

24 November 2017

Director, Legislative Updates
Department of Planning and Environment
GPO BOX 39
SYDNEY NSW 2001

Dear Sir/Madam;

Re: Submission – Environmental Planning and Assessment Regulation Review

I am writing in response to the Department's *Review of the Environmental Planning and Assessment Regulation 2000 – Issues Paper* on public exhibition during September-November 2017, which seeks feedback from stakeholders to inform the Government's review of the legislation.

Specifically, the Department seeks stakeholder feedback in response to these questions:

- *Are there known issues or inefficiencies to address?*
- *Can the provisions be reformed to better achieve the objects of the EP&A Act and the Government's relevant policy priorities, including:*
 - *increasing housing supply to meet current and future needs of the State*
 - *facilitating faster and more efficient housing approvals, including through the uptake of the complying development pathway.*
- *Can the provisions be simplified, consolidated, or otherwise reformed to reduce regulatory and administrative burden?*
- *Are there digital solutions which could be used to make requirements easier to meet?*

Having considered the Issues Paper, the following comments are made.

Lack of detail in Issues Paper

The overall review of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and the need to simplify legislation to allow for more efficient processes within the NSW planning system is supported in principle. However, the Issues Paper is very light on detail about what changes are proposed by the Department, and indeed, some parts of the Regulation receive no mention at all.

It is understood that this review will provide a basis for a new Regulation that complements the Bill to change the *Environmental Planning and Assessment Act 1979*, recently passed through Parliament, and that it will be released for consultation in 2018. Council supports transparency in this process and the opportunity to provide comment on the draft Regulation next year prior to it being made.

Planning Instruments

Clause 10A - To provide greater certainty, the Issues Paper notes that a time period could be prescribed for a council to give notice that it does not support a written request made by a person for the preparation of a planning proposal. No objection is raised to this provided that it is reasonable and

recognises council or IHAP processes for finalising meeting minutes, i.e. within 7 days would be reasonable.

Clause 18(1)(b)(ii) - Following the preparation of a draft DCP, the council must publicly exhibit “a copy of any relevant local environmental plan or deemed local environmental planning instrument” along with the draft DCP. Given that LEPs and EPIs are readily available on the NSW Legislation website, this requirement no longer seems necessary. It would be more practical to refer to the name of the instrument in the exhibition material and provide a link to the NSW Legislation website (or to even include a copy of only relevant sections of the instrument if appropriate), rather than print out the entirety of the instrument whenever a draft DCP is made.

Clause 18(2) - A draft DCP must be publicly exhibited for at least 28 days. There should be flexibility in this to allow minor DCP amendments to be publicly exhibited for a shorter period of time. Council was recently granted Gateway approval to amend Mosman LEP 2012 to update the listing of three heritage items. A DCP amendment accompanied the planning proposal. The Gateway approval permitted a minimum 14 day public exhibition period for the planning proposal, yet the supporting DCP amendment was required to be notified for 28 days under this clause.

Clause 21(1) - The clause allows council “to approve the plan [a draft DCP] with such alterations as the council thinks fit”. This is very broad, and to improve transparency, a change should be made to this clause. The change suggested in the Issues Paper is a requirement for the re-exhibition of an amended DCP in certain circumstances, such as where amendments substantially alter the form or objectives of a draft DCP. This would need further explanation, i.e. what is the definition of “substantially”? Further, there should be a requirement for a council to give reasons for a change to a draft DCP following exhibition. (This is a requirement under clause 21(4) for when a council decides not to proceed with a DCP).

Development assessment and consent

Part 5 – Existing uses (clauses 39 to 46). Existing use rights (EUR) is inherently complex and perhaps there is scope to make it simpler through the Regulation review. Points for consideration:

- Outline clear criteria for burden of proof.
- Resolve current conflict between EUR and variation of development standards, in terms of making it clear in what instances a clause 4.6 variation is required (such as moving to a conforming use).
- EUR should not encourage insensitive development, rather, the legislation should provide incentive to move to a conforming use.

Modification of consents - The provisions of the Regulation could be simplified by removing the provisions relating to section 96AB ‘Review where modification application refused or conditions imposed’. An applicant could just lodge a new S96 application. Further, provisions in the Regulation which allow a consent authority to reject a development application in certain circumstances, or for an applicant to withdraw an application, should be extended to modification applications, as suggested in the Issues Paper.

Standardisation of forms and conditions - To provide consistency and transparency, the Regulation could set out standardised conditions of development consent, just as there are standardised conditions for complying development certificates. This could also be extended to State standardised digital forms, such as for development applications, modification applications and so on. However, the ability for councils to include additional conditions of consent, or to require additional information with an application, to address local circumstance should be permitted.

Notices of Determination - A suggested amendment in the Issues Paper is to simplify requirements for DA notices of determination, to allow for notification to occur via email and relevant documents to be uploaded to the Planning Portal. Additionally, the Issues Paper has proposed the requirement for councils to notify all submission authors of the outcome of 82A determinations. These changes are supported to improve transparency and reduce the administrative burden on consent authorities.

Part 13A (clause 227A) – This clause applies to signs on development sites for building work on a site carried out under a development consent or complying development certificate, and requires the name, address and telephone number or the principal certifying authority or principal contractor to be displayed on the sign. Consideration could be given to requiring email address also.

Compliance and certification - The Issues Paper advises that the Regulation will not examine building compliance and certification provisions (including complying development certificates (CDCs)), as broader building regulation reforms are being fast tracked through a separate process. Further, certification and fire safety matters are not examined but will be the subject of a separate report. When reviewing these parts of the Regulation, the Department should include a mandatory statutory requirement for a report to be prepared that establishes compliance with the CDC criteria to improve transparency. Currently there is nothing that demonstrates how the decision was reached. Further, all documents relating to individual CDCs should be published on the Department's website.

Development contributions

Clause 101(2)(b) – With respect to section 94 and 94A conditions of development consent, the clause requires a notice to an applicant to include *“the address of the places where a copy of the contributions plan may be inspected”*. It is suggested that this should be re-worded to remove the requirement to inspect a physical copy of the document and replace it with words directing an applicant to the council website or NSW Planning Portal.

Fees and Charges

The Issues Paper recommends that all fees be reviewed to determine whether they remain appropriate.

Development fees - The current prescribed fees are generally not sufficient as they do not reflect market value. All prescribed fees should be CPI adjusted at a minimum. It is Council's experience that the type of development does not align with the level of assessment required for an application. The introduction of thresholds that correlate with the complexity of assessment and level of internal referrals may aid in accurately capturing fees for more complex DAs. Such complex DAs are more likely to be required to be determined by an IHAP, the cost of which cannot be recovered via development assessment fees currently.

Penalties - The previous increase in penalties is sufficient to remedy the breach. If penalties were to increase officers would be less likely to use this as enforcement option. Currently there are options to increase a penalty through Court attendance Notices (CAN).

Planning certificates

Council supports in principle the provision of an online Section 149 system through the NSW Planning Portal, however, details of how this system would operate would need to be reviewed and discussed to ensure that an acceptable outcome is provided.

The Department should give consideration to require the inclusion of the following information on a planning certificate: whether or not the land is:

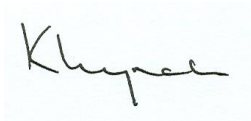
- affected by a foreshore building line;
- subject to any additional permitted uses under the LEP;
- affected by a draft DCP, draft contributions plan, or any other draft policy of significance;

The Department should also consider reviewing the wording of the Schedule of requirements (Schedule 4) to ensure consistency of responses and simplification. For example, some clauses in the Schedule require council to identify “whether or not...” land is affected, so a response in the affirmative or negative is required; yet other clauses require a response “only if the land” is affected; and still others require a “a statement of whether...”.

There is currently a duplication of information required to be provided on the s149(2) certificate regarding bushfire prone land: within Schedule 4 of the Regulation, clause 7 'Council and other public authority policies on hazard risk restrictions' and clause 11 'Bush fire prone land'. This should be corrected in the draft Regulation.

Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me on 9978 4058 or k.lynch@mosman.nsw.gov.au if you would like to discuss these issues further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Lynch', is placed on a light blue rectangular background.

Kelly Lynch
SENIOR STRATEGIC PLANNER