

Our ref: A12/0147

21 November 2017

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

RE: SUBMISSION ON ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000 REVIEW

Dear Sir / Madam,

Thank you for the opportunity to provide feedback toward the review of the Environmental Planning and Assessment Regulation 2000 (the Regulation). This submission is the opinion of Council Officers and not that of the elected Council.

Waverley is generally supportive of the planning reforms, and supports the aims of the review of the Regulation. A detailed submission is being made by the Southern Sydney Region of Councils (SSROC) of which Waverley is a member Council. The Issues Paper released in September 2017 has been reviewed, and the matters below have been identified for further consideration.

1. Planning instruments

1.1 Notification of determination.

Where a written request for the preparation of a planning proposal under Part 3 of the Act is not supported by Council, a prescribed time period to notify a proponent of the determination is generally supported, provided there is adequate time to carry out a reasonable assessment of the proposal.

1.2 Requirements for exhibition of DCPs.

A review of the requirements for the exhibition of DCP's is generally supported to improve transparency of the process and reason for changes. However, care is to be taken to ensure that this does not unduly burden administrative processes. It is suggested that a DCP is to be re-exhibited only where substantial amendments to a previously exhibited draft have been made.

2. Development assessment and consent

2.1 Prescribed policy guidance documents for state significant development.

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The addition of a requirement to ensure proponents consider and comply with key environmental guidelines from an early stage of a state significant development is supported.

2.2 Provision for a modification application to be rejected or withdrawn.

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

2.3 Provision to allow for the surrender of a development consent or a Part 3A approval where one or more landowners do not consent.

The introduction of a provision to this effect is supported.

2.4 Locating public exhibition requirements.

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

2.5 Requirements for notices of determination.

The publication of reasons why determination decisions are made is supported to improve transparency in the planning process, however additional administrative burden should not be imposed to achieve this outcome. The reasons for a determination are discussed in detail in the publicly available planning report, and staff have expressed that the replication of this information in a determination is unnecessary and onerous. It would also likely lead to shortened 'standard' reasons being included simply to meet the legislative requirement rather than the clear and detailed reasons as outlined in the assessment report.

Staff are however supportive of the notice of determination being in plain English, with minimal references to other documents where possible, to improve clarity for the public. It has also been suggested that the determination indicates the method of determination (e.g. staff delegation, IHAP) so that the applicant and any other interested person is aware. This would again improve transparency and clarity in the process.

Staff are also supportive of notification via email rather than post where possible. It is noted that some residents will prefer to continue to receive letters via post, which may cause administrative burden to accommodate individual preferences.

2.6 Notification of internal review decision.

A requirement to inform any person who made a submission of the result of an internal review under section 82A of the Act is supported.

2.7 Classes of designated development.

Waverley Council does not receive many applications for designated development, however supports a review to determine the appropriateness of the current classes.

2.8 Definition of an environmentally sensitive area in Schedule 3.

The definition of 'environmentally sensitive area' in Schedule 3 remains appropriate within the Waverley LGA.

3. Environmental assessment

3.1 Requirement for public agencies to make their environmental assessments publicly available.

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

4. Fees and charges

A review of the adequacy of fees and charges is supported.

5. Development contributions

5.1 Practice notes for VPAs.

The consideration of practice notes in the preparation of Voluntary Planning Agreements (VPAs) is supported, as well as any explanatory notes accompanying the VPA to be written in plain English, again to increase transparency and public understanding of the issues and decision process.

5.2 Public inspection of draft and final planning agreements.

The exhibition of all draft and final planning agreements on the Planning Portal is supported to improve public understanding and transparency. However, the purpose for exhibition is recommended to be clarified on the Planning Portal, so that the public is aware that the purpose is for notification, not for comment.

5.3 Council policies on VPAs.

Waverley Council has adopted the *Waverley Council Planning Agreement Policy 2014*. This policy document has proved critical for Council to guide and explain the use of VPAs in the Waverley LGA, and to provide clarity and transparency around the process. The introduction of a regulatory provision to formalise the creation of a VPA policy for each council area is strongly supported.

6. Planning certificates

Standardising the formatting, language, and information included in planning certificates is generally supported, provided the information is clear and written in plain English for owners, and does not preference industry professionals. Regardless of the formatting, there should be some flexibility to allow for sensitive or complex information to be presented in a way that improves understanding of the issues.

Planning certificates should include information that is potentially limiting to the health of the occupants, and potential limits to development. Staff have also discussed that planning certificates might be utilised to make owners aware of other amenity impacts from nearby sources particularly in mixed use zones, including the potential operating hours of the businesses, and the nature of the businesses, including outdoor dining and live music.

Where land is subject to potential affectations, these should be listed for clarity and certainty. This is similar to the way that Planning Proposals are notified on planning certificates. Potential affectations may include: Special Infrastructure Contributions; land identified as 'potentially contaminated land;' and land that is nominated for investigation under State or Council policies or strategies.

7. Miscellaneous operational and administrative provisions

Updating the Regulation

The *Environmental Planning and Assessment Act 1979* (EP&A Act) was updated earlier this year to immediately reflect the outcome of a Court of Appeal decision regarding the definition of staged development applications [*Bay Simmer Investments Pty Ltd v State of New South Wales* [2017] NSWCA 135]. The definition was changed from 'staged development applications' to 'concept development applications.'

It is strongly recommended that the Regulation be continually reviewed and updated to reflect decisions made by the Court to provide clarity for decision making and processes, and also to ensure consistent language is used across all legislation.

Feedback Portal

It is suggested that the Planning Portal includes a Feedback Portal, so that submissions are able to 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.

Clarity in the Planning System

To eliminate uncertainty and provide greater consistency of approach when dealing with applications to vary development standards, it is strongly suggested that all Environmental Planning Instruments state whether a clause is a *Prohibition* or a *Development Standard*. This will provide clarity for all parties including the court and the public, and also provide greater transparency and understanding in the planning system.

Timeframes for Review

It is strongly suggested that the current legislation regarding Sect82A be amended to provide for a timeframe for review based on the lodgement of the application rather than the determination of the application. Under the current legislation, the timeframe is dependent on the time that the council takes to assess and determine the S82A application.

Deferred Commencement

It is suggested that a maximum time period for deferred commencement be implemented to ensure the validity and applicability of the consent. To allow adequate time to provide further information, however to retain the applicability of the consent, a maximum period of 1 year is suggested.

We appreciate you taking the time to consider our submission. If you have any questions about this submission, please contact Jaime Hogan, Strategic Planner, on (02) 9083 8057.

Best regards,



George Bramis

Executive Manager, Shaping Waverley