



PCU070123

KEMPSEY
Shire Council



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Planning Legislation Updates 2017
NSW Department of Planning and Environment
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Dear Sir/Madam

SUBMISSION ON THE DRAFT UPDATES TO THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

At its meeting of 21 February 2017 Kempsey Shire Council resolved to endorse the following submission on the draft updates proposed in the *Environmental Planning and Assessment Amendment Bill 2017* (Amendment Bill):

1 'Major Development' Consultation

Council supports the right of the community to be informed about planning matters. Schedule 2, Part 2, Division 2.6 Community Participation in the Amendment Bill states (specifically clause 2.23(2)(f) and Part 2 General Provisions, clause 23) that the community affected by proposed "major development" are to be consulted by the proponent prior to the lodgement of the development application. While this measure potentially has merit, there are no further details provided as to how this consultation is to be held, which must be genuine and not token in nature. Associated regulations are required to layout a defined process to be followed by the proponent to ensure a rigorous and formalised procedure is adhered to, including the need to demonstrate how feedback has been addressed in the proposal.

2 Statement of Reasons for Decisions

Schedule 2.1, clause 19 of the Amendment Bill states that public notification of the 'reasons for decisions' is to occur for identified development types. The draft provisions appear to require the public notification of all applications for development consent determined by council (whether or not the development application is required to be publically notified by virtue of the scale of development, cost of works etcetera). While the stated intent of providing greater transparency is generally supported, the inclusion of all development application determinations will necessitate increased levels of administration and cost for councils. These provisions should be restricted to major developments only, which would normally apply to matters for the joint regional planning panels and the Planning Assessment Commission are the consent authority.

3 Local strategic planning statements

The requirement for a local strategic planning statement is supported and can be readily adopted from Council's existing Strategic Planning Program, which is proposed to be incorporated in the 2017/21 Delivery Plan. However, the process should not be used to unnecessarily constrain community aspirations by generic state-imposed restrictions.

4 Misuse of section 96 modifications

Whilst the intent of this reform is noted, this should not apply in circumstances where S96 is an effective remedy to formalise unauthorised development.

5 Complying Development

Council objects to the burden of upholding complying development standards issued by private certifiers. Proposed amendments should also include greater levels of liability for private certifiers and require that where a complying development is not in accordance with a certificate, that the private certifier must undertake initial prescribed compliance actions, advising the owner of the matters of non-compliance, prior to referring the matter to Council to consider enforcement actions.

Council is also concerned about the expansion in the scope of the complying development category to include medium-density on the basis that these changes will diminish community rights further as increasing gradations of development are relegated to complying development, leaving the community with no opportunity to comment on, or influence these development outcomes

6 Voluntary Planning Agreements (VPAs)

Council objects to revisiting the existing provisions and to unnecessary amendments which would further restrict councils to develop flexible VPAs.

7 Local Planning Panels

Council has the considerable concerns that the Amendment Bill does not provide any details in regard to the Minister's powers to replace elected representatives with a local planning panel (the details will be contained in the 'regulations' which are not publically available). Council urges the Department to develop this matter further with Local Government before enacting this legislative amendment.

8 New design object

While the inclusion of the promotion of good design in the Amendment Bill is welcomed, a single superficial reference to good design in the amended Act (without any supporting regulations as to what qualifies as good design and how it can be implemented into development) will be ineffective and open to interpretation and may create an unintended ground for third party appeals.

Yours faithfully



Robert Pitt
DIRECTOR
SUSTAINABLE ENVIRONMENT