

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 20 February 2017

**PE4 – Public Exhibition of Proposed Planning Legislation Updates**

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**EXECUTIVE SUMMARY**

- The purpose of this report is to notify Councillors of the proposed changes to the NSW Planning Legislation which are currently on public exhibition and advise of Council's intention to make a submission on these proposed changes.
- The exhibition includes a 'Draft Bill' which would update/replace the Environmental Planning and Assessment Act, 1979, which is the key legislation that Controls Land Use Planning in NSW.
- The proposed changes are on exhibition from 10 January 2017 to 10 March 2017.
- A draft submission is still under preparation and will be forwarded to Councillors as soon as we are able and prior to the Council meeting.
- It is recommended that Councillors become familiar with the content of these proposed changes and make a formal submission on the proposed changes.

**REPORT**

The NSW Department of Planning recently commenced the public exhibition of its plan to update the Environmental Planning and Assessment Act, 1979 (EP&A Act). The EP&A Act is the key legislation that regulates and controls planning and land use in NSW and the changes are focussed on simplifying and amending this Act.

In several cases, the proposed updates to the EP&A Act would be supported by further amendments to the Environmental Planning and Assessment Regulations or the development of further guidelines or tools (for example, under the proposed updates the EP&A Act would enable the regulations to specify certain types of development where only a Council Certifier could issue a Complying Development Certificate; however, the regulations would need to be updated in future to specify these types of development).

The key changes proposed in the updates to the EP&A Act are outlined as follows:

1. Enhancing Community Participation
  - Under the proposed changes, each Planning Authority (including all Councils in NSW) will be required to prepare a Community Participation Plan which outlines how the authority will engage the community in plan making and development decisions.

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- The revisions to the EP&A Act will include a number of Community Participation Principles and Planning Authorities would need to have regard to these principles when preparing their Community Participation Plans.
  - The revisions to the EP&A Act would also require consent authorities to provide reasons for their decisions. The Statement of Reasons would vary depending on the scale of the proposal and should highlight relevant considerations such as the need to mitigate specific impacts or community concerns.
2. Completing the Strategic Planning Framework
- All Council's in NSW will be required to develop and publish local strategic planning statements which tell the story of a Local Government Area and priorities for that area. The Local Strategic Planning Statements would be based on a 20 year vision and Council would be required to undertake a review of the statement every 5 years. The Local Strategic Planning Statement will inform rezoning decisions and guide development.
  - The local strategic planning statement would in part reflect Council's Community Strategic Plan and, it is assumed, also require additional detail related to strategic land use planning, possibly similar in part to Council's Growth Management Strategy. The draft Council submission will request clarification of these matters.
  - All Council's would be required to undertake a 5 yearly LEP check against set criteria, to accommodate changes to demographics, infrastructure and services, economic factors of the area, environmental factors and state policies.
  - The amendments to EP&A Act would also require DCP's to follow a standard format. While the format of DCP's would be consistent, the content of DCP provisions would remain a matter for Council's.
3. Better Processes for Local Development
- The amendments would enable the EP&A Act to make regulations to encourage or require certain activities to be completed before a person lodges a development application. This may include promoting conversations between neighbours prior to lodgement of a development application and incentives (such as reduced DA fees) where an applicant can demonstrate he or she has actively resolved issues through early consultation. The Department's Summary Guide on the proposed amendments advises that a pilot program with selected Council's would be undertaken in 2017 and would inform any changes to the regulations accordingly.

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- For development which requires approval from another authority, the amendments to the EP&A Act will enable the Secretary of the Department of Planning and Environment to give advice, concurrence or Terms of Approval where the agency has not provided the advice within relevant statutory timeframes or where the advice from two or more agencies is conflicting.
  - The EP&A is being amended to prevent Planning Authorities (including the court) from approving a modification in relation to works already carried out which are contrary to the original consent (other than correcting an error or misdescriptions).
  - The amendments enable certain types of sensitive development where only a Council Certifier is able to issue a Complying Development Certificate. These circumstances are yet to be determined and would be set out in the draft regulations.
  - The amendments would enable for the deferred commencement of a Complying Development Certificate in certain circumstances.
4. Better Processes for State Significant Development
- The amendments would introduce 'transferrable conditions' for State Significant Development (SSD). These are conditions that may lapse or cease to have effect, should a similar condition be imposed through another regulatory tool such as an Environmental Protection License or mining lease for the same development, in order to avoid duplication of conditions.
5. Facilitating Infrastructure Delivery
- Amendments to the EP&A Act would enable a State Environmental Planning Policy to require an authority to obtain the concurrence of a specified public authority (or to notify a specified public authority) before carrying out an activity or granting an approval in relation to a Part 5 activity within an infrastructure corridor (A Part 5 Activity refers to an activity undertaken by public authorities that do not require consent but must still be subject to an environmental assessment).
6. Fair and Consistent Planning Agreements
- The Draft Amendments to the EP&A Act clarify and strengthen the Minister's power to make a direction about the methodology underpinning Planning Agreements. The amendments to the EP&A Act relating to Planning Agreements are supported by a proposed ministerial direction, revised practice note and planning circular.

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7. Decision Making

- At the local level, Independent Hearing and Assessment Panels (IHAP) can be established to provide independent, expert advice and recommendations to Council's regarding certain matters relating to development applications. The proposed amendments will aim to standardise the state-wide provisions for Local Planning Panels in relation to constitution, membership, functions etc.
- The amendments would allow the minister to direct a Council to establish a local planning panel to determine development applications.
- The name of the Planning Assessment Commission will be changed to the Independent Planning Commission to reflect the independent, expert nature of the Commission and that its role is primarily one of determining proposals rather than providing advice.
- At present under s82A of the EP&A Act, the applicant may apply for a review of a decision by the Planning Authority. However, the current legislation currently does not enable a review to be requested for State Significant Development or Integrated Development. The proposed amendments would allow the consent authority to undertake a review for State Significant Development or Integrated Development.

8. Clearer Building Provisions

- The EP&A Act will be amended to ensure that Construction Certificates are not inconsistent with development consents. Recent case law has demonstrated that the current wording of the EP&A Act and regulations does not ensure that Construction Certificates are consistent with development consents. The amendments propose to place in the Act itself a clear requirement that a Construction Certificate must be consistent with a development consent and to give the court the ability to declare a construction certificate invalid if it is inconsistent with the consent.

9. Enhancing the Enforcement Toolkit

- The amendments propose to give regulators greater flexibility in improving compliance by giving the Department of Planning and Council's the ability to enter into enforceable undertakings with holders of a Development Consent. This would enable the consent authority to enter into an agreement that then requires the consent holder to rectify harm that has occurred and to commit to improved behaviours in the future rather than issuing fines etc.

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The proposed amendments are on public exhibition from 10 January 2017 until 10 March 2017. Council has requested an extension to the deadline until 24 March 2017 but has not received a response and therefore this report has been submitted to the February Council meeting rather than the March Council meeting. This has meant that the report had to be published in the agenda prior to the finalisation of the draft submission.

The submission on the proposed legislation changes will be provided to Councillors under separate cover as soon as possible to enable Councillors the opportunity to provide feedback on the submission and any additional items they would like included in the submission.

**CONSULTATION**

Relevant consultation with Council staff will be taken into account in the preparation of the submission.

**FINANCIAL IMPLICATIONS**

The preparation of this report has had no direct financial impact on Council's adopted budget or forward estimates. The changes to the act, if adopted, will have positive and negative impacts on Council's adopted budget and labour resources however the detailed impact of such changes cannot be forecast at this point in time.

**CONCLUSION**

The proposed amendments to the NSW Planning Legislation are highly relevant to Council. A detailed submission will be formulated and provided to Councillors under separate cover for consideration at its February Council Meeting.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Media Release from NSW Department of Planning regarding proposed changes.

A draft submission on the proposed changes will be forwarded to Councillors under separate cover once it has been prepared.

**RECOMMENDATION**

That Councillors become familiar with the content of these proposed changes and make a formal submission on the proposed planning reforms.