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Dear Sir/Madam

Tweed Shire Council welcomes the opportunity to comment on the Department's Issues Paper, *"Review of the Environmental Planning and Assessment Regulation 2000"* (the Regulation).

Please find attached Council's specific comments for consideration and/or clarification by the Department.

Yours faithfully

**Vince Connell**  
**Director, Planning and Regulation**

Attach

## **Review of Environmental Planning and Assessment Amendment Regulation 2000 Issues Paper September 2017**

### **Tweed Shire Council Submission**

#### **Questions to consider**

Are there known issues or inefficiencies to address?

- Can the provisions be reformed to better achieve the objects of the EP&A Act and the Government's relevant policy priorities, including: increasing housing supply to meet current and future needs of the State facilitating faster and more efficient housing approvals, including through the uptake of the complying development pathway.
- Can the provisions be simplified, consolidated, or otherwise reformed to reduce regulatory and administrative burden?
- Are there digital solutions which could be used to make requirements easier to meet?

#### **A More Modern and Accessible Regulation**

Tweed Shire Council has been a leader in NSW Councils for advancing e planning practices within its development assessment and certification services.

Council first introduced mandatory electronic lodgement requirements for all DAs in July 2009 to coincide with the commencement of a DA tracker and Property Enquiry service, and a greatly enhanced web information and mapping. It then was one of the councils to participate in the pilot of the NSW State Government's Electronic Housing Code project.

Council has since undertaken a further technical and cultural transformation of its capacity to deliver e planning services, which has led to the introduction of new paperless, end-to-end, electronic web lodgement portal for all development, building and engineering applications, as well as new internal electronic assessment and administrative systems in August 2015.

This transformation has led to more efficient processing times, more customer focused assessment systems, an enhanced IT and tech-savvy culture among staff, and the upskilling of many local business and consultants in e planning practices.

As the NSW State Government moved towards a State based web portal for all development and certification processes, Tweed Council has been formulating its own strategies to best adapt its e planning practices and systems to support the new State based initiative.

The section "A More Modern and Accessible Regulation" seeks feedback on the following issues:

*"Box 6: Making a submission on a planning matter*

*Box 7: Examples of outdated/administratively burdensome provisions*

*Box 8: Related initiative - NSW Planning Portal and ePlanning Amendment Regulation"*

These discussion topics pose questions on the receptiveness and capacity of State and local consent authorities to introducing more electronic functions to the legal requirements for consultation and the administrative processing of applications.

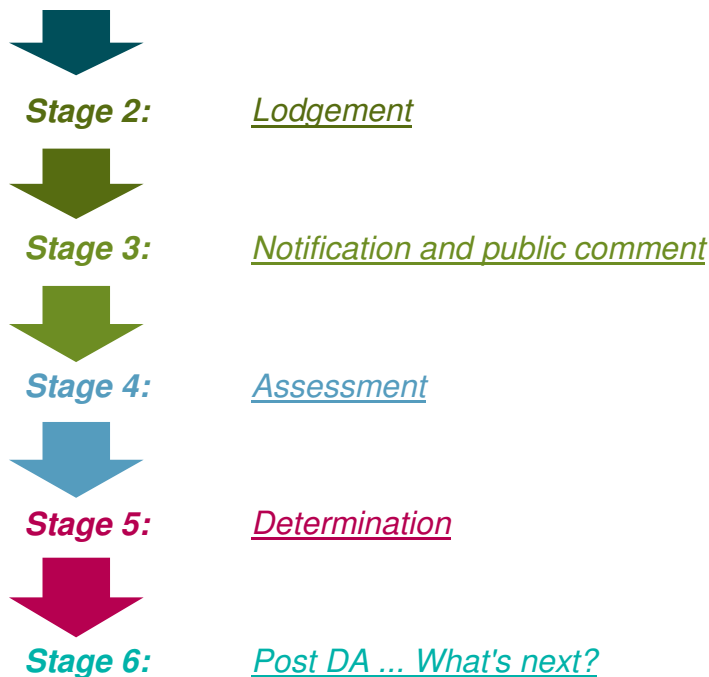
Tweed Council has been examining the options for new electronic components to its application processing, particularly in light of the huge resourcing burden (staff time, printing/postal delivery costs) that is devoted to its consultation and acknowledgment/advice functions. This resourcing issue is particularly relevant to NSW Councils which have had its capacity for cost recovery impacted in recent decades by the NSW State Government's policy to cap application fees.

Like many public agencies, Council has been attempting to balance how best to improve the communication of information and participation in consultation processes using electronic tools and systems, whilst still catering for those members of the public who do not have access to the Internet and electronic devices.

In terms of development applications, Council has prepared the following draft electronic acknowledgment email for people who have already been notified, and have made a written submission through a Council web portal:

*"Thank you for your submission on this application.*

*Typically, the application that you have made a submission on follows this process:*



*As part of Council's commitment to the electronic processing of its applications, you will now receive email notification of the following stages of the application process (where applicable):*

- Any significant amendments.
- If the application is to be reported to a Council Meeting.
- The result of Council's determination.

*Council's website provides a detailed explanation of its Notification Procedures:*  
<http://knowledge:1036/Development/Stage3>

*You can also view the relevant documents and track the progress of a DA or Section 96 through Council's DA Tracker: [www.tweed.nsw.gov.au/datracking](http://www.tweed.nsw.gov.au/datracking)*

*Finally, you always have the option of contacting Council staff to enquire on the progress of an application."*

The collection of the data of submitters via an email to Council's web portal would allow Council to create a database to more readily draw upon for electronic updates at each of the main stages of a DA, and thereby create major time and cost savings by avoiding the current hard copy postal option.

This new web system would need to be supported by a more comprehensive advertising of all DAs as they are received in Council's own weekly news publication, The Tweed Link. Additional PCs could also be provided in Council's administrative offices and libraries to assist those people who do not have their own PCs and Internet access.

A critical concern of Council in any new statutory e planning requirements is for the Department to ensure that a sufficient timeframe is provided and for prior consultation with the main IT systems providers that currently service NSW Councils, such as Technology One and Civica, in order to minimise the disruption and impact on the resourcing of councils' development assessment systems.

### **Development assessment and consent**

As identified in Council's submissions on Draft Amendments to the Regulation (E Planning) and the Act earlier this year, Council is concerned about the State Government's proposal to require the notification of affected property owners for all Development Applications. Council currently administers its notification requirements for DAs and Section 96 Modification applications based in criteria with a Development Control Plan. The DCP provides the discretion for Council not to notify lesser impacting developments. Council currently processes an average amount of 800-1,000 DAs per year, with about 60-70% involving neighbour notification. Any new State requirement for the notification and 14 day submission period for all DAs has the potential to greatly impact on the efficiency and affordability of Council's assessment services.

The following further matters have also been identified:

- The deemed refusal period is considered to be too short (40 or 60 days), as it doesn't reflect complexities of clause 113.
- Consideration should be given for a maximum timeframe for a DA determination, or otherwise the process terminates.
- The application that gets determined should be the subject of the appeal not an evolving amended proposal. Likewise councils should not be permitted to introduce new merit issues during the appeal.
- Clearer process on when a structure has been built without approval and the landowner is seeking **approval after the fact**.
- **Unauthorised uses and building work.** Create a procedure that deals with this situation in a fair and practical way. This is to follow the Ombudsman's advice which is no one is to benefit from their illegal actions. Currently there is little to no recourse for the builder or the owner who carried out the work, where if legally carried out they would have to obtain HIA insurance, pay long service levy, undergo licencing checks etc.

- The Department of Fair Trading need to create a portal that can be used to provide details of licenced builders and other licenced trades that are caught carrying out unauthorised works so there licences can be reviewed, penalties ETC by the department.
- **All referenced forms, certificates** etc. in the EP&A Regs should be prescribed forms/certificates. Standardisation would prevent errors and omissions.
- Division 2A **Conditions of Comply Development Certificate** should all be contained in the schedule of the relevant SEPP.
- In Clause 139 and other clauses **the person who is eligible to appoint a principle certifying authority** should be simplified to be the “owner”.
- Need to ensure document format requirements of **the portal** are compatible with the local council. For example TSC only accepts PDF files. How will this work when the portal is introduced? Also how will the portal work in conjunction with Council’s internal systems and processes.
- **Notification.** Disagree with the notification of all applications. This will increase time for processing applications and costs that may not have much value. Need to have the ability to assess on local conditions on a case by case basis.
- **Complying Development** – Is too complicated to be practical and efficient. Council’s expend a lot of resources to handle enquires and process applications. Currently Complying development is being utilized by inexperienced applicants rather than consultants leading to long drawn out process which defeats the purpose of a “fast track” system.

In particular Commercial & Industrial CDC’s are problematic (especially Building alterations and change of use).

For example the SEPP requires;

*A. The new use must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, loading, vehicular movement, traffic generation, waste management or landscaping, and*

*B Car parking must be provided:*

*(i) in accordance with any existing condition relating to car parking that applies to the use of the land,*

These CDC’s are dependent on *lawful use* but there is no clear definition and it is open to interpretation. It would be constructive to require applicants obtain the relevant consents from the Consent Authority which are required to accompany the CDC application. Then the nominated PCA can check whether or not the proposal is consistent with the current development consent. This documentation is invaluable for PCA’s, Councils and their compliance officers to use in the assessment of complaints, i.e. hours of operation, car parking, contributions.

The SEPP requires for food and drink premises the premises must comply with AS 4674–2004 Construction and fit-out of food premises.

Council’s Environmental Health Officers have found often privately certified Commercial & Industrial CDC’s involving Food & Drink premises do not comply with AS 4674-2004 Construction and fit-out of food premises.

To prevent this situation it would be constructive to require applicants obtain the approval of the food and drink premises from an appropriately qualified Environmental Health Officer (with regulatory food and drink premises experience).

This approval would be required to accompany the CDC application. Also this initiative should prevent unnecessary expensive deconstruction and rebuilding of Food & Drink premises. It is to be noted that TSC requires the applicant to obtain approval of the Food Premises Fitout Plan prior to lodgement of the CDC and this arrangement has proven to be beneficial to all parties.

- **Portal DA lodgement** – secretary requirements raised issues with the land constraints data and spatial data (example DCP, bush fire, LEP mapping, Koala Plan of Management) held by the Planning Department being up to date. Also it may be too sensitive and require specialised documents to support an application that may not be need based on local knowledge.
- We would like confirmation on how this portal is going to operate and when will it be available for use? Is there any sort of time frames in place? Which will likely lead to further questions / issues including training?
- When is a replacement coming to **replace the tools that have been decommissioned as shown below?** These were very useful tools. For example a quick easy tool to identify exempt and complying dev for a specific property.

#### Electronic Housing Code



The Electronic Housing Code was launched in October 2011 and allowed users to prepare, submit and lodge a complying development application; and to investigate whether they needed planning permission to build or renovate.

The EHC was decommissioned on the 23rd June 2017. The functionality within the tool will be available within Online Lodgement services.

#### Local Insights



Local Insights was a tool that provided easier access to datasets about each Council area, which you may need before making development or property related decisions. Users could view a range of information related to a local government area such as changes in population, demographic data, household type distribution, residential development intent, development applications by price range and much more.

Local Insights was decommissioned on 30 November 2015. The functionality provided will be available within the NSW Liveability Dashboard.

#### Interactive Buildings



The Interactive Buildings tool was launched in July 2014 and provided access to interactive models of residential, commercial and industrial buildings. These models allowed users to identify what changes they could make to a property without the need for any further planning or building approvals.

Interactive Buildings was decommissioned on 14 July 2017.



- **Fence exemption** under the SEPP (Exempt and Complying) for Residential (Subdivision 17) does not apply to a flood control lot which includes both 1 in a 100 year and PMF. In the PMF area landowners might be able to construct fence as CDC but only for single dwellings as it doesn't cover duplex or townhouses ect, therefore we are still getting DA's for fences.
- **Fire Safety Schedules** – Clearer guidelines required.
  - Need to be standardised and cover how to deal with existing buildings that have multiple additions over many years.
  - Also more clarity is required to cover buildings that have Stratum allotments or major tenancies owned by various companies especially when fire safety measures are shared.
- **Building Certificates** need to be re-named to *certificate of non-action*, with the ability to not issue the certificate. Building Certificates are all too often used within a development consent as a stop measure to require additional work/requirement to be undertaken that relate to use etc. rather than the building component itself.
- The regulations need to be simplified in regard to **fire safety certificates, fire schedules, annual fire safety statements**, and the associated processes. For example :
  - 1) complications around shared fire safety measures in stratum subdivided buildings,
  - 2) timing of the issuing of fire schedules creates complications around existing and proposed measures – fire safety certificates should be issued at occupation stage.
  - 3) complications associated with shopping centres, licenced clubs and the like which have grown and evolved over time with fire safety measures which have been installed and certified under different revisions of the particular Australian Standard.

## **Fees and charges**

Statutory fees need to be more realistic for the time spent by Council's, e.g. the fees received for a DA should more closely reflect the money spent by Council to process this application.

The DA fee could be based on m<sup>2</sup> rather than total cost of works.

The framework for fee calculations should be available on the Planning Department website for state consistency.

Consistency on how fees are calculated, e.g. a Section 96 Modification Application fee can be based on the original DA fee. Some Councils are including Plan First and Environmental Enforcement Levy fees within this "original DA fee" as they were part of the original DA fee. A further example includes: Development Application fee - change of use if there is no cost of works (\$285 lodgement fee) pay a higher lodgement fee than if they nominate up to \$5000 of works (\$110 lodgement fee). A more simplified fee structure would be great.

All prescribed fees relating to development applications should be increased by 5% across the board as a minimum to allow for Consent Authorities to fund additional resources. These resources are necessary to counter the increasing complexities being continually added to the legislation.

## Planning Certificates

1. **Planning 149 Certificates** – these are quite cumbersome and hard to read for the general public, they should be standardised and be clear with the information, maybe instead of having a (2) or (5), it should just be 1 type of Certificate offered, as many do not want to pay the additional fee and therefore miss out on important information, such as land subject to aircraft noise and building height limits. For these to be automated through the portal, the Department would need to ensure the background information is up to date.
2. **Clause 149(2) a & b** are unnecessary requirements as the Certifier and Council would already hold copies of these documents (DA, CC & CDC).
3. **Clause 149** should include a clarification that an application for an occupation certificate can be made concurrently with the appointment of the PCA. This would simplify the paper work and improve efficiencies for both the applicant and PCA.
4. **Schedule 1** references the requirement for a statement of environmental effects. There should be included a prescribed format/content requirement.