

20 March 2017

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

council@mosman.nsw.gov.au  
www.mosman.nsw.gov.au

Dear Sir/Madam;

**Re: Submission – Draft Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017**

I am writing in response to the Department's public exhibition of the *Draft Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017* (the ePlanning Regulation).

If made, the amendments would affect the development assessment and plan-making processes of councils throughout NSW, including Mosman.

Having reviewed the draft ePlanning Regulation, the following comments are made. The table attached to this letter provides further information and forms part of this submission.

1. With technological advancements and growing trend towards an online environment, change to the way development applications are lodged is inevitable. It is essential that a clear and robust system is in place to support this new process. The proposal to lodge applications via the NSW Planning Portal would alter the receipting and processing of applications at council, necessitating appropriate training of staff. Clarification is sought from the Department regarding timing; the processing of applications not submitted via the portal; and whether council's current exhibition, assessment and reporting processes would be affected. It is unclear if the Council's Mosman DA Tracker would be rendered redundant due to duplication of information on the portal.
2. The *Secretary's Requirements* set out standardised application forms for development and submission requirements. At first glance, the document (182 pages) seems overly-complicated and repetitive, and as it is applicable NSW-wide, there is a lot of content not relevant to Mosman and content that is relevant but is very generic in nature. The document contains confusing terminology that is not used in the Standard Instrument nor defined; appears to be missing critical information; and sets a lower standard for information to be submitted with an application compared with Mosman's requirements.
3. In regard to the proposed change to requirements for landowner's consent, relying on a declaration from the landowner or applicant, clarification is sought from the Department regarding the procedure for checking accuracy of information and notice to affected landowners. Clarification is also sought regarding how this would affect strata subdivided buildings (where external changes to a strata building require a special resolution to be passed as part of the owner's consent) and obtaining landowners consent from council or a state agency.


4. The proposed changes to standardise how application fees are calculated is unable to be commented on without the Department releasing the standardised cost of works calculator. It is unclear if the 'fee simplification' will apply to other application fees.
5. The proposed changes relating to development control plans (DCPs) and contributions plans (CPs) to be uploaded to the NSW Planning Portal need to be clarified. The timing of when this would occur – given draft changes to the *Environmental Planning and Assessment Act 1979* currently on public exhibition which mandate a standardised template for DCPs – is unclear. The need to give the Department up to 14 days notice before uploading draft and final DCPs and CPs to the portal may lead to delays in processing and finalising plans. It is unclear why public submissions for DCPs and CPs, but not for development applications, can be made via the portal; the process and procedures relating to this need to be explained.

Finally, in regard to the public exhibition period, providing one month for consultation 15 February to 15 March 2017 does not provide sufficient time for councils to adequately consider the Government's proposed changes to the regulatory process and their implications, particularly at the present time with the raft of other proposed/draft policy changes also on public exhibition i.e. the draft EP&A Bill 2017, draft Child Care SEPP, draft Infrastructure SEPP, draft District Plans. Further, this does not account for reporting timeframes to council meetings, which for many councils are held only once per month.

I appreciate being granted a one week extension to make this submission, however request that the Department consider the above comments when scheduling future consultation.

Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me on 9978 4058 or [k.lynch@mosman.nsw.gov.au](mailto:k.lynch@mosman.nsw.gov.au) if you would like to discuss these issues further.

Yours sincerely



Kelly Lynch  
SENIOR STRATEGIC PLANNER

Attachment: Table of proposed changes and comments/implications

Proposed changes	Comment / Implications for Mosman
<p><b>Lodge DA, CDC, CC and other types of applications online via the NSW Planning Portal</b></p> <ul style="list-style-type: none"> <li>• Will be phased in gradually across NSW</li> <li>• Electronic Housing Code (EHC) will be recalled</li> <li>• Process: <ol style="list-style-type: none"> <li>1. Applicant completes forms/declarations then upload to NSW Planning Portal.</li> <li>2. Sent via portal to relevant council for preliminary review – check required information provided.</li> <li>3. Council can then reject, or accept and issue fee invoice.</li> <li>4. Payment is made by applicant via portal. At this time the application is officially lodged.</li> <li>5. The exhibition/assessment process begins.</li> </ol> </li> <li>• Current provisions for rejection (within 14 days) and ‘stop the clock’ will not be altered.</li> <li>• Information on portal will be publicly available</li> <li>• Can track applications via portal</li> <li>• Cannot make or view submissions on portal. Submissions made to council and will be stored within council property information systems.</li> </ul>	<p><b>Change to Council processes</b></p> <p>Lodging applications via the portal would change the receipt and processing of DAs and other applications at council. Council staff (Development Services Support Officers (DSSO) in particular) would need training on this new process. The timing of when this new process would be phased in for Mosman is unknown. The Department encourages councils to use new process during the transitional period, but this is not mandatory.</p> <p>Clause 50 of the draft Regulation does allow DAs to be delivered by hand, sent by post or transmitted electronically direct to council – so this may continue to be an option even once the portal is phased in for applications lodged in Mosman. Clarification is needed regarding this process. Will the applications need to be uploaded to the NSW Planning Portal by Council staff, or will these applications be subject to a different process (i.e. the same that occurs at councils currently?).</p> <p>It would seem that council's current exhibition, assessment and reporting processes would be largely unaffected by these proposed changes. Submissions would continue to be lodged with council. The determination of applications (by staff under delegation, MDAP or Council) seems similarly unaffected. Councils may, but need not, publish the notice of determination on the portal (clause 102 Regulation).</p> <p><b>Mosman DA Tracker</b></p> <p>The NSW Planning Portal will offer a track function and publicly available information – partly duplicating the Mosman DA Tracker. ‘Extracts’ of a DA sufficient to identify the applicant and the land to which the application relates are to be made available on the portal (clause 56 Regulation). It is uncertain if it is the Department's intention to expand on this in the future, for example, requiring submissions, development assessment reports and notices of determination to be publicly available on the portal – similar to information that is currently contained on the DA Tracker, ultimately rendering the DA Tracker redundant. <a href="https://portal.mosman.nsw.gov.au/pages/xc.track/searchapplication.aspx?as=s">https://portal.mosman.nsw.gov.au/pages/xc.track/searchapplication.aspx?as=s</a></p> <p>The recall of the EHC is of no concern as it is not operational in Mosman.</p>
<p><b>Standardised application forms and submission requirements</b></p> <ul style="list-style-type: none"> <li>• Replace council application forms for DA, s.96 and s.96AA Modification, s.82A Review, CDC and s.87 Modification, CC</li> <li>• <i>Secretary's Requirements</i> set out standard forms and submissions requirements; will replace schedule 1 EP&amp;A Regs. Operate on</li> </ul>	<p><b>Secretary's Requirements: over-complicated, repetitive and confusing</b></p> <p>The <i>Secretary's Requirements</i> is a 182 page document, divided into 4 parts based on the type of application (DAs and Modifications; CDCs; CCs) and then further divided based on development type. At first glance the document seems overly-complicated and repetitive, and as it is applicable NSW-wide, there is a lot of content that is not relevant to Mosman (e.g. agriculture, industrial, koala habitats) and content that is relevant but is very generic in nature.</p> <p>For example, the requirements for lodging a DA or Modification application are detailed in Part 1. This</p>

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<p>80/20 principle - most applications lodged under Secretary's requirements will have enough information for assessment.</p> <ul style="list-style-type: none"> <li>Councils can request additional documentation if needed.</li> </ul>	<p>part contains:</p> <ul style="list-style-type: none"> <li>4 application forms (DA, combined DA and CC, s.96 and s.96AA modification, and s.82A review)</li> <li>15 separate sub-parts detailing what to submit requirements based on development type. For example, residential, commercial, retail etc.</li> <li>These sub-parts are the further divided again based on more specific development type, e.g. within Residential: alterations and additions, internal alterations and additions, single dwelling, residential flat building etc. Business/shop-top development is listed separately to residential and commercial.</li> <li>In total, there are 55 separate development types within Part 1, each with its own list of what to submit with a DA or modification application.</li> </ul> <p>This document contains confusing terminology. For example, page 36 identifies different types of residential development e.g. dwelling house, residential flat building, boarding house, townhouse and villa home. Not all these land use terms correlate with the Standard Instrument. Are 'townhouse' and 'villa home' defined? There is also no differentiation between Residential Alterations/Additions and Residential Internal Alterations/Additions Only – the latter could be misinterpreted as being within the existing footprint only and still change openings (i.e. windows). The checklist requirement on page 39 (2.4 Single Dwelling) is actually for dwelling houses as well as dual occupancy dwellings and attached dwellings – the latter of which are not single dwellings.</p> <p>Will applications for existing use rights be able to be made within this new structure?</p> <p><b>Application forms</b></p> <p>The content of the standardised application forms is similar to that of Mosman's forms, however, as the forms apply NSW-wide, there is some content not relevant to Mosman (e.g. (h) mine subsidence; (m) wilderness area), and some content may be relevant but is not presented in a user-friendly way (e.g. (g) is the road classified?).</p> <p>It is unclear how an applicant would readily know on the portal whether their land was (g) on a classified road or (d) on the State heritage register (Mosman's application forms list Spit and Military Roads as classified roads in Mosman). Has consideration been given to harnessing the information contained in the NSW Planning Portal to auto-complete the application form once the street address is entered?</p> <p>Part 4 of the application form relates to other approvals. Part 4n) 'other council approval' in the form only identifies works for a septic tank for approval, but there are other items requiring approval under section 68 of the <i>Local Government Act 1993</i>. It is unclear why these are not included. There is also an error at n) as next to 'No' it says 'go to n)' when n) is the end of the form.</p> <p>The applications forms do not have any declaration that a person agrees that their personal information may be publicly available. Perhaps this is on the portal itself?</p>

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	<p><b>Submission requirements</b>  Comparing the standardised submission requirements with Mosman's, there are many differences. Importantly:</p> <ul style="list-style-type: none"> <li>a) There is no requirement to submit notification plans. Council currently requires notification plans and posts these to affected landowners along with notification letters. Is it the Department's intention that this practice no longer occurs; that an affected landowner view plans on the NSW Planning Portal?</li> <li>b) A landscape plan is not required for residential alterations/additions or single dwellings (but may be as a condition of development consent). Concern is raised regarding this as landscaping plays such an important role in integrating new development into a streetscape, improving the level of amenity, and improving local habitat for flora and fauna. In an area such as Mosman, where landscaping is highly valued, and which has such high scenic value from the harbour, ensuring appropriate planting of sites and retention of trees is vital. Landscape plans should be required for residential alterations/additions (where landscaping is affected) and new single dwellings.</li> <li>c) A site analysis and photomontage are voluntary for residential alterations/additions and single dwellings. A site analysis is the first step in the design process. It aims to ensure the qualities of the site and its content are properly considered to achieve development that is well designed makes a positive contribution to its surroundings and establishes a positive relationship with neighbouring buildings. A site analysis should at the very least be required for new single dwellings, as it is a current requirement in Mosman.</li> <li>d) A photomontage and 3D model are required for residential flat buildings, but not for multiple dwelling housing. It is unclear why the Department is making a distinction between residential flat buildings and multiple dwelling housing.</li> <li>e) A fire safety schedule is not required for commercial change of use (but may be as a condition of development consent). However, a fire safety schedule may be required pursuant to clause 168 of the Regulation where there are no building works involved. This would be the same for all the Change of Use Only development throughout the Secretary's Requirements document.</li> <li>f) There is no requirement for drawings to list the name of the architect/draftsperson or their contact details; to show proposed building works/changes in colour; or to show neighbouring buildings on plans. There is no defined requirement for scale – page 150 states that it should be recognisable scale only.</li> <li>g) The trigger for an acid sulfate soils report is based on system of classification that is not used in Mosman LEP 2012, i.e. the standardised application form refers to Class 1-5, however Mosman LEP 2012 clause 6.1 does not use this class system for acid sulfate soils, instead identifying only two areas – an acid sulphate soils area (land up to 5m AHD) and a buffer area (land greater than 5m but less than 10m AHD or within 170m of any acid sulphate soils area). Council currently requires an acid sulfate soils assessment for excavation of land in these areas. The standardised application form needs to reflect this requirement.</li> </ul>

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	<p>h) There is no requirement that the statement of environmental effects (SEE) address s.79C of the EP&amp;A Act 1979. Further, a request for a clause 4.6 variation is not identified as a separate document – it is assumed this would be incorporated into the SEE. The Secretary's Requirements also do not identify individual requirements for s.82A or s.96 applications, that is, that a SEE should address the reasons for refusal (in respect of a s82A review application) or how the development is substantially the same (in respect of a s.96 application). This needs clarification.</p> <p>i) Access reports are not required for all commercial or retail developments. They are required for new build only, but not alterations and additions to an existing building. Council currently requires an access report to be submitted for all development applications for commercial, business, mixed use and large scale residential developments.</p> <p>j) There is no requirement for a crime risk assessment. Council currently requires a crime risk assessment for applications comprising 20 or more dwellings, or other large scale developments as required by Council, having regard to Crime Prevention Through Environmental Design (CPTED) principles.</p> <p>k) A Heritage Impact Statement is not required for heritage-listed buildings that are proposed to be subdivided. The curtilage of a building can be an important component of its heritage listing, and should be required for all heritage applications, including subdivision.</p> <p>l) The requirements for when a geotechnical report is required are inadequate. A geotechnical report should be required to be submitted with a development application for development of land at or near cliff faces, on significantly sloping sites where excavation is proposed, for development involving excavation greater than 1.5m in depth within a distance of 1.5m or less from a property boundary, or where otherwise determined by Council.</p> <p>m) Engineering reports and plans – these should be produced by a qualified engineer in that field, not just 'a structural engineer' as written in the Secretary's Requirements.</p> <p>n) Clarification is sought regarding the Tree Permit checklist – Tree Removal Only (page 113). This states '<i>it should be completed and submitted with your DA along with the required drawings and documents</i>'. However, the DA Form states (page 13) '<i>Not applicable to Tree Removal Only applications</i>'. Clarification is also sought regarding the process for tree removal only applications, and for public vs private land. Council supports reference to an individual council's LEP or DCP for the details of what an arborist report should contain (page 161).</p> <p>It is understood that a Council can ask an applicant for further information as necessary. The Department is asked to clarify if there will be any restrictions on when in the process this can occur.</p> <p>Amendment to Mosman's DCPs would be required to remove Part 2 DA Requirements if the proposed changes came into effect. (This may occur with the revision of DCPs into the Department's new standardised format proposed under the amendments to the EP&amp;A Bill).</p>

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<p><b>Change to Landowners Consent</b></p> <ul style="list-style-type: none"> <li>• Replace written consent from land owners with declarations from applicants stating that they have permission to submit a DA. (clause 49(4A), 50)</li> <li>• Guilty of offence if false or misleading statements (s.148B EP&amp;A Act)</li> </ul>	<p><b>Process: checking landowner consent details</b>            Currently Council requires the owner’s consent on the application form – name, position of signatory if a company name, postal address, signature, and owner’s corporation seal where applicable. This is checked by Council’s DSSO as part of the application checking process.</p> <p>Under the proposed changes, the system would rely on a declaration from the landowner that they are the owner of the land to which the application relates, or a declaration from the applicant that they have the landowner’s permission to lodge the application. Does the Department envisage that this should still be checked by councils? Landowners who are not the applicant would receive notice of a DA having been made. This notice would be issued by councils. Clarification regarding this notice is sought – Will this be standardised? Auto generated by NSW Planning Portal? Training/revised procedures for this new process would be needed.</p> <p><b>Strata applications</b>            Currently, external changes to a strata building require a special resolution to be passed as part of the owner’s consent. The changes to the standardised application form do not cater to this, that is, there is no requirement for evidence of this special notice to be lodged as part of the application. If a development application is lodged by one unit owner purporting to have the consent of the owner’s corporation, is notice required to be sent to all unit owners of that building in respect of an application having been lodged? Clarification is sought regarding notification of applications for strata buildings.</p> <p><b>State agency or council land owners consent</b>            It is unclear what happens to development that currently requires owner’s consent from council or a state agency, e.g. Roads and Maritime Services etc. Will there be any change to the existing procedure? Will a notice of having received a DA need to be sent to state agencies as landowner if they are not the applicant? Clarification is sought.</p>
<p><b>Fee simplification</b></p> <ul style="list-style-type: none"> <li>• Cost of works calculator standard NSW wide based on total gross floorspace of the building as constructed or enlarged, and average cost to build for the geographic location (cl. 246B regulation)</li> <li>• Fee payments made through Portal Payment Gateway to DPE, then pass on to councils or state agencies (concurrency) once per week.</li> <li>• The DA is not lodged until the fee is paid.</li> <li>• Councils will be given the discretion to</li> </ul>	<p><b>Standardised cost – financial implications for council unclear</b>            The standardised cost of works calculator is unavailable on the NSW Planning Portal, so it is unclear how the fee derived from the NSW calculator would compare with that calculated by Council currently. There may be a cost implication for Council. To be able to comment on this further – the Department needs to make the standardised cost of works calculator available to all councils.</p> <p>It is also unclear if the ‘fee simplification’ will apply only to standardising the fee based on the estimated cost of development, or whether this would also extend to other fees, e.g. business advertising sign only, development not involving the carrying out of any work (change of use, land subdivision); s.96, s.82A and s.82B applications; deferred commencement; notification/advertising; inspection fees; scanning etc.</p>

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<p>determine how much of the application fee is to be refunded if the application is rejected within 14 days</p>	<p>It is noted that the cost to build component of the fee can also be derived from a quantity surveyor report or the contract price to build from a registered builder.</p> <p>Under the proposed changes, Council's DSSO would calculate the application fee based on the above, then issue a Statement of Transactions Fee to the applicant to pay via the portal. Application fees paid to the Department will be reimbursed to councils on a Wednesday of each week for all applications lodged in the preceding seven day period. Training/revised procedures would be needed.</p>
<p><b>DCPs and Contribution Plans (CPs) –</b></p> <ul style="list-style-type: none"> <li>• Require draft DCPs and CPs to be published on portal for minimum 28 days exhibition</li> <li>• Require final DCPs and CPs to be published on portal – do not commence until they are on portal; only legal effect when this is done</li> <li>• Can submit comments about draft DCPs, CPs via portal (and draft SEPPs, LEPs, and regulation changes)</li> <li>• Must give Dept Planning 14 days' notice before upload draft or final plan to portal</li> <li>• Existing provisions of Regs (part 3) requiring public notice in local newspaper are to be repealed</li> <li>• CI 16-25AD Regs</li> </ul>	<p><b>Timing and standardised DCP template</b></p> <p>The proposed changes relate to those contained in the EP&amp;A Bill 2017 currently on public exhibition until 31 March 2017, which require a standard template for DCPs across NSW. The intent is for all DCPs to be similar in structure and uploaded to the NSW Planning Portal. The timing for this is unclear. The Department has talked about a transitional period – one would assume this would be correlated with the need to prepare new DCPs in the standardised format, however clarification of this is needed.</p> <p><b>Notice to Department – 14 days to upload to portal</b></p> <p>The proposed changes require public exhibition of draft DCPs and CPs on the planning portal, with councils required to issue the draft plans and give 14 days' notice to the Department prior to the start of the exhibition period (presumably to allow time for the Department to upload the documents on the NSW Planning Portal), and again giving the Department 14 days' notice when the final DCPs and CPs are to commence. Overall, this may add up to 4 weeks to the processing time for preparing DCPs and CPs, as currently DCPs and CPs are often publicly exhibited or adopted immediately following consideration by council. It is unclear why 14 days' notice is required – can this time be reduced with councils accessing the portal and directly uploading the documents instead of the Department?</p> <p><b>Public submissions on portal</b></p> <p>Preparation, exhibition and adoption of draft DCPs and CPs has traditionally been the domain of local councils - meeting Department guidelines and complying with relevant legislation - with the final plans sent to the Department after adoption by council. The proposed changes substantially alter this process.</p> <p>Under the draft Regulation, public submissions on draft DCPs and CPs can be submitted via the NSW Planning Portal. There are several questions regarding this:</p> <ul style="list-style-type: none"> <li>• What is the reason for this? Is there an issue that this is seeking to resolve?</li> <li>• Why can public submissions on draft DCPs and CPs can be submitted via the portal, but submissions for DAs and modification applications cannot?</li> <li>• How would this work? - i.e. Will council be notified of submissions made direct to the portal? Will council also be able to receive submission directly (post, hand, online)? If so, will these then need to be uploaded to the portal and who would do this? Will submissions be able to be posted directly to the Department? Who will monitor content on submissions (i.e. offensive language, request not to be</li> </ul>



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	<p>public)?</p> <ul style="list-style-type: none"> <li>• Will there be a time lag when submissions are made via the portal to when they are displayed online, and supplied to council? (i.e. a 14 day time lag for uploading information as noted above?). The assessment of public submissions on draft DCPs and CPs often commences during the exhibition period as they are lodged with council to ensure efficiency in process. If there was to be a time lag when submissions were made available to councils this may further delay finalisation of plans.</li> <li>• Is it the Department's intention to monitor the content of submissions, and directly intervene or issue directions to councils regarding particular matters contained in submissions, draft DCPs or CPs?</li> <li>• Is it the Department's intention that the NSW Planning Portal be the only location for exhibiting the draft DCPs and CPs, or just another mechanism along with council's website, display in council foyer, notice in local newspaper etc?</li> </ul> <p>Clarification from the Department on these matters is sought.</p>