EP&A Regulation review – Submission summary table

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
Planning Instruments			
Clause 10A Notification when council does not support request to prepare planning proposal	Where a council does not support a written request for a planning proposal, the applicant must be notified in writing as soon as practicable	To provide greater certainty to the person applying, the review could consider prescribing a time period for giving notice	Council does not support the introduction of a prescribed time period for giving notice. Council has 90 days to support or make a decision on a planning proposal before an applicant may request a rezoning review. Recommendations of Council staff require a resolution of Council. Council needs the 90 days in order to meet reporting deadlines and to allow for appropriate consultation and assessment.
Clause 11 Fee payable for costs and expenses of studies etc. by relevant planning authority	Are there any known issues or inefficiencies to address?	Feedback is requested	The $25,000 figure in clause 11(2)(b) is not a sufficient sum to cover such costs. A more reasonable figure is $50,000 due to the rising costs of consultants, specialist studies and community engagement costs. The ability to enter into an agreement with an applicant should be retained. However, this can at times be a difficult process if the applicant does not agree with the planning pathway

GEORGES RIVER COUNCIL

EP&A Regulation review – Submission summary table

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
			proposed by Council.
Part 3 Development control plans (DCP)	The structure and format of DCPs differ greatly between Council areas, making them difficult to understand and apply.	The Department proposes the introduction of a standard format DCP	Council supports the introduction of a standard format DCP. To ensure that DCPs have the right balance of consistency and flexibility, the standard format DCP should have a part that allows for local provisions. The local provisions should be at the discretion of the local council
Clause 21 Approval of development control plans	After a DCP is exhibited and the submissions are considered, the Regulation allows a plan to be approved with any 'such alterations as Council thinks fit'	To improve transparency a re-exhibition could be required where amendments substantially alter the form or objectives of the draft DCP	Council does not support the re-exhibition of a DCP in these circumstances. Following exhibition and the assessment of submissions, a draft DCP needs to be reported to Council. The Council report is publicly available and the community are provided an opportunity to have their say at the Council meeting prior to any resolution being made. This is a form of consultation. A full re-exhibition is a very expensive and time consuming process.
Development assessment and consent			
Not currently addressed in the Regulation	For State Significant Development the Regulation does not currently require an environmental impact assessment to consider factors referred to in applicable	Proponents could be required to comply with applicable guidelines as part of their request for the Secretary's	Council supports the recommendations of the Issues Paper

GEORGES RIVER COUNCIL

EP&A Regulation review – Submission summary table

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
	guidelines	Environmental Assessment Requirements	
Clause 51 Rejection of development applications Clause 52 Withdrawal of development applications	The clauses only relate to development applications and do not extend to modifications	There is an opportunity to provide an avenue for the formal rejection or withdrawal of a modification in appropriate circumstances	Council supports the recommendation of the Issues Paper. However, any refund of fees should be at the discretion of Council
Clause 8P Surrender of approvals given under Part 3A of the Act or existing use rights Clause 97 Modification or surrender of development consent or existing use right	The Regulation currently requires the consent of all owners prior to the surrender of a development application or a transitional Part 3A approval. This can be overly onerous and at times impossible	Provision to allow for the surrender of a development consent or a Part 3A approval where one or more landowners do not consent	Council supports the recommendation of the Issues Paper
Public exhibition	The public exhibition requirements for a development application are currently spread across a range of different planning instruments	Mandatory community participation requirements are proposed in the review of the EP&A Act, with the review of the Regulation to consider streamlining and consolidating the requirements	Council supports the recommendation of the Issues Paper
Clause 100 Notice of determination Clause 101 Additional particulars with respect to section 94 and 94A conditions	The requirements for notices of determination are overly prescriptive, with Councils having to print and send out large numbers of documents to submitters, where the submitter has not indicated that they can be contacted by email	The review could allow for notification to be given via email, with applicants and submitters invited to view the notice of determination and relevant documents via the NSW Planning Portal	Council supports the recommendation of the Issues Paper

EP&A Regulation review – Submission summary table

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
Clause 123G Review of determination of development application	After a review of a determination, Council is required to notify the applicant of the result. Council is not required to notify submission makers of the result	An amendment to require Council to notify submission makers of the result could be considered	Council supports the recommendation of the Issues Paper. However, clarification is required to allow for email notification where possible
Schedule 3 Designated development	Classes of designated development are currently listed in Schedule 3 of the Regulation or declared in an LEP or SEPP. There is a question whether the classes of designated development are appropriate	The review could consider whether the classes of designated development remain appropriate and to review their alignment with Schedule 1 Scheduled Activities of the Protection of the Environment Operations Act 1997 No 156	Council supports the recommendation of the Issues Paper
	The Department is seeking feedback on whether the definition of 'environmentally sensitive area' in Schedule 3 remains appropriate and whether the use of specific locations or environmental criteria for some classes of development should continue	Feedback is requested	Council suggests a review of the definition of 'environmentally sensitive area' to include areas declared to be of outstanding biodiversity value under Part 3 Areas of outstanding biodiversity value, of the Biodiversity Conservation Act 2016
Environmental assessment			
Clause 228 What factors must be taken into account concerning the impact of an activity on the environment?	There is no requirement to record such assessments on a register or make them publicly available. Therefore it can be difficult to work out if a review of environmental factors has been done and what the outcome of the assessment was	The review could consider making it a requirement that public agencies must make their environmental assessments publicly available	Council supports the recommendation of the Issues Paper. However, is Council required to maintain such a register? Can the information be included within the NSW Planning Portal for ease of accessibility?

EP&A Regulation review – Submission summary table

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
Fees and charges			
Part 15 Fees and charges	Question whether the existing fee regime is appropriate	The Department is seeking feedback on all fees and charges	The current schedule of fees and charges under the Regulation does not meet our costs. Council seeks an increase in the fees and charges to recover the costs involved in assessing development, issuing certificates and reviewing determinations Council would like to offer an express post service for development consents and stamped plans. This is in response to customer feedback regarding the time it takes for such documents to arrive in the mail or complaints regarding the documents not arriving. This is an additional cost that cannot be absorbed by Council but should be able to be offered to applicants for a set additional fee
Development contributions			
Clause 25B(2) Form and subject-matter of planning agreements	Planning authorities are not currently required to consider practice notes when entering into a voluntary planning agreement (VPA)	The review could consider an amendment to the Regulation to ensure planning authorities and developers consider any relevant practice notes when entering into a VPA	Council supports the mandatory consideration of practice notes on the condition that: • the practice notes are consistent with the Act and Regulation; and • practice notes are not used to

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
			introduce additional requirements or restrictions on Council's ability to negotiate development contributions
Clause 25D Public notice of planning agreements	Are there any known issues or inefficiencies to address? The negotiation of a planning agreement can be very time consuming process. Therefore a VPA may not be ready to be exhibited at the same time as a planning proposal. It is imperative that the community are able to review the planning proposal and its corresponding VPA at the same time, so that they understand the whole picture of the proposed amendments to the LEP. This is reflected in clause 4.10 of Council's Planning Agreements Policy	Feedback is requested	An amendment is requested to clause 25D(1A) to require contemporaneous exhibitions. This may delay the progress of a planning proposal but will ensure that the community are fully informed about the impact / benefits proposed for the community
Not currently addressed in the Regulation	Are there any known issues or inefficiencies to address? Planning agreements are open to corruption	Feedback is requested	Guidelines are required on standardising the implementation and use of planning agreements. This could be included as part of a VPA practice note
Not currently addressed in the Regulation	Are there any known issues or inefficiencies to address?	Feedback is requested	Consideration should be given to inserting such a provision into the Regulation for planning agreements

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
	A planning agreement in connection with a development application can be incorporated into the development consent conditions (section 79C and 80A of the EP&A Act). This means that the execution of a draft VPA and then the delivery of the public benefits can be included as conditions of consent. This is imperative to ensure that the developer still enters into the VPA once they are given consent. Otherwise the developer can back out of negotiations / execution of a VPA once they receive their development consent. There is no such mechanism for planning proposals. This leaves councils very vulnerable to developers not delivering on promised public benefits or executing the VPA once the amendments are made to the LEP.		connected to a planning proposal, to replicate the safeguards afforded to planning agreements that are in connection with development applications. Councils are delaying the making of planning proposals to ensure that the relevant VPA is executed prior to the making of the LEP amendment. This is clearly expressed in clause 4.18 of Council's Planning Agreements Policy
Not currently addressed in the Regulation	Are there any known issues or inefficiencies to address? Council has serious concern regarding the interaction between planning proposals and planning agreements	Feedback is requested	Council recommends that the Gateway process should be able to direct the provision of public benefits via satisfactory arrangements (i.e. a planning agreement) where a planning proposal seeks significant uplift and is likely to have impacts on local and

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
	Where a planning proposal seeks significant uplift and is likely to have impacts on local and regional infrastructure, other than the developer volunteering a planning agreement, there is no mechanism to ensure the developer / land owner will ever provide the required infrastructure, other than Section 94/94A and Section 80A conditions of consent at the later development application stage S94/94A plans are a prediction of future development based on the planning controls and strategic plans at the time they are drafted and made. Section 94/94A plans cannot keep up with the rate at which land is being uplifted across Sydney to cater for increased density, in particular, apartment development Strategic Reviews and State Infrastructure Contributions (SICs) have the same issues as S94/94A plans, in that they are based on the best available information when they are published, but cannot foresee every planning proposal. SICs usually only		regional infrastructure An enforceable mechanism needs to be brought into operation to enable councils to refuse planning proposals where it can reasonably be identified that the developer has not offered to provide, by agreement, adequate infrastructure and public benefits to ameliorate against the impacts of their proposed development and make what would otherwise be an unacceptable development, acceptable in planning terms. The mechanism needs to be in place when significant uplift is sought that would result, if approved, in significant windfall gains to land owners. It is envisaged that pre-determined and published rates and or formulas for calculating value capture in the uplift in land value will provide certainty to local communities, Government and developers alike. Such formulas should be consistent across the metropolitan area and growth centres

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation

	cover State level infrastructure and do not provide a mechanism to ensure there is adequate provision of local infrastructure commensurate with the uplift sought by planning proposals
	
	It is too late to make good on infrastructure deficits at the development application stage, after the uplift has occurred, for the following reasons:
	• Landowners who sought the LEP amendments and received windfall gains from the sale of the land have often moved on
	• Developers who acquired the land at a premium price (after the uplift has occurred) have little margin to move within to keep their development feasible and object vigorously to the imposition of further costs
	• Developers are subject to SIC levies and S94/94A levies
			Any mechanism should:
			• Be a Plan-Led system that allows developers/landowners to calculate the likely financial implications of seeking such uplifts in development potential. Council's and other relevant planning authorities would need to publish relevant policies outlining what is expected in the planning obligations based on the scale of the proposal
			
			• Provide methodologies and matrices for predicting the size and types of obligations likely to be sought for specific sites; sub-plan areas; or windfall sites
			
			• Contain 'reasonable' tests to ensure the proposal:
			  • Prescribes the nature of the development to achieve planning objectives;
			  • Mitigates the impact of the subsequent development; and

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
			• Compensates the community for loss or damage caused by the subsequent development. Such an approach provides a faster release of land and reduces housing costs, by eliminating lengthy negotiations, peer reviews and scrutiny currently required when negotiating VPAs
Clause 25E Explanatory note	Explanatory notes are often written in technical or legal terms that are difficult to understand	The draft revised practice note for VPAs recommends that explanatory notes are written in plain English	The Department should consider a review of the language used in clause 25E(2) of the Regulation which sets out the mandatory information to be contained within an explanatory note. This would improve the plain English readability of explanatory notes
Clause 25F Councils to facilitate public inspection of relevant planning agreements	The Regulation currently requires public authorities to maintain a register of final planning agreements and have hard copies available for inspection	Consider requiring all draft and final planning agreements to be exhibited on the NSW Planning Portal	Planning agreements are commercial in confidence until such time as they are resolved by Council for exhibition. Therefore draft planning agreements should only be made available for inspection during the public exhibition period. Council supports the Department of Planning maintaining the register of VPAs on the NSW Planning Portal once

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
			the VPA is finalised
	The Regulation does not currently require planning authorities to publish policies and procedures to guide and explain their use of VPAs	The review could consider introducing a regulatory provision requiring public authorities to publish policies on a range of fundamental principles for VPAs	Council supports an amendment to the Regulation requiring public authorities to make available a VPA policy. However, the Regulation should provide an overview of the mandatory structure of such a policy to improve consistency
Planning certificates			
Schedule 4 Planning certificates	Planning certificates lack consistency and can be overly lengthy and complex	Question: What should the role of planning certificates be?	Planning certificates should be accurate legal documents that provide relevant planning and property information relating to individual land parcels that can be relied upon for property sales, property enquiries and development
		Question: What information should be included on planning certificates?	Planning certificates should contain all of the planning and property information that is relevant and known (to the local council) relating to the land. This does not include information that is in draft form or is commercial in confidence.
		Question: Should the Regulation prescribe the language or format in which information should appear?	Yes. The Regulation should set out the wording of questions and be in a standard instrument format for consistency. This is imperative as the

Part of the EP&A Regulation	Issue	Issues Paper suggestion	Council Recommendation
			current ad hoc approach to interpreting the Regulation is producing a patchwork approach across local government areas. It is questionable whether all certificates being produced in NSW are accurate as a result of this approach
		Question: Could hard copy planning certificates be replaced with an online system through the NSW Planning Portal?	Yes. This is a very good idea, as the portal could be a one stop hub for planning information relating to land. A centralised planning certificate system would ensure that when updates are made to the Regulation relating to the required contents of certificates, all certificates would automatically update once the update is made. The Department must consider who will manage the data that sits behind the templates, which is relied upon to produce the certificates. Councils currently use a range of software tools to produce certificates. If the Department managed the data and the software program that supports the creation of the certificates, this would improve service times and reliability