

Legislative Council – Regulation Committee

Inquiry into environmental planning instruments (SEPPs) – Government Response

Recommendation	Government response
<p>Recommendation 1</p> <p>That the NSW Government consider amending the <i>Environmental Planning and Assessment Act 1979</i> (EP&A) to make clear that third-party review rights are not extinguished when a State environmental planning policy deems a development to be 'state significant'.</p>	<p>Support in principle</p> <p>This is already the case under the current law and legislative amendment will increase the complexity of the planning system.</p> <p>The EP&A Act provides third-party rights for merit-based appeals in relation to designated development applications. Whether or not development has been declared 'State significant' by a SEPP does not change the third-party appeal rights provided by the EP&A Act.</p> <p>The EP&A Act further provides that there is no right of merit appeal for either an applicant or an objector against a decision of the Independent Planning Commission (IPC) that is made after a public hearing by the Commission has been held into the carrying out of that development. Not all State significant development is decided by the IPC.</p> <p>The EP&A Act provides judicial review rights for all decisions under the Act (including on State significant development) to any person, including applicants, objectors, councils and third parties.</p>
<p>Recommendation 2</p> <p>That the NSW Government consider amending the Environmental Planning and Assessment Act 1979 to provide that the Minister must undertake consultation for all State environmental planning policies, with consultation to include the following elements:</p> <ul style="list-style-type: none"> • publication of a comprehensive, plain English explanation of intended effect • publication of the draft text of the State environmental planning policy • a minimum consultation period of 28 days from the publication of the draft State environmental planning policy text • explanation of how feedback gathered during the consultation process has been considered 	<p>Noted</p> <p>This is already delivered in practice and legislative amendments are not required.</p> <p>The existing SEPPs and deemed SEPPs have recently been consolidated into 11 SEPPs, arranged on a thematic basis. The restructuring and simplification of SEPPs provides a solid basis for future reviews and reforms to policy in the key areas of interest to the State. Details of how and when those SEPPs will be further reviewed by the Department will be communicated to stakeholders at the appropriate time.</p> <p>The EP&A Act already contains provisions requiring the Minister to take appropriate or necessary steps to exhibit an explanation of the intended effect of a proposed instrument and seek and consider submissions from the public. These may not be appropriate or necessary in some circumstances like minor</p>

<ul style="list-style-type: none"> • details of how and when the State environmental planning policy will be reviewed by the department. 	<p>amendments or to address urgent and emerging issues such as the COVID-19 pandemic or bushfire crisis responses.</p> <p>In practice, community consultation and public exhibition of proposed SEPPS ranges from 4 to 6 weeks. Processes and procedures followed for SEPP making are set out in the Department's Community Participation Plan.</p>
<p>Recommendation 3</p> <p>That the NSW Government consider amending the Environmental Planning and Assessment Act 1979 to provide that:</p> <ul style="list-style-type: none"> • the Minister may declare any State environmental planning policy to be an 'emergency State environmental planning policy' • an 'emergency State environmental planning policy' is exempt from consultation requirements but must be reviewed within 12 months 	<p>Noted</p> <p>The provisions of the EP&A Act already provide the Minister with the discretion to dispense with consultation requirements where the Minister considers it appropriate or necessary, which enables SEPPs to be made quickly when needed.</p> <p>SEPPs responding to emergency or emerging issues are generally time limited. Recent examples in <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> include:</p> <ul style="list-style-type: none"> • Changes in early 2020 to enable shipping containers to be installed and used for storage purposes, offices or industrial purposes following a bushfire on land in any zone for a maximum period of 2 years. • The first COVID-19 pandemic measures allowing the delivery of goods to retail premises outside normal permitted hours was initially limited to a 6-month period. After reviewing the measures, including consideration of the need for the provisions and their impacts, the provisions were extended for an additional 18 months in recognition of the prolonged effects of the pandemic. • Changes in October 2020 to allow relaxed requirements for outdoor dining areas in The Rocks initially for a 12-month period to assist with economic recovery and social distancing requirements. Following a review of the effectiveness and impacts of the provisions, the provisions have now been made permanent. <p>Further amendments to the EP&A Act are unnecessary given that the provisions of the EP&A Act already enable the Minister to make SEPPs rapidly in response to emergency situations and that in practice such SEPPs are subject to time limitations that enable further review and consideration.</p>

<p>Recommendation 4</p> <p>That the Department of Planning, Industry and Environment publish online the following information, as relevant, relating to all current and future State environmental planning policies:</p> <ul style="list-style-type: none"> • a link to the current and all previous versions of the State environmental planning policy text on the NSW Legislation website • any explanatory material detailing the rationale for the State environmental planning policy and its intended effect • details of any consultation undertaken and how this consultation was incorporated into the State environmental planning policy • information about upcoming and past departmental review. 	<p>Supported in principle</p> <p>These matters are already substantially delivered through existing processes:</p> <ul style="list-style-type: none"> • The in-force and historical versions of all SEPPs, as well as repealed SEPPs, are available on the NSW Legislation website. • Any explanatory material released in relation to proposed SEPPs are published on the NSW planning portal and the Department’s website. • Submissions received in response to exhibition of proposed SEPP are published on the DPIE website, or are set out in a submissions summary or report. • Information about upcoming and past reviews are published on the Department’s website.
<p>Recommendation 5</p> <p>That the NSW Government consider amending the <i>Environmental Planning and Assessment Act 1979</i> to provide that all future State environmental planning policies are subject to a sunset period of five years</p>	<p>Noted</p> <p>An arbitrary expiry period for SEPPs will prevent the Government from responding to policy reform initiatives in a timely manner. Amending or remaking every SEPP every five years would significantly impact on the Department’s ability to progress the reform agenda of the Government.</p> <p>The lapsing of SEPPs after 5 years of would also undermine ongoing efforts to ensure a more certain planning system to support investment in the State. The investment pipeline, from land acquisition to financing, design, approval and completion often takes more than 5 years to achieve.</p> <p>In some cases there is a clear need for fixed policy over time. For example, provisions prohibiting canal estate developments throughout NSW were made in 1997 and have had only two minor amendments in that time. In other cases, reviews are ongoing and respond to emerging issues or to adjust the policy settings where required to ensure the SEPP remains current and relevant. This is contrasted with <i>State Environmental Planning Policy (Infrastructure) 2007</i> which has been the subject of several comprehensive reviews and has been amended 61 times since commencement.</p>

<p>Recommendation 6</p> <p>That the NSW Government consider amending the <i>Environmental Planning and Assessment Act 1979</i> to provide that the Minister must table a report in both Houses of Parliament on the first sitting day after the summer and winter recesses each year, indicating:</p> <ul style="list-style-type: none"> • all State environmental planning policies made since the previous report was tabled (or in the case of the first report, the preceding 6 months), and for each instrument providing a summary of the rationale for and intended impact of the instrument, what consultation was undertaken, and how feedback gathered during the consultation process was considered • any State environmental planning policies that are due to lapse in the next 12 months, and whether there is an intention to remake those instruments or allow them to lapse on expiry of the sunset period. 	<p>Support in principle</p> <p>Information regarding the making of SEPPs is already published on the Department's website and the NSW Legislation website.</p> <p>The Department's annual report sets out changes to the planning legislation (including Act, regulation and planning instrument changes) made during the financial reporting year.</p>
<p>Recommendation 7</p> <p>That the NSW Government consider amending the Environmental Planning and Assessment Act 1979 to provide that, 12 months prior to the expiry of the relevant sunset period, the Minister is to refer any State environmental planning policy that is intended to be remade to the Legislative Council Regulation Committee for inquiry and report.</p>	<p>Noted</p> <p>The making of SEPPs and rezoning of land is already subject to a lengthy process which at times is criticised for being too slow. Referring planning instruments to a parliamentary committee will only create greater inefficiencies in the planning system.</p> <p>An additional review process for planning instruments would also create significant market uncertainty. Landowners would be reluctant to apply for or act on development consents in case a planning instrument changes following the review. This discourages industry investment, creates delays in development assessment times, undermines confidence in the planning system and reduces productivity.</p>