



ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (CERTIFICATION) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The purpose of the bill is to reinstate powers for the Minister for Planning and Public Spaces, Transport for NSW, Newcastle Port Corporation and the port operators of the Three Ports to undertake certification work under Part 6 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in certain circumstances. These powers are needed for the aforementioned authorities to issue certificates that are essential to fulfilling their ongoing service delivery functions.

Previously, the above authorities were empowered to issue the required certificates under the provisions of the EP&A Act. However, a major restructure and rewrite of the EP&A Act in 2018 inadvertently removed these powers. To prevent an immediate loss of service delivery, the powers were subsequently preserved through savings provisions at ss 18B, 18BA and 18C of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Reg)*; however, these savings provisions are time-limited and a permanent reinstatement of the powers to the EP&A Act is necessary prior to 1 December 2024 when the STOP Reg expires.

Objectives: What is the policy's objective couched in terms of the public interest?

The bill seeks to resolve the deficiencies of the current legislation by providing an ongoing legal pathway for the Minister for Planning and Public Spaces, Transport for NSW, Newcastle Port Corporation and the port operators of the Three Ports to undertake certification work under Part 6 of the EP&A Act in certain circumstances.

The Minister for Planning and Public Spaces is expected to use these powers to provide the full range of Part 6 certification services within the Alpine Region that are usually offered by local councils, as the Minister acts in the place of the local council for development oversight matters in this area due to its unique circumstances. Transport for NSW, Newcastle Port Corporation and the port operators of the Three Ports are expected to use the powers to issue subdivision certificates in key waterway and maritime areas as part of their land and lease management responsibilities in these areas.

In both instances, these are existing responsibilities that the relevant authorities have undertaken since before the restructure and rewrite of the EP&A Act in 2018, and were since preserved under the STOP Reg. The objective of the bill is to allow these services to continue into the future, beyond the expiry date in STOP Reg.

Options: What alternative policies and mechanisms were considered in advance of the Bill?

Consideration was given to whether the powers could be permanently established in regulations without an Act amendment.

Also considered was deferring until the Government's broader building legislation reform.

It is not possible to 'do nothing' as the existing savings provisions in the STOP Reg would expire without any replacement being in place.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Regulation amendment only

Maintaining the current provisions under the regulations to the EP&A Act was found to be legally unworkable. The current savings provisions cannot be extended indefinitely, and there is currently no regulation-making power in the EP&A Act that would enable an alternate permanent provision covering all required functions to be made in the regulations.

Defer to broader building legislation reform

Consideration was given to resolving the issue as part of the Government's broader commitment to statutory reform of the full range of building legislation. However, the current savings provisions in the STOP Reg will expire on 1 December 2024, and the Parliamentary Counsel has advised that they should not be extended further. Meanwhile, the reform of building legislation is not expected to be enacted before this date, making this solution unviable.

Do nothing option

The 'do nothing' option is not a viable solution, because in this scenario the existing savings provisions in the STOP Reg would expire on 1 December 2024 without any replacement being in place. Failure to prevent these powers from lapsing will restrict the essential procedural step of certification from occurring in some of the most prominent parts of the state, such as the Kosciuszko National Park ski resorts and Sydney Harbour. This would risk making a core component of NSW's system of planning and building oversight unworkable in these areas.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments will commence on assent. The new provisions will provide powers to be exercised by the relevant authorities, including key port operators, the Newcastle Port Corporation, Transport for NSW and the Department of Planning, Housing and Infrastructure.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Department of Planning, Housing and Infrastructure, Transport for NSW and key port operators were consulted on the proposed legislative changes. As the scope of the bill is limited to allowing existing service delivery to continue, broader community consultation in the preparation of the bill was not undertaken and was not considered necessary.