



**Submission to the Review of the
Environmental Planning &
Assessment Act 2000**

November 2017





Canterbury–Bankstown Council’s Submission to the Review of the Environmental Planning & Assessment Regulation 2000

As a starting point, this submission raises the following issues for the Department of Planning & Environment to consider when reviewing the Environmental Planning & Assessment Regulation 2000:

- Ensure the format and content of Development Control Plans remain flexible to capture local context.
- Ensure the NSW planning portal remains flexible to capture local context.
- Review the fees for development applications and modification (s96) applications.
- Streamline the Commonwealth referral process.
- Strengthen the procedural requirements to prevent the misuse of modification (s96) applications.
- Improve the accountability of site compatibility certificates.
- Confirm whether the miscellaneous provisions for Community Participation Plans will also apply to Community Strategic Plans.
- Detail the procedural requirements for pre-lodgement community consultation when undertaken by applicants.
- Simplify the section 149 planning certificates.

Council will provide further comment with the exhibition of the Draft Regulation.

Council notes the reforms to the building regulation and certification provisions in the Regulation will be subject to separate consultation.



Planning Instruments

Issue 1: Ensure the format and content of Development Control Plans remain flexible to capture local context.

At present, Council decides the format and content of the Development Control Plan to ensure it supports the Local Environmental Plan and captures local context.

With the introduction of the Environmental Planning & Assessment Amendment Bill 2017, the Regulation will outline the standard template and model provisions. It is essential the proposed standard template and model provisions remain flexible to capture local context.

Recent experience with the Standard Instrument Local Environmental Plan program highlights the difficulty for a state-wide template to incorporate local provisions. The Local Planning Panel's Position Paper 'Improving the Implementation of the Standard Instrument Local Environmental Plan Program' reinforces this issue.

Issues to consider as part of the Regulation Review:

- Ensure the standard template and model provisions for Development Control Plans remain flexible to capture local context.



NSW Planning Portal and ePlanning Amendment Regulation

Issue 2: Ensure the NSW planning portal remains flexible to capture local context.

At present, Council decides the format and content of planning documents and application forms to ensure it captures local context.

According to the Issues Paper, the Regulation may introduce standard templates and model provisions to conform to the technical requirements of the NSW planning portal. It is essential the proposed standard templates and model provisions remain flexible to capture local context.

Council takes this opportunity to outline key issues to inform the Regulation Review.

2.1 Ensure the templates of application forms and checklists remain flexible to capture local context.

The Draft Environmental Planning & Assessment Amendment (ePlanning) Regulation 2017 will enable applicants to lodge development applications, modification (s96) applications and construction certificate applications with Council or on the NSW planning portal. Council's application forms will need to convert to the NSW planning portal's standard forms.

However, Council has invested considerable resources in streamlining its application forms and checklists to conform to Council's ePlanning services. Council's standard forms capture local context and requests information that are specific to Council's planning documents.

The issue with the NSW planning portal's standard forms is it attempts to cover issues for both metropolitan and regional councils. Recent experience with the Standard Instrument Local Environmental Plan program highlights the difficulty for a state-wide template to incorporate local provisions. The Local Planning Panel's Position Paper 'Improving the Implementation of the Standard Instrument Local Environmental Plan Program' reinforces this issue.

Issues to consider as part of the Regulation Review:

- Adapt the NSW planning portal to incorporate Council's standard (ePlanning) forms and checklists.



2.2 Confirm the legal status in the event the information on the NSW planning portal is inconsistent with Council's LEP and maps on the NSW legislation website.

The Department of Planning & Environment's Change Readiness Workshop (Spatial Data Workshop) on 13 December 2016 raised the issue that the data on the NSW planning portal will be legally binding. This means any errors on the NSW planning portal are likely to be law.

Council is concerned with this scenario as it conflicts with the legal status of the NSW legislation website, which is the electronic repository of Council's Local Environmental Plan and maps.

Council is already aware of one incident where Council's Local Environmental Plan shows a certain property as Zone SP2, however, the NSW planning portal incorrectly showed the property as Zone B4.

In relation to zonings and other development standards, it is essential to make it clear that Council's Local Environmental Plan and maps on the NSW legislation website prevail if there is an inconsistency with the NSW planning portal.

Issues to consider as part of the Regulation Review:

- Make it clear that Council's Local Environmental Plan and maps on the NSW legislation website prevail if there is an inconsistency with the NSW planning portal.

2.3 Ensure the relevant planning authority hosts the exhibition of draft development control plans and contributions plans, rather than the NSW planning portal.

The Draft Environmental Planning & Assessment Amendment (ePlanning) Regulation 2017 will enable the NSW planning portal to exhibit draft development control plans and contributions plans. Any person may make a written submission to the relevant planning authority (e.g. Council) or on the NSW planning portal.

However, the Draft Regulation does not contain safeguards to ensure:

- The NSW planning portal and Council display the same exhibition material (including certain information as required by the Regulation and relevant background information).



- Written submissions made through the NSW planning portal are forwarded to Council for consideration.

In the event the exhibition material is inconsistent or a written submission is not forwarded to Council, this may be grounds for a legal challenge under section 123 of the Environmental Planning & Assessment Act 1979 (i.e. a review of the technical process).

To avoid confusion, the preferred option is to have the relevant planning authority (e.g. Council) host the exhibition of draft development control plans and contributions plans, rather than the NSW planning portal.

Issues to consider as part of the Regulation Review:

- The relevant planning authority should host the exhibition of draft development control plans and contributions plans, rather than the NSW planning portal.
- Written submissions must be made to the relevant planning authority, rather than on the NSW planning portal.

2.4 Stage the rollout of the NSW planning portal to ensure councils are properly resourced to accept applications.

The Draft Environmental Planning & Assessment Amendment (ePlanning) Regulation 2017 does not offer resources or financial assistance to councils to upgrade their information technology systems to ensure it integrates with the NSW planning portal's information technology system.

The financial implication is councils are faced with many unresolved issues that make it difficult to accept applications online through the NSW planning portal. These issues include:

- The transfer of data from the NSW planning portal to Council's information technology system. If the systems are incompatible, this will require Council to manually enter the data into its information technology system.
- The installation of wide computer screens, dual screens and programs (e.g. Trapezium) to assess electronic plans, together with staff training.
- The assumptions that will inform the integrated fee calculator to determine development application fees, and whether the calculator will incorporate Council's local fees e.g. advertising fees.



- Whether Council may continue to obtain quantity surveyor's reports to confirm the costs of complex development proposals, despite the integrated fee calculator.
- The financial implications of having to print plans, particularly during the exhibition period as not all residents have access to computers.
- The methods of online payments.
- The implications of the Copyright Act and the Government Information (Public Access) Act in relation to copyright provisions and the release of personal information.

Council's submission to the exhibition of the Draft Environmental Planning & Assessment Amendment (ePlanning) Regulation 2017 discusses these issues in more detail.

Issues to consider as part of the Regulation Review:

- Stage the rollout of the NSW planning portal to ensure councils are properly resourced to accept applications online.
- Provide financial assistance to councils to upgrade information technology systems, upgrade computer hardware and software, and undertake staff training.
- Exhibit the assumptions to the integrated fee calculator prior to finalising the Draft Regulation, and confirm whether Council may continue to obtain quantity surveyor's reports to confirm the costs of complex development proposals (typically greater than \$5 million).
- Allow councils to charge a levy as part of the application fees to recoup printing costs.
- Clarify the legal status of the Copyright Act and the Government Information (Public Access) Act in relation to the NSW planning portal.



Development assessment

Issue 3: Review the fees for development applications and modification (s96) applications.

At present, the Regulation caps the lodgement fees for development applications and modification (s96) applications.

The review should seek to increase the lodgement fees to better reflect the current costs of providing various planning services to applicants, particularly for development applications and modification (s96) applications.

Issues to consider as part of the Regulation Review:

- Review the fee regime to better reflect the current costs of providing various planning services to applicants, particularly for development applications and modification (s96) applications.

Issue 4: Streamline the Commonwealth referral process.

In relation to integrated development, Council must refer development applications to the Commonwealth Government should the proposed development penetrate the prescribed airspace. Based on recent experience, this process can take up to 12 months to resolve.

Issues to consider as part of the Regulation Review:

- Extend the Planning Secretary's step-in powers to streamline the Commonwealth referral process.



Issue 5: Strengthen the procedural requirements to prevent the misuse of modification (s96) applications.

With the introduction of the Environmental Planning & Assessment Amendment Bill 2017, modification (s96) applications must consider the reasons for the initial determination. The intended outcome is to restrict the use of modification (s96) applications by developers seeking to reinstate parts of an application that were rejected as part of the initial determination.

Whilst Council supports this improvement, there is the opportunity to further strengthen the procedural requirements to prevent the misuse of modification (s96) applications.

Where a modification (s96) application proposes to vary a development standard, the application must comply with clause 4.6 of the Standard Instrument Local Environmental Plan to ensure there is sufficient justification for Council to consider. This amendment would bring consistency between the development application and modification (s96) application pathways.

Issues to consider as part of the Regulation Review:

- Where a modification (s96) application proposes to vary a development standard, the application must comply with clause 4.6 of the Standard Instrument Local Environmental Plan. This would be in addition to the consent authority's consideration of the statement of reasons for the decision.



Making a submission on a planning matter

Issue 6: Improve the accountability of site compatibility certificates.

At present, the Department of Planning & Environment does not need to undertake community consultation when considering requests for site compatibility certificates.

This process has the potential to introduce development which may not be supported by the community, in the same way as the former Part 3A of the EP&A Act. This process is also inconsistent with the intended outcomes of the Environmental Planning & Assessment Amendment Bill 2017, which are to enhance community consultation and to make planning decisions in an open and transparent way.

Issues to consider as part of the Regulation Review:

- Require site compatibility certificates to follow the same consultation requirements as planning proposals.

Issue 7: Confirm whether the miscellaneous provisions for Community Participation Plans will also apply to Community Strategic Plans.

The Environmental Planning & Assessment Amendment Bill 2017 does not require councils to prepare a separate community participation plan if the councils decide to include the relevant matters in the Community Strategic Plan.

In this scenario, the Regulation should confirm whether the miscellaneous provisions for Community Participation Plans (section 2.24 of the Bill) will also apply to Community Strategic Plans. The issue is Community Strategic Plans are subject to a different plan making process under the Local Government Act 1993, and this process may conflict with the miscellaneous provisions.

Issues to consider as part of the Regulation Review:

- Confirm whether the miscellaneous provisions (section 2.24) of the Environmental Planning & Assessment Amendment Bill 2017 will also apply to Community Strategic Plans prepared under the Local Government Act 1993.



Issue 8: Detail the procedural requirements for community consultation when undertaken by applicants.

With the introduction of the Environmental Planning & Assessment Amendment Bill 2017, the Regulation may require applicants for development consents or other approvals to undertake community consultation in relation to their applications.

To effectively implement this requirement, the Regulation would need to resolve matters such as:

- The definition of ‘community’.
- The verification of the community consultation process.
- The quality of community consultation particularly with residents who do not understand plans or residents of non–english speaking backgrounds.
- The legal implications in obtaining the personal contact details of property owners, tenants, and residents adjacent to development sites (this information is currently confidential).
- Consistency with Council’s Community Participation Plan or Community Engagement Strategy.

The Department of Planning & Environment also proposes to explore incentives in the system (e.g. reduced lodgement fees) if applicants can demonstrate they actively resolved issues through early consultation. Whilst Council supports pre–lodgement consultation, it does not support reduced lodgement fees as an incentive mechanism. This proposal would have financial implications for Council, and would impact on Council’s resources to process development applications in a timely manner.

Issues to consider as part of the Regulation Review:

- Detail the procedural requirements to verify the quality of the community consultation process.
- Do not consider reduced lodgement fees as an incentive mechanism to encourage pre–lodgement community consultation.



Section 149 Planning Certificates

Issue 9: Simplify the section 149 planning certificates.

The Regulation prescribes certain matters to be included in the section 149(2) planning certificates.

Over time, the number of prescribed matters has made the planning certificates overly complex and difficult to read.

As a starting point, the Regulation should transfer all information relating to exempt and complying development (as set out in Schedule 4, clause 3) from the section 149(2) planning certificate to a separate planning certificate. This will help to simplify the standard template.

The other issue is the standard template attempts to cover prescribed matters for both metropolitan and regional councils. The review should ensure there is flexibility in the standard template for councils to only capture prescribed matters that are relevant to the local context.

Issues to consider as part of the Regulation Review:

- Simplify the number of prescribed matters in the section 149(2) planning certificates to make the standard template easy to read.