24 November 2017

Reference File: F00678

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

Regulation.Review@planning.nsw.gov.au

Dear Sir/Madam

SUBJECT **Review of the Environmental Planning and Assessment Regulation 2000**

The following submission follows the format of the exhibited issues paper, providing comment on each relevant section. It is understood that the review of the EP&A Regulation follows from a broader review of the EP&A Act, therefore some of the included comments relate to the Act.

Please also note this Council's submission of 30 March 2017 relating to the proposed *EP&A Amendment (ePlanning) Regulation 2017*. That submission raised issues with the proposed changes, some of which are not explicitly addressed in the September 2017 issues paper but remain relevant to reform of the Regulations in the context of ePlanning.

A More Modern and Accessible Regulation

This section of the document identifies areas where the existing Regulation could be modernised, given that it has not been comprehensively reviewed since its introduction in 2001. A range of drivers are listed for the review including advancements in technology. In several instances reference is made to the Planning Portal. The City of the Blue Mountains supports the delivery of online services and open data. To do this, integration with Council's front / back end digital systems is essential. At the time of writing, the Planning Portal has yet to be released. It remains unclear as to whether the proposed portal acts as a repository or a channel for information. For this reason, some of the comments made focus on system integration so that processes remain seamless for the applicants and Council.

The following points are made in relation to the suggested changes in the context of modernising this piece of legislation:

Box 6: Making a Submission on a planning matter

Clarification on the process and methods by which a submission can be made is encouraged.

Currently, and as a result of technology out pacing the provisions of the EP&A Act and the EP&A Regulation, Councils are increasingly required to accommodate all methods of making a submission; being either by letter, email, online formats etc. This is an administrative burden that could be simplified, by requiring that a nominated platform or format be used.

Box 7: Examples of Outdated/administratively burdensome provisions

It is agreed that the posting of Notices of Determination is outdated, as is the provision under s.101 of the EP&A Act & cl.6 of the Regulations, which requires a public notice to be published in a local newspaper. The publication of the notice of determination via tracking software or, in the absence of this, via a notice on the Council's website and/or an email should be sufficient.

If as suggested, the Regulation is amended such that it allows for notification via email, which then directs applicants to the Planning Portal, the Planning Portal needs to integrate with the various Council document management systems and databases, to ensure that this process is seamless.

1. Planning instruments

Box 10: Related initiative – Standard format Development Control Plans

The development of a standard format DCP is supported. It should enable improved navigation and legibility. However, standardised content is not supported. Councils with unique environments must be free to undertake local planning and provide targeted guidance through their DCPs.

1.2 Requirements for the exhibition of DCPs

A requirement to re-exhibit draft DCPs that have been subject to substantive changes is supported.

2. Development Assessment and Consent

Box 11: Provisions relating to development assessment and consent process

With reference to the Schedule 1 requirements for information and documentation to be submitted with a development application, it is understood that this will be replaced by the Secretary's Requirement as part of the EP&A Act changes. In the context of modernising these requirements, it is requested that any review:

- Include provisions for the e-planning system, and make clear that this will be the primary method of lodging an application. Currently, due to the lack of clarity around the type of options that *must* be provided (for example can applicants be refused from lodging a hard copy application) Councils need to run multiple processes to provide the opportunity for all lodgement methods;
- Formalise a method by which applications lodged online can be vetted before formal lodgement is accepted. For example, if there are no fees attached to an application, clarity should be provided as to the status of that application – whether it is legally made? Is the formal date of lodgement, the date fees are received?

2.2 Provision for Modification Application to be Rejected or Withdrawn

The opportunity to reject or request formal withdrawal of section 96 modification applications is supported.

It is also suggested that the Regulation could include a timeframe or a hold point, whereby a new development application would be required, rather than a modification. This may be a timeframe in years since the original approval, or for example, if an Occupation Certificate has been issued, then a new development application would be required.

2.4 Locating public exhibition requirements

The inclusion in the EP&A Act of mandatory minimum requirements for public notification is supported. The streamlining and consolidation of these requirements, such that they are in a single location is also supported.

It is also recommended that as part of the review of the Regulation, the following information be included to provide clarity around the notification process:

- In what circumstances are internal floor plans required to be redacted?
- Which documents are required to be notified?
- When documentation is submitted during assessment, are these documents required to be notified. What is the threshold?

Additionally, in relation to public notification, it is requested that clarity be provided around notification letters. Specifically:

- Will notification still be required by letter either of a development application on notification or notification of a decision?
- Responsibilities associated with the receipt and consideration of anonymous submissions or issues with legibility of addresses;
- Clarification on the provision of submissions to the general public and / or publication of those on tracking software and the impact on privacy.

Notification by ePlanning alerts is supported. It is suggested however that notification mechanisms be defined in a communication plan that promotes electronic notification but also considers local circumstances. Such a plan, should outline the nominated platform that will be used and under what circumstances. For example, general development via website notices or tracking tools or opt-in / opt-out software (such as planning alerts).

Box 12: Requirements for a Notice of Determination

As per the above comment, reference to notification by email and referral of applicants to the Planning Portal is supported. The proposed changes to the EP&A Act requiring all decision makers publish reasons for their decision is noted, along with the suggestion that these reasons be included in the Notice of Determination. The following comments are made and clarification sought:

- Is there are framework for the level of detail or extent of reasoning required? The description of the reason for the decision needs to be meaningful, and therefore to ensure consistency of approach, parameters around this information are required;
- Will it be required that additional information (such as technical assessments) be available on the Planning Portal, in conjunction with the Notice of Determination?
- For court decisions, should these be notified, or are applicants required to rely on publication by the court?

2.7 Classes of Designated Development and 2.8 Definition of an environmentally sensitive area in Schedule 3

The suggestion to make the classes of Designated Development listed under Schedule 3 of the EP&A Regulation consistent with those listed under Schedule 1 of the POEO Act is supported.

However, no detail is provided as to which classes of development would be removed or changed. This level of detail is important to ensure that the types of development to be considered designated are not watered down, and robust environmental protections remain in place.

Similar to the point above, while consistency is supported, without detail on what the definition of 'environmentally sensitive area' might be changed to include or exclude, comment cannot be made on its appropriateness. We request further consultation on this issue when more details are available.

3. Environmental assessment

3.1 Requirement for Agencies to make environmental assessments available

The suggestion that the Regulation could be reviewed to require that public agencies make their environmental assessments publicly available is supported.

4. Fees and Charges

The proposed review of the existing fee regime is supported. The following fees and charges are recommended for review:

- The Value of Works is used to determine the development application fee. In the Blue Mountains this is based on the building works / excavation and site preparation costs / demolition costs etc. Plus the value of related works such as landscaping, drainage, etc. To achieve consistency, guidance on inclusions is required;
- The base fees associated with the erection of a dwelling house with an estimated cost of $100,000 or less should be indexed;
- Applications that are substantially the same can be modified. Consideration should be given to time limiting this. Alternatively, a new fee structure should be established that is not based on a percentage of the original fee paid. Currently, modifications can occur on applications that are over 10 years in age. The fee associated with this work is not reflective of the service provided.

5. Development Contributions

This section of the issues paper is dominated by the regulation of VPAs. It is agreed that improved transparency and a degree of standardisation would improve community perceptions of the VPA process.

Not given attention in the issues paper is the role the Regulations play in setting a maximum percentage of the proposed cost of carrying out development that may be imposed under a section 94A contribution. Current maximum percentages as stipulated in the regulations act as an arbitrary cap on local infrastructure contributions and contributes to funding shortfalls. The cap on s94 contributions has recently been removed. So too should this cap on s94A contributions. This will allow

developer contributions to more accurately reflect the cost of providing local infrastructure.

6. Planning Certificates

Questions around the language and format of certificates are noted, and consistency in approach is recommended, including:

- Confirmation about what should be included on Planning Certificates;
- Should content be streamlined, and if so, what are the legal implications?

The information being placed into Section 149(2) Planning Certificates has increased considerably over the years. 149(2) Certificates are becoming de-facto property information repositories. The Section 149(2) wording could potentially be streamlined to only include essential information on the land required for conveyancing purposes.

The information currently included on certificates is often general in nature. For example, a list of all State Environmental Planning Policies which may apply to the site is included. This does not provide applicants with detailed information on potential risk (eg: site contamination). Clarity is sought on this and a framework for a standard process across NSW is required.

Any information already furnished on a Land Title should not be duplicated in a Section 149 Planning Certificate.

A mandatory endnote on the Section 149(2) could be included flagging the other items of information that can be obtained in a Section 149(5).

7. Miscellaneous Operational and Administrative Provisions

Box 19: Miscellaneous operational and administrative provisions in the current Regulation

Crown Development Provisions

The need for the timely delivery of public infrastructure and services is understood. However, it is requested that the section requiring agreement from the Crown before conditions of consent can be imposed, be reviewed to allow consent authorities some discretion around such applications.

Registers and Records

With reference to the requirement of section 100 of the Act, the following comments are made:

- Clarification is sought on whether the development assessment tracking tool will become the register. This should be considered as part of the review of the Regulation;
- GA39 Local Government Records Authority gives broad classes of retention. Major developments must be kept 10 years after the structure has been removed or demolished. Minor only need to be kept for 10 years are until after completed. Lapsed or withdrawn after 7 years. How this relates to the register of consents and compliments GIPA requests requires clarification;
- Court determined applications and decisions are not published on Council's website. Clarification around how these are managed is required;

- It would be beneficial for Councils to be notified of Exempt works and works completed under the Infrastructure SEPP, such that a comprehensive register can be kept. This would benefit regulatory compliance enquiries.

We look forward to your consideration the above matters as part of the review of the EP&A Regulation. We would welcome the opportunity to discuss our suggested changes in more detail. The most appropriate contact for further discussion would be Kim Barrett (Manager – Development and Planning Services) at kbarrett@bmcc.nsw.gov.au, or 4780 5591.

Yours faithfully

WILL LANGEVAD
Director – Development and Customer Services