HOUSING INDUSTRY ASSOCIATION

Housing Australians

Reforming Building & Planning Laws

Submission to the Department of Planning and Environment

Review of the Environmental Planning and Assessment Regulation 2000

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contents

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over $150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1.0 INTRODUCTION

The Housing Industry Association (HIA) would like to provide the following comments on the Department of Planning and Environment's review of the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) and the brief issues paper released in September 2017.

The EP&A Regulation was made in September 2000 and commenced on 1 January 2001. It replaced the Environmental Planning and Assessment Regulation 1994 which had a lifespan of only 6 years. Accordingly, the Regulation will have been in existence for more than 17 years when it is eventually replaced, 11 years longer than its predecessor. A comprehensive review of the current regulation is long overdue.

The review comes at a time when the Government has completed a major review of the Environmental Planning and Assessment Act 1979 (the EP&A Act) with the passing of the Environmental Planning and Assessment Amendment Act 2017. The amendments follow other reforms made over the last few years including the changes to the plan making procedures (the Standard Instrument LEP program, Rezoning Reviews, ongoing SEPP Review), changes to development assessment (simplified and expanded complying development codes, mandatory IHAPS for Sydney region councils) and reforms to infrastructure contributions (VPA changes, removing section 94 caps and new Special Infrastructure Contribution levies).

Other reforms either being progressed or recently completed include changes to biodiversity laws, coastal management guidelines, bushfire planning changes, the recent increase to the BASIX energy target, a comprehensive review of building certification and fire safety rules. These changes are taking place in the shadow of the transition towards ePlanning and an online development application process. Despite the continuous reform program described above, there has never been a need for more reform in the NSW planning system.

Local councils have a very important role to play in the planning system, including the assessment of development applications that are determined by council staff or a planning panel. The council's staff is responsible for undertaking the initial review of development applications to determine if they are complete in accordance with the regulation and council policies. These policies provide guidance to applicants on how the council will interpret the EP&A Regulation regarding submission and determination of certain development applications. It is important that the policies local councils follow to process and handle applications made to them are reasonable, fair and consistent. HIA members have reported numerous examples where the culture of the local council is anti-development and designed to create road blocks for applicants submitting development applications. The culture of planning needs to be change so that it is more focused on the planning outcome rather than administrative processes. Many of the policies relating to the handling of development applications reflects the focus on processes and reporting of processing timeframes rather than delivering good planning outcomes.

The new regulation needs to provide a more effective land-use regulatory system that amongst other things reduces costs for users of the system, provides certainty of outcomes for applicants and which removes process inefficiencies and therefore unnecessary delays in achieving land use decisions. Providing for a transition from the current regulation to an improved regulation that addresses the objectives above should be guided by the preparation of a Regulatory Impact Statement (RIS) which considers the cost impact of the new regulatory framework.

The current EP&A Regulation, when it was first published in the Government Gazette in September 2000, comprised 190 pages (excluding schedules). Today the same regulation has grown through many years of amendments being added, to be more than 215 pages in length (excluding schedules). Since 2000, an additional one and a half pages of new regulation has been developed each year on average. With this in

mind, the current review should take the opportunity to remove redundant or obscure content from the regulation or to facilitate the transfer of content elsewhere (such as into environmental planning instruments or section 117 Ministerial Directions) if appropriate.

The Department is seeking feedback on the following 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 and facilitating faster and more efficient housing approvals 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?

The EP&A Regulation is just one layer of the NSW planning system which includes legislation (Environmental Planning and Assessment Act 1979 and a suite of environmental planning instruments dealing with a large volume of planning and development related issues. The complexity of the planning system is often cited by its users as being the main reasons for rising costs and delays. Aspects of the current Regulation contribute to the layers of complexity and removal of any unnecessary or redundant requirement is encouraged.

The three key sections of the EP&A Regulation which are important to the housing construction industry are development assessment, fees and charges and development contributions. In this submission the HIA has provided comments relevant to these sections as well as general comments about the existing EP&A Regulation.

2.0 DEVELOPMENT ASSESSMENT

The issues paper provides several examples of issues relating to development assessment and consent provisions. This includes the process for preparing, assessing and determining development applications as well as the notification process surrounding such applications. It is suggested in the issues paper that it is time to review the need for outdated communication methods including requirements to provide written notices in some cases.

2.1 COMPLYING DEVELOPMENT

The relevant provisions relating to complying development can be found in Part 7 (clauses 125 to 137). These span the complying development process including making an application for a complying development certificate, the determination of applications under complying development, provisions relating to the Building Code of Australia and fire safety issues, the form of a complying development certificate and conditions applying to complying development certificates.

It is important that the planning rules applying to complying development are clear and easy to apply. The current arrangements involve complying development rules being spread between the EP&A Act, the EP&A Regulation and the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Whilst it is necessary to have certain planning requirements contained in legislation and others in environmental planning instruments, unnecessary fragmentation of the requirements applying to complying development should be avoided. Any future regulation should ensure that applicable requirements relating to the use of complying development should be consolidated within the same part of the document.

2.2 DEVELOPMENT APPLICATIONS

Administrative procedures relating to development applications are set out in Part 6 of the EP&A Regulation. There are special procedures which apply to applications requiring concurrence (Division 2), applications for integrated development (Division 3), Designated Development (Division 5), public participation arrangements for State Significant Development (Division 6) and public participation procedures for other advertised development (Division 7).

The current EP&A Regulation provides clear direction regarding who can make a development application (clause 49), the process for making a development application (clause 50), procedures for rejection of a development application (clause 51) and the withdrawal of development applications (clause 52), requests for additional information (clause 54) and procedures for amending development applications (clause 55).

A longstanding frustration of the housing construction industry is the lack of certainty in the development application process. An example of this exists where a development application has been prepared on the basis of the requirements set out in Part 1 of Schedule 1 of the Regulation and the relevant submission guidelines prepared by the local council and it is then accepted by the Council. Despite an application being prepared in accordance with all relevant guidelines, a council can still request additional information (that it considers necessary to its proper consideration of the application) in accordance with clause 54.

In these cases, these requests generally do not relate to additional information but more detailed information. In some cases, councils are seeking higher level of detail with development applications than is generally required at the planning assessment stage. The review of the Regulation should consider providing better guidance to local councils regarding the level of detail needed to support a development application. This should extend to limiting councils from making requests for unnecessary information that do not assist council with the decision making process.

Division 8 and 10 of the EP&A Regulation relate to the determination process and post –determination notifications for development applications. It is important that the review process examine these aspects of the Regulation to ensure that they are effective and up to date.

3.0 FEES AND CHARGES

The EP&A Regulation provides consent authorities (local councils and the Department) with the opportunity to recover their costs associated with providing development assessment services through the collection of development application fees. A schedule of fees applying to development applications are contained in Part 15 of the Regulation. The issues paper indicates the review provides an opportunity to examine whether the existing fee regime remains appropriate.

The fees applying to most local development applications, advertised development, integrated development and development requiring concurrence are set out in Division 1 of Part 15. Fees applying to requests for a review of a determination, applications for the modification of consents, planning certificates, building certificates and fees for other services are set out in Division 2. Clause 262B sets out the fee applying to obtaining a BASIX certificate.

In respect to fees and charges, the issues paper has invited feedback on all fees and charges set out in Part 15. The following outcomes in respect to fees and charges should be considered in the review:

- Support the retention of regulated development fees to provide uniformity and certainty.

- Oppose local councils being able to impose excessive and unnecessary advertising and notification fees.
- Retain the regulated fee (clause 247) applying to the erection of a dwelling house with an estimated cost of construction of $100,000 or less.
- Require all relevant fees and charges applying to the making of a development application to be published on the Planning Portal to support transparency and certainty.
- Prevent local councils requiring the provision of reports from a registered quantity surveyor for projects with a cost of work estimated to be less than $5 million.

The Department is encouraged to undertake further consultation with industry on the final detail of its proposal for fees and charges under the future regulation.

4.0 DEVELOPMENT CONTRIBUTIONS

Part 4 of the EP&A Regulation sets the framework for applying development contributions to certain development approval pathways. These give support to the legislative arrangements that are used to operate the development contributions regime. The provisions contained in the EP&A Regulation are broadly speaking limited to matters of an administrative and mechanical nature.

The EP&A Regulation provides guidance regarding the preparation and making of planning agreements (Division 1A), preparation, approval and amendment of contribution plans (Divisions 1C, 2 and 3) and information in respect of accounting and public access (Divisions 5 and 6). Supporting the provisions of the regulation are Ministerial directions, planning circulars and practice notes to assist with the interpretation of the legislation and regulations. It is important that there is clear guidance regarding the operation of these arrangements so that industry has certainty in terms of the process and outcomes.

These provisions should be reviewed to ensure that they avoid unnecessary regulatory processes and outdated notification procedures which place added cost onto the certifying authority and the applicant.

5.0 GENERAL COMMENTS

5.1 BUILDING REGULATION AND CERTIFICATION

Deferral of building certification, subdivision certification, fire safety and Building Code of Australia matters from the review is noted. It is understood these matters will be subject of a separate review arising from the Lambert Review of the Building Professionals Act. A separate review of these matters is supported.

5.2 SAVINGS AND TRANSITIONAL PROVISIONS

It is appropriate that when there is a major change in policy that has the potential to impact upon existing and pending applications, that there are savings and transitional provisions put into effect. The review should consider what savings and transitional arrangements are needed to ensure a smooth transition from the current EP&A Regulation to a new regulatory framework.

6.0 CONCLUSION

The release of the issues paper to support a review of the EP&A Act is supported. The review provides a good opportunity to ensure the EP&A Regulation is contemporary and relevant. There are many procedures and actions outlined in the regulation which deal with the provision of information either from an applicant to a consent authority or vice versa which must be provided in written form such as by letter. The rapid development of technology during the last 20 years requires some change the way that planning authorities (councils and the Department) conduct their business and the way they deliver and share information.

Since 2000 there have many changes made to the Act and environmental instruments which support the NSW planning system. It is important that the EP&A Regulation be reviewed and updated to be consistent with other changes in the planning system. We welcome the opportunity to provide a contribution to the new phase of the review.