

**SUBMISSION BY COFFS HARBOUR CITY COUNCIL**  
**TO THE LEGISLATIVE UPDATES TO THE *ENVIRONMENTAL PLANNING AND***  
***ASSESSMENT ACT 1979***

**MARCH 2017**

**General**

This submission has been prepared by Coffs Harbour City Council, for lodgement with the State Government, as a response to the Legislative Updates to the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The Summary of Proposals and associated documents are on exhibition until 31 March 2017.

Coffs Harbour City Council (CHCC) generally supports the proposed legislative updates to the EP&A Act, contained within the consultation package currently on exhibition until 31 March 2017. The State government is to be commended for its pursuit of planning excellence and attempt to modernise and simplify the planning legislation for the state.

The following is Council's submission in relation to specific aspects of the legislative updates and follows the format of the headings provided in the *Summary of Proposals January 2017* document.

**Introduction - objectives**

- The updated objects to the EP&A Act aim to modernise the objectives of this legislation without changing the effects or intent of the objects. However, it appears some key components of the objects have been lost or are now ambiguous. For example, '*ecologically sustainable development*' appears to encapsulate the environment and climate change, however, these matters would be best defined and dealt with separately.

**1. Enhancing community participation**

- CHCC's current Public Notification component of its *Development Control Plan (DCP) 2015* allows for notification to be dispensed with if the proposed development is minor in nature and is unlikely to detrimentally affect the enjoyment of adjoining land or the locality. It is important that any future Community Participation Plan (CPP) will continue to allow for exemptions to the public notification process so as not to unduly delay the assessment of low impact developments.

Councils will be required to prepare a CPP comprising significant community engagement processes. There is a statement in the Summary of Proposals document that suggests that councils do not need to prepare a separate CPP provided they can meet the EP&A Act requirements through the broader community engagement strategy they have prepared under the *Local Government Act 1993*. This may mean that CHCC's new Community Strategic Plan (CSP) that is currently being prepared satisfies the requirements and hence Council does not need to prepare a new CPP. The Department's assurance that templates, model plans and guidance material for the CPP is welcomed. Councils should be allowed to lodge their current CSPs with the Department to ascertain whether they comply with the principles or not.

Council welcomes the development of guidelines to assist with the preparation of statement of reasons. These guidelines should be detailed to enable council officers

and councillors to develop appropriate statement of reasons which promote accountability and transparency while also mitigating legal risks to council.

## **2. Completing the strategic planning framework**

- It is understood that councils will be required to prepare a Local Strategic Planning Statement (LSPS) which outlines a 20 year vision which links to the planning controls. In addition, goals and actions to achieve the vision as well as monitoring and reporting on the progress of the LSPS will be required. Further, the intent of the LSPS is to outline the context within which LEPs have been developed and to explain strategic priorities.

It is likely that this will (at least in part) replace CHCC's existing adopted Local Growth Management Strategy (LGMS). The Department is seeking input from stakeholders on what the LSPS should look like and contain. This may have implications for CHCC's LGMS – i.e. Council may be forced to revise the structure and content if it does not fit the model the Department adopts. CHCC recommends that the current model for its LGMS be recognised given the amount of resources that are currently being expended on it. Council should be able to submit the existing LGMS document for certification initially.

- The draft reforms appear to indicate that the Government is going to require a five yearly LEP check against set criteria. Depending on the outcomes of this check, Councils may need to prepare a new comprehensive LEP. Significant resources are required for such processes. In September 2017, it will be 4 years since Coffs Harbour LEP 2013 (its current comprehensive LEP) was made. Has there been any consideration given to funding LEP reviews? Council supports any initiative by the State government to provide financial assistance for major LEP review processes.
- Under the reforms, Councils in NSW will be required to implement a standard format for their DCPs. These model DCPs will be able to be spatially represented on the NSW Planning Portal. CHCC currently undertakes ePlanning (as encouraged by NSW Planning and Environment (P&E)) and has updated its DCP to fit into specific ePlanning software. This has taken significant time and resources to complete. In this regard, the government needs to be mindful that any model DCP structure should be flexible to take into account various ePlanning software already utilised by various local Councils throughout NSW. Failure to do so will result in a further significant resource burden for councils.

Further, if Councils are required to adopt model DCP provisions, caution should be applied to their development. There is the need to be able to tailor model provisions to fit local and regional circumstances. An optional approach, rather than a mandated one, is preferred, to ensure that local circumstances can be taken into account.

## **3. Better processes for local development**

- The early consultation process (for applicants) prior to the lodgement of Development Applications (DAs) which is outlined in the reforms is supported. Councils frequently end up mediating pre-existing neighbourhood disputes through the DA process which is very time consuming for councils. However, the failure of an applicant to consult neighbours should not prevent the lodgement or assessment of an application. A prompt or recommendation on the DA form may be all that is required to inform the applicant of the benefits of early consultation with their neighbours.

- The step-in-power proposed to be provided by the Secretary of DPE is likely to result in unfavourable development and unacceptable impacts on land adjoining new development. The only benefits to be made by such changes are to the proponent of the development. If a State agency has refused to issue concurrence or general terms of approval it is likely that there are valid reasons for doing so. Further, the particular Agency is the specialist in the area they are providing advice. To override decisions from specialists in the field is not to the benefit to the local community or environment.
- If the Department would like to address processing times it should also consider specifying in more detail what is required to be submitted with an application to improve the quality of applications received in the first place e.g. the EP&A Regulation should specify the level of detail required in a statement of environmental effects.
- The proposed transparent digital platform is supported as this may assist in efficiencies in the 'Integrated Development' process.
- The proposal to amend the Act to prevent consent authorities from approving modifications to development in relation to works already completed is supported.
- The expectations of Council's role in the monitoring complying development certificates issued by private certifiers needs to be clearly clarified.
- The proposed Levy on Complying Development Certificates (CDCs) to fund Council's compliance responsibilities is welcomed. However, equal consideration needs to be given to the DA fee schedule. Pre-private certification, councils were the sole regulator receiving DA and/or building application fees. Councils had total oversight of a project from start to finish to enable any issues to be rectified along the way prior to finalising the project. With the advent of private certification, councils have had to fund designated compliance resources to address and resolve the issues that private certification does not or is not responsible to undertake. A fee to fund Council's activities in this area would greatly assist in managing this issue.
- Proposed changes to the modification assessment process to discourage unauthorised work appear ambiguous and could create uncertainty. A clear process is required to resolve this matter. CHCC has previously used an alternative approach to this matter - being a hybrid application with penalty fees built in, that enables Council to assess both planning and building related matters (ie an Unauthorised Works Application). CHCC has successfully used this administrative process in the past as a way to manage this issue. It allows Council to charge a fee to recoup staff time taken to review and work through the problems caused by unauthorised activities. However, DA and building certificate applications have also been required to provide some legal status and certainty.

A new unauthorised works application process, penalty fee provisions and statutory backing to provide recognition of process and determination would be an effective tool to dissuade and tidy up this issue.

#### **4. Better processes for State significant development**

- CHCC supports the proposed amendments in this section.

#### **5. Facilitating infrastructure delivery**

- CHCC supports the proposed amendments in this section

## **6. Fair and consistent planning agreements**

- CHCC has recently received legal advice on the format it should use for Voluntary Planning Agreements (VPAs). This legal advice directed Council to DPE's proposed planning circular and template for VPAs, as a best practise action. Council supports these amendments to the legislation as proposed in the supporting documentation.

## **7. Confidence in decision making**

- The implementation of local planning panels (LPPs) is supported. Council would expect that an appropriate level of these decisions would still be undertaken using delegated authority by appropriately experienced and qualified staff. This would ensure that the assessment process is not unduly delayed.
- The administration and membership requirements of the Joint Regional Panels (JRPs) and LPPs should be reviewed. If the membership of panels across the State is not managed appropriately to help depoliticise and improve the thoroughness and quality of decision making and, over time, increase community confidence in the planning system, it defeats the very purpose as to why they were established in the first place.
- It is agreed that matters to be determined under delegated authority versus a full council meeting should be standardised across the state. Where DAs are not determined under delegated authority, this could significantly delay the assessment process.

## **8. Clearer building provisions**

- CHCC supports the proposed changes to the Act - to insert a clearer requirement that a Construction Certificate (CC) must be consistent with the associated development consent and if not, the CC is declared invalid.

## **9. Elevating the role of design**

- CHCC commends and supports the government's initiatives to promote good design. CHCC wish to extend an offer to the Government Architect of NSW to hold a joint regional forum in Coffs Harbour to discuss the draft Architecture and Design Policy for NSW. This will provide a good opportunity to discuss opportunities with councils, government agencies and industry stakeholders to incorporate the above policy into rural and regional planning and development. If agreeable, it may be considered appropriate to conduct similar forums on the South Coast and central NSW.

## **10. Enhancing the enforcement toolkit**

- CHCC supports the proposed enforceable undertakings which give councils greater flexibility in improving compliance.