QPRC

SF170180
C17183098

23rd November 2017

Director, Legislative Updates
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001
Regulation.Review@planning.nsw.gov.au

Dear Director

Submission – EP&A Regulation Review

Thank you for the opportunity to make a submission.

At its meeting of 22nd November 2017 Council considered a report on this review and adopted the following recommendation:

That Council make a submission on the review of the *Environmental Planning and Assessment Regulations 2000* covering the issues in this report and other matters as appropriate.

In addition Council wanted the issue of a rural residential zone to be raised as part of this submission.

Accordingly the following submission is made.

1. Planning instruments

The Issues Paper flags amendments to *the Environmental Planning and Assessment Act 1979* (the Amendment Bill) will require councils to follow a standard format for development control plans. Regulations for this have not been produced and the Issues Paper indicates that the Department will work with councils to develop an approach to how the standard format DCP could be implemented, to ensure DCPs have the right balance of consistency and flexibility to capture local contexts.

This general approach is supported and has the potential to enable the repeal of clauses such as clause 21A "Approval of development control plans relating to residential apartment development". However, any reforms need to consider the challenges and circumstances in non-metropolitan areas often associated with development within Zones RU1 Primary Production, RU5 Village, E3 Environmental Management and E4 Environmental Living.

The standard format also needs to be structured so that it follows the sequence of Section 79C matters for consideration, so that complying with the relevant provision covers that matter. In addition, prior to the preparation of a DCP template, the outcomes that DCPs produce should be identified to ensure that successful DCPs (or parts thereof) are allowed to continue. For example, the use of master planning as part of the DCP process in the urban release areas in Queanbeyan has allowed for high level matters to be resolved prior to the preparation of individual development applications for subdivision. The Department is encouraged to ensure that a 'one size fits all' approach not be pursued just for ease of making the planning portal work.

The focus needs to be on outcomes achieved, not just the process and the technology around it.

2. Development assessment and consent

To assist procedural efficiency, the Regulations need to clarify and simplify the application of Section 79C matters for the assessment of new development/extensions within existing urban areas for those applicants who wish to submit a development application and follow this pathway. This would make the process procedurally simpler and quicker for this type of development application.

If pursued, this should also incorporate any matters currently prescribed by the Regulation.

In the case of applications that may be "withdrawn", the decision to withdraw should ultimately be with the applicant and not "forced" by the assessment authority. This should be clearly relayed to the applicant as they otherwise have no recourse for review or appeal with withdrawn applications.

3. Environmental assessment

The *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) is often misinterpreted and applied in instances where it was not intended. It is common that where the proposed use is not stipulated, then a "like" use is applied. This then causes confusion in so far as the trigger for requiring an EIS and the resultant scope of the EIS.

A Review of Environmental Factors, EIS and other information relied upon during the assessment should be made publicly available. Further, standardised templates detailing the format and information required and relied on to enable the assessment could be regulated, while the level of information and depth of study should be made relative to the proposal.

4. Development contributions

There is a need for the Regulations to be reviewed to clarify what type of amendments to planning agreements that section 93G of the *Environmental Planning and Assessment Act 1979* applies to and to exempt minor or housekeeping amendments to executed planning agreements from it.

In regard to the latter, this could be limited to changes to contribution rates arising from updated information, minor changes to clauses or other housekeeping changes i.e. changes which do not materially affect a planning agreement. This change would speed up the current process and obviate the need for legal input into preparing Deeds of Variation or new planning agreements for these type of changes.

In regard to indexation of monetary contributions, the Regulation needs to be amended to allow for the use of indexes or methods of escalation other than the Consumer Price Index (All Groups Index) for Sydney for particular types of infrastructure. This would apply to hard infrastructure such as roads and buildings which the Consumer Price Index tends to understate increases for. Suggested indexes for these could be some sort of construction index or other methods of escalation such as those used by Roads and Maritime Services.

It is also time for the Regulations to review the percentages and base figures used to set section 94A contributions which mostly haven't been reviewed since they were first introduced by the 2005 planning reforms. For some jurisdictions and/or types of development this has been done but should be done generally.

The Regulations should also allow a pathway for these thresholds and percentages to be adjusted in particular circumstances.

5. Fees and charges

The review of all fees as part of this review is welcomed. Fees are often historic, inconsistent and do not relate to the amount and cost of labour required by the particular process.

One fee that needs to be included in the Regulation is a fee for the preparation of a planning proposal. Many jurisdictions charge this and it could be based on minor and major planning proposals and an assessment of the current hours that staff actually require for the preparation of a planning proposal. This could set as a maximum which would allow discounting by Councils if felt necessary.

Another fee that should be considered by the Regulation is a fee for service where an application is withdrawn just prior to determination.

This Council recently had a situation where a major development application was some days off from being determined by the Joint Regional Planning Panel when the applicant withdrew it. This was after considerable monies had been expended on staff time to assess the application as well as the commissioning of consultants to review the applicant's studies. Councils should be recompensed in this type of situation.

6. Planning certificates

Since the commencement of the *Environmental Planning and Assessment Act 1979* more than 37 years ago, the amount of information to be included in Section 149 Certificates has greatly increased. In some cases, this has resulted in them being lengthy and overly complex.

With the Regulation review and the growing role of the NSW Planning Portal and NSW planning database, there is an opportunity to rethink the role of Section 149 Certificates and perhaps reduce some of the information in them including that currently available through the NSW Portal. This needs to be explored with a view to simplifying the information contained on Section 149 Certificates and referring the user to other sources of information.

The Issues Paper also raises the potential of standardising the format of Section 149 certificates and replacing hard copies with an online system through the NSW Planning Portal. Both of these initiatives need to be explored.

7. Rejecting Applications Where no Fees are Paid

Currently there is no formal mechanism to refuse or reject a development application that has been accepted but where no fees have been paid. This has occurred on several occasions and is more likely if Council is required to invoice for applications that are submitted electronically. Council will request that provisions be included to allow rejection of such applications.

8. Miscellaneous operational and administrative provisions

The Amendment Bill sets out the following changes:

22 Regulations relating to public exhibition

(1) The regulations may set out the method of public exhibition under this Act, how people can make submissions and how people can obtain further information.

(2) The regulations may specify the requirements for something to be considered a submission for the purposes of this Act.

23 Re-exhibition

(1) The regulations may specify the circumstances in which a plan or other matter is required or not required to be re-exhibited.

(2) Re-exhibition is not required if the environmental impact of the development has been reduced or not increased.

In principle, these are supported as the current regulations contain a number of inconsistencies for exhibiting draft development control plans, planning agreements and draft section 94 contributions plans as well as for their final approval/adoption. In some cases, these also refer to "notification in a local newspaper" which, in an age of electronic communication, needs revision. At the same time, the fact that a large amount of communication is now done electronically also raises the need to clarify what constitutes a submission.

However, councils should also be given an opportunity to comment on the relevant draft Regulation before it is finalised.

The application of this Regulation to the exhibition of development applications is also supported as well as the clarification of what constitutes a submission on these.

Apart from the above, the Amendment Bill also foreshadows further regulations to be made. These include regulations relating to such things as:

- the kind of development for which an accredited certifier is not authorised to issue an complying development
- to enable the recoupment of costs incurred by councils in investigating and enforcing compliance.

Again Councils should be given an opportunity to comment on these before they are finalised.

In addition to the above, the issue of a rural residential zone being considered as part of the Reform Package was raised by Council. What is being sought is a new zone in the Standard Template LEP which is equivalent to the former Zone No 1 (d) (Rural Residential Zone) in the *Yarrowlumla Local Environmental Plan 2002*.

This is envisaged to be in addition to Zone E4 Environmental Living. It would apply to land previously zoned as rural residential, but has been zoned E4 because this was the best zone currently available from the Standard Template LEP and after a fit for purpose analysis has been found to have limited environmental attributes.

Yours sincerely,

David Carswell
Service Manager, Land-Use Planning
Queanbeyan-Palerang Regional Council

CC **Mike Thompson**
Graeme Harlor