



THE PADDINGTON SOCIETY
FOR COMMUNITY AND HERITAGE
EST 1964

Ms Kiersten Fishburn
Secretary
Department of Planning, Housing and Infrastructure

Via the NSW Planning Portal

Dear Ms Fishburn,

Standard and Model Conditions of Consent for Residential Development

I am writing to make a submission on behalf of The Paddington Society regarding the Department's proposal to introduce standard and model conditions of consent across NSW.

The Society acknowledges the Department's desire to introduce standard and model conditions of consent that could make development approvals more consistent, transparent and easier to understand. There is much to commend in those three objectives.

Worthwhile as those objectives are, it is important also to recognize that development that gives effect to the objectives of the *Environmental Planning and Assessment Act* will often require the use of site-specific and development-specific conditions of consent.

The Society is therefore pleased to see that the Department's proposal enables consent authorities to continue to attach 'bespoke' conditions to any development consent. As residential development is by far and away the most common form of development in NSW, this is particularly important. In short, the ability to apply bespoke conditions of consent must remain a fundamental part of the planning and development control system in NSW.

Consultation with applicants on draft conditions of consent

This part of the proposal needs to be viewed in light of the NSW Government's draft Community Participation Plan. The draft plan effectively 'guts' community participation in relation to various forms of development. The Society wrote to the Department expressing great concerns about the withdrawal of community involvement in development control decisions. Oddly, if the plan is adopted, it will take NSW back, in substantial measure, to the situation that prevailed in the 1970s before the Act was introduced. It needs to be remembered that one of the reasons for the Act was to provide for greater public input to the planning and development process.

The current proposal would require consent authorities to consult with applicants for at least seven days in relation to proposed conditions of consent. Consistent with the draft Community Participation Plan, there is no reciprocal right for the community to comment on proposed conditions of development consent.

If, as seems likely, the Plan is finalised and applied, there should be some opportunity for local communities to provide comment on proposed conditions of consent. After all, at that point, the consent authority would have reached a threshold view as to whether the development in question should be approved. The Government's concerns about delays arising from public participation at the assessment stage would be moot, as there would have been only very restricted consultation on non-compliant applications. However, the local community, including neighbours adjoining and close

to a proposed development, should at least have had some opportunity to influence the conditions of consent.

If that proposal is not accepted by the Department and the Government, the Society believes that, at least:

1. Draft conditions of consent shared with applicants should be published on the Planning Portal
2. Amendments to those conditions requested by the applicant should be published on the Planning Portal
3. The final conditions of consent should also be published on the Planning Portal.

Given developments in IT and AI systems, that process can surely be pursued without any undue administrative burden. Moreover, as noted earlier, the EIE's executive summary states expressly that transparency is one of the reasons for proposing standard model conditions of consent. That is a worthwhile objective; however, the process needs to provide the mechanism to achieve that outcome. Publication of those three points in the finalisation of conditions of consent supports a transparent planning system.

To be clear, under this proposal, there would be no opportunity for individuals other than the applicant to ask for changes to the proposed conditions. What it would do is assist the community in understanding the details of how the planning system is working, both in a particular case and over time, e.g. following a broader review at either the level of individual council or across the state about how draft consents are (or are not) being modified before a consent is finalized.

We recommend that the public has an opportunity to object to, and/or comment on, the draft conditions. This should not prolong the process but will give Council a fuller picture on the impacts for their assessment, which will therefore be more balanced.

More generally, Section 6 of the *Explanation of Intended Effects* (EIE) is a little confusing. On one reading, it seems to be suggesting merely that certain functionality in the NSW Planning Portal would be removed to enable councils to use their own internal systems for copying the terms of model. However, the EIE refers to other housekeeping changes; it is unclear what that might mean.

Comments on draft model conditions

The Society is pleased to see that in many, though not all cases, the draft conditions in Attachment A and Attachment B to the EIE allow for a consent authority to insert a condition setting out additional requirements.

However, some helpful model conditions appear to be missing.

For example, Condition C5 in Attachment A deals with the preparation of a wall dilapidation report at the pre-construction stage. It makes no reference to excavation associated with the development, or other ground conditions, that might cause damage to adjoining public or private properties or public infrastructure. In Paddington, excavation of sites on which there is terrace housing is not uncommon. It poses the same or greater risks of property damage as erecting a wall. The Society believes that the preamble to this model condition (highlighted in blue) in Attachment A should use the same wording as that used for condition C8 in Attachment B. This is because the preamble in the Attachment B condition is broader.

If that is not acceptable, the preamble to Condition C4 in Attachment A should be re-worded to include a reference to excavation.

We also consider that it would be helpful to have model conditions on heritage (eg on fabric, future detail, future heritage oversight), in addition to bespoke conditions on heritage. The Society recommends that DPHIE seek Heritage NSW advice on whether model conditions for heritage items and in Heritage Conservation Areas are appropriate. Such conditions would provide consistency and assist smaller regional Councils.

Certifiers

Sadly, experience in the planning and development sector has shown that some private certifiers do not necessarily discharge their legal and public interest responsibilities in a dispassionate manner; it appears that some may be inclined to interpret conditions and other requirements in a manner that supports a developer's or builder's interests rather than the public interest which is trying to be protected through consent conditions.

The Society notes that, in the great majority of cases, the model conditions refer to a "Certifier". The Society believes that it must be open to consent authorities to determine whether the consent authority itself is the certifier, or to leave it open to the applicant to decide who shall be the certifier for a development.

Statutory Review of the SEPP

Like any administrative instrument, the SEPP should be subject to a periodic administrative review of its effectiveness.

The Society suggests that a period of two three years is appropriate, given the importance and potential impacts of the reforms.

Thank you for the opportunity to make a submission on this matter.

Yours faithfully

A handwritten signature in black ink, reading "Esther Hayter". The signature is written in a cursive, flowing style.

Esther Hayter

President - The Paddington Society - Tel: 0411 109 770

30 July 2026