

24 November 2017



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

Dear Sir/Madam

**SUBMISSION - PROPOSED CHANGES TO THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION, 2000**

Council welcomes the opportunity to provide its input and perspectives in respect of the proposed changes to the Environmental Planning and Assessment Regulation, 2000 and the Issues Paper released by the Department of Planning and Environment in September 2017.

The Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation, 2000 have both done a good job in facilitating the development and consideration of our natural environment for a significant period of time. However, given the overall age of the Act and Regulation, they have both become overly complicated and cumbersome and require significant review.

Following are Council's comments in respect of the various sections of the Issues Paper:

**1. Planning Controls**

The Issues Paper provides discussion around two specific concerns in respect of the current provisions of the Regulation and its relationship with the Act, as detailed below:

**(a) Notification of Determination**

As discussed in the Issues Paper, the Regulation does not currently specify a minimum time period in which a Council is required to notify a person in writing that a request for the preparation of a planning proposal has not been supported. The Issues Paper also seeks input as to whether a prescribed time period should be provided for this notification.

It is considered that the provision of a prescribed time period for notification as to whether a planning proposal is to be supported by a Council is not required or warranted given the overall complexity of the planning proposal process. Unlike the development assessment process, which has statutory times attached to proponents having the ability to undertake legal action, it is

All communications to: **THE GENERAL MANAGER**

**ABN 53 539 070 928**

PO Box 81 Dubbo NSW 2830

**T** (02) 6801 4000 **F** (02) 6801 4259 **E** [council@dubbo.nsw.gov.au](mailto:council@dubbo.nsw.gov.au)

Civic Administration Building Church St Dubbo NSW 2830

**W** [dubbo.nsw.gov.au](http://dubbo.nsw.gov.au)

unclear as to what value this would add to the planning proposal process given the pre-Gateway Determination provisions currently available.

**(b) Requirement for exhibition of DCPs**

As discussed in the Issues Paper, the Regulation allows for a Development Control Plan (DCP) to be approved with the undertaking of alterations by council, without the need for the Plan to be re-exhibited.

Whilst re-exhibition of a DCP that has been amended would serve to increase public transparency in the process, it is unclear as to what parameters would be placed around a requirement to re-exhibit a DCP. In addition, this provision may cause confusion in the public realm if the entire content of the DCP is again open for public scrutiny.

## **2. Development Assessment and Consent**

The Issues Paper has provided a number of matters for consideration in respect of development assessment and consent issues. The following includes information in respect of specific items which require further clarification and/or consideration by the Department in the development of the changes to the Regulation.

**(a) Locating Public Exhibition Requirements**

The Issues Paper has raised concerns in respect of the public exhibition requirements for numerous development types spread across State Environmental Planning Policies, council Development Control Plans and other policy documents.

It is considered that the Regulation review should consider including specific provisions that both enact the proposed community participation changes to be included in the Act and provide clear direction for councils and the community to ensure community participation requirements are readily available and easily understood. However, any changes to community participation requirements need to be considered in the context of the Integrated Planning and Reporting Framework and the required Community Participation Charter.

In the context of the Dubbo Regional Local Government Area, Council is currently preparing a Community Participation Charter which will provide the community with appropriate direction as to how Council will consult across planning issues and other matters. Council's Development Control Plan will continue to detail the public exhibition requirements for development applications and other planning permits. In respect of other Council projects and policies, these items will be subject to the preparation of specific community engagement plans which are tailored to the project, location and range of stakeholders.

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## **(b) Classes of Designated Development**

The Issues Paper has included information that a review of the classes of Designated Development will be undertaken as part of the overall review process.

It is considered that a review of Designated Development provisions is well overdue. This review should focus on updating the classes of Designated Development in respect of the Standard Instrument Local Environmental Plans, review any provisions where numbers are prescribed and provide clear provisions around the undertaking of modifications to Designated Development.

In respect of reviewing provisions where numbers are prescribed, this should focus on the minimum distances contained in the provisions and the number of livestock for intensive livestock agriculture activities. Given the lack of information included in the Issues Paper in respect of the review, it is considered that Local Government should be given a further opportunity to comment on any proposed changes.

## **3. Environmental Assessment**

The Issues Paper raises a number of issues in respect of environmental assessment and the streamlining of environmental assessment provisions. Council is supportive of the majority of the issues raised.

The Issues Paper provides information that public agencies do not currently have to make the results of any environmental assessments publicly available. It is considered that the results of these assessments should be publicly available. This would increase public transparency in environmental assessment and ensure public agencies can adequately articulate reasons for a particular decision.

## **4. Fees and Charges**

The Issues Paper includes information that the Department of Planning and Environment is currently undertaking a review of fees and charges as included in the Regulation. Review of the fees and charges is well-overdue as the current fee structure does not allow Council to cover costs for the services the community seek. In addition, councils have been required to undertake significant cost saving measures in light of the 'Fit for the Future' assessment processes associated with the review of Local Government and the associated council mergers.

It is considered that the review of the Regulation should include a mechanism in respect of fees and charges that builds in an annual review having regard to movements in the Consumer Price Index and other issues impacting both the sustainability of Local Government and the Building and Development Industry. This review could be undertaken by the Independent Pricing and Regulatory Tribunal and be binding on Local Government and industry.

## **5. Development Contributions**

The Issues Paper raises the need for a number of changes across the development contributions system which will further explain and add a layer of transparency to a complex system.

The Paper suggests a proposed need for councils to have policies in place in respect of Voluntary Planning Agreements (VPA). Whilst a policy that assisted in the articulation of a council's requirements for the assessment, acceptance of and the process for the consideration of VPAs, it is unclear as to what value there would be in articulating the public benefits of the VPA in detail. VPAs by their very nature are overly complex and legalistic documents. Given the negotiations that are undertaken between a council and a developer and the characteristics of the infrastructure or community facilities facilitated by the VPA, careful consideration should be given as to how this is required to be articulated to the public.

## **6. Planning Certificates**

The Issues Paper raises a number of questions for consideration in respect of the future of Planning Certificates. The following provides comment in respect of the issues raised.

### **(i) What should the role of planning certificates be?**

It is considered that planning certificates provide an important service in respect of property transactions and are a form of formal council advice in respect of planning documents and other issues that a purchaser should be aware of in the property transaction process.

### **(ii) What information should be included on planning certificates?**

It is considered that planning certificates should include information in respect of potentially contaminated land, flood planning issues and bushfire. In addition, a planning certificate should include land use planning information however, the information required to be included on planning certificates in respect of exempt and complying development should be removed and included on the Planning Portal.

### **(iii) Should the Regulation prescribe the language or format in which information should appear?**

It is considered that the Regulation should contain a template for planning certificates and include common language and provisions.

### **(iv) Could hard copy planning certificates be replaced with an online system through the NSW Planning Portal?**

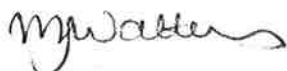
As the Department of Planning and Environment would be aware, a significant number of councils in NSW are either allowing for the electronic submission of planning certificate

applications and/or issuing planning certificates in an electronic format. It is unclear as to what value it would add in also providing an online system through the NSW Planning Portal.

Council appreciates the opportunity to provide these comments in respect of the Issues Paper for the review of the Environmental Planning and Assessment Regulation, 2000 and would welcome the opportunity to discuss these comments during the next stage of the Regulation review process.

If you require any information regarding this submission, please do not hesitate to contact Council's Manager Strategic Planning Services, Steven Jennings, on (02) 6801 4000.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Melissa Watkins', with a stylized, flowing script.

*Melissa Watkins*  
Director Planning and Environment