115 to specify that owner’s consent for applications to modify a Penrith Lakes Development Corporation development is only needed for the part of the land that the modification relates to. This means that these applications do not require the consent of the owners of all the land to which the original DA relates.
Environmental Planning and Assessment Amendment (COVID-19 Planning Bodies) Regulation 2020	This made a change to insert cl 294 to allow hearings and public meetings of planning bodies to be made by audio or audio-visual link during the COVID-19 pandemic prescribed period – i.e. until 25 March 2021.

Amending legislation	Summary of amendments
Environmental Planning and Assessment Amendment (Public Exhibition) Regulation 2020	This amending Regulation made changes to clauses that impose a requirement to publish notices in newspapers. These clauses have been updated to require online notification only, allowing planning/consent authorities the discretion to choose to also publish in newspapers. These changes were to: *General* • cl 3 to remove the definition of "local newspaper". • cl 3(4) to definitions to clarify that a reference to the consent authority's website means the website of the council(s) if the consent authority is a council or a planning panel, and the Planning Portal if the consent authority is the Minister or the Independent Planning Commission. • cl 24 to clarify that a reference to a council's website in the context of DCPs made by the Planning Secretary should be taken to be a reference to the Planning Portal. *DCPs* • omit cl 6 to remove reference to the timing of notices in local newspapers. • cl 18 to update exhibition requirements for DCPs so that relevant documents are required to be exhibited on the council's website. • omit cl 19 to remove the requirement for draft DCPs to be made publicly available for inspection/copying. • cl 21 to specify that the notice of making a DCP is required to be published online rather than in a newspaper. • cl 22 to make a minor style edit to the heading and make amendments to provisions to reflect new requirement to publish notice of repeal of a DCP online instead of in a newspaper. • cl 22A to reflect new requirement to publish the making of a DCP under Ministerial direction online rather than in a newspaper. • cl 23 to omit this clause as it relates to the process of repealing a DCP via a notice in a newspaper. *Contribution plans* • cl 28 to require exhibition for contribution plans to be online. • cl 29 to remove hard copy requirements related to contribution plans. • cl 31 to require publishing notice of a contributions plan to be online rather than in a newspaper. • cl 32 to amend the clause to require notice of repeal of contributions plan to be published online. • omit cl 33 to remove the requirement to publish the repeal of a contributions plan in a newspaper. *DAs and CDCs*

Amending legislation	Summary of amendments

	• cl 49 to provide that land owner consent is not required before lodging a DA if notice has been provided on the Planning Portal or public authority's website for public notification development or a public authority's DA.
	• cl 77 to combine notice requirements for designated development with SSD, nominated integrated development, threatened species development, and Class 1 aquaculture development. A change was also made to update references in a notice of lodgement of a DA to refer to online exhibition.
	• cl 78 to update notice requirements relating to community participation periods.
	• cl 118 to remove requirements for notice of s 4.55(2) and 4.56 modification applications to be published in a local newspaper, and instead require that notice occur on the consent authority's website.
	• cl 124 to require the notice of a development consent to be published online rather than in a newspaper.
	• cl 137 to require a notice of a CDC to be published online rather than in a newspaper.
	• cls 266 and 267 to remove the requirement for councils to keep a copy of a page of the newspaper where a notice for a DA or CDC was published and require that councils keep a copy of a notice published on their website instead.
	SSD / SSI
	• cl 193 to require notice of SSI applications to be provided on the Planning Portal where there is no land owner consent.
	• cl 196 to require SSI documents be publicly available on the Planning Portal instead of on the Department's website.
	• Part 6, Division 6 to omit the division related to public participation of SSD and replace it with cl 82. Changes have been made to remove:
	  ○ requirements for notice of applications to occur via local newspaper and to send notice of the application to certain persons. The Planning Secretary is now required to make documents available on the Planning Portal.
	  ○ requirements for the application and accompanying documents to be made available at the Department and council's offices during the exhibition period.
	  ○ the list of content requirements for SSD application notices.
	Part 5/other planning approval pathways
	• cls 87, 88, 89, and 91 to omit clauses providing notice requirements for nominated integrated development, threatened species development, and Class 1 aquaculture development. These provisions have been incorporated into cl 77.
	• cl 233 to remove references to inspections for s 5.8 notices and to require notice on the Planning Portal where an EIS is available for consultation.

Amending legislation	Summary of amendments
	• cls 234 and 235 to remove the requirement for s 5.8 notices to be made available for public inspection and to be published in a daily and local newspaper. These must now be published on the Planning Portal instead. *Paper subdivisions* • cl 268ZB to require notice of a development plan for paper subdivisions to be provided on the Planning Portal. • cl 268ZJ to require notices related to the adoption of a development plan for paper subdivisions to be published on the Planning Portal rather than in a local newspaper. • cl 268ZL to require notices related to amendments to a development plan for paper subdivisions to be published on the Planning Portal rather than in a local newspaper. *Housekeeping* • cl 32 to update heading. • Part 6, Division 5 to update heading. • Part 6, Division 7 to update heading. • clause 233 to update heading. • Part 14, Division 5 to omit the Division as it relates to notice requirements for repealed provisions of the Act.
Environmental Planning and Assessment Amendment (Planning for Bush Fire Protection) Regulation 2020	This amended cl 272 to reference the latest version of the *Planning for Bush Fire Protection* document, published in November 2019. It also made the following changes to: • cl 273 so that the method for determining the bushfire attack level is determined from the Planning for Bush Fire Protection document rather than a gazettal notice. • cl 273(8) to reference the latest Australian Standard relating to the construction of buildings in bushfire prone areas (i.e. replaced AS 3959—2009 with AS 3959:2018). Also replaced the definition of bush fire attack level–40 (BAL–40) and flame zone (BAL–FZ) to reference the current version of the Planning for Bush Fire Protection document. • cl 273B to insert transitional provisions so that the amendments made do not apply to DAs made but not determined before 1 March 2020.

Appendix B - Overview of changes to development assessment processes

Table B1. Further detail of proposed changes to development assessment process

Planning process	Existing 2000 Regulation	Proposed 2021 Regulation
Receipt of DAs	Cl 51 allows a consent authority to reject a DA on certain grounds, this does not apply to modification applications	A DA can be rejected, including a modification application for certain reasons, including if it has not been made in the prescribed form (if a form is prescribed)
	Cl 52 allows a DA to be withdrawn. This does not apply to modification applications	Withdrawal provisions provided to DAs also apply to all modification applications
	Amended or varied DAs under cl 55 must provide 'written particulars' indicating the nature of the changes	'Written particulars' for amended or varied DAs is clarified to including revision numbers, revised plan dates and specifics of the changes to the plan
Concurrence and referral procedures	Cls 59, 66 and 120 require the consent authority to refer DAs seeking concurrence or GTAs within 14 days	These clauses will not require this where the application is rejected within 14 days or if it is a modification under s 4.55(1) and (1A) of the Act
	Cl 110 provides two concessional days for the consent authority to register and check received applications or receive additional information	Two concessional days at cl 110 will not be provided. This reflects modern processes using email and instant uploads of reports
Stop the clock period	Provisions for calculating assessment periods and stop the clock rules are in Division 11 of the Regulation	Provisions for calculating assessment periods and stop the clock rules in Division 11 of the Regulation are restructured and made clearer
Requests for additional information — stop the clock	Consent authorities must notify applicants under cls 112 and 113 of effect of an extension to a deemed refusal period or when the clock has stopped	Notification requirements under cls 112 and 113 must also advise applicants of the number of days elapsed and when the clock will be turned back on
	Information requests under cls 54, 60 and 67 allow, but do not require authorities to specify a reasonable timeframe for an applicant to provide information	Information requests under cls 54, 60 and 67 will require the relevant authority to specify a reasonable timeframe for an applicant to provide information

Planning process	Existing 2000 Regulation	Proposed 2021 Regulation
Deemed refusal period	Provisions for when the deemed refusal period begins and days that are not counted in the deemed refusal period or the concurrence authority/ approval body's assessment period contain circular references and overlapping exemptions	Provisions for when the deemed refusal period begins and days that are not counted in the deemed refusal period or the concurrence authority/ approval body's assessment period are consolidated and made clearer
Development consent - modification	Cl 122 provides requirements for how notice is given for the determination of an application to modify a development consent	New requirements for how determination notices are given for modification applications. The Secretary may also prescribe requirements for the form of development consent (modification application).
	Landowner's consent is required for the surrender or modification of a development consent	A development consent can be surrendered or modified without landowner's consent where the original DA was made without land owner's consent
Notification requirements – post-determination	A notice of determination issued to an applicant and a notice issued to a person under s 4.18(1) of the Act contains information set out under cl. 100 of the Regulation	The requirements for information provided in a notice of determination distinguishes between that issued to an applicant or to a person under s 4.18(1) and may be sent electronically where an email contact is provided.
	Approval body notification under cl 105 must be 'sent'	Approval body notification under these provisions will include uploading to the Planning Portal, sending electronically, or by mail
Notification requirements – internal review applications	Clause 113A (2) requires internal review applications to be notified in same manner as the original DA. Third parties submitters do not receive notification of the consent authority's determination.	Notifications under these provisions must also notify third party submitters of the consent authority's determination

Appendix C - List of abbreviations

Table C1. List of abbreviations used within the RIS

Abbreviation	Full form
ARTC	Australian Rail Track Corporation
BCA	Building Code of Australia
CDC	complying development certificate
CLM Act	*Contaminated Land Management Act 1997*
CPI	consumer price index
CPP	community participation plan
DA	development application
DCP	development control plan
EIA	environmental impact assessment
EIS	environmental impact statement
EPI	environmental planning instrument
EPL	environment protection license
ESA	environmentally sensitive area
ESASS	environmentally sensitive area of State significance
EUR	existing use rights
IPC	Independent Planning Commission
LEP	local environmental plan
LG Act	*Local Government Act 1993*
LGA	local government area
LPP	Local Planning Panel
MDDG	Medium Density Design Guide
NCC	National Construction Code
POEO Act	*Protection of the Environment Operations Act 1997*
PV	photovoltaic

REF	review of environmental factors
RIS	Regulatory Impact Statement
RPP	Regional Planning Panels
SAS	site audit statement
SEPP	State Environmental Planning Policy
SICs	special infrastructure contributions
SSD	State significant development
SSI	State significant Infrastructure
SVC	site verification certificate
VPA	voluntary planning agreement