



# Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020

Policy Paper

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# Executive Summary

The Environmental Planning and Assessment Act 1979 (EP&A Act) and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) set out the statutory requirements for the assessment and determination of State significant development (SSD) and State significant infrastructure (SSI) in NSW. The legislation is supported by policies, systems and practices, collectively referred to as the 'major projects assessment system'.

The major projects assessment system provides a comprehensive, robust and coordinated framework for assessing the State's most important development and infrastructure projects.

Reforms to the system are currently being proposed to ensure that projects of State significance are supported by a strong, fair and quick assessment system. The proposed reforms include changes to regulation, policy, systems and practices to contribute toward better assessment, better coordination and better engagement on SSD and SSI projects.

A key component of the reforms will be amendments to the EP&A Regulation to improve the administration and assessment of SSD and SSI applications, including:

- standardising and strengthening online applications and reports
- changes to the setting of and expiry of environmental assessment requirements
- introducing guidelines for preparing assessment reports
- minor revisions to content requirements for environmental impact statements
- recognising accredited professional schemes for environmental assessment practitioners and requiring certification of environmental assessment reports by registered practitioners.

These proposed regulatory changes are intended to:

- increase the efficiency and transparency of SSD and SSI processes
- ensure SSD and SSI documents are prepared to a consistently high standard
- introduce formal quality assurance measures for environmental assessment reports.

This paper provides information on the proposed changes to the EP&A Regulation and outlines the intended effect of those changes.

# 1. Introduction

State significant development (SSD) and State significant infrastructure (SSI) represent some of the highest priority development in NSW. These projects include major employment generating development, essential infrastructure and other projects that provide significant contributions to the economy. However, they can also be characterised by complex or contentious planning issues and may potentially cause significant environmental impacts.

The major projects assessment system provides a comprehensive, integrated and coordinated framework for assessing SSD and SSI projects, in order to support informed and appropriate decision-making. The system has been operating for more than 25 years, with a number of significant enhancements over that time.

The major projects assessment system is centrally administered by the Department of Planning, Industry and Environment (the Department).

The Department plays a major role in ensuring that the major projects assessment system is effective, including ensuring:

- environmental assessments are comprehensive and of the highest quality;
- administrative processes are well-coordinated and efficient; and
- engagement on major projects is consistent with the Department's community participation principles (open and inclusive, easy, relevant, timely and meaningful).

The Department is currently reviewing the major projects assessment system to identify where a further round of improvements may be made.

A number of areas for reform have been identified including strategies and actions that may contribute to better assessment, coordination and engagement on SSD and SSI projects. These include changes to regulations, policies, systems and practices.

For details on the full major projects reform program visit [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

## 1.1 Purpose of this document

This document provides information on proposed amendments to the EP&A Regulation as part of the major projects reform program.

The document should be read in conjunction with the public consultation draft of the proposed *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020* which can be viewed at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

## 2. Planning context

The Department is currently implementing a Planning Reform Action Plan (PRAP) to support productivity, investment and jobs. This is in response to the immediate COVID-19 economic crisis, as well as measures announced by the Premier in November 2019 to improve the transparency, certainty and timeliness of the NSW planning system.

The PRAP implements findings from past reviews of the planning system, such as the NSW Productivity Commission Discussion Paper and Green Paper, and the 2019 Kaldas *Review of Governance in the Planning System*.

The actions in the PRAP also respond to broader public feedback on the planning system, including consistent calls for greater transparency, reduced complexity, better government coordination and improved customer service.

The PRAP includes reforms to the major projects assessment system with a view to improving assessment, coordination and engagement on SSD and SSI projects.

Referred to as the 'Rapid Assessment Framework', the proposed reforms are designed to ensure that projects of State significance are supported by a strong, fair and quick assessment system. The Rapid Assessment Framework will contribute toward better assessment, better coordination and better engagement for major projects.

The reforms include a set of exhibition documents:

- A draft *SSD Guide* and draft *SSI Guide* and associated appendices for requesting SEARs and producing EIS and other reports
- A draft *Undertaking Engagement Guide* for conducting community engagement for State significant projects
- A draft *Registered Environmental Assessment Practitioner (REAP) Guide* setting out to arrangements for the proposed introduction of the 'REAP Scheme'
- A draft *Cumulative Impact Assessment Guide* to set clear expectations for assessing the cumulative impacts of all State significant projects and promoting ecologically sustainable development in NSW
- Draft *industry-specific SEARs* for health infrastructure, key sites and distribution centres
- A public consultation draft amendment to the *EP&A Regulation* to give effect to the reforms.

To access the major projects reform documents visit [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

This paper explains the proposed regulatory changes outlined in the public consultation draft amendment to the EP&A Regulation to support the major projects reforms.

### 2.1 Major projects legislation

SSD and SSI projects are assessed and determined under the provisions of the EP&A Act and the EP&A Regulation.

These instruments provide the main legal framework for the major projects assessment system.

Division 4.7 and Division 5.2 of the EP&A Act include special provisions for SSD and SSI respectively, including:

- declaring development to be SSD or SSI
- provisions for staged SSD and SSI applications

- legislation that does not apply or must be consistently applied to SSD and SSI projects
- regulation-making powers.

For SSD, these provisions are in addition to Part 4 requirements applying to standard development applications (DAs).

For SSI, Division 5.2 of the EP&A Act also includes requirements for assessing and approving SSI applications and modifications, and provisions related to the validity of actions and appeals.

The EP&A Regulation provides further requirements for SSD and SSI including:

- Part 6 – Procedures relating to development applications
- Part 10 – State significant infrastructure
- Part 15 – Fees and charges
- Schedule 1 – Forms
- Schedule 2 – Environmental Impact Statements.

## 2.2 Proposed regulation changes

There are no changes proposed to the EP&A Act as part of these reforms. The current EP&A Act provisions are considered to provide a solid base for the regulation of major projects.

A number of possible amendments to the EP&A Regulation have been identified to improve the administration and assessment of SSD and SSI proposals. The proposed regulatory changes include:

- standardising and strengthening online applications and reports
- changes to the setting of and expiry of environmental assessment requirements
- introducing guidelines for preparing assessment reports
- minor revisions to content requirements for environmental impact statements
- recognising accredited professional schemes for environmental assessment practitioners and requiring certification of environmental assessment reports by registered practitioners.

These proposed regulatory changes are intended to:

- increase the efficiency and transparency of SSD and SSI administration and assessment;
- ensure SSD and SSI applications and reports are prepared to a consistently high standard; and
- introduce formal quality assurance measures for environmental assessment reports.

The proposed changes and their intended effects are outlined further below and at **Appendix A**.

The regulatory changes will be supported by a comprehensive set of guidelines covering environmental assessment, community engagement and quality assurance processes for major projects.

For details on the full major projects reform program visit [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

## 3. Purpose of amendments

The proposed regulatory changes relate to the following parts of the EP&A Regulation:

- Part 6 – Procedures relating to development applications
- Part 10 – State significant infrastructure
- Schedule 1 – Forms
- Schedule 2 – Environmental Impact Statements.

It is not proposed at this stage to amend other major projects provisions in the EP&A Regulation (e.g. fees and charges under Part 15).

**Appendix A** provides an explanation of the intended effect of each proposed change to the EP&A Regulation.

A draft legal instrument outlining the proposed wording of the changes has been prepared for exhibition purposes (Visit [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform)).

### 3.1 Efficient lodgement of applications

Changes are proposed to provisions in **Part 6** and **Part 10** of the EP&A Regulation to make it easier to lodge and check applications for major projects. These include:

- requiring SSD and SSI applications and modification applications to be lodged on the NSW Planning Portal in the form approved by the Planning Secretary and made publicly available on the portal
- transferring and consolidating DA requirements (from **Schedule 1** of the EP&A Regulation) into a single SSD application form on the NSW Planning Portal
- standardising and strengthening the requirements for all environmental assessment reports submitted to the Department for SSD and SSI projects, including environmental impact statements (EISs), via approved guidelines
- providing expanded powers for the Planning Secretary to reject SSD applications and SSD modification applications if they are considered to be incomplete.

Standardised application procedures and requirements will improve process efficiency and the quality of documentation provided to the Department.

The strengthened rejection powers for SSD applications and modification applications will also offer additional quality control on information provided to the Department. This will enable the Department to reject applications that are not considered complete for various reasons, in addition to ensuring that applications are legible, clear and contain all required information.

See items [1] – [19] at **Appendix A** for further details, including an explanation of the intended effect of each proposed regulation amendment.

### 3.2 Changes to SEARs

The Planning Secretary issues environmental assessment requirements (SEARs) for use in the preparation of EISs for SSD, SSI, designated development and activities under Part 5 of the EP&A Act that require an EIS. SEARs identify the information that must be provided in an EIS, as well as the community engagement that must be carried out.

A number of changes are proposed to improve the efficiency of how SEARs are developed and to ensure that SEARs are fit-for-purpose. This includes tailoring SEARs to specific industry types,



developing project-specific SEARs following detailed scoping, and placing a time-limit on SEARs to ensure EIS requirements are relevant and up-to-date.

These proposed changes to SEARs are outlined below.

Note. The proposed changes to SEARs outlined in this section only apply to SSD and SSI proposals (where indicated). It is not proposed to change SEARs processes for designated development or Part 5 activities requiring an EIS.

## Tailoring industry-specific SEARs

The Department will streamline the way SEARs are prepared for certain types of SSD projects that typically have lower impacts and are consistent with the existing land use planning framework. Examples of these types of projects include hospitals, schools, warehousing and distribution centres and other urban development.

These SSD proposals will be issued with ready-made industry-specific SEARs to streamline upfront administrative processes, while still being subject to a comprehensive assessment in accordance with government plans, policies and guidelines.

Instead of preparing SEARs on a project-by-project basis, industry-specific SEARs will be developed by the Department upfront in consultation with relevant public authorities and tailored to each category of development.

Issuing industry-specific SEARs for SSD applications will:

- improve the clarity, consistency and certainty of assessment requirements for each type of development
- focus time and effort on key assessment matters common to that type of development
- utilise public authority involvement more effectively by consulting on SEARs in advance, rather than on an individual project-by-project basis
- ensure applicants engage with councils, key agencies and the local community when preparing their EIS
- allow the Department and other public authorities to focus on preparing SEARs for projects with greater environmental risks, or that seek to depart from existing planning controls, such as concept proposals or prohibited development.

To enable the use of industry-specific SEARs, amendments are proposed to **Schedule 2** of the EP&A Regulation to limit the mandatory requirement to consult with relevant public authorities when preparing SEARs to only SSD projects that:

- would be designated development but for section 4.10(2) of the Act, or
- are partly prohibited by an environmental planning instrument, or
- are wholly prohibited by an environmental planning instrument, to the extent permitted by section 4.38(5) of the Act, or
- are a concept development application for State significant development.

See item [21] at **Appendix A** for further details.

More information on industry-specific SEARs, including draft examples for key industry sectors, can be found at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

## Scoping and project-specific SEARs

Regulation changes are proposed to improve the preliminary assessment of SSI proposals to better inform subsequent environmental assessment stages.

When an SSI application is lodged, the proponent will need to include a **Scoping Report** to assist the Department in preparing SEARs. A Scoping Report will include information about the project and its potential environmental impacts to allow the Department to set **project-specific SEARs** in consultation with public authorities.

The Scoping Report will also identify the relevant approvals required, any consultation undertaken to date, and plans for consultation during subsequent stages. The Scoping Report should also identify issues of concern to the community and how these will be addressed in the EIS and future consultation activities.

The Department will publish the Scoping Report online and seek advice from relevant public authorities about what should be included in the SEARs.

In preparing project-specific SEARs, the Department will have regard to the Scoping Report, advice from public authorities and any relevant publications.

In order to give these changes statutory effect, amendments are proposed to **Part 10** of the EP&A Regulation. The amendments will:

- require SSI proponents to submit a Scoping Report identifying the matters that may require detailed assessment in the EIS
- require proponents to prepare the Scoping Report having regard to *State Significant Infrastructure Guidelines*, including consideration of the level of assessment required
- make the Scoping Report a consideration for the Planning Secretary when preparing SEARs for SSI projects.

See items [15] and [17] at **Appendix A** for further details.

Similar provisions for preparing Scoping Reports and setting project-specific SEARs will also apply to SSD projects (other than projects that receive industry-specific SEARs). The SSD scoping provisions will be given effect through the *State Significant Development Guidelines* (see further below).

## Expiry of SEARs

It is also proposed to introduce an automatic expiry on SEARs for SSD and SSI projects two (2) years after they have been issued. This measure is intended to:

- ensure that EISs for SSD and SSI are based on relevant and up-to-date environmental considerations
- provide a mechanism to encourage the progress of proposals to the assessment stage in a timely manner
- remove long-standing proposals that have been lingering in the system for several years, and to assist in reducing the uncertainty felt by local communities around the future uses of land within an area.

The SEARs expiry provisions would be put into effect through amendments to **Part 10** (for SSI) and **Schedule 2** (for SSD) of the EP&A Regulation. The proposed changes will:

- limit SEARs to a two-year period - If the EIS for an SSD or SSI project is not submitted to the Department within two (2) years of the SEARs being issued, the SEARs will expire and a new application for SEARs will be required

- allow the Planning Secretary to extend the expiry date of SEARs by three (3) months if the SSD applicant or SSI proponent makes a written request for extension before the SEARs expire.

The option for a three-month extension on SEARs will provide a short grace period for projects that are very close to having an EIS submitted but have just missed the deadline.

See items [18], [22] and [23] at **Appendix A** for further details.

The new expiry provisions will only apply to SEARs for SSD and SSI. EISs for designated development and Part 5 activities will continue to operate under the current provisions. Those current provisions allow applicants to further consult with the Planning Secretary on their EIS requirements after the two-year period has passed, without the SEARs automatically expiring.

### 3.3 EIA Guidelines

The major projects reforms include the development of a comprehensive set of environmental impact assessment (EIA) guidelines to assist in improving the quality of environmental assessments and documentation provided to the Department.

The guidelines will:

- assist applicants, the community, local councils and other public authorities in understanding the steps involved in SSD and SSI assessment
- encourage greater community participation in the assessment of major projects
- set clear expectations for applicants, including information that must be provided with each application, and ensure all environmental assessment reports submitted to the Department are succinct, easy to understand, technically robust, reflect community views and provide a comprehensive evaluation of the project as a whole
- identifying the matters the consent authority/approval authority must consider in determining SSD and SSI applications.

It is proposed that these guidelines – referred to as the **SSD Guidelines** and the **SSI Guidelines** - be given statutory effect via amendments to **Part 6**, **Part 10** and **Schedule 2** of the EP&A Regulation.

The EP&A Regulation will require SSD applicants and SSI proponents to have regard to these guidelines when making applications, requesting SEARs, preparing EISs, responding to submissions, amending applications, and seeking to modify SSD consents and SSI approvals.

The guidelines will set out EIA document requirements and standards, including:

- General requirements such as form, structure, length, presentation, technical specifications, document access and navigation requirements
- Documents contents such as project description, strategic and statutory context, engagement, impact assessment and evaluation
- Additional requirements relevant to the document type, for instance required attachments and example templates.

See items [1], [8], [9], [12], [20] and [25] at **Appendix A** for guideline provisions related to SSD, and items [16] - [19] for guideline provisions for SSI.

More information (including **draft SSD Guidelines** and **draft SSI Guidelines**) can be found at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

## 3.4 EIS contents

The proposed amendments to the EP&A Regulation also include minor revisions to content requirements for EISs in **Schedule 2** (clause 7).

### Analysis of feasible alternatives

It is proposed that the existing EIS requirement to provide an '*analysis of any feasible alternatives to the carrying out of the development*' be clarified to indicate that the reference to "feasible alternatives" can include alternative ways (manners/methods) of undertaking the development other than the manner in which it has been proposed.

For instance, the EIS could provide an analysis of possible alternative development layouts or alternative methods for managing impacts, in addition to the proposed manner in which those aspects of the project would be otherwise undertaken.

### Comprehensive evaluation

It is also proposed to remove the EIS requirement to provide '*reasons justifying the carrying out of the development*' and replace it with a requirement to provide an '*evaluation of the development*'.

The wording change is intended to shift the focus away from an applicant's justification of a project (a position that would advocate for the approval of a project) toward a more objective weighing up of the positive and negative impacts of the development.

This approach will require an EIS to contain a summary of the matters (including issues and impacts) covered in the statement and include a comprehensive and holistic evaluation of the project, having regard to the principles of ecologically sustainable development.

See items [26] and [27] at **Appendix A** for further details on EIS content changes.

## 3.5 Registered Practitioners

It is proposed to establish a scheme for registered environmental assessment practitioners to provide environmental assessment quality assurance for major projects.

The 'REAP scheme' will provide statutory recognition of specialists in the field of environmental impact assessment that are suitably skilled, qualified and experienced professionals and who are able to review and certify key assessment documents.

The certification of EISs by registered practitioners will assist in improving the quality of EIS documents, ensuring they are accurate, easy to understand, promote informed public debate on the merits of proposals, and support informed and appropriate decision-making.

The establishment of the REAP scheme will address (in part) recommendations from the 2019 Kaldas *Review of Governance in the Planning System*, particularly in relation to the accreditation of planning specialists.

The REAP scheme will be given effect through amendments to **Schedule 2** (clause 6) of the EP&A Regulation. EISs for SSD and SSI will be required to contain a certificate that is prepared by a registered practitioner, having regard to the *Registered Environmental Assessment Practitioner Guidelines* (REAP Guidelines).

The REAP Guidelines will set out the EIS certification requirements, including confirmation from the registered practitioner that the EIS:

- complies with all relevant statutory requirements, SEARs and EIS guidelines
- contains all available information relevant to the environmental assessment of the project

- does not contain false or misleading information
- contains an accurate summary of the findings of any detailed community engagement and the technical studies of the impacts of the project
- provides a simple and easy to understand evaluation of the impacts of the project.

A draft version of the **REAP Guidelines** is on exhibition at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

Environmental assessment practitioners will be recognised as registered practitioners if they are current members of certain professional schemes to be listed in **Schedule 2** of the EP&A Regulation.

No professional schemes have been identified for inclusion in the EP&A Regulation as yet. Professional schemes will be added to the EP&A Regulation following an administrative accreditation process.

Relevant organisations may apply to have their membership schemes recognised as a REAP scheme. Applications will be assessed and evaluated by a Panel (comprising government, environmental industry and community representatives), before being accredited by the Planning Secretary and listed in Schedule 2 as a recognised REAP scheme.

Professional schemes will need to meet criteria set out in the REAP Guidelines in order to be accredited, including:

- strict membership requirements related to environmental assessment qualifications, experience and competencies, and robust evaluation of applications before members are admitted to a scheme
- a strong governance framework including a governing body, established ethical or professional codes of conduct, and clear operational policies and procedures (including procedures for handling complaints and taking disciplinary action against members if necessary)
- requiring members to undertake continuing professional development.

See items [24] and [25] at **Appendix A** for further details on the proposed amendments to the EP&A Regulation to support the REAP scheme.

## 4. Have your say

The Department welcomes your feedback regarding the proposals outlined in this paper. Your feedback will help us better understand the views of the community and will assist us in finalising the proposals outlined in this paper.

Submissions can be made via the Department's website:

[www.planningportal.nsw.gov.au/major-projects-reform](http://www.planningportal.nsw.gov.au/major-projects-reform)

You may also lodge your submission via post by sending it to:

Executive Director

State Policies and Strategic Advice

Department of Planning, Industry and Environment

GPO Box 39, SYDNEY, NSW 2001.

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.

To find out more, please visit [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

# Appendix A – Explanation of intended effect of proposed EP&A Regulation

The following table provides an explanation of the intended effect of each proposed amendment to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

The item reference numbers below relate to proposed regulation amendments in the document *public consultation draft Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020*. The document can be viewed at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
<b>Part 1 (Preliminary) of the EP&amp;A Regulation</b>			
[1]	cl 3	<p>The Regulations will refer to <i>State Significant Development Guidelines</i> and <i>State Significant Infrastructure Guidelines</i>.</p> <p>These guidelines will introduce clear standards for major projects applications and reports and will assist in improving the quality of environmental assessment and reporting for major projects.</p>	<p>Draft SSD Guidelines and SSI Guidelines can be viewed at <a href="http://www.planning.nsw.gov.au/major-projects-reform">www.planning.nsw.gov.au/major-projects-reform</a>.</p> <p>The Guidelines will (among other things) help to ensure that environmental impact statements (EISs) are succinct, easy to understand, technically robust, reflect community views and provide a comprehensive evaluation of a project.</p>
<b>Part 6 (Procedures relating to development applications)</b>			
[2] and [3]	cl 50	<p>Requirements for lodging SSD applications will be separated from other development application (DAs) requirements.</p> <p>SSD applications will be made using an online form available on the NSW planning portal, with all relevant SSD information and accompanying documents to be required as part of the automated system.</p> <p>Standardising application procedures and requirements will improve efficiency and quality of documentation.</p>	<p>DA information requirements listed in Part 1 of Schedule 1 will continue to apply to other DAs.</p> <p>Relevant requirements in Schedule 1 will be transferred and consolidated into a single online form for SSD.</p>
[4] and [5]	cl 51	<p>The consent authority will be able to reject an application for SSD if it is considered incomplete.</p> <p>This will strengthen existing powers to reject SSD applications and offer additional quality control on information provided to the Department for SSD projects.</p>	<p>Planning Secretary will need to specify in writing to the applicant why the application is considered incomplete.</p>



Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[6], [7] and [8]	cll 55, 55A, 55B	<p>An SSD applicant who wishes to amend or vary an SSD application must apply to do so using the approved form on the NSW planning portal, and the application must be prepared having regard to the SSD Guidelines.</p> <p>Standardising application procedures and requirements will improve efficiency and quality of documentation.</p>	<p>See item [1] above in relation to SSD Guidelines.</p> <p>The Guidelines include requirements for amending applications.</p>
[9]	cl 82	<p>SSD applicants may be required to respond to any issues raised in submissions that the Planning Secretary considers necessary, and the applicant's written response is to be prepared having regard to the SSD Guidelines.</p> <p>This will provide consistency and improve the quality of applicants' responses to issues raised in submissions.</p>	<p>See item [1] above in relation to SSD Guidelines.</p> <p>The Guidelines include requirements for responding to submissions.</p>
[10], [11] [12] and [13]	cll 115, 115A new cl 115AA	<p>An application to modify a development consent for SSD must be made using the approved form on the NSW planning portal, and the modification application must be prepared having regard to the SSD Guidelines.</p> <p>Standardising application procedures and requirements will improve efficiency and quality of documentation.</p>	<p>See item [1] above in relation to SSD Guidelines.</p> <p>The Guidelines include requirements for modifying development consents for SSD.</p> <p>Changes at item [13] are consequential only (due to change in clause numbering elsewhere).</p>
[14]	new cl 119B	<p>An application to modify a development consent for SSD may be rejected if it is not in the approved form on the NSW planning portal, or it is considered incomplete.</p> <p>The new rejection power for SSD modification applications will offer additional quality control on information provided to the Department for SSD projects.</p>	<p>Planning Secretary will need to specify in writing to the applicant why the modification application is considered incomplete.</p>

Part 10 (State Significant Infrastructure)



Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[15] and [17]	cl 192	<p>SSI applications will need to be lodged using an approved form available on the NSW planning portal, with all relevant SSI information and accompanying documents to be required as part of the automated system.</p> <p>A 'scoping report' will need to be included with the SSI application. The scoping report is intended to identify the matters that may require detailed assessment in the environmental impact statement (EIS).</p>	<p>See item [1] above in relation to SSI Guidelines.</p> <p>The Guidelines include requirements and advice on undertaking scoping for an SSI project, and preparing a scoping report.</p> <p>Scoping report is used by the Department to assist in informing the setting of the environmental assessment requirements (<b>SEARs</b>).</p>
[16]	cl 192	<p>An SSI proponent who wishes to amend or vary an SSI application must apply to do so by using the approved form on the NSW planning portal, and the application must be prepared having regard to the SSI Guidelines.</p> <p>Standardising application procedures and requirements will improve efficiency and quality of documentation.</p>	<p>See item [1] above in relation to SSI Guidelines.</p> <p>The Guidelines include requirements for amending SSI applications.</p>
[18]	cl 194  Part 4 of Sched 2	<p>The scoping report will become a consideration for the Planning Secretary when preparing SEARs.</p> <p>The proponent will be required to comply with the SEARs, EIS requirements in Part 3 of Schedule 2, and have regard to the SSI Guidelines when preparing an EIS.</p>	<p>See item [1] above in relation to SSI Guidelines. The Guidelines include advice on preparing EISs.</p> <p>Special provisions on environmental assessment requirements for SSI currently sit in Part 4 of Schedule 2.</p> <p>These will be transferred to Part 10 and amended as set out in item [17]. This will ensure that SSI requirements are centrally located in the Regulation.</p>

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[18]	new clause 194	<p>If the EIS for an SSI project is not submitted to the Department within two (2) years of the proponent having received SEARs, the SEARs will expire and the proponent will need to re-apply to the Planning Secretary for new SEARs.</p> <p>This will ensure that EISs are based on relevant and up-to-date environmental considerations.</p> <p>It will also mean long-standing proposals that have been lingering for several years without progressing, can effectively be removed from the system. This may assist in reducing uncertainty around the future uses of land within an area, as proponents will need to progress their proposals to assessment stage in a timely manner.</p> <p>If however the proponent makes a written request for an extension to the SEARs before that two-year period is up, the Planning Secretary may extend the expiry date of the SEARs by three (3) months.</p> <p>This will provide a short grace period for projects that are very close to having an EIS submitted but have just missed the deadline.</p>	<p>The new expiry provisions will only apply to SEARs for SSD and SSI (see also item [22] below).</p>
[19]	new clause 196A	<p>An application to modify an approval for SSI must be made using the approved form on the NSW planning portal, and the modification application must be prepared having regard to the SSI Guidelines.</p> <p>Standardising application procedures and requirements will improve efficiency and quality of documentation.</p>	<p>See item [1] above in relation to SSI Guidelines.</p> <p>The Guidelines include requirements for modifying SSI approvals.</p>

Schedule 2 (Environmental Impact Statements)

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[20]	Sched 2 cl 3(2)	<p>For SSD, applications for SEARs will need to be prepared having regard to the SSD Guidelines.</p> <p>This will be in addition to current requirements around applying for SEARs in the form approved by the Planning Secretary, and including particulars of the location, nature and scale of the development or activity.</p>	<p>See item [1] above in relation to SSD Guidelines.</p> <p>The Guidelines include requirements and advice on undertaking scoping for an SSD project and preparing a scoping report.</p> <p>Scoping report is used by the Department to assist in informing the setting of <b>project-specific SEARs</b>.</p> <p>See also item [21] below in relation to <b>industry-specific SEARs</b>.</p>
[21]	Sched 2 cl 3(4)	<p>The current requirement for the Planning Secretary to consult with relevant public authorities on SSD SEARs will be amended to only apply to SSD applications that:</p> <ul style="list-style-type: none"> <li>• would be <b>designated development</b> but for section 4.10(2) of the Act, or</li> <li>• are <b>partly prohibited</b> by an environmental planning instrument, or</li> <li>• are <b>wholly prohibited</b> by an environmental planning instrument, to the extent permitted by section 4.38(5) of the Act, or</li> <li>• are <b>concept development applications</b> for State significant development.</li> </ul> <p>These complex, and often contentious proposals, will continue to require consultation with public authorities on <b>project-specific SEARs</b> on an individual case-by-case basis.</p> <p>Other types of SSD applications will be issued with <b>industry-specific SEARs</b>. Industry-specific SEARs will be developed upfront in consultation with the relevant public authorities and will be tailored to suit the industry sector to which the SSD application relates.</p>	<p>All other existing assessment requirements will continue to apply to these applications, including consultation with relevant councils, agencies, and other stakeholders on the preparation of an EIS, as well as EIS form, content and exhibition requirements.</p> <p>In addition, EISs for all SSD applications will need to be reviewed and certified by registered environmental assessment practitioners for quality assurance purposes (see item [24] below).</p>

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[22] and [23]	Sched 2 cl 3(7)	<p>If the EIS for an SSD project is not submitted to the Department within two (2) years of the applicant having received SEARs, the SEARs will expire and the applicant will need to re-apply to the Planning Secretary for new SEARs.</p> <p>This will ensure that EISs are based on relevant and up-to-date environmental considerations.</p> <p>However, if the applicant makes a written request for an extension to the SEARs before that two-year period is up, the Planning Secretary may extend the expiry date of the SEARs by three (3) months.</p> <p>This will provide a short grace period for projects that are very close to having an EIS submitted but have just missed the deadline.</p>	<p>The new expiry provisions will only apply to SEARs for SSD and SSI (see also item [17] above).</p> <p>EISs for designated development and Part 5 activities will continue to operate under the current provisions. Those current provisions allow for applicants to further consult with the Planning Secretary on their EIS requirements after the two-year period has passed, without the SEARs automatically expiring.</p>
[24]	Sched 2 cl 6	<p>It is proposed to establish a <b>Registered Environmental Assessment Practitioners (REAP) Scheme</b> to provide environmental assessment quality assurance for major projects.</p> <p>The Scheme will recognise certain registered practitioners who are able to review and certify key assessment documents.</p> <p>Of note, EISs for SSD and SSI will need to contain a <b>certificate</b> that is prepared by a registered practitioner having regard to <i>Registered Environmental Assessment Practitioner Guidelines</i> (REAP Guidelines)</p>	<p>Draft version of the <i>Registered Environmental Assessment Practitioner Guidelines</i> (REAP Guidelines) can be viewed at <a href="http://www.planning.nsw.gov.au/major-projects-reform">www.planning.nsw.gov.au/major-projects-reform</a>.</p>
[25]	Sched 2 cl 6	<p>Registered practitioners (or REAPs) will be defined as members of certain professional schemes ('REAP Schemes') that are named in the Regulations.</p> <p>Those schemes will include members who are suitably skilled, qualified and experienced practitioners in the field of environmental impact assessment.</p>	<p>Draft Regulation does not list any REAP Schemes as yet.</p> <p>Schemes will be added to the Regulations following accreditation.</p> <p>The REAP Guidelines will outline how professional schemes will be accredited before they are listed in the Regulations.</p>

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[25]	Sched 2 cl 6	The person preparing an environmental impact statement for State significant development must have regard to the <i>State Significant Development Guidelines</i> .	See item [1] above in relation to SSD Guidelines. The Guidelines include advice on preparing EISs.  This will help to ensure that EISs are succinct, easy to understand, technically robust, reflect community views and provide a comprehensive evaluation of a project.
[26]	Sched 2 cl 7(1)(c)	EISs (for all development, infrastructure and activities requiring an EIS) must include:  <i>an analysis of any feasible alternatives to the proposed manner of carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure.</i>  The additional words ‘to the proposed manner’ have been added to the current provision to indicate that ‘feasible alternatives’ can include different methods or ways of achieving the objectives of the development. For instance, it is acceptable for the EIS to examine ways of undertaking the development in a different manner (different scales, configuration, methods, techniques, mitigation and management strategies etc).	This amendment has been proposed to clarify that the reference to ‘feasible alternatives’ can include alternative ways of undertaking the development – not just alternatives to carrying out the development at all (i.e. not undertaking the development).

Draft Reg item*	Current EP&A Reg	Explanation of intended effect of proposed amendment	Notes
[27]	Sched 2 cl 7(1)(f)	<p>EISs (for all development, infrastructure and activities requiring an EIS) must include:</p> <p><b><i>an evaluation of the development, activity or infrastructure, which is:</i></b></p> <p>(i) <i>based on the matters in paragraphs (a)–(e), and</i></p> <p>(ii) <i>prepared having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).</i></p> <p>This change will require an EIS to contain a summary of the matters covered in the statement and include a comprehensive and holistic evaluation of the project, having regard to the principles of ecologically sustainable development.</p>	<p>This provision will replace the current provision in Schedule 2, clause 7(1)(f) requiring an EIS to include the reasons justifying the carrying out of the development, activity or infrastructure in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development.</p> <p>The wording change is intended to shift the focus away from a proponent's 'justification' of a project (advocating for the approval of the project) - toward a more objective weighing up of the positive and negative impacts of the development.</p>
[28]	Sched 2, Part 4	SSI provisions in Part 4 of Schedule 2 will be moved to Part 10 of the Regulation so that all SSI provisions are in one section.	See item [17] above.

\* Item reference numbers relate to proposed amendments in the document *public consultation draft Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020*. The document can be viewed at [www.planning.nsw.gov.au/major-projects-reform](http://www.planning.nsw.gov.au/major-projects-reform).