



DRAFT SUBMISSION

In response to an Issues Paper relating to the
Review of the *Environmental Planning and Assessment Regulation 2000*

City of Parramatta Council
Endorsed by Council on <insert date>

Introduction

This **Draft** Submission has been prepared by City of Parramatta Council in response to the public exhibition by the Department of Planning and Environment (DPE) of an Issues Paper relating to a review of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

**Please note: This is a Draft Submission prepared by Council officers in order to meet the public exhibition deadline of 24 November 2017. It is to be formally considered by City of Parramatta Council at its meeting on 11 December 2017, after which, further correspondence will be forwarded to DPE.*

Summary of Key Issues

The Regulation came into effect in 2001, and is due for a comprehensive review and update. It is understood that, prior to preparation and exhibition of a new draft Regulation in 2018, DPE wishes to first gather information from stakeholders relating to known issues with the operation and application of the Regulation. This consultative step is welcome, and Council officers have prepared this **Draft** Submission to provide feedback in response.

The following key issues are raised in this **Draft** Submission:

- Concern is raised that the detail relating to the standardisation of DCPs, if overly rigid will restrict Council's ability to prepare appropriate and adequate controls that are warranted for unique, specific and complex precincts.
- Any additional reporting requirements for councils introduced by the Regulation needs to sensitively balance the need for greater transparency with the need to limit unreasonable regulatory burden.
- There is a need for the Regulation to reflect the digital age in relation to the use of online exhibitions and record keeping.
- A number of detailed technical issues are raised in relation to the operation of development contributions, planning agreements and Section 149 planning certificates.
- It is noted that the draft Regulation, once prepared will be further exhibited for consultation. This approach is supported as it will be important for councils to review the detail. In this regard, it is requested that the public exhibition period be sufficient to make provision for Council's lead-in time for the preparation of the Business Paper to enable official endorsement of any comments by Council.

The following sections of this **Draft** Submission provide further detailed feedback on these and other issues relating to the Regulation. It is hoped that this is of assistance to DPE in preparing a new draft Regulation for public exhibition in 2018.

1. Planning Instruments

In essence, Cl.10 of the *Regulation* states that a Planning Proposal cannot contain a proposed reservation of land for a particular purpose under section 26(1)(c) of the Act, unless the public authority required to acquire that land for that purpose has provided concurrence. This is a reasonable requirement, however, the clause is unclear as to *when* this concurrence must be provided – i.e. is the RPA unable to submit a Planning Proposal for Gateway determination *without* this concurrence? Or can the RPA submit a Planning Proposal for Gateway determination *without* this concurrence, provided that concurrence is received prior to public exhibition? Clear guidance about when this concurrence is required would be of assistance.

There is a requirement that a notice be published within 28 days of Council's adoption of a DCP, regardless of when the DCP will actually take effect. So, in practice, Council may be required to publish a notice about a DCP adoption months in advance of it taking effect and then publish an additional notice when it will actually take effect. There may be an opportunity here to simplify administrative requirements to only require one notice to be published.

There are no references to electronic exhibition or filing of planning instruments. There may be opportunities to streamline and provide appropriate guidance around expectations of online exhibition and record-keeping.

2. Environmental Assessment -

The issues paper notes that there is currently no requirement for environmental assessments under Part 5 to be made publicly available. This means that it can be difficult for the public (and other agencies and councils) to ascertain whether a Review of Environmental factors has been done and what the outcome of the assessment was. The Issues Paper makes a suggestion that the Regulation could be amended to require public agencies to make their environmental assessments available.

It is agreed that this would be a positive measure which would improve transparency. However, any such requirement would need to balance the need for transparency with the potential for further regulatory burden. The requirements should be reasonable and provide the option for a digital register to be employed.

3. Development Contributions/ Planning Agreements

Council raises several detailed matters for consideration in relation to Development Contributions and Planning agreements. These are outlined in the table below.

Relevant Provision		Comments
Part/Division /Clause No.	Title/Subject Matter	
Part 4, Division 1A, cl 25B	Form and subject matter of planning agreements	Add Note or define 'parties' as per Section 93F(1) of Act.
Part 4, Division 1A, cl 25D(2A)	Public notice of planning agreements	In subclause (2A) remove reference to (2) as it has been repealed.
Part 4, Division 1A, cl 25D(4)	Public notice of planning agreements	Add definition of 'planning proposal' or a note that refers to Section 55(1) of the Act.
Part 4, Division 1A, cl 25F(4)	Councils to facilitate public inspection of relevant planning agreements	Sub clause (4) may be difficult for Council to adhere to if the planning agreement is not sent to Council under the Act. Consider deleting.
Part 4, Division 1B, cl 25J	Section 94A levy – determination of proposed cost of development	Definitions or guidance required around the exclusions under sub clause 3, in particular, parts (e) (g); (j); (k); (l) and (m).
Part 4, Division 1B, cl 25K	Section 94A levy- maximum percentage	Note that Parramatta City Centre LEP 2007 has been repealed. However, the application of the 3% levy to that land area still applies under the relevant contribution plan. Reference to Parramatta City Centre LEP 2007 is reasonable despite the

		instrument being repealed since the map is static. However, the Regulation review may wish to consider an alternate approach.
Part 4, Division 1C, cl 27(1A)	What particulars must a contributions plan contain	<p>Sub clause (1A) should be changed so that contribution payments required in respect of a complying development certificate are made before the issue of a complying development certificate. Requiring the payment to occur 'before the commencement of any building work or subdivision work authorised by the certificate' is difficult for Council to police.</p> <p>Consider amending Section 86 of the Act (Commencement of Complying Development) to enshrine the requirement to pay any S.94 contributions/S.94A levies prior to commencement of complying development. A section needs to be included to refer to the commencement of any use.</p>
Part 4, Division 2, cl 28	Draft contributions plan must be publicly exhibited	In paragraph (a), consider updating reference from 'local newspaper' to 'planning portal' or Council website. Perhaps references in local newspapers are becoming obsolete.
Part 4, Division 3, cl 31	Approval of contributions plan by council	In subclause (2), consider updating reference from 'local newspaper' to 'planning portal' or Council website. Perhaps references in local newspapers are becoming obsolete.
Part 4, Division 4, cl 32	How may a contribution plan be amended or repealed?	<p>Recommend that sub clause (3) be expanded to allow other changes to the Plan, particularly where the changes are of a non-policy nature or where they are being made to align with changes in legislation and/or Ministerial Directions.</p> <p>Provide guidance on what constitutes a "minor typographical correction" – e.g. does it include consequential changes necessary to realign a contributions plan to modified legislation or ministerial directions.</p>
n/a (general)		There may be opportunities throughout to streamline requirements by allowing for online exhibition and record-keeping.
n/a (Other related comments)		Section 93F (3A) of the Act states that 'A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.' This is problematic as the consent authority could include an IHAP or JRPP who would not ordinarily be a party to an agreement. Consider changing the wording "consent authority" to an alternative wording that reflects this potential scenario.

4. Planning Certificates

Council raises several detailed matters for consideration in relation to Planning Certificates. These are outlined in the table below.

Relevant Provision		Comments
Part/Division/Clause No.	Title/Subject Matter	
Schedule 4 - Planning Certificates	The role of the planning certificate	<ul style="list-style-type: none"> The role of the planning certificate is to provide the reader limited planning and zoning information applicable on a portion of land on the date that the certificate was issued. <p>Most s149 Certificates are requested for property purchases. For this purpose, the certificate in its current form, for the most part, provides the reader with more information than is required.</p> <p>However, the planning certificate is also relied upon for persons wanting to apply for Complying Development Certificates (CDC)s and/ or ascertaining development controls for redevelopment of a property. For this purpose, the certificate is deficient.</p> <p>The certificate needs to be tailored for the purpose it is required. This may require the applicant to select the type of certificate that they require ie if you require the certificate for a property transaction, the certificate provides basic information ie Zoning, Heritage, Contamination, Flooding etc. If the certificate is required for a CDC or property redevelopment the applicant can request an additional section that provides more detailed information.</p>
	Standardised Format and Language	<ul style="list-style-type: none"> The regulation should prescribe both the format and the language in which information appears within the s149(2) Certificate. The language prescribed for the certificate should be in "plain English". <p>Each Council uses different certificate formats with differing language. This can be confusing for a lay person who is reading the certificate.</p> <p>For example, as a temporary measure immediately after the Local Government Proclamation in May 2016, Cumberland, Hornsby and The Hills Councils, provided the City of Parramatta Council planning</p>

		<p>certificates to issue for areas that had been consolidated within the City of Parramatta. This resulted in 5 different planning certificates being issued.</p> <p>Each certificate had a different format with varying levels of detail and language. Some certificates such as those provided by The Hills Council and Hornsby Council were up to 20 pages long and included many paragraph long notes and disclaimers. In comparison, the Cumberland Council provided, for the former Holroyd LGA areas, a more concise and specific certificate which was 8 pages in length. These certificates all had the same format, the difference being the language used to describe prescribed information under Schedule 4 of the Environmental Planning and Assessment Regulation 2000.</p> <p>Council now issues certificates for all consolidated areas in the same format of the Parramatta City Council certificate. The certificate length is 8 to 10 pages long.</p> <ul style="list-style-type: none"> • Another suggestion is that a guide/ explanatory note in plain English be created for use by both the public and councils which better explains where further information for each of the item listed in the certificate can be obtained and the relevant authority.
	Contamination	<ul style="list-style-type: none"> • The scope of contamination information provided in the s149(2) Certificate requires expansion and should include whether a property is identified as potentially contaminated. <p>Currently the s149(2) Certificate requires inclusion of information relating to loose fill asbestos and matters that are prescribed by section 59 (2) of the Contaminated Land Management Act 1997.</p> <p>Section 59 (2) of the Contaminated Land Management Act 1997 states:</p> <p><i>“(2) For the purposes of section 149 of the Environmental Planning and Assessment Act 1979, the following matters are prescribed in addition to any other matters, prescribed by the regulations under that</i></p>

		<p><i>section, to be specified in a certificate under that section:</i></p> <p><i>(a) that the land to which the certificate relates is significantly contaminated land—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,</i></p> <p><i>(b) that the land to which the certificate relates is subject to a management order—if it is subject to such an order at the date when the certificate is issued,</i></p> <p><i>(c) that the land to which the certificate relates is the subject of an approved voluntary management proposal—if it is the subject of such an approved proposal at the date when the certificate is issued,</i></p> <p><i>(d) that the land to which the certificate relates is subject to an ongoing maintenance order—if it is subject to such an order at the date when the certificate is issued,</i></p> <p><i>(e) that the land to which the certificate relates is the subject of a site audit statement—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.”</i></p> <p>This overlooks lesser levels of contamination that may be present on a property which a council may have record of. This includes section 60 Notifications under the Contaminated Land Management Act 1997 and information councils may have received with development applications or compliance actions.</p> <p>For example, Council may have received information that asbestos has been used as a fill material on a parcel of land. This may have been identified during an assessment under SEPP 55 - Remediation of Land. If the site has not been declared significantly contaminated land or if there is no management order, approved voluntary management proposal, ongoing maintenance order or site audit statement, then there is no requirement for the Council to include this information in the s149(2) Certificate, as it is not a matter prescribed by section 59 (2) of the Contaminated Land Management Act 1997.</p>
	Complying Development	<ul style="list-style-type: none"> • A standard format and language to describe the extent to which complying development may or may not be carried out on that land

		<p>because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1) (c3) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, is required.</p> <p>Also there is no requirement to provide within the s149(2) Certificate the reason why a property may be affected by a provision in clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1) (c3) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Particularly if a property is within an environmentally sensitive area, the reason why it is an environmentally sensitive area under the applicable LEP should be included. In other words this section needs to drill down to the next layer and state that it is an environmentally sensitive area because "(insert reason)".</p> <p>For example: The Complying development provisions may not be applicable to that land because of the provisions of clauses 1.17A (1) (e) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p> <p>For instance, if the land is <i>'land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997,'</i> (see Clause 3.3 (2)(h) of the Standard Instrument—Principal Local Environmental Plan).</p> <ul style="list-style-type: none"> • A guide / explanatory note to the definitions of the provisions in clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1) (c3) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is also required, to better inform the Public.
	<p>Information provided in the Section 149(5) Certificate</p>	<ul style="list-style-type: none"> • With the exception of a statement relating to loose fill asbestos the information provided in s149(5) of the certificate is not defined and it is up to the discretion of the Council. Therefore, the level of information provided across Local Government Areas varies. <p>Whilst information provided under s149(5) is provided in "good faith" there should be a</p>

		<p>prescribed minimum amount of information to be included in this section of the certificate.</p> <ul style="list-style-type: none"> • Furthermore, there is no guidance for Councils' role in including draft/incomplete information which has not been adopted, however, may be relevant to a property eg. flooding information and contamination. Accordingly, it is suggested that guidelines be produced for what information can be provided under section s149 (5) is also required.
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5. Relationship with the Environmental Planning and Assessment Amendment Bill 2017

It is noted that the Environmental Planning and Assessment Amendment Bill 2017 has been passed by the Legislative Assembly and is awaiting royal assent. These changes were exhibited in draft form in January 2017 and on 13 March 2017 Council endorsed a submission on the changes.

It was noted in Council's March 2017 submission that the full effect of several of the initiatives introduced by the proposed changes to the Act were unclear pending the release of further detail in the Regulation. The following changes introduced by the Bill will have implications for the Regulation which should be considered as part of any review:

- Section 2.24 of the Bill states that the Regulation may make provisions for procedures for the making of community participation plans and reports on the implementation of community participation plans. The requirement for Council's to regularly report on the implementation of community participation plans has the potential to create an onerous administrative burden on councils. Any requirements introduced in the Regulation should be mindful of the administrative burden that any such requirement would place on Councils and sensitively balance the need for transparency with the need to limit unreasonable levels of regulatory burden.
- Section 74E 2(A) of the Bill introduces standardised DCPs. As stated in Council's submission endorsed on 13 March 2017, concern is raised that the standardisation of DCPs, if overly rigid will restrict Council's ability to prepare appropriate and adequate controls that are warranted for unique, specific and complex precincts.

6. The need for further consultation on proposed draft amendments to the Regulation

It is noted that the Issues Paper makes reference to opportunities for stakeholder engagement and indicates that a draft Regulation will be released for public comment. This approach is supported and it is important for local government to have the opportunity to review the detail in the Regulation. It is further requested that the public exhibition period be sufficient enough to make provision for Council's lead-in time for the preparation of the Business Paper to enable official endorsement of any comments by Council. Any information sessions are best held early in the exhibition period to allow clarification of the detail to be sought and factored into Council's comments.