

Planning certificates

Summary of changes

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

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

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

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

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

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

What changes are proposed?

The draft Environmental Planning and Assessment Regulation 2021 (proposed 2021 Regulation) includes changes to:

- Streamline the matters that can be included in section 10.7(2) certificates. This involves:
 - Refining and reordering the list of matters in Schedule 4. The content of section 10.7(2) certificates 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 NSW Planning Portal).
- Updating clauses to provide greater clarity, address gaps, and remove information that is not useful to incoming purchasers or can be found elsewhere.

The specific amendments to Schedule 4 of the 2000 Regulation (which are reflected in the new Schedule 3 of the proposed 2021 Regulation) are summarised below.

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

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

The proposed 2021 Regulation will:

- Require councils to include draft DCPs on planning certificates.
- Provide that draft environmental planning instruments (EPIs) and draft DCPs that have not been made within three years from the date they were last on public exhibition do not need to be included on planning certificates. These draft EPIs and draft DCPs are not required to be taken into consideration when determining a development application, and therefore do not need to be included in planning certificates.
- See clause 1 of Schedule 3 under the proposed 2021 Regulation.

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

The proposed 2021 Regulation will:

- Require information about whether any additional permitted uses apply to the land under the relevant LEP.
- Consolidate this clause with clause 2A (below). This will ensure the one clause covers zoning and land use under both LEPs and State Environmental Planning Policies (SEPPs).

See clause 2 of Schedule 3 under the proposed 2021 Regulation.

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

The proposed 2021 Regulation will require councils to include information on all SEPPs that zone land or include the land within a designated area. A designated area means any area that is mapped by a SEPP but not including maps related to zoning. This will address an existing gap and ensure landowners, prospective purchasers, and interested parties obtain accurate information on zoning in a planning certificate.

See clause 2 of Schedule 3 under the proposed 2021 Regulation.

Clause 3 - Complying development

The proposed 2021 Regulation will:

- 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* (Codes SEPP) 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.
 - See clause 4 of Schedule 3 under the proposed 2021 Regulation.

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

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

See clause 10 of Schedule 3 under the proposed 2021 Regulation.

Clause 9 – Contributions plans

The proposed 2021 Regulation will 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.

See clause 3 of Schedule 3 under the proposed 2021 Regulation.

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

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

Reordering of clauses:

The proposed 2021 Regulation will reorder the matters in the current Schedule 4 (the new Schedule 3) 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

What are the benefits of these changes?

The proposed 2021 Regulation will provide improved convenience to landowners and prospective buyers. It will reduce the complexity of planning certificates and focus the matters contained in planning certificates to those relevant to land use and development controls relevant to conveyancing. It 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. As well as providing improved convenience by refining the list of matters to be included in a planning certificate, the proposed 2021 Regulation will also reduce the legal risks associated with issuing invalid or out-of-date certificates.

When will these changes commence?

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

How can I have my say?

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

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

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