Fairfield City Council

Submission to the Proposed NSW Planning Legislation Changes

31 March 2017
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INTRODUCTION

On 10 January 2017, the NSW Department of Planning and Environment (DP&E) released a draft NSW Government Bill for public consultation. The draft Bill and associated documents are proposing changes to the NSW Planning System through the Environmental Planning and Assessment Act 1979 (EP&A Act).

Submissions on the proposed NSW Legislation changes are due to DP&E by 31 March 2017.

A report (Attachment A) was presented to Council’s Outcomes Committee on 14 March 2017 detailing comments and issues associated with the proposed legislation changes. As a result, Council at its meeting on 14 March 2017 resolved the following:

That Council endorse the issues raised in the report as the basis for making a submission to the Department of Planning and Environment’s proposed NSW Planning Legislation changes.

The content of the Outcomes Committee report has provided the basis for Council’s submission on the proposed NSW Planning Legislation changes.
RESPONSE TO PROPOSED PLANNING LEGISLATION CHANGES

A. Enhancing community participation

The proposed legislation changes will require planning authorities to prepare community participation plans explaining how the authority will engage the community in plan-making and development decisions.

Each planning authority under the EP&A Act will have to prepare a community participation plan. The plan will explain how the authority will engage the community in plan-making and development decisions. This obligation will apply all local councils, NSW Government agencies that are planning authorities under the EP&A Act and the Secretary of the Department of Planning and Environment.

Comments
Council currently has a Community Engagement Strategy as required under the Local Government Act 1993 which identifies broadly how council will engage with the community in developing the City Plan. Council also has a section within the Fairfield City Wide Development Control Plan which guides how Council will consult on development applications.

This amendment requires Councils to prepare a broad community participation plan for how Councils consult with the community on all planning matters, including Planning Proposals and Development Applications.

The requirement for a community participation plan is generally supported, however, there is some uncertainty regarding details to be included in these plans, timing of when plans are to be prepared, resources and if funding is available from the DP&E.
B. Completing the strategic planning framework

Local Strategic Planning Statements
The proposed legislation changes will require councils to develop and publish Local Strategic Planning Statements which will explain how strategic priorities at the regional and/or district level are given effect at the local level through LEPs and DCPs. Figure 1 below outlines where the Local Strategic Planning Statement would fit within the current planning system.

![Figure 1](image)

Local Strategic Planning Statements will be developed by councils in consultation with the community, and will tell the story of the local government area and set out the strategic context within which the LEP has been developed (including the rationale behind the application of zones and development controls), explain how strategic priorities at the regional and/or district level are given effect at the local level and incorporate and summarise land use objectives and priorities identified through the council’s Community Strategic Plan process.

Comments
Overall, the introduction of the Local Strategic Planning Statements is supported as a key link between the District and Regional Plans and Council’s Fairfield LEP 2013. However, there is currently limited information as to how much detail will be required in the Local Strategic Planning Statements. In addition, like the proposed Community Participation Plan, there is some uncertainty regarding detail, timing, resources and if funding available from the DP&E for the project.

Standardising Development Control Plans
The DP&E are proposing to standardise the structure and format of development control plans to make them easier to understand and navigate.

The DP&E states that current variations in structure and format between DCPs can make them difficult to understand and apply. Such variations also limit the opportunity to embed DCP controls in the NSW Planning Portal alongside other planning controls, such as those included in LEPs.
The format of the DCPs is proposed to be made consistent, with the content of the DCP provisions remaining a matter for councils. A standard format across DCPs could help achieve significant cost and time savings for planning system users, by simplifying the processes for planning consultants to find and navigate the relevant provisions of DCPs. The standard format will be developed in consultation with councils to ensure that DCPs have the right balance of consistency and flexibility to capture local contexts.

Comments
In principle, the notion of standardising DCPs is generally supported on the basis that Councils have complete control of the detail included in the DCP.

One issue that remains unclear relates to how site specific DCPs or town centre specific issues will be managed within a standardised DCP format. The work required to migrate Council’s DCPs provisions to a standard format would also require significant Council resources to implement. Clarification would also be required regarding an implementation period for standard DCPs.

Regular LEP update
The DP&E are also proposing a five-yearly LEP check against set criteria and working with the Department of Planning to ensure they are up to date. The set criteria are outlined below:

- Does a new regional or district plan necessitate major change to local strategic plans or controls?
- Has there been a marked demographic change in recent years, or is one expected in coming years?
- Has there been or is there expected to be significant infrastructure investment that necessitates or justifies major change to local strategic plans or controls?
- Has there been a high number of planning proposals in recent years?
- Does the LEP demonstrate consistency with relevant state environmental planning policies, section 117 directions and the regulations?
- Has the community requested significant changes to the LEP in recent years?

Comments
Overall, this amendment is supported. Council is already continually updating the LEP through Housekeeping LEP Amendments. This provides a more formal process and provides guidance on the key criteria Councils are required to review.
C. Better processes for local development

Early consultation with neighbours
The amendments propose incentives for developers to consult with neighbours and the surrounding community to ensure disputes are resolved prior to a development application proceeding to council.

Comments
This aspect of the proposed legislation changes is not supported. Council officers have a number of concerns regarding this proposed amendment. The proposed early consultation by developers is outside the scope of Council’s notification and consultation processes when an application is received. This could potentially result in greater confusion to neighbours, the community may think Council has seen an application and is supportive of a proposal that may not meet development standards, and there is no certainty as to what the developer is showing the neighbours.

Step in powers
The proposed legislation changes seek to provide discretionary step-in powers for the Secretary of the Department of Planning in relation to integrated development as well as provide the DP&E with the ability to coordinate responses from state agencies with the aim to manage conflicts that may arise between state agencies and planning authorities regarding concurrence and timeframes for receiving advise from state agencies.

Comments
Providing the DP&E with the ability to coordinate responses from state agencies to provide timely and meaningful feedback is supported.

It is recommended that this process not be limited to Development Applications, but expanded to strategic land use planning matters such as preparation of strategies and planning proposals.

In addition, it is recommended that the amendments be expanded to require the DP&E to coordinate the state authority’s consultation as part of the Gateway Determination process of an LEP Amendment. When the Gateway Determination is finalised and released to the Council, it should also be forwarded to the public authorities, along with a standard letter requesting comment on the proposal. This will ensure that the public agency provides comments up front and minimise the potential for issues to be raised by the agencies further along the rezoning process. To ensure this process works well, greater resourcing is required for the DP&E.

Preventing misuse of Modification Applications
One of the basic principles of the NSW planning system and the EP&A Act is that a development consent can only be modified:

- to correct minor errors, misdescription or miscalculations; and/or
- to an extent such that the consent authority is satisfied the development has not significantly changed.
This principle ensures that developments are built to be consistent with how they were planned and approved.

Over time, this principle has been eroded by the granting of retrospective approvals for works that go beyond the original consent.

This proposed amendment will seek to prevent the use of modification applications in circumstances where works have already been constructed (except in limited circumstances).

Comments
The proposed changes are a step forward and should result in unreasonable Modification Applications not proceeding if they are not consistent with the original approval.

Complying Development
The DP&E are looking to expand the provisions of complying development. Council had previously made a submission on this matter in early 2016.

In addition, the DP&E have identified that as the use of complying development grows, it may be necessary to put in place additional safeguards to ensure the appropriate consideration of proposals with greater potential to impact local values or sensitive areas.

In addition, the Government proposes to amend the EP&A Act to make it clear that, where a complying development certificate does not comply with the relevant standards in the State Policy, it can be declared invalid.

Comments
Council has previously made a submission in regards to the expansion of complying development provisions. Council objected to the expansion of the complying development provisions on the following basis:

- Removal of Council powers
- Inconsistency with Council’s current Planning Controls and the proposed expansion of complying development to include more intensive residential uses.
- Manor homes – home should not be considered complying development, particularly if they are introduced in the R2 Low Density Residential zone.
- Council’s DCP controls – It is considered Council’s development controls are more responsive and better equipped to manage future development within Fairfield City than the state wide provisions proposed by the Department.
- Loss of effective community consultation – more applications would be assessed through the Complying Development process which require little to no community consultation.
- Impacts on Council operations and budgetary implications for Council
- Flooding, overland flow and stormwater – Fairfield LGA sits on a flood plain and has significant areas with flooding issues. Council has spent a considerable amount of time and resources to ensure that through DCPs
and the assessment process, that development will not negatively impact on the catchment areas within Fairfield

- Overall lack of confidence in private certification.
- Compliance and enforcement.

For the above reasons the expansion of the Complying Development to a wider range of uses is not supported.

A number of the other proposed amendments to Complying Development appear to be appropriate and are generally supported in principle. These include restricting some complying development types be only assessed by Council Certifiers. However, as outlined in a number of other points throughout the document, there will be a greater demand for Council to assess CDCs that will require Council to invest in additional resources.

It is also proposed that should a CDC not comply with the relevant standards in the State Policy, it can be declared invalid. However, without the detail available in the proposed future amendments to the Regulation there is uncertainty how these amendments will be enforced.
D. Better process for State Significant Development

The amendments proposed better integration of development consents and other statutory approvals, making it easier to ensure up-to-date monitoring and reporting, and providing a clear legislative basis for modern approaches to manage impacts.

Additionally, the amendments seek to end transitional arrangements in respect of the repealed Part 3A. Modification of existing Part 3A approvals will be determined in the same way as either State Significant Development or State Significant Infrastructure approvals.

Comments
The changes are generally administrative to ensure that the process is clear in both assessment and monitoring.

The transitional arrangements would impact only a few existing developments within Fairfield City, such as the Bonnyrigg Living Communities redevelopment and developments in the Western Sydney Employment Area. There appears to be limited issues with the transition from Part 3A Major Projects to State Significant Development projects.
E. Facilitating infrastructure delivery

The guideline sets out a process for planning major infrastructure corridors to assist infrastructure agencies in understanding and using the different planning mechanisms available through the phases of a corridor’s lifecycle.

For development in these corridors that requires consent under the EP&A Act, there is a requirement to obtain the advice or concurrence of agencies, such as Transport for NSW and Roads and Maritime Services. Examples of such requirements for road and rail corridors are set out in the Infrastructure SEPP.

Currently, this approach does not apply to activities assessed under Part 5 of the EP&A Act. These are activities are undertaken by public authorities that do not require development consent, but must still be subject to an environmental assessment.

Comments
The proposed amendments are generally administrative and relate to major infrastructure works undertaken by state agencies.
F. Fair and consistent planning agreements

The DP&E have introduced a revised practice note, policy, planning circular and Ministerial directions to make planning agreements between developers and councils fairer, more consistent and more transparent.

The draft documents aim to encourage councils and developers to work together to get the best possible outcomes out of planning agreements so that:

- the planning agreement results in a clear public benefit;
- the process for negotiating the planning agreement is fair and reasonable for both parties and is transparent to the broader community; and
- the infrastructure identified in the planning agreement is informed by an assessment of the needs of the local community.

Comments
Overall, the amendments will provide greater guidance on the Voluntary Planning Agreement process.
G. Confidence in decision making

The amendments propose increasing the use of independent planning panels and creation of a uniform set of rules, responsibilities and functions to ensure consistency in their operation across the state.

Under this approach the elected council sets the strategy, policy and standards for development on behalf of the community, while technical assessments and decisions are made by independent experts in line with council’s framework.

It is proposed that the Minister would have the power to direct a council to appoint a local planning panel where this would improve the quality and timeliness of planning decisions in the local area.

Increasing use of independent planning panels

Under this model, elected councils set the strategy, policy and standards for development on behalf of their constituents, while technical assessments and decisions are made by independent experts in line with council’s framework.

The DP&E state that the benefit of this approach is that it helps to depoliticise and improve the thoroughness and quality of decision-making and, over time, increase community confidence in the planning system. The use of panels also reduces the risk of conflicts of interest that may arise from elected officials making decisions about planning matters in which they have an interest. These benefits are maximised when the panel has a determinative, rather than advisory, function.

Comments

The purpose of the proposed introduction of independent planning panels is to reduce the number of applications which are required to be approved by Council. In Fairfield City’s instance, Council officers assess a significant number of applications (approximately 90% +) under delegation.

The concern is that this amendment will seek to formalise these panels as decision making committee rather than a recommendatory committee.

Council already has an independent planning panel (IDAC – Independent Development Advisory Committee) which reviews relevant applications and provides a recommendation to Council. This panel has operated for 17 years and works well with specific experts sitting on the panel providing advice.

Revised thresholds for Regional Development

Regional planning panels currently determine the classes of development known as regionally significant development. The current thresholds for regionally significant development were established in 2011 and have not since been reviewed. The proposed changes are:

- Development applications with a capital investment value of more than $30 million, up from $20 million.
- Council-related development investment greater than $15 million for councils with a local planning panel.
• Private infrastructure and community facilities greater than $5 million.
• Educational facilities (including associated research facilities) that have a capital investment value of more than $30 million.
• Ecotourism facilities greater than $5 million.
• Designated development for extractive industries, marinas and waste management facilities or works.
• Certain coastal subdivisions.
• Development greater than $10 million but less than $30 million undetermined within 120 days and at the applicant’s request, unless the delay was caused by the applicant.
• Development designated by order where the council’s development assessment is considered unsatisfactory.

Comments
The proposed changes are supported in principle, as the development values have not been updated since 2011.

Other decision making changes
The DP&E propose to expand the scope of internal reviews to include decisions about integrated development and State significant development. The DP&E also propose to strengthen decisions at the State significant level and reduce duplication of process.

Comments
These changes generally relate to state significant developments which are assessed by the Planning Assessment Commission (PAC) and will have limited effect on Council. The PAC is also proposed to be renamed to Independent Planning Commission (IPC).
H. Clearer building provisions

Simplifying and consolidating building provisions into a single part of the EP&A Act to remove confusion for developers and certifiers.

Changes to ensure that a construction certificate must be consistent with a development consent and that it can be declared invalid by a court if it is inconsistent with a consent (but only if proceedings are commenced within 3 months of the construction certificate being issued).

Comments
The consolidation of the building provisions into one section of the EP&A Act is supported.

The ability to declare a construction certificate as invalid is supported in principle. However, there are concerns that this will lead to a greater demand on Council’s enforcing the matter, with no detail of the process or whether resourcing will be available. The detail is also quite limited and should be strengthened to provide greater clarity in these situations.
I. Elevating the role of design

Design is already a relevant consideration that may be taken into account by decision-makers. The design objective, if implemented, will ensure that design is considered and balanced with the other objectives of the EP&A Act. For example, the promotion of good design will be considered in a framework that also promotes land use planning that encourages economic development and the principles of ecologically sustainable development. This will be the task of decision-makers in the context of both strategic planning and development assessments.

Comments
The amendment proposes to introduce a minor wording change by introducing a new objective into the EP&A Act to “promote good design in the built environment”.

The introduction of this objective is supported.
J. Enhancing the enforcement toolkit

It is proposed to widen the availability of internal review options for proponents aggrieved by council decisions as a faster, low cost alternative to court action.

Introducing a new enforceable system in order to assist Councils to enforce compliance with the terms of development consents.

The government proposes to establish a compliance levy to support councils in their role in enforcing complying development standards.

Comments

Limited detail provided on the above proposed changes. The proposal to levy a fee on CDCs to provide funding for Council to enforce complying development standards is tentatively supported, pending release of further details.
CONCLUSION

In summary, there are a number of proposed changes that Council supports in-principle pending release of further detail as part of the development of the associated Regulations.

Those changes include:
- preparation of Local Strategic Planning Statements,
- elevating the role of design,
- preventing miss use of Modification Applications, and
- tightening Complying Development where there are significant environmental constraints.

Additionally, Council has a number of areas of concern regarding the proposed legislation changes.

The key proposed changes of concern and issues are:
- Early consultation with neighbours is not supported for the reasons listed in the submission above;
- Requiring Council to implement a Planning Panel as a decision making panel rather than a recommendation body is not supported for the reasons listed in the submission above;
- Expansion of Complying Development to including a wider range of development types is not supported for the reasons listed in the submission above; and
- Greater resourcing issues and requirements for Council as a result of required strategies and other proposed changes.

This submission supports some of the proposed changes. However some issues outlined in this submission are not supported as they will have an impact on Council’s current operations without significant improvement, impact Council and its community’s ability to determine the appropriateness of development for the local area and create funding and resourcing issues for Council.
24: Submission to the Proposed NSW Planning Legislation Changes  
File Number: 17/01162  

MOTION: (Le/Rohan)  

That Council endorse the issues raised in the report as the basis for making a submission to the Department of Planning and Environment’s proposed NSW Planning Legislation changes.  

CARRIED UNANIMOUSLY
SUBJECT: Submission to the Proposed NSW Planning Legislation Changes

FILE NUMBER: 17/01162

REPORT BY: Chris Shinn, Coordinator Strategic Planning

RECOMMENDATION:

That Council endorse the issues raised in the report as the basis for making a submission to the Department of Planning and Environment’s proposed NSW Planning Legislation changes.

SUPPORTING DOCUMENTS:

AT-A Summary of proposed changes 51 Pages

CITY PLAN

This report is linked to Theme 2 Places and Infrastructure in the Fairfield City Plan.

SUMMARY

On 10 January 2017, the NSW Department of Planning and Environment released a draft NSW Government Bill for public consultation. The draft Bill and associated documents are proposing changes to the NSW Planning System through the Environmental Planning and Assessment Act 1979 (EP&A Act).

This report details the proposed legislation changes and Council officer comments on those changes.

A copy of Council’s final submission will be referred to Councillors prior to being submitted to the Department of Planning and Environment.
BACKGROUND

The Department of Planning and Environment (DP&E) are seeking to amend the Environmental Planning and Assessment (EP&A) Act 1979. The updates proposed by the DP&E aim to build greater confidence in the planning system by enhancing community participation, strengthening upfront strategic planning and delivering greater probity and integrity in decision-making, in addition to a large number of minor housekeeping amendments clean up the EP&A Act.

To support the changes the DP&E have released 4 documents for public consultation as part of the proposed NSW Planning Legislation amendments. These documents are:
- Summary of Proposals (Attachment A)
- Draft NSW Government Bill
- Draft NSW Government Bill Guide
- Stakeholder Feedback

The 10 key objectives addressed in the proposed legislation changes are:
- Enhancing Community Participation
- Completing the strategic planning framework
- Better processes for local development
- Better process for State significant development
- Facilitating infrastructure delivery
- Fair and consistent planning agreements
- Confidence in decision-making
- Clearer building provisions
- Elevating the role of design
- Enhancing the enforcement toolkit

A full copy of the proposed NSW Planning Legislative changes can be viewed at the following website:


Submissions on the proposed NSW Legislation changes are due to DP&E by 31 March 2017.

PROPOSED LEGISLATION CHANGES

A. Enhancing community participation

The proposed legislation changes will require planning authorities to prepare community participation plans explaining how the authority will engage the community in plan-making and development decisions.
Each planning authority under the EP&A Act will have to prepare a community participation plan. The plan will explain how the authority will engage the community in plan-making and development decisions. This obligation will apply all local councils, NSW Government agencies that are planning authorities under the EP&A Act and the Secretary of the Department of Planning and Environment.

**Comments**
Council currently has a Community Engagement Strategy which it is required to prepare under the Local Government Act 1993 and identifies broadly how council will engage with the community in developing the City Plan. Council also has a section within the Fairfield City Wide Development Control Plan which guides how Council will consult on development applications.

This amendment seeks Councils to prepare a broad community participation plan for how Council consults with the community on all planning matters, including Planning Proposals and Development Applications.

The proposed community participation plan is generally supported, however, there is some uncertainty regarding detail, timing, resources and if funding is available from the DP&E.

**B. Completing the strategic planning framework**

**Local Strategic Planning Statements**
The proposed legislation changes will require councils to develop and publish Local Strategic Planning Statements which will explain how strategic priorities at the regional and/or district level are given effect at the local level through LEPs and DCPs. Figure 1 below outlines where the Local Strategic Planning Statement would fit within the current planning system.

![Figure 1](attachment:image.png)
Local Strategic Planning Statements will be developed by councils in consultation with the community, and will tell the story of the local government area and set out the strategic context within which the LEP has been developed (including the rationale behind the application of zones and development controls), explain how strategic priorities at the regional and/or district level are given effect at the local level and incorporate and summarise land use objectives and priorities identified through the council’s Community Strategic Plan process.

Comments
Overall, the introduction of the Local Strategic Planning Statements is supported as a key link between the District and Regional Plans and Council's Fairfield LEP 2013. However, there is currently limited information as to how much detail will be required in the Local Strategic Planning Statements. In addition, like the proposed Community Participation Plan, there is some uncertainty regarding detail, timing, resources and if funding available from the DP&E for the project.

Standardising Development Control Plans
The DP&E are proposing to standardise the structure and format of councils’ development control plans to make them easier to understand and navigate.

The DP&E states that current variations in structure and format between DCPs can make them difficult to understand and apply. Such variations also limit the opportunity to embed DCP controls in the NSW Planning Portal alongside other planning controls, such as those included in LEPs.

The format of the DCPs are proposed to be made consistent, with the content of the DCP provisions remaining a matter for councils. A standard format across DCPs could help achieve significant cost and time savings for planning system users, by simplifying the processes for planning consultants to find and navigate the relevant provisions of DCPs. The standard format will be developed in consultation with councils to ensure that DCPs have the right balance of consistency and flexibility to capture local contexts.

Comments
In principle, the notion of standardising DCPs is generally supported on the basis that Councils have complete control of the detail included in the DCP.

One of the key issues is that it is unclear how site specific DCPs or town centre specific issues will be managed. Additionally, the work required to transfer Council’s DCPs to a standard format would be significant and would be a timing and resourcing issue.

Regular LEP update
The DP&E are also proposing a five-yearly LEP check against set criteria and working with the Department of Planning to ensure they are up to date. The set criteria are outlined below:
OUTCOMES COMMITTEE

Meeting Date 14 March 2017

Item Number 24

- Does a new regional or district plan necessitate major change to local strategic plans or controls?
- Has there been a marked demographic change in recent years, or is one expected in coming years?
- Has there been or is there expected to be significant infrastructure investment that necessitates or justifies major change to local strategic plans or controls?
- Has there been a high number of planning proposals in recent years?
- Does the LEP demonstrate consistency with relevant state environmental planning policies, section 117 directions and the regulations?
- Has the community requested significant changes to the LEP in recent years?

Comments
Overall, this amendment is supported. Council is already continually updating the LEP through Housekeeping LEP Amendments. This provides a more formal process and provides guidance on the key criteria Councils are required to review.

C. Better processes for local development

Early consultation with neighbours

The amendments propose yet to be detailed incentives for developers to consult with neighbours and the surrounding community to ensure disputes are resolved prior to a development application proceeding to council.

Comments
Council officers have a number of concerns regarding this proposed amendment. The proposed early consultation by developers is outside the scope of Council's notification and consultation processes when an application is received. This could potentially result in greater confusion to neighbours, the community may think Council has seen an application and is supportive of a proposal that may not meet development standards, and there is no certainty as to what the developer is showing the neighbours.

This proposed amendment is not supported for the above mentioned reasons.

Step in powers

The proposed legislation changes are seeking discretionary step-in powers for the Secretary of the Department of Planning in relation to integrated development as well as the DP&Es ability to coordinate agencies together to reduce conflict and timeframes.

Comments
It is proposed that the DP&E have the potential to ensure state agencies provide timely and meaningful feedback is a positive step forward and is supported.

It is recommended that this process not be limited to Development Applications, but expanded to strategic land use planning matters such as preparation of strategies and planning proposals.
In addition, it is recommended that that the amendments go one step further and that the DP&E coordinate the state authority’s consultation as part of the Gateway Determination process of an LEP Amendment. When the Gateway Determination is finalised and released to the Council, it should also be forwarded to the public authorities, along with a standard letter requesting comment on the proposal. This will ensure that the public agency provides comments up front and will hopefully resolve any initial blockages by the agencies.

To ensure this process works well, greater resourcing is required for the DP&E.

Preventing misuse of Modification Applications
One of the basic principles of the NSW planning system and the EP&A Act is that a development consent can only be modified:

- to correct minor errors, misdescription or miscalculations; and/or
- to an extent such that the consent authority is satisfied the development has not significantly changed.

This principle ensures that developments are built to be consistent with how they were planned and approved.

Over time, this principle has been eroded by the granting of retrospective approvals for works that go beyond the original consent.

This proposed amendment will seek to prevent the use of modification applications in circumstances where works have already been constructed (except in limited circumstances).

Comments
The proposed changes are a step forward and should result in unreasonable Modification Applications not proceeding if they are not consistent with the above mentioned principles.

Complying Development
The DP&E are looking to expand the provisions of complying development. Council had previously made a submission on this matter in early 2016.

In addition, the DP&E have identified that as the use of complying development grows, it may be necessary to put in place additional safeguards to ensure the appropriate consideration of proposals with greater potential to impact local values or sensitive areas.

In addition, the Government proposes to amend the EP&A Act to make it clear that, where a CDC does not comply with the relevant standards in the State Policy, it can be declared invalid.

Comments
Council has previously made a submission in regards to the expansion of complying development provisions. Council objected to the expansion of the complying development provisions on the following basis:

- Removal of Council powers
- Inconsistency with Council’s current Planning Controls and the proposed expansion of complying development to include more intensive residential uses.
- Manor homes – home should not be considered complying development, particularly if they are introduced in the R2 Low Density Residential zone.
- Council’s DCP controls – It is considered Councils development controls are more responsive and better equipped to manage future development within Fairfield City than the state wide provisions proposed by the Department.
- Loss of effective community consultation – more applications would be assessed through the Complying Development process which require little to no community consultation.
- Impacts on Council operations and budgetary implications for Council
- Flooding, overland flow and stormwater – Fairfield LGA sits on a flood plain and has significant areas with flooding issues. Council has spent a considerable amount of time and resources to ensure that through DCPs and the assessment process, that development will not negatively impact on the catchment.
- Overall lack of confidence in private certification.
- Compliance and enforcement.

For the above reasons the expansion of the Complying Development to a wider range of uses is not supported.

A number of the other proposed amendments to Complying Development appear to be appropriate and are generally supported in principle. These include restricting some complying development types to Council assessment only. It is also proposed that should a CDC not comply with the relevant standards in the State Policy, it can be declared invalid. However, without the detail available in the proposed future amendments to the Regulation there is uncertainty how these amendments will be enforced.

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The amendments proposed better integration of development consents and other statutory approvals, making it easier to ensure up-to-date monitoring and reporting, and providing a clear legislative basis for modern approaches to manage impacts.

Additionally, the amendments seek to end transitional arrangements in respect of the repealed Part 3A. Modification of existing Part 3A approvals will be determined in the same way as either State Significant Development or State Significant Infrastructure approvals.

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The proposed amendments are generally administrative and relate to major infrastructure works undertaken by state agencies.

F. Fair and consistent planning agreements

The DP&E have introduced of a revised practice note, policy, planning circular and Ministerial directions to make planning agreements between developers and councils fairer, more consistent and more transparent.

The draft documents aim to encourage councils and developers to work together to get the best possible outcomes out of planning agreements so that:

- the planning agreement results in a clear public benefit;
- the process for negotiating the planning agreement is fair and reasonable for both parties and is transparent to the broader community; and
- the infrastructure identified in the planning agreement is informed by an assessment of the needs of the local community.

Comments
Overall, the amendments will provide greater guidance on the Voluntary Planning Agreement process.
G. Confidence in decision making

The amendments propose increasing the use of independent planning panels and creation of a uniform set of rules, responsibilities and functions to ensure consistency in their operation across the state.

Under this approach the elected council sets the strategy, policy and standards for development on behalf of the community, while technical assessments and decisions are made by independent experts in line with council’s framework.

It is proposed that the Minister would have the power to direct a council to appoint a local planning panel where this would improve the quality and timeliness of planning decisions in the local area.

Increasing use of independent planning panels
Under this model, elected councils set the strategy, policy and standards for development on behalf of their constituents, while technical assessments and decisions are made by independent experts in line with council’s framework.

The DP&E state that the benefit of this approach is that it helps to depoliticise and improve the thoroughness and quality of decision-making and, over time, increase community confidence in the planning system. The use of panels also reduces the risk of conflicts of interest that may arise from elected officials making decisions about planning matters in which they have an interest. These benefits are maximised when the panel has a determinative, rather than advisory, function.

Comments
The purpose of the proposed introduction of independent planning panels is to reduce the number of applications which are required to be approved by Council. In Fairfield City’s instance, Council officers assess a significant number of applications (approximately 90%+) under delegation.

The concern is that this amendment will seek to formalise these panels as decision making committee rather than a recommendatory committee.

Council already has an independent planning panel (IDAC – Independent Development Advisory Committee) which reviews relevant applications and provides a recommendation to Council. This panel has operated for 17 years and works well with specific experts sitting on the panel providing advice.

Revised thresholds for Regional Development
Regional planning panels currently determine the classes of development known as regionally significant development. The current thresholds for regionally significant development were established in 2011 and have not since been reviewed. The proposed changes are:
• Development applications with a capital investment value of more than $30 million, up from $20 million.
• Council-related development investment greater than $15 million for councils with a local planning panel.
• Private infrastructure and community facilities greater than $5 million.
• Educational facilities (including associated research facilities) that have a capital investment value of more than $30 million.
• Ecotourism facilities greater than $5 million.
• Designated development for extractive industries, marinas and waste management facilities or works.
• Certain coastal subdivisions.
• Development greater than $10 million but less than $30 million undetermined within 120 days and at the applicant’s request, unless the delay was caused by the applicant.
• Development designated by order where the council’s development assessment is considered unsatisfactory.

Comments
The proposed changes are supported in principle, as the values have not been updated since 2011.

Other decision making changes
The DP&E propose to expand the scope of internal reviews to include decisions about integrated development and State significant development. The DP&E also propose to strengthen decisions at the State significant level and reduce duplication of process.

Comments
These changes generally relate to state significant developments which are assessed by the Planning Assessment Commission (PAC) and will have limited effect on Council. The PAC is also proposed to be renamed to Independent Planning Commission (IPC).

H. Clearer building provisions

Simplifying and consolidating building provisions into a single part of the EPA Act to remove confusion for developers and certifiers.

Changes to ensure that a construction certificate must be consistent with a development consent and that it can be declared invalid by a court if it is inconsistent with a consent (but only if proceedings are commenced within 3 months of the construction certificate being issued).

Comments
The consolidation of the building provisions into one section of the EP&A Act is supported.
The ability to declare a construction certificate as invalid is supported in principle. However, there are concerns that this will lead to a greater demand on Council’s enforcing the matter, with no detail of the process or whether resourcing will be available. The detail is also quite limited and should be strengthened to provide greater clarity in these situations.

I. Elevating the role of design

Design is already a relevant consideration that may be taken into account by decision-makers. The design objective, if implemented, will ensure that design is considered and balanced with the other objectives of the EP&A Act. For example, the promotion of good design will be considered in a framework that also promotes land use planning that encourages economic development and the principles of ecologically sustainable development. This will be the task of decision-makers in the context of both strategic planning and development assessments.

Comments

The amendment proposes to introduce a minor wording change by introducing a new objective into the EP&A Act to “promote good design in the built environment”.

The introduction of this objective is supported.

J. Enhancing the enforcement toolkit

It is proposed to widen the availability of internal review options for proponents aggrieved by council decisions as a faster, low cost alternative to court action.

Introducing a new enforceable system in order to assist Councils to enforce compliance with the terms of development consents.

The government proposes to establish a compliance levy to support councils in their role in enforcing complying development standards.

Comments

Limited detail provided on the above proposed changes. The proposal to levy a fee on CDCs to provide funding for Council to enforce complying development standards is tentatively supported, pending release of further details.

CONCLUSION

It is recommended that Council endorse the issues raised in this report as the basis for making a submission to the Department of Planning and Environment’s proposed NSW Planning Legislation changes.
A copy of Council’s final submission will be referred to Councillors prior to being referred to the Department of Planning and Environment.

Chris Shinn
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Authorisation:
Acting Group Manager City Development

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***** END OF ITEM 24 *****