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Planning and Assessment for Councils during COVID 19

Frequently Asked Questions

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Section 1: Clarifying essential services

Will there be guidance to councils as to what work they should keep doing, aside from the areas that have been closed under gazetted orders?

The new reality brought about by COVID 19 is one of constant change and ever-evolving response.

The department commits to giving guidance to councils as soon as practicable within this fluid situation.

The public health orders detail what are considered non-essential services. Councils should continue all services and functions that do not fall into the non-essential category. They should ensure that all prescribed public hygiene principles are followed, such as maintaining social distancing.

Please also refer to updates from the Office of Local Government.

Can you clarify what are considered 'essential services' of councils? Could these be published in a circular to all councils?

The NSW Government's Public Health (COVID 19) Restrictions provides guidance, prescribing non-essential activities that must stop.

All other activities are permissible and should be continued.

If a state of emergency is declared, is planning and development considered an 'essential service' that councils must continue to the fullest extent possible?

Yes. Planning and assessment remains an essential service and should continue, subject to social distancing and any other requirements for public safety.

There remains the possibility that this may change in response to the deepening pandemic. However, our current advice is to continue planning services as usual.

Section 2: Managing planning functions

What impact will COVID 19 have on all planning functions, including timeframes for councils to complete their new LEPs and funding?

The department is working in its normal capacity (but within government and health guidelines) to assist councils with the completion of local environment plan (LEP) processes, including making gateway determinations and completing their LEP.

We want to ensure LEPs continue to be processed by councils and the department so that pent-up demand in NSW can be transformed into jobs and economic stimulus.

Discussions are being held about the 18 metro accelerated councils and a decision should be made imminently. We will communicate the outcome.

Can the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) regarding community participation be satisfied by the online exhibition of planning proposals during this time?

Advice on how to publicly exhibit documents such as local strategic planning statements, given the impending deadline, and voluntary planning agreements is as follows:

- measures put in place to protect our community mean that, for the immediate and foreseeable future, all exhibitions will need to be online
- the department has moved quickly to amend regulations so that physical copies of planning documents are no longer required for exhibition
- documents will be available on the Planning Portal and council websites, and the department is working through options to ensure people with limited access to digital platforms are catered for
- with face-to-face engagement no longer an option, we are using tools such as Social Pinpoint to create online engagement hubs
- this new reality will require councils reconfigure their community participation plans. The department is working to provide councils with best practice online engagement information and training resources to ensure the community continues to be at the forefront of planning decisions.

Council is considering amending its community participation plan (CPP) provision to notify adjoining landowners by letter, as we don't have anyone in the office. Can we make this amendment without the usual 28 day exhibition period?

Under the [COVID-19 Legislation Amendment \(Emergency Measures\) Bill 2020](#) (s10.18) councils can continue their normal communication with their communities without the need for face to face provision of information. Minor amendments to a CPP can be made without re-exhibiting for example if a CPP has certain requirements that can no longer be satisfied, such as displays in the council offices or public library.

However, Councils don't need to update their CPP to meet the new social distancing rules and to account for their office closures.

The CPPs all refer to a broad range of engagement methods but none state that they will also use one particular approach (i.e. physical display in their council or library etc.) or that any method is mandatory. The amendment to the EP&A Act means they aren't in breach of the legislation if they don't provide physical access to documents.

If councils want to update their CPPs to reflect this they can do this quickly without re-exhibiting their CPP, but if a council wants to make a significant change to their CPP, for example, no notifications at all in any channel, such a major change would require re-exhibition.

Community consultation is one of the objects of the EP&A Act and has long been a key feature of the NSW planning system, and it would be a significant amendment to a CPP to remove this requirement.

Should council have no administrative ability to notify adjoining neighbours of proposed developments, please contact your departmental regional team for help in identifying an approach that best resolves this.

As an interim measure, councils should advise their community and applicants that normal administrative processes may take longer than usual.

Will there be an extension of time to adopt local strategic planning statements?

Strategic planning at a local level is key to ensure we create and maintain strong communities for people to live and work. That is why it is important we continue to work towards the 1 July deadline to finalise local strategic planning statements (LSPS) for councils in regional NSW.

There is no provision in the regulation to grant extensions to councils to complete their LSPS beyond 1 July 2020.

If councils have an issue with their LSPS they should raise it with the department via the relevant region's office.

All Greater Sydney councils had finalised their LSPS by the 31 March deadline.

Will there be any impact on gateway determinations and other government agency responses to planning proposals?

NSW Government agencies are continuing to operate throughout the current situation and are rapidly improving online capabilities to support staff and enable them to keep working.

Councils should continue to work directly with the department's regional offices to discuss any implications for specific planning proposals and gateway determinations.

Section 3: Managing planning proposals and planning instruments

How can councils manage DA and DCP notifications—specifically, the need to send physical notification letters to neighbours or affected residents where not all email addresses are available? With reduced staff in the office, we are unable to print the letters and post them.

We have developed a resource guide to assist councils in managing their engagement with the community, including notifications. This is available from the department website.

Councils can make use of a range of external sources, including:

- Australia Post or mail distribution services to print and deliver addressed or unaddressed mail
- leveraging local media or community information sources to alert residents to the planning proposal exhibited on council's website
- using community newsletters and online groups to alert residents to the planning proposal exhibited on council's website.

Where a council has reduced capacity, they should advise their community and applicants that normal administrative processes may take longer than usual.

Where email addresses are available, can councils use these channels without having to amend their DCPs or community participation plans?

Yes.

Will it be enough for council to advertise DA notifications via its website as the sole means of notification? Would it be possible for the responsible minister to deem this as sufficient notification for, say, six months?

Yes, the [COVID-19 Legislation Amendment \(Emergency Measures\) Bill 2020](#) allows the Secretary to override Act and regulation requirements for councils to display physical copies of DAs and other assessments at their offices.

The Secretary has now approved council websites or the NSW Planning Portal to be used to make documents available online instead of council's offices.

What happens if our local newspaper closes?

A consent authority (including councils and the department) are required to give public notice of various planning matters in a newspaper circulating through the relevant area at intervals of not more than two weeks as per [Environmental Planning and Assessment Regulation 2000 clause 3](#) (EP&A Reg.).

Where a local newspaper is no longer circulating due to restrictions arising from the COVID-19 pandemic, the consent authority must advertise the relevant notice in a regional or statewide newspaper that is circulating in the broader area. For example, publishing a notice in the Hawkesbury Gazette, if the local Rouse Hill Times has ceased operations.

Only publishing a notice in an online version of a local newspaper will not satisfy the requirements for public notice as these online versions do not have the same reach and free access.

The specific publication requirements under the EP&A Reg. such as the information that is to be included in the notice and the format of this notice must also be maintained. Provisions requiring a

notice to be placed in a daily newspaper circulating generally throughout the state are still applicable.

The department will consider amending these requirements in the EP&A Reg. to enable more cost effective, efficient and appropriate methods of communicating important planning matters to communities.

Council is considering amending its DCP to remove the requirement to make available physical notifications, such as letters and copies of plans. Will this meet the requirements of the Act? If so (and assuming councillor support), is council able to amend its DCP and waive the usual 28-day exhibition period?

It is possible for councils to waive the requirement for physical notifications, provided these documents are made available through council's website or the [NSW Planning Portal](#). However, public consultation remains a vital part of the planning process and exhibition periods should it remains it is important that exhibition takes place via electronic channels where physical exhibition is not possible.

Can councils accept electronic versions of plans as part of managing DAs?

Yes, you can accept electronic lodgement where relevant and supported by any other evidence to demonstrate compliance with the consent conditions. The supporting evidence can be provided electronically, or by post.

How can councils appropriately issue 'stamped approved' plans or subdivision certificates where we don't have the capacity for electronic stamping and the officer who would authorise the document is working remotely?

Similarly to accepting electronic versions of plans, councils can issue outcomes electronically, with supporting evidence.

Will digital equivalents be accepted all the way through the DA process, for example for linen plans attached to proposed land subdivisions?

Councils can accept an application for a subdivision certificate and the required attachments including the plan of subdivision (linen plan), certificate of compliance from the relevant water supply authority where relevant and any other evidence to demonstrate compliance with the consent conditions either by post or electronically.

Councils should make arrangements directly with applicants for the provision of signed linen plans and the subdivision certificate once approved to enable the applicant to lodge those with NSW Land Registry Services.

Given the current access barriers, should the timeframe for community consultation and exhibitions be extended? And will there be a waiver of long service leave and planning reform fees, like the fee waivers for bushfire victims?

The NSW Government will work closely with stakeholders to provide a package of measures to support the NSW economy during the crisis and for the recovery. All options will be on the table.

Is council able to send its consents electronically: particularly if staff are not in the office to print and post?

Yes

How do council staff continue to undertake inspections for DA's if we are not allowed to visit the site, for example when a DA that has been lodged for an extension to a nursing home?

Site inspections can be carried out, subject to adhering to health and safety requirements. These requirements include a limit of two people in the room, observing social distancing, staff travelling to site in separate vehicles, and other public safety requirements.

Council will need to undertake a risk assessment on a case-by-case basis. Site visits can still occur if appropriate steps are taken to comply with public health orders. This might mean the site visit is more limited in scope than it normally would be, only focussing on specific areas of concern. Councils may need to rely more on photos, videos or aerial imagery than they normally would.

With regard to site inspections of nursing homes, there should be no issue with external inspections if the applicant/site owner is forewarned of the inspection and residents are kept inside or at a safe distance.

What advice do you have regarding subdivision certificate issue and the requirements from NSW Land Registry Services for signatures, for example by councillors, on original documents that are then delivered in hard copy? Is there an equivalent electronic process that will be legally valid?

The department will pursue the development of electronic processes with NSW Land Registry Services.

A key issue for councils is having documents rejected by NSW Land Registry Services. Can the department pursue accepting digital signatures and electronic document transfer?

Yes. The department will pursue the development of electronic processes with NSW Land Registry Services.

Where can I find more information about the 'website' referred to in EP&A Act amendment s10.18 that documents can be advertised on the NSW Planning Portal or other website approved by the minister?

Information about the COVID-19 Legislation Amendment (Emergency Measures) Bill 2020 is available on the NSW legislation website: www.legislation.nsw.gov.au/bills/82167dc2-5f11-4a1b-b1c1-8f5d87db27ef

Further information about the COVID changes is available on the department's website: www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response

Has the department approved any council websites as an appropriate channel?

The department approves all official council websites as appropriate alternatives to physical exhibition of documents, in line with [COVID-19 Legislation Amendment \(Emergency Measures\) Bill 2020](#) Section 10.18.

Is there published confirmation that council websites are an endorsed channel for notification under EPA Act amendment s10.18? If so, where?

Yes. The information is on the department's website at: www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response

Is it enough to advertise notifications on either the council's website or the planning portal, or will councils need to advertise notifications on both channels?

Ideally notifications would be advertised on both the planning portal and council's website to give the community more opportunity to view.

The [COVID-19 Legislation Amendment \(Emergency Measures\) Bill 2020](#) allows the Secretary to override Act and regulation requirements for councils to display physical copies of DAs and other assessments at their offices.

The Secretary has now approved council websites or the NSW Planning Portal to be used to make documents available online instead of council's offices.

How can councils manage payments for DAs that are now made through the Planning Portal?

The department is developing the capacity to manage payments through the planning portal. In the meantime, councils will be advised about DAs that are lodged through the planning portal.

Councils can then provide applicants with a fee quotation and the preferred methods of payment outside the online DA process.

What support is available for using the planning portal?

The [NSW Planning Portal](#) includes knowledge management tools for councils, including [Quick Reference Guides on how to progress a DA case in the Portal](#).

You can also contact the ePlanning Training and Implementation team at epanning@planning.nsw.gov.au for any additional assistance.

Are submissions from the community collated and issued to councils when the planning portal is used for consultation?

Each submission will be separately forwarded directly to councils from the portal, for collation by council staff.

Media outlets in our local government area have closed, which severely restricts our ability to advertise. How can council meet the requirement to notify residents without access to a community paper?

Councils can make use of a range of external sources, including:

- Australia Post or mail distribution services to print and deliver addressed or unaddressed mail
- using local business and community newsletters to alert residents to the planning proposal exhibited on council's website
- use social media and local, online groups to alert residents to the planning proposal exhibited on council's website.

Under current circumstances, councils may not be able to progress applications as usual. How can we mitigate the impacts of this? For instance, should deemed refusal periods be extended?

This is a matter the department raised with NSW Local Government and we are awaiting their advice (as at 06/04/20). We will advise councils when an update becomes available.

How can councils appropriately issue documents (for example, subdivision certificates) where the officer who would authorise the document is working remotely?

The best approach would be to fix this issue by embracing digital signing capabilities. In the meantime, councils will need to use existing channels such as the postal system for lodgement and issue of documents.

Section 4: Exemptions and change of use provisions

We are getting request from health practices for approval for critical testing areas, such as pop-up health test facilities in demountables in car parks. These would ordinarily require development consent, but they need to be installed immediately. Is there any way to fast track approval?

Please refer to www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response for recent Orders.

Has any thought been given to changes of use of a premises in contravention of current DA provisions? For example, to allow repurposing of venues, or to allow wholesalers to retail from their premises?

Please refer to www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response for recent Orders.

Can you explain changes to regulations around home-based business?

The NSW Government's gazetted changes to home businesses include that these businesses can now operate 24 hours, seven days per week, with up to five people (the previous upper limit was two people), subject to social distancing and other public safety restrictions.

The purpose of the changes is to give more flexibility for NSW's approximately 680,000 small businesses continue making their vital contribution to the state economy.

What exemptions will apply to home businesses where food preparation is undertaken?

The minister made an Order on 25 March 2020 in relation to extended operations: https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/A+Activation/Order+1.pdf

This Order allows for home businesses, including those that involve food preparation to:

- operate 24 hours per day
- employ more than two people other than the permanent residents of the dwelling, but not more than five people, providing they can abide by social distancing and noise reduction guidelines.

All other conditions continue to apply to the business. In addition, when operating outside the normal hours of operation of the premises, steps must be taken to ensure it has no adverse impact on the amenity of the neighbourhood—for example by way of noise, smell, fumes or waste products.

Will the department consider exemption to allow food and drink premises to operate for takeaways or delivery for extended trading hours (for example, until midnight) to save some jobs and businesses?

The department will take the issue on board as an action item for consultation with NSW Health. We will advise councils when a path forward is identified for specific exemptions.

Council has been advised that fuel stations are exempt from the need to remove tables and chairs for heavy vehicle drivers. Is this the case?

On 31 March 2020, the National Heavy Vehicle Regulator and Department of Infrastructure, Transport, Regional Development and Communications advised that truck stops throughout Australia will remain open, subject to health and safety measures including properly cleaning and

sanitising showers and toilets and spacing out seating. Use of truck stops will be limited to heavy vehicle drivers.

How will existing use rights be impacted where businesses/organisations have closed in response to government requirements, but may not reopen?

The answer to this goes back to the fundamental principles that apply—the presumption of abandonment after 12 months. However, that may be reviewed at the end of the pandemic. We are keen to encourage ‘status quo’ once current restrictions are eased. We will review this at a later date.

Section 5: Planning panels

Can the department commit to ensuring local and regional planning panels can continue throughout the pandemic period?

Yes. Continuing the functions of local and regional planning panels is crucial to ensuring oversight when determining development assessments. The department has moved quickly to enable local and regional planning panels to meet via teleconference, including providing for public participation.

Several panel meetings have been held by teleconference, and these have been well received.

Reflecting the need to prioritise projects that will stimulate economic recovery in NSW, the Planning Panels Secretariat is working with councils to prioritise those DAs that have the greatest economic benefit.

We would appreciate if planning directors could send through to the Planning Panels Secretariat enquiry@planningpanels.nsw.gov.au a list of the DAs that will be reported to their Sydney or regional planning panel up to the end of the financial year.

How will meetings be held? Can we have a consistent approach and protocols for how planning panel public meetings should be carried out?

To help councils manage planning panels, the department has updated its advice on local planning panels. The updated advice is available from www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels

With face-to-face public panel meetings no longer an option, you will need to hold meetings virtually, such as by teleconference, until further notice. Panel members or members of the public are not required to attend panel meetings in person.

As a guide, the approach to planning panel meetings should consider the following:

- When either local planning panels or regional panels meet it must be in public and at a minimum the audio from the meeting must be recorded. The recording of the meeting must be published on the panel's website.
- Teleconferences are considered the most accessible way people can participate in these meetings because all they require is a phone.
- A meeting by teleconference must be open to the public, however councils are able to require those who want to join the teleconference to register, either to listen to proceedings or to address the panel. All panel members should be able to hear the other panel members, and those addressing the panel. The teleconference must have the audio recorded and published on the panel's website.
- People can contact the planning panels phone line on 02 8217 2060 to leave their comments.
- After hearing from all those wishing to address the panel, the panel can close the meeting and adjourn to a separate teleconference to formulate its decision, which would then be published in writing on the panel's website.
- As was the case for physical meetings, teleconference meetings will have audio recorded and published on the Panel Secretariat's website for people to access, in compliance with - planning legislation.
- The NSW Government is aware that the teleconference system is not perfect but it is the best solution to give the greatest number of people access to this important process in extremely trying times.

In the event a community member, who does not have internet access, is able to make a verbal submission but is unable to access the live meeting audio, have we met the conditions for a public meeting? If not, what do we need to do to meet the standard?

The conditions for a public meeting are met when:

- all panel members can hear other panel members and those addressing the panel
- the teleconference audio is recorded and published on the panel's website.

What software solutions do you recommend for panel meetings?

Council's technology advisors may be able to assist you with choosing from the many commercial teleconference systems and services available.

How will we manage practical aspects of panel meetings, for example site inspections?

There is nothing that prevents site inspections, subject to health and safety requirements being adhered to. These requirements include a limit of two people in the room, observing social distancing, staff travelling to site in separate vehicles, and other public safety requirements.

Panels will need to undertake a risk assessment on a case-by-case basis. Site visits can still occur if appropriate steps are taken to comply with public health orders. This might mean the site visit is more limited in scope than it normally would be, only focussing on aspects of the site where potential concerning impacts might be. You may need rely more on photos, videos or aerial imagery. Refer to Section three.

What are expected regional planning panel lead times, particularly given the need to prioritise assessment and determination of development applications to encourage economic stimulus in the building/construction industry?

The department will work with councils to ensure that all development assessment and determination functions continue and that we can identify any opportunities to ensure business as usual and support the recovery of the NSW economy.

How can we manage approvals if we need to determine applications electronically? We have been informed by a panel Chair that their actual signature is not required on their meeting declaration of interest forms. Is this correct? This seems wrong. These forms go on our website and may be perceived as forged if the signature is not on the form.

There are a range of ways that signatures or approval of documents can be given and recorded. An email from a panel member's email address authorising a document, including the time and date on which it was sent, is sufficient in these circumstances.

Section 6: Other

Now that council meetings can be held via teleconference, where a DA needs to be approved by council for delegation purposes, could the meeting be held at any time and then posted online, rather than waiting for council's regular monthly meeting?

If it is a formal meeting conducted by teleconference and appropriate requirements, such as notice periods and the public's right to attend are met, this would be a valid way of progressing the DA application.

Please refer to the Office of Local Government regarding holding council meetings via teleconference.

Council's health and fire safety officers are being denied access to buildings on the grounds that they are breaching public safety requirements. What is the legal status of these officers?

Inspectors are authorised inspectors under the legislation and therefore continue to enjoy right of access.

What about older people who don't have access to computers, the library?
How can we ensure they continue to have access to council proceedings?

The Office of Local Government has changed provisions for council meetings in the legislation and councils are required to conduct their meetings under these rules.

The community is able to access council proceedings under those provisions. Further guidance will be provided on the need to provide hard copies of documents put on public exhibition under the LG Act.

ENDS