

**From:** [REDACTED]  
**To:** [NSW Productivity Feedback](#)  
**Subject:** Submission to Productivity Green Paper - Planning System  
**Date:** Wednesday, 16 September 2020 1:37:27 PM

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To Whom it May Concern

Thank you for the opportunity to make a submission to the Green Paper. My comments go specifically in support of recommendation 7.6: Minimise red-tape and complexity in the planning system. In your report you state that *during consultations stakeholders agreed that the planning system is too prescriptive, slow and cumbersome. But there was no clear consensus on what path to take to address these issues.* In my submission we make some suggestions with regards to the direction the NSW Planning System should take. In particular, I recommend:

1. Short courses be available to retrain planners and give them the necessary skills in data analytics.
2. Simplify the planning system by amending the EP&A Act to restricting the application of only one Environmental Planning Instrument (EPI) for each site in NSW.
3. Retaining existing State planning interests and power by allowing the Minister for Planning to amend any EPI (including LEPs) without consultation.
4. Developing KPIs for the planning system that look beyond just assessment timeframes and consider the whole process for getting developments started.
5. Remove Clause 4.6 requests and allow Councils to approve Development Control Plans specific to their site in agreed digital format that can be viewed on the ePlanning System.

I strongly support the NSW ePlanning system and the opportunity it provides to streamline the lodgement of applications and improve access to information. The data we will collect from the ePlanning System will revolutionise the way planning is done. Planning will become more evidence base with data available in real time. Planning Policy will therefore need to be flexible and adaptive to be responsive to changing circumstances. Town Planners will need to become more skilled at data analytics and many planners will need to be upskilled in response to this changing environment. Therefore, we recommend the development of short courses to train planners in urban data analytics.

However, the ePlanning system is a modern system operating within legislation that dates back to 1979 - before internet was available in Australia and before all households had computers. The EP&A Act 1979 was written at a time when there was a need for a tiered planning system because planning instruments could not be updated in real time. Therefore Councils, who were largely responsible for most local planning decisions, would prepare Local Environmental Plans (LEP). Whilst State interests would be expressed in State Environmental Planning Policies (SEPPs) that did not need to be publicly exhibited. This tiered approach to planning control in NSW has resulted in a multitude of EPIs applying to each site in NSW. Some EPIs are not relevant to the proposed development

and others are relevant but with objectives and provisions that conflict with other EPIs. There is a need to simplify the planning system by rationalising the number of EPIs that affect a site.

Currently there are over 50 planning provisions within various SEPPs that apply to millions of sites within NSW and would amend the existing planning controls within LEPs. The following are some examples:

**Example 1:** The Infrastructure SEPP amends every zone within NSW's LEPs to permit certain uses such as: waste or resource transfer stations, electricity generating works, emergency and health services, data storage facility, public administration buildings, commercial activities at transport nodes and research stations. These amendments are not reflected in the planning portal. For example, Blacktown LEP 2015 prohibits waste or resource transfer stations in IN2 zones and therefore if you were to search IN2 in Blacktown LGA you would not know that waste or resource transfer stations are actually permissible in IN2 zones unless you are aware of the ISEPP. The Standard LEP Instrument could be used to ensure these uses are permissible in all NSW's LEPs without creating another EPI.

**Example 2:** SEPP (State Significant Precincts) identifies site specific planning controls for 17 sites in NSW that override local LEP and DCP controls and could be included in the relevant LEP.

**Example 3:** SEPP (Affordable Rental Housing) 2009 allows public authorities or social housing providers to develop Residential Flat Buildings on sites within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use or equivalent zones if they have obtained a site compatibility certificate and are located in certain LGAs. These provisions could be put into the relevant LEPs.

The NSW planning system would be simplified if only one EPI applied to each site in NSW. This could be achieved by translating the power the Planning Minister currently has with creating SEPPs to LEPs. This translation of power would give the Planning Minister the power to amend LEPs or the Standard Instrument to incorporate all State interests currently expressed in SEPPs without community consultation. The benefits of having only one EPI apply to each site in NSW are:

- Easier to digitise the planning system;
- Reduction of potential planning disputes created by conflict of competing planning objectives with various EPIs applying to the one site;
- Clear and simple planning controls provides greater certainty for the market and reduces design and assessment timeframes.

The Green Paper relies on data that relates to assessment timeframes because assessment of development application is the responsibility of government and is measurable. The Green Paper also recommends bringing NSW approval assessment times into line with

other jurisdictions' times by the end of 2023. However, assessment timeframes are only a fraction of the overall process of getting developments started. If getting development started in NSW is the key objective, then governments need to look at the whole process and develop KPIs around that process. That includes:

- Ensuring availability of suitable sites and being flexible enough to respond to changing circumstances;
- Lack of funding from banks and their requirement for off the plan sales;
- Reducing complexity of the whole planning system; and
- Ensuring public faith in the certification process.

Finally, we advocate for landowners to have the ability to submit to Council for approval, DCPs that are specific to their site and in an agreed digital format that can be viewed on the ePlanning System. Currently Councils prepare DCPs that specify more detail planning controls that are used to guide development in their LGA. Council's LEPs also include development standards such as height of buildings, Floor Space Ratio, landscaping etc. However, sometimes the generic controls in the DCP and the development standards in an LEP do not work for specific sites due to the terrain, aspect, covenants or other circumstances specific to the site. Where a landowner needs to amend a development standard in an EPI due to the specific circumstances of their site, they are required to submit a clause 4.6 with the DA justifying the amendment sought. Clause 4.6 have become extremely legalistic documents that are often contested in the Land and Environment Court. Also, the Clause 4.6 exemption is only valid to that specific DA.

A clause could be inserted into the Standard Instrument and LEPs allowing site specific DCPs to include development standards that over-ride the development standards in the EPIs and prohibit the use of Clause 4.6 where a site specific DCP applies. The site specific DCPs would be subject to public consultation, as is currently the case with Council's generic DCP. The benefit of site specific DCPs are:

- Planning controls and a building envelope could be designed that considers the circumstances of the site;
- Landowners and potential purchasers of a site would have greater certainty about what could be built on the site;
- The DCP would apply to all future DAs;
- Site specific controls would reduce assessment timeframes for future compliant DAs; and
- The DCP would be submitted in a template format with standard requirements that could be easily digitised.

If you have further queries please feel free to contact me on [REDACTED]

Regards

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Urban Perspectives | [Redacted]

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