



24 November 2017

Director, Legislative Updates
Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

E-mail: Regulation.Review@planning.nsw.gov.au

Dear Director

Re: The Review of the Environmental Planning and Assessment Regulation 2000

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of eleven local councils in the area south of Sydney harbour - central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils cover a population of about 1.7 million, one third of the population of Sydney.

In order to make this submission within the timeframe of the review, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. We will contact you further if any issues arise as it is reviewed.

The details of SSROC comments are in the sections below.

Thank you for the opportunity to provide comments and suggestions on the Review of *Environmental Planning and Assessment Regulation 2000*. If you have any queries please contact the SSROC Strategic Planning Manager, Vincent Ogu, on 8396 3800 or ssroc@ssroc.nsw.gov.au.

Yours sincerely

Namoi Dougall
GENERAL MANAGER
Southern Sydney Regional Organisation of Councils

SSROC Submission on:

**REVIEW OF THE ENVIRONMENTAL PLANNING
AND ASSESSMENT REGULATION 2000**

Submitted to the Department of Planning and Environment

24 November 2017

GENERAL COMMENTS

SSROC welcomes the opportunity to contribute comments on the Review of the Environmental Planning and Assessment Regulation 2000.

The SSROC Secretariat realises that the review of the Regulation follows the proposed changes to the *Environmental Planning and Assessment Act 1979*. This is important to local councils and other stakeholders as the Regulation deals with the day-to-day requirements for the effective operation of the planning system.

SSROC recognises the need for the review of the Regulation as an opportunity to build on the changes to the EP&A Act and to reduce administrative burden and increase efficiency, reduce complexity and establish a simpler and transparent planning system.

SSROC member councils welcome the focus of the Regulations reform on key areas:

- Planning instruments - planning proposals, making and amending of development control plans
- Procedures for development applications and complying development certificates
- Requirements for environmental assessment and applications for State Significant Infrastructure
- Environmental impact statements
- Development contributions, including the preparation of contributions plans
- Planning certificates
- Miscellaneous operations and administrative provisions.

Suggestions and recommendations to improve on the current Regulations are presented in the “Specific Comments” sections below.

SPECIFIC COMMENTS

1 PLANNING INSTRUMENTS

1.1 Planning Proposals

The Issues Paper suggests inserting a time limitation for councils to assess Planning Proposals once lodged similar to time limitations placed on assessing development applications. Already, a Department of Planning and Environment (DPE) Planning Circular published in August 2016 refers to a 90-day period within which Councils must provide their response on Planning Proposal applications.

Experience of member councils shows that small site-specific or moderately sized Planning Proposals can generally be addressed within the 90-day timeframe. However, large Planning Proposals, often related to urban renewal developments that could include whole precincts or proposed developments that exceed 20-30 storeys in height, would require more time.

Urban renewal strategies in NSW require that Local Environmental Plans, Development Control Plans and Section 94 Developer Contribution Plans go through comprehensive reviews and that several public and private agencies be consulted as part of the Planning Proposal’s preparation process. A 90-day time frame is insufficient to conduct initial referrals, preliminary assessment, peer-review of documents, and the initial report to Council for determination.

To address these concerns, DPE should consider establishing different categories according to the scale, type and size of Planning Proposals, and put in place differing and appropriate

assessment and reporting timeframes. This would be in line with the approach to development applications that vary depending on the type and scale of the proposed development.

SSROC emphasises that it would be necessary to allow additional time for Planning Proposals for Urban Renewal Corridors as a complex assessment process often is required in addition to comprehensive reviews of the relevant Local Environmental Plans, Development Control Plans and Section 94 Plan.

As is the case with development applications, the Regulation should contain details of provisions for 'stop the clock', requests for additional information and details of extension or modification of Planning Proposals.

Recommendations:

1. DPE should establish timeframe categories according to the type and size of Planning Proposals.
2. Allow additional time for Planning Proposals for Urban Renewal Corridors to accommodate the necessary complex assessments and reviews of Local Environmental Plans, Development Control Plans and Section 94 Plan.

1.2 Notification of Determination

If a written request for the preparation of a planning proposal under Part 3 of the Act is not supported by Council, then a prescribed time period to notify a proponent of the determination is generally supported by SSROC. However, adequate time to carry out a reasonable assessment of the proposal would also be needed. Councils often need up to 90 days to meet reporting deadlines and to allow for appropriate consultation and assessment.

The publication of reasons why determination decisions are made is supported, as it improves transparency in the planning process. However, additional administrative burden should not be imposed to achieve this outcome. Often, the reasons for decisions made are discussed in detail in Council planning reports which are available to the public.

The replication of this in determination notices is seen as an unnecessary administrative burden. One implication is that this would encourage 'standardised' and shortened reasons to meet the legislative requirement instead of the usually clear and detailed reasons as outlined in the assessment report.

Any notices of determination should be in plain English with few or no references, where possible, to other documents to improve clarity for the public.

Recommendation:

3. Prescribed timeframe to notify proponents of planning proposals if not supported by council is supported provided there is adequate time to carry out a reasonable assessment of the proposal.
4. The publication of reasons for determination decisions should not impose any additional administrative burden or replicate information provided in a planning/assessment report.
5. Determination notices should be in plain English with few or no references to other documents to improve readability and clarity for the public.

1.3 Development Control Plans

The introduction of a standard format DCP should be approached with caution. SSROC member councils have reservations that need to be addressed. It is arguable that the proposal would lead

to one-size-fits-all, compromise planning and hinder good design. It is seen as restrictive and limits the use of planning controls to address unique characteristics of different areas and respond to local issues. Flexibility is necessary and should remain, in order to enable the preparation of DCPs that respond to local circumstances and differences.

At the least, 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 and these provisions should be at the discretion of the local council.

Recommendation:

6. The Department of Planning and Environment should consult with councils, the development industry and the community on the form, structure and content of a standardised DCP before it is legislated.
7. Any standard format DCP should have a part that allows for local provisions and detailed place-based controls.

1.4 Approval of Development Control Plans

SSROC member councils are generally not keen on re-exhibition of DCPs because this can be an expensive and time-consuming process. The conditions or criteria for a DCP to be re-exhibited should be collaboratively established with councils. For example, DCPs should only be re-exhibited if substantial amendments have been made to a previously exhibited draft. The objective then could be to improve transparency in situations where amendments have substantially altered the form or objectives of the draft DCP.

Recommendation:

8. Re-exhibition of DCPs should not be prioritised because of the expensive and time-consuming nature of exhibitions.
9. If the DPE intends to require re-exhibition, establish qualifying criteria in collaboration with councils and only apply where amendments have substantially altered the form or objectives of the draft DCP.

2 DEVELOPMENT APPLICATIONS

2.1 Rejection or Withdrawal of Development Applications

Councils support the recommendation of the Issues Paper that provision be made for the formal rejection or withdrawal of development applications in appropriate circumstances. Caution should though be exercised as some Councils may already have incurred cost. Any refund of fees should be at the discretion of Council.

The provision of an avenue for the formal rejection or withdrawal of modification applications is supported.

2.2 Public Exhibition

SSROC realises that the public exhibition requirements for a development application currently can be found in different planning instruments. Member councils support the community participation requirements as proposed in the review of the EP&A Act. SSROC also supports the review of the Regulation which seeks to streamline and consolidate the requirements.

The consolidation of all requirements relating to public exhibition into the Regulation is supported.

2.3 Designated Development

In 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.

It would be useful to undertake a review of the definition of ‘environmentally sensitive area’ to include areas declared to be of *outstanding biodiversity value* under Part 3 of the Biodiversity Conservation Act 2016.

2.4 Development Assessment

SSROC supports the inclusion of a requirement for proponents to consider and comply with key environmental guidelines from an early stage of a State Significant development.

Recommendations:

10. Provision for the formal rejection or withdrawal of development applications in appropriate circumstances is supported. As some councils may already have incurred cost, any refund of fees should be at the discretion of Council.
11. SSROC also supports the review of the Regulation to streamline and consolidate the community participation requirements of public exhibition.
12. DPE should undertake a review of the definition of ‘environmentally sensitive area’ to include areas declared to be of outstanding biodiversity value under Part 3 of the Biodiversity Conservation Act 2016.
13. SSROC supports the inclusion of a requirement for proponents to consider and comply with key environmental guidelines from an early stage of a State Significant development.

3 ENVIRONMENTAL ASSESSMENT

Currently, the Regulation does not require an environmental impact assessment to consider factors referred to in applicable guidelines for State Significant development. SSROC member councils support the Issues Paper recommendation that proponents be required to comply with applicable guidelines in relation to environmental assessment requirements.

The addition of a requirement for public agencies to make environmental assessments publicly available is strongly supported.

SSROC believes that statutory guidance on the preparation and processing of environmental impact statements will provide greater certainty and promote robust assessment and decision-making by the relevant determining authority.

Recommendation:

14. The guidance on the preparation, contents, form and submission of environmental impact statements and the documents and information required should be included in the Regulations as intended by clause 105 of the *Environmental Planning and Assessment Act 1979*.

4 PLANNING CERTIFICATES

4.1 Revised s149 Template

There is general consensus among SSROC member councils that planning certificates are not user-friendly or consistent in their presentation. A revised 149 certificate template for Councils to work from would provide greater consistency of the presentation of this information across the State.

The current 149 system is unnecessarily labour intensive and in some cases requires weeks of work to translate amendments into information on a certificate. The implications of poor data quality and the time taken to validate data sets against real site conditions has placed a significant burden on Council staff.

Standardising the format, language, and information included in planning certificates is generally supported. The information should be clear and written in plain English. There should also be some flexibility to allow for sensitive or complex information and situations to be presented in a way that improves understanding of the issues.

4.2 Data Quality and Organisational Complexity

The data quality and maintenance of NSW databases can be unreliable, particularly in relation to State Infrastructure Certificates, for example in relation to on-site contamination issues. Councils carry the liability of displaying incorrect information yet very limited information is available. Often, anomalies arise between what is identified within LEPs and real site conditions due to errors in mapping and interpretation.

The fragmentation of 149 teams within Councils also presents a barrier to procedural improvements. The responsibility for planning certificates ranges from planners, engineers and GIS officers to administration staff. In some instances, the complexity of the changes and the operating system that each Council uses can extend the time taken to update the planning certificate for weeks.

4.3 Automated Delivery of Certificates

There is need for DPE to consider automated delivery of planning certificates in order to reduce the organisational requirements of councils. A significant amount of work is required to enable the automation and instant provision of planning certificates. The scope of work involved in rolling out an automated system includes data extraction, data matching, data validation and corrections and sign off for every parcel and attribute. The support of DPE is required to pursue these improvements.

4.4 Development limiting information

Planning certificates should include information on issues that potentially limits development. The certificates might be used to make owners aware of other amenity impacts from nearby mixed-use areas; the operating hours of nearby businesses for example.

Where land is subject to potential affectations, these should be listed for clarity and certainty in the planning certificates. Such affectations may include, Special Infrastructure Contributions; 'potentially contaminated land;' and land that is nominated for investigation under State or Council policies or strategies.

Recommendations:

15. Establish a notification process to alert councils of changes to S149 Planning Certificates prior to the changes coming into effect.

16. State Infrastructure Contribution levies, where applicable, should be identified similar to the existing provisions relating to Section 94 and 94A contribution plans.
17. Develop a 'model' plain English 149 certificate template in collaboration with councils, which is made available on the Department's website and regularly updated when relevant legislation is amended. This should be in addition to the issuing of Planning Circulars notifying amendment to the legislation.
18. Create a s149 position or team within the Department of Planning and Environment with responsibility for:
 - Coordinating the release of regular circulars and practice notes to Councils prior to the enforcement of amendments;
 - Providing guidance on the wording and implications of amendments;
 - Facilitating an online s149 forum for Councils, the Department and developers / solicitors to interact, provide feedback and resolve issues;
 - Developing and managing a plain English s149 webpage with user friendly information.
19. The Department provide relevant State data sets to Councils to expedite data gathering.
20. The Department should build in some flexibility to address locally-specific issues such as amenity impacts of nearby mixed land use and legacy matters such as the remaining Regional Environmental Plans.

4.5 Development Contributions

The SSROC realises that the existing Regulation does not require consideration of the Secretary's VPA Practice Notes, while DPE would like to change this and make consideration of such guidelines mandatory. It is important that DPE engages with councils regarding the application and functionality of the Notes for VPAs. Piloting the VPA Practice Notes would help to assess efficiency before they are made mandatory to identify and address any unintended consequences.

Some degrees of flexibility are required to address locally specific issues in the review of the Regulations. A staged approach to implementing changes may also be necessary. For example, Urban Renewal Corridors such as the Sydneham to Bankstown Urban Renewal Corridor depends on the VPA framework to meet costs of infrastructure not covered by the existing Section 94 & 94A framework or proposed SIC levies. An interim and staged process may be necessary prior to comprehensive planning reviews to determine among others, infrastructure needs and costs.

It is also important that any explanatory notes accompanying VPAs are written in plain English, again to increase transparency and public understanding of the issues and decision process.

Recommendation:

21. It is reasonable that the DPE review and investigate implementation costs and procedures associated with the establishment and/or amendment of Section 94, 94A and VPAs Policy.

5 FEES AND CHARGES

5.1 Levy for compliance

SSROC strongly supports provisions for reimbursement of the costs that councils incur in the process of investigating and enforcing compliance with the requirements of the Environmental Planning and Assessment Act in relation to development that requires consent. This would be through a levy on development applicants, including complying development applicants.

SSROC member council would also urge that the Regulation detail the rate of the levy and the process of reimbursement. This will enable adequate relevant funds to be remitted to local councils to undertake the compliance functions and activities.

5.2 Fees for Development Applications

The prescribed fee structure for DAs in clause 246B should be reviewed so that councils are able to recover all costs associated with assessing and processing of often complex development applications. Currently, councils often cannot meet the cost of salaries of staff working on the development application assessments with income generated from fees.

Councils would support a review of the DA fees set out in clause 246B to ensure that the fees cover the costs of staff as well as public notification and advertising. This will enable councils to engage more staff and to undertake detailed assessment of development applications.

5.3 Additional application fees resulting from underpayment

It is important that the Regulation show some flexibility. Currently, clause 246 allows a consent authority to make a determination in regard to fees, including underpayment. The problem is that such a determination must be made within 14 days of an application being lodged. The reality though is that often, issues in relation to underpayment of DA fees come up after the expiration of the prescribed 14 days.

For example, issues of appropriate payment may only be found or confirmed generally at the construction certificate stage, after builders are appointed and when the actual construction costs can be established. Another difficulty is that clause 125 (offences against the Act and Regulations) of the *Environmental Planning and Assessment Act 1979* does not permit shortfalls in DA fees to be recovered based on the actual or contracted development cost.

SSROC would support an additional subclause in clause 246B of the Regulation to allow councils to recover any additional application fees resulting from an underestimate or underpayment that may only be accurately determined after the actual or contracted development cost is known.

Recommendations:

22. The Regulation should detail the rate of the levy and the process of payment of compliance levy to councils. DPE should engage with councils on the rate and processes for reimbursement to local councils of costs incurred in compliance enforcement process.
23. A review of the fees prescribed in clause 246B to ensure that councils adequately meet the costs associated with assessing complex development applications.
24. Provision be made and for councils to recover any additional application fees attributable to underpayment identified during the construction process.

6 MISCELLANEOUS OPERATIONAL AND ADMINISTRATIVE PROVISIONS

6.1 NSW planning portal and online planning services and information

The Environmental Planning and Assessment Act seems to allow for provision for the online delivery of planning services and information including information on land use zoning, development standards and online delivery of planning certificate information through the NSW planning portal.

SSROC member councils hold some reservations that electronic disclosure of critical information such as land-use zoning and development standards without verification has substantial risk issues. Some councils' risk management practices require all section 149(2) and (5) certificates to be verified before they are released to an applicant. The Department needs to consider the risk issues carefully as councils may not agree to bear any liability for information inadequacies.

Operational and ethical issues also need to be addressed. These include: compatibility of computer and information technology system; data integration of the NSW Portal with Councils' systems; copyright; complexity of forms; and risks associated with electronic authorisation of land owner's consent.

6.2 Feedback Portal

It is suggested that the Planning Portal includes a facility for feedback, so that submissions can be made directly via the portal, or members of the community may express interest in the outcome of an application or planning issue, and be updated when an application is re-exhibited, or a determination is made.

6.3 Clarity in the Planning System

It is important that all Environmental Planning Instruments state whether a clause is a Prohibition or a Development Standard. This will eliminate uncertainty and provide greater consistency of approach when dealing with applications to vary development standards. This will provide clarity for all stakeholders or parties and greater transparency, understanding and confidence in the planning system.

Recommendation:

25. The Regulation should address the operational and ethical concerns raised by councils in relation to the planning portal and the issue of resources to enable councils to upgrade their information systems for effective integration with the NSW planning portal information system.
26. All Environmental Planning Instruments should state whether a clause is a Prohibition or a Development Standard for greater consistency, transparency and confidence in the planning system.