

24 November 2017

Director, Legislative Updates  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2000

To whom it may concern,

**RE: Submission on the Issues Paper - EP&A Regulations Review**

Thank you for providing Council with the opportunity to comment on the Issues Paper for the Review of the *Environmental Planning & Assessment Regulations 2000* (the Regulations).

The following sections comment on the functionality of the Regulations and make 16 recommendations to improve overall processes. It should be noted that Council has placed emphasis on providing regulatory flexibility for areas subject to the State Government's Urban Renewal Strategies. These areas are undergoing rapid change and a 'one-size-fits-all' regulatory approach is unlikely to deliver positive outcomes in these areas. Interim approaches are needed until comprehensive planning reviews of the State Infrastructure Contribution levies, local environmental plans, development control plan and Section 94/94A Developer Contribution Plans are completed.

*Local Environmental Plans*

The Department's Regulation Review Issues Paper discusses the possibility of inserting a time limitation for councils to assess Planning Proposals once lodged. This would be similar to time limitations placed on assessing and reporting development applications. It is noted that in the DPE's Planning Circular PS 16-004 published on 30 August 2016 already refers to a 90 day period that Council must provide its response to a Planning Proposal Application.

Since this was published, Council officers have endeavored to assess and report Planning Proposals within this timeframe with moderate success. Small site-specific or moderately sized Planning Proposals are generally able to be addressed within the 90 day timeframe. However, the advent of the State Government Urban Renewal Strategies endorsed by Section 117 Ministerial Directions in the Inner West has generated a surge of large Planning Proposals, some encompassing whole precincts or proposed developments exceeding 20-30 storeys in height. The 90 day timeframe for assessing and reporting these Planning Proposals is often insufficient.

The Urban Renewal Strategies require that comprehensive reviews are undertaken of Council's LEP/DCPs and Section 94 Developer Contribution Plans and that multiple State

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Government agencies and stakeholders are consulted as part of the preparation of any Planning Proposals. The 90 day limitation is an unreasonable timeframe to conduct these initial referrals, preliminary assessment, peer-review of documents, and the initial report to Council for determination. To ameliorate these issues, the Department should consider the following recommendations:

1. Establish categories that scale the type/size of Planning Proposals and set appropriate assessment and reporting timeframes accordingly. This is similar to the approach taken in Part 6 of the Regulations to determine the assessment timeframes of development applications by the type and scale of the proposed development. Additional allowances should be made for Planning Proposals occurring in Urban Renewal Corridors given the complexity of the assessment process prior to comprehensive reviews of the relevant LEP/DCP/Section 94 Plan.
2. Similar provisions regarding 'stop the clock', ability to request additional information, and details regarding the extension or modification of Planning Proposals should be outlined in the Regulations. This would be a similar approach to that currently described for development applications under Part 6 of the Regulations, in particular sections 51-56, 58-64, 95, 106-110, 112-113A, 123B-123F, and 123G and 123I.
3. The Department should consider inserting mandatory regulations for requiring Pre-Planning Proposal meetings for Proponent-led Planning Proposals (or rezoning applications). At present, Council conducts Pre-planning proposal meetings as part of providing planning services to the public. The process is generally viewed constructively as initial concerns can be raised and mitigated prior to the formal lodgment. This can have flow-on advantages for assessment and referral processes, and likewise council is able to prepare for additional resources if the project requires it. Notwithstanding, there are many instances where councils have no knowledge of proposals until they are formally lodged, and this process generally leads to increased assessment timeframes or inadequate resourcing to fully assess the initial Planning Proposal.

#### *Development Control Plans*

As a general comment there are largely no problems with the existing provisions of Part 3 of the Regulations.

#### *Development Assessment Regulation*

The following recommendations are made to the regulatory functions of development assessment under Part 6 of the Regulations:

4. Council supports the Department's initiative to review numerous environmental planning instruments to consolidate public exhibition requirements into the Regulations.
5. Council supports the simplification of Clauses 100 and 101; however, notes that the Department's suggestion to include the detail of the reasons for the determination would seemingly undermine the "simplification" objective. The reasons for the determination are detailed in the relevant assessment report which is made publicly available. Accordingly, the suggestion to include the reasons for determination in the notice is considered unnecessary.
6. The review should seek to enable notices to be sent via email (if given) to remove administrative burdens of mailing consents.

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7. The State Government initiative to reduce assessment timeframes could be assisted if the Department considered inserting mandatory provision for lodging Pre-Development Application for major developments and any development occurring in areas identified as Urban Renewal Corridors endorsed by a Section 117 Ministerial Direction.
8. Schedule 1 should be reviewed so that the Regulations require a higher level of quality information to be prepared as part of Development Applications. This would be a reasonable response to enable ease and clarity of assessment for consent authorities, as considerable time can be spent on deciphering plans or correcting errors. In particular, the reference to 'sketches' should be removed and emphasis placed on providing professionally scaled and accurate architectural plans. The Department may wish to consider establishing a 'guideline DA template' to replace or complement Schedule 1.

### *Fees & Charges*

To meet the costs of providing various planning services to applicants, consent authorities charge fees which are set out in the Regulations (Part 15 describes fees for development applications, building, occupation, construction and subdivision certificates, planning certificates, or review of decision to review a refusal determination). It is acknowledge that in most circumstances in this section, these fees and charges have not been reviewed in 5+ years or addressed in an ad hoc manner as successive amendments are made to the Act regarding particular development types.

In recognition of the costs associated with implementing and resourcing new planning legislation, new procedures, new types of development activities, the natural attrition of service costs over time, and that the type and scale of development activity varies across NSW, the fees should be reviewed taking account of the real costs of processing applications. The current cost setting is inappropriate for areas undergoing significant changes. It is recommended that the Department:

9. Investigate creating a more flexible and responsible approach to setting fees and charges, this may examine annual rate-pegging or creating exemptions for areas undergoing significant change that require additional resourcing.
10. Refrain from determining policies regarding fees and charges for Pre-Planning Proposals, Planning Proposals and Voluntary Planning Agreements (VPAs). This acknowledges that there are different levels of resourcing, development types/scales, and varied levels of development activity across NSW. It would be inappropriate to impose a one-size-fits-all approach on this issue.

### *Development Contributions*

Council supports the Department's initiative to remove the need for councils to have hard copies of all planning agreements available for public inspection at Council offices, and to instead upload copies of the planning agreements to the NSW Gov't Planning Portal.

Concern is raised regarding the Department's initiative to make the Secretary's Practice Notes for VPAs mandatory. The Department must consider the implementation costs, procedures, and regulatory limitations associated with the establishment and/or amendment of Section 94 and 94A. The Department must understand that VPAs provide a mechanism by which 'interim responses' to the provision of local and state infrastructure can be

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delivered in the absence of a relevant Section 94/9A Plans or State Infrastructure Contribution (SIC) levies. Further investigations will need to be mindful that the State Government endorsed Urban Renewal Strategies heavily depend on the VPA framework to delivery infrastructure costs not currently encompassed by existing Section 94 & 94A framework and (yet to be established) SIC levies.

Development along the Urban Renewal Corridors in the Inner West is currently subject to a high-degree of uncertainty and 'interim' flexible approaches are needed until comprehensive planning reviews can be undertaken. Likewise, across NSW there is a varied array of infrastructure costs, development activity, and envisioned growth over the short, medium and long term. A State Government policy approach to VPAs is not likely to appropriately outline all local costs/issues and may set unreasonable expectations on stakeholders. Accordingly, it is recommended that the Department:

11. Affords some degree of flexibility to address locally-specific issues in their review of the Regulations, noting a staged approach to implementing changes may be warranted; and
12. Further consultation is undertaken with councils regarding the application and functionality of the Secretary's Practice Notes for VPAs to assess its efficiency in existing contexts prior to making it a mandatory consideration.

### *Planning Certificates*

The contents of Planning Certificates are detailed in Schedule 4 of the Regulations which seek to condense an array of planning information from numerous statutes. Recent State Government reforms have changed numerous elements via the public exhibition and implementation of legislative reforms and amendments to existing State Environmental Planning Policies. Subsequently, Council is in a constant state of monitoring to update the relevant sections of the Planning Certificates given its legal status to ensure compliance.

It is recommended that this Department further investigate the following issues:

13. Seek to establish a notification process to alert Councils of changes to S149 Planning Certificates prior to the changes coming into effect;
14. Consider establishing a general template for Planning Certificates to remove complexities; however, afford some degree of flexibility to address locally-specific issues and legacy areas, such as the remaining Regional Environmental Plans.
15. Where applicable, State Infrastructure Contribution (SIC) levies should be identified similar to the existing provisions relating to Section 94 and 94A contribution plans;
16. Hard copy planning certificates should be replaced by an online system through NSW Planning Portal. However, given the complexity of ensuring information is correct during the implementation period, and that 149 Planning Certificates are a legal document, the Department should be mindful that 'check-points' will be needed to ensure that the correct information is provided.

Council would ask that the issues identified in this letter be investigated and addressed prior to the Draft Regulations Review documentation being released for further consultation in 2018.

If you wish to discuss the matter please contact Katie Miles, Strategic Planner (Leichhardt Division, Inner West Council) on 9367 9114.

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Yours sincerely



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