



Planning &
Environment

Online development applications

***A discussion paper
February 2017***

*Environmental Planning
and Assessment
Amendment (ePlanning)
Regulation 2017*



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Introduction

The role of the NSW Planning Portal

The NSW Government is committed to providing better housing and job opportunities for the people of NSW. This includes increasing housing supply, improving housing affordability, and simplifying the planning system to enhance community confidence and make it easier to build a home and do business in NSW.

The NSW Planning Portal will play a key role in delivering on this commitment by providing better access to planning guidance, information, decisions and services anywhere at any time. In particular, online lodgement of development applications will help to provide greater certainty for the community and businesses, and will help to reduce delays in reviewing these applications.

Faster housing approvals

The Planning Portal plays an important role in delivering faster housing approvals. Online services will introduce a standard application process that requires well-prepared development applications to be submitted, accompanied by the correct documentation and application fee. This will help to provide certainty for homeowners and developers on what documentation and fees are required up front, and will also help to reduce current delays caused by councils having to go back to applicants to clarify development proposals or request additional and revised documentation. This will help to save people time and money, from a family building a new home through to a business extending their premises, and will ultimately help to deliver more housing for the growing population of NSW.

Housing supply and affordability

The Population of NSW is expected to grow to 9.9 million by 2036, A Plan for Growing Sydney estimates that Sydney alone will need 664,000 new homes over the next 20 years. Increasing the supply of housing will help to place downward pressure on housing prices. Government is supporting the delivery of more homes by establishing housing targets across NSW, and providing record allocations to the Housing Acceleration Fund to build the infrastructure to support this growth. The Planning Portal plays an important role in increasing housing supply by identifying the assessment options available for all types of housing development early on, simplifying the process for preparing and submitting development applications for housing developments, and streamlining consultations with state agencies.

Simplifying the planning system

The Planning Portal complements other new initiatives to simplify the planning system such as:

- *Simplification and Improvements to the complying development system;*
- *the One Stop Shop for concurrences and referrals, which will help to speed up government decision-making; and*
- *amendments to the Environmental Planning and Assessment Act 1979, which aim to target delays in development assessments by councils and enhance community confidence in the planning system.*

Collectively these initiatives, combined with online lodgement services, will make the planning system simpler, more transparent and easier to use.

Providing better government digital services

Government is committed to having 70 per cent of its transactions conducted via digital channels by 2019. Government is working to increase the level of online transactions to 70 per cent by 2018-19. The Planning Portal has an important role to play by helping to overcome barriers and constraints to online transactions by providing easy-to-use services, cloud-based storage for documents accompanying development applications, secure online payment systems, and SMS/email notifications for applicants, adjacent land and property owners, councils and certifiers.

Standard forms and 'best practice'

Changes are proposed to the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) to allow for online lodgement of development applications and to implement the use of standard forms and 'best practice' for all other types of applications.

Online lodgement services for development applications available on the Planning Portal will dramatically reduce the time and resources currently spent on producing and reviewing hard copy documents and make it easier to do business. Stakeholder engagement.

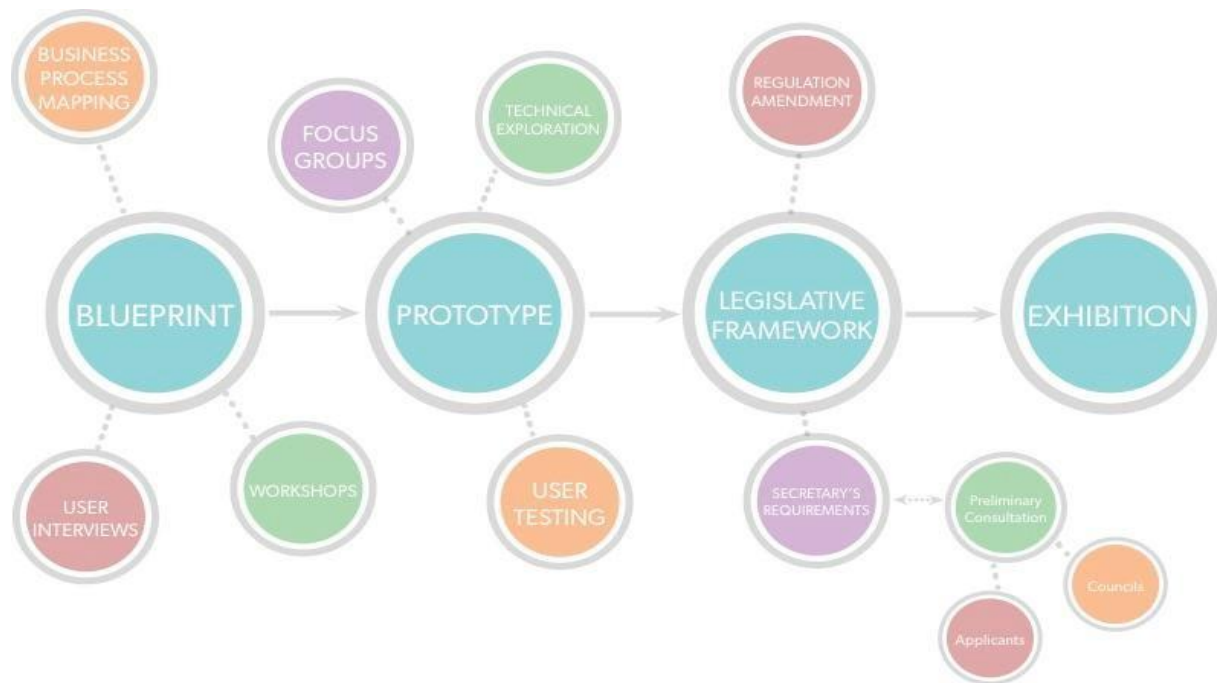
Activities to inform and guide the design of online lodgement services

To enable online lodgement of applications for development, the Department of Planning and Environment (DP&E) undertook a number of activities to inform and guide the design of the online lodgement services, and identify the legislative changes required.

The activities included:

- business process mapping of councils' end-to-end development application (DA) processes;
- workshops with councils to develop the user requirements and help identify issues and constraints for the application process;
- interviews with planning professionals and other stakeholders regarding any issues and expectations from an applicant's perspective; and
- development of an online lodgement prototype.

How we did it





Feedback from stakeholders

Lodgement is generally a transaction between an applicant and a council or accredited certifier. During the workshops the Department worked with stakeholder's to ensure to ensure an understanding of their needs so that an online solution for lodgement could be designed to address these needs.

The main areas of concern identified were:

- the variability and uncertainty of document requirements for a complete development application;
- copyright and privacy issues; and
- the complexity and variability of application fees.

The following table provides a summary of stakeholder feedback and illustrates how this feedback has been translated into an effective online solution:

Feedback	Design Principle	Solution
Variability and uncertainty of submission requirements		
<ul style="list-style-type: none"> Each council has its own range of application forms and associated checklists. A 	<ul style="list-style-type: none"> Only include requirements on the form that are relevant to the majority of applications. 	<ul style="list-style-type: none"> Standard forms for development applications, complying development certificates and combined development applications

large cross-section of these forms were analysed.

and construction certificates have been developed.

These rationalised forms set the framework for specific submission requirements based on the proposed development type or issues relating to the land subject to the proposal, which:

- standardises the description of development across all councils;
- allows detailed information to be provided under drawings or documents;
- improves identification of triggers for concurrences and referrals, and integrated development.

-
- There is an inconsistent approach in terms of which drawings are required for different application types and what information they should include.

- Unify the various standards for drawings.

- The initial research for drawings involved a review of the drawing requirements from various planning authorities, as well as the Land and Environment Court, to establish best practice.

- The Secretary's Requirements:
 - clarify the purpose for each drawing;
 - establish the minimum standards for what each drawing must contain;
 - rationalises the number of drawings being requested at present; and
 - provides a consistent naming convention across NSW.

-
- There is a lack of clarity regarding what the purpose of specific documents are, why

- Provide sufficient documentation for assessment, while reducing

- Planning can be complex and there is a need to understand the impact of development if

they are needed in the assessment and in what circumstances they should be submitted.

unnecessary requirements on applicants.

informed decisions are to be made. However, reports should only be required when they are necessary for the decision making process. The Secretary's Requirements:

- sets clear triggers for when a report is required based on either a feature of the land (e.g. bushfire prone) or the specific development proposed (e.g. new dwelling house);
- provides an overview of what the document is and who should prepare it; and
- ensures information is provided in the most appropriate and efficient format (e.g. documents covered in the Statement of Environmental Effects rather than being stand-alone documents).

-
- The existing Regulation requires a Statement of Environment Effects (SEE) but does not describe what it should contain. This has created significant variation across the State.

- Provide general development information that does not require a supplementary professional report and can be provided by the applicant or a professional on their behalf.

- Used correctly, the SEE encourages applicants to consider the potential impacts of a development and address them during the design phase. The Secretary's Requirements:
 - Defines what constitutes an SEE
 - Identifies clearly the mandatory and development specific requirements to be addressed.
 - Provides a template for people to follow to ensure acceptance by council.
 - Assists applicants to identify potential impacts to consider and tackle.

- Allows councils to understand how specific impacts have been addressed.

-
- Poor quality or incomplete applications being submitted

- Implement the use of electronic forms for data capture and provide applicants with clear requirements for minimal documentation required for the assessment, while reducing unnecessary requirements on applicants.

- Standard forms for development applications, complying development certificates and combined development applications and construction certificates have been developed.

These rationalised forms set the framework for specific submission requirements based on the proposed development type or issues relating to the land subject to the proposal, which:

- standardises the description of development across all councils;
- allows detailed documentation to be provided for the assessment.

-
- Lack of consistency on formats and contents of various documents

- Provide guidelines for form and content of documents to accompany applications

- Provides a standard methodology for preparing documents to accompany applications

-
- Inability to understand the requirements of an application, even for simple developments

- Implement the use of simple to understand questions on electronic forms for data capture and provide applicants with clear requirements for minimal documentation required for the assessment, while reducing unnecessary requirements on applicants

- Standard forms for development applications, complying development certificates and combined development applications and construction certificates have been developed.

Complexity and variability of application fees

There are often fee disputes, which are based on the construction value of the development. Evidence is often required just to lodge the application.	<p>Utilise the existing fee structure to create a simple method for applicants and councils to be able to generate a fee that can be quickly agreed.</p> <p>Focuses on smaller scale, high volume developments, such as alterations and additions and new dwellings</p>	<p>The introduction of a fee calculator via the NSW Planning Portal.</p> <p>This will use average construction values based on the proposed development type and the amount of floor area.</p>
Difficult to agree development build costs for the purposes of fee generation;	Integrate data captured on electronic forms into Cordell's Total Costing Solutions Database to provide accurate cost to build.	<p>The fee calculator ensures easy validation by council</p> <p>Provides a standard methodology for calculating cost to build</p>

Copyright and privacy issues

Inefficient mechanism for providing owner's consent	Focuses on a verifiable process with new legal declaration	Provides a standard methodology providing owner's consent
copyright/privacy issues and the requirements of open government	Use of the Portal for exhibition of development proposals provides Councils with access to the copyright and privacy provisions of the Department	Provides a standard methodology for copyright/privacy issues

Why is an update to the Regulation necessary?

The current provisions of the Regulation reflect the requirements of a paper-based system. The EP&A Regulation needs to be updated to reflect the process required in an online environment. Online lodgement is not as simple as submitting documents electronically; it requires the re-framing of the regulatory processes to reflect the online environment.

The business process mapping, interviews and workshops conducted with stakeholders documented the demand and expectation from councils and other stakeholders that online lodgement be introduced and that the regulation needed to be amended to allow this.

The issues identified are the areas of concern, which delay the preparation and determination of development applications for both councils and the applicants. The Department will provide standards for online submission and lodgement to avoid replicating the current uncertainty and lack of uniform submission requirements.

How the new regulatory framework affects applicants and councils

Applicants

The new regulatory framework will provide certainty on:

- *what to provide;*
- *how to provide it; and*
- *when it is needed.*

This provides consistency across local government area boundaries and reduces unnecessary submission requirements. An application prepared in accordance with the Secretary's Requirements will ensure confidence in the application being accepted.

There will be improved transparency of upfront fees to enable lodgement of the application and the commencement of assessment, and simplification of owner's consent with no manual signatures.

Councils

The new regulatory framework provides a strong legislative base for councils to validate or reject an application. The quality of applications will be improved through clarity and certainty of the information required to be submitted.

The Secretary's Requirements remove ambiguity and duplication of forms and checklists across all council areas. This reduces the need to maintain separate forms and checklists for each council.

The relationship between the submission requirements and the assessment of the application will be improved, ensuring the correct information is available for council at application lodgement.

Existing "stop the clock" provisions will be retained for additional planning information that may be required following an initial assessment of the application.

Summary of key changes

The key changes to the EP&A Regulation are:

1. Documents required for lodgement – all in one place

- The changes require the use of standardised forms for development applications, applications for complying development certificates and construction certificates, as well as standard requirements for plans, maps, drawings and reports to be lodged with a development application.
- All of the standard forms and requirements will be contained in a new, stand-alone, non-statutory publication entitled, the Secretary's Standard Forms and Submission Requirements (Secretary's Requirements).
- The use of standard forms will also be introduced for applications that are not lodged on the Planning Portal. The mandatory use of the Planning Portal for online submission of development applications, complying development certificate applications, construction certificates and other types of applications will be gradually phased in across the State.

2. Fees – simplification and centralisation

- The Planning Portal contains a Cost of Works Calculator for common development types, which takes the guess work out of calculating DA fees. Fees will be paid through an integrated payment gateway on the Planning Portal.
- Councils will be given the discretion to determine how much of the application fee is to be refunded if the application is rejected. A council may reject a DA within 14 days of receipt.
- Fees collected from the Planning Portal will be paid into a separate clearing account owned and operated by the Department.
- Fees will be reimbursed to nominated council and State agency bank accounts on Wednesday of each week for all applications lodged in the preceding seven days.
- The Department will retain the interest earned on the fees whilst they are held in the clearing account.

3. Land owner's consent

- The land owner's signature, or signatures where there is more than one land owner, will not be required on the development application form when the standard DA form is used. Instead, a land owner who makes a development application will be required to declare that he or she is the owner of the land to which the application relates.

- *Where a development application is made by someone other than a land owner, that person will be required to make a declaration to the effect that they have the land owner's permission to submit a development application in respect of the land.*
- *Land owners who are not the applicant will receive notice of a development application having been made.*
- *Knowingly providing a false declaration may constitute an offence under section 148B of the EP&A Act.*

Benefits of online lodgment

The benefits of the proposed changes are part of the NSW Government's commitment to a simplified planning system. The benefits delivered are both quantified and qualitative.

Quantified benefits:

- *time and travel costs saved by applicants for development using the Planning Portal;*
- *benefits from the convenience of electronic application lodgement processes in terms of reduced printing and copying costs;*
- *time saved due to the ease of estimating fees for development applications;*
- *greater access to information about land use planning which is in one place and easy to find;*
- *greater access to information and planning controls;*
- *efficiencies gained by councils from a reduced reliance on manual, paper-based processes in handling applications; and*
- *benefits from the introduction of standard application forms and requirements for lodgement which will eventually apply across the State.*

Benefits considered qualitatively:

- *more equitable access to planning information through the Planning Portal accessible to all NSW stakeholders;*
- *greater consistency of decisions relating to development applications across NSW, supported by more standardised and automated processes across all local governments;*

- *stimulated economic development, and potential associated revenue increases flowing from applicants for development having better access to information and ease of interacting with the planning system;*
- *better quality policies, plans and decisions as a result of information sharing and service integration, and more time available to State and local governments to engage in strategic planning and addressing contentious issues;*
- *consistency of data standards and an increase in the number of online transactions creating a robust statistical record, improving the ability to make evidence-based planning decisions and to compare the performance of councils on a like-for-like basis; and*
- *benefits from the integration of the One-Stop-Shop for concurrences and referrals into the Planning Portal, providing a seamless user experience and integrated workflow for State agencies.*



Regulation changes

Aim of regulation changes

The changes proposed to the EP&A Regulation facilitate the submission of development applications via the Planning Portal as part of the Government's broader objective to build a simpler, modern planning system.

The draft regulation includes the following amendments:

- a requirement for development control and contribution plans to be published on the Planning Portal;
- Development Control and Contribution Plans only having legal effect when published on the Planning Portal;
- the publication of a Secretary's Requirement which specifies the form of a development application and other types of application for development and requirements for documentation to accompany applications for development;
- the applicant or other person consenting to the application, are no longer required to provide a signature or seal of approval;
- the application must include a statement that the applicant is authorised to make the application and has obtained all necessary consents;
- the consent authority may (but is not required to) refund to the applicant the whole or any part of any application fee paid in connection with an application that is rejected;
- the estimated cost to build of a development must be estimated in accordance with the calculator determined by the Secretary and published on the Planning Portal; and
- a standardised method for calculating application fees

Components of an application

The requirements for a development application to be accepted are set out in the following parts of the EP&A Regulation:

1. The required documents and form prescribed in clauses 47A, 48, 50(1), (1A), (1B), (2) and (2A), 115, 125A, 126, 128, 138A, 139, 141, Schedule 7 of the EP&A Regulation.
2. The requirement for an application to be accompanied by the fee – clauses 50 (1) (c), 256 of the EP&A Regulation.
3. The requirement for land owner's consent - clause.49(1) of the EP&A Regulation.

Documents required

The current requirements for what forms accompany an application are set out in Schedule 1 of the EP&A Regulation. In addition, individual councils have also developed extensive checklists for the documents required as part of an application. These requirements are usually taken from the council's Local Environmental Plan (LEP) and Development Control Plans (DCPs). Sometimes the requirements are legacy items derived from earlier documents that are no longer current.

This can result in uncertainty and time lost used by applicants in determining what documents are required. The requirements are also subject to individual interpretation of the requirements by different council officers within the same council.

Proposed changes

The changes proposed to the EP&A Regulation aim to provide consistent and uniform requirements for the forms and documents required, which is why the Department has decided to combine all the requirements into a single document that replaces Schedule 1 and councils' checklists.

The Secretary's Requirements for the Lodgement of Applications for Development (Secretary's Requirements) list the documents required to be submitted with certain applications and contain the following standard forms:

- *Development Application Form;*
- *Combined Development Application and Construction Certificate Form;*
- *Application to Modify Development Application;*
- *Complying Development Certificate Application Form;*
- *Application to Modify Complying Development Certificate;*
- *Construction Certificate Application Form.*

When using the Planning Portal, an applicant will be automatically prompted to upload information particular to the application, without having to search through any other publication.

The Secretary's Requirements includes standard technical requirements for drawings, maps, plans and reports.

Application forms

Proposed changes

To allow for a more efficient process with less confusion and uncertainty for applicants, a standard authorised development application form will be introduced. The form, which is contained in the Secretary's Requirements, is built into the Planning Portal and will be provided by councils which choose to use the standard form.

The information to be collected on the form includes:

- *applicant and land owner's contact details;*
- *development type and description of proposal;*
- *integrated development and other approvals;*
- *gifts and political donations; and*
- *land owner's consent and declarations.*

Land owner's consent

Current legislation requires the land owner to give written consent for a development application to be lodged. In nearly all cases proof of their consent is taken to be a signature on the application form.

Many councils have imposed more strenuous demands than that prescribed in legislation for proof of owner's consent, such as differing requirements for body corporates (strata) and company-owned properties. It should be noted that there is no standard of proof that the signatures are actually those of the owners or the authorised representative of an owner.

In the case of companies, some councils are requesting copies of the company structure and/or shareholders lists to show who the representatives signing the forms are, to determine whether or not the appropriate company officer has signed.

In the case of strata corporations, the strata secretary's signature and the strata seal is required. In addition some councils are requesting 'minutes of meetings' showing approval for the secretary to sign the application form and apply the strata seal.

If the current system was maintained applicants would be required to download the form, print it out, sign it, scan the document and then upload it into the online lodgement system. This makes the process cumbersome and time consuming and negates the benefits of working in an online environment.

Experience has shown that in some instances the name of the signatory is checked against the council's ownership records but it is not possible for councils to verify the signatures. Councils are unwilling to do a title search (through NSW Land and Property Information) to confirm the name of the owner against the registered proprietor shown on the certificate of title.

This means that under the current processes there always remains a degree of doubt about whether the requirements for land owners consent has been satisfied.

Proposed changes

The changes proposed acknowledge that councils have accurate records of land ownership, which are updated constantly based on the Land and Property Information's timeliness in providing updated ownership and subdivision information and the councils own internal records keeping processes.

The changes proposed are:

- declaration from the land owner (if they are the applicant) that they understand the requirements and obligations imposed on them by making an application; and
- declaration by the applicants (if they not the land owner) that they have land owner's consent to make the application – land owners' signatures will not be required.

Land owners (if they are not the applicant) will also receive notification from council that an application has been lodged on their land.

The changes proposed are based on two requirements:

- councils will need to identify the land owners or owners in order to notify them of the development application; and
- knowingly making a falsely declaration that the applicant is the land owner or has land owner's consent to the application will be considered a false or misleading statement, which may constitute an offence.

Applications submitted via the Planning Portal will also require users to verify their identity when submitting the application.

Development application fees

The Planning Portal will calculate development application fees using an integrated fee calculator.

The cost to build component of the fee will be derived from:

- *a quantity surveyors report (if provided); or*
- *a contract price to build from a registered builder (if provided); or*
- *the total gross floorspace of the building as constructed or enlarged.*

The total gross floorspace provided will be integrated into a third-party proprietary database to generate an average cost to build for the geographic location specified. Fees will include GST where applicable.

Proposed change - DA fees

Online lodgement requires that a single fee be paid for the development application. The single application fee will comprise:

- *the DA fee;*
- *other statutory fees and charges (where applicable); and*
- *other fees and charges levied by council (where applicable).*

Development applications submitted via the Planning Portal will initially be sent to the council for review. Following a review of the information provided and requirements for concurrences and referrals to State agencies, council will issue a Statement of Transactions fee request to the applicant (through the Portal) for payment.

Current industry practice means that industry professionals and consultants will ask their clients to pay application fees by way of cheque directly to the councils; especially for high-value projects.

Fees for DAs submitted via the Planning Portal will be paid by the applicant prior to lodgement using an integrated payment gateway on the Planning Portal.

A DA that is lodged to council using the Planning Portal is only lodged when application fees have been paid and an email is sent to the applicant that acknowledges that the application has been successfully lodged.

Proposed change – fees for complying development certificates

The majority of CDCs are determined by private certifiers. Fees for CDC applications are paid directly to the certifier as part of the certifiers' contract with the applicant. No changes are proposed for how fees for CDC applications are paid.

Calculating construction values

Proposed changes

The Planning Portal will include an integrated calculator for construction value. Construction values will be based on the type of development (based on the Standard Instrument LEP) with the median cost being used. This takes account of differences in building costs due to the quality of finishes, fixtures and fittings.

Payment of application fees

As outlined above, when using the Planning Portal, the applicant will be issued with a single Statement of Transactions fee. The fee invoice will specify how the fee has been calculated including GST where applicable.

Fees for DAs submitted via the Planning Portal will be paid by the applicant using an integrated payment gateway. The payment gateway will provide a variety of payment methods including credit card, debit card and BPAY. On payment of the required fee, applicants will receive separate tax invoices for each consent authority and agency for which a fee is applicable.

DA fees will be paid into a clearing account owned and operated by the Department. The Department will retain application fees paid into the clearing account for a maximum of seven days. Application fees, fees for approval by another agency, and concurrence fees will be reimbursed to councils and State agencies on Wednesday of each week for all applications lodged in the preceding seven-day period.

Fees will be paid directly into the bank accounts of councils and State agencies. Each payment will include metadata identifying the unique Planning Portal reference, payment reference, payment amount and payment date.

The Department will enter into a planning services agreement with each council in the State prior to the commencement of online lodgement service in that council area.

Planning reform fund remittance

Planning reform fund remittances, for development applications submitted via the Planning Portal, will be taken at source by the Portal payment gateway. Councils will not be required to include details of fee payments for applications submitted via the Planning Portal in their monthly return to the Department.

Refunds of application fees

Councils spend considerable time reviewing applications for adequacy of the materials submitted. Councils will be given the discretion to determine how much of the application fee is to be refunded, if the application is rejected.

Development control plans

DCPs on the Planning Portal

Since 19 June 2015 councils have been required (Planning Circular PS15-001) to submit copies of their new DCPs through the Planning Portal.

On 30 November 2015, Planning Circular PS15-005 provided councils with a link to the Secretary's Standard Technical Requirements for Spatial Datasets and Maps (Version 1.0), which sets out new standard technical requirements for maps and spatial datasets incorporated by reference in environmental planning instruments, DCPs and Contribution Plans (CPs).

The future addition of DCP data to the Planning Portal will result in better access to information online for purposes of planning transactions.

Proposed changes

Draft DCPs and associated notices must be published on the Planning Portal. The exhibition period will be at least 28 days.

New DCPs will only take effect from the date on which they are published on the Planning Portal. Technical requirements for publishing draft and final DCPs on the Planning Portal will be issued in a planning circular.

Contribution plans

Contribution plans on the Planning Portal

Since 19 June 2015 councils have been required (Planning Circular PS15-001) to submit copies of their new Contribution Plans (CP) through the Planning Portal.

On 30 November 2015, Planning Circular PS15-005 provided council with a link to the Secretary's Standard Technical Requirements for Spatial Datasets and Maps (Version 1.0),

which sets new standard technical requirements for maps and spatial datasets incorporated by reference in environmental planning instruments, DCPs and CPs.

The future addition of CP data to the Planning Portal will result in better access to information online for purposes of planning transactions.

Proposals

Draft CPs and associated notices must be published on the Planning Portal and the exhibition period will be at least 28 days.

New CPs will only take effect from the date it is published on the Planning Portal. The technical requirements for publishing draft and final CPs on the Planning Portal will be issued in a planning circular.

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Secretary's Requirements

Secretary's Requirements

The Environmental Planning and Assessment Amendment Act 2014 (the Amendment Act) includes provisions which enable the Secretary of the Department of Planning and Environment (the Secretary) to determine standard technical requirements for:

- *Environmental Planning Instruments;*
- *plans and related documents;*
- *spatial datasets;*
- *maps; and*
- *the form of applications for consent, approvals or certificates that must be implemented by councils and other planning authorities.*

The Department proposes replacing the provisions of Schedule 1 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) with the Secretary's Requirements for Online Lodgement which will require:

- *the property details;*
- *the land owner's contact details;*
- *the applicant's contact details;*
- *declaration relating to land ownership, gifts and political donations;*
- *a Statement of Environmental Effects or an Environmental Impact statement;*
- *plans, Maps and Drawings required based on development type;*
- *any other reports as required by the Secretary's Requirement; and*
- *any other document as required by the Secretary's Requirement.*

The Environmental Planning and Assessment Amendment Act 2014 (the Amendment Act) also included provisions which enable the Secretary of the Department to determine standard technical requirements for:

- *Environmental Planning Instruments;*
- *plans and related documents;*
- *spatial datasets;*
- *maps; and*
- *the form of applications for consent, approvals or certificates that must be implemented by councils and other planning authorities.*

To ensure the Secretary's Requirements are kept current and relevant, they need to be given legal effect, but can be updated and revised in a timely manner without always requiring a change to the EP&A Regulation.

Ongoing review of Secretary's Requirement

The Department will implement a formal review the Secretary's Requirement on a regular basis and in response to issues identified by the users of the standard forms and submission requirement. Proposals to update or change the Secretary's Requirement, will be reviewed by the ePlanning Steering Committee and changes exhibited, before being approved by the Secretary.

Documentation

Document review

An essential element of councils' processes for accepting an application for determination is the review carried out by council staff when an application is submitted.

Experience has shown that councils spend considerable time and expense in providing advice verbally, electronically and in hard-copy to prospective applicants in order to ensure that applications are submitted containing the required information, so that the application can be determined, without requesting additional essential information.

Councils and applicants then spend considerable time to ensure that the application is complete before council accepts the application for determination. This review stage saves councils and applicants considerable time in the determination process, as the process will not commence if any information is missing. Under the current legislation, if the lodgement process moved online without changes to the Regulation this review process would not be possible.

Documents required – the issues to be addressed

Currently the application requirements are spread out in the EP&A Act and EP&A Regulation and in multiple DCPs across 135 councils. The complexity and variability of the requirements causes considerable uncertainty and confusion among applicants.

The aim of the Planning Portal is to centralise the documents/information required for lodging an application for development in a central location. If an application contains all the required documents and required fees are paid then the application is considered to contain sufficient documentation for the application to be submitted.

Documents – changes proposed

The minimum requirements for the forms and documents required are prescribed in the current EP&A Regulation, but are also augmented by specific requirements for each council, contained in either their LEPs or DCPs. This approach has led to increased complexity and uncertainty for applicants submitting applications, even if they are experienced industry professionals.

The creation of an online lodgement system requires a number of changes to the existing system from both a legal and operational aspect.

In the current system, the requirements are identified by a number of different instruments (EP&A Act, EP&A Regulation. and councils' specific DCPs) means that the information is difficult and time consuming for applicants to find, is difficult to readily update and is not in a format that readily translates into an online environment.

The documentation required needs to be responsive to changing council and Department requirements and the most appropriate method is to remove the requirements from the Regulation and multiple DCPs, and place them in a single document as the definitive location, being the Secretary's Requirements.

The requirements will consist of:

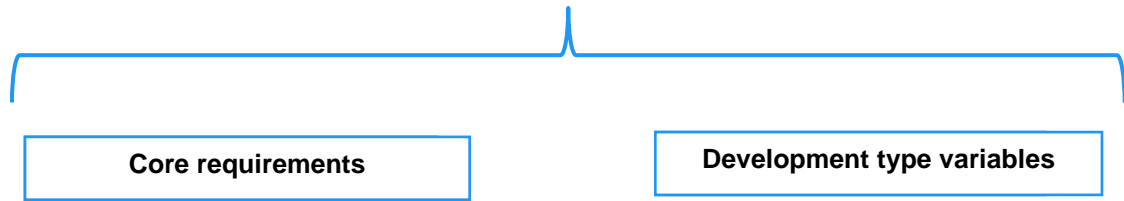
- *drawings, maps and plans*
- *Statement of Environmental Effects or Environmental Impact Statement; and*
- *development-specific documentation requirements*

Attachment C *provides details of the rationalisation of existing drawings and how they have been integrated into the submission requirements.*

Attachment D *provides details of the rationalisation of existing reports and how they have been integrated into the submission requirements.*

The core requirements and specific development type requirements will be consistent State-wide, for every application. The requirements based on the development types will be the same for that development type, but will vary between the development types. The location variables will be tailored to suit the specific regional requirements.

Documentation requirements



*The current provisions for rejection and 'stop the clock' will not be altered. Councils can request additional information during the assessment stage as deemed **necessary**.*

Transitional arrangements

It is intended that the changes proposed to the EP&A Regulation will be introduced gradually.

Consent or certifying authorities can continue to accept development applications and complying development certificate applications made on existing application forms under the existing provisions or on the new standard application forms prescribed in the ePlanning Amendment Regulation.

The duration of the transitional period will be determined by the Minister.

For applicants

This means that when submitting an application on paper, a council or a private certifier has the option to choose under which system an application is made.

Alternatively, if a development application and complying development certificate application is lodged through the Planning Portal, the provisions of the EP&A Amendment (ePlanning) Regulation 2017 will apply.

For councils

For councils this means that during the transitional period they can choose whether they will continue to use their existing application forms.

If a development application and complying development certificate application is lodged through the Planning Portal, the provisions of the EP&A Amendment (ePlanning) Regulation 2017 will apply.

For private certifiers

For private certifiers this means that during the transitional period they can choose whether they will continue to use their existing application forms.

If a complying development certificate application is lodged through the Planning Portal, the provisions of the EP&A Amendment (ePlanning) Regulation 2017 will apply.

Have your say

Consultation is now underway on the proposed changes to the EP&A Regulation to enable the introduction of online lodgement.

The public consultation period is from 15 February 2017 to 15 March 2017.

We encourage our stakeholders, interested community groups and individuals to review the reforms and respond:

- *online using the 'on exhibition form' on the Planning Portal; or*
- *by mail to:*

*Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001*

A white line starts from the top left corner and extends diagonally down to a small white circle, which is positioned to the left of the word "Attachments".

Attachments

Attachment A

Table of changes

Table 1 Documentation

Existing provision	Proposed changes
<p>Reg. cl.47 Application of Part</p> <p><i>This Part applies to all development applications.</i></p> <p><i>Note. Because of the definition of development application in section 4 (1) of the Act, this Part does not apply to complying development or to applications for complying development certificates.</i></p> <p>Reg. cl.48 Consent authority to provide development application forms to intending applicants</p> <p><i>The consent authority must provide any person intending to make a development application with:</i></p> <p><i>(a) the consent authority's scale of fees for development applications generally, and</i></p> <p><i>(b) if the consent authority has determined the fee to accompany that particular application, advice of the amount determined, and</i></p> <p><i>(c) if the consent authority requires such an application to be in a particular form, blank copies of that form.</i></p> <p>Reg. cl.50 How must a development application be made?</p> <p><i>(1) A development application:</i></p> <p><i>(a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1; and</i></p> <p><i>(b) if the consent authority so requires, must be in the form approved by that authority; and</i></p> <p><i>(c) must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority; and</i></p> <p><i>(d) must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission.</i></p>	<p>How must a development application be made?</p> <p><i>Amend the clauses to:</i></p> <ul style="list-style-type: none"> • <i>introduce the Secretary's Requirements to determine the form of the application;</i> • <i>application forms and document requirements are to be available on the Planning Portal;</i> • <i>allow online lodgement of applications for development;</i> • <i>the DA lodgement fee will be calculated on the Planning Portal for online lodgement.</i>

Table 2: Application forms

Existing provision	Proposed changes
<p>Reg. cl.47 Application of Part</p> <p><i>This Part applies to all development applications.</i></p> <p><i>Note: Because of the definition of development application in section 4 (1) of the Act, this Part does not apply to complying development or to applications for complying development certificates.</i></p>	<p>How must a development application be made?</p> <p>Amend the Regulation to allow:</p> <p>Amend the clauses to:</p> <ul style="list-style-type: none">• introduce the Secretary's Requirements to determine the form of the application;• application forms and document requirements are to be available on the Planning Portal• Schedule 1 of the EP & Regulation will be superseded by the 'Secretary's Requirements'; and• BASIX requirements will be removed from Schedule 1 and moved into the Regulation.
<p>Reg. cl.48 Consent authority to provide development application forms to intending applicants</p> <p><i>The consent authority must provide any person intending to make a development application with:</i></p> <p><i>(a) the consent authority's scale of fees for development applications generally;</i></p> <p><i>(b) if the consent authority has determined the fee to accompany that particular application, advice of the amount determined; and</i></p> <p><i>(c) if the consent authority requires such an application to be in a particular form, blank copies of that form.</i></p>	
<p>Reg. cl.50 How must a development application be made?</p> <p><i>(1) A development application:</i></p> <p><i>(a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1;</i></p> <p><i>(b) if the consent authority so requires, must be in the form approved by that authority;</i></p> <p><i>(c) must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority; and</i></p> <p><i>(d) must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission.</i></p>	

Table 3: Documentation

Existing provision	Proposed changes
<p>Reg. cl 50 How must a development application be made?</p> <p>1. A development application:</p> <p>a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1.</p>	<p>How must a development application be made?</p> <p>Amend the clauses to:</p> <ul style="list-style-type: none"> introduce the Secretary's Requirements to determine documentation requirements; document requirements are to be available on the Planning Portal; Schedule 1 of the EP&A Regulation will be superseded by the 'Secretary's Requirements'; and BASIX requirements will be removed from Schedule 1 and moved into the Regulation.

Table 4: Land owner's consent

Existing provision	Proposed changes
<p>cl. 49 Persons who can make development applications</p> <p>(1) A development application may be made:</p> <p>(a) by the owner of the land to which the development application relates; or</p> <p>(b) by any other person, with the consent in writing of the owner of that land.</p> <p>(2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority or for a development application for public notification development if the applicant instead gives notice of the application:</p> <p>(a) by written notice to the owner of the land before the application is made; or</p> <p>(b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.</p> <p>(3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.</p>	<p>Amend the Regulation to provide:</p> <ul style="list-style-type: none"> The applicant, if they are one of the land owners, will make a declaration they have all the other land owners' consent for making an application. The applicant, if they are not the land owners, will make a declaration they have all the other land owners' consent for making an application. The consent authority will advise all the land owners when an application has been made. <p>(refer cl. 148B (3)(d) EPA Act - the person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.)</p>

(3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.

(4) Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.

(5) In this clause:

public authority includes an irrigation corporation within the meaning of the Water Management Act 2000 that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

cl.283 False or misleading statements

A person is guilty of an offence if the person makes any statement, knowing it to be false or misleading in an important respect, in or in connection with any document lodged with the Director-General or a consent authority or certifying authority for the purposes of the Act or this Regulation.

Table 5: Fees

Existing provision	Proposed changes
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Reg. cl 50 How must a development application be made?

1. A development application:

- a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1;
- b) if the consent authority so requires, must be in the form approved by that authority;
- c) must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority; and
- d) must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission.

Amend the Regulation to provide:

- When lodging online:
 - the DA fee is payable on lodgement (based on cl.246B regulation); and
 - all other fees must be paid before the application is determined.

Table 6: Construction value

Existing provision	Proposed changes
<p>cl. 246B Fee for development application</p> <p>(cf clause 93 of EP&A Regulation 1994)</p> <p>(1) The maximum fee for development involving the erection of a building, the carrying out of work or the demolition of a work or a building, and having an estimated cost within the range specified in the Table to this clause is calculated in accordance with that Table.</p>	<p>Amend the Regulation to:</p> <ul style="list-style-type: none">• That the 'cost of works' will be calculated using the calculator hosted on the Planning Portal.

Table 7: Summary of changes

Existing provision	Proposed changes
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Reg. cl 50 How must a development application be made?

Form & document requirements –

cl 50 (1), (1A), (1B), (2), (2A).

EP & A Regulation – Schedule 1 Forms

- Part 1, clause 1 – Information to be included in DA
- Part 1, clause 2 – Documents to accompany DA
- Part 2, clause 4 – Documents to accompany application for CDC
- Part 3, clause 5 – Information to be included in application for construction certificate

LEPs and DCPs

Individual council requirements (usually contained in DCP and/or checklists).

Summary:

Forms and documents required described in the new Secretary's Requirements.

The Requirements to also describe what needs to be contained within the documents and drawings required for lodging an application for development.

The grounds for rejection based only on what is required by the Secretary's Requirements.

Owner's consent to be replaced by declaration from applicant if not the owner, and specific penalties for making false declaration

Fees: Combined fee process, fees required under the EP&A Regulation and other fees required for concurrences and referrals and under the LG Act.

Cost of construction to be set on a sq.M basis based on specific development types.

Consent should not be granted until all the relevant fees have been paid.

In circumstances where an application is rejected a proportion of the fee payable is maybe retained by the council.

No changes proposed for CDC fees.

Table 8: Summary of changes

Existing provision	Proposed changes
All of Part 3 Development control plans <i>Clauses 16 -25AD</i>	<p>Summary:</p> <p>Amend the Regulation to:</p> <ul style="list-style-type: none">• <i>Require that notices for and draft DCPs be exhibited on the Planning Portal.</i>• <i>The minimum exhibition period is 28 days.</i>• <i>New DCPs are to be placed on the Planning Portal.</i>• <i>New DCPs do not commence until they are placed on the Planning Portal.</i>• <i>Councils can request additional information and charge an assessment fee if the DCP is submitted by the owner of the land.</i> <p>Planning Circular</p> <p><i>The Planning Circular will be required:</i></p> <ul style="list-style-type: none">• <i>Before a draft development control plan is published on the Planning Portal, the council must:</i><ul style="list-style-type: none">(a) <i>give the Department 14 days' notice of their intent to publish a draft development control plan;</i><i>and</i>

(b) upload a copy of the draft development control plan and all associated spatial datasets through the Planning Portal.

- *Before a development control plan is published on the Planning Portal, the council must:*

(a) give the Department 14 days' notice of their intent to publish a development control plan following public exhibition through the Planning Portal; and

(b) upload a copy of the development control plan and all associated spatial datasets through the Planning Portal.

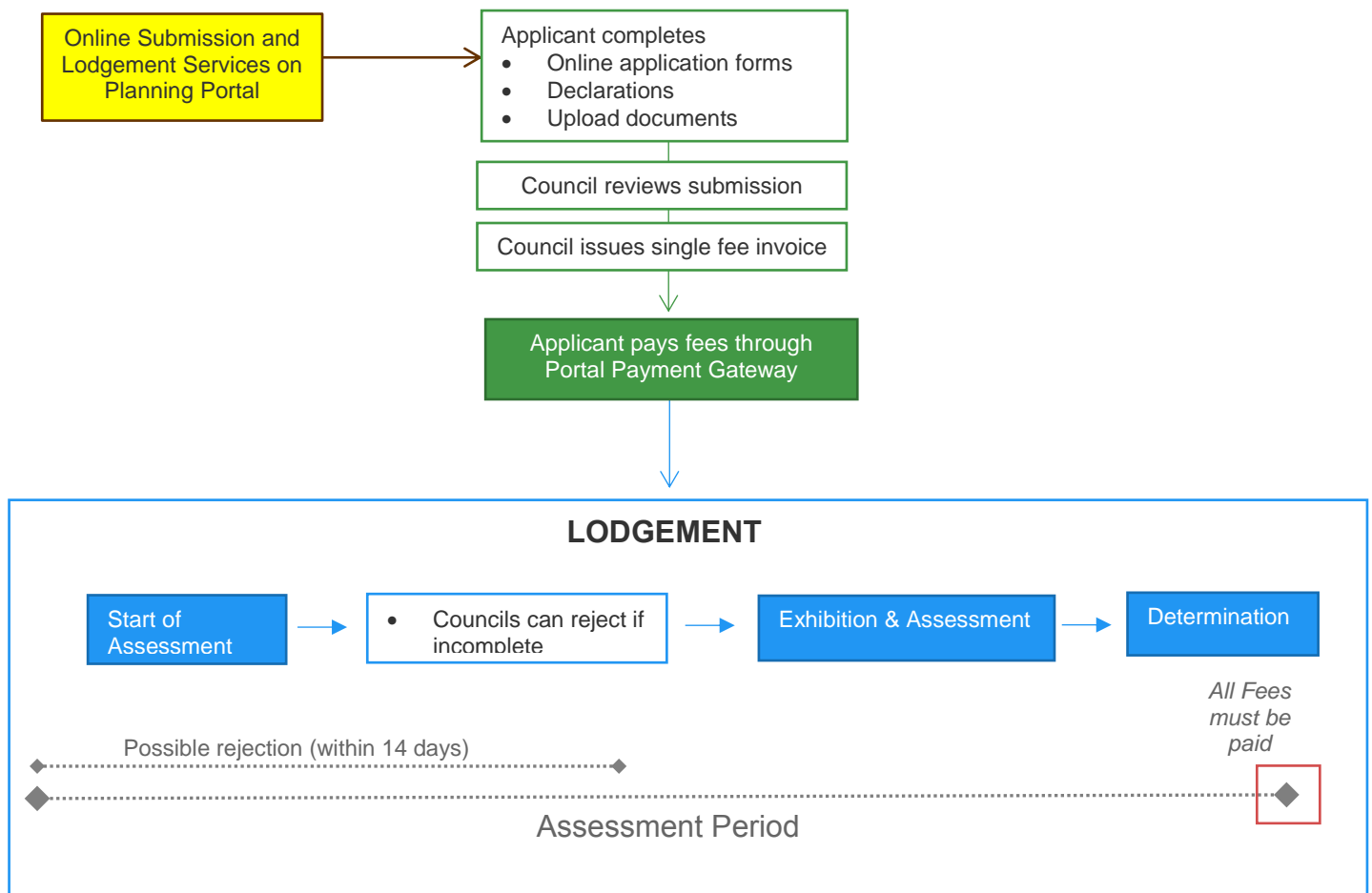
Table 9: Summary of changes

Existing provision	Proposed changes
<p>Part 4 Development Contributions</p> <p><i>Clauses 25L, 26, 26(3), 28, 31, 31A, 32, 33, 37 and 38.</i></p>	<p>Summary:</p> <p>Amend the Regulation to:</p> <ul style="list-style-type: none"> • <i>Require that notices for and draft CPs be exhibited on the Planning Portal.</i> • <i>The minimum exhibition period is 28 days.</i> • <i>New CPs are to be placed on the Planning Portal.</i> • <i>New CPs do not commence until they are placed on the Planning Portal.</i> <p>Planning Circular</p> <p><i>The Planning Circular will be required:</i></p> <ul style="list-style-type: none"> • <i>Before a draft contribution plan is published on the Planning Portal, the council must:</i> <p><i>(a) give the Department 14 days' notice of their intent to publish a draft contribution plan; and</i></p> <p><i>(b) upload a copy of the draft development control plan and all associated spatial datasets through the Planning Portal.</i></p> • <i>Before a contribution plan is published on the Planning Portal, the council must:</i> <p><i>(a) give the Department 14 days' notice of their intent to publish a contribution plan following public exhibition through the Planning Portal; and</i></p> <p><i>(b) upload a copy of the contribution plan and all associated spatial datasets through the Planning Portal.</i></p>

Attachment B

Proposed DA workflow

Proposed process (DAs only) – workflow



Attachment C

Rationalisation of drawings

This table details the rationalisation of various drawings within the submission requirements:

Drawing	Change
Archaeological Management Plan	Included in Conservation Management Plan/Strategy
Buffer Management Plan	Included in Flora/Fauna Assessment Report
Construction Management Plan	Included in Statement of Environmental Effects
Context Plan	Included in Site Analysis
Contour Plan	Included in Site Plan
Demolition Plan	Included in Statement of Environment Effects
Detail Sections / Elevations	Included in Sections and Elevations
Drainage Concept Plan	Included in Stormwater Management Plan
Driveway Plan	Included in Site Plan
Environmental Management Plan	Included in Flora/Fauna Assessment Report
GFA & Landscaped Area Plans	Included in Floor and Roof Plan and Landscape Plans, when required
Local Context Plan	Included in Design Verification Statement and SEE
Signage Plan	Included in Elevations
Site Management Plan	Included in Statement of Environment Effects
Stormwater Plan	Included in Stormwater Management Plan

<i>Swept Path Diagrams</i>	<i>Included in Site Plan</i>
<i>Vegetation Management Plan</i>	<i>Included in Flora/Fauna Assessment Report</i>
<i>Waste Disposal Plans</i>	<i>Included in Site Plan and SEE</i>
<i>Mine Subsidence Stamped Plans</i>	<i>Omitted as now addressed on the application form</i>
<i>Notification Plans</i>	<i>To be reviewed after the Department's review of the Privacy Policy</i>
<i>Service Plan</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Soil Erosion Plan</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Water Stamped Plans</i>	<i>Omitted as there is no requirement for pre-approval of plans</i>

Attachment D

Rationalisation documents and reports

This table details the rationalisation of various documents within the submission requirements:

Document	Change
Aboriginal Archaeological Stud	Included in Heritage Impact Statement
Accessibility Report	Included in Access Report
Adaptable Housing Report	Included in Adaptability Report
Asbestos Survey	Included in Statement of Environmental Effects
BCA Compliance Report	Included in Building Specifications Building
Codes Assessment / Compliance Report	Included in Building Specifications Building
Included in Energy Efficiency Report	Included in BASIX Certificate
Flood Impact statement	Included in Flood Study
Flora Assessment	Included in Flora/Fauna Assessment Report
Hazardous Material Report	Included in Contamination Report for existing materials; SEE for proposed materials
Heritage Impact Assessment	Included in Heritage Impact Statement
Hydrological Report	Included in Geotechnical Analysis
Koala Habitat Assessment	Included in Koala Management Plan
Manufacturers Specifications	Materials and Finishes Included in Building Specifications
Native Vegetation Cover Report	Included in Flora/Fauna Assessment Report
Overland Flow Study	Included in Flood Study

Noise Impact Statement	Included in Acoustic Report
Security Management Plan & Crime Risk Analysis Report	Included in Statement of Environment Effects
SEPP 65 Design Report	Included in Design Verification Statement
SEPP 65 Assessments	Included in Design Verification Statement
Site and Soil Report	Included in Statement of Environment Effects
Site Contamination Report	Included in Contamination Report
Streetscape Character Analysis	Included in Site Analysis
Site Contamination Report	Included in Contamination Report
Streetscape Character Analysis	Included in Site Analysis
Termite Barrier Details	Included in Building Specifications
Traffic and Car Parking Report	Included in Traffic and Transport Assessment
Visual Impact	Included in Statement of Environmental Effects Water
Cycle Management Study	Included in Stormwater Management Plan and SEE
Water/Soil Management Report	Included in Statement of Environment Effects
Waterway Impact	Included in Statement of Environment Effects
Wind Bracing Design Details	Included in Building Specifications
ABSA Certificate	Omitted as no statutory requirement
Affordable (Rental) Housing SEPP Report	Omitted, however, council can request specific details following lodgement
Agricultural Assessment	Omitted, however, council can request specific details following lodgement

<i>Coastal Impact Assessment</i>	<i>Omitted as primarily a strategic planning consideration</i>
<i>Crime Risk Analysis Report</i>	<i>Omitted, however, council can request if necessary following lodgement</i>
<i>Dilapidation report</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Electricity/Gas Supply Details</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Erosion Control Report</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Fuel Heater Details</i>	<i>Omitted, however, council can request specific details following lodgement.</i>
<i>Reflectivity Report</i>	<i>Omitted as can be controlled as a condition of consent</i>
<i>Preliminary Engineering Details</i>	<i>Omitted for DA as minimal need for engineering detail. Included for CDC/CC in Building Specifications and Engineering Details</i>
<i>Section 305 Certificate</i>	<i>Omitted, however, council can request specific certificate</i>
<i>Services Assessment</i>	<i>Omitted as can be controlled as a condition of consent</i>