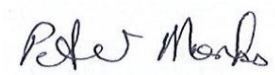
STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING

A meeting of the STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE will be held at Waverley Council Chambers, Cnr Paul Street and Bondi Road, Bondi Junction at:

7.30PM, TUESDAY 6 MARCH 2018



Peter Monks
Acting General Manager

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Delegations of the Waverley Strategic Planning and Development Committee

On 10 October 2017, Waverley Council delegated to the Waverley Strategic Planning and Development Committee the authority to determine any matter **other than**:

1. Those activities designated under s 377(1) of the *Local Government Act* which are as follows:

    (a) The appointment of a general manager.
    (b) The making of a rate.
    (c) A determination under section 549 as to the levying of a rate.
    (d) The making of a charge.
    (e) The fixing of a fee
    (f) The borrowing of money.
    (g) The voting of money for expenditure on its works, services or operations.
    (h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).
    (i) The acceptance of tenders to provide services currently provided by members of staff of the council.
    (j) The adoption of an operational plan under section 405.
    (k) The adoption of a financial statement included in an annual financial report.
    (l) A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
    (m) The fixing of an amount or rate for the carrying out by the council of work on private land.
    (n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work.
    (o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*.
    (p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
    (q) A decision under section 356 to contribute money or otherwise grant financial assistance to persons,
    (r) A decision under section 234 to grant leave of absence to the holder of a civic office.
    (s) The making of an application, or the giving of a notice, to the Governor or Minister.
    (t) This power of delegation.
    (u) Any function under this or any other Act that is expressly required to be exercised by resolution of the council.

2. Despite clause 1(i) above, the Waverley Strategic Planning and Development Committee does not have delegated authority to accept any tenders.

3. The adoption of a Community Strategic Plan, Resourcing Strategy and Delivery Program as defined under sections 402, 403, and 404 of the *Local Government Act*.

AGENDA

PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair will read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

'God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.'

1. Apologies/Leaves of Absence

2. Declarations of Pecuniary and Non-Pecuniary Interests

3. Addresses to Council by Members of the Public

4. Confirmation of Minutes

5. Reports

6. Urgent Business

7. Meeting Closure

CONFIRMATION OF MINUTES
PD/4.1/18.03

Subject: **Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 6 February 2018**

TRIM No.: SF18/246

Author: Natalie Kirkup, Governance and Internal Ombudsman Officer

RECOMMENDATION:

That the minutes of the Strategic Planning and Development Committee Meeting held on 6 February 2018 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

Introduction/Background

The minutes of the Strategic Planning and Development Committee meeting must be submitted to Strategic Planning and Development Committee for confirmation, in accordance with section 375 of the *Local Government Act 1993*.

Attachments

1. Strategic Planning and Development Committee Meeting Minutes - 6 February 2018 .

MINUTES OF THE STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING HELD AT WAVERLEY COUNCIL CHAMBERS, CNR PAUL STREET AND BONDI ROAD, BONDI JUNCTION ON TUESDAY, 6 FEBRUARY 2018

Present:

Councillor Paula Masselos (Chair)	Lawson Ward
Councillor John Wakefield (Mayor)	Bondi Ward
Councillor Dominic Wy Kanak (Deputy Mayor)	Bondi Ward
Councillor Sally Betts	Hunter Ward
Councillor Angela Burrill	Lawson Ward
Councillor George Copeland	Waverley Ward
Councillor Leon Goltsman	Bondi Ward
Councillor Tony Kay	Waverley Ward
Councillor Elaine Keenan	Lawson Ward
Councillor Steven Lewis	Hunter Ward
Councillor Will Nemesh	Hunter Ward
Councillor Marjorie O'Neill	Waverley Ward

Staff in attendance:

Cathy Henderson	Acting General Manager
Rachel Jenkin	Acting Director, Waverley Life
Peter Monks	Director, Waverley Futures
Emily Scott	Director, Waverley Renewal
Jane Worthy	Internal Ombudsman

At the commencement of proceedings at 7.59 pm, those present were as listed above.

PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.

AT THIS STAGE IN THE PROCEEDINGS, THE FOLLOWING MOTION WAS MOVED BY CR GOLTSMAN AND SECONDED BY CR COPELAND:

That the recording of the meeting be made available on Council's website within a week of the meeting

THE MOTION WAS PUT AND DECLARED CARRIED UNANIMOUSLY.

1. Apologies/Leaves of Absence

There were no apologies.

2. Declarations of Pecuniary and Non-Pecuniary Interests

The Chair called for declarations of interest and none were received.

3. Addresses to Council by Members of the Public

3.1 A resident – PD/5.4/18.02 – Interim Heritage Order – Heritage Assessments – 7-11 Lugar Street, Bronte.

3.2 S Davies (Urbis) – PD/5.4/18.02 – Interim Heritage Order – Heritage Assessments – 7-11 Lugar Street, Bronte.

3.3 V Milson (on behalf of Bronte Beach Precinct) – PD/5.4/18.02 – Interim Heritage Order – Heritage Assessments – 7-11 Lugar Street, Bronte.

3.4 L Mitchell – PD/5.4/18.02 – Interim Heritage Order – Heritage Assessments – 7-11 Lugar Street, Bronte.

4. Confirmation of Minutes

PD/4.1/18.02 Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 7 November 2017 (SF18/246)

MOTION / DECISION
Mover: Cr Burrill
Seconder: Cr Goltsman

That the minutes of the Strategic Planning and Development Committee Meeting held on 7 November 2017 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

5. Reports

PD/5.1/18.02 Waverley Inter-War Fact Sheets (A13/0648)

MOTION / UNANIMOUS DECISION
Mover: Cr Wakefield
Seconder: Cr Burrill

That Council receives and notes this report.

PD/5.2/18.02 Draft Waverley Development Control Plan 2012 - Amendment No. 6 (A17/0250)

MOTION / UNANIMOUS DECISION
Mover: Cr Wakefield
Seconder: Cr Goltsman

That the matter be deferred to a Councillor Workshop at the earliest opportunity.

Division
For the Motion: Crs Betts, Burrill, Copeland, Goltsman, Kay, Keenan, Lewis, Masselos, Nemesh, O'Neill, Wakefield and Wy Kanak.
Against the Motion: Nil.

PD/5.3/18.02 Reporting of Meetings with Developers - Proposed Template (A09/1010)

MOTION / UNANIMOUS DECISION
Mover: Cr Wakefield
Seconder: Cr Keenan

That Council approves the proposed template attached to this report for the monthly reporting of meetings by the Mayor and Senior Staff with applicants on major development matters, which will be listed on Council's website for public information, subject to the template including the location of the meeting, the names of all attendees and the length of time of the meetings.

PD/5.4/18.02 Interim Heritage Order - Heritage Assessments - 7-11 Lugar Street, Bronte (A18/0030)

MOTION

Mover: Cr Keenan
Seconder: Cr Wakefield

That Council amends Schedule 5 Part 1 Heritage Items of the Waverley Local Environmental Plan to include the front sections of 7, 9 and 11 Lugar Street, including the front exterior, and the interior fabric being the front two rooms, hallway and stairs, as places of local environmental heritage.

AMENDMENT

Mover: Cr Burrill
Seconder: Cr Kay

That the Motion be adopted subject to being amended to read as follows:

"That Council amends Schedule 5 Part 1 Heritage Items of the Waverley Local Environmental Plan to include the front sections of 7, 9 and 11 Lugar Street, including the front exterior, and the interior fabric of the front two rooms and hallway, limited to any original items as listed in the Urbis report, as places of local environmental heritage".

THE AMENDMENT WAS PUT AND DECLARED LOST.

Division
For the Amendment: Crs Betts, Burrill, Goltsman, Kay and Nemesh.
Against the Amendment: Crs Copeland, Keenan, Lewis, Masselos, O'Neill, Wakefield and Wy Kanak.

THE MOVER AND SECONDER OF THE MOTION THEN ACCEPTED AN AMENDMENT TO THE MOTION SUCH THAT THE MOTION NOW READS AS FOLLOWS:

That Council amends Schedule 5 Part 1 Heritage Items of the Waverley Local Environmental Plan to include the front sections of 7, 9 and 11 Lugar Street, including the front exterior, and the interior fabric being the front two rooms and hallway, as places of local environmental heritage.

THE MOTION WAS THEN PUT AND DECLARED CARRIED UNANIMOUSLY.

Division
For the Motion: Crs Betts, Burrill, Copeland, Goltsman, Kay, Keenan, Lewis, Masselos, Nemesh, O'Neill, Wakefield and Wy Kanak.
Against the Motion: Nil.

PD/5.5/18.02 Waverley Development Contributions Plan 2008 (Amendment No. 8) (A17/0472)

MOTION / DECISION

Mover: Cr Lewis
Seconder: Cr Wakefield

That Council adopts Amendment No. 8 of the Waverley Development Contributions Plan 2006 attached to this report subject to Schedule 1 - Capital Works Schedule and Maps being deleted and replaced by a hyperlink to the current Capital Works Plan which is updated quarterly, and the updated Long Term Financial Plan which is updated annually.

Division
For the Motion: Crs Betts, Burrill, Copeland, Goltsman, Kay, Lewis, Masselos, Nemesh, O'Neill and Wakefield.
Against the Motion: Crs Keenan and Wy Kanak.

PD/5.6/18.02 Waverley Destination Management Plan (A16/0608)

MOTION / DECISION

Mover: Cr Wakefield
Seconder: Cr Keenan

That this item be deferred.

Division
For the Motion: Crs Betts, Burrill, Copeland, Goltsman, Kay, Keenan, Lewis, Masselos, Nemesh, O'Neill, Wakefield and Wy Kanak.
Against the Motion: Nil.

6. Urgent Business

There were no items of urgent business.

7. Meeting Closure

THE MEETING CLOSED AT 9.29PM.

.....
SIGNED AND CONFIRMED
CHAIR
6 MARCH 2018

REPORT
PD/5.1/18.03

Subject: **Planning Proposal - Dover Heights Synagogue and Shule, Napier Street, Dover Heights**

TRIM No: PP-2/2016

Author: Gabrielle Coleman, Strategic Planner

Director: George Bramis, Acting Director, Waverley Futures

RECOMMENDATION:

That Council:

1. Notes the matters raised in the submissions made on the planning proposal at the Dover Heights Shule/Synagogue, Napier Street, Dover Heights.

2. Supports the planning proposal lodged by Dover Heights Shule/Synagogue to amend the Waverley Local Environmental Plan 2012 (WLEP 2012) in respect of the Dover Heights Shule/Synagogue, Napier Street, Dover Heights.

3. Supports making the amendments to the WLEP 2012 outlined in the planning proposal in conjunction with Parliamentary Counsel under the delegation received from the Department of Planning and Environment.

4. Notifies property owners of Council's decision.

1. Executive Summary

The planning proposal relating to the Dover Heights Shule/Synagogue was submitted to Council in October 2016. The proposal sought to amend the Waverley Local Environmental Plan (LEP) 2012 in relation to the subject site by:

- Increasing the maximum permissible height from 8.5 metres to 10.5 metres; and
- Increasing the floor space ratio (FSR) standard from 0.5:1 to 1.3:1.

Council supported the planning proposal at its Operations Committee meeting on 2nd May 2017 and forwarded the application to the Department of Planning and Environment (the Department) for Gateway Determination.

The Department granted Gateway Determination on 5th July 2017, giving Council delegation to proceed with amending the LEP. It also required that the application be placed on public exhibition for a minimum 28 days. Three (3) submissions were received during this period and are addressed in this report.

In response to the submissions, the applicant amended the proposal by:

- Reducing the maximum permissible height on the southern portion of the site to 9.5 metres and applying the 10.5 metre height limit to the northern portion of the site.

The proposed FSR remains the same. The existing zone also remains SP2 Infrastructure (Place of Public Worship and Educational Establishment).

The proposed changes in development standards will facilitate the extension of the existing Shule/Synagogue from 302 seats to 466 total seats (additional 164 seats) and reconfiguration of certain facilities. A new ancillary hall is proposed with a total capacity of 220 seats, which is not planned to be used directly in conjunction with the Shule/Synagogue.

This report assesses the planning proposal against the criteria in the NSW Department of Planning and Environment's (DPE) "A Guide to preparing Planning Proposals" with input from Council's strategic planning, urban design, traffic and sustainable transport officers.

It is recommended that the planning proposal be supported by making the amendments to the WLEP 2012 outlined in the planning proposal in conjunction with Parliamentary Counsel under the delegation received from the Department of Planning and Environment.

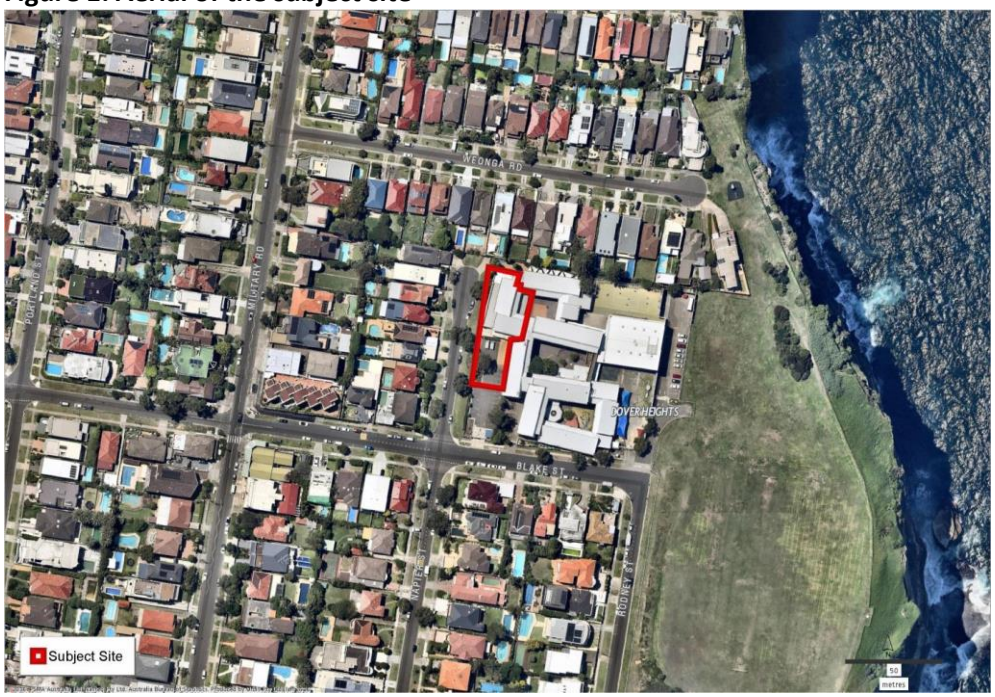
2. Introduction/Background

The Dover Heights Shule/Synagogue is a Chabad orthodox Jewish community-based congregation, started in 1997 on the grounds of the former Yeshiva College Dover Heights Campus. The existing Shule/Synagogue building was constructed in 2003. In 2009, the Shule/Synagogue Board purchased the property where the Shule/Synagogue is situated, from the adjacent Kesser Torah College.

The subject site (Lot 1 DP 1132221) is located in Dover Heights with a total site area of 1,245 sqm (refer to Figure 1). The subject site is directly adjacent to Kesser Torah College (Lot 2 DP 1132221) and was originally part of the same site before a subdivision application was approved on 25 March 2008 to separate the original lot into two strata lots (DA-383/2007). As a part of the subdivision application, conditions were added to govern the car parking arrangements between the Shule/Synagogue and the adjacent Kesser Torah College, as outlined below:

> *2. The proposal shall be amended as follows: (a) A right to park vehicles associated with Lot 1 be provided over the car spaces located towards the west of the site between Lot 1 and the Blake Street boundary at times when these car spaces are not required for school purposes.*
> *3. The rear underground carpark located below the playground of the school must be open and made available for parking for attendees during functions and special events conducted in the Shule.*

Figure 1: Aerial of the subject site



Source: Urbis, 2016.

Existing development on the site

The existing development on the subject site includes a two storey building, comprising:

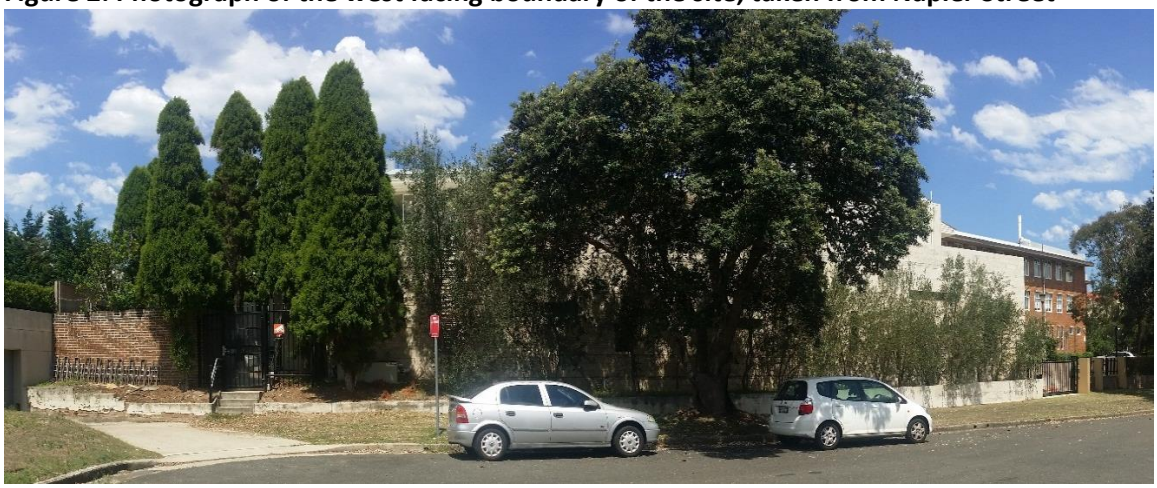
- Ground floor foyer area and the Shule/Synagogue with seating for 302 people.
- First floor with a classroom area accessed via stairs on the neighbouring associated school lot (refer to Figures 2 to 4).

The site also includes 18 at-grade parking spaces, allocated as follows:

- Seven car spaces fall within the Shule/Synagogue's car parking area.
- Eleven car spaces are utilised by the Kesser Torah Colleges Day Care pick up / drop off.

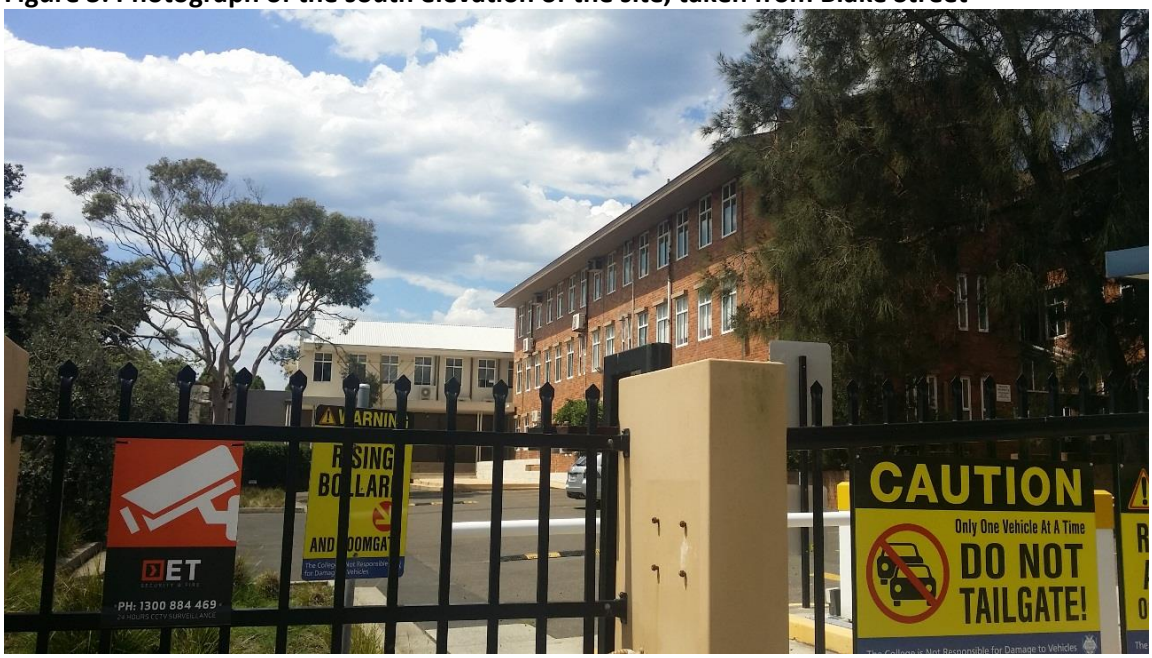
The Shule/Synagogue provide regular services throughout the week and on Shabbat (Saturday), Sunday morning & evening, High Holidays and festivals. The Shule/Synagogue also has youth services and programs for boys and girls on Friday evening, Saturday, all festivals and High Holidays, and during the week and Sundays (Urbis, 2016).

Figure 2: Photograph of the west facing boundary of the site, taken from Napier Street



Source: Council officer, 2017.

Figure 3: Photograph of the south elevation of the site, taken from Blake Street

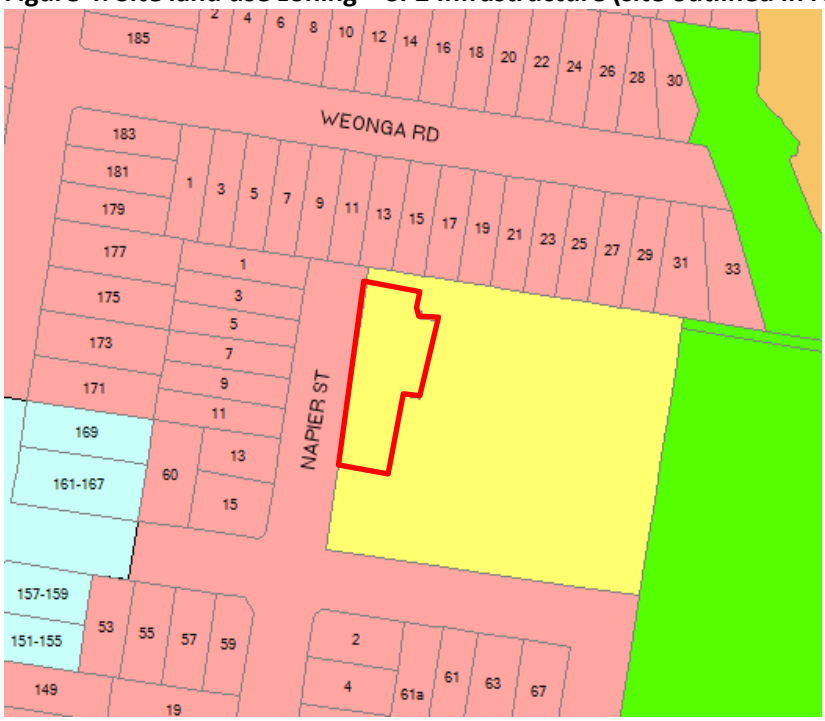


Source: Council officer, 2017.

2.1 Current planning controls for subject site

The Waverley Local Environmental Plan 2012 (WLEP 2012) applies to the subject site, which is currently zoned SP2 Infrastructure (Place of Public Worship and Educational Establishment) with a maximum height of 8.5 metres and FSR of 0.5:1 (refer to Figures 4, 5, and 6). The subject site does not contain a heritage item, nor is it within a heritage conservation area.

Figure 4: Site land use zoning – SP2 Infrastructure (site outlined in red)

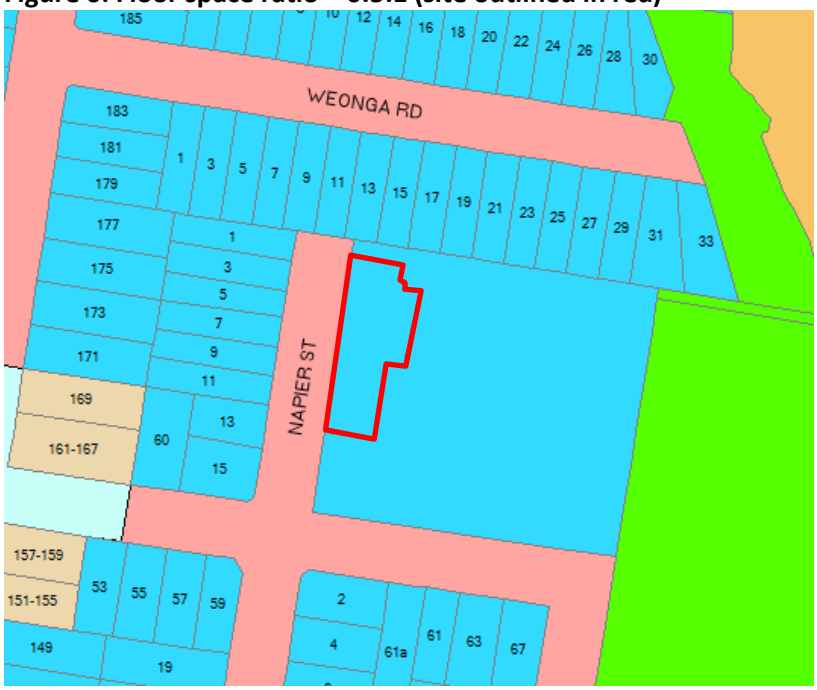


Source: Waverley Council, 2017.

Figure 5: Height of Buildings – 8.5m (site outlined in red)

Source: Waverley Council, 2017.

Figure 6: Floor space ratio – 0.5:1 (site outlined in red)



Source: Waverley Council, 2017.

2.2 Planning proposal documentation

On 20 October 2016, the proponent submitted a planning proposal to amend the WLEP 2012 in relation to Dover Heights Shule/Synagogue, Dover Heights.

The proposal originally sought to amend the WLEP 2012 by:

- Increasing the maximum permissible height from 8.5 metres to 10.5 metres; and
- Increasing the floor space ratio (FSR) standard from 0.5:1 to 1.3:1.

	Existing Controls	Originally Proposed	Surrounds
Zone	SP2 (Place of Public Worship and Education)	SP2	R2 - Low density
FSR	0.5:1 (0.6:1 existing)	1.3:1	0.5
Height	8.5m (9.6m existing)	10.5m	8.5m
Not a heritage item or subject to heritage overlay			
Prevailing built form	2 storey pitched	3 storey flat (potential)	1-2 storey detached dwellings and 2-3 storey school

After the public exhibition period, the applicant sought to amend the proposed maximum building height by reducing it across the southern portion of Lot 1 DP 1132221. This was in response to concerns about negative amenity impacts from the proposed extension of the Shule/Synagogue to the adjoining classrooms at Kesser Torah College.

	Existing Controls	Now Proposed	Surrounds
Zone	SP2 (Place of Public Worship and Education)	SP2	R2 - Low density
FSR	0.5:1 (0.6:1 existing)	1.3:1	0.5
Height	8.5m (9.6m existing)	**10.5m and 9.5m**	8.5m
Not a heritage item or subject to heritage overlay			
Prevailing built form	2 storey pitched	3 storey flat (potential)	1-2 storey detached dwellings and 2-3 storey school

3. Relevant Council Resolutions

Council or Committee Meeting and Date	Minute No.	Decision
Operations Committee Meeting 2 May 2017	OC/5.2/17.05	That Council: 1. Supports the planning proposal lodged by Dover Heights Shule to amend the Waverley Local Environmental Plan 2012 (WLEP 2012) in respect of the Dover Heights Shule and Synagogue, Napier Street, Dover Heights. 2. Forwards the proposal to the NSW Department of Planning and Environment for a Gateway Determination. 3. Places the planning proposal on public exhibition in accordance with any conditions of the Gateway Determination. 4. Requests the role of Relevant Planning Authority should the delegations be offered under Section 54 of the *Environmental Planning and Assessment Act 1979* in relation to the making of the amendment.

4. Discussion

4.1 Gateway Determination

The planning proposal was forwarded to Council at the Operations Committee meeting on 2 May 2017. It was resolved to support and forward the proposal to the Department of Planning and Environment for Gateway Determination. The Gateway Determination was issued on 5 July 2017 which supported the proposal proceeding to public exhibition for a period for a minimum 28 days.

4.2 Consultation

Consultation with State Agencies
The planning proposal was sent to Transport for NSW and Roads and Maritime Services for comment. Both agencies sent one response highlighting no issues with the proposal to change the development standards on the site.

Internal consultation
The Shaping Waverley department have had ongoing consultation with a range of Council staff who have expertise on particular matters involved with this project. Council staff who have been consulted include urban designers, traffic engineers and sustainable transport officers. The comments from Council staff on particular matters involved with the project have been incorporated in this report.

Consultation with the proponent
The Shaping Waverley department have been in ongoing consultation with the applicant in regards to requesting additional information and timeframes.

Public consultation
In accordance with the Gateway Determination, the applicant was required to update their maps and the Traffic Impact Assessment. Once this was received in November 2017, the planning proposal was exhibited from 13 December 2017 to 19 January 2018. The following was undertaken during the exhibition period:

- Notice placed in the Wentworth Courier;
- The planning proposal was advertised on Council's website;
- The planning proposal was exhibited in Council's Customer Service Centre and Library;
- Letters were sent to key stakeholders including the adjoining Kesser Torah College, Woollahra Council, Randwick Council, local residents and business owners in the vicinity of the subject site.

A total of three submissions were received; two from the adjoining Kesser Torah College and one from some residents of Napier Street. The main issues raised by the submissions are summarised below.

Submission relating to Public Interest
The proposed amendments to the LEP will specifically benefit the Chabad Orthodox Jewish community at the expense of reasonable amenity of surrounding property owners. Therefore, the proposal is not in the public interest. It is also suggested that the existing facilities can accommodate the operations of the Shule/Synagogue and further expansion is not required.

Council Officer Response
The proposal services the local Jewish community in Dover Heights. The Shule/Synagogue facilitates practising the Jewish faith and functions/events that contribute to the Jewish sense of identity. In this respect, there are clear social benefits to the proposal. Furthermore, whilst the applicant has not provided quantitative evidence such as membership numbers to justify the demand to increase the Shule/Synagogue's capacity, the proposal has strategic merit in meeting the needs of the Jewish community in the local area, in line with the growing population in Sydney.

Details about the amenity impacts of the proposal are discussed further in this report.

Submission relating to Traffic and Parking
Concerns were raised by the adjoining Napier Street residents that approving the proposed LEP amendments will have a negative impact on traffic and parking management around the site. The underlying suggestion is that the expansion to the Shule/Synagogue will result in an increase of visitors to the area and therefore place further pressure on on-street car parking and generate additional traffic in the immediate vicinity. The submission also raised concern that when two cars are parked on either side of Napier Street, a relatively narrow cul-de-sac, exiting in and out of properties is difficult, particularly during special functions (e.g. weddings). The submission also suggests that previous conditions relating to

managing where users of the Shule/Synagogue park and cannot park their cars, have not previously been complied with.

Council Officer Response

Throughout the history of the site, it seems traffic and parking management has been an ongoing issue. It is acknowledged that there is likely to be greater traffic generation and car parking impacts from the subject proposal. Nevertheless, Council's internal traffic advice raises no objections to the planning proposal on transport and traffic grounds as the site is reasonably well-connected to public transport, Dover Heights does not have any particular identified problems associated with overall lack of car parking or high levels of vehicular traffic congestion, and there are religious requirements for patrons to walk to religious services. It is envisaged that the management strategies proposed below by the applicant's Traffic Impact Assessment (TIA) will address the concerns of the submission:

- The Dover Heights Shule/Synagogue will appoint an officer to maintain the management of off-street parking and deal with any parking related enquiries. The officer to be known as the Travel Plan Officer, is responsible for liaising with staff and visitors to the Shule/Synagogue and ensure that the designated car parking areas are utilised to minimise on-street parking impacts.
- The Travel Plan Officer is to patrol the nearby Napier and Blake Streets to encourage congregants of the Shule/Synagogue not to park their vehicles on the streets.
- Congregants will be regularly reminded that on-street parking in nearby Napier and Blake Streets is prohibited.
- The Shule/Synagogue is to provide communication methods for neighbours to report occurrences of on-street parking, and it is the Travel Plan Officer's responsibility to address any issues accordingly.
- A comprehensive Travel Access Guide (TAG) will be developed and distributed to Shule/Synagogue employees, visitors and congregants to encourage alternative transportation methods.
- The Dover Heights Shule/Synagogue will install appropriate signage to encourage visitors to park in designated areas and respect the neighbours.
- A monitoring and review process for the TMP will be undertaken by the Shule/Synagogue and maintained by the Travel Plan Officer. This would include an annual survey to be conducted by both visitors and staff to monitor the progress of the TMP.
- For future events, a promotional newsletter or bulletin should be distributed to staff, visitors and neighbouring properties 2 weeks in advance of a major event.

Detailed discussion of the traffic and parking impacts are discussed further in this report.

Submission relating to Amenity impacts

Two submissions were received objecting to the proposed FSR and height due to the impacts on overshadowing to the adjoining Kesser Torah College (KTC). In their submission to the original planning proposal (before the amendments to the maximum building height), concerns were raised that whilst the indicative concept plans show that the southern portion of the development will have a height of 9.5m, the proposed height of 10.5m applies the whole site. The indicative concept plans are not binding at the planning proposal stage and concerns were raised that any additional height up to 10.5m (which could be applied for at the DA stage) to the southern portion of the site would compromise the amenity of the classrooms and administration offices in terms of overshadowing, partial overlooking as well as partial loss of outlook and ventilation.

The submission suggests that a proposed height of 9.5m to the southern portion of the Shule/Synagogue would be acceptable.

Figure 7: Aerial photograph of the Shule/Synagogue in relation to the KTC building

Source: MHNDUNION

Council Officer Response

In response to the submissions from the KTC, the applicant has amended the proposal to now include a split maximum height of building across the site. This directly addresses the concerns in the abovementioned submission by ensuring that the 9.5m height is binding to the southern portion of the site.

Figure 8: Proposed Height of Buildings – 10.5m and 9.5m

Source: Urbis, 2018

Figure 9: Proposed Height of Buildings – 10.5m and 9.5m overlay with indicative Site Plan

Source: Urbis, 2018

4.3 Planning history of the site

The Planning history of the site is as follows:

- **DA 803/2001 –** Approval in February 2002 for use of the site as a Shule/Synagogue. A Traffic Management Plan was approved as part of the development which sought to reduce any on-street parking impact. This included:
  - Installation of street signs which advised users of the school and the Shule/Synagogue that parking in Blake or Napier Street is prohibited.
  - An officer was also required to patrol nearby streets during times when the Shule/Synagogue is to be used to ensure that on-street parking was avoided.
- **DA-383/2007 –** Subdivision of land into two stratum lots, lot 1 being the Shule/Synagogue and lot 2 being the school. Conditions to manage car parking between the two new lots were added as follows:
  - A right to park vehicles associated with Lot 1 (Shule/Synagogue) be provided over the car spaces when these car spaces are not required for school purposes.
  - The rear underground carpark located below the playground of the school must be open and made available for parking for attendees during functions and special events conducted in the Shule/Synagogue.

4.4 Required considerations

Below is an assessment of the proposal in relation to the required considerations in the DPE's *"A guide to preparing planning proposals".*

(a) Is the planning proposal the result of any strategic study or report?

The planning proposal site is located within Dover Heights which has not been the subject of recent strategic studies or reports commissioned by Council.

(b) Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proponent's objective to encourage further expansion of the Shule/Synagogue cannot be achieved with the current controls on the site. The existing building is already above the existing height and FSR for the site. Therefore, a planning proposal is necessary making it the best means to facilitate expansion of these uses

Minor changes to development standards can be achieved through a Clause 4.6 variation to development standards as part of a development application. However, the proposed increase in height – from 8.5 to 10.5 and 9.5 metres (24% maximum increase) – and FSR – from 0.5:1 to 1.3:1 (160% increase) – are deemed too significant to warrant a variation to development standards as part of a development application.

(c) Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

A Plan for Growing Sydney

*A Plan for Growing Sydne*y (Metropolitan Strategy) was released in December 2014 and is the NSW Government's 20-year plan for the Sydney Metropolitan Area. It provides direction for Sydney's productivity, environmental management, and liveability; and for the location of housing, employment, infrastructure and open space.

The Metropolitan Strategy does not specifically refer to or provide directions on places of public worship. However, the plan does aim to "improve the accessibility of cultural and recreational facilities outside the

Sydney CBD" and "undertake long-term planning for social infrastructure to support growing communities". Furthermore, the Metropolitan Strategy states that social infrastructure improvements "create places where people like to gather and feel they belong, leaving less chance for the socially vulnerable to become isolated."

The planning proposal is consistent with the aims and priorities of the Metropolitan Strategy that encourages the expansion of social infrastructure.

Draft Central District Plan and Draft Eastern City District Plan
Similar to *A Plan for Growing Sydney*, the draft Central District Plan does not specifically refer to or provide directions on places of public worship. The planning proposal is not inconsistent with the draft Central District Plan.

(d) Is the planning proposal consistent with the local Council's community strategic plan or other local strategic plan?

An assessment of the planning proposal against the strategies outlined in Council's community strategic plan, *Waverley Together 3*, can be found below:

Strategy	Consistent?
C2 The community is welcoming and inclusive and people feel they are connected and belong.	
C2a Provide a broad range of relevant, affordable and accessible facilities, spaces, programs and activities that promote harmony, respect and togetherness.	Yes. The proposed changes would facilitate a future expansion of the role and function of the Dover Heights Shule/Synagogue, as demonstrated by the proposed scheme. The function of a Shule/Synagogue are to cater specifically to members of the Jewish faith and not to the broader, secular and other-faith communities. However, the potential expansion of the Shule/Synagogue would cater to the significant Jewish community in and around Dover Heights and within the broader area. To this extent – and on balance – the planning proposal would promote harmony and a sense of connection and belonging and hence meets objectives C2 and C2a.

Strategy	Consistent?
L4 The unique physical qualities and strong sense of identity of Waverley's villages is respected and celebrated.	
L4a Use planning and heritage policies and controls to protect and improve the unique built environment.	Yes. The proposed changes would facilitate a future expansion of the role and function of the Dover Heights Shule/Synagogue and would improve the infrastructure provision for the Jewish community in the Dover Heights area.

The planning proposal is consistent with the Waverley Council's community strategic plan as it would promote harmony, a sense of connection and belonging as well as improve infrastructure provision for the Jewish community in the Dover Heights area.

(e) Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPS)?

Most SEPPs are not relevant to this planning proposal or would be a consideration at the development application stage. The relevant SEPP is the State Environmental Planning Policy (Infrastructure) 2007.

State Environmental Planning Policy (Infrastructure) 2007 sets out requirements for various public authorities and infrastructure works throughout the state. Under Schedule 3, the SEPP requires the referral of certain traffic generating development to the RMS during the DA assessment process. Places of public worship generating 200 or more motor vehicles are required to be referred to the RMS. The planning proposal is not a development application for an extension to a place of public worship. Nonetheless, the Gateway Determination required that the application be referred to the RMS for comment, who had no issues with the proposal.

(f) Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The section 117 Ministerial Directions that apply are '3.4 Integrated Land Use and Transport' and '7.1 Implementation of a Plan for Growing Sydney'. An assessment of the planning proposal against these objectives and criteria has been completed below.

Direction	Consistent	Comment
3.4 Integrated Land Use and Transport	Yes	The objective of this direction is to ensure that urban land use locations improve accessibility for active and public transport and reduce car dependence. The site is reasonably well-connected to public transport, being a short walking distance from two regular bus services. No objections are raised in regards to traffic and parking concerns as a result of a larger scale Shule/Synagogue on the site. Traffic and parking issues are further addressed below in criterion (h).
7.1 Implementation of a Plan for Growing Sydney	Yes	The objective of this direction is to give legal effect to the planning principles; directions; and priorities for districts, strategic centres and transport gateways contained in A Plan for Growing Sydney. As indicated above in 3.2 (c) the planning proposal is consistent with the aims and priorities of the Metropolitan Strategy that encourages the expansion of social infrastructure.

(g) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

It is not considered that any critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the planning proposal.

(h) Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Traffic and Parking

The proponent submitted a Traffic Impact Assessment (TIA) as part of the planning proposal documentation. The Traffic Management Plan contained in the TIA outlines that the planning proposal would result in a minimal reduction of car parking spaces on site:

Car park location	Existing capacity (spaces)	Proposed capacity (spaces)	Use
Car park 1	18	17	Used by the Shule/Synagogue / Kesser Torah College and Pre-School pick up / drop off.
Car park 2	27	27	Used by Kesser Torah College exclusively.
Car park 3	30	30	Car parking is available for Shule/Synagogue Patrons outside of Kesser Torah College operating hours.
TOTAL	75	74	

Figure 10: Location of Carparks 1, 2 and 3

Source: Traffix, 2016.

The TIA states that the Shule/Synagogue's current vehicular access and car parking is accommodated within Car Park 1.

The TIA states that a first principles[1] approach is appropriate to calculate the number of spaces required by the Proposed Scheme Concept Plan (given that the WDCP does not state requirements for Places of Public Worship).The applicant's TIA refers to GSA Planning's (2007) *Traffic and Parking Management Plan* (submitted with DA-803/2007) original assessment of the existing number of visitors to the Shule/Synagogue each day. It is recommended that an updated assessment of the existing number of visitors be provided in an updated TIA at the DA stage.

The planning proposal documentation asserts that the objective of increasing the Shule/Synagogue's capacity is not to accommodate an increase in the number of patrons visiting the site rather it will provide an opportunity to improve on-site facilities. Therefore, the TIA notes that the current parking demand will remain unchanged, citing the religious requirement for walking to religious services. Notwithstanding, the TIA makes the following assessment of parking:

- The maximum parking requirement for the Dover Heights Shule/Synagogue is twenty eight during special event services occurring seven times throughout the year and do not coincide with the Kesser Torah College operating hours.
- Parking requirement for social events (weekday evenings and weekends) is a maximum requirement of twenty parking spaces. Therefore, it is considered that the social events and festivals parking requirement can be readily accommodated within Car Park 1 and Car Park 3 which provides a total of forty eight parking spaces.
- The weekday maximum car parking requirement for the Dover Heights Shule/Synagogue is considered to be ten parking spaces. It is noted that the Shule/Synagogue site car park provides six car parking spaces and is located within Car Park 1, however, the parking spaces are shared with the Day Care centre. It is considered that five car spaces in Car Park 1 are unrestricted and can accommodate the Shule/Synagogue staff and a portion of visitors to the Shule/Synagogue. In addition, the Shule/Synagogue will have access to an additional twelve car parking spaces outside of Day Care pick up and drop off times.
- In the event that the daily maximum number of ten vehicles were to arrive during Day Care pick up and drop off times, two of these vehicles could be accommodated within Car Park 1 (noting that the other 2 spaces are for Shule/Synagogue staff) and the remaining eight vehicles would utilise on-street parking along the frontages of the school. The likelihood of this scenario is extremely low as visitors to the Shule/Synagogue during weekdays are usually throughout the day and during business hours (i.e. after drop off and before pick up times).

To implement these car parking arrangements the TIA argues that *"The existing car park area includes a security booth with monitored security personnel. Additional security measures include a rising bollard and a boom gate. These security devices ensure the occupants of the car park utilise the correct parking spaces".*

The Traffic Management Plan in the TIA proposes the following travel strategies to encourage active travel for staff and visitors to the Shule/Synagogue:

Proposal	Details	Implementation
Management of Off-Street Parking Facilities	Officer to set up and maintain management of the off-street parking facilities as well as manage all enquiries relating to parking for the Dover Heights Shule/Synagogue. The officer will be responsible for liaising with staff and visitors to the Shule/Synagogue to ensure that	A minimum of 73 car parking spaces be available at all times on site when any of the permitted uses (Shule/Synagogue or School) are operating, with Car Park 3 to be available for Shule/Synagogue patrons. The Shule/Synagogue is to provide a permanent officer to patrol nearby areas of Napier and Blake Street at times when the Shule/Synagogue is used

[1] A first-principles approach refers to a self-evident proposition or assumption that cannot be deduced from any other proposition or assumption.

Proposal	Details	Implementation
	off-street parking is utilised so that there is minimal impact to on-street parking.	to ensure that no attendees park vehicles in the adjoining streets. Congregants attending the Shule/Synagogue are to be reminded on a regular basis that motor vehicles should not be parked in the nearby areas of Napier and Blake Streets.
Walking and Cycling Routes	Providing walking and cycling routes to staff and visitors to promote active travel.	Reviewed annually to ensure any changes or additions to routes in the local area are reflected. The Shule/Synagogue shall provide active travel education to all visitors and promote active travel through annual events.

Previous developments at the subject site (DA-803/2001) have included conditions relating to the specific parking management requirements of the site. It is recommended that any future Development Applications for the site update these parking management restrictions to ensure the smooth operation of the area.

Consultation was completed with the surrounding residents in Napier and Blake Streets and Weonga Road receiving letters and project fact sheets. This consultation highlighted that several residents were concerned about the traffic and car parking impacts of any future intensification of the site. In response, the Consultation report recommended that the Shule/Synagogue site would work with the school to explore solutions to traffic and parking impacts. The planning proposal did not outline what these solutions might be.

The planning proposal argues that further development on site would not generate additional traffic to and from the site above existing levels. However, the planning proposal cannot guarantee such an outcome and it is possible that there could be a further net increase in the number of patrons visiting the site above current levels if the Shule/Synagogue expand. Furthermore, it is possible that additional floor space (facilitated by an increase in FSR and height) could be used for special functions that patrons can drive to, such as Bar Mitzvahs, which may not currently be accommodated on site. This is the most significant potential traffic related impact that could arise from development on the site and this impact should not be understated. At the same time, any additional functions accommodated on the site from an increase in floor space would be considered 'ancillary' to the primary purpose of the place of public worship. Therefore it is envisaged that appropriate conditions could be outlined in any future DA to manage these impacts.

The internal traffic advice received raises no objections to the planning proposal on transport and traffic grounds on the basis that:

- The location is reasonably well-connected to public transport, being a short walking distance from two regular bus services.
- The location of Dover Heights does not have any particular identified problems associated with overall lack of car parking or high levels of vehicular traffic congestion.
- There are religious requirements for patrons to walk to religious services.
- Conditions can be implemented at a development application stage to manage traffic related impacts.

Given that the Shule/Synagogue and Kesser Torah College are strata subdivided, and hence are part of the same strata scheme, the management and coordination of car parking arrangements can be more effectively implemented than if the two lots were separate Torrens title. It is expected that any issues relating to managing and ameliorating car parking issues in the future can be managed via coordination between the two strata subdivided uses as well as the implementation of conditions that prescribe specific

parking management requirements for the site including an officer to set up and maintain management of the off-street parking facilities.

Recommendation:
In summary, there is likely to be greater traffic generation and car parking impacts that would result from the requested built form (height and FSR) changes in the planning proposal. These are planned to be managed via the implementation of a Traffic Management Plan at the DA stage which would govern sharing arrangements with the Kesser Torah College and by staff who would actively manage on-site and off-site parking.

Consideration of the amenity of neighbouring properties

The changes requested in the planning proposal could result in a building/s that is larger and taller than the existing buildings on site. The planning proposal includes an increase to the height development standard from 8.5 metres to 10.5 and 9.5 metres, as well as an increase to the FSR from 0.5:1 to 1.3:1. These increases could facilitate a three storey development of a greater bulk and scale than existing on the site. The planning proposal increases do appear to be significant considering that the subject site is within a predominately low density residential neighbourhood. The increases in bulk and scale have the potential to impact on the amenity of neighbouring properties with regard to overshadowing, privacy and streetscape amenity. Consultation commissioned by the applicant as a part of the planning proposal found that several residents were concerned about the visual impacts relating to scale, bulk and overshadowing. These impacts are discussed in turn below.

Visual impact
The height, bulk and scale of the development under the proposed 10.5 and 9.5 metre height limit and 1.3:1 FSR could create a greater visual impact than existing on site. While a planning proposal is not required to go into the detail required from a DA merit assessment, the acceptability of the proposal is discussed below.

There is an existing large three-storey building– the Kesser Torah College – that faces Napier Street and hence any further development of the subject site would be visually compatible with, and respond to, the existing elements of the streetscape and is unlikely to significantly change the streetscape presence to Napier Street from the west. The surrounding residential area contains mostly two-storey, large residential dwellings that have an FSR closer to 1:1, rather than the existing control of 0.5:1 and in this respect the proposal would not be significantly incompatible with the prevailing built form.

A potential 10.5 and 9.5 metre, three-storey development abutting residential properties to the north could be mitigated through appropriate setbacks and other design solutions. In response to this issue, the Consultation report suggested that a revision had been made to the roofline to be less visually intrusive from neighbours and that a future design (lodged as part of a separate development application) would respond to concerns from neighbours.

There are residential properties to the west and south, but the boundaries of these properties are 20 metres and 47 metres, respectively, from the boundary of the subject site. The distance between these properties and the subject site would attenuate the potential built form impacts arising from the development.

The proposed new height and FSR controls would not diminish any views to and from a public place or significant landmark.

Overshadowing
The proposed increases in height and FSR will not impact on the amenity of neighbouring residential properties, in regards to overshadowing. The only residential properties that directly adjoin the site are to the north.

Privacy
It is possible that a future development could have windows oriented to the north that overlook the backyard of the neighbouring properties to the north, particularly from a third level. This impact could be mitigated or ameliorated through design solutions such as screening and additional setbacks to ensure that the current level of amenity for residents is maintained.

It is envisaged that issues of visual impact and privacy will be considered at the DA stage via a merit assessment.

Internal urban design advice was received and noted the following urban design issues to be resolved during the development assessment process:

- The length of the building is approximately 60 metres which creates a large visual edge along the length of Napier Street. The building should be well articulated along this elevation to reduce the impact of bulk and scale on Napier Street.
- The proposed built form adjacent to residential dwellings at 13-15 Weonga Road, should be designed to limit the impact of bulk and scale on these dwellings.

Recommendation:
The potential increases in bulk and scale will not create an adverse impact in regards to overshadowing and potential impacts relating to privacy and visual impact on the streetscape can be mitigated via design solutions. Therefore, the planning proposal is supported to proceed to public exhibition on Urban Design grounds.

(i) Has the planning proposal adequately addressed any social and economic effects?

The planning proposal states that the proposed changes would create the following social and economic benefits.

Planning Proposal claim	Comment
The proposed development is in the public interest as it ensures that an important religious establishment in the Dover Heights community continues to provide appropriate spaces for religious services and community gatherings into the future.	To the extent that the planning proposal creates a more functional establishment for the local Jewish community in Dover Heights, then this is a social benefit to this local community, which is strongly represented in the local area.
Future expansion of the structure will meet the needs of local residents into the future and provide additional classrooms and a hall for community celebrations.	An assessment of future needs of local residents for additional classrooms or for an additional hall for community celebrations in this location has not been completed. Therefore this cannot be claimed to be a definitive benefit.
The proposal will enhance the existing Shule/Synagogue facility. This proposal is a contemporary design that will improve the presentation and function of the building.	The proposed scheme concept plan may enhance the Shule/Synagogue facility. However, the presentation and function of any future development form cannot be claimed, as the planning proposal does not require a particular built form. It is possible that a future design could diminish the presentation and function of the building. Therefore this cannot necessarily be claimed

Planning Proposal claim	Comment
	as a benefit.
Community consultation of properties along Blake and Napier Streets and Weonga Road was undertaken through the design process as part of an ongoing commitment by the Shule/Synagogue to engage with local residents.	Results from community consultation indicate that there are concerns relating to the visual and traffic impacts from an intensification of the site. The Consultation report associated with the planning proposal has recommended to work with neighbours to mitigate any visual and traffic impacts. Furthermore, internal traffic, sustainable transport and urban design referrals raise no objections to the planning proposal proceeding. It is also noted that after Council's public exhibition period, the applicant amended the proposal to reduce the height on the southern portion of the site.
The objective of increasing the Shule/Synagogue's capacity is to accommodate the number of patrons already visiting the Shule/Synagogue. Nonetheless, a parking management strategy is proposed for the site which will ensure there are no additional impacts to on street parking.	There are likely to be transport and traffic effects, in particular parking, that would result from the requested built form changes in the planning proposal. However, internal traffic and sustainable transport advice raises no objections to the planning proposal on transport and traffic grounds as indicated above.

There are no obvious economic effects as a result of the development.

Recommendation:

The potential expansion of the Dover Heights Shule/Synagogue would benefit the significant Jewish community in Dover Heights. The planning proposal would facilitate expansion of the existing facilities and hence could create potential traffic, urban design and neighbourhood amenity issues. However, the advice received indicates that the planning proposal addresses these issues as outlined throughout this report above.

(j) Is there adequate public infrastructure for the planning proposal?

Yes, there is adequate public infrastructure for the planning proposal. A more detailed assessment is outlined below:

Public Transport

There are adequate public transport connections for this planning proposal. The existing transport infrastructure is capable of handling the additional demand generated. It is a short walking distance from two regular bus services:

- 180 metres walk from the 380 bus route, which connects to Watsons Bay, Vaucluse, North Bondi, Bondi, and Bondi Junction via Bondi Road.
- 300 metres walk from the 323 bus route, which connects to Dover Heights, Rose Bay, Double Bay and Edgecliff train station via New South Head Road.

Roads

The site is located at the corner of Blake and Napier Streets, Dover Heights, both of which are local roads accessible by the existing road network.

Waste Management Services

Waste management and recycling services will continue to be provided by Waverley Council.

Utility Services
Existing utility services will adequately service the future development of the site as per the planning proposal. The proponent has committed to upgrading utilities where required.

(k) What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination and have they resulted in any variations to the planning proposal?

Referral comments were received from State public authorities Transport for NSW and RMS. No objections were received by these authorities.

Views of Commonwealth public authorities were not required.

5. Relationship to Waverley Together 3 & Delivery Program 2013-17

The relationship to *Waverley Together 3* and *Delivery Program 2013-17* is as follows:

Direction:	L5 Buildings are well-designed, safe and accessible and the new is balanced with the old.
Strategy:	L5a Ensure planning building controls for new buildings and building upgrades deliver high quality urban design that is safe and accessible, in which heritage and open space is recognised, respected and protected.
Deliverable:	Strategic Land Use policies and plans reviewed regularly

6. Financial impact statement/Timeframe/Consultation

6.1 Financial impact statement

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the assessment. These costs have been accounted for in Shaping Waverley's operational budget.

6.2 Timeframe

Whilst it is difficult to accurately provide a timeframe for the project as it involves corresponding with external bodies such as the DPE and Parliamentary Counsel, the anticipated timeframe for further work on this project is as follows:

March 2018	Report to Strategic Planning and Development Committee meeting.
April to May 2018	Finalisation of planning proposal with Parliamentary Counsel and anticipated gazettal.

7. Conclusion

The planning proposal includes an increase to the height development standard from 8.5 metres to 10.5 and 9.5 metres, as well as an increase to the FSR from 0.5:1 to 1.3:1. The changes requested in the planning proposal could result in a building/s that is larger and taller than the existing buildings on site. As such, the expansion of the Shule/Synagogue could raise in traffic / transport and urban design issues.

Regarding traffic, it is expected that any issues relating to managing and ameliorating car parking issues in the future can be managed via coordination between the two strata subdivided uses. Development assessment conditions that prescribe specific parking management requirements for the site – including an officer to set up and maintain management of the off-street parking facilities – could be implemented at the DA stage. There are currently a range of similar DA conditions that apply to the site.

Regarding urban design impacts, the potential increases in bulk and scale will not create adverse impacts in and visual impact on the streetscape can be mitigated via design solutions.

In conclusion, it is believed that the planning proposal has strategic merit and should be supported by Council.

8. Attachments

Nil.

REPORT
PD/5.2/18.03

Subject: **Waverley Architectural Mapping Project**

TRIM No: A17/0636

Author: Gabrielle Coleman, Strategic Planner

Director: George Bramis, Acting Director, Waverley Futures

RECOMMENDATION:

That Council acknowledges Council staff will be carrying out the Waverley Architectural Mapping Project. It will be funded by a grant of $42,828 awarded by the Office of Environment and Heritage as part of the Heritage Near Me incentives program.

1. Executive Summary

The purpose of this report is to inform the Council of a $42,828 grant awarded by the Office of the Environment and Heritage (OEH) to carry out the Waverley Architectural Mapping Project. The aim of this project is to map and identify urban typologies and architectural styles across the Waverley Local Government Area to create a comprehensive database of a range of built-form attributes including dwelling typologies, number of storeys, land use, car parking provision and items of heritage interest. This database can be used as a tool to identify and protect Waverley's history and integrate that knowledge into future strategic planning decisions.

It is expected the project will be complete by the end of 2018, subject to resourcing.

2. Introduction/Background

A comprehensive review of this scale has not been undertaken by Waverley Council before and with the current rate of development in the LGA, this project is timely. Broadly, the objective of this project is to map and identify urban typologies and architectural styles across the Waverley LGA. It will create a comprehensive database of built-form attributes including dwelling typologies, number of storeys, land use, car parking provision and items of heritage interest. This database can be used as a tool to identify and protect Waverley's history and integrate that knowledge into future strategic planning decisions.

In November 2017, officers from Strategic Town Planning submitted an application to receive grant funding from the OEH Heritage Near Me incentives program for the Waverley Architectural Mapping Project. The OEH notified Council that the grant funding had been approved in early February 2018. This funding to the amount of $42,828 will be made available to Council after the relevant documentation has been updated internally, including a revised timeline.

The idea for this project was borne from one of the Housing Issues Paper recommendations, completed by Strategic Town Planning team and considered by Council in December 2017. The recommendation was as follows:

> ***Map residential styles*** *– The residential history of Waverley revealed that there are dwellings that represent different eras across the LGA. However, the investigation revealed that there is no*

comprehensive and accessible database to understand areas of significant dwelling styles. To ensure that any future changes to planning controls do not compromise the architectural integrity of the LGA, further work should be completed. This could include mapping the architectural styles and eras of each dwelling across the LGA to promote and enhance areas of important residential character.

3. Relevant Council Resolutions

Nil.

4. Discussion

Waverley has a unique built environment history that ranges from mid-19th century sandstone worker's cottages, Victorian and Federation terraces, inter-war flat buildings in the Bondi basin to modern high-rise towers in Bondi Junction. This project proposes to map all of Waverley's architectural styles and urban typologies by systematically looking at every lot in the LGA and identifying the following attributes.

- Architectural style.
- Dwelling type: including detached, semi-detached, attached, apartments and shop top housing.
- Evidence of modifications to architectural styles.
- Land use: residential, commercial, other, mixed.
- On-site car parking.
- Number of storeys.
- Items of heritage interest. To be completed both within and outside of Heritage Conservation Areas.

At the end of the project, a summary report will be produced with the mapping outputs from the study and some of the key findings from the study with recommendations for future work such as updates to the DCP, LEP, Heritage Conservation Areas and listing (or potential removal) of future heritage items. This future work is not explicitly part of the project's scope.

5. Relationship to Waverley Together 3 & Delivery Program 2013-17

The relationship to *Waverley Together 3* and *Delivery Program 2013-17* is as follows:

Direction:	L5 Buildings are well-designed, safe and accessible and the new is balanced with the old.
Strategy:	L5a Ensure planning building controls for new buildings and building upgrades deliver high quality urban design that is safe and accessible, in which heritage and open space is recognised, respected and protected.
Deliverable:	Strategic Land Use policies and plans reviewed regularly .

6. Financial impact statement/ Timeframe/Consultation

6.1 Financial impact statement

There are no financial impacts of the project as it is being funded by the OEH through the Heritage Near Me incentives program.

6.2 Timeframe

A crucial element of this project is the employment of university students/graduates to undertake the data collection of the attributes for each lot in the LGA. Therefore the timing of this project is contingent on when they are available to undertake the data collection. The original timeframe envisaged that these students would be engaged over the January/ February university holidays. Given the delay in grant approval, this timing is currently being revised with the potential to use student labour over the mid-year university break. It is expected the project will be complete by the end of 2018.

6.3 Consultation

Limited consultation will be undertaken during the project. The technical nature of the data collection exercise will guide the nature and level of engagement to be undertaken. It is expected that key community groups may be consulted.

7. Conclusion

A comprehensive review of this type and scale has not been undertaken by Waverley Council before and with the current rate of development in the LGA, this project is timely. The confirmation of the OEH grant funding has provided officers with the impetus to carry out project implementation. Council will be kept informed of major milestones by e-mail during the project.

8. Attachments

Nil.

REPORT
PD/5.3/18.03

Subject: **Amendments to the Environmental Planning and Assessment Act 1979**

TRIM No: A03/0117

Author: Jaime Hogan, Strategic Planner

Director: George Bramis, Acting Director, Waverley Futures

RECOMMENDATION:

That Council:

1. Notes the changes to the Environmental Planning and Assessment Act 1979.

2. Notes the circular from the Department of Planning & Environment regarding Clause 4.6 'Exceptions to Development Standards'.

1. Executive Summary

The purpose of this report is to notify Council of the changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and of two planning circulars issued by the Department of Planning & Environment (DPE) regarding variations to development standards.

The EP&A Act has been updated following the passing of the *Environmental Planning and Assessment Amendment Act 2017* (the Amending Act) in NSW Parliament in November 2017. The changes will be staged, with most commencing on 1 March 2018. Some changes will take longer to implement as they require further guidance and consultation.

Planning Circular 18-003 (released by the DPE 21 February 2018) affects the delegations of all Sydney Councils, effective immediately. Any Development Application that varies a Development Standard (in Waverley this means the controls for Height, Floor Space and Minimum Subdivision Size in the LEP) by more than 10% cannot be delegated to Council officers and will now automatically have to be assessed by the WDAP.

2. Introduction/Background

The NSW Parliament passed the Amending Act in November 2017. This is the largest amendment to the *Environmental Planning and Assessment Act 1979* (the Act) since the inception of the legislation in 1979. The changes are a result of extensive consultation with stakeholders carried out by the DPE. The DPE is currently undertaking a review of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) which will support the changes to the Act.

Planning Circular 18-003 (released by the DPE 21 February 2018) affects the delegations of all Sydney Councils, effective immediately. Any Development Application that varies a Development Standard (in Waverley this means the controls for Height, Floor Space and Minimum Subdivision Size in the LEP) by more than 10% cannot be delegated to Council officers and will now automatically have to be assessed by the WDAP.

3. Relevant Council Resolutions

Nil.

4. Discussion

Changes to the EP&A Act

The primary purpose of the changes to the EP&A Act is to promote confidence in our state's planning system. This will be achieved through four underlying objectives:

- To enhance community participation;
- To promote strategic planning;
- To increase probity and accountability in decision making; and
- To promote simpler, faster processes for all participants.

The new Act is simplified and easier to navigate and understand. There are 10 principal parts with revised decimal numbering of all provisions. Some detailed provisions have also been moved to schedules and the regulations where appropriate.

An overview of the key changes Amending Act and the proposed commencement period are listed in Table 1 below. Attachment 1 provides a more detailed summary of the proposed changes from the DPE. Attachment 2 provides a useful table that aligns the numbering of previous provisions of the Act with the numbering of revised provisions.

Table 1 – Changes to the EP&A Act and the Commencement of those changes

CHANGE	***COMMENCEMENT***
General	
Revised decimal numbering.	1 March 2018. However there will be a transitional period (which has yet to be specified) to allow Council to change all documentation to reflect the new numbering system.
Part 1	
Revised objects of the Act.	1 March 2018.
Part 2	
Implementation of Local Planning Panels.	1 March 2018.
Preparation of a Community Participation Plan.	CPPs will undergo further consultation before their implementation and the obligation under the Act to provide a CPP will not commence until this consultation is completed.
Requirement to give and publicly notify reasons for decisions.	Local planning panels and Sydney district and regional planning panels will be required to give written reasons of their decisions and make them publicly available from 1 March 2018. The requirement to give and publicly notify reasons for decisions will be required for all new applications from 1 July 2018. Templates and guidance material will be released to assist decision-makers with this new requirement.
Part 3	
The preparation of Local Strategic Planning Statements.	The earliest Council will be required to have the new Local Strategic Planning Statements (LSPS) in place is mid to late 2019. The preparation of the

	LSPS is delayed to enable further work to be carried out and for the DPE and Council to work together on the implementation. The DPE will prepare guidance material, templates and Secretary's requirements, and develop a process for endorsing the statements.
Part 4	
The requirement to regularly review Local Environmental Plans every five years.	The DPE will prepare criteria and guidance material during 2018 with Council to implement the change in late 2018.
The preparation of a standard template Development Control Plan for each Council.	This change requires further consultation with councils on the standard template, guidance material, building an online platform and on the NSW Planning Portal website before regulations and other policy guidance is provided. It is expected that the preparation of the standard template DCP will not commence until 2019.
New powers to manage complying development and provide greater certainty to the community.	These changes require further consultation with stakeholders including councils and certifiers before regulations and other policy guidance is provided.
Changes to Part 3A applications to either State Significant Development (SSD) or State Significant Infrastructure (SSI).	The changes to end the transitional arrangements for Part 3A projects will commence from 1 March 2018 with a regulation to end the transitional arrangements. The introduction of transferrable conditions (consent conditions that can become dormant where they are also imposed by an environment protection licence or other instrument) will be available from 1 March 2018 for SSD only. This will be followed by the staged introduction of new and existing consent processes during 2018 and provide time for guidance to be developed in consultation with stakeholders.
New Planning Secretary powers to intervene and speed up NSW Government agency referrals.	These changes will be available from mid-2018 to enable a new online concurrence and referral system to be introduced.
Part 5	
Requirement for concurrence or notification of public authorities to activities under Part 5 within future infrastructure corridors.	The changes to concurrence or notification of public authorities under Part 5 will commence from 1 March 2018, but will be given effect through other planning instruments, such as the Infrastructure State Environment Planning Policy as and when required.
Part 6	
Revised clearer and more logical structure to building regulation and certification in the Act – now contained in Part 6 of the updated EP&A Act. Principal certifiers will have additional functions, including: • carrying out inspections of building or subdivision work • issuing occupation certificates	These changes will require further consultation, including the development of the building manual, preparation of relevant guidance material, and review of the schemes for issuing occupation certificates and subdivision certificates. This will be carried out in 2018 and 2019.

• issuing completion of work compliance certificates • issuing subdivision certificates for subdivision work.	
Part 7 Changes to the infrastructure contributions system – the Minister for Planning will have the power to direct the methodology used by councils when entering into voluntary planning agreements. The Department will work with IPART, councils and industry to review current guidelines on the costs, design and provision of local infrastructure delivered through local infrastructure contributions to ensure they are delivered efficiently and to appropriate standards.	Changes to planning agreements will commence from 1 March 2018 with further work to be carried out to provide guidance to stakeholders.
Part 8 Internal review of a decision about integrated development.	Changes to reviews about integrated development (development applications that require a permit or license from a NSW Government agency in addition to a development consent from the Department) and to appeals on decisions about SSD that are determined by Departmental staff under delegation will commence from 1 March 2018.
Part 9 New and increased enforcement measures to enable breaches of the EP&A Act to be fixed, compensated or efficiently resolved.	The changes to enforcement will commence from 1 March 2018 with guidance material on their content and use to be developed by the DPE for consultation with stakeholders during 2018.

Planning Circulars 17-006 and 18-003

On 15 December 2017, the DPE issued a Planning Circular (17-006) regarding variations to development standards under Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP) and *State Environmental Planning Policy No 1 – Development Standards* (SEPP 1). The Planning Circular referred to applications being assessed by 'Councils'. There was confusion around what was meant by 'Councils' as, after 1 March 2018, 'Councils' will not have delegation to assess developments. On 21 February 2018, an amending Planning Circular (18-003) was released to clarify that what was meant by the assessing body is a Local Planning Panel, and not a Council. Refer to Attachment 3 Planning Circular 17-006 and Attachment 4 Planning Circular 18-003.

With the commencement of the new Local Planning Panel (LPP) model from 1 March 2018, delegations relating to the types of Development Applications that may be determined under staff delegation, and those that must be referred to the Waverley Development Assessment Panel (WDAP), are likely to be different. The full delegation model was not known at the time of writing this report (end Feb 2018) however details should have been released by the Minister by the time of reading by this Committee, anticipated to be around 1 March 2018.

Planning Circular 18-003 affected the delegations of all Sydney Councils, effective immediately. The circular stipulated that the Department's discretion on offering Council the ability to determine Development Applications that vary a Development Standard (in Waverley this means the controls for Height, Floor Space and Minimum Subdivision Size in the LEP) was being limited to a maximum variation of 10%. That is, from 21 February 2018, any decisions to vary a Development Standard by more than 10% must go to an Independent Panel (the WDAP) for determination. As there is no longer an opportunity for Council officers

to approve of a variation above 10%, including in cases where there is no demonstrated impact or objection, the WDAP is required to review some applications that are minor in nature, uncontroversial, and without impact, based on a numerical standard.
It is not yet known how many extra applications will be referred to the WDAP each month as a result of the change, however Woollahra Council has already demonstrated through their first meeting in March that there was an 87% increase in applications (from 8 to 15) as a result of this delegation change, many of the items being for existing non-compliances.

At the time of writing this report it is unclear what the implications will be for Waverley Council, but it could be reasonably suggested that at a minimum it will be similar to the Woollahra experience. It is proposed that after a number of WDAP meetings, there will be a further report to Council to outline the implications, including any budgetary/resourcing issues. At that time, depending on the extent of change, it may be recommended that Council seek a greater dispensation from the Department.

5. Relationship to Waverley Together 3 & Delivery Program 2013-17

The relationship to *Waverley Together 3* and *Delivery Program 2013-17* is as follows:

Direction:	G1 Inspiring community leadership is achieved through decision making processes that are open, transparent, corruption resistant and based on sound integrated planning.
Strategy:	G1a Develop and maintain a framework of plans and policies that ensures open and transparent operations that facilitate equitable benefit sharing and progress towards sustainability.
Deliverable:	Significant governance policies developed and existing policies reviewed regularly and access to Council's policy register provided.

6. Financial impact statement/Timeframe/Consultation

The implementation of the EP&A Act changes will be staged, beginning from 1 March 2018 continuing to late 2019. Over the course of the next 12 to 18 months, there will be a number of stages through which Council will be required to prepare new processes and procedures, as well as update references to the EP&A Act in the DCP and LEP, based on the legislative change and subsequent guidance material to be prepared by the DPE.

As discussed above, the number of WDAP meetings may need to be increased as a result of the new Planning Circular, and the financial impacts will be reported to Council later in 2018. The financial and resource implications are as yet unknown.

7. Conclusion

The changes to the EP&A Act aim to implement a more transparent planning system that is easier for applicants to navigate. The changes will begin to be implemented from 1 March 2018 and continue in stages as guidance material is released.

The planning circulars will increase the number of developments that are required to be determined by the WDAP. Further information will be gathered and reported to Council later in 2018 on the extent of this impact.

8. Attachments

1. Summary of Changes
2. Table of Provisions
3. Planning Circular 17-006
4. Planning Circular 18-003


NSW GOVERNMENT
Planning & Environment
Planning Legislation Updates
Summary of proposals January 2017

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Contents

Minister's Foreword

This guide sets out the Government's proposals to update the *Environmental Planning and Assessment Act 1979* (EP&A Act) through a series of targeted amendments.

These updates aim to build greater confidence in the planning system by enhancing community participation, strengthening upfront strategic planning and delivering greater probity and integrity in decision-making. The updates will make the system simpler and faster for all participants and help ensure that growth across NSW is carefully planned into the future.

The EP&A Act has been amended some 150 times in the decades since its establishment. While it still provides a solid foundation for our planning system, we need to remove the unnecessary complexity that has built up over the years and return the focus to delivering transparent processes that enable best practice planning outcomes.

We particularly want to protect and enhance the community's participation in the system, and passion about where they live and work.

The targeted amendments outlined in this guide will help create a planning system that delivers good amenity and liveability, encourages connected communities and promotes the enjoyment and protection of the local environment and heritage. They will help create a system that allows us to balance different views and values, and helps us accommodate growth in a way that produces better outcomes.

We are living in the most highly urbanised era in Australian history, so it is time we elevated the critical role of design in the built environment to deliver neighbourhoods, streets, parks and recreation spaces that balance the needs of communities with the need to accommodate growth.

The updates detailed in this guide sit alongside other initiatives the Government has already taken to deliver a better built environment. Among these are the establishment of the Greater Sydney Commission to plan for a liveable, productive and sustainable Greater Sydney, the roll out of regional plans across the state and the development of the new NSW Planning Portal, which makes planning information and services readily accessible.

We look forward to hearing your views on the proposals and welcome constructive debate in order to help us to deliver great planning outcomes for our state.

Rob Stokes
Minister for Planning

Introduction

Objectives of the legislative updates

The primary purpose of this package of updates to the *Environmental Planning and Assessment Act 1979* (EP&A Act) is to promote confidence in our state's planning system. This will be achieved through four underlying objectives:

- to enhance community participation;
- to promote strategic planning;
- to increase probity and accountability in decision-making; and
- to promote simpler, faster processes for all participants.

The proposed amendments build on recent policy, operational and legislative improvements to the NSW planning system. These include:

- **Greater Sydney Commission:** Within the Greater Sydney Region, the Commission is now responsible for preparing district plans, making a range of strategic planning and development decisions, and implementing *A Plan for Growing Sydney*.
- **Strategic planning:** A hierarchy of regional and district plans is now established in legislation, which must be implemented in local planning controls in the Greater Sydney Region, and can be switched on for other areas of NSW.
- **ePlanning:** The NSW planning database has been established as an electronic repository of planning information, and the NSW Planning Portal provides online access to planning information, tools and services.
- **Enforcement:** A new three tier offence regime is now in place, with substantial increases to maximum penalties for offences under the EP&A Act. This is supported by consolidated departmental and council investigative powers.

The proposed amendments also build on the significant work undertaken by the Government and stakeholders in 2013 to identify improvements to the planning system. At that time, the Government proposed a range of reforms set out in the Planning Bill 2013 and the *White Paper: A New Planning System for NSW*.

The current proposals outlined in this paper build on areas of agreement from 2013 and the subsequent improvements. They are the next steps in promoting confidence in the NSW planning system.

Figure 1 maps the current set of proposals against the policy objectives.

Figure 1: Objectives of the updates to planning legislation

Objectives		Initiatives
Community participation	Enhancing community involvement in the key decisions that shape our cities, towns and neighbourhoods	Community participation plans
		Community participation principles
		Statement of reasons for decisions
		Stronger consultation requirements for major projects
		Up to date engagement tools
		Early consultation with neighbours
Strategic planning & better outcomes	Continuing to improve upfront strategic planning to guide growth and development	Local strategic planning statements
		Regular local environment plan (LEP) checks
		Standard development control plan (DCP) format
		Optional model DCP provisions
		A new design object
		Design-led planning strategy
		Enforceable undertakings
		Improved environmental impact assessments
		Fair and consistent planning agreements
Probity and accountability in decisions	Improving transparency, balance and expertise in decision-making to improve confidence and trust in the planning system	Discontinuing Part 3A arrangements
		Directions for local planning panels
		Improved environmental impact assessments
		Ensuring delegation to council staff
		Refreshed thresholds for regional development
		Independent Planning Commission
		Model codes of conduct for planning bodies
		Preventing the misuse of modifications
		Clearer powers to update conditions on monitoring and environmental audit
Simpler, faster planning	Creating a system that is easier to understand, navigate and use, with better information and intuitive online processes	Efficient approvals and advice from NSW agencies
		Standard DCP format
		Optional model DCP provisions
		Improved complying development pathway
		Transferrable conditions
		Fair and consistent planning agreements
		Simplified and consolidated building provisions

A more accessible Act

Part of making the NSW planning system easier to understand and navigate is to make the EP&A Act itself more accessible in terms of its structure and provisions. The amendments include a range of housekeeping and structural changes, such as:

- clarifying development assessment pathways by clearly describing all categories of development in one place;
- standardising and consolidating provisions governing the administration of the planning system;
- removing repealed provisions;
- updating the numbering and names of parts, divisions, sections and schedules;
- refining some terms and definitions to clarify policy intent; and
- transferring appropriate provisions to the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).*

These changes will ensure the EP&A Act is clearer and easier to use.

Updated objects

We also propose to modernise the objects of the EP&A Act. The updates do not change the intent or effect of the objects, except for the inclusion of an object to promote good design in the planning system, as detailed in section 9 of this paper. The proposed objects are as follows:

The updated objects of this Act include:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
- to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing);
- to protect the environment, including the conservation of threatened and other species of native animals and plants;
- to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage);
- to promote good design in the built environment;
- to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- to provide increased opportunity for community participation in environmental planning and assessment.

Discussions to date

Following the Government's announcement in May 2016 of its plan to update the EP&A Act, the Department of Planning and Environment (the Department) conducted targeted stakeholder consultations in Sydney, Parramatta, Queanbeyan, Gosford, Newcastle, Tamworth, Griffith, Coffs Harbour, Wollongong and Dubbo.

Discussion forums were held during May and June 2016, and were attended by more than 370 representatives of councils, practitioners, and industry, environmental and community groups.

These were robust discussions, and the exchange of views and new ideas has been valuable in the policy development process.

The Department also sought input from targeted stakeholders through a follow-up survey, and received direct correspondence from a range of stakeholders identifying options to improve the planning system.

The feedback from stakeholder consultations is also outlined in the Stakeholder feedback report that accompanies these consultation documents.

Consultation documents

The proposed planning legislation updates comprise four sections:

1. Summary of proposals (this document)
2. Bill Guide
3. Draft Bill
4. Stakeholder feedback

Summary of proposals – gives an overview the key changes to the planning system that are being proposed in this package and the reasons for them. Some of the changes would be made through the legislation, and some through supporting policies and initiatives.

The proposals are set out according to the following themes:

- enhancing community participation;
- completing the strategic planning framework;
- better processes for local development, better processes for State;
- significant development;
- fair and consistent planning agreements;
- confidence in decision-making;
- clearer building provisions;
- elevating the role of design; and
- enhancing the enforcement toolkit.

Bill Guide – is an explanation of the legislative amendments. It is intended to be read alongside the draft Environmental Planning and Assessment Amendment Bill 2017 (the Bill).

The Department is seeking stakeholder feedback on the proposals. This feedback will inform the preparation of a final Bill for introduction to parliament in early 2017, please see Box 1 for information on how to make a submission.

Draft Bill – contains the draft legislation.

Stakeholder feedback – summarises public discussion on a series of initial proposals made by the Government in the development of the draft Bill.

Box 1: How to make a submission

You can make a submission on the legislative updates in two ways. These are:

1. Complete the online feedback form available on the Department's website, http://www.planning.nsw.gov.au/Have-Your-Say/Community-Consultations.
2. Forward written submission to the Department at the Legislative Updates email box, legislativeupdates@planning.nsw.gov.au.

1. Enhancing community participation

Community participation in planning processes increases the accountability of decision-makers and promotes transparency and confidence in the planning system.

It also improves planning outcomes by providing additional information and diverse perspectives to inform decision-making. This includes helping to identify local and regional impacts, values and priorities, and practical solutions to issues.

Community participation is particularly important for strategic planning, where the vision, priorities and ground rules for land use in a local area are set out.

It is also important on an ongoing basis to support decision-making about individual developments. The extent and methods of community participation should vary depending on the community's needs and the potential impact of development.

This section sets out the key initiatives that, if adopted, would enhance community participation in the planning system.

Community participation plans

Each planning authority under the EP&A Act will have to prepare a community participation plan (see Schedule 2.1[1], clause 2.23(1) on page 16 of the Bill). The plan will explain how the authority will engage the community in plan-making and development decisions.

This obligation will apply to:

- all local councils;
- NSW Government agencies that are planning authorities under the EP&A Act; and
- the Secretary of the Department of Planning and Environment.

The plan will set out how and when the planning authority will undertake community participation in relation to upcoming proposals and development applications, including:

- the ways in which the community can provide their views and participate in plan-making and planning decisions made by the authority; and
- how the community can access information about planning proposals and decisions.

The plans will have to be prepared in accordance with requirements set out in the Regulation, such as exhibition timeframes. The Regulation will outline requirements for the content of and process for developing community participation plans.

Councils and other authorities will be able to specify mandatory participation requirements in their plans so that they can design effective, proportionate and clear approaches to community engagement. Once made, a plan will only be able to be challenged within three months of its publication.

As part of the introduction of the requirement for community participation plans, it is also proposed to update the current minimum public exhibition requirements. For example, all applications for consent for local development will be required to be exhibited for a minimum of 14 days. Councils currently have some discretion over whether to exhibit such applications.

To reduce duplication for local councils, the amendments specify that a council does not need to prepare a separate community participation plan if it can meet the EP&A Act requirements through the broader community engagement strategy it has prepared under the *Local Government Act 1993*.

Councils that choose this approach will need to consider the principles under the EP&A Act in developing community engagement strategies, to the extent that the strategy covers the council's planning functions.

Support for councils in implementing this change will include the development of model plans and guidance material.

To meet its obligations as a planning authority, the Department will develop its own community participation plan. This will set out how the Department will engage the community across its different planning functions, including strategic planning and priority precincts. Other NSW agencies that are planning authorities under the Act will be able to develop their own plans or rely on the Department's plan.

Community participation principles

When preparing community participation plans, planning authorities will need to have regard to the community participation principles that will be set out in the EP&A Act (see Schedule 2.1[1], clause 2.23(2) on page 16 of the Bill).

These principles have been developed from the community participation charter that was proposed in 2013.

Planning authorities will have the flexibility to apply these principles in the way that best suits their communities and the types of developments occurring in their local area.

Box 2 sets out the principles that must be considered during the development of community participation plans.

Box 2: Community participation principles

- The community has a right to be informed about planning matters that affect it.
- Planning authorities should encourage the effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
- Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
- The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
- Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
- Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
- Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
- Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.

Statement of reasons for decisions

Decision-makers will be required to give reasons for their decisions (see Schedule 2.1[2], clause 19(2)(c) on page 21 of the Bill). This will help community

members to see how their views have been taken into account. The Department will develop guidance material to help decision-makers set out their reasons.

The statement of reasons should be proportionate to the scale and impact of decision. This means that less complex projects can have a simple statement of the reasons. For more complex projects, more detailed information will be needed about how the decision was made. Planning authorities making complex decisions will be encouraged to include a summary page to make it easier for community members to understand the reasons.

The statement of reasons should highlight considerations – such as the need to mitigate specific impacts or community concerns – that are particularly important to the decision. These will then be taken into account in any future decision about any modifications to a project. More information on proposals relating to modifications can be found in section 3.3 of this paper.

Stronger consultation requirements for major projects

In the case of State significant development, applicants will be asked to demonstrate how they consulted with the community prior to lodgment. The Department will require this as part of the applicant's environmental impact statement.

This approach is consistent with the proposed community participation principles in Box 2.

Pre-lodgment consultation options at the local development level are discussed in section 3.1 of this paper.

Up-to-date engagement tools

The Government will work to ensure that all users of the planning system understand and encourage community participation.

The Department is exploring options to improve the suite of tools available to consent authorities to improve their engagement capacity.

Options under consideration include new guidance materials, online tools and applications, and case studies of effective and innovative ways to engage the community, particularly on strategic planning.

We also propose to release new community consultation guidelines, in light of new approaches such as social media, online campaigns and the NSW Planning Portal.

This guidance material will also address the consultation and engagement requirements of specialist audiences. In particular, there will be a focus on how consent authorities can better involve Aboriginal communities in planning decisions.

2. Completing the strategic planning framework

A key part of the agenda for improving the NSW planning system has been to strengthen strategic planning. Strategic plans set the vision and context for an area in consultation with the community, and help to guide the efficient distribution of resources and facilitate coordinated development outcomes.

In 2015, the Government established regional and district plans as part of the EP&A Act. Under the Act, regional and district plans must identify:

- the basis for strategic planning in the region or district, having regard to economic, social and environmental matters;
- a vision statement and objectives;
- strategies and actions for achieving those objectives; and
- a monitoring and reporting framework.

In the Greater Sydney Region, district plans are required to give effect to the *Plan for Growing Sydney*, and for local environment plans (LEPs) to give effect to relevant district plans. The EP&A Act contains a provision to introduce this for other regional plans if appropriate over time.

Further options are proposed to enhance the strategic planning framework under the Act, and to ensure development controls are clear and accessible and remain up to date. This section sets out proposals to:

- ensure that the 'line of sight' of strategic planning clearly flows to the local level through new local strategic planning statements;
- introduce regular LEP checks to make sure that LEPs remain responsive to strategic planning objectives and up to date in relation to their local areas; and
- improve the consistency of development control plans, so that they are easier to navigate and apply.

2.1 Strategic planning at the local level

There is currently a missing piece of the hierarchy of strategic plans in the EP&A Act. While the EP&A Act provides for strategic plans at the regional and district level, and for legal controls (through the LEP) at the local level, it does not require a strategic plan at the local level.

Many councils prepare land use strategies to inform their overarching Community Strategic Plans (under the Local Government Act) and their LEPs.

There is opportunity to establish a mechanism under the EP&A Act to complete the 'line of sight' in strategic planning from the regional to the local level, while at the same time drawing on local land use values and priorities set out in Community Strategic Plans.

Local strategic planning statements

The amendments will require councils to develop and publish local strategic planning statements (see Schedule 3.1[20] on page 45 of the Bill).

Local strategic planning statements will be developed by councils in consultation with the community, and will:

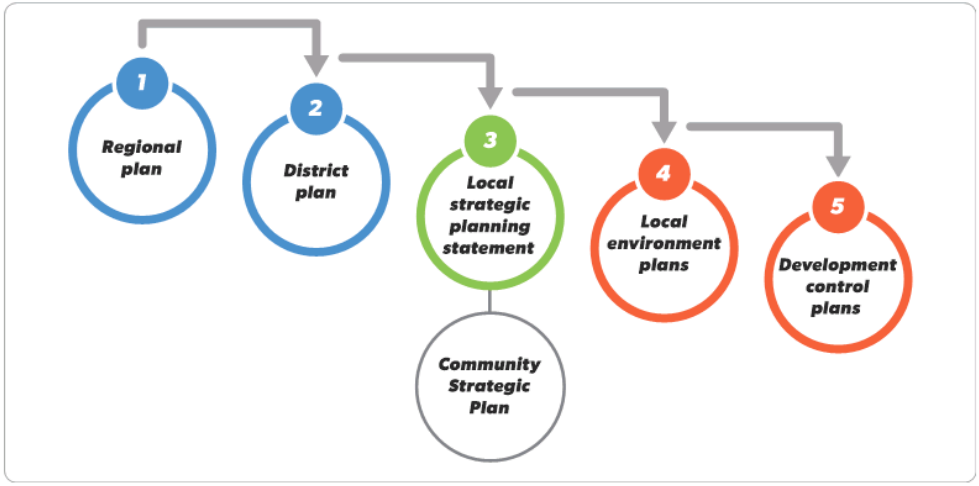
- tell the story of the local government area and set out the strategic context within which the LEP has been developed (including the rationale behind the application of zones and development controls);
- explain how strategic priorities at the regional and/or district level are given effect at the local level; and
- incorporate and summarise land use objectives and priorities identified through the council's Community Strategic Plan process.

The statements will not be part of the LEP itself, but will help explain the LEP and development control plans. They will provide the strategic context and rationale for local planning controls. The local strategic planning statements would complete the line of sight from regional and district plans. They will need to be consistent with regional and district plans, and may develop the policies and actions in those plans in greater detail at the local or neighbourhood level.

The statements should reflect and promote the themes of the council's Community Strategic Plan as they relate to land use planning. Councils will be able to draw on land use strategies prepared under their Community Strategic Plans in developing the local strategic planning statements.

The statements will therefore be a mechanism for aligning relevant goals and actions in the Community Strategic Plans with those in the regional and district plans, as illustrated in Figure 2 below. The statements will bring together these different plans into one succinct document that sets out the story of and vision for the local area.

Figure 2: Completing the line of sight in strategic planning



Box 3 outlines the proposed structure and content of the local strategic planning statements. As with regional and district plans, this will include vision, goals, actions and measures of progress. The Government is seeking input from councils and other stakeholders on what the statements should look like and contain.

The statements are intended to be easily accessible to community members seeking to understand the future direction and current planning controls in their area. They will be published on the NSW Planning Portal alongside LEPs.

The vision presented by the local strategic planning statements should take a 20-year horizon, consistent with regional and district plans. To ensure the statements remain current, councils will be required to refresh their statements at least once every five years. Councils may choose to do this every four years as part of their overarching Integrated Planning and Reporting processes, and will need to take into account regional and district planning cycles.

Once in place, the local strategic planning statements will inform rezoning decisions and guide development. Councils will be required to consider their statements when preparing planning proposals.

The local strategic planning statements will be developed and finalised by local councils in consultation with stakeholders (including NSW agencies). In order to be taken into account when planning proposals, such as rezoning proposals, are being considered for approval, the statements will need to be endorsed by the Department (or the Greater Sydney Commission in the case of councils in the Greater Sydney Region).

The Government will help local councils prepare their local strategic planning statements by providing guidance and model statements.

Implementation will be staged over coming years to align with current regional and district planning processes.

Box 3: What will the local strategic planning statements look like?

The local strategic planning statements will follow a basic standard structure. However, councils will be able to tailor their statements to their areas. The statements are intended to be clear and succinct, but may be simpler or more complex depending on the requirements of the local area. In either case they should be in plain language and make use of maps and graphical representations.

A 20 year vision for the local area

The vision tells the story about the role and character of towns, suburbs and precincts in the local government area and the way they will develop over time. It captures the desired future state for the local area and the high-level outcomes envisaged for it.

The vision should reflect relevant elements of visions in both the regional and district plans, as well as the objectives and values in the council's Community Strategic Plan as they relate to land use.

Goals and actions to achieve the vision

The statements will identify goals and actions for local areas that will assist in achieving the vision.

- Goals will be focused statements of the outcomes the council aims to achieve in the local area. They should be clear and measurable.
- Actions will set out what is required to deliver goals.

As the statement will be aligned with the Community Strategic Plan, councils may choose to carry the goals and actions through into their delivery programs or operational plans.

Links to planning controls

In this section, the statements will explain how the vision, goals and actions shape the planning controls and development decisions in the local area.

Good calibration between the statement, planning controls and decision-making will help deliver development that is in line with the vision and supported by strong strategic planning foundations.

Monitoring and reporting on progress

The statement will establish performance indicators by which progress towards the goals can be measured. It will also explain how progress will be monitored and reported.

Councils may choose to use their existing processes under the Integrated Planning and Reporting Framework to monitor and report on progress.

2.2 Keeping local environmental plans up to date

LEPs are the key legal controls for development in a local area. For LEPs to be effective in achieving the best planning outcomes for the community, it is important they are kept up to date. They must also give effect to higher-level policies and strategies in district and regional plans, as required by the EP&A Act.

The Act requires councils to keep their LEPs under regular review. However, it does not specify how often LEPs must be reviewed. This is different to jurisdictions such as Victoria, which requires a review every four years, and Queensland, which requires a review every 10 years.

Prior to the adoption of the standard instrument LEP in 2006, the average age of LEPs in NSW was 14 years. This included 67 LEPs that had not been significantly reviewed for over 20 years. Currently, LEPs in NSW are comprehensively remade every seven years on average with smaller changes made more frequently through individual planning proposals.

It is important that LEPs are kept up to date to ensure that changes in land use are considered in a comprehensive manner. Up-to-date LEPs are more strongly connected with the needs and values of residents and businesses of a local area. They also reduce the need for spot rezonings, being ad-hoc planning proposals that change the allowable land use, or zoning, of a plot of land. Spot rezonings create high costs for businesses and planning system users, taking on average 374 days to be determined and costing $450,000 to $800,000.

Regular LEP checks

Local government areas across NSW experience varying levels of growth or change. In some areas, little will change over five years and it would not be appropriate or efficient to require a comprehensive review and remake of the LEP.

However, in other areas there may be major changes to demographics, infrastructure and services, the economic structure of the area, environmental factors or state and regional policies. These may warrant a full review of the LEP or major components of it.

The Government is therefore proposing that all councils undertake a five-yearly LEP check against set criteria (see Schedule 3.1[13] on page 44 of the Bill). The proposed criteria are listed in Box 4 below.

Box 4: Proposed LEP check criteria

- Does a new regional or district plan necessitate major change to local strategic plans or controls?
- Has there been a marked demographic change in recent years, or is one expected in coming years?
- Has there been or is there expected to be significant infrastructure investment that necessitates or justifies major change to local strategic plans or controls?
- Has there been a high number of planning proposals in recent years?
- Does the LEP demonstrate consistency with relevant state environmental planning policies, section 117 directions and the regulations?
- Has the community requested significant changes to the LEP in recent years?

Councils will be required to conduct a preliminary assessment of whether external or local circumstances suggest that significant changes to the LEP are needed. Where this is the case, those changes would be identified through a more comprehensive LEP review with full community participation.

The outcomes of the LEP check and any recommendations will be provided to the Minister for Planning, or the Greater Sydney Commission in the case of councils located in the Greater Sydney region.

The Department will work with councils to plan for and implement follow up actions identified by the LEP check, such as putting forward planning proposals for minor amendments, or performing a full LEP review.

2.3 More consistent development control plans

Development control plans (DCPs) are made by councils to provide detailed guidance about planning and design to support the statutory planning controls in a LEP. There are currently over 400 DCPs across NSW.

The structure and content of DCPs vary significantly between councils, whilst some councils have multiple DCPs. DCPs cover a range of subject matters and can be based on location and types of development. This may include requirements for specific land uses, design standards or project specific requirements or objectives.

The current variations in structure and format between DCPs can make them difficult to understand and apply. Such variations also limit the opportunity to embed DCP controls in the NSW Planning Portal alongside other planning controls, such as those included in LEPs.

Standard DCP format

To address this complexity and confusion, the EP&A Act will be amended to require DCPs follow a standard format (see Schedule 3.1[17] on page 44 of the Bill). This will improve consistency across local councils and improve user navigation of the planning system and its controls. It will also allow DCPs to be spatially represented on the NSW Planning Portal. A standard format for DCPs will be a critical step to reducing red tape for industry and increasing transparency for the community.

While the format of the DCPs will be made consistent, the content of the DCP provisions will remain a matter for councils. Councils may choose to adopt model DCP provisions (discussed below).

A standard format across DCPs could help achieve significant cost and time savings for planning system users, by simplifying the processes for planning consultants to find and navigate the relevant provisions of DCPs.

The standard format will be developed in consultation with councils to ensure that DCPs have the right balance of consistency and flexibility to capture local contexts. A consistent structure could adopt a menu approach allowing councils to choose elements relevant to the local government area.

The Government will work with councils to develop an approach to how the standard format DCP could be implemented. This work will investigate how statewide and locally specific provisions could be constructed, and develop an appropriate online platform using the NSW Planning Portal.

Optional model DCP provisions

In addition to developing the standard DCP template, a working group will develop an online library of model provisions. The working group will include Government, council and industry representatives.

This is a non-legislative action that will support the improvements to how DCPs are accessed and navigated. Councils will be able to access and use these model provisions on an optional basis.

The model provisions will be developed over time in line with priorities identified by the working group. This would include a scoping phase where the Department engages with councils and stakeholders to understand which areas are best suited to a model approach.

The library of model provisions will be available through the NSW Planning Portal.

3. Better processes for local development

Local development is development for which the council is the planning authority. For many individuals and businesses, their main experience of the planning system is with local development, as either an applicant or someone affected by or interested in a proposed project.

Making local development processes simpler and faster for all participants is one of the goals of the legislative updates. This would reduce cost and delay for proponents, and allow interested members of the community to better understand the assessment process and how they can access information and participate.

At the same time, a key priority for the Government is to deliver faster housing approvals. The Premier has committed to ensuring that 90 per cent of housing approvals are processed within 40 days. An important part of the strategy to achieve this target is by improving development assessment processes for local development.

This section discusses a range of proposals that aim to improve local development assessment processes by:

- encouraging early consultation with neighbours;
- improving efficiency and transparency where a development application needs approvals from other NSW Government agencies;
- preventing the modification of a consent where the work has already been carried out; and
- improving the pathway for complying development.

These changes, if adopted, will contribute to a simpler, faster planning system with savings in time and money for proponents, councils and the community.

3.1 Early consultation with neighbours

Consulting with neighbours before lodging a development application is good practice. It allows neighbours to have input at an early stage in the design process on matters that may impact on them, such as loss of views and overshadowing.

It increases the likelihood that issues can be resolved up front to the satisfaction of all parties. This means that fewer issues are left to be resolved by councils or the Land and Environment Court, with associated delay and cost.

Exploring incentives for early consultation

There are significant benefits in encouraging applicants to consult with their neighbours in the early stages of a project.

The legislative amendments will clarify that the EP&A Act provides a power to make regulations to encourage or require certain activities to be completed before a person lodges a development or modification application (see Schedule (see Schedule 2.1[2], clause 23 on page 22 of the Bill).

Before making any such regulation, the Department will conduct further research into current barriers to early consultation and possible options and incentives to overcome them. This will include looking into:

- tools to facilitate early conversations between neighbours, including through the NSW Planning Portal; and

- incentives in the system, including in relation to fees, where an applicant can demonstrate he or she has actively resolved issues through early consultation.

The Department will conduct a pilot with selected local councils to trial different incentive mechanisms and administrative approaches. The results of the research and pilot program may inform any changes to the regulations in 2017.

3.2 Efficient approvals and advice from NSW agencies

State agencies play an important role in local development by providing advice to councils on key issues relating to the environment, safety and other matters.

Depending on the legislation or planning instrument that requires the agency's input, agencies may provide:

- advice, being general comments on a proposal;
- concurrence, being agreement to an element or elements of a project; or
- 'general terms of approval', being an in-principle approval, given where a development requires approval under the EP&A Act and another Act.

Development that requires approval under multiple Acts is known as 'integrated development'.

NSW agencies provide some 8,000 pieces of advice on local development each year. Approximately 10 per cent of these take longer than 40 days. The annual value of development applications with more than one concurrence and/or referral is approximately $6.1 billion.

The need to obtain an agency's advice is an important protection within the planning system, but delay in the delivery of that advice prevents the granting of development consent, creates uncertainty and increases costs for applicants. This in turn may deter investment.

Delays cannot be attributed to any single feature of the system. Features that contribute to delay include:

- a lack of communication between agencies and/or proponents;
- manual transactions;
- limited transparency in agency processes; and/or
- an absence of systematic oversight and performance accountability.

Integrated development, concurrence and referral processes can be improved to make agencies more accountable to councils and proponents, and to ensure they participate in a timely and productive manner. The changes discussed in this section are expected to save applicants approximately 11 days as part of the average integrated development process.

Step-in power to ensure timely approvals

The amendments will give the Secretary of the Department of Planning and Environment the reserve power to prevent delays and resolve conflicts between agencies (see Schedule 4.1[12] on page 50 of the Bill).

The Secretary will be able to give advice, concurrence or general terms of approval on behalf of another agency where:

- the agency has not provided the advice, granted or refused concurrence, or provided general terms of approval within statutory timeframes; and/or
- the advice, concurrence or general terms of approval from two or more agencies are in conflict.

The Secretary's powers to act in these situations will be reserve powers, exercised at her or his discretion.

When exercising the reserve powers, the Secretary will have regard to the 'State Assessment Requirements'. This will be a statutory policy to guide the Secretary's decisions. It will also guide applicants by:

- helping applicants determine whether they need approval from other agencies;
- clarifying agencies' information requirements and assessment criteria; and
- providing information on how agencies will assess an application and what outcomes applicants can expect.

The Secretary's powers will apply to developments for which a council is the consent authority. They will not apply to State significant development or infrastructure or to activities assessed under Part 5 of the EP&A Act.

The Regulation will also be amended to allow the Secretary to restart the assessment process and timing where an agency has paused it, in order to make an additional information request that is inconsistent with policy requirements.

Performance improvement approach

To accompany the new powers, the Department will play a leadership role in the system, working with councils and agencies to identify opportunities for improvement and supporting them to perform their roles.

Agencies will be supported in implementing a risk-based approach to concurrences and referrals, ensuring decisions are robust and made at the right level of government.

The new system is modelled on NSW Food Authority's Food Regulation Partnership (FRP) program, which has been identified by the Independent Pricing and Regulatory Tribunal as leading practice in how to facilitate and manage state and local government interactions. Key principles of the FRP include clear delineation of parties' roles and responsibilities, providing state support for councils to perform their function, state oversight of the process, and two-way communication.

Figure 3 on page 19 illustrates the difference between the current system for managing concurrences and referrals and the proposed model.

Transparent digital platform

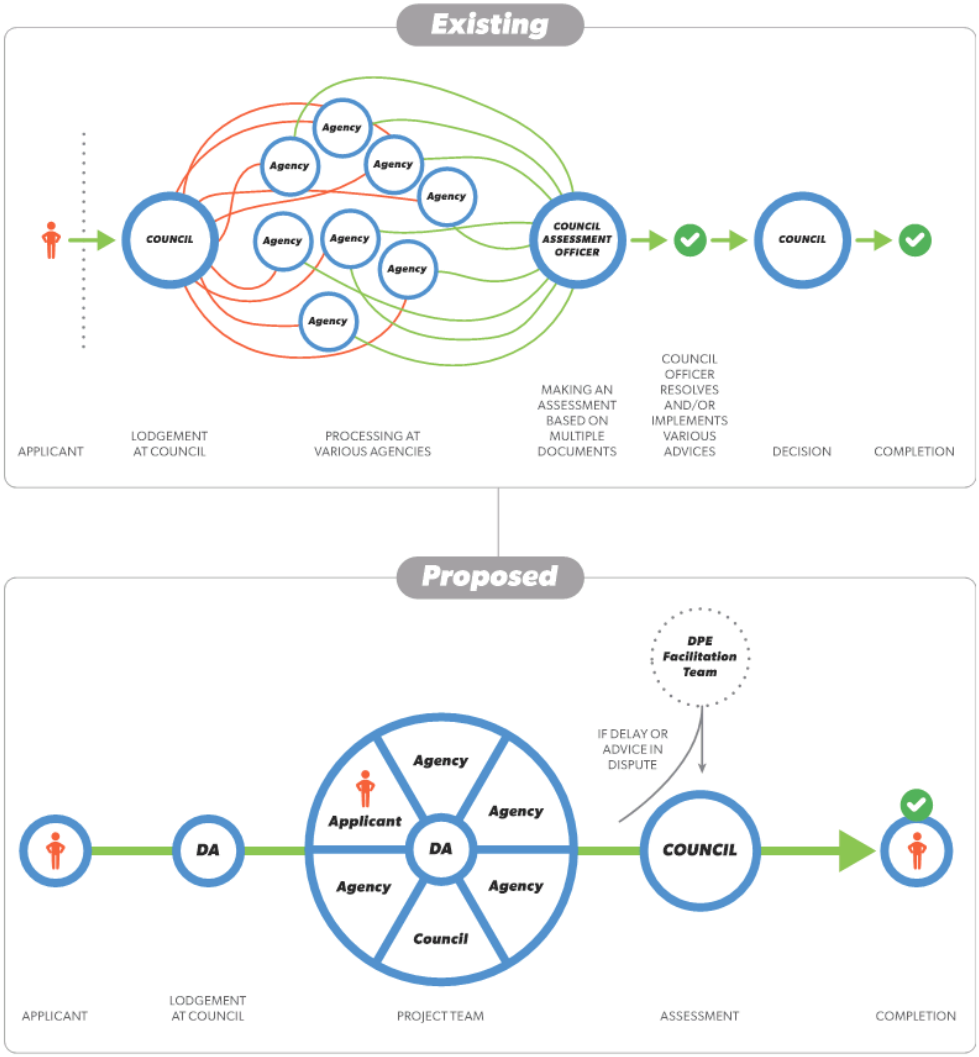
Underpinning this performance improvement approach, the Department is developing an electronic system to digitise the transactional elements of the system and promote collaborative work practices. The system will be an element of the NSW Planning Portal and link with online lodgement facilities. It will have functions including:

- allowing payments to be made to different agencies;
- information sharing among all participants;
- data collection;
- notifications at each stage of the process; and
- the publication of decisions.

Together with the digital platform, the new provisions will improve the accountability of all agencies, as councils and proponents will be able to track the progress of the concurrences and referrals.

Data collected by the system will be a valuable resource that will be used to manage the processing of applications and for process analysis to identify opportunities for improvement. The Department will publish performance monitoring reports to promote self-regulation and identify opportunities for improvement.

Figure 3: The existing and proposed concurrence and referral workflows



Ongoing review of concurrences and referrals

We will continue to update requirements so as to minimise costs and delays for all stakeholders. To support this, the Department will undertake a comprehensive, whole-of-government review of referrals and concurrences. The aim will be to identify unnecessary requirements and alternative tools to assess less complex impacts. It will also identify whether decisions are being made at the right level of government.

This will allow concurrences and referrals to be rationalised and removed where redundant, following a review by the Department in consultation with agencies. These changes will help make existing concurrence and referrals requirements operate more efficiently and transparently.

3.3 Preventing the misuse of modifications

One of the basic principles of the NSW planning system and the EP&A Act is that a development consent can only be modified:

- to correct minor errors, misdescription or miscalculations; and/or
- to an extent such that the consent authority is satisfied the development has not significantly changed.

This principle ensures that developments are built to be consistent with how they were planned and approved.

Over time, this principle has been eroded by the granting of retrospective approvals for works that go beyond the original consent.

An example of this is the case of Windy Dropdown v Warringah Council, outlined in Box 5.

Box 5: Windy Dropdown Pty Ltd v Warringah Council

Windy Dropdown Pty Ltd was the owner of land known as Windy Dropdown, over which there was an existing development consent to subdivide the land for the construction of residential houses. Drainage work and other approved works were carried out in accordance with the consent. However, landfill was placed on the site in breach of conditions of the original consent.

Windy Dropdown lodged an application under section 96 of the EP&A Act to modify the consent to approve the increased filling, despite the work having already occurred. The council alleged the extra landfill markedly changed the character of the land from a naturally vegetated area to bare space.

The court considered whether the modification power under section 96 was available to amend a development consent where the relevant works had already been carried out. It ordered that the retrospective section 96 application was valid.

The effect of the decision is that an application can be made to modify a development consent which would extend that development consent to cover work already carried out.

Source: *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240.*

Some councils have raised concerns that there has been an increase in the number of developments that are being built without the appropriate approvals. This undermines the development consent process and diminishes the rights of residents where illegal works have a negative impact on the surrounding properties.

Strengthening deterrence of unauthorised works

The Act is being amended to prevent planning authorities, including the court, from approving a modification in relation to works already completed, other than in limited circumstances (see Schedule 4.1[15] on page 51 of the Bill). These limited circumstances are to correct a minor error, misdescription or miscalculation.

This change reinstates the original principle of the EP&A Act, while still allowing the modification mechanism to be used to authorise minor departures from the original consent.

The effect of the amendment is that unauthorised works falling outside these parameters may be subject to enforcement action, such as demolition, or require a new building certificate.

Modifications must take into account reasons for original consent

Additionally, the current system allows for the modification provisions to be used to amend, or remove, conditions of a development consent without proper consideration of why those conditions were originally imposed.

Under the proposed amendments, a planning authority will be required to give reasons for a decision (see section 1 of this paper). In setting out its reasons for a decision, consent authorities can explain the importance of certain conditions and the reasons for imposing them.

A further amendment will require planning authorities, when considering a modification application, to consider the statement of reasons for the original consent (see Schedule 4.1[14] and [16] on page 51 of the Bill).

3.4 Improving the complying development pathway

In the NSW planning system, 'complying developments' are low impact proposals that meet development standards set out in an environmental planning instrument.

The key set of standards for complying development are found in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the State Policy). Low impact projects covered by the State Policy include new one or two storey dwellings, alterations to existing dwellings and commercial and industrial premises.

If the proposal fully meets the standards, an accredited council or private certifier can approve the development by issuing a complying development certificate (CDC). This is a combined planning and building approval.

Complying development brings a number of benefits for applicants. These include shorter approval timeframes, reduced administrative costs, and greater certainty about whether the development is permissible.

This pathway is a key mechanism for ensuring that housing supply meets demand created by population growth and demographic changes.

By 2036, New South Wales will have an extra 2.1 million people and Sydney alone will need an extra 725,000 houses.

Box 6 provides an overview of the use of the complying development pathway in NSW.

Box 6: Complying development in NSW

- In 2014-15, 29,075 CDCs were issued in NSW by private and council certifiers. This represented 32 per cent of all local development approved (development applications and CDCs combined), and an increase of 17 per cent since 2013-14.
- The value of approved complying development projects was $5.24 billion, an increase in CDCs of 17 per cent since 2013-14.
- CDCs issued by council certifiers took an average of 22 days, whereas development applications took on average 71 days to determine.

Source: *Local Development Performance Monitoring report, 2014-15*

The measures proposed below would grow complying development as a proportion of total development, while at the same time increasing confidence that the relevant standards will be enforced.

Ongoing work to improve the complying development pathway

In early discussions, stakeholders raised some issues that act as barriers to the uptake of complying development. The current standards can be seen as overly complex. In addition, the compliance and enforcement regime for private certifiers is seen as confusing and sometimes ineffective, undermining public confidence.

These concerns can be addressed through a range of legislative and non-legislative measures. The aim is to:

- deliver a clear set of rules that make it as easy as possible for participants to follow the complying development pathway;
- build confidence that complying development standards are being met;
- ensure that councils have the necessary resources and tools to ensure complying development standards are met; and
- level the regulatory playing field between development applications and complying development certificates.

The Department has an ongoing program of work to simplify the planning rules around complying development. The aim is to improve the efficiency and uptake of this pathway for low impact projects. This work includes

- preparing a new user-friendly simplified Housing Code, which includes explanatory diagrams;
- reviewing and simplifying development standards for complying development in greenfield areas;
- developing simplified controls for complying development in inland areas of NSW with the introduction of an Inland Code;
- implementing an education program on exempt and complying development to assist councils in understanding the State Policy and providing advice to applicants;
- undertaking work to enhance the education of accredited certifiers in NSW; and
- enhancing the NSW Planning Portal to allow online lodgement of complying development certificates (and development applications).

An important recent development has been the release of a draft *Medium Density Design Guide and Medium Density Housing Code* for public comment.

The draft Guide and Code are aimed at making it cheaper, easier and faster to build lower-rise medium density housing, specifically:

- dual occupancies – two dwellings on one lot of land;

- terraces – three or more attached dwellings with common street frontage;
- townhouses – three or more dwellings on a lot; of land where not all dwellings have a street frontage; and
- manor houses – two storey buildings that contain three or four dwellings.

The Guide and Code have been extensively discussed and debated among stakeholders. To view the exhibition material, please visit the Department's website, http://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Medium-Density-Housing.

In addition, a design competition for medium density housing has been launched to test and demonstrate how the draft guide and code can deliver design-led planning. The outcomes of this competition will help inform the final guide and code.

Ensuring the development meets the standards

The Government proposes to amend the EP&A Act to make it clear that, where a CDC does not comply with the relevant standards in the State Policy, it can be declared invalid (see Schedule 4.1[9] on page 50 of the Bill).

This amendment is needed to address an issue identified in recent case law (*Trives v Hornsby Shire Council*, outlined in Box 7). At present, a CDC may approve development that is outside the relevant standards, but this would not be enough for the certificate to be overturned by the court. The Court has held that, if an accredited certifier is satisfied that the development meets the standards, her or his opinion prevails provided it is reasonable.

Box 7: Trives v Hornsby Shire Council

In April 2014, Hornsby Shire Council challenged the validity of three complying development certificates issued by a private certifier, Mr Trives, on the basis that the structures certified were not properly characterised as 'detached studios' within the meaning of the State Policy.

The Land and Environment Court (LEC) found that the characterisation of the development as 'complying development' was a jurisdictional fact. The Court invalidated the certificates on the basis that the jurisdictional fact did not exist. In other words, because the complying development certificate did not comply with the relevant standards, the Court could invalidate the certificate.

However, the Court of Appeal determined that the LEC was incorrect in deciding it could make a finding about whether particular development was in fact complying development. That is, the Court of Appeal found that the characterisation of complying development could only be made by the certifier, and that a court could not look into this matter as a question of 'jurisdictional fact' (as a basis for judicial review of the decision to issue the certificate).

The Court of Appeal held that the power to issue a complying development certificate depends on the certifier's state of satisfaction. This was based on section 85A(3)(a) of the EP&A Act requiring a certifier to be satisfied the proposed structures were complying development within the meaning of the State Policy. That state of satisfaction had to be one that could be formed by a reasonable person with an understanding of the State Policy.

This decision means that if a person challenges a CDC by bringing judicial review proceedings, they would need to demonstrate that the certifier acted unreasonably given the information before them, rather than simply demonstrating that the development was not within complying development rules.

Source: *Trives v Hornsby Shire Council [2015] NSWCA 158*

This situation can mean that little can be done to challenge complying development that does not meet the standards unless the certifier acted unreasonably.

The proposed amendments address this by allowing a person or a council to bring proceedings to challenge the validity of a complying development certificate, and allowing a court to objectively determine whether the certificate is in accordance with relevant standards.

Improved information for councils and neighbours

The notification requirements for complying development are more limited than for development applications. For example, complying development proposals are not publicly exhibited.

The reason for this is that complying development should be approved if it meets the standards in the State Policy. This is because complying development is low impact by its nature.

The Government recognises that greater transparency for complying development would improve confidence in the system. At present it can be difficult for councils and neighbours to satisfy themselves as to whether the proposed development meets the required standards.

This will be addressed by preparing regulations that:

- require certifiers who are intending to issue a complying development certificate in metropolitan areas to give a copy of the proposed certificate, any plans and other applicable documents (such as a compliance table demonstrating how the proposal complies with the relevant standards) to the council and direct neighbours; and
- require certifiers, after issuing a certificate, to give a copy of the certificate and any endorsed plans to direct neighbours at the same time as they provide the information to councils.

This will increase transparency and checks and balances in the system.

In time, neighbours will be able to access plans and certificates on the NSW Planning Portal, which will contribute to greater transparency in the system.

Limit some sensitive categories to council certifiers

As the use of complying development grows, it may be necessary to put in place additional safeguards to ensure the appropriate consideration of proposals with greater potential to impact local values or sensitive areas.

On this basis, the regulation will be able to specify certain categories of development for which only a council certifier is authorised to issue a complying development certificate. (see Schedule 4.1[7] on page 49 of the Bill).

These circumstances will be clearly set out in regulations and limited to categories of development where councils are best-placed to decide whether a complying development proposal meets the standard.

This will also give councils increased visibility over sensitive complying development in their areas, and help them to improve their monitoring and enforcement functions.

Powers and resources for councils

Councils are the enforcement authority responsible for monitoring how development is carried out at the local level, and ensuring that it follows the rules. This includes complying development where the certificate is issued by a private certifier.

However, work on complying development can proceed very quickly. This leaves councils with limited time in which to investigate whether a complying development certificate is being followed. If work proceeds while the investigation

is being undertaken, it could limit the enforcement options available to the council if the work is found to be non-compliant.

To remedy this, a new investigative power is proposed for councils (see Schedule 9.1[2], clauses 9.33 and 9.34 on pages 86-87 of the Bill). Where a complying development certificate has been issued, councils will be able to issue a temporary stop work order on the project, in order to investigate whether it is being constructed in line with the CDC. Work will be able to be stopped for seven days, and the power will be limited to genuine complaints about building work not complying with a CDC.

Resourcing constraints also place limits on compliance and enforcement action by councils. This is particularly the case for complying development, as councils do not currently collect fees from complying development applications made through private certifiers.

The government proposes to establish a compliance levy to support councils in their role in enforcing complying development standards (see Schedule 4.1[17] on page 51 of the Bill). This would be part of the fee structure for complying development certificates, whether issued by a private or council certifier. It will also be made clear that the levy can extend to development applications. The revenue from this levy will be remitted to councils to resource investigation and enforcement activity under the EP&A Act.

The proposed amendments create the power to establish the compliance levy through a regulation. Further work is needed to determine the most efficient and equitable model for the levy. The Department will model and consult on different options, with a view to introducing the levy as part of the forthcoming remake of the EP&A Regulation.

Levelling the playing field between complying development and development applications

At present, the EP&A Act contains anomalies that create unnecessary differences between the complying development and development application pathways.

One such anomaly is that a certifier is not currently able to issue a complying development certificate if the development is to occur on an unregistered lot.

This serves as a barrier to the adoption of complying development in greenfield areas. By contrast, consent to a development application may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition, such as lot registration.

To address this, the EP&A Act will allow for the deferred commencement of a complying development certificate in certain circumstances (see Schedule 4.1[8] on page 49 of the Bill). An example of such circumstances could be requiring a subdivision to be registered prior to the development commencing.

Another anomaly is that there is currently no ability to levy for special infrastructure contributions for complying developments (as can be done for development applications).

This will be corrected by allowing special infrastructure contributions to be required, and planning agreements to be entered into, for complying developments (see Schedule 7.1[1], [3] and [5]-[7] on page 73 of the Bill).

4. Better processes for State significant development

Better processes are needed for State significant development to reduce complexity and overall assessment times while also providing for greater transparency and accountability.

The Government has committed to the State priority of halving assessment times for State significant development. This can be achieved in a manner that maintains high environmental standards and strong community engagement.

This section discusses proposals for improving processes for State significant development including:

- better integration of development consents and other statutory approvals;
- making it easier to ensure up-to-date monitoring and reporting;
- providing a clear legislative basis for modern approaches to manage impacts; and
- closing off the former Part 3A development pathway.

If adopted, the proposals outlined below would strike a balance between reducing complexity and regulatory burden for proponents of major projects, and improving confidence and accountability in the planning system.

4.1 Clarifying the regulation of major projects

Consent for State significant development is generally granted subject to a broad range of conditions. Some of these requirements are replicated on other licences or authorisations, such as environment protection licences (EPLs) and mining leases.

State significant developments, such as mines, wind energy developments and industrial manufacturing sites can have multiple agencies regulating their environmental risks, such as noise, blasting, dust, air quality, water and biodiversity impacts. The Department provides initial regulation of these risks through conditions on the development consent. The Environment Protection Authority provides ongoing operational regulation of these risks through the application of EPLs. Additionally, NSW Resources and Energy regulates operational and rehabilitation risks through mining leases.

This arrangement is problematic for two reasons:

- The conditions of the development consent are fixed in time. This means it is not possible to take into account emerging information, a change in the risks being regulated or to reflect a change in standards or best practice. By contrast, the conditions of the mining lease and EPLs are not required to be substantially consistent with the conditions of consent after either the first renewal of the lease or the first five-yearly review of the EPL.
- Over time it can become confusing for operators and the community as to which regulator is managing which risks and impacts.

The fixed nature of development consents also means that reporting and other machinery provisions may not keep up to date with modern standards.

To address these issues, changes to the EP&A Act will improve the responsiveness and efficiency of conditions of consent for State significant projects, without compromising the protections that those conditions afford.

Transferrable conditions

Sometimes conditions are duplicated across more than one approval, creating parallel regimes that regulate the same impacts.

To address this, the amendments will establish a mechanism of 'transferrable' conditions (see Schedule 4.1[6] on page 49 of the Bill). These are conditions of consent that no longer need to apply, because they are substantially consistent with conditions subsequently imposed under other regulatory approvals or licences.

In determining a development application, conditions of consent will still need to address the impacts of the development as a whole. However, where these impacts are better regulated through another regulatory approval such as an EPL, mining lease or other approval they will subsequently cease to have any effect once they are imposed on that other approval.

These consent conditions will lapse as substantially equivalent conditions are included in the other regulatory instruments. Responsibility for enforcing these conditions will then lie with the government agency issuing the lease, licence or other approval rather than with the original consent authority. This will ensure transparency and accountability for proponents and the public. It will also reduce inconsistency and confusion over time, as underlying approvals may have their conditions change in a way that leads to the conditions of the consent becoming redundant or no longer fit for purpose. The change will also remove confusion regarding which government agency is regulating which aspect of the development.

As noted above, some regulatory approvals can be amended over time. For example, an environment protection licence can be amended after the first review, which must take place within five years after it was issued. Where this is the case, the legislation will specify that the amendments will not be able to permit greater impacts than those allowed under the conditions in the original development consent.

Clearer powers to update conditions on monitoring and environmental audit

The Minister for Planning currently has the power to impose conditions on a project approval that require monitoring activities or an environmental audit. These conditions can be imposed at the time of an approval or at any time thereafter by written notice to the proponent.

The new amendments will strengthen this power by clarifying that the Minister may also vary or revoke monitoring or environmental audit requirements in existing approvals (see Schedule 4.1[18] on page 51 of the Bill). This provides greater flexibility to ensure that conditions in older consents remain relevant, contemporary and enforceable. It will support a program of appropriate audits, which, over time, will improve the standard and consistency of older consents.

Clear basis for modern approaches to managing impacts

Further amendments will clarify that the conditions of consent can require financial securities to fund the decommissioning or rehabilitation of sites (see Schedule 4.1[6] on page 49 of the Bill). This will enable the environmental and community impacts of the development to be better and more flexibly managed.

These amendments are particularly relevant to developments where the landholder is not the proponent, or holder of the development consent. This has emerged as a particular concern for wind energy developments and quarries, where turbines are being constructed and construction materials are extracted by proponents, subject to agreement with the landholder of the private land.

Consideration is also being given as to whether special provisions should be made with respect to conditions relating to offsets for the impacts of proposed development. These amendments would confirm that conditions of consent can apply offset requirements to address any environmental impact of a project, not just biodiversity impacts.

In applying conditions requiring either financial assurance or offsets, consent authorities would not seek to duplicate the role of other approvals such as EPLs or mining leases.

The regulations would set out the classes of development to which these types of conditions could be applied. Such conditions would only be able to be imposed where a NSW Government policy is in place to set out how they would operate. For example, the regulation would allow either a particular type of offset condition or financial security to be imposed in relation to a particular class of development, to ensure that there is a sound policy basis for the application of such conditions.

Tools and guidance for better conditions

To support these amendments, the Department will develop:

- guidance material on the scope of the new conditioning powers for stakeholders and the community;
- guidance material for consent authorities on how to write consistent, robust and legally enforceable conditions of consent; and
- a database of clear, enforceable standard or model conditions for major projects. This would include more flexible auditing and reporting, and future-proof machinery conditions.

4.2 Improved environmental impact assessment

Stakeholders, including community and environmental groups and planning authorities, frequently raise concerns with the quality of environmental impact assessment for major projects.

Poor environmental impact assessment undermines community confidence in planning decisions. It also causes delays in the assessment process as authorities seek further information.

For proponents, there is currently a lack of clear guidance on how environmental impact assessment should be conducted and what is required from consent authorities. This adds to the time and costs of the project and means that the assessment may not be sufficiently linked to the decision-making criteria.

Environmental Impact Assessment (EIA) Improvement project

The Government has released a discussion paper with ideas about how to improve the assessment of major projects. The proposed improvements discussed in the paper include:

- driving earlier and better engagement with affected communities;
- improving the quality and consistency of EIA documents;
- developing a standard approach for applying conditions to projects;
- providing greater certainty and efficiency around decision-making, including assessment timeframe;
- strengthening monitoring and reporting on project compliance; and
- improving the accountability of EIA professionals.

The changes proposed are aimed at ensuring public confidence in the assessment process.

To view the discussion paper and to make a submission please visit the Department's website, http://www.planning.nsw.gov.au/Policy-and-Legislation/Environmental-impact-assessment-improvement-project.

Feedback on the discussion paper will be used to develop draft guidelines. The draft guidelines will be released for consultation.

4.3 Discontinuing Part 3A

In 2011, the NSW Government repealed Part 3A of the EP&A Act, a method of assessment for major projects that were considered to be of State or regional planning significance, and announced that it would no longer accept any new projects in the Part 3A assessment system. This system has been replaced by the State significant development (SSD) and State significant infrastructure (SSI) pathways that commenced on 1 October 2011.

Under transitional arrangements, Part 3A continues to apply to certain projects approved or pending at the time of its repeal. The Department continues to accept modifications to applications previously approved under Part 3A of the EP&A Act.

This means new Part 3A modification applications continue to be made almost five years after the Part 3A Repeal Act was passed. Part 3A modification applications are subject to a much broader modification power (section 75W) than under the SSD provisions of the EP&A Act (section 96). Section 96 requires development to be 'substantially the same' as the development originally approved.

Discontinuing transitional arrangements

To prevent the ongoing use of former section 75W to modify former Part 3A projects, the transitional arrangements in the EP&A Act will repealed subject to the arrangements listed below (see Schedule 10.1[7] on page 110 of the Bill). All existing approvals under Part 3A or the transitional provisions will then be moved to the current SSD and SSI pathways, with provisions to ensure that development completed or under construction will be unaffected by the change.

It is proposed that the following rules will apply to the repeal of the Part 3A transitional arrangements:

- modification applications under the former section 75W will be received for a period of two months following the passage of the Bill (the 'two month window') and determined under section 75W;
- where Secretary's Environmental Assessment Requirements have already given for a modification applications under the former section 75W, the application will be determined under section 75W provided an environmental impact statement is lodged within 12 months;
- where a modification for a former Part 3A consent is lodged after the two month window, the modification will be assessed against the development as at the time it is transitioned to either SSD or SSI (in other words, as at the time the development was last modified); and
- the ongoing effect of approved Part 3A concept plans will be preserved.

Box 8 shows the current categories of transitional Part 3A projects and the development pathway to which they will transfer once Part 3A is fully discontinued.

Box 8: Part 3A project transition

Category	SSI or SSD?
Agriculture, timber and food	SSD
Coastal	SSD
Health, education and community services	SSI
Manufacturing	SSD
Mining, petroleum and extractive	SSD
Residential, commercial and retail	SSD
Resource recovery and waste	SSD
Tourism and recreation	SSD
Transport, energy, water and telecommunications	SSI

5. Facilitating infrastructure delivery

To ensure the strategic and cost effective delivery of major infrastructure projects, such as major road and rail projects, the Department has released a planning guideline for infrastructure corridors. The guideline sets out a process for planning major infrastructure corridors to assist infrastructure agencies in understanding and using the different planning mechanisms available through the phases of a corridor's lifecycle.

For development in these corridors that requires consent under the EP&A Act, there is a requirement to obtain the advice or concurrence of agencies, such as Transport for NSW and Roads and Maritime Services. Examples of such requirements for road and rail corridors are set out in the Infrastructure SEPP.

Currently, this approach does not apply to activities assessed under Part 5 of the EP&A Act. These are activities undertaken by public authorities that do not require development consent, but must still be subject to an environmental assessment.

It is current practice for public authorities to consult with other agencies and State owned corporations about their proposed activity to ensure that it will not affect future plans for an infrastructure corridor. There is a need to formalise this practice in law.

Concurrence for Part 5 activities

The proposed amendments extend the current ability of environmental planning instruments to require concurrence or notification of public authorities to activities under Part 5 within future infrastructure corridors (see Schedule 5, Item [1] on page 53-54 of the Bill).

This will ensure inappropriate development does not occur within a corridor that will create problems when it is time to construct the infrastructure. For example, if services needed to be re-located within the corridor this could have significant cost implications for the Government.

6. Fair and consistent planning agreements

The legislative framework for planning agreements has been in place for over a decade. Planning agreements are entered into by a planning authority (such as the Minister for Planning) and a developer where the developer agrees to provide or fund designated State infrastructure such as public amenities, affordable housing, transport or other infrastructure.

It has helped set a clear basis for legal agreements between planning authorities and developers to deliver public benefits in association with development, particularly in relation to complex, large scale or staged infrastructure for major development.

A key principle underpinning planning agreements is that they are intended to be a voluntary arrangement between parties towards a public purpose in support of the objects of the EP&A Act. A planning agreement must be directed towards a legitimate planning purpose and provide for a reasonable means of achieving that purpose.

A planning agreement may not authorise a breach of an environmental planning instrument or a development consent, and the benefits of a planning agreement should be given appropriate weight when considered against other environmental, economic, or social considerations in making a planning decision.

The legislative framework for planning agreements is broad and flexible. Although this allows significant potential for innovative or unique delivery of public benefits and infrastructure, it also means there is opportunity for parties to a planning agreement to make unfair or unreasonable demands on what is required under a planning agreement.

Clearer directions to councils

The Government is developing a clearer policy framework for the role and use of planning agreements in the planning system.

The Bill clarifies and strengthens the Minister's power to make a direction about the methodology underpinning planning agreements (Schedule 7.1, item 2, on page 73 of the Bill).

The Department has released a suite of draft documents to improve the policy framework for planning agreements. These are a proposed ministerial direction, revised practice note and planning circular. If adopted, the direction will require that local councils have regard to specific principles, policy and procedures when negotiating or preparing a planning agreement.

The draft documents aim to encourage councils and developers to work together to get the best possible outcomes out of planning agreements so that:

- the planning agreement results in a clear public benefit;
- the process for negotiating the planning agreement is fair and reasonable for both parties and is transparent to the broader community; and
- the infrastructure identified in the planning agreement is informed by an assessment of the needs of the local community.

To view the draft documents and to make a submission, please visit the Department's website. The Department is seeking feedback by 27 January 2017.

Other improvements to infrastructure contributions

In addition to the improvements to the policy framework for planning agreements, the Government is committed to improving the infrastructure contributions system more broadly. This will enable the efficient, transparent and fair sharing of infrastructure costs and benefits where development occurs.

To achieve this, the Government is undertaking the following initiatives:

- **Special infrastructure contributions (SICs)** – in high growth areas like priority precincts and priority growth areas across metropolitan Sydney, the Hunter and Illawarra, the Department is preparing SIC determinations for regional infrastructure to make sure new development is accompanied by key growth infrastructure.
- **Reviewing local infrastructure guidelines** – the Department will work with IPART, councils and industry to review current guidelines on the costs, design and provision of local infrastructure delivered through section 94 infrastructure contributions to ensure they are delivered efficiently and to appropriate standards.
- **Section 94A guidelines** – the Department will prepare a guideline and assessment criteria for requests by councils to vary the levy rate for section 94A contributions in growth areas.

7. Confidence in decision-making

A key objective of the proposed changes to the EP&A Act is to build community confidence through enhancing the probity and accountability of decision-making in the planning system. This involves improving transparency and balance in assessment and determination processes, and the independence and expertise of the decision-makers.

There is scope to improve confidence in decision-making at all three levels of the planning system – local, regional and State significant development.

The following sections describe the Government's proposals to:

- deliver better local decisions through promoting the consistent use of local planning panels and establishing tools to ensure experts make decisions where needed;
- update the thresholds for regional development – that is, development determined by regional planning panels; and
- strengthen decision-making in relation to state significant development through changes to emphasise the independence and determinative function of the current Planning Assessment Commission.

7.1 Better local decisions

At the local level, independent hearing and assessment panels (IHAPs) have been established by a number of local councils over the last two decades. The role of these panels is to provide independent, expert advice and recommendations to councils exercising planning functions, or to exercise those functions on behalf of the council. That is, panels can be tasked with determining development applications, such as those over a certain value or which have attracted a high number of objections.

Under this model, elected councils set the strategy, policy and standards for development on behalf of their constituents, while technical assessments and decisions are made by independent experts in line with council's framework.

The benefit of this approach is that it helps to depoliticise and improve the thoroughness and quality of decision-making and, over time, increase community confidence in the planning system. The use of panels also reduces the risk of conflicts of interest that may arise from elected officials making decisions about planning matters in which they have an interest. These benefits are maximised when the panel has a determinative, rather than advisory, function.

Stakeholder feedback shows that many existing IHAPs in NSW are working well, and are helping councils manage increased workload. While only around 0.7 per cent of development applications were determined by IHAPs in 2014-15, these tend to be the more complex and controversial applications.

The following sections discuss proposed amendments to make local planning panels a regular feature of the planning system across local government areas, by:

- updating the provisions of the EP&A Act relating to IHAPs and bringing all local planning panels under one framework; and
- giving the Minister the power to direct a council to appoint a local planning panel where this is warranted to improve the quality and timeliness of planning decisions in the local area, or manage conflicts of interest or corruption.

The amendments will also include a tool to ensure councils are delegating the determination of development applications to council staff where appropriate, to remove unnecessary delays and support good decision-making.

Consistent provisions for local planning panels

While many local councils already have IHAPs or similar panels in place, there can be confusion and inconsistency as to how they are established and operate.

This arises because some panels operate under the IHAP provisions in the EP&A Act, and others have been set up by councils under local government legislation. Existing panels vary significantly in terms of composition, the kinds of matters that are referred to them, and how they are accountable to the community for their timeliness and performance.

To address this, the current IHAP provisions will be replaced with updated provisions on local planning panels (see Schedule 2, Division 2.5 on pages 14-15 of the Bill). These will set basic rules about the constitution, membership and functions of local planning panels, and allow the application of consistent performance reporting requirements.

In the first instance, each council may decide whether it wishes to establish a local planning panel. The council will also determine which planning functions are to be exercised by the panel. Should a council choose to establish a panel to exercise its planning functions, it will need to do so under the new provisions. These are outlined in Box 9.

Box 9: How will local planning panels operate?

Under the proposed amendments and supporting regulations, local planning panels will be established and operate as follows:

- The panels are to comprise three members, with an independent expert chair, another independent expert member and a community representative.
- The panel will not be subject to the direction or control of council except in relation to procedure and the time within which it is to deal with any matter.
- The members are appointed by the council.
- The expert members will be required to have expertise in any of the following areas – planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.
- The community member is to be appointed from a pool of nominees approved by the council.
- The council will set the rules for which matters go to the panel. It is expected that the vast majority of development applications would continue to be determined by council staff, with the more complex and contentious applications reserved for the local planning panels.
- The NSW Government will publish guidance material to help councils establish the panels, including a model charter and operating procedures.

To ensure all local planning panels operate under this single framework, any IHAPs or similar panels already established by councils will be transitioned to the new provisions. They will be taken to have been established under these provisions as if this was directed by the Minister (see below). Where the composition or functions of any such panel are inconsistent with the new requirements, councils will be given 12 months to bring these into compliance.

Councils with existing panels will also be encouraged to review the panel's charter and operating procedures against the model charter and operating procedures once these have been published by the Government.

Power to direct that a local planning panel must make determinations

The amendments will allow the Minister to direct a council to establish a local planning panel to determine development assessments (see Schedule 4, item [3] on page 48 of the Bill).

The direction would also require the membership of the panel be approved by the Minister, and set out the circumstances in which the panel is to exercise the determination function. In most cases this would be in line with the model charter and operating procedures.

The Minister would exercise this power where it is needed to address sustained community concern about the timeliness or quality of a council's planning decisions, or about conflict of interest. Considerations for the Minister making a direction can be specified in the regulations. These could include consideration of performance indicators such as the timeliness of decisions and the frequency with which the council's determination depart from the development standards, or of the findings of a relevant report by the Independent Commission Against Corruption. The regulations may also require the Minister to consult with specific parties (such as the council or Local Government NSW) before making the direction.

The new power of direction will replace the existing provisions allowing the Minister to appoint a planning administrator or panel to exercise the planning functions of a council.

Ensuring delegation to council staff

The new power of direction will also allow the Minister to require that more planning functions are carried out by the council staff.

The vast majority of development applications should be determined by council staff on delegation. Councils have expert practitioners on staff who are knowledgeable about local planning strategies and technical requirements. In addition, councils that delegate more applications to their staff have shorter processing times. For example, in 2014-15 in the Sydney region:

- Councils with the highest levels of delegation (i.e., where 98 per cent of development applications were determined by staff) had an average processing time of 82 days.

- Councils with the lowest levels of delegation (with less than 80 per cent of development applications determined by staff) took on average 106 days.

For most councils, there will be no need for the Minister to make a direction to that council staff must make determinations. In 2014-15, 95.7 per cent of development and modification applications were determined by council officers under delegation.

However, there were 19 local government areas in which more than 10 per cent of applications were determined by councils themselves, creating unnecessary delay.

Any direction that determination functions are to be exercised by council staff will be supported by a best practice model to be developed by the Government, setting out which matters should be determined by staff on delegation and which should be reserved for the council or local planning panel.

7.2 Refreshed thresholds for regional development

Regional planning panels currently determine the classes of development known as regionally significant development. The current thresholds for regionally significant development were established in 2011 and have not since been reviewed.

Preliminary feedback from stakeholders is that joint regional planning panels are working well.

The current legislative updates provide an opportunity to consult with the community on whether the thresholds for regionally significant development remain effective. In particular, as local planning panels enhance expertise and independence in decision-making at the local level, the Government is considering whether a greater share of applications should be determined by panels. This would require raising the thresholds for regionally significant development.

Proposed new thresholds are set out in the table below. These take into account suggestions in early consultation with councils that the basic threshold for regionally significant development should be increased from $20 million to $30 million. All new schools will be treated as SSD, while the thresholds for alterations and additions at existing schools will be lowered to $20 million. Other thresholds remain the same, as outlined in Box 10.

Box 10: Proposed new thresholds for regionally significant development

- Development applications with a capital investment value of more than $30 million.
- Council-related development investment greater than $15 million for councils with a local planning panel.
- Private infrastructure and community facilities greater than $5 million.
- Educational facilities (including associated research facilities) that have a capital investment value of more than $30 million.
- Ecotourism facilities greater than $5 million.
- Designated development for extractive industries, marinas and waste management facilities or works.
- Certain coastal subdivisions.
- Development greater than $10 million but less than $30 million undetermined within 120 days and at the applicant's request, unless the delay was caused by the applicant.
- Development designated by order where the council's development assessment is considered unsatisfactory.

In addition, the thresholds will be moved from the EP&A Act into the appropriate State Environmental Planning Policy, to allow them to be updated from time to time in response to periodic review.

7.3 Strengthening decisions at the State significant level

The Planning Assessment Commission (the Commission) was established in 2008 and plays an important role in improving transparency and independence in the planning system.

The Commission's functions are to determine applications for State significant proposals under delegation from the Minister, and provide independent expert advice (or review) on a range of planning and development matters.

The role of the Commission has evolved over time. Since 2011, the main role of the Commission has been to determine projects, rather than provide advice or assess projects. For example, in 2014-15, 78 matters were referred to the Commission, with 66 of these being development proposals for determination.

This contemporary emphasis on determination is not reflected in legislated functions of the Commission or its name.

The Commission currently reviews State significant proposals, and then later may determine the same proposals. This results in duplication as a detailed assessment is undertaken twice on the same proposal. This is inefficient and creates uncertainty for communities and industry, as illustrated in Figure 4.

It is a Government priority to halve the time taken to assess applications for State significant developments. Project assessment times for complex State significant proposals increased from 598 days in 2008 to 1089 days in 2014. A more predictable, efficient and transparent system will assist in reducing assessment times and uncertainty for all stakeholders.

Independent Planning Commission

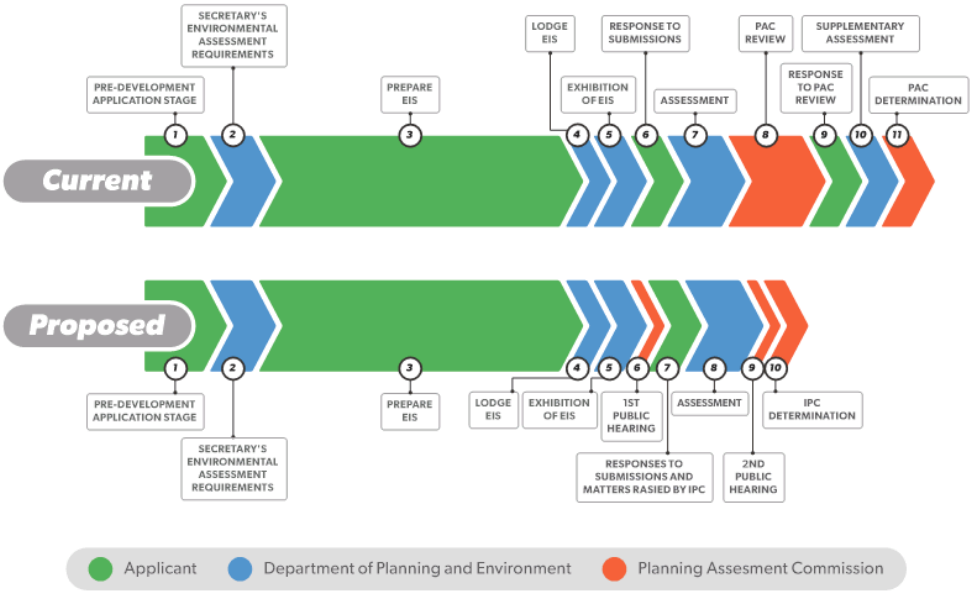
The name of the Planning and Assessment Commission will be changed to the Independent Planning Commission (see Schedule 2.1[1], clause 2.7 on page 9 of the Bill). This reflects the independent, expert nature of the Commission and the fact that its role is primarily one of determining State significant proposals, rather than providing advice.

To support this, the Commission will no longer have a statutory function to review development proposals. As the determining authority, it will guide assessments undertaken by the Department, to ensure that these assessments take into account all issues the Commission wishes to consider. This will result in resource and time savings, with no reduction in assessment rigour.

An initial assessment of the effect of the proposed changes indicates potential savings of between 70 and 160 days per proposal, depending the proposal's complexity.

To emphasise the independent and determinative role of the Commission, and provide greater certainty to industry and the community, the State Environmental Planning Policy (State and Regional Development) 2011 will prescribe the types of State significant proposals that are to be determined by the Commission.

Figure 4: Removal of the duplicative review function



Fair and robust public hearings

The EP&A Act will continue to enable the Minister to ask the Commission to hold public hearings prior to determining State significant proposals. There are no proposed changes to the availability of third party merit appeals following a public hearing.

The public hearing will be held over two stages:

- The first stage will allow the Commission to hear from the community and the proponent, and identify issues for the assessment of the proposal.
- The second stage will allow the Commission to examine in detail and interrogate the proposal, the assessment report and any draft conditions.

Community members will be involved early in the process and have the opportunity at each stage to hear from the proponent and government officials and to assist the Commission in testing the veracity of claims and the effectiveness of conditions. Box 11 outlines the new public hearing process.

Box 11: The new public hearing process	
Stage 1	**Stage 2**
Timing: Held in the final weeks of the Department's public exhibition period, prior to the close of public submissions.	**Timing:** Held once the Department has prepared its draft assessment.
Role of the Commission: to hear from the community and the proponent, and identify issues for the assessment of the proposal.	**Role of the Commission:** to examine in detail and interrogate the proposal, the draft assessment report and any draft conditions.
How it will work: The proponent will outline the proposal and reasons to support it. The Department will present an initial whole-of-government briefing on the project, setting out the policy context and other information relevant to the proposals. Stakeholders will be given the opportunity to speak, providing their own initial views and issues on the proposal. The Commission may question any of the speakers and may visit the site of the proposal.	**How it will work:** The second stage will be more inquisitorial, with the Commission formulating and publishing questions arising from its review of the Department's assessment report. The public will be given the opportunity to speak and present their views on the Department's assessment report. The proponent, the Department, invited experts and other government agencies may be questioned by the Commission. The proponent will be given the opportunity to make any final comments before the hearing concludes.
What happens next: The Commission will release a summary paper that identifies issues for the Department's assessment of the proposal.	**What happens next:** The Commission will undertake further deliberations, if required, and make its determination.

A public hearing will be held when directed by the Minister. Separate to a public hearing, the Commission may hold a public meeting before making a determination. Public meetings are not the same as a public hearing and do not affect appeal rights.

Additional expertise

A large proportion of State significant proposals referred to the Commission include resource proposals.

The proposed legislative amendments will expand the Commission's expertise in this area by:

- specifying that Commissioners may have qualifications in soil and agricultural science, hydrogeology, economics, and mining and petroleum development; and
- combining the current Mining and Petroleum Gateway Panel established under the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, so that members of the Gateway Panel will become Commissioners.

7.4 Managing conflicts for panels

The EP&A Act currently allows planning bodies to determine their own procedures for calling meetings and the conduct of business during those meetings, subject to any Ministerial direction.

The Planning Assessment Commission and regional planning panels have prepared and adopted their own codes of conduct for members. The code of conduct for regional planning panel members was prepared in September 2012, while the Commission last updated its code of conduct in September 2014.

Existing Independent Hearing and Assessment Panels (IHAPs) set up by councils are subject to few procedural requirements under the EP&A Act. The procedures for IHAPs are determined by individual councils.

The charters and operational procedures of existing IHAPs show elements of consistency and some areas of difference between councils. Each council requires panel members to adhere to a code of conduct of some form, although there is variation in how this is applied in practice. For example, a number of councils require IHAP members to adhere to the council's code of conduct, while other councils have developed panel-specific codes.

Model codes of conduct for planning bodies

To ensure a common approach to the conduct of members of planning bodies, we propose to develop model codes of conduct. This will be done in consultation with the Independent Commission Against Corruption to ensure the highest ethical standards in the exercise of duties and responsibilities.

The model codes of conduct will be adopted by the EP&A Regulation, and will need to be incorporated in the codes of conduct adopted by the Sydney district and regional planning panels and local planning panels.

For local planning panels, the Department will gather information from councils that have previously set up IHAPs to identify common issues or areas for inclusion in the model code of conduct.

The Department will work closely with the Office of Local Government to ensure the proposed measures are developed in line with the model code of conduct for councillors.

The Department will also work with the Independent Planning Commission to update its current code of conduct to reflect the model codes where necessary or appropriate.

A key element of a code of conduct is requirements for managing conflicts of interest. While the Act currently sets requirements to disclose pecuniary (financial) interests, it is difficult to regulate how non-pecuniary interests are dealt with. This is because they require an individual to make a subjective judgment about their personal interests, such as personal or professional relationships, rather than relying on the objective fact of a pecuniary interest. The model codes of conduct will therefore complement the statutory requirements by setting principles and practices for managing non-pecuniary interests in the event of a conflict.

7.5 Review of decisions

Applicants of development consents can sometimes be dissatisfied with council decisions, due to conditions or refusal. In these cases, the applicant can request that the council review its decision.

Following the review, the council can decide to change or uphold its original decision. This process is known as an internal review. Internal reviews are an important part of the planning system, as they provide a quick, low cost alternative to court proceedings. However, internal reviews are not currently available for all categories of development.

Expanded scope for internal review

We propose to expand the scope of internal reviews to include decisions about integrated development and State significant development (see Schedule 8.1[2], clause 8.2 on page 75-76 of the Bill).

Integrated development includes certain development applications that require a permit or license from a NSW Government agency in addition to a development consent from the Department. This is common for heritage approvals.

Under the proposed changes, applicants will be able to request an internal review of a council's decision about integrated development, provided the relevant agencies are involved in the review.

Applicants will also be able to seek review of the Minister's decision about State significant development, including decisions made under delegation by the Independent Planning Commission or another delegate.

However, internal reviews of State significant development will not be available for high-risk developments, such as heavy industries, intensive livestock industries and mining operations, if the Commission has held a public hearing into the development.

8. Clearer building provisions

Building regulation and certification provisions in the EP&A Act describe the requirements for certifying building work from design through to construction and occupation. Together with the *Building Professionals Act 2005* (Building Professionals Act) and the *Home Building Act 1989*, these provisions underpin the quality and safety of buildings in NSW.

In 2015, the Independent Review of the Building Professionals Act 2005 (the Lambert Report) identified areas for improvement in the current building regulation and certification system. While most of the improvements relate to the Building Professionals Act, changes to the EP&A Act will address issues identified by the Lambert Report by providing a clearer, more logical structure to building regulation and certification in the Act.

In September 2016, the Government responded to the Lambert Report with commitments to:

- improve how building and development certification information is collected and published under the Building Professionals Act;
- consolidate key building provisions, under the responsibility of the Minister for Innovation and Better Regulation;
- implement a package of fire safety reforms for both new and existing buildings; and
- establish a Building Regulators Committee to improve coordination across NSW Government.

As part of this broader set of initiatives, the Government is proposing changes to the EP&A Regulation about buildings and fire safety to ensure an effective building regulation and certification system by:

- consolidating building regulation and subdivision certification provisions into a single part of the EP&A Act;
- enabling regulations that allow accredited certifiers to place conditions on the issue of construction certificates and complying development certificates;
- ensuring construction certificates do not allow proponents to depart significantly from planning approvals.

These measures are discussed below.

Simplified and consolidated building provisions

The provisions for building regulation and certification are currently located in different areas within the EP&A Act, as well as in the EP&A Regulation. Ministerial oversight is also divided between the Minister for Planning and the Minister for Innovation and Better Regulation.

The Lambert Report identified that the building industry, including certifiers, find the EP&A Act challenging to navigate and difficult to understand due to the lack of consolidation of building provisions. This can reduce the efficiency and effectiveness of regulation, and can result in poor development outcomes.

The Lambert Report recommended an approach to creating a sound, easily comprehended legislative framework by revising and consolidating the existing building regulation provisions in the EP&A Act into one part.

The amendments will bring together the key provisions relating to building regulation and certification into a single part of the EP&A Act (Part 6).

The administration of this new consolidated part will be allocated to the Minister for Innovation and Better Regulation. This change will provide strong oversight of building laws by consolidating responsibility for building within one portfolio.

Consistency with the development approval

Planning authorities are responsible for assessing the impact of a proposal when deciding whether or not to give a planning approval. This includes ensuring that the development meets state and local requirements and that development is safe, functional and appropriate for the local area.

However, a planning approval does not cover all aspects of a building's design and construction. Construction certificates set out the detailed plans and specifications of a building, and ensure that it will comply with technical requirements, such as the Building Code of Australia.

To ensure that significant changes are not made to the development envisioned by the planning approval, existing regulations under the EP&A Act provide that a construction certificate must not be issued if the development will be inconsistent with the development consent. While minor changes to development plans may need to take place to account for new or unforeseen issues, it is important that construction certificates do not create a pathway for significant changes to the development consent.

In recent years, case law has demonstrated that the current wording of the EP&A Act and EP&A Regulation does not ensure that the construction certificates are consistent with development consents. This is outlined in Box 12.

Box 12: Burwood Council v Ralan

In November 2015, the Court of Appeal in Burwood Council v Ralan Burwood Pty Ltd held that development carried out in accordance with a construction certificate is not necessarily invalid, even where it differs substantially from the building approved under the related development consent. This ruling was made even though such an inconsistency would be in breach of clause 145(1) of the EP&A Regulation 2000 or section 109F(1)(a) of the EP&A Act.

The Court of Appeal's reasoning was that a clear requirement for a construction certificate to be consistent with the development consent was not adequately established through the EP&A Act and Regulations.

Since the building in that case was substantially completed, the Court also considered that invalidating a construction certificate could result in public inconvenience, as it may prevent a person from being able to occupy or use the building or be caused to be in breach of other parts of the legislation.

This decision by the Court of Appeal may mean that while certifiers will still be liable to prosecution under the EP&A Act for issuing a construction certificate that is inconsistent with a development consent, there may now be less incentive on both developers and certifiers to ensure consistency between a construction certificate and a development consent.

Source: *Burwood Council v Ralan Burwood Pty Ltd (No. 3) [2014] NSWCA 404*

To address this, the amendments:

- place in the Act itself (rather than the Regulations) a clear requirement that a construction certificate must be consistent with the development consent
- give the Court the ability to declare a construction certificate invalid if it is inconsistent with the consent.

Proceedings to seek such a declaration will be limited to three months after the construction certificate has been granted.

We will develop non-statutory guidance and criteria to assist accredited certifiers in ensuring that construction certificates are consistent with development consents, and clarify what is required for a development to meet the consistency test.

9. Elevating the role of design

Our future productivity and the liveability of our communities is heavily influenced by the design of the built environment. The built environment includes the places where people live, work, play and learn, such as towns, suburbs and cities.

Housing supply in the greater Sydney region and key regional centres will need to increase to accommodate the projected population growth over the coming decades. The Sydney metropolitan region alone will need an additional 725,000 new dwellings by 2036.

It is important that the planning system delivers well-designed urban areas, including streets, parks and recreation spaces, to meet the needs of a growing population. Design will work alongside urban planning to help to meet practical objectives including:

- preserving a neighbourhood's cohesion and identity;
- enhancing amenity;
- encouraging enjoyment and use of services, public and green spaces; and
- putting buildings, places, infrastructure and resources to best use.

Design in the built environment creates an urban environment that works for individuals and communities, is fit-for-purpose, attractive, safe, efficient, built to last and can adapt to the needs of future generations.

Good design is good for business. It generates innovation, investment and construction, which are fundamental components of the economy. Well-designed buildings, and urban areas, attract and support business.

Appropriate design can be promoted through a mix of regulatory and non-regulatory tools and measures. Non-regulatory tools and measures act to equip and motivate industry, councils and communities to raise the quality of design at both the precinct and individual development level.

A new design object

The amendments include a new object in the EP&A Act, promoting good design in the built environment (see Schedule 1.1, clause 1.4 on page 3 of the Bill).

The objects of an Act are a statement of Parliament's intention for the legislation. An object assists decision-makers to interpret how to exercise their statutory powers.

Design is already a relevant consideration that may be taken into account by decision-makers. However, the design object, if implemented, will ensure that design is considered and balanced with the other objects of the EP&A Act. For example, the promotion of good design will be considered in a framework that also promotes land use planning that encourages economic development and the principles of ecologically sustainable development. This will be the task of decision-makers in the context of both strategic planning and development assessments.

Design-led planning strategy

The Office of the Government Architect will develop a design-led planning strategy, comprising incentives and measures to assist planning system users to achieve well-designed places.

In developing the strategy, the Office of the Government Architect will consult with the community, industry and council stakeholders to develop specific initiatives to promote good design.

The first step in this process has been the launch of a draft Architecture and Design Policy for NSW.

The draft policy is the beginning of a discussion about the opportunities we have in NSW to deliver good design outcomes in the urban environment.

It provides a set of principles and guidance to support productivity, environmental management and liveability in NSW. It is focusing on the delivery of housing, employment, infrastructure, open space and the public domain.

For more information on the design-led planning strategy and on the architecture and design policy please visit the Government Architect NSW's website, http://www.planning.nsw.gov.au/About-Us/Office-of-the-Government-Architect.

10. Enhancing the enforcement toolkit

In 2014, the enforcement system in the EP&A Act was strengthened through the introduction of tiered penalties, improved investigative tools for local councils and new powers for the courts.

These amendments were made in order to provide greater deterrence against breaches of consent conditions, and to ensure that proponents who commit breaches are held accountable for any resulting community and environmental harm.

This accountability requires strong and flexible enforcement tools. The current approach provides for fines and court actions.

Enforceable undertakings

In order to give regulators greater flexibility in improving compliance, we propose to give the Department and local councils the ability to enter into enforceable undertakings with holders of a development consent (see Schedule 9.1[1] on page 86 of the Bill).

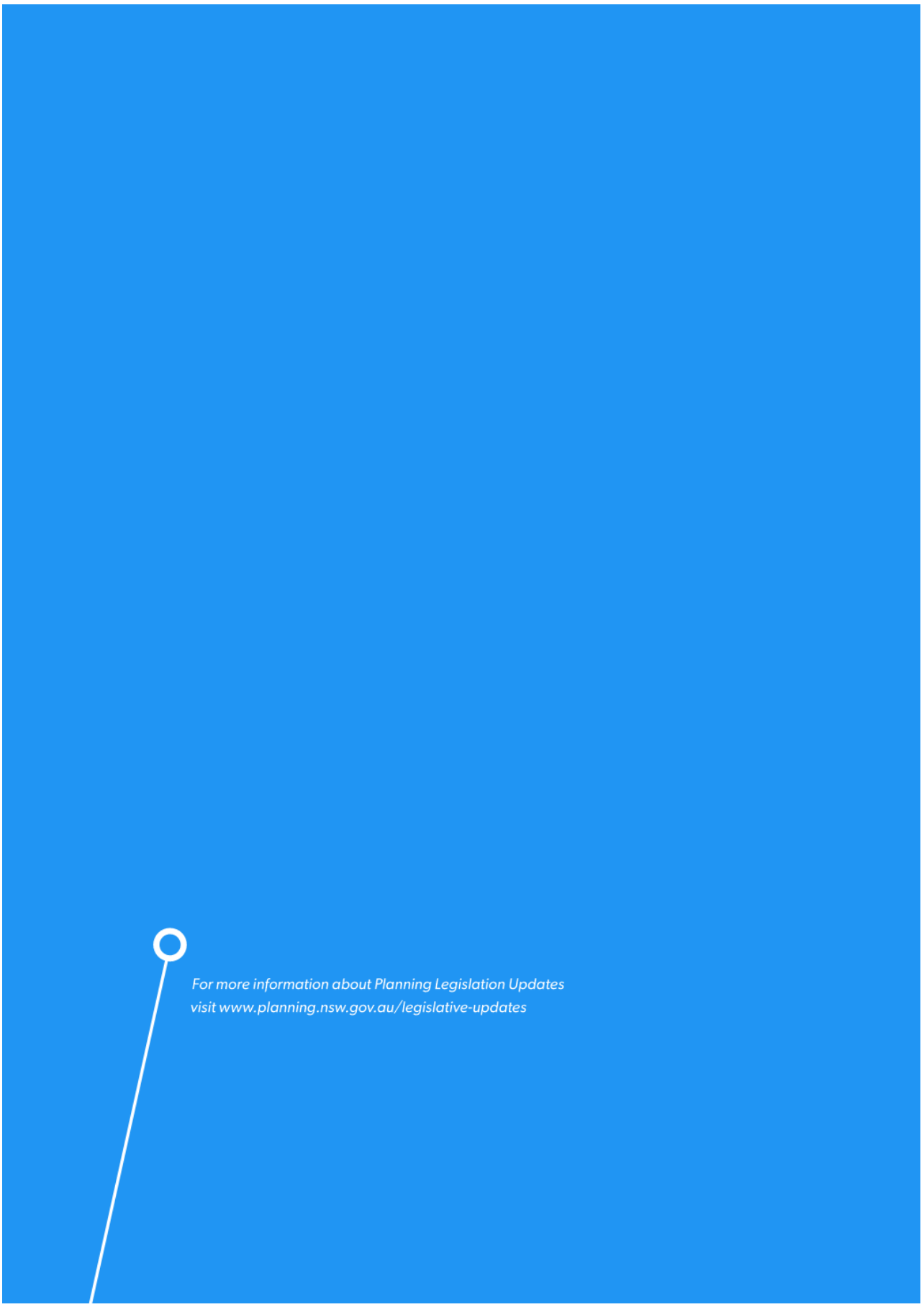
Enforceable undertakings are a commonly used tool that can improve compliance outcomes in cases where fines or prosecutions may be less useful. These give the regulator the power to enter into an agreement that then requires the consent holder to rectify harm that has occurred and to commit to improved behaviours in the future.

In the event that the consent holder then breaches the terms of the agreement, the regulator can then efficiently apply to the court to enforce those terms.

This is a faster and cheaper regulatory option than prosecuting the original breach of the consent.

The proposed enforceable undertakings system is similar to that already used in many other jurisdictions, as well as in NSW legislation including under the *Protection of the Environment Operations Act 1997*, the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*.

The Department will also develop guidance material to assist in employing this new tool.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Amendments to the Environmental Planning and Assessment Act 1979

New references

January 2018

Where have the Sections gone?

The table below contains the expected new numbering of many of the sections of the Act regularly used by councils and other practitioners in their forms and templates.

Please note this numbering is based on the unofficial consolidated version of the updated Act available on the Department's website. Please note the changes do not yet have legal effect. The Act will not be amended to reflect these changes until they commence on 1 March 2018. We recommend checking the numbering once the changes commence and the official consolidated version of the updated Act has been released.

Previous section of the Act	Description	Updated section reference in the Act
Sec 55	Planning proposals	Sec 3.33
Sec 76	Development that does not need consent	Sec 4.1
Sec 76A	Development that needs consent	Sec 4.2
Sec 76B	Development that is prohibited	Sec 4.3
Sec 77A	Designated development	Sec 4.10
Sec 78A	Application	Sec 4.12
Sec 79B	Consultation and concurrence	Sec 4.13
Sec 79C	Evaluation	Sec 4.15
Sec 80	Determination	Sec 4.16
Sec 80A	Imposition of conditions	Sec 4.17
Sec 82A	Review of determination	Secs 8.2, 8.3, 8.4, 8.5
Sec 82B	Review where development application not accepted	Secs 8.2, 8.3, 8.4
Sec 82C	Review procedures generally	Sec 8.5
Sec 82D	Effect of review decisions	Sec 8.5
Sec 83	Date from which consent operates	Secs 4.20, 8.13
Sec 85	What is a "complying development certificate"?	Sec 4.27
Sec 89	Determination of Crown development applications	Sec 4.33
Sec 91	What is "integrated development"?	Sec 4.46
Sec 93F	Planning agreements	Sec 7.4
Sec 94	Contribution towards provision or improvement of amenities or services	Sec 7.11
Sec 94A	Fixed development consent levies	Sec 7.12
Sec 95	Lapsing of consent	Sec 4.53
Sec 96	Modification of consents—generally	Sec 4.55
Sec 97	Appeal by applicant—development applications	Secs 8.7, 8.10
Sec 106-109B	Existing uses	Secs 4.65 – 4.70
Sec 109D	Certifying authorities	Sec 6.17
Sec 109E	Principal certifying authorities	Sec 6.5
Sec 110	Definitions (Definition of an Activity – Environmental Assessment)	Sec 5.1
Sec 117	Directions by the Minister	Sec 9.1

NSW GOVERNMENT

Amendments to the Environmental Planning and Assessment Act 1979

New references

January 2018

Sec 119D	Powers of investigation officers to enter premises	Sec 9.16
Secs 121A-121ZS	Orders	Secs 9.3 - 9.37 and Sch 5
Sec 125	Offences against this Act and the regulations	Secs 9.37, 9.50
Sec 149	Planning certificates	Sec 10.7
Sec 149A	Building certificates	Sec 6.26

Where can I find out more

- Call on 1300 305 695.
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.

Email legislativeupdates@planning.nsw.gov.au

NSW GOVERNMENT

NSW GOVERNMENT Planning & Environment

Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 17-006
Issued	15 December 2017
Related	Revokes PS-08-003 (May 2008), PS08-014 (November 2008), PS11-018 (August 2011), Circular B1 (March 1989)

Variations to development standards

This circular is to advise councils of arrangements for when councils may assume the Secretary's concurrence to vary development standards, and clarify requirements around reporting and record keeping where that concurrence has been assumed. This circular is primarily resulting from an audit of councils' use of *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1) and Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP).

Overview of the amendments

This circular replaces Planning Circulars B1, PS08-003, PS08-014 and PS11-018 (the previous circulars) and issues revised assumed concurrence, governance and reporting requirements.

An audit of various councils revealed that some inconsistencies have arisen in the use of the existing assumed concurrence provisions. The concurrence provisions make it clear that council must take into account the Secretary's considerations when assuming concurrence.

Councils are notified that only a full council can assume the Secretary's concurrence where the variation to a numerical standard is greater than 10%, or the variation is to a non-numerical standard. The determination of such applications cannot be made by individual council officers unless the Secretary has agreed to vary this requirement for a specific council. In all other circumstances, individual council officers may assume the Secretary's concurrence.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, council is notified, in accordance with the attached written notification, that it may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP and clause 6 of SEPP 1.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures, established in the previous circulars, continue to apply and must be adhered to by councils when considering applications utilising clause 4.6 of the SILEP or SEPP 1:

- Applications for variations to development standards cannot be considered without a written application objecting to the applicable development standard and addressing the matters required to be addressed in the relevant instrument.
- A publicly available online register is to be established, and its currency maintained, of all variations to development standards approved by council or its delegates. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved, either by council or its delegates, must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December). Such report must be on the form provided by the Department.
- A report of all variations approved under delegation by staff must be provided to a full council meeting at least once each quarter.

The Department will continue to carry out random audits to ensure the above monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy. Should ongoing non-compliance be identified with one or more councils, the Department will consider revoking the ability to assume the Secretary's concurrence, either broadly or for a specific non-compliant council.

Audit outcomes

An audit of various councils was undertaken. The audit report can be viewed at www.planning.nsw.gov.au

Further Information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at: www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Written notification of assumed concurrence

I, the Secretary of the Department of Planning and Environment, under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, hereby give written notification of my assumed concurrence to councils for exceptions to development standards in respect of all applications made under:

(a) Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP); or
(b) Clause 6 of the *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1)

This assumed concurrence is subject to the following matters:

(1) Council may assume my concurrence in respect of an application to vary a development standard relating to the minimum lot size for the erection of a dwelling on land zoned RU1, RU2, RU3, RU4, RU6, R5, E2, E3 or E4 (or equivalent zone) only if that allotment has an area equal to or greater than 90% of the minimum area specified in the development standard.

(2) Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.

(3) When assuming my concurrence in the following circumstances, only a full council (rather than individual council officers) can determine applications:
   a. Where the variation of a development standard is greater than 10%, or
   b. Where the development standard being varied is non-numerical.

(4) Any existing variations which have been granted in writing by me will continue to have effect in accordance with their terms.

Dated: 27.11.17

Carolyn McNally
Secretary, Department of Planning and Environment

NSW GOVERNMENT Planning & Environment

Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 18-003
Issued	21 February 2018
Related	Revokes PS17-006 (December 2017)

Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied), and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Overview of assumed concurrence

This circular replaces Planning Circular PS 17-006 and issues revised assumed concurrence, governance and reporting requirements for consent authorities.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

However the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning and Environment to a previous notice will continue to have effect under the attached notice.

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition
- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living
- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 23I, to be renumbered 4.8 from 1 March 2018).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong will be required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 23I, to be renumbered section 4.8 from 1 March 2018).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it will apply to panels established after 1 March 2018.

Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment* Regulation *2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect), or clause 6 of SEPP 1.

The notice takes effect on the day that it is published on the Department of Planning's website (i.e. the date of issue of this circular) and applies to pending development applications.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

Further information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at:

www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size: – Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition – Zone R5 Large Lot Residential – Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living – a land use zone that is equivalent to one of the above land use zones This condition does not apply to State significant development or development for which a Minister is the consent authority
2	Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority: – development that contravenes a numerical development standard by more than 10% – development that contravenes a non-numerical development standard **Note.** Local planning panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf a council and are not delegates of the council This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17–006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018

Carolyn McNally
Secretary, Department of Planning and Environment