

Answers to Questions on Notice – Mr Marcus Ray Group Deputy Secretary, Planning and Assessment, Department
Environmental planning instruments (SEPPs) – Hearing – 7 June 2021

1. Are there any proactive steps taken when a SEPP is proposed or made to notify affected landholders?

- Because most SEPPs apply State-wide or across large parts of the State, notification of affected landholders does not typically occur on an individual basis because of the difficulties and costs associated with identifying such a large number of landholders.
- Instead, the approach is to notify them globally through the consultation process provided for in section 3.30 of Part 3 to the *Environmental Planning and Assessment Act 1979*, and in the Community Participation Plans, which are also required under the *Environmental Planning and Assessment Act 1979*.
- While the obligation to consult is discretionary, most SEPPs are subject to some form of community consultation prior to being made to give landowners and the community an opportunity to express their views on the proposed controls, including through their local member.
- There is no one size fits all approach to consultation and for each proposed SEPP an approach is generally tailored for the proposal and then undertaken.
- In some cases, in addition to the exhibition of an Explanation of Intended Effect, the Department may hold public information

sessions, targeted stakeholder sessions, information workshops and online seminars in respect of a proposal.

- While an Explanation of Intended Effect is the principal consultation document under the Act (setting out in plain English the intended policy changes), it is often the case that a draft instrument will also be placed on exhibition or shared with key stakeholders, on a targeted basis to ensure there are no unintended consequences from the drafting process.
- Generally, the more complex a proposal is, the more extensive the consultation will be.
- The only time consultation generally will not happen is where the amendments have to be made on an urgent basis or the proposed amendments are administrative or machinery in nature and will have no substantial impact on the current controls.
- Once a SEPP is made and published on the NSW Legislation website, landowners or persons who wish to deal with the subject land (i.e. develop or sell it) can find out whether a SEPP applies by obtaining a planning certificate from their local council.
- There is a similar process for consultation on planning proposals for changes to Local Environmental Plans.
- If public consultation is required, this must be specified in the Gateway determination.
- However, councils may elect to do further consultation beyond the requirements specified in the determination.

2. Suspension of laws provisions of planning instruments

- Section 3.16 of the *Environmental Planning and Assessment Act 1979* allows a planning instrument (including a SEPP) to disapply or modify a 'regulatory instrument' (which includes another Act), but only to the extent necessary 'for the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent'.
- It is important to note that this power has historically only been very infrequently used to switch off Acts and regulatory instruments other than historical property covenants, and has appropriate consultation safeguards built into it.
- These are that the concurrence of the Minister whose legislation or instrument is affected is required and that the Governor has to specifically approve of such provisions before they can be made.
- Generally, if a proposal has an impact on another portfolio, including if it is disapplying or modifying an instrument administered by another portfolio, the Department's normal consultation process would include consultation with the relevant agency.
- Those agencies would be consulted with as part of that process.