

Deputy Secretary Alison Frame
NSW Department of Planning & Environment
Policy, Strategy & Governance
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By email: regulation.review@planning.nsw.gov.au

Dear Ms Frame

Submission – Environmental Planning & Assessment Act – Regulation Review

The opportunity to make a submission in this regard is appreciated. Council considered a detailed report on this matter on 14 November 2017 and it was resolved that:

Council make a submission to the NSW Department of Planning and Environment on Review of the Environmental Planning and Assessment Regulation 2000 Issues Paper based on the issues outlined in Attachment 1.

The following comments are provided consistent with this resolution.

GENERAL COMMENTS FOR CONSIDERATION.

Council generally supports the promotion of consistency across the state and the use of standard templates for all Development Control Plans (DCPs), forms and processes will assist in this regard. The Department needs to take the lead role in this regard to ensure consistency is achieved.

Council would like to reiterate the importance of consulting with Local Government in regard to any proposed changes and the implementation thereof, including specifically lead in times, as there is a potential for this to significantly impact on operational productivity, efficiency and community understanding.

TEMPLATES AND CONSISTENCY

As noted above, the promotion of state-wide consistency in the planning system is supported. In addition to standardised DCPs and State Significant Development/Infrastructure (SSD/SSI) project approvals, it may be prudent to consider broadening the scope to include standardised templates and agreed benchmarks for

- a draft template and guideline should be provided for review and comment as part of the draft Regulation package.
- Pre-Lodgement Meeting requirements, for example, specified type, size and capital investment value of development, and acceptable standards of plans and documentation required to book a pre-lodgement meeting.

Similarly, it may be beneficial to adopt a standardised approach regarding the availability of online information for applications under assessment to ensure transparency within the planning system (e.g. standardising the type and availability of documentation made publicly viewable via each local council's Development Application Tracking website).

NOTIFICATION AND FEES

Notification requirements should be reconsidered. Newspaper advertisements are costly and overall readership is declining. Advancements in technology and digital communication now present a wider range of opportunities for online methods of notification that should be able to be utilised and meet legislative provisions.

It is also noted that public exhibition requirements with respect to development assessment will be included in the EP&A Act itself, rather than the Regulation. Currently, these provisions sit within the Regulation, and it is unclear why they are now proposed to be included in the Act.

It may also be prudent to re-evaluate Development Application fees within the current review to reflect actual cost recovery in the current planning environment.

TECHNOLOGY

Council agrees that the provisions need to be updated to reflect advancements in technology, innovation and communication methods, and specifically the implementation of the NSW Planning Portal.

New technologies mean that the majority of communication and information is now digital, and the Regulation needs to reflect this, particularly with regards to electronic lodgement of development applications (which should be mandated to ensure consistency and quality, with a clear set of standards for applicants), distribution of information, correspondence, and so on. Similarly, Part 16 of the Regulation prescribes specific requirements for the maintenance of registers. The mostly digital nature of these registers should be recognised, and accommodated within the NSW Planning Portal.

However, it should be acknowledged that not all customers or community members have access to digital technology and there will continue to be a need for traditional correspondence.

This is relevant for example, to some sectors of the community that do not have internet access in remote/blackspot locations or due to demographics such as age or computer/internet availability.

CONDITIONS OF CONSENT

The Issues Paper discusses the need for consistency and standardisation across the planning system with regards to SSD/SSI project approvals and the format of DCPs. It is also noted that prescribed conditions already apply with regard to complying development. It may be prudent to also consider a standardised approach to determination notices, format of development consents, and conditions of consent, specifically for other development classes (for example, local development).

Such an approach would promote consistency across local government areas, and reduce complexity and confusion for applicants and developers. Flexibility will still be required, as special conditions will still most likely be needed to address particular circumstances and unique situations relating to localities or more complex applications.

REASONS FOR APPROVAL

The proposal to provide reasons for determination outcomes ensures transparency and will assist with community confidence in planning decisions and in the planning system generally. In the context of the planning system, this means that applicants or objectors will have a better understanding of how and why a decision was made (e.g. why a development application was approved even though many objections were lodged against it), and how an objector's opinions or views were taken into account or balanced in making a determination.

Under the existing planning legislation, Councils are already obliged to produce a "notice of determination" when a development application is determined (i.e. approved or refused). This notice is given to the applicant and must meet the specific requirements of clause 100 of the Regulation. This includes detailing the reasons for the refusal (if the application is refused) or reasons for imposing conditions (if the application is approved subject to conditions).

If the legislation change proceeds, there will presumably be specific requirements for the "statement of reasons". Depending on what is ultimately rolled out, it could be that the statement will need to be tailored to each decision, providing more detail if the development application does not comply with the planning controls or objections have been raised regarding the proposal. Other factors that may influence the detail and length of the statement may include the duration or length of assessment, whether or not expert advice has been obtained about particular issues, and whether there are a number of key facts to be weighed up in making the decision. It is likely that most Councils will have a suite of standard reasons to assist in this regard.

Clarification is required on what will occur when an officer recommends refusal of a development application, but subsequently the application is approved by the elected Council. The legislation needs to recognise how the ultimate decision of Council was reached and not necessarily how the decision was arrived at.

SPECIFIC PROVISIONS FOR REVIEW

PART 2 ENVIRONMENTAL PLANNING INSTRUMENTS

Council strongly recommends the inclusion of a provision to enable the maps associated with EPIs to be updated without necessarily always having to undertake the Planning Proposal (PP) process where they have already been through some form of public consultation process, or are a minor change relating to cadastral updates or land acquisition for infrastructure projects. An example is the Flood Planning Area Map in the LEP. Council has an ongoing program of preparing floodplain risk management studies and plans for the large number of catchments within the City. These are prepared in accordance with the NSW Government's Floodplain Management Manual.

This process includes comprehensive public consultation with affected landowners. Updating the LEP Flood Planning Area Map then requires the preparation of a PP which results in a significant time delay in updating the maps and takes planning staff away from other more strategic projects. Council is currently preparing PP's to remove the flood planning area and coastal risk planning maps from the LEP to address this issue but it would be preferable to retain these maps within the LEP if there were a simpler and faster process for updating them.

Council requests that a clause similar to Clause 32(3) be included to allow for minor amendments to an LEP such as typographical corrections, updating property descriptions or item descriptions in Schedule 5 Environmental heritage, or other minor changes that do not change the content or interpretation of the LEP.

PART 3 DEVELOPMENT CONTROL PLANS

Consideration should be given to including a clause similar to Clause 32(3) to allow for minor amendments to a DCP such as typographical corrections, updating diagrams, or other minor changes that do not change the content or interpretation of the DCP.

Council would like significant involvement in the process of preparing provisions relating to the proposed standardisation of DCPs through the proposed amendments to the Act. Whilst the Standard format for DCP's is generally supported, Council would however be extremely concerned if standardised provisions were required and there was an attempt made to mandate local content.

Council supports notification of DCPs through the Planning Portal. It would also be helpful if members of the public can subscribe to notification of possible changes so they can keep updated.

PART 4 DEVELOPMENT CONTRIBUTIONS

Council would like to see greater flexibility to create a pool of funds to provide infrastructure and facilities as this will enable adjustment of priorities and demand for particular services to respond to changing needs.

Council supports the requirement to have a policy on VPAs outlining standards and procedures as it will increase accountability and transparency. It would also be helpful if guidelines were provided on what could be contained within such a policy to ensure policies are clear and easy to understand.

The indexation of contributions by the Consumer Price Index (CPI) has been severely deficient in keeping up with the actual cost of infrastructure construction and land value. This leaves Council with a large “hole” when budgeting for costs associated with providing essential infrastructure in line with the Contributions Plan. A more appropriate system of indexing would ensure there are no cost overruns and allow for the provision of infrastructure.

The regulations should expand on what forms an “administrative change” that can be made to the Contributions Plan without requiring public exhibition. For example, in Shoalhaven, the Contributions Plan includes a list of properties, including their address and Lot and DP, which are required to pay the full rate of contributions payable at the building approval stage as they did not pay contributions when the subdivision occurred. As such the list of properties needs to be amended regularly, with properties needing to be removed from the list when contributions have been paid. If such a change is required to be exhibited, it adds no real benefit to Council and the wider community, and in fact slows down processes and the Plan contains incorrect information until such times as it is changed.

PART 16C PAPER SUBDIVISIONS (CLAUSES 268Y – 268ZP)

GENERAL COMMENTS - PAPER SUBDIVISIONS

The requirements involved in the process of running a ballot and adopting a development plan are currently too onerous and act as a major disincentive.

NEWSPAPER NOTICES - PAPER SUBDIVISIONS

Newspaper notices are expensive. An alternative option should be given to write to all directly affected and adjoining landowners and to place an online notice. It should not be necessary to place a notice in both a local newspaper and a daily newspaper, particularly given the amount of consultation that will be required to secure the requisite level of landowner support.

Additionally, Council’s now have far more ‘reach’ through community engagement officers and Facebook profiles. Whilst it is acknowledged that notices could not necessarily be placed on Facebook, current developments could be shared through this medium with links back to the Council’s website.

See also specific comments below.

AMENDMENTS TO DEVELOPMENT PLANS - PAPER SUBDIVISIONS

The definition of a ‘minor amendment’ is too narrow and the definition of a ‘major amendment’ is too broad. Any amendment deemed to be a major amendment would result in significant delay and expense. This acts as a major disincentive to any organisation considering taking on the role as relevant authority in terms of the paper subdivision provisions. Further specific comments are provided below.

SPECIFIC COMMENTS - PAPER SUBDIVISIONS

Clause	Comments
<p>268ZB Notice of proposed development plans and consent ballots</p> <p>(1) An authority that proposes to adopt a development plan must:</p> <p>(a) not less than 14 days before the ballot papers are issued for the consent ballot, publish a notice that complies with this clause in a local newspaper and a daily newspaper circulating generally in New South Wales, and</p>	<p>This requirement is costly has not demonstrated to add any additional value to the process.</p>
<p>268ZD Voting roll and ballot papers</p> <p>(5) The returning officer must, at least 28 days before the date fixed for the closing of the ballot, send by post or otherwise deliver to every owner entitled to a ballot paper one set of the following material:</p> <p>(a) one ballot paper,</p> <p>(b) a statement as to the place, date and time ...</p> <p>(c) an envelope (the outer envelope) addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates</p>	<p>Why is it necessary to place the name and address of the owner and the lots and deposited plan numbers on the rear of the outer envelope? Not only does this add complication, it may discourage some people from sending it (e.g. if they have privacy concerns).</p>
<p>268ZJ Adoption of development plans</p> <p>(1) A development plan is adopted by an authority if:</p> <p>(a) ...</p> <p>(b) the authority causes a notice of the adoption of the plan to be published in a local newspaper and a daily newspaper circulating generally in New South Wales within 28 days after the decision of the authority to adopt the plan.</p>	<p>This requirement is excessive. At most, it should be sufficient to place a notice in a local newspaper, as is the case for DCPs.</p>

<p>(3) A development plan that is adopted by an authority is taken to be in force in relation to the subdivision land for the purposes of clause 4 (5) of Schedule 5 to the Act.</p>	<p>Should it commence from the date the notice is placed in the newspaper as per DCPs, i.e. <i>on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice?</i></p>
<p>268ZL Additional requirements for amendments other than minor amendments</p> <p>(1) An authority that proposes to adopt a major amendment to a development plan:</p> <p>(a)...</p> <p>(b) must not adopt the proposed amendment unless at least 60% of the total owners of the land subject to the development plan, and the owners of at least 60% of the total area of that land, have consented to the amendment.</p>	<p>Insert "number of" total owners</p>
<p>(3) An authority that proposes to adopt an amendment to a development plan that is not a major amendment or a minor amendment must:</p> <p>(a) publish a notice that complies with subclause (4) in a local newspaper and a daily newspaper circulating generally in New South Wales, and</p>	<p>See comments on 268ZJ (1).</p>
<p>(5) In this clause:</p> <p>minor amendment means an amendment to a development plan that:</p> <p>(a) corrects an error or mis-description, or</p> <p>(b) consists of a minor realignment of the boundaries of lots in the proposed plan of subdivision that will not create additional lots or the opportunity for additional dwellings, or</p> <p>(c) alters to a minor extent the location of roads or services to be provided, or</p>	<p>(5)(d) makes this definition of minor amendment very narrow, which in turn means the definition of a major amendment is very broad. Given that any major amendment essentially requires the ballot process to be repeated, there is a high level of risk. Either the requirements for a major amendment should be reduced or the definition of a minor amendment should be broadened. The 5% threshold is too low and could potentially be exceeded as a result of inflation alone. This should be expressed in terms of real dollars to negate the effect of inflation, and be increased to at least 10%.</p>

(d) varies the proportion of costs to be borne by one or more owners of the land by not more than 5% in any particular case.	
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SCHEDULE 4 PLANNING CERTIFICATES

Council has consistently suggested that there should only be a single planning certificate containing all relevant information relating to a property rather than what currently occurs - a Part 2 certificate with an optional Part 5. Often information of interest, e.g. road proposals, strategic plans, DCP amendments, and the like are located in Part 5, but the majority of prospective purchasers only obtain a Part 2 as this part is the only legally required part for a contract of sale and purchase.

To date during 2017, Council has issued 3447 Part 2 certificates and only 717 full certificates (Part 2 and Part 5) certificates. Prior to 2015, rural dwelling entitlement information was included in part 5. From 2015 onwards, Council created a separate dwelling entitlement certificate. As demonstrated in the table below, the removal of this information resulted in a reduction of full certificates.

Year	Part 2 Certificates	Full Certificates
2014	3970	3850
2016	1237	945

A single certificate could still contain a mandated part and a non-mandated part for discretionary information. A standard template and formatting would also be beneficial so that all certificates look and read the same wherever you are in the State. Such a template should include explanatory information so they can be easily interpreted by the community.

Council for the most part provides electronic certificates which are currently emailed to the applicant and is supportive of providing certificates electronically via the NSW Planning Portal, subject to system's compatibility etc. However, Council would still need the ability to check certificates for accuracy as Council has issues with data integrity in our system given the geographic spread of our LGA and its planning complexity.

If you need further information about this matter, please contact Marie-Louise Foley, Planning Environment & Development Group on (02) 4429 3559. Please quote Council's reference 31157E (D17/386933).

Yours faithfully

Gordon Clark.

Gordon Clark
Strategic Planning Manager
23/11/2017

c.c. The Hon. Gareth Ward, MP
The Hon. Shelley Hancock, MP
The Hon. Richard Colless, MLC
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