

NSW TASKFORCE UPDATE - Planning Edition

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What is the application process for using the Nation Building Act planning provisions?

A number of enquiries have been made to the Taskforce about the timing and sequence of how applicants can access the NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 relative to an application to local council

Some councils have organised for dedicated planning staff to deal with Nation Building projects as a matter of priority. In some other cases, due to the tight construction timeframe, it may not be possible to be able to have a Development Application approved in time.

Applications may be considered by the Taskforce where the proponent can show that the project is at risk of not being able to meet the targets for construction, as a condition of funding, if it were to go through the usual assessment process under the *Environmental Planning and Assessment Act 1979*.

An application to the Taskforce for consideration under the Nation Building and Jobs Plan Act requires the completion of the Application Form, Checklist, provision of drawings and supporting reports and information in much the same way that this would be required for a development application.

For school facilities, the focus of the Nation Building and Jobs Plan Act assessment will be on those aspects of the building that do not meet the Complying Development criteria under the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) eg where the site is bushfire prone or contains a heritage item.

For schools that involve development of a significant scale the assessment undertaken will be more comprehensive. The Taskforce may ask for information in addition to the items listed in the Checklist, if required, to assess an application.

A significant difference between assessment under the Nation Building and Jobs Plan Act and for a Development Application is that a Development Application would normally be advertised and notified to adjoining owners and the general public by the Council, after lodgement. For Nation Building and Jobs Plan Act applications, proponents are encouraged to consult with the local community. Consultation with the local council must have been undertaken upfront, prior to lodgement. There is no requirement for the Taskforce to advertise an application or to notify the proposal to adjoining owners and occupiers.
(see also new Policy on applications to be considered by the Taskforce, below)

Further questions?

If you have further questions you can email taskforceinfo@dpc.nsw.gov.au or call the Taskforce Hotline on 1800 752 100.



Development Contributions for applications approved under Nation Building and Jobs Plan Act

A policy has now been adopted by the Taskforce for the application of Development Contributions for Social Housing and Education projects that are approved under the Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 (Nation Building and Jobs Plan Act). This policy has been prepared in consultation with the Minister for Planning.

Social Housing projects

The Policy for **social housing projects** is as follows:

- no local development contributions apply to projects with 20 or fewer dwellings in one application;
- the first 20 dwellings in any application will not be subject to any local developer contribution;
- for the 21st dwelling and above in regional NSW, the local development contribution will be **\$5,000 per dwelling** OR in accordance with the council's Section 94 Plan, whichever is the lesser;
- for the 21st dwelling and above in the Sydney metropolitan area, the local development contribution will be **\$10,000 per dwelling** OR in accordance with the council's Section 94 Plan, whichever is the lesser;
- no local development contributions are payable for seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- no State Infrastructure levies will apply;
- any component of a social housing project which is not for social housing use, such as commercial or retail areas, or dwellings for private rent or sale, will be required to pay contributions in accordance with the council's section 94 Contributions Plan.

The rationale for this is that developments with 20 or fewer dwellings determined under the Infrastructure SEPP provisions will not pay any local developer contributions, therefore the same criteria should apply to the same number of units approved under the Nation Building and Jobs Plan Act. The policy is consistent with the Section 94E Direction made by the Minister for Planning in relation to seniors housing. For developments with in excess of 20 dwellings a reasonable rate per dwelling has been set based on information provided by Housing NSW on the range on contributions paid to councils.

Education projects

The Policy for both government and non-government **education projects** approved under the Nation Building and Jobs Plan Act is that:

- neither government nor non-government projects will be required to pay development contributions for the component that is funded by the Nation Building Stimulus Plan;
- the Infrastructure Coordinator General may apply conditions requiring contributions to school projects that contain components that are not funded by the Nation Building Economic Stimulus Plan.

An example would be a new building costing say \$10 m which includes a \$2 m library funded by the Nation Building Economic Stimulus Plan with the balance of funds provided by the school. In such cases it is proposed that any approval would include a condition requiring that for the \$8 million non-Nation Building funded component, the school is to pay contributions in accordance with the Council's Contribution Plan.

First two school building projects approved under Taskforce special planning powers

Epping Heights Public School and St Gabriel's School for the Hearing Impaired at Castle Hill are the first schools in NSW to be given planning approval under the NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009.

Approval was granted on 23 June 2009 for a new hall, covered outdoor learning area and canteen at Epping Heights Public worth \$1.7 million and a roof to enclose an existing internal courtyard and new flooring at St Gabriel's School for the Hearing Impaired worth \$250,000. The schools estimate there will be approximately 30 people employed on the project in Castle Hill and 75 at Epping Heights.

Epping Heights Public School showed that it needed assistance with planning approvals to meet its completion deadline. St Gabriel's School needed urgent approval so they could start in the July school holidays to get their project underway as soon as possible with the least inconvenience to their hearing impaired students.

Amendments to education provisions in the Infrastructure SEPP

On 10 July 2009, the Infrastructure SEPP was amended to further improve the ability of educational establishments in NSW to efficiently respond to the Australian Government's economic stimulus plan.

The amendments to the **Complying Development** provisions include:

- extending the complying development provisions for schools under the Infrastructure SEPP to allow:
 - a hall with associated covered outdoor learning area and/or tuckshop;
 - an outdoor learning or play area and associated awnings or canopies;
- clarifying that alterations or additions that involve a change of use from an existing school use to another school use is complying development;
- ensuring that complying development can be undertaken where there is an existing educational establishment, regardless of whether it is located in a 'prescribed zone' (these are listed in the Infrastructure SEPP);
- deleting Clause 31A(3) of the Infrastructure SEPP. This previously stated that 'Development is not complying development if it can be carried out on the land without consent.' As government schools have the provisions of 'development without consent' open to them to use for certain types of school development, this clause meant that these provisions could not be used if the proposal met the criteria for both 'without consent' and 'complying development'. With the deletion of this clause, greater flexibility is given to government schools in the use of complying development provisions.

It should be noted that a Complying Development Certificate cannot be issued if the land is bushfire prone or contains a heritage item or is located in a conservation area.

Any development that meets the criteria and development standards for complying development should be approved via a Complying Development Certificate and an application will not be considered under the Nation Building and Jobs Plan Act.

The amendments to the **Exempt** development provisions have been changed such that the development standard for awnings, canopies, pergolas and storm blinds has now been amended so the size limit of 20 square metres does not apply where the development is for an educational establishment.

For the latest version of the Infrastructure SEPP, check the Legislation NSW website:

<http://www.legislation.nsw.gov.au/>

For further information on the Infrastructure SEPP amendments, see the Circular issued by the Department of Planning:

http://www.planning.nsw.gov.au/planningsystem/pdf/ps09_018_isepp_am_school_provisions.pdf

Housing NSW and the Infrastructure SEPP

Housing NSW is continuing to meet with Councils across the state to brief them on the Infrastructure SEPP requirements and how this affects Housing NSW when it proposes to redevelop, demolish housing or subdivide its land.

While this will make a major difference to the way Housing NSW does business, the only change is to the way in which the plans are approved. Instead of going through Council to certify that a plan meets the regulations, Housing NSW can fast-track approval.

The process applies to smaller redevelopments, a maximum of 20 units, where redevelopment is allowed under current planning requirements for that area. Housing NSW sends out a consultation notice to adjoining neighbours and the Council. These neighbours and the Council then have three weeks to make a response. This response is then considered and expert planners review the proposal. If it complies with legislative requirements, then Housing NSW can grant approval for the development to go ahead.



Consideration of education projects under the Nation Building and Jobs Plan Act

A new Policy has been adopted by the Taskforce to allow school infrastructure projects that are 'almost complying development' under the Infrastructure SEPP to be considered under the Nation Building and Jobs Plan Act. This will provide certainty and efficiency in the delivery of the Building the Education Revolution program.

This means that where the project only misses out being complying development as a result of one site constraint, the proponent will not have to provide justification to the Taskforce to show that a council would not be able to determine a development application in time in order for the Taskforce to consider the application under the Nation Building and Jobs Plan Act.

This approach is a slight amendment to the policy outlined in the User Guide. A User Guide update will be issued shortly.

The Policy is that a project that meets the criteria below may automatically be considered as a project for assessment under the Nation Building and Jobs Plan Act. Namely:

Any project that that does not meet the requirements for Complying Development or the Development Standards in the Infrastructure SEPP, and which would otherwise be Complying Development, except that, for example:

- it is on a site that is classified as being bushfire prone land; or
- it is on a site that contains a local or state heritage item or is in a conservation area; or
- if it was to require a Development Application, it would require referral to an agency as Integrated Development; or
- contains threatened species and requires possible assessment under the *Threatened Species Conservation Act 2005*; or
- does not comply with the building height or setback development standard in the Infrastructure SEPP (clause 31A(4)) by no more than 10 % - ie building height no more than 13.2 metres, setback of at least 4.5 metres; or
- does not comply with the development standard from a side or rear boundary setback, where that frontage is to a public road; or
- does not comply with the set back development standard because the building straddles two allotments and will therefore have a nil setback along the internal property boundaries.

Any development that has constraints in more than one point above, (eg is both bushfire prone and has a heritage item on the site) may be accepted on its merits as a Nation Building and Jobs Plan Act matter, subject to prior discussion with the Taskforce.

Meeting the above requirements does not guarantee that the Infrastructure Coordinator General will authorise the project. The merits of the development will be assessed in full, with particular focus on that aspect that meant the project was outside the Infrastructure SEPP development standards or Complying Development provisions.

The proponent must still:

- consult with the local council (senior council staff) and have written notes from that meeting endorsed by the council officer/s. These notes should cover planning, traffic and engineering issues; and
- provide the project delivery program for the specific project (not a generic estimate) indicating when the project is programmed for physical commencement and completion.



Consideration of social housing projects under the Nation Building and Jobs Plan Act

Housing NSW has made representations to the Taskforce Office seeking a program exemption from pursuing assessment under Part 4/Part 5A of the EPA Act 1979 for projects that do not meet the Infrastructure SEPP. This would apply to all Nation Building projects that cannot be approved under the 'development without consent' path in the Infrastructure SEPP.

Due to the time taken to construct such projects of approximately 15 months and the deadline for completion, 31 March 2011, Housing NSW has made a case that certain projects must all be assessed and determined under the Nation Building and Jobs Plan Act. This is based on evidence of past council performance in application assessment for Housing NSW projects.

It is agreed that given the timeframes required for determination, the volume of projects to be built and the fact that a guaranteed approval is not possible under Part 4 of the EPA Act, any social housing project submitted by Housing NSW that does not meet the requirements for 'development without consent' in the Infrastructure SEPP will be considered by the Taskforce.

The Taskforce will be able to accept a project without additional individual justification being lodged in terms of the time it would take to obtain a Development Consent for the project. Housing NSW may still elect to lodge a development application with a council in specific circumstances.

Meeting the above requirements will not guarantee that the Infrastructure Coordination General will authorise the project. The merits of the development will be assessed.

Housing NSW will still be required to consult with the local council (senior council staff) and have written notes from that meeting. This extends to planning, traffic and engineering comments.

Housing NSW will be required to provide the project delivery program for the specific project indicating when the project is programmed for physical commencement and completion.

Housing NSW has advised that, as a matter of policy, it intends that all applications, including those that may be considered under the Nation Building and Jobs Plan Act, will be notified to adjoining occupiers and to the local council for 21 days. This consultation will occur prior to the lodgement of any application. This consultation is over and above that required by the Nation Building and Jobs Plan Act and the User Guide.



Visit the Australian Government's Nation Building and Economic Stimulus website www.economicstimulusplan.gov.au keeps Australians informed about the Australian economy and the Australian Government's early and decisive action to cushion the nation from the worst of the global financial recession.

To view previous Taskforce Updates visit <http://www.nsw.gov.au/nationbuildingtaskforce>

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