

# Submission on Proposed Environmental Planning and Assessment Regulation 2021

September 2021

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities.

LGNSW welcomes the update of the current Environmental Planning & Assessment (EP&A) Regulation 2000 and the opportunity to comment on the proposed Environmental Planning & Assessment Regulation 2021 (proposed Regulation 2021). New and additional issues have arisen in the four years since the initial consultation<sup>1</sup> which may not have been included in councils' original 2017 submissions. There has been a lot of change - legislative amendments, increasing digitalisation and e-Planning roll-out, new processes and cost movements, and still more planning reforms on the horizon which will necessitate further regulation amendments.

This consultation comes at a time when councils are responding to and/or gearing up to implement a raft of planning system reforms. Local government staff are stretched, and many have been unable to make a written submission on the proposed 2021 Regulation. This should not necessarily be interpreted as lack of interest from councils or assumed support in all areas.

LGNSW wishes to emphasise the local government sector's broad support for the intent of the proposed new regulation changes to modernise and improve planning processes. However, as discussed in this submission, there are opportunities to make additional improvements that would help address ongoing issues for councils and further improve development and building outcomes. These are in the following areas:

- council fees and charges, in particular compliance funding;
- certain aspects of the development application (DA) process to improve quality and assist the assessment process;
- issues with complying development and building regulation, particularly unauthorised development and the Building Information Certificate process; and
- opportunities for ensuring better identification and management of asbestos and waste during development.

These are discussed in **sections a) to g)** of this submission, with specific comments on selected parts and clauses in the proposed regulation provided in tables at **Appendix 1** and **Appendix 2** (comments tailored to asbestos-related improvements).

This submission is informed by LGNSW annual conference resolutions, our Policy Platform, and input from councils. It does not cover certain other matters currently under review by the NSW Department of Planning, Industry and Environment (DPIE) which LGNSW understands will involve further amendments to the regulation in due course.<sup>2</sup>

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<sup>1</sup> *Environmental Planning & Assessment Regulation 2000 – Issues Paper*

<sup>2</sup> These include: review of clause 4.6 of the Standard Instrument (relating to variations to development standards); introduction of standard conditions of consent; proposed infrastructure contributions reforms; and the standard DCP template.

This submission was endorsed by the LGNSW Board in October 2021.

## LGNSW Response

### a) Fees and charges in general

LGNSW's Policy Platform sets out the consolidated advocacy positions of the local government sector, guided and amended by resolutions of the LGNSW Annual Conference.

In line with our Policy Platform<sup>3</sup>, LGNSW seeks greater autonomy for councils in determining fees and charges. The proposed 2021 Regulation is an opportunity to address constraints on councils' financial sustainability in delivering planning and development services and performing their compliance responsibilities. It is LGNSW's position that a comprehensive review is needed and substantial adjustment to the suite of fees and charges available to councils to support delivery of these services and functions. The principal focus in the first instance should be a holistic review of compliance funding. (Refer to section c) below.)

LGNSW acknowledges that the proposed 2021 Regulation includes changes to allow for minor adjustments in fixed fees each year, to account for movements in the consumer price index (CPI) and the existing fees will be increased to account for CPI increases since the last CPI adjustment was made to the 2000 Regulation in 2011.<sup>4</sup> This proposal is a welcome first step. However, a more comprehensive review of local government fees and charges is needed which would allow councils to be able to charge statutory fees on a user pays/cost recovery basis when providing certain development services, such as Building Information Certificates (refer to section d)).

**Recommendation 1:** *That the NSW Government commit to review fees and charges during 2022, in consultation with local government, to enable fees and charges in the Regulation that support delivery of certain council services and functions to be made on a cost recovery/user pays basis where appropriate.*

### b) Issues with complying development

LGNSW's position on complying development has been well-documented and is clearly stated in our Policy Position<sup>5</sup>. Complying Development was initially for relatively low-impact residential and commercial alterations and additions, but it has been progressively expanded to encompass more complex, multi-million-dollar building projects.

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<sup>3</sup> LGNSW 2021 Policy Platform, Policy Position 1.2

<sup>4</sup> DPIE, *Draft Environmental Planning and Assessment Regulation - Regulatory Impact Statement*, p 43

<sup>5</sup> LGNSW advocates for: Complying development to be limited to low risk or low impact development, with clearly defined parameters. (LGNSW Policy Position 9.6)

The current scope and complexity of development that can be carried out as Complying Development is too extensive and causes issues for councils such as:

- Impacts on local amenity - changing local character of streets and suburbs
- Community complaints – council officers are increasingly being required to intervene to address concerns by residents affected by the impacts of complying development.
- Compliance and enforcement - increasingly, councils are being forced to act as the intermediary between disgruntled residents and proponents, builders, contractors and certifiers.
- Unpaid infrastructure contributions for complying development certificates which are issued by private certifiers.

Councils can provide countless examples of these and other issues created by the expansion and complexity of Complying Development. Their submissions identify where and how development and building outcomes in the Complying Development pathway can be improved and recommend detailed amendments in the 2021 Regulation. LGNSW requests that DPIE have regard to councils' feedback and also consider the comments in Appendix 1 of this submission.

In short, local government wishes to see certain provisions amended or included in the 2021 Regulation to address many of the shortfalls of the Complying Development system which have existed and perpetuated for many years. These changes are needed to improve development and building outcomes and to better support councils to meet their service delivery and compliance responsibilities.

***Recommendation 2:*** *To improve development and building outcomes and better support councils to meet their service delivery and compliance responsibilities the 2021 Regulation must be amended to include specific provisions to address the shortfalls of the Complying Development system as recommended by LGNSW and councils.*

### **c) Compliance levy - cost and funding of compliance and enforcement**

A resolution at the 2020 Local Government Annual Conference specifically calls for amendments to the EP&A Regulation 2000 for a compliance levy on all development and complying development applications:

**Resolution 77 - Amendment to Clause 263 of the EP&A Regulation 2000**

That clause 263 of the Environmental Planning and Assessment Regulation 2000 be amended to include the following additional clause (7) - A council may impose a compliance levy of 0.2% of the Capital Investment Value of a proposed development with a minimum levy of \$75 payable on all development and complying development applications upon lodgement of an application in the NSW planning portal.

A matter of significant concern to the local government sector is the regulation change<sup>6</sup> made in July 2021 that prohibits councils the option of charging a compliance levy on developments

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<sup>6</sup> Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021

to help pay for their ongoing compliance responsibilities. LGNSW and councils have made representations to the Minister for Planning and Public Spaces on this issue and DPIE staff are aware of the sector's position.

While the NSW Government has recently introduced a compliance levy on developers to support the oversight of its compliance work (ie being undertaken by the Office of the NSW Building Commissioner and NSW Fair Trading), similar provisions have not been afforded to local government. Councils need a mechanism to enable them to properly and fairly recover the costs of their compliance activities, in the same way that the State Government has justified the introduction of its compliance levy.

The proposed 2021 Regulation provides an opportunity to address this disparity, by introducing a provision that would allow councils to charge a compliance levy on development applications (DAs) or construction certificates (CCs). This would assist councils to fund and resource compliance with development consents, construction certificates and complying development certificates.

LGNSW notes the proposal for a levy on complying development certificates (CDCs) as a means of partially addressing the compliance funding shortfall. This proposal is an acknowledgement that DPIE recognises that some sort of compliance funding support is needed. The sector questions why the Department considers it suitable to impose a levy on CDCs but not on DAs.

The charging of a levy on DAs or CCs is a simple and cost-effective means of ensuring strong regulation is achieved. As referred to in Appendix 1, this could be done by amending the Regulation as proposed in the above Conference Resolution #77.

**Recommendation 3:** *That the NSW Government introduce a compliance levy on all Development Applications or Compliance Certificates – analogous with that which has been legislated for the NSW Building Commissioner - to support local government's expanding compliance responsibilities, and that provisions for this levy be included in the new 2021 Regulation.*

#### **d) Unauthorised development and Building information certificates**

At the 2020 LGNSW Annual Conference, councils resolved:

##### **Resolution 70 - Unlawful Development**

That Local Government NSW lobbies the NSW Government to amend:

1. Part 15 of the Environmental Planning and Assessment Regulation 2000 to include a provision which enables a fee to be charged for a development application which seeks approval for the use of an unauthorised development that is at least the combined development application and certification work fees that would be payable for the same development if it had been commenced lawfully.

2. Section 7.12 of the Environmental Planning and Assessment Act 1979 to enable a condition to be imposed within a development consent that requires the applicant to pay a levy of the percentage of the value of the unauthorised development which the consent permits the continued use of.

Detailed comments are provided in Appendix 1.

It is LGNSW's position that the prescribed fees that apply to the making of an application for a Building Information Certificate are inadequate and not reflective of the costs involved in issuing these certificates. The information needed to assess illegal works is often not readily available. The prescribed fees in the Regulations fall far short of the actual cost to councils and importantly, do not provide any disincentive for unauthorised work.

A review of the framework for managing unauthorised development through the Building Information Certificate process is needed. Councils are concerned that current provisions for Building Information Certificates essentially enable unauthorised building work to remain as constructed and perpetuate poor building practice. In doing so they undermine current reforms which are driving improvements to building industry practices and improved outcomes for future owners and occupants. LGNSW and councils have raised the issue with the NSW Building Commissioner.

Fees for building information certificates should provide for full cost-recovery in all cases. Further, if the building work to which the Certificate relates does not have the relevant required approvals (DA/CDC/CC/OC<sup>7</sup>), additional fees should apply – this should provide a deterrent for developers and builders that proceed to undertake unauthorised work or variations to building work, without obtaining the necessary consents and certification.

**Recommendation 4:** *That the NSW Government commit to review the framework for managing unauthorised development with particular attention to the Building Information Certificate process, to allow councils full cost recovery for these certificates and to improve outcomes for future owners and occupants by introducing deterrents against unauthorised work.*

## e) Ensuring quality development applications

Councils have observed issues with the quality of information being submitted with development applications (DAs) since commencement of DA lodgement via the Planning Portal. The lack of contact with the applicant is making it increasingly difficult to ensure that DAs include all the required information for a complete application to enable proper and adequate assessment.

The Regulatory Impact Statement (RIS) notes that as part of the remake of the Regulation, the DA requirements that are currently set out in Schedule 1 of the 2000 Regulation will be

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<sup>7</sup> Occupation Certificate

transferred across to the 'approved form', which is located on the Planning Portal. The RIS also notes that once the new Regulation is made, DPIE intends to consult councils to develop improvements to the approved form.

Councils advise that consultation and review of the approved form (Schedule 1 in the current Regulation) is required as a matter of priority. Without improvements to address the issues councils are observing with the quality and completeness of applications, there is a risk that the poorer quality of DAs will undermine objectives to improve assessment times.

LGNSW and councils request that DPIE prioritise this review as soon as the Regulation is made in March 2022.

**Recommendation 5:** *That as soon as the Regulation is made in March 2022, DPIE prioritise its intended consultation with councils to review the 'approved form' (Schedule 1 of the current Regulation 2000), with a view to ensuring that online DA lodgement via the Planning Portal is maintained to a high standard and assessment times are not compromised by poor quality applications.*

#### **f) Ensuring better consideration of waste management**

Councils play a lead role in providing waste, recycling and resource recovery services to the community. At the same time, they continue to face significant challenges from increasing waste generation. The *Waste and Sustainable Materials Strategy 2041* will help guide NSW in achieving the ambitious target of an 80% recovery rate from all waste streams by 2030 through the implementation of multiple strategic priorities.

The proposed Regulation 2021 presents an opportunity to ensure that the NSW Government can work collaboratively with local government to implement these strategic waste priorities. Firstly, by embedding the principles of Circular Economy within the document, alongside those of Ecologically Sustainable Development it is anticipated that these could collectively inform future environmental assessments. Furthermore, by recommending the use of templated tools to improve the manner in which waste servicing of new development applications is documented it is anticipated that such a process would maximise resource recovery in local communities.

##### ***Principles of Circular Economy***

Division 5 of Part 8 (Infrastructure and environmental impact assessment) refers to the methodology and content of environmental assessments. It also references the principle of Ecologically Sustainable Development (ESD) as a primary consideration that should underpin the assessment process to ensure the prioritisation of positive environmental outcomes.

LGNSW sees an opportunity to strengthen the assessment process and better achieve these desired outcomes by also including a reference to the NSW Circular Economy Policy Statement 2019. The Policy Statement sets the ambition and approach for a circular economy

in NSW and highlights the need to embed circular economy considerations in NSW Government decision making, incorporate circular economy principles in NSW Government policies and strategies and assist with planning the transition to a circular economy.

The proposed Regulation 2021 offers a strategic opportunity for all levels of government to work together as we move towards a more circular economy.

### ***General Comments on development applications and waste considerations***

Waste servicing for development applications is an important and often complex process for councils. The *Waste and Sustainable Materials Strategy 2041* sets out priorities for organic waste diversion and the kerbside collection service will likely continue to represent a crucial tool in achieving mandated separate collection of food and garden organics for all NSW Councils by 2030. This will result in an increase of kerbside bins for many residential properties, coupled with other challenges such as ensuring access to bin storage precincts and ensuring accessibility for collection vehicles. Such important considerations all suggest a need for robust and standardised waste servicing plans to be designed alongside the development application.

There is evidence to suggest that where councils utilise standardised templates to obtain the required information around waste servicing for development applications, this not only improves the quality of the application but also limits the need for repeated correspondence to resolve issues, saving time for both the applicant and the council.

LGNSW advocates for a non-mandated, standardised template to allow for consistency across councils in the way that this information is captured. It is recommended that site plans should include waste storage area(s), collection location(s) and access/egress pathways. This will not only streamline the process for applicants but give greater surety to council and communities that waste services can be managed appropriately into the future given the context of strategic and often long term priorities.

LGNSW advocates for a clear waste policy direction for local government with regulatory certainty, achievable targets, implementation and funding pathways for delivery. The proposed 2021 Regulation, including incorporation of the LGNSW recommendation below, has the capacity to help inform this policy direction and therefore better enable councils to meet the strategic targets contained in both the Circular Economy Policy Platform 2019 and the Waste and Sustainable Materials Strategy 2041.

***Recommendation 6:*** *That DPIE consider the inclusion of Circular Economy as a guiding principle within the Regulation and that in practical terms options to include waste servicing plans for new developments be considered in order to improve customer experience, limit the administrative burden on councils and achieve good waste management outcomes that benefit communities and the environment.*

## **g) Ensuring better identification and management of asbestos during development**

Asbestos waste is produced during construction and demolition activity. Consent to undertake construction and demolition is regulated through the planning system which includes the current Environmental Planning and Assessment Regulation 2000. The review and amendment of this Regulation is an opportunity to help improve the way that asbestos is managed in NSW.

Many councils think the codes and regulations around asbestos and development could be strengthened and that certifiers could do more to ensure asbestos is identified, removed and disposed of legally and safely. One consequence of this not happening properly is the illegal dumping and illegal disposal of asbestos waste. Another consequence is the contamination of recycling material with asbestos waste.

There are inconsistencies and insufficient detail in the proposed Regulation 2021 on the lawful requirements for the identification and management of asbestos during development, leading to potential confusion and community dissatisfaction.

There is evidence<sup>8</sup> that applicants for development are largely unaware of the presence of asbestos when considering and planning for development. The research also shows that where unexpected finds of asbestos occur (once development has commenced) this can lead to unlicensed removal and illegal dumping. Councils are significantly affected by the dumping of asbestos, leading to public health risks and significant clean-up costs.

Before development is approved, applicants for development need more help in identifying asbestos and declaring it to consent authorities, to ensure they better plan for the lawful removal and disposal of asbestos. The requirement to identify asbestos before applying for development is not specified at all within the proposed Regulation 2021, and this is a clear shortcoming.

However, the conditions that can be applied to managing asbestos within complying development (once the asbestos has been identified) are sufficient but should be extended to all development covered within the proposed Regulation 2021, not just complying development certificates.

Finally, it is not clear what the penalties are, or if there are any penalties at all, for applicants who fail to declare and manage asbestos lawfully or for consent authorities that fail to enforce asbestos related conditions.

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<sup>8</sup> [2018 National asbestos awareness and attitudes survey, Asbestos Safety and Eradication Agency.](#)

[NSW Asbestos Waste Strategy 2019-21, Environment Protection Authority](#)

**Appendix 2** contains is list of the changes that could be made to improve how asbestos is regulated under the proposed Regulation 2021.

**Recommendation 7:** *That DPIE consider inclusion of additional provisions as recommended in Appendix 2 of this submission to improve how asbestos is regulated under the proposed Regulation 2021.*

## **h) Proposed new Development Certification and Fire Safety Regulation**

It is noted that DPIE proposes to separate out provisions of the 2000 Regulation that are made under Part 6 and section 10.13(1)(d) of the EP&A Act, and transfer these to a new proposed Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (the 'Development Certification and Fire Safety Regulation').

The RIS notes that the Development Certification and Fire Safety Regulation has not yet been made, but is expected to be made before the proposed 2021 Regulation is made.<sup>9</sup> The proposal to simply remove and transfer these provisions into a new regulation precludes councils the opportunity to provide comment on or suggest improvements to these current provisions. Further, without this new draft 'Development Certification and Fire Safety Regulation' available for councils to review, they are unable to fully understand how these provisions might work alongside the proposed Regulation 2021.

Councils would appreciate the opportunity to review and comment on the draft *Development Certification and Fire Safety Regulation* before it is made.

**Recommendation 8:** *That DPIE provides councils the opportunity to review and make comment on the new and separate draft Development Certification and Fire Safety Regulation before it is made.*

## **Summary of Recommendations**

**Recommendation 1:** *That the NSW Government commit to review fees and charges during 2022, in consultation with local government, to enable fees and charges in the Regulation that support delivery of certain council services and functions to be made on a cost recovery/user pays basis where appropriate.*

**Recommendation 2:** *To improve development and building outcomes and better support councils to meet their service delivery and compliance responsibilities the 2021 Regulation*

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<sup>9</sup> Draft Environmental Planning and Assessment Regulation - Regulatory Impact Statement, p 12

*must be amended to include specific provisions to address the shortfalls of the Complying Development system as recommended by LGNSW and councils.*

**Recommendation 3:** *That the NSW Government introduce a compliance levy on all Development Applications or Compliance Certificates – analogous with that which has been legislated for the NSW Building Commissioner - to support local government’s expanding compliance responsibilities, and that provisions for this levy be included in the new 2021 Regulation.*

**Recommendation 4:** *That the NSW Government commit to review the framework for managing unauthorised development with particular attention to the Building Information Certificate process, to allow councils full cost recovery for these certificates and to improve outcomes for future owners and occupants by introducing deterrents against unauthorised work.*

**Recommendation 5:** *That as soon as the Regulation is made in March 2022, DPIE prioritise its intended consultation with councils to review the ‘approved form’ (Schedule 1 of the current Regulation 2000), with a view to ensuring that online DA lodgement via the Planning Portal is maintained to a high standard and assessment times are not compromised by poor quality applications.*

**Recommendation 6:** *That DPIE consider the inclusion of Circular Economy as a guiding principle within the Regulation and that in practical terms options to include waste servicing plans for new developments be considered in order to improve customer experience, limit the administrative burden on councils and achieve good waste management outcomes that benefit communities and the environment.*

**Recommendation 7:** *That DPIE consider inclusion of additional provisions as recommended in Appendix 2 of this submission to improve how asbestos is regulated under the proposed Regulation 2021.*

**Recommendation 8:** *That DPIE provides councils the opportunity to review and make comment on the new and separate draft Development Certification and Fire Safety Regulation before it is made.*

\* \* \*

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Strategy Manager, Planning at [jane.partridge@lgnsw.org.au](mailto:jane.partridge@lgnsw.org.au) or on 02 9242 4093.

## Appendices – Specific comments on selected parts and clauses

### Appendix 1 Specific comments on Proposed Regulation 2021

Proposed section	LGNSW comment
<p><b>Part 3 Development applications</b></p> <p><b>Division 1 Making development applications</b></p> <p>Clause 24</p> <p>Content of DAs</p>	<p><i>Refer to comments in sections e), f) and g) of this submission.</i></p> <p>Councils have issues with the quality of information being submitted with online lodgement of DAs via the Planning Portal.</p> <p>Consultation and review of the approved form (Schedule 1 in the current Regulation) is urgently required and should be prioritised to ensure that poor quality DAs being lodged via the portal do not undermine objectives to improve assessment times.</p> <p><u><i>Waste management considerations</i></u></p> <p>Use of templated tools can improve the manner in which waste servicing is considered and documented in DAs, to maximise resource recovery in local communities. <i>Refer to section f) of this submission for detailed comments about consideration of waste management in the development process.</i></p> <p><u><i>Asbestos considerations</i></u></p> <p><i>For specific comments about ensuring better identification and management of asbestos during development, see comments in section g) and Appendix 2 of this submission.</i></p>
<p><b>Part 8 Infrastructure and environmental impact assessment</b></p> <p>(Clauses 175, 176)</p> <p>Infrastructure and environmental impact assessment</p>	<p><i>See comments in section f) of submission regarding waste management and provisions for Principles of Circular Economy.</i></p>
<p><b>Part 6 Complying development</b></p> <p>Compliance levy</p>	<p>There are no details in the proposed Regulation or the RIS about proposed <u>compliance levy reforms</u> for a new Complying Development Certificate (CDC) Levy and improved Compliance Cost Notices (CCNs).</p> <p>The Regulations need to be amended to address compliance funding, and as discussed earlier in this submission, a comprehensive review is recommended for a compliance levy on development to support councils to ensure adequate oversight and resourcing of statutory and regulatory responsibilities.</p> <p>It is essential that DPIE clarifies details of the proposed CDC levy and engages with LGNSW and councils to address the broader question of compliance funding.</p>

<p><b>Part 14 Miscellaneous</b></p> <p><b>Division 4 Development control, orders</b></p> <p>Clause 262 - Compliance cost notices</p>	<p>LGNSW and councils have previously advised DPIE and the Minister about the issues with the practical application and operation of compliance cost notices. CCNs are onerous and unworkable, and councils consider that the relatively minor changes in the proposed 2021 Regulation do not address these issues.</p> <p>Following introduction of the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021 in July 2021, the only cost recovery mechanism now available to councils is through Compliance Costs Notice provisions.</p> <p>It is impractical and unworkable to expect councils to rely on the limited funds and onerous administration, invoicing, accounting and debt recovery functions involved in the CCN system of compliance cost recovery. As stated above, this needs to be part of an immediate and wider comprehensive review to agree on a fair and workable framework for supporting councils' compliance activities.</p>
<p><b>Schedule 3 Planning certificates</b></p>	<p>The intent to streamline and restructure planning certificates is supported, but councils have raised concerns about the burden that the changes to planning certificates put on councils.</p> <p>As noted in the RIS, the proposed 2021 Regulation will require councils to amend their planning certificate templates and the data that sits behind these templates. They will need sufficient lead-time, financial support and guidance for implementing the changes.</p> <p>The March 2022 deadline will be a tight and possibly inadequate timeframe for some councils. LGNSW notes that the RIS acknowledges the need for a transitional period between the making of the proposed 2021 Regulation and the commencement of the provisions.</p> <p>It is recommended that this transitional period would allow councils to issue certificates under either the old or new structure. This would provide a fallback position if councils encounter any technical or other issues that could delay implementation of the new certificate structure on the day the new Regulations take effect.</p> <p>It is understood the Department is currently considering a standard template for planning certificates, with further consultation to be undertaken with Councils in 2022. LGNSW requests that councils be notified and provided the opportunity to provide feedback on any standard template, particularly given the above comments and concerns about complexity and the burden on councils.</p>
<p><b>Part 13 and Schedule 4</b></p> <p><b>Fees</b></p> <p>Compliance levy</p>	<p><i>Refer to detailed comments in section c) of this submission.</i></p> <p>Provisions must be included in the 2021 Regulation to enable councils to charge compliance levies on DAs or CCs to support their expanding compliance responsibilities.</p> <p>There is no reference in the proposed 2021 Regulation to the proposed CDC levy or any other fee structure for councils to fund and resource compliance with development consents, construction certificates and complying development certificates.</p>

<p><b>Building information certificates</b></p> <p>Clauses 248 and 264 – Other fees - References to Building Information Certificates</p> <p>Schedule 4 Fees</p> <p>Part 9 Other fees</p> <p>Item 9.4</p>	<p><i>See also comments in section d) of this submission.</i></p> <p>There are no regulated fees for Building Information Certificates in the proposed 2021 Regulation i.e. no equivalent provision to clause 260 of the current Regulation relating to fees for Building Information Certificates.</p> <p>LGNSW recommends the DPIE replicate provisions in the current Regulation which allow a council to charge additional fees where an application for a Building Information Certificate is made in certain circumstances (set out in cl. 260(3A) as provided for in cl. 260(3B)). These provisions allow councils to “regularise” building work that has been carried out without obtaining, or contrary to, the requisite development consent, construction certificate or occupation certificate.</p> <p>Further, it is unclear how clause 264 of the proposed Regulation is intended to interact with other provisions for Building Information Certificates that appear likely to transfer to the new Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. These matters need to be clarified prior to introduction of the Regulations.</p>
<p><b>Part 13 and Schedule 4 Fees</b></p> <p>Unauthorised Development and building information certificates</p>	<p><i>Refer to above and also detailed comments in section d) of this submission.</i></p> <p>Amend proposed Regulation 2021 to enable:</p> <ul style="list-style-type: none"> <li>• fees for building information certificates to provide for full cost-recovery.</li> <li>• additional fees to apply for BICs for building work to which does not have the relevant required approvals (DA/CDC/CC/OC). Much higher fees are needed to provide a deterrent for developers and builders who undertake unauthorised work or variations to building work, without obtaining the necessary consents and certification.</li> </ul>
<p><b>Part 13 and Schedule 4 Fees</b></p> <p>State significant development (SSD) and state significant infrastructure (SSI) - Council review and input to assessment</p>	<p>Many councils, particularly those in rural and regional areas where concentrations of state significant development (mining and resource development) take place, are limited in their capacity to resource the review and assessment of these projects, support advocacy and seek improved outcomes for communities. Council costs to provide this type of advice and input to the assessment process include staffing and consultants (where specialist advice is required).</p> <p>At the 2020 LGNSW Annual Conference, councils resolved:</p> <p><b>Resolution 79 - SSD and/or SSI assessment process</b></p> <p>That Local Government NSW lobbies the Department of Planning, Industry and Environment to support local councils in the provision of advice into the State Significant Development (SSD) and/or State Significant Infrastructure (SSI) assessment process through the:</p> <p>a. Inclusion of fees for the reasonable costs incurred by a council for the review of SSD and SSI in the schedule of fees listed in Part 15, Division</p>

	<p>1AA and/or Division 2 of the Environmental Planning and Assessment Regulation 2000; and</p> <p>b. Establishment of a council inter-agency committee to assist and support local councils in the provision of advice into the assessment process.</p> <p>Some financial support, through legislative application of reasonable cost fees, would assist councils continue to provide important advice and input on SSD/SSI applications.</p> <p>It is recommended that fees for councils to recover some of the reasonable costs incurred for the review of SSD and SSI be included in Part 13 of the proposed Regulation. Consideration should also be given to establish a council inter-agency committee to assist and support local councils in the provision of advice into the assessment process</p>
<p><b>Part 6 Complying development</b></p> <p><b>Division 5 Conditions of CDCs</b></p> <p>Clause 142 – Development contributions</p>	<p>Recovery of unpaid development contributions for CDCs issued by private certifiers is a key issue for councils. They constantly have to follow up unpaid development contributions for CDCs issued by private certifiers after the work approved by the CDC has commenced.</p> <p>Clause 142 should be redrafted to require payment of development contributions prior to the issue of the CDC (as opposed to payment prior to the commencement of work).</p> <p>In addition, as an incentive to ensure the required contributions are paid to council at the appropriate time, there should be provisions included in the Regulation for councils to issue a Penalty Notice to the applicant and certifier if contributions are not paid upon commencement.</p>

## Appendix 2 Suggested inclusions for better asbestos management

Proposed section	LGNSW comment (Asbestos)
Part 3 Development applications	Recommend that applicant must declare upon application the estimates amount or presence of asbestos to be removed or disturbed as part of the development.
Division 1 Making development applications	Recommend applicant must provide written report from competent person (in line with the Work Health & Safety Regulation 2017 Requirements) identifying the presence or absence of asbestos.
Part 4 Determination of development applications	Add requirement that consent authority must consider the presence of asbestos in determining the development application and the subsequent regulatory requirements for asbestos identification, asbestos removal and disposal of asbestos.
Division 1 Determination of development applications	
Division 2 Conditions of development consent—the Act, s 4.17(11)	Add a condition stating asbestos identification and removal requirements, see s 136E for recommended conditions of consent for development with consent.
Part 5 Modification of development consents	Content of modification application must include information on amount of asbestos to be removed or disturbed as part of the modified development application.
91 Content of modification applications (cl 115 2000 Reg)	Recommend applicant must provide written report from competent person (in line with the Work Health & Safety Regulation 2017 Requirements) identifying the presence or absence of asbestos.
Part 6 Complying development	Recommend that applicant must declare upon application the amount of asbestos to be removed or disturbed as part of the development.
Division 1 Applications for complying development certificates	Recommend applicant must provide written report from competent person (in line with the Work Health & Safety Regulation 2017 Requirements) identifying the presence or absence of asbestos.
Part 6 Complying development	Recommend inclusion that certifier can request from applicant written report from competent person (in line with the Work Health & Safety Regulation 2017 Requirements) identifying the presence or absence of asbestos.
Division 2 Determination of applications for complying development certificates	
Part 6 Complying development	Recommend adding specific section on asbestos identification, removal and disposal requirements.
Division 3 Issue of complying development certificates	
Part 6 Complying development	Recommend to support section 138 (note this was s136E in EP&A Reg 2000)

<p>Division 5 Conditions of complying development certificates</p> <p>138 Development involving asbestos material (cl136E 2000 Reg)</p>	
<p>Schedule 3 Planning certificates (cl 279 and Sch 4 2000 Reg)</p>	<p>Recommend that planning certificates also include a section to indicate the presence of asbestos, where council or the planning authority becomes aware of the presence of asbestos (in addition to the loose fill asbestos requirements). Eg: asbestos in building, or on/in soil.</p>
<p>Schedule 5 Penalty notice offences</p>	<p>Recommend including penalty notice in relation to asbestos declaration and conditions.</p>
<p><b>Deleted sections of Environmental Planning and Assessment Regulation 2000</b></p>	<p>The DA requirements currently contained in Schedule 1 of the 2000 Regulation have been deleted from the proposed Regulation 2021 and will be transferred to the 'approved form' for development applications and complying development applications, located on the Planning Portal.</p> <p>As stated in this submission (section e)) a review of the content of the 'approved form (currently in Schedule 1) should be a priority. From the perspective of ensuring better identification and management of asbestos during development, councils want to be confident that applicants will be asked the necessary questions to assist with determining what conditions must be included in consents.</p>