



# Penrith City Council Submission on Planning Legislation Updates

April 2017

## 1. Introduction

Council supports the initiative to improve the NSW planning system through its proposed changes to the *Environmental Planning and Assessment Act 1979*. We support the proposals to increase community participation, promote strategic planning, and elevate the role of design in the built environment.

Our response to the exhibition documentation, including the draft Bill, is set out in this document. The review of the exhibition material revealed that the detail of how the proposed reforms will be implemented has been left for new or updated *Environmental Planning and Assessment Regulations*. These Regulations were not provided as part of the current consultation we subsequently request the opportunity to review the regulations prior to finalisation and make a subsequent submission on any relevant matters.

We think that the target to achieve 90% of housing approvals in 40 may need to be reviewed to take into account the higher percentage of dwellings being delivered as multi-unit housing and apartment developments. For example, 77% of Councils housing approvals are now for multi-unit housing developments. These assessments are more complicated than those for single dwellings and often involve a variety of agency referrals and the resolution of complex matters such as waste management.

We support the proposal; to elevate the role of design in the built environment and the new Object in the Act. However, we feel that expanding complying development to also deliver medium density housing is inconsistent with elevating the importance of good design outcomes. Our view is that the complying development pathway does not allow for rigorous assessment of the merit and appropriateness of design. This is despite the introduction of the design guide and design verification statements.

## 2. Comments on Summary of Proposals Paper

### ***Enhancing community participation***

#### Community Participation Principles and Plans:

We support the objective of enhancing community participation in planning processes (at both State and Local level), specifically with regards to the setting of goals and actions to deliver the community's desired outcomes for the local area. We prefer the proposal to expand the role of the current Community Engagement Strategies over a "stand-alone" Community Participation Plan which has the potential to add to the number and complexity of documents generated by councils.

We welcome the proposed support and assistance for creating these plans (model plans and guidance), but also encourage the NSW Government also consider other ways to assist councils to respond to the new requirements (e.g. continuation/expansion of the planning reform fund).

We are concerned that the proposal for mandatory minimum notification requirements for all development applications for a minimum of 14 days is too onerous. Many low impact developments and developments that comply with current controls are still managed through the development application process. The proposed notification measures will add time and cost to applicants. The proposal to notify all development applications for low impact development for 14 days will slow down approval times, particularly in Greenfield areas. This proposal is at odds with the Government's targets for 40-day approval timeframes.

We also seek clarification on the proposed statutory status of the Community Participation Plan and potential duplication/replacement of the notification requirements many Council's include in their development control plans.

#### Statement of reasons for decisions

This is supported as it will assist the community in understanding how its views have been taken into account and will become a key consideration in any application for modification of a development. However, it will introduce an additional step in the process and needs to be implemented so that reasons are targeted to the level of complexity of the application. It is also recommended that reasons only need to be included in the determination and not published separately as all determinations are publicly available on a council's website or through the NSW Planning Portal.

#### Stronger consultation requirements for major projects

We support the proposed requirements for community consultation prior to the lodgement of an application and the need to demonstrate that this has occurred in an (expanded) environmental impact statement. We request that the consultation requirement is expanded to include councils. This will not only enable councils to engage with a proposal from an early stage, but also assist in managing the public enquiries that are likely to flow from early community consultation.

#### Up to date engagement tools

We support the initiative to improve the suite of tools, methods and practices to help councils improve their engagement capacity.

#### ***Completing the strategic planning framework***

We welcome and support the clear intent to promote and strengthen strategic planning, it is the key process in identifying and facilitating desired outcomes that meet the needs of the community and implement the State Government's directions.

In addition to the proposed measures, we ask the Department to examine ways to improve its performance for the parts of the Gateway Process (for making and amending local environmental plans) for which it is responsible for. This includes the initial consideration and issue of a Gateway Determination and the finalisation of a local environmental plan or amendment. Our experience with the Gateway process indicates that the Department often takes significantly longer than the stated 6 weeks to finalise a plan or amendment, in some instance taking up to 12 months. We also encourage the Department to consider methods to assist councils to secure feedback from State Agencies within the prescribed periods.

#### Local Strategic Planning Statements

We agree with the importance of publishing clear, easy to understand documents that provide the narrative for the suite of statutory documents that control development in the local area. This is key to engaging a greater and more diverse section of the community in strategic planning.

We welcome the formalisation and consolidation of a process already being undertaken by some councils through these Statements to help implement the State Government's targets (set by the District Plans) at the local level. The proposed content and structure of these documents appears logical.

We prefer the proposal to expand the role of the current Integrated Planning and Reporting Framework over a "stand-alone" document which has the potential to add to the number and

complexity of documents generated by councils. It also ensures that sufficient monitoring and reporting on progress is undertaken to inform future reviews of both local and state planning documents.

We welcome the proposed support and assistance for creating these plans (model plans and guidance), but also encourage the NSW Government also consider other ways to assist councils to respond to the new requirements (e.g. continuation/expansion of the planning reform fund).

However, concern remains with the interaction of District Plans, State Environmental Planning Policies and local planning documents. There is significant potential for the State documents to undermine or conflict with the outcomes planned for in the District Plans and local documents.

#### Regular LEP Checks

We welcome the formalisation of a requirement to undertake regular reviews of local planning documents. The proposed approach of reviewing an existing plan against a set of criteria is also considered to be less onerous and a quicker process than a full scale review.

We anticipate that in coming years, with Penrith's observed and forecast population growth, the delivery of significant infrastructure, and our aspirations for our City's future, that there will be an increasing number of revisions or updates to our local planning documents, so repeat our request for the NSW Government to consider other ways to assist Council to respond to the new requirements (e.g. continuation/expansion of the planning reform fund).

#### Standard Development Control Plan Format

We support the proposal of a standard format for development control plans to allow for easier navigation and publication of such documents on the NSW planning Portal, but object to any requirements or restrictions on the intent and content of such plans.

#### ***Better processes for local development***

Improvements to complying development supported including increased rigor around notification of applications and approvals to council and adjoining owners. Expansion of compliance mechanisms around CDCs is also welcomed however the appropriateness of increased role of Council officers to regulate their peers in the private sector, is questioned.

Any increase in the role of council in regulating complying development needs to be supported with revised and simplified compliance and cost recovery processes which are reflective of the administrative, and potentially legal case load these actions create.

The proposed reforms to the management of compliance by council's in complying development may give rise to unrealistic expectations within the community regarding council's role in auditing all complying development approvals.

The current requirements prescribe and restrict the information which can be made available through a section 149(2) planning certificate. This may result in CDCs being erroneously issued to lack of information around constraints to a site such as a High Hazard.

The expansion of the complying development to higher impact and sensitive types of development, particularly medium density housing, is not supported. This expansion is inconsistent with the aim of the SEPP (Exempt and complying Development Codes) 2008 to provide state-wide standards for types of development that are of minimal environmental impact. Sensitive development types and higher impact development types, including

medium density housing, should be assessed through the more rigorous development application process allowing full consideration of amenity, community concerns and cumulative long term impacts including parking, waste collection, and design that enhances local character. These issues are more complex and should not be codified into the SEPP.

***Facilitating infrastructure delivery***

See comments aligned to relevant sections of the Draft Bill

***Confidence in decision-making***

See comments aligned to relevant sections of the Draft Bill

***Clearer building provisions***

See comments aligned to relevant sections of the Draft Bill

***Elevating the role of design***

See comments aligned to relevant sections of the Draft Bill

***Enhancing the enforcement toolkit***

See comments aligned to relevant sections of the Draft Bill

**3. Specific comments relating to Draft Environmental Planning and Assessment Amendment Bill 2017**

***a) Schedule 1 – Preliminary***

Proposal	Comment
<p><b>1.1 Principal amendments</b></p> <p><b>Section 5</b></p> <p><b>1.4 Objects of Act</b></p> <p>The objects of this Act are as follows:</p> <p>(a) 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,</p> <p>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</p> <p>(c) to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing),</p>	<ul style="list-style-type: none"> <li>• The introduction of a new object to promote good design in the built environment is <b>supported</b></li> <li>• the introduction of a new object for the protection of environmental and cultural heritage is <b>supported</b></li> <li>• The existing object in the act promotes Ecologically Sustainable Design (ESD). The changes weaken the environmental protections at the heart of ESD and give more weight to economic considerations than they may have currently and <b>is not supported</b></li> <li>• The proposed changes remove ‘protection and conservation of threatened species, populations and ecological community and their habitats’ from the object. This weakens the scope and strength of the existing object which seeks to protect and enhance biodiversity and support healthy natural areas across the State. This is <b>not supported</b></li> </ul>

<p>(d) to protect the environment, including the conservation of threatened and other species of native animals and plants,</p> <p>(e) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</p> <p>(f) to promote good design in the built environment,</p> <p>(g) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</p> <p>(h) to provide increased opportunity for community participation in environmental planning and assessment.</p>	<ul style="list-style-type: none"> <li>• Replacing ‘orderly and economic use and development of land’ with ‘timely delivery of business, employment and housing opportunities’ is <b>not supported</b>. The new wording does not reflect the meaning of ‘orderly development’ and will change the intent of the object.</li> <li>• Moving affordable housing to be included in timely housing opportunities is <b>not supported</b>. This change is inconsistent with the Greater Sydney Commission’s draft District Plans and does not reflect the Government’s high priority to encourage more affordable housing across NSW. It also weakens the importance of ongoing maintenance of affordable housing.</li> <li>• Removal of provision of community services and facilities object is <b>not supported</b>. Facilitating the provisions of community services and facilities is a key part of strategic planning and development of healthy places for people.</li> <li>• Removal of provision of land for public purposes from the objects is <b>not supported</b>. Facilitating the provisions of land for public purposes is a key part of strategic planning and development of healthy places for people.</li> <li>• Move away from words like “ecologically sustainable development” and “coordinate” is <b>not supported</b>.</li> </ul>
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**b) Schedule 2 – Administration (Part 2)**

Proposal	Comment
<p><b>Division 2.5 Local planning panels</b></p> <p><b>2.17 Constitution of local planning panels</b></p> <p>(2) The regulations may require a council to establish local planning panels.</p>	<p><b>Comment</b> – There needs to be clear criteria around when a council may be required to establish a LPP. High performing council’s exercising appropriate levels of delegation to staff should not be required to do this. The details in the regulation should be placed on exhibition.</p> <p>Local Planning Panels should only be necessary where council does not delegate matters to its officers to determine.</p>
<p><b>Division 2.6 Community participation</b></p> <p><b>2.23 Community participation plans—preparation</b></p>	<p><b>Not Supported</b> – This obligation should be a submission requirement rather than a prescribed requirement of a CPP.</p>

<p>(2) A planning authority is to have regard to the following when preparing a community participation plan:</p> <p>(f) 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.</p>	<p>Whilst council encourages applicants to engage with the neighbours early in the design process, formalising early consultation is unsuitable for development applications because:</p> <ul style="list-style-type: none"> <li>• proposed incentives and reduced fees for early consultation is overly complicated.</li> <li>• pre-consultation is unlikely to be transparent or timely in practise</li> <li>• it will duplicate the community consultation process for the DA creating additional time and administrative burdens on the community, applicants and council.</li> <li>• there is not a set criteria to evaluate or quantify the public consultation conducted by developers to ensure it was inclusive and effective in engaging with the community. This lack of detail prevents Councils from assessing the merit and rigour of the consultation.</li> </ul>
<p><b>Schedule 1 Community participation requirements - Division 2 Minimum public exhibition periods for development applications and other matters</b></p> <p>cl 6 Applications for development consent to be exhibited for 14 days</p>	<p><b>Not Supported</b> – There are a significant number of development proposals which are not complying development but are still straightforward low impact developments. These would be fully compliant with a councils LEP and DCP and would not currently trigger a requirement for notification. To do so now would add time to the assessment process and cost to proponents without adding value to the outcome.</p>
<p><b>Division 4 Mandatory notification requirements for applications and decisions</b></p> <p><b>19 Public notification of certain decisions and reasons for the decisions</b></p>	<p><b>Not Supported</b> – This requirement will add a substantial administrative burden on councils and costs to applicants. The value this would add is questioned when notices of determination are publicly available on a council's website and/or the planning portal.</p>
<p>(2) The mandatory notification requirement in relation to a decision to which this clause applies is public notification of:</p> <p>(a) the decision, and</p> <p>(b) the date of the decision, and</p> <p>(c) the reasons for the decision (having regard to any statutory requirements applying to the decision), and</p> <p>(d) how community views were taken into account in making the decision.</p>	<p><b>Not Supported-</b> This requirement will add a substantial administrative burden on councils and costs to applicants</p> <p>Reasons for decisions requirements should be included in the determination. A consideration of community views should be included in the assessment report which can also be made publicly available on a council's website.</p>

<p><b>Part 2 General provisions</b></p> <p><b>20 Additional or revised mandatory public exhibition and notification requirements</b></p> <p>The regulations may amend Part 1 of this Schedule:</p> <p>(a) to prescribe additional mandatory requirements for community participation, or</p> <p>(b) to make other changes to that Part.</p>	<p><b>Comment</b> – the draft regulations should be exhibited for comment.</p> <p>See comments on 2.23 above and 23 below.</p>
<p><b>23 Regulations relating to community consultation by applicants for planning approvals</b></p> <p>The regulations may require applicants for development consent or other approvals under this Act (or for the modification of any such consent or approval) to undertake community consultation in relation to their applications.</p>	<p><b>Not Supported</b> – if this is to be a formal process it is a duplication of a process which council is also required undertake. Informal consultation is supported and details could be included in the SEE. It is logistically problematic for an applicant to identify contact details of non-resident owners etc. without imposing on councils to provide the information. Draft regulations should be exhibited for comment.</p>
<p><b>Part 2 – Division 2.7 Miscellaneous</b></p> <p>cl 2.27 Obligations of councils to assist Commission and panels</p>	<p><b>Comment</b> - This obligation comes at a cost to councils – no further impost on councils should occur.</p>
<p><b>Schedule 3 NSW planning portal and online delivery of planning services and information</b></p>	<p><b>Comment</b> – draft regulations should be exhibited for comment. Close consultation should be undertaken with Council's regarding the scope and technical requirements of these initiatives. Council's should not be subject to expense to come on board. Online delivery of planning services should not result in duplication of processes or reporting for Local Government.</p>
<p><b>3 Regulations and other provisions relating to online planning services and Information</b></p> <p>(b) access to information (and the issue of certificates) about land use zoning and development standards relating to particular land,</p>	<p><b>Comment</b> – Limiting the provision of planning information to a 149(2) Certificate for Complying Development is problematic as it can leave out information vital to a certifier in making correct determinations regarding issues such as whether land is subject to a high hazard flooding affectation.</p>
<p><b>Part 2 Schedule 3 cl 3(2)</b></p> <p>The charges or fees that may be prescribed by the regulations under section [137] extend to charges or fees in relation to the online delivery of planning services and information (including the compilation and maintenance of the NSW planning database, the operation of the NSW planning portal and the</p>	<p><b>Not Supported</b> – Councils should not be required to bear any cost burden associated with the development and maintenance of the planning database or the planning portal. Cost shifting to Council's should be examined by IPART prior to implementation. The Planning reform fund or a similar but more transparent mechanism should be used to fund this work. It is the proponents that will benefit most from the efficiencies</p>

enhancement of the NSW planning database and the NSW planning portal).	gained through the portal and therefore Council's should bear the cost.
<p><b>Part 2 Schedule 3 cl (3)</b></p> <p>c) a council or other planning body is to implement any standard technical requirements determined by the Planning Secretary to facilitate access to relevant data in the electronic systems maintained by the council or other body or to transfer that data to the NSW planning database.</p>	<p><b>Comment</b> – standard technical requirements should be negotiated with vendors of council systems and agreement reached prior to mandating timeframes for councils to come on board. Councils need to be provided with adequate support through the process and not be subjected to significant cost.</p>

**c) Schedule 3 - Planning instruments**

<b>Proposal</b>	<b>Comment</b>
<p><b>[17] Section 74E (2A)</b></p> <p>Insert after section 74E (2):</p> <p>(2A) Regulations relating to the form, structure and subject-matter of development control plans may require the standardisation of those plans and, for that purpose, authorise the Minister to publish requirements as to their form, structure and subject-matter which are to be complied with by relevant planning authorities.</p>	<p><b>Conditional support</b> – provided only the structure of the DCP is mandated and councils are free to add their own content recognising local conditions and character and input community consultation</p> <p>Standardised format allowing for spatial representation of provisions on land is <b>supported</b></p> <p>However, clarification is sought regarding:</p> <ul style="list-style-type: none"> <li>• Detail about the form of the template. It is difficult to provide informed comment on the proposal to standardise DCPs at this time</li> <li>• Retaining local controls in the DCPs that address issues unique to the local context and the desired character of our centres and local areas</li> <li>• The process for developing the new template must be undertaken in cooperation with councils and other stakeholders, e.g. conducting workshops and consultations</li> </ul> <p>It is considered that a suite of optional model DCP provisions would be useful. The model DCPs must be developed in consultation with local government and be suitable to address the unique issues of different areas such as for development in rural areas, release areas, infill areas, coastal areas or inner city areas.</p> <p>The inclusion of 'subject – matter' is <b>not supported</b> as it potentially allows the Planning Secretary to prohibit certain clauses or development controls as is the case already for some SEPPs which prohibit certain DCP controls. For example SEPP 65 prohibits local planning controls for setbacks,</p>

	<p>common open space and balcony sizes and the Draft Education SEPP prohibits DCPs from having local planning controls for minimum site dimensions, number of children, and separation between centres in residential areas or hours of operation.</p> <p>These undermine local government's ability to implement local provisions that address the specific needs of local areas and local communities.</p>
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**d) Schedule 4 - Development assessment and consent**

<b>Proposal</b>	<b>Comment</b>
<p><b>4.1 Principal amendments</b></p> <p><b>[3] Section 76A (6)–(8)</b></p> <p>Insert after section 76A (5):</p> <p><b>(6) Consent authority</b></p> <p>(b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development for the purposes of this section—the Sydney district or regional planning panel for the area in which the development is to be carried out,</p>	<p>Proposed new threshold for development applications with a value of \$30 million is <b>supported</b></p> <p>The threshold is proposed for Council-related development investment greater than \$15 million for councils with a local planning panel is <b>not supported</b>. The existing threshold is supported as it provides extra transparency and governance to these decisions.</p> <p>The other proposed changes to thresholds are <b>supported</b>.</p>
<p><b>[7] Section 85A Process for obtaining complying development certificates</b></p> <p>Insert after section 85A (1):</p> <p>(2) The regulations may specify the kind of development for which an accredited certifier is not authorised to issue a complying development certificate.</p>	<p><b>Comment</b> – draft regulation should be exhibited for comment</p> <p>Council does <b>not support</b> the proposal to limit certain types of complying development to council certifiers because this development would be best assessed through a development application. The purpose of complying development is to streamline approval for low impact development. Sensitive development that cannot be assessed by a private certifier would not fit into the category of 'low impact development'.</p> <p>The expansion of the complying development to higher impact and sensitive types of development, particularly medium density housing, is not supported. This expansion is inconsistent with the aim of the SEPP (Exempt and complying Development Codes) 2008 to provide state-wide standards for types of development that are of minimal environmental impact that may be carried out without the need for development consent.</p>

<p><b>[8] Section 85A (9A)</b>  Insert after section 85A (9):  (9A) <b>“Deferred commencement” certificate</b>  A complying development certificate may be granted subject to a condition that the certificate is not to operate until the applicant satisfies the council or certifier who issued the certificate, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.</p>	<p><b>Not Supported</b> – certifiers will not be able to obtain a sec 149 certificate for the proposed lot. It is not uncommon for a zone or Section 88B Instrument to change and affect compliance  Council does not support the proposal to allow deferred commencement of a complying development certificate for unregistered lots. This is considered to be impractical and will lead to poor quality outcomes. Releasing the CDC prior to the linen release and finalisation of the services and utilities is not feasible or orderly.</p>
<p><b>[9] Section 4.#</b>  <b>Validity of complying development certificate</b>  Without limiting the powers of the Court under section 124 (1), the Court may by order under that section declare that a complying development certificate is invalid if:  (a) proceedings for the order are brought within 3 months after the issue of the certificate, and  (b) the certificate authorises the carrying out of development for which the Court determines that a complying development certificate is not authorised to be issued.</p>	<p><b>Supported in principle</b>  Council supports the proposed changes to allow judicial review of CDCs and address the issue raised in Trives v Hornsby Shire Council. However, requiring proceedings to be commenced within 3 months after the issue of the certificate is too restrictive. In most cases non-compliance with development standards is not identified until well into construction. The provisions should allow for the validity of a CDC to be challenged at any time prior to the issue of an Occupation Certificate. This ensures that the completed development can be lawfully occupied and offers more certainty. The draft legislation changes, particularly the 3-month timeframe, do not suitably address the following matters:</p> <ul style="list-style-type: none"> <li>• Community expectations. The community will expect that council will review the validity and compliance of all CDCs. In order to meet the expectations of the community, who already lack confidence in confidence in the complying process councils would be required to complete a thorough review of all CDCs lodged. This is not currently local government’s role in the complying development process and will create work that is time consuming and resource prohibitive. The Building Professionals Board is the current authority who responds to complaints regarding private certification of CDCs.</li> <li>• Physical breaches of development standards could occur many months after a CDC determination, resulting in an</li> </ul>

	<p>approved complying development being no longer complying. For example, excavation of the site that exceeds the maximum for complying development. The current limitations on addressing abuses of the CDC system results in the community mistrusting the process.</p>
<p><b>[12] Section 91A Development that is integrated development</b></p> <p>Insert after section 91A (4):</p> <p>(4A) The Planning Secretary may act on behalf of an approval body for the purposes of informing the consent authority under this section whether or not the approval body will grant the approval, or of the general terms of its approval, if:</p> <p>(a) the Planning Secretary is authorised to do so by the regulations because of the failure of the approval body to do so or because of an inconsistency in the general terms of approval of 2 or more approval bodies, and</p> <p>(b) the Planning Secretary has taken into consideration assessment requirements prescribed by the regulations as State assessment requirements. The decision of the Planning Secretary is taken, for the purposes of this Division, to be the decision of the approval body, unless the approval body has informed the consent authority of its own decision on the matter.</p>	<p><b>Support in Principle</b> – subject to review of draft regulation</p> <p>The proposal to improve concurrence timeframes and reduce conflicts between agency decisions is supported. However, while it is acknowledged that this is a ‘reserve power’ any conditions or concurrence should still be issued by a suitably qualified expert from the relevant authority.</p>
<p><b>[14] Section 96 Modification of consents - generally</b></p> <p>Insert “The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.” at the end of section 96 (3).</p>	<p><b>Support in principle</b></p> <p>Council supports the proposal to require all modification applications to consider the reasons for the original consent.</p>
<p><b>[15] Section 96 (3A)</b></p> <p>Insert after section 96 (3):</p> <p>(3A) If, after the grant of development consent, any part of the development is carried out in contravention of the consent, the consent may not be modified (except under subsection (1)) in order to authorise that part of the development.</p>	<p><b>Supported in principle</b></p> <p>Some scope still needs to be provided for modifications for unauthorised works which are <i>minor</i> and not attempts to undermine the integrity of the approvals process. One only modifications for works that are substantially the same as the consent should be able to be considered. Major variations should require a new Development Application to assess the development and use. The proposal to rely on Building Information Certificates and other enforcement action</p>

	<p>such as demolition orders is not supported as it does not allow for:</p> <ul style="list-style-type: none"> <li>• Rectification works, completion of works, or other solutions to improve compliance with building standards and planning controls</li> <li>• The thorough assessment of development and issue of a suitable approval for a lawful use</li> <li>• Council to impose conditions on the use or activities associated with the unauthorised development, for example operating hours.</li> <li>• Lawful issue of an Occupation Certificate.</li> <li>• Community consultation about the proposed development or use.</li> </ul> <p>Compliance processes to address variations of a minor nature are resource intensive and expensive to implement.</p>
<p><b>[17] Section 105 Regulations - Part 4</b>  Insert after section 105 (1) (f):  (f1) the reimbursement of the costs incurred by councils in investigating and enforcing compliance with the requirements of this Act relating complying development by a levy on applicants for complying development certificates and the procedures for the imposition and collection of the levies,</p>	<p><b>Supported</b> – subject to access to funds from the compliance levy to resource the undertaking of the work</p> <p>The proposal to provide resources for undertaking the regulatory function under the Act for CDCs is <b>supported</b>. However, concerns are raised that this increases the role of local government for enforcement of CDCs. Currently the Building Professionals Board is the responsible authority for addressing complaints and overseeing the conduct of private certifiers Council recommends improvements to the compliance cost system to make it simpler and less confusing to recover the full cost of investigation and enforcement.</p>
<p>(f2) authorising officers of a council to suspend the carrying out of work under a complying development certificate (for a period not exceeding 7 days) pending an investigation into compliance of the work with applicable development standards,</p>	<p>The proposed change to give council the ability to issue a ‘Stop-Work Order’ to investigate complying development which may not comply with the relevant standards is <b>supported</b>. However, it is unclear how the changes in the legislation will effectively implement this. To be effective, councils must have the ability to issue a ‘Stop Work Order’ in relation to any CDC at any time if it is identified to be in breach of the standards. Councils should be able to use this power in association with the new right to appeal the validity of CDC.</p>

e) **Schedule 5 – Infrastructure and environmental impact assessment**

Proposal	Comment
<p><b>Division 5.3 Infrastructure corridors—concurrences and notifications</b></p> <p><b>Designation of “infrastructure corridors”</b></p> <p>(1) A State environmental planning policy may designate land to be an infrastructure corridor for the purposes of this Division if it has been set aside for future use as a road, railway, public transit way, electricity transmission line, pipeline or other linear infrastructure.</p>	<p>The proposal to clarify the process for assessing development in infrastructure corridors is <b>supported in principle</b>.</p>

f) **Schedule 6 – Building and subdivision certification**

Proposal	Comment
<p><b>6.5 Functions of certifiers (including principal certifiers)</b></p> <p>(2) A certifier has the following functions in relation to subdivision work:</p> <p>(c) Issuing subdivision certificates (but only if the certifier is a council or is an accredited certifier in a case in which an environmental planning instrument authorises an accredited certifier to issue the certificate).</p>	<p><b>Conditional Support</b> – on the basis that the scope of certificates able to be issued by accredited certifiers (other than council) is not expanded</p>
<p><b>6.6 Requirements before building work commences</b></p> <p>(3) A person must not fail to give a notice that the person is required to give under this section. Maximum penalty: Tier 3 monetary penalty.</p>	<p><b>Supported</b> – clarification and high highlighting of repercussions if notice not given is a good idea</p>
<p><b>Division 6.8 Miscellaneous</b></p> <p><b>6.27 Owners building manual</b></p> <p>(1) A certifier is not to issue an occupation certificate for a building that is of a class prescribed by the regulations unless a building manual for the building has been prepared and provided to the owner of the building in accordance with the requirements of the regulations.</p> <p>(2) The regulations may make provision for or with respect to building manuals and, in particular, for or with respect to the following:</p> <p>(a) the preparation, form and maintenance of building manuals,</p>	<p><b>Supported</b></p> <p>Need to see draft regulation to comment on form and content</p> <p>Council supports the inclusion of an Owners Building Manual. Local government and other stakeholders should be consulted throughout the development of these regulations. It is important that the building manual provisions provide an effective, practical and efficient mechanism to address the management, maintenance and certification of building and fire safety measures and provisions in a building. Access to the manual is an important consideration.</p>

<p>(b) the content of a building manual (including requirements that a building manual identify in a consolidated format matters for on-going compliance in relation to the building concerned),</p> <p>(c) the inspection of building manuals,</p> <p>(d) extending the circumstances in which a building manual is required to be prepared and provided under this section.</p>	
<p><b>6.32 Validity of certificates under this Part</b></p> <p>Without limiting the powers of the Court under section 124 (1), the Court may by order under that section declare that a certificate under this Part (other than an occupation certificate) is invalid if:</p> <p>(a) proceedings for the order are brought within 3 months after the issue of the certificate, and</p> <p>(b) the plans and specifications or standards of building work or subdivision work specified in the certificate are not consistent with the development consent for the building work or subdivision work.</p>	<p><b>Support in principle</b> – but what is the follow up process if a certificate is declared invalid?</p> <p>Council supports the introduction of provisions which require a construction certificate to be consistent with the development consent and the ability for the Court to determine a construction certificate to be invalid.</p> <p>The 3 month cut-off to commence these proceedings is not sufficient when issues are often identified during construction. It is recommended that the timeframe be extended to the issue of the Occupation Certificate to allow time for a comprehensive review of approval documentation. It is noted that the proposed changes to the provisions are intended to resolve the issues raised in <i>Burwood Council v Ralan Burwood Pty Ltd</i>. The proposed 3 month timeframe would not achieve this.</p>
<p><b>6.33 Regulations: Part 6</b></p> <p>(1) The regulations may make provision for or with respect to the carrying out of building work or subdivision work and, in particular, for or with respect to the following:</p>	<p><b>Supported</b> – the draft regulations should be exhibited for comment.</p>
<p><b>6.34 Regulations: smoke alarms in buildings providing sleeping accommodation</b></p>	<p><b>Supported</b> – the draft regulations should be exhibited for comment.</p>

**g) Schedule 7 – Infrastructure contributions and finance – No comment**

**h) Schedule 8 – Reviews and appeals**

Proposal	Comment
Consolidation and reordering of existing provisions	<b>Supported</b>
<p><b>Division 8.2 Reviews</b></p> <p><b>8.2 Determinations and decisions subject to review</b></p>	<p>The changes to expand the review of applications to include decisions about integrated and state significant development <b>are supported</b>. However, concerns are</p>

(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:	raised regarding the potential additional resources and financial burden this will place on local government. The existing review fees are not likely to cover the full cost of the process.
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**i) Schedule 9 – Implementation and enforcement**

Proposal	Comment
<p><b>9.1 Principal amendments</b></p> <p><b>[1] Section 9</b></p> <p>Insert after section 117BA (with appropriate decimal section number):</p> <p><b>Enforcement of undertakings</b></p>	<p><b>Support in principle</b> – the concern is that the administrative burden associated with the process renders it too inefficient.</p>
<p><b>Existing Part 12 Compliance cost notices</b></p> <p><b>36 Compliance cost notices</b></p> <p>(1) A relevant enforcement authority that gives a development control order to a person may also serve a compliance cost notice on the person.</p> <p>(2) A <b>compliance cost notice</b> is a notice in writing requiring the person on whom it is served to pay all or any reasonable costs and expenses incurred by the relevant enforcement authority in connection with:</p> <p>(a) monitoring action under the development control order, and</p> <p>(b) ensuring that the development control order is complied with, and</p> <p>(c) any costs or expenses relating to an investigation that leads to the giving of the development control order, and</p> <p>(d) any costs or expenses relating to the preparation or serving of the notice of the intention to give the development control order, and</p> <p>(e) any other matters associated with the development control order.</p> <p>(3) A compliance cost notice is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.</p> <p>(4) The relevant enforcement authority may recover any unpaid amounts specified in a</p>	<p>It is <b>recommended</b> that the Government update and simplify the provisions for compliance costs in consultation with local government. The existing and proposed provisions for the recovery of compliance costs are overly complex, resource intensive, impractical and limited to the extent that most councils find the process too complex and time-consuming to implement. Orders should be a last resort in the process of resolving non-compliance matters. Significant time and resources are expended so that non-compliance can be resolved to achieve the best outcome for the community.</p> <p>Any simplified provisions should allow local government to recover the full cost of its investigation and compliance functions, irrespective as to whether or not a formal notice or order is issued or if the matter is resolved through negotiations or directions, without resorting to a formal notice or order.</p> <p>Consultation with local government and industry professionals to explore options for simplifying the provisions for compliance costs should be undertaken. Consideration should be given to providing clear and enforceable provisions so that costs can be easily determined based what is appropriate for the category of works (under the Building Code of Australia) and the resourcing requirements of local government.</p>

<p>compliance cost notice as a debt in a court of competent jurisdiction.</p> <p>(5) If the person on whom a compliance cost notice is served complies with the notice but was not the person who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who was responsible</p>	
<p><b>Schedule 5 Development control orders</b></p> <p><b>Part 1 General orders</b></p>	<p><b>Recommendation</b> - that column 2 be amended to allow council to issue an order to stop or prevent works from being carried out when:</p> <ul style="list-style-type: none"> <li>• a Complying Development Certificate has been issued in contravention of the Act, Regulation or Planning Instrument</li> <li>• a Construction Certificate has been issued and the Construction Certificate is inconsistent with the relevant development consent</li> <li>• works are in contravention of a development consent, complying development certificate or any development standard listed in any planning instrument</li> </ul> <p>The recommended changes will help implement the changes relating to the validity of Certificates and may allow matters to be resolved without the need to seek court orders.</p>

**j) Schedule 10 – Miscellaneous**

Proposal	Comment
<p><b>[7] Schedule 6A Transitional arrangements-repeal of Part 3A</b></p> <p>Omit the Schedule.</p> <p><b>Consultation note.</b> The provisions of this Schedule are being transferred to the regulations under the Act. The transferred provisions are to be amended to prevent any further modification of approvals for transitional Part 3A projects under the former Part 3A modification provisions, to enable those projects to become State significant development or State significant infrastructure and to make provision with respect to any outstanding Part 3A concept plans.</p>	<p>Council supports ending the transitional arrangements for Part 3A and changes that will ensure that all future modifications are substantially the same development. It is recommended that modifications to State Significant Development are carefully assessed for potential cumulative impacts given the scale of development despite being substantially the same.</p>