



Byron Shire Council - Staff Submission

Review of the Environmental Planning and Assessment Regulation 2000, Issues Paper, September 2017

Issue	Comment
Box 6: Making a submission on a planning matter	<ul style="list-style-type: none"> Online lodgement and public availability of submissions should be facilitated through the Planning Portal to ensure that Council's are protected from copyright or defamation issues. Electronic submissions should be available for review/information via the Planning Portal. The Regulation should clearly outline what requirements need to be met within the submission. 4. Electronic submissions should be able to be acknowledged via an automated acknowledgement method.
Box 7: Out dated/ administratively burdensome provisions	<ul style="list-style-type: none"> Part 3 Division 2 Clause 18: Draft Development Control Plans must be publicly exhibited. A public notice is required in a local newspaper. Whilst the existing wording doesn't preclude a public notice in an online local newspaper, it needs to be cognisant of future changes in how local newspapers are produced. The regulation requires that a Draft Development Control Plan be 'publicly exhibited at the places set out in the notice'. As we move towards a more paperless society, can a Council website be considered a 'place'? With the introduction of the Planning Portal all correspondence relating to an application (acknowledgement, further information, referrals, determination/plans) should be done electronically. There should be no requirement for hardcopy documents to be available for exhibition outside the LGA. Preferably all exhibition documents should be only available electronically. (Note. Byron Shire Council no longer uses hardcopy exhibition documents. These are available online via kiosks in the Administration office). .
Box 8: DPE Planning Portal e-Planning	Financial support and assistance for Council's: With the introduction of the Planning Portal and the unknown implications it will have on Councils current and future processes, financial support should be provided to Councils to assist with the portal requirements. .
Box 9: Provisions relating to planning instruments in the current Regulation	<ul style="list-style-type: none"> Notification requirements (Clause 10A): If 'x' number of days is to be specified for notification where a planning proposal is not supported, the period should be specified as being from the date of the relevant Council resolution at which the request to amend the LEP was considered. Provisions allowing for relevant planning authorities to enter costs and expenses agreement with proponent (Clause 11): Sufficient flexibility is provided within the existing provision. Planning proposal timeframes and subsequent costs incurred by Council can vary widely; therefore any proposed change to Clause 11 that may limit Council's discretion when determining costs and expenses is not supported.

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	<ul style="list-style-type: none"> • Requirements for Exhibition of DCP's (Clause 21): The inclusion of provisions requiring re-exhibition of a draft DCP, where the Council substantially alters the form or objectives of the draft DCP, is supported. <p>During the consultation process it should be determined what constitutes 'substantial'.</p> <p>Councillors and Council officers cannot be expected to have considered all relevant impacts of significant alterations; therefore public consultation is appropriate in such instances.</p>
<p>Box 11:</p> <p>Provisions relating to the development assessment and consent process in the current Regulation</p>	<ul style="list-style-type: none"> • Schedule 1 DA lodgement requirements: Can this list be expanded to give Council's greater legislative backup in rejecting DAs that provide insufficient information? i.e. so that a Statement of Environmental Effects must address specific criteria. Currently schedule 1 requires a SEE to be submitted but does not provide details as to what it must contain. <p>Similar requirements would be ideal for giving Council's power to reject Section 96 applications.</p> <ul style="list-style-type: none"> • Council to give reasons why an application has been approved/refused: How detailed do these reasons need to be? i.e. is it enough to specify that an application satisfies the list of considerations under Section 79C?
<p>Box 12:</p> <p>Requirements for a notice of determination (clauses 100 and 101)</p>	<ul style="list-style-type: none"> • If the proposed amendments require decision-makers to publish reasons for their decisions, this should be done via publishing assessment reports on the Planning Portal, and not included in the determination notice. • With the introduction of the Planning Portal, there should be no hardcopy requirement for Council's to print plans for stamping. Plans are lodged electronically; they should also be stamped and returned electronically.
<p>Box 13:</p> <p>Provisions relating to environmental assessment in the current Regulation</p>	<p>The review should have a requirement for public authorities to make their Part 5 assessments for infrastructure works and the like to be made publically available to improve transparency.</p>
<p>Box 15:</p> <p>Provisions relating to fees and charges in the current Regulation</p>	<ul style="list-style-type: none"> • Part 15: Planning certificates fees should be increased as per CPI each year. • DA/S96 fees: Maximum DA fees prescribed by the regulation need to be increased as often the fees charged for an application are not relative to the level of assessment required especially S96 applications. <p>Currently there is no mechanism, only Regulation amendments, that allow for a review of DA/S96 fees. There needs to be a more regular review or a mechanism for an annual/bi-annual fee increase in line with the CPI</p> <ul style="list-style-type: none"> • Regulation should allow for DA fees to be reviewed beyond 14 days once a detailed assessment of the application can be undertaken.

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	<ul style="list-style-type: none"> • Part 15: Fees for Part 4A certificates should remain as unregulated fees. • Building certificates - current dwelling fee is \$250. Councils Building Certifier team currently has a large influx of building certificates to acknowledge illegal building works. This requirement has been requested by Councils land use planning consent. This involves Council Building Certifier team considering the illegal works against current Building Code of Australia requirements. Currently council is limited to charging Construction certificate fees at building certificate application when building works have been undertaken within the last 24 months. Most instances the works are older than this and it results in the Council only being able to charge \$250 for what is a construction certificate assessment that may taken 6 hours to undertake. • The 24 month limitation on charging construction certificate fees should be removed and building certificate fees should be increased as per CPI each year.
<p>Box 18:</p> <p>Provisions relating to planning certificates in the current Regulation</p>	<ul style="list-style-type: none"> • Content: Land subject to a Timber/Forestry Plantation Agreement should be added as a 'Prescribed matter' in s149(2) certificates, as this information is not available to prospective buyers unless the seller chooses to do so. • Format: There should be a standard template that all Councils use for generation of 149s (at least 149(2)s). This would make things less confusing for solicitors and conveyancers detailing with various councils. • DPE Planning Portal: There is concern how 149s can be accurately generated on the online Planning Portal given so many variables and ensuring that the data the Department has is completely accurate. • Amendments: An issue is the timely notification by the Department on changes or new inclusions to 149s. • Transition to automated online certificates: To transition to automated/online certificates (at least for the 149(2) certificates) the format of the certificate needs to be simplified. Eg, rather than have separate questions for each item that is prescribed by the Regulation, those items could be included as an annexure (eg similar to Box 18 in the issues paper) and the body of the certificate list only those attributes that are applicable to that land parcel, which could easily be auto-generated from the attributes in a Council's GIS/Authority systems (attribute code messages may need to be updated in some cases). This would save having to delete information from the template that is not applicable. A disclaimer would be needed to emphasise that only applicable attributes will appear in the body of the certificate.

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<p>Box 19: Miscellaneous operational and administrative provisions in the current Regulation</p>	<ul style="list-style-type: none"> <p>Clause 93 & 93 of the EP&A Regs.: This clause should be expanded to include other considerations other than structural provisions and certain fire safety and egress provisions. For a development that proposes a change of use or where building works are less than 50% of the floor area, Measures such as disabled access/ facilities and compliance with Section J of the Building Code of Australia should be able to be implemented.</p> <p>Registers and Records: Regulations should provide Council's with clarification and direction regarding copyright provisions relating to development applications (both historical and current). At the moment Council's have differing attitudes towards copyright protection, it is demonstrated by one Council uploading all plans, reports, etc. relating to a DA whereas another Councils err on the side of caution and amend plans for exhibition purposes to remove floor layout.</p> <p>Similarly, some Council's upload the approved plans with the determination notice; where as others only upload the determination notice, making more work in the form of GIPA requests for approved plans.</p> <p>Direction by the Regulation would assist to ensure consistency across NSW.</p> <p>Section 100 should be amended to include a reference to electronic records (where possible), with reference to waiving any actual or perceived copy right infringements on provision of plans. Current processes to provide such information for inspection is currently arduous and resource intensive via GIPA requests.</p> <p>Moving forward, these documents should be retrievable online.</p>