



Urgent Confidential Items

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12. URGENT GENERAL BUSINESS

12.1 Local Planning Panels

Reporting Officer

Director City Development
City Development

Community Strategic Plan

Objective	Strategy
4 Outcome Four: A Successful City	4.5 - Work in partnership with the State Government to achieve positive planning outcomes

Officer's Recommendation

That the information be noted.

Purpose

To inform Council of the passing of the *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017*.

History

In January 2017 the NSW Government placed a suite of proposed amendments to the *Environmental Planning and Assessment Act, 1979* on exhibition. Among the amendments proposed was to replace the current Parts 2 and 2A of the Act which relate to Administration and Planning Bodies with a new Part 2 entitled "Planning Administration."

Council's formal submission was made on 25 March (copy attached) following consideration of the proposed legislative changes at its Ordinary Meeting of 28 February 2017.

Council's submission referred to a number of matters, including the issue of Local Planning Panels and expressly supported "better guidance on appropriate levels of delegation for assessment staff, Local Planning Panels and Council".

In addition, it was a resolution of the Council that the Department of Planning Environment be requested to meet with Council staff when undertaking further work in response to the issues matters in Council's submission.

Report

The Ministers for Planning and Local Government on Monday 7 August 2017 announced that Independent Hearing and Assessment Panels (IHAPs)/Local Planning Panels (LPPs) will become mandatory for all Councils in the Greater Sydney Region (see attached copy of

media release). Various proposed amendments to the *Environmental Planning and Assessment Act, 1979* were exhibited in January 2017 with Council forwarding its submission in March 2017. Key aspects of the new legislation which were not apparent at that time are that LPPs would be mandated for all Greater Sydney Region Councils and that consent authority functions will no longer be exercisable by Councillors above specified thresholds.

Although the thresholds for the referring of development applications to the Sydney South West Planning Panel (SSWPP) has been raised from \$20 million to \$30 million, a secondary threshold has also been set at \$5 million, for the referral of development applications to a LPP. This means that any development application with a value between \$5 million and \$20 million that would have normally been dealt with by the Council is now to be removed from the Council, and is to be dealt with by the LPP. This is in addition to those development applications with a value below \$5 million that also meet other specific criteria that results in the removal of Councils authority.

Councillors will no longer have the authority to determine development applications at a Council meeting that exceed or meet the specified criteria and many applications currently determined by staff under delegation will be required to be held over and reported to a LPP for determination.

Notwithstanding the added cost in running and employing the services of a LPP, this will have significant time and cost implications for Council in the administration of these applications.

The Objects of the Bill which has been passed by both houses and received assent on 14 August 2017 is outlined in the attached Explanatory Note and the proposed composition and function of panels is outlined in the attached Q & A document from the Department of Planning and Environment. Of particular note and potential implications for Council are the following aspects:

- Section 231 of the EPA Act 1979 is amended to specify that the functions of a Council as a consent authority are not exercisable by the Councillors;
- This includes for the determining of Development Applications, Modifications and imposition of Conditions including for Section 94 contributions however Councillors are still able to endorse the making of a Section 94 plan;
- The Minister may direct Council to refer a Planning Proposal to a panel for advice;
- Council is to provide staff, facilities, monitor the performance of and meet all costs of the panel;
- One panel can be established for two or more Local Government Areas; and,
- Panels are to be constituted by 1 March 2018.

Under the new proposed thresholds and based on our current application types and value, it is likely that a small number of applications would still be reported to the SSWPP above the \$30 million threshold and given the wide ranging criteria, an unknown number of DA's would be reported to a LPP in a year. The number of applications reported to a LPP is likely to be far in excess of that currently reported to Council which is currently less than 20 applications in a given year. The true impact of the changes will take some time to assess given the

extent of new criteria for LPPs however they are likely to have significant administration and cost implications, introducing another layer of decision making and reporting, including separate assessment and reporting to the Council so as to ensure that it is adequately informed of the more significant and/or contentious DA's lodged with the Council from time to time.

Conclusion

The amendments recently announced were unexpected as it was reported through the media in June of this year that the State Government would undertake to consult on the matter of LPPs/IHAPs before they issue the new regulations. Council officers are unaware of any attempt to consult on this matter since the statement was made by the State Government and this approach is seemingly inconsistent with the discussion papers released in January.

This report is provided to the Council as an initial snapshot while Council officers further assess the details of the likely implications of the amendments.

Attachments

1. Campbelltown City Council Submission to proposed amendments to Planning Legislation March 2017 (contained within this report)
2. Department of Planning FAQs - IHAP (contained within this report)
3. Role Statement IHAP (contained within this report)



25 March 2017

Glyn Cryer
Planning legislation updates 2017
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Cryer

Proposed Amendments to the Environmental Planning and Assessment Act 1979

Council would like to thank the Department of Planning and Environment (DPE) for the opportunity to respond to the proposed amendments to the Environmental Planning and Assessment Act 1979.

Council at its meeting of 28 February 2017 considered a report on the proposed Planning and Assessment Act Amending Bill and resolved:

1. That Council endorse the draft submission on the Environmental Planning and Assessment Act 1979.
2. That Council advise the respective local State Members of Parliament of its position seeking their support where appropriate.
3. That the Council formally request the Department of Planning and Environment to meet with Council staff when undertaking further work in response to the issues raised in Council's submission.

A copy of Council's report is attached to this letter.

Council generally supports the changes to the Act in particular digital lodgement, community consultation plans and strategic planning changes however, Council notes that there is still further work to be undertaken to refine the detail contained within the Regulations. The key areas of concern for Council are noted to focus on development assessment and certification. Without this information it is difficult to understand the magnitude of change and the impacts it will have on strategic planning, development assessment, certification and compliance processes. Nonetheless Council submits the following comments for the Department's consideration.

Community Participation

Council supports the proposed requirements for each planning authority to prepare a Community Participation Plan. It is noted that Campbelltown City Council has Engagement Framework and Toolkit for its Community Strategic Plan and that it may be necessary to review and amend its current approach in line with the proposed amendments in the Act, the forthcoming changes to the Regulations, and any guidance provided by DPE. It will be

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important for this work to be undertaken using a collaborative approach to ensure it addresses all types of consultation in the planning, policy making and community strategic plans.

Strategic Planning

Council recognises that there is merit in better aligning State, regional, district and local plans (both organisational and land use planning). On this basis the Local Strategic Planning Statement is supported. It is understood that the Statement will be considered as part of the assessment of planning proposals, however, clarification is sought as to the role, if any, of the Statement in relation to development assessment and whether it will form part of the 79C considerations.

While frequent review of the Statement is also supported, the review should not be tied to set timeframes.

It is important that Councils remain engaged and are consulted as the framework for the Statement is prepared to ensure that it reflects the local government environment. Furthermore, the Statement should allow for local content and reflect the need to create a sense of "place" for the community. The creation and focus on "place" performs an important role in delivering community focused outcomes and therefore it should be capable of integrating with and be reflected in environmental planning instruments. It is envisaged that the Statement could assist in strengthening Councils strategic planning policies and instruments.

Council acknowledges that the LEP review will be resource intensive initially but it is considered that this approach encourages a proactive and strategic approach to planning and ensures that Environmental Planning Instruments stay relevant. This is particularly important for high growth areas. It is for these reasons that the LEP review is supported.

Council recognises that a standard format DCP will improve consistency and legibility of development controls across the State and assist with integration in the NSW Planning Portal. While Council supports the initiative it notes that it will be important for the new format to allow flexibility in content thereby enabling Council to respond to locality based planning matters. To this end Council makes itself available to discuss content and a draft framework further.

Development Assessment

Council generally supports the proposed amendments to development assessment including strengthening the Act as it relates to construction certificates (CC) and the proposed changes to regional development thresholds however there are concerns about the implications of the proposed changes to Section 96 modifications to consent and the inability to grant retrospective approval in particular. Council highlights that some acceptable departures do occur during the construction process and there needs to be a way to regularise works that depart from approved plans but still otherwise comply with relevant development standards and controls.

It is unclear from the amending Bill whether or not an alternative pathway to authorise works that depart from consents will be adopted or whether the intent is to prevent any retrospective changes being carried out entirely. As an example a dwelling with an approved 6 metre setback and is built with a 6.5m setback instead, with no other non-compliances, it may be unreasonable to require demolition. Further clarity is requested from the Department in this regard.

Furthermore it is unclear the impact that this will have on occupation certificates. Final occupation certificates must not be issued to authorise a person to commence occupation unless a development consent or CDC is in force. If the building works are not in accordance

with the consent and a building certificate is issued, is it still considered as being in place? If not, have the ramifications been considered to the housing industry such as banks, and insurers that rely on occupation certificate. Given that a building certificate only ensures Council will not take action for seven years, there is no certainty that low impact irregular works would ever be fully approved. It is also noted that as there is no consultation involved in the issue of building certificates it would not allow the same ability to consult neighbours as a Section 96 application. Council seeks the DPE advice on this matter.

Council also seeks clarification on the proposed changes to CDC notification processes and their impact on timeframes for issuing a CDC. At what point in the assessment timeframe is Council expected to notify immediate neighbours of intention to issue a CDC. The amendments propose that the certifier provide a copy of the proposed certificate to the neighbour prior to the issue of CDC. Currently there is a twenty-one (21) day turn around and a requirement to be notified for fourteen (14) days. A certificate may not be assessed straight away and it is not until the assessment is complete that it is known whether the CDC would be issued and a draft of the CDC would become available. If this assessment occurs later in the twenty one (21) day period, i.e. day fifteen (15) to twenty (20) where would the logic be in issuing a draft of the CDC to adjoining neighbours only to send out a final approved CDC within a matter of days.

In relation to the proposed new enforcement action available for investigating complaints further clarification on the use of stop work orders and their limitation to investigate genuine complaints is required. How will a "genuine" complaint be distinguished from other complaints or who determines whether or not a complaint is "genuine".

Regarding deferred commencement for CDC, in particular CDC in greenfield areas, Council seeks clarity regarding at what stage of the subdivision process the CDC can be issued. It is expected that the regulation should specify if it can be issued prior to subdivision works or prior to subdivision approval and how a CDC interacts with 88B instruments if it is issued prior to the 88B being established on the lot.

State Significant Development

Council supports the proposed amendments.

Facilitation Infrastructure Delivery

Council is supportive of planning for major infrastructure corridors being governed by statutory planning mechanisms ensuring that they are protected to support future growth however Council notes that agencies should be required to comply in the same manner as Councils are required to comply with requirements for planning and construction. Furthermore Council needs to be consulted and engaged with when identifying the corridors for inclusion in a State Environmental Planning Policy (SEPP), when planning for zoning and acquisition and managing development within the corridors.

Council seeks further clarification on whether the Government needs to own the land affected by a major corridor in order to identify it within a SEPP or if it can be held in private ownership. If the latter is likely, clarification will be required on how to assist land owners affected by infrastructure corridors understand any changes.

Planning Agreements

Council supports the proposed amendment to provide clearer direction and guidance for planning agreements.

Decision Making

Council supports better guidance on appropriate levels of delegation for assessment staff, Local Planning Panels and Council.

Building Provisions

Council supports the consolidation of building provisions into one part of the Act, as well as the ability to condition a construction certificate (CC) and stronger enforcement of CC where there are departures from the development approval.

Elevating Design

Council supports the addition of a new objective in the Act to promote good design. It is important to recognise that any design guidelines and controls must respect and respond appropriately to, and leverage against, place, character and context. To assist in promoting good design greater flexibility in the application of the existing design excellence clause of the standard instrument is necessary and recognition that as new release areas come online and lots become smaller, there is an increased need for local government involvement in assessment of the design of spaces and buildings.

Enforcement

Council supports these proposed amendments.

In conclusion, Council wishes to reinforce its general support for most of the proposed initiative and requests further consideration in areas specifically highlighted. Additionally, Council wishes to reinforce its willingness to be involved in the development of the relevant detailed regulatory changes and the absolute need for Councils generally to be consulted in respect of these foreshadowed detailed companion changes to the Regulations.

Should you require clarification of any aspects of this submission please do not hesitate to contact Mr Jim Baldwin in the first instance on (02) 4645 4576.

A formal request to meet with the DPE

Council is formally requesting a meeting between Council officers and the relevant staff from DPE to discuss the matters raised in Council's submission.

If you require any further information please contact myself on (02) 4645 4575 or Mr Graham Pascoe, Acting Manager Sustainable City and Environment on (02) 4645 4666.

Yours sincerely



Jim Baldwin
Director City Development



Ordinary Meeting 28/02/17

**TITLE SUBMISSION TO ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT AMENDING BILL**

Division

City Development

Reporting Officer

Director City Development

Attachments

Summary of *Environmental Planning and Assessment Act 1979* amendments (contained within this report)

Purpose

To seek Council's endorsement of the draft submission on the proposed amendments to the *Environmental Planning and Assessment Act 1979*.

History

The NSW Government as part of its regulatory reform process, aimed at improving the planning system, has prepared an amending Bill and supporting explanatory documents that outline proposed updates to the *Environmental Planning and Assessment Act 1979* (EPA Act).

These updates aim to build greater confidence in the planning system by enhancing community participation, strengthening up front strategic planning and facilitating greater probity and integrity in other decision making processes.

Staff briefings and workshops were conducted on 18 and 23 January 2017, to discuss the changes with the view to gathering feedback for a submission to the Department of Planning and Environment (DPE). Council's submission is due to Department of Planning and Environment by 10 March 2017.

Report

Exhibition Overview

On 10 January 2017 the DPE placed on exhibition the following documents:

1. Summary of Proposals
2. Bill Guide

3. Draft Bill
4. Stakeholder Feedback

The summary of proposals provides an overview of the intent behind changes to the EPA Act. The amending bill provides detail on how the Act will be changing including new clauses and consequential changes. The draft bill paves the way for changes to EPA Regulations as it applies to community engagement, strategic planning, development assessment and complying development, however the detail that resides in the regulations has not been provided at this stage. The lack of detail is due to the need for further research to be undertaken before such changes would be specified in regulations. It is expected that further consultation will be undertaken in relation to the outstanding work and once the work is completed the regulations would be placed on exhibition. It is noted that the DPE is exhibiting the amending bill until 10 March 2017.

Proposed Amendments to the *Environmental Planning and Assessment Act 1979*

Council generally supports the changes to the Act in particular digital lodgement, community consultation plans and strategic planning changes however, Council notes that there is still further work to be undertaken to refine the detail contained within the regulations. The key areas of concern for Council are noted to focus on development assessment and certification. Without this information it is difficult to understand the magnitude of change and the impacts it will have on strategic planning, development assessment, certification and compliance processes. Nonetheless Council submits the following comments for the Department's consideration.

The main amendments to the EPA Act that affect Council are detailed in attachment 2 and summarised to include:

Community Engagement

- requiring a Community Participation Plan
- requiring a statement outlining reasons for a decision on development applications.

Council supports the proposed requirements for each planning authority to prepare a Community Participation Plan. It is noted that Campbelltown City Council has an Engagement Framework and Toolkit for its Community Strategic Plan and that it may be necessary to review and amend its current approach in line with the proposed amendments in the Act, the forthcoming changes to the regulations, and any guidance provided by DPE. It will be important for this work to be undertaken using a collaborative approach to ensure it addresses all types of consultation in the planning, policy making and community strategic plans.

Strategic Planning

- requiring a Local Strategic Planning Statement
- requiring a Local Environmental Plan (LEP) check
- introducing a standard Development Control Plan (DCP) format.

Council recognises that there is merit in better aligning state, regional, district and local plans (both organisational and land use planning). On this basis the local strategic planning statement is supported. It is understood that the statement will be considered as part of the assessment of planning proposals, however, clarification is sought as to the role, if any, of the statement in relation to development assessment and whether it will form part of the 79C considerations.

While frequent review of the statement is also supported, the review should not be tied to set timeframes.

It is important that Councils remain engaged and are consulted as the framework for the statement is prepared to ensure that it reflects the local government environment. Furthermore, the statement should allow for local content and reflect the need to create a sense of place for the community. The creation and focus on place performs an important role in delivering community focused outcomes and therefore it should be capable of integrating with and be reflected in environmental planning instruments. It is envisaged that the statement could assist in strengthening Councils strategic planning policies and instruments.

Council acknowledges that the LEP review will be resource intensive initially but it is considered that this approach encourages a proactive and strategic approach to planning and ensures that Environmental Planning Instruments stay relevant. This is particularly important for high growth areas. It is for these reasons that the LEP review is supported.

Council recognises that a standard format DCP will improve consistency and legibility of development controls across the State and assist with integration in the NSW Planning Portal. While Council supports the initiative it notes that it will be important for the new format to allow flexibility in content thereby enabling Council to respond to locality based planning matters. To this end Council makes itself available to discuss content and a draft framework further.

Development Assessment

- introducing early neighbour consultation
- enable development applications to be lodged through NSW Planning Portal
- changes to development application modifications
- changes to Complying Development Certificates (CDC)
- changes to Construction Certificate (CC).

Council generally supports the proposed amendments to development assessment including strengthening the Act as it relates to Construction Certificates (CC) and the proposed changes to regional development thresholds however there are concerns about the implications of the proposed changes to Section 96 modifications to consent and the inability to grant retrospective approval in particular. Council highlights that some acceptable departures do occur during the construction process and there needs to be a way to regularise works that depart from approved plans but still otherwise comply with relevant development standards and controls.

It is unclear from the amending bill whether or not an alternative pathway to authorise works that depart from consents will be adopted or whether the intent is to prevent any retrospective changes being carried out entirely. As an example a dwelling with an approved 6m setback and is built with a 6.5m setback instead, with no other non-compliances, it may be unreasonable to require demolition. Further clarity is requested from the Department in this regard.

Furthermore it is unclear the impact that this will have on occupation certificates. Final Occupation Certificates must not be issued to authorise a person to commence occupation unless a development consent or CDC is in force. If the building works are not in accordance with the consent and a building certificate is issued, is it still considered as being in place? If not, have the ramifications been considered to the housing industry such as banks, and insurers that rely on occupation certificate. Given that a building certificate only ensures Council will not take action for seven years, there is no certainty that low impact irregular

works would ever be fully approved. It is also noted that as there is no consultation involved in the issue of building certificates it would not allow the same ability to consult neighbours as a Section 96 application. Council seeks the DPE advice on this matter.

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In relation to the proposed new enforcement action available for investigating complaints further clarification on the use of stop work orders and their limitation to investigate genuine complaints is required. How will a genuine complaint be distinguished from other complaints or who determines whether or not a complaint is genuine.

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State Significant Development

Council supports the proposed amendments.

Facilitation Infrastructure Delivery

Council is supportive of planning for major infrastructure corridors being governed by statutory planning mechanisms ensuring that they are protected to support future growth however Council notes that agencies should be required to comply in the same manner as Councils are required to comply with requirements for planning and construction. Furthermore Council needs to be consulted and engaged with when identifying the corridors for inclusion in a State Environmental Planning Policy (SEPP), when planning for zoning and acquisition and managing development within the corridors.

Council seeks further clarification on whether the Government needs to own the land affected by a major corridor in order to identify it within a SEPP or if it can be held in private ownership. If the latter is likely, clarification will be required on how to assist land owners affected by infrastructure corridors understand any changes.

Planning Agreements

Council supports the proposed amendment to provide clearer direction and guidance for planning agreements.

Decision Making

Council supports better guidance on appropriate levels of delegation for assessment staff, Local Planning Panels and Council.

Building Provisions

Council supports the consolidation of building provisions into one part of the Act, as well as the ability to condition a construction certificate (CC) and stronger enforcement of CC where there are departures from the development approval.

Elevating Design

Council supports the addition of a new objective in the Act to promote good design. It is important to recognise that any design guidelines and controls must respect and respond appropriately to, and leverage against, place, character and context. To assist in promoting good design greater flexibility in the application of the existing design excellence clause of the standard instrument is necessary and recognition that as new release areas come online and lots become smaller, there is an increased need for local government involvement in assessment of the design of spaces and buildings.

Enforcement

Council supports these proposed amendments.

Decision Making

- introduction of Local Planning Panels (LPP)
- review of delegations to staff, Local Planning Panels and Council.

Community Participation Plan

Council already has an existing engagement plan which places Council in good stead. It will, however, need to be reviewed in light of any changes to the EPA Act.

Statement of reasons for decision

Decision makers will be required to give reasons for decisions when determining a development application. This statement is expected to help community understand how their views were taken into account during the assessment process. DPE is intending to release guidelines on how to prepare these statements.

Local Strategic Planning Statement

Council will need to prepare a Statement that aligns local and district planning matters. The statement will contain goals and actions that support the achievement of the district plan, the Community Strategic Plan while also demonstrating the manner in which Councils LEP and other planning policy enable these goals to be achieved. It will be important for this Statement to be prepared using an integrated, whole of Council approach given that the document will be used as a basis for strategic planning decision making across the organisation including the review of planning policy, assessment of planning proposals and is expected to support the Community Strategic Plan.

LEP Update

Council will be required to undertake a regular check of the LEP, at least every five years. The outcome will need to be provided to DPE. Appropriate action will need to be instigated to amend the LEP to address necessary changes, ensuring the LEP is achieving the goals set in the District Plan and the Local Strategic Planning Statement.

Standard Format Development Control Plan

Council will be required to deliver their DCP content in a standardised format. However, content will remain at the discretion of Council and reflect local circumstances.

Early Neighbour Consultation

There will be further research undertaken by DPE and a pilot program with select Councils that facilitates neighbour consultation prior to lodging a development application.

Agency Referrals

There will be step in powers for the Secretary to act on behalf of state agencies where that state agency has failed to provide feedback, concurrence or general terms of approval within statutory timeframes.

Digital lodgement of development applications

The NSW Planning Portal will be the mechanism for lodging development applications in NSW. The same portal will be responsible for collecting applicable fees and disseminating information.

Section 96 Modifications to Development Applications

Currently where application is lodged seeking modification to an existing consent, Council has the discretion to approve works already built if it generally complies with Council planning policy. This will no longer be the case under the proposed changes. The effect of this change could mean greater compliance action.

Complying Development Certificate (CDC)

CDC will need to fully comply with State Policy or face the possibility of being declared invalid by the Court. Council and private certifiers will be subject to greater notification requirements prior to issuing a CDC. Furthermore, only Council will be able to certify certain works. Enforcements tools such as stop work orders will be given to Council to follow up on complaints regarding CDC. Lastly, it is proposed to introduce deferred commencement provisions for CDC.

Construction Certificates

A Construction Certificate will no longer be able to depart significantly from the development approval and the Court will be given powers to declare a construction certificate invalid where it is found inconsistent with the development approval.

Local Planning Panels

The Minister will have the power to direct Council to appoint a LPP to improve timeliness, manage conflicts of interest and potential for corruption. DPE will determine the delegation of LPP in relation to Council and assessment staff. The panel will require approval by DPE.

Delegation

The Minister will have power to require more planning functions to be carried out by staff.

DPE will provide advice on what matters will be determined by staff, by Council and LLP.

Conclusion

Generally, support is given to the proposed changes outlined in the amending bill including Community Participation Plan, the regular LEP review, Local Strategic Planning Statements, and standard DCP format. However, there are some proposed changes within the amending Bill that pave the way for reforms without operational information, making it difficult for Council to support the changes. Such changes include early neighbour consultation where the amending bill requires certain activities to be undertaken but it is not understood what these activities will entail. Another example is Section 96 Modifications of Consent no longer being available to accommodate retrospective approvals, which might be desirable in some instances, however, there is no detail on how to deal with changes when they otherwise comply with the relevant development standards and controls. With no other mechanism for approval identified the flow on impacts for enforcement action could create unnecessary stress for home owners. These matters are all outlined in Council's submission provided in attachment 1.

Where the DPE has committed to undertaking further work, Council should make itself available, where appropriate and resources permit, to enable effective representation during the change process.

Officer's Recommendation

1. That Council endorse the draft submission on the *Environmental Planning and Assessment Act 1979*.
2. That Council advise the respective local State Members of Parliament of its position seeking their support where appropriate.
3. That the Council formally request the Department of Planning and Environment to meet with Council staff when undertaking further work in response to the issues raised in Council's submission.

ATTACHMENT 1

1 Community participation

Participation plan:

- Prepare a community participation plan
- Details engagement requirements for planning policy and assessment including how a community member can:
 - Provide views on a proposal
 - Participate in plan making
 - Participate in planning decisions.
- Regulations will specify the process i.e. exhibition timeframes and required content etc.
- The plan once made can only be challenged within the first three months of publication.
- If council has an existing engagement strategy and it meets the EPA Act it does not need to prepare another plan but rather can update the existing Plan.

Statement of reasons for decisions:

- Decision makers will be required to give reasons for decisions
- The statement is intended to assist community in understanding how their views have been taken into account
- Further guidance to be provided by DPE on how to explain decisions
- Statements are expected to be proportional to development impact
- DPE is to develop a suite of tools to assist

2 Strategic Planning

Local Strategic Planning Statement (LSPS)

- Prepare and publish LSPS
- It will have 20 year lifespan and be reviewed at least every five years
- It should be easy to read and provide insight into future direction of an area
- The LSPS is expected to provide context for Local Environmental Plan (LEP) demonstrating:
 - Why certain zones and controls apply
 - Consistency and how they give effect to regional and district plans
 - Aligning with relevant goals in the Community Strategic Plan
- It will not be part of LEP but rather explain the LEP
- It will be used to inform decision making and will be taken into account when preparing planning proposals and planning policy generally
- It will be developed in consultation with stakeholders including NSW Agencies
- It will require endorsement by DPE or GSC
- DPE will provide guidance and model statements
- Implementation will align with current regional and district plan process.
- Published on planning portal

LEP updates

- Undertake a five yearly check against a set criteria including where:
 - The Regional or District Plan necessitates change
 - Significant demographic change occurs
 - Significant infrastructure investment is necessary
 - High number of planning proposals is evident
 - Consistency is required with SEPP, S117 and Regulations
 - Community requests significant change
- Outcome of check to be provided to Minister Planning or GSC

- DPE will help plan for implementation actions identified in LEP Check

DCP

- Require DCP to follow standard format
- Enabling the DCP to be uploaded on NSW Planning Portal
- Content will still be dictated by Council but in line with LSPS
- Further work required by DPE on proposed format
- Library of model provisions to be created

3 Development Assessment**Early neighbour consultation**

- Require certain engagement activities to be completed before lodging development applications
- DPE to conduct more research including the identification of barriers, creating tools and providing incentives
- There will be pilot programs with selected Councils

Agency referrals/concurrences

- Secretary can act in the place of a State Agency where:
 - They have not provided advice, granted/refused concurrence or provided General Terms of Approval (GTA) within statutory timeframes
 - Advice, concurrence or GTA conflict between Agencies
- When exercising this function the Secretary will have regard to State Assessment Requirements – to be a statutory policy to guide decisions of Secretary
- This will only apply where Council is consent authority
- Regulations to be amended to allow the recommencement of assessment process where paused by an Agency

Digital lodgment

- Intended to create accountability and transparency
- Allow payment to multiple agencies (integrated development)
- Facilitate information sharing
- Can be used for data collection
- Track progress of an application
- Provide for publication of decisions

Modification to development applications

- Remove the ability to grant retrospective approval on work already undertaken not in line with a development consent
- Act will be amended to prevent planning authorities including Courts from approving modifications that relates to completed works, excepting limited circumstances
 - Limited circumstances include minor error, misdescription or miscalculation.
- Effect being that unauthorized works will likely be subject to enforcement action, such as demolition or new building certificate
- Furthermore modifications will need to consider the "statement of reasons for decision"

Complying Development Certificate (CDC)

- Amend the EPA Act to allow for CDC that does not comply with State Policy to be declared invalid

- Amendments will allow persons to bring proceedings to challenge CDC
- Court can then determine if it is in accordance with the relevant standards
- New Regulations will require certifiers intending to issue CDC to:
 - Provide copy of certificate and any plans/documents to Council and immediate neighbours prior to issuing a CDC
 - Copy of the certificate and endorsed plan to be provided to immediate neighbours and Council after the issue of CDC
- New Regulations will specify that certain complying development types will only be able to be certified by Council
- To facilitate investigation powers Council will be able to issue a temporary stop work order
 - Stop work orders are only for a maximum of 7 days and power limited to investigate "genuine complaint".
- A new levy proposed to support enforcement action
 - As part of fee structure for CDC
 - Can also be extended to DA
 - Revenue provided to Council to resource investigation and enforcement activity
- Allow deferred commencement of CDC in certain circumstances including requiring a subdivision to be registered prior to commencement to facilitate CDC in greenfield
- Allow SIC to be required and planning agreements to be entered

4 State Significant Development

- Improve conditions of consent via:
 - Transferrable conditions
 - Conditions that are no longer needed because they are substantially consistent with other conditions imposed under other regulatory approvals or licenses
 - Responsibility for enforcement will lie with government agency that issued lease, licence or other approval rather than with the original consent authority.
 - Minister will have power to vary or revoke monitoring or environmental audit requirements in existing approvals (particularly relevant for older consents).
 - Conditions can require financial securities to fund decommissioning or rehabilitation of sites
 - Particularly relevant where landholder is not the proponent or the holder of development consent
 - Regulations will specify what type of development these conditions can be applied to.
 - To be further considered - other conditions for use as offsets not just in the case of biodiversity
- To provide support DPE will:
 - Develop guidance on new conditioning powers for both community and consent authorities
 - Material for consent authorities to write consistent and legally enforceable conditions
 - Database of enforceable standard or model conditions
- Modification to Part3A
 - Prevent ongoing use of former Section 75W to modify Part 3A
 - The arrangements will be repealed and moved across to SSD and SSI pathways ensuring that development completed or under construction will not be affected

- Applications for SSD will also be required consult community prior to lodging application

5 Facilitating Infrastructure Delivery

- Extend the ability of an EPI to require concurrence or notification of public authorities activities under Part 5 in future infrastructure corridors
 - Avoid inappropriate development that will create problems into future

6 Planning Agreements

- Strengthens the Minister's power to make a direction about the methodology underpinning planning agreements
- Currently Planning Agreements are subject to a separate review process

7 Decision-making

Local Planning Panels and Delegation

- Bring IHAP, JRPP and other panels under one framework
- Minister will have power to direct Councils to appoint a LPP to improve timeliness, manage conflicts of interest or corruption
- Approval of Panel by Minister is required
- Ensure Council is delegating the determination of development applications to Council staff to remove delays and support good decision making
- New powers will enable Minister to require more planning functions be carried out by staff
- DPE will provide best practice setting out which matters should be determined by staff and which by Council or LPP.

Thresholds for regional development

- New thresholds being moved from EPA Act to SEPPS.
 - Developments with more than \$30M capital investment
 - Council investment greater than \$15M
 - Private infrastructure and community facilities greater \$5M
 - Educational facilities more than \$30M
 - Ecotourism more than \$5M
 - Designated development extractive industries, marinas and waste management or works facilities
 - Development greater than \$10M but less than \$30M undetermined within 120 days and at the applicants request
 - Development designated by order where the Council development assessment is unsatisfactory.

Independent Planning Commission (IPC)

- Name change for the former Planning Assessment Commission to IPC
- Will become a determining authority
- As determining authority it will guide assessments under the DPE
- Two part public hearing process.
- Expansion of expertise into soil, agricultural science, hydrogeology, economics, mining and petroleum.

Code of Conduct

- Planning bodies and panels will have a model code of conduct in consultation with ICAC.

Internal review

- Expand the scope for reviews of determinations to include integrated development and SSD
 - Providing State Agencies are involved in the process
- Applicants can also request the Minister reviews SSD decisions made under delegation by IPC or other delegate.
 - This will not be available for high-risk development i.e. heavy industry, intensive livestock, mining operations, if IPC held a public hearing.

8 Building Provisions

- Changes occurring to Regulations as part of broader initiatives
- Consolidating building regulations and subdivision certification provisions into a single part of the EPA Act
- Allow the Regulations to permit accredited certifiers to place conditions on the issues of CCs and CDC
- Ensure CC does not allow proponent to depart significantly from the planning approval
 - To achieve this the EPA Act will clarify the requirement that a CC must be consistent with development consent
- Enable the Court to declare a CC invalid if inconsistent with a development approval but limit proceedings to 3 months after the issue of a CC

9 Elevating Design

- New objective in the EPA Act promoting good design (SCH 1.1(1.4) PG3)
- Office of Government Architect will develop design-led planning strategy, incentives and measure to assist planning system users.
 - Linked to draft Architecture and Design Policy for NSW

10 Enforcement

- Allow the DPE and Council to enter into enforceable undertakings with consent holders
- Enforceable undertakings are taken to be Agreements that rectifies harm caused via development/land use instead of imposing a penalty
- The Court will have the power to enforce these agreements

Submission to Environmental Planning and Assessment Act Amending Bill

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item

Council at its meeting of 28 February 2017 adopted the following Resolution with Resolution No 27.

8.5 SUBMISSION TO ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AMENDING BILL

It was **Moved** Councillor Greiss, **Seconded** Councillor Manoto:

1. That Council endorse the draft submission on the *Environmental Planning and Assessment Act 1979*.
2. That Council advise the respective local State Members of Parliament of its position seeking their support where appropriate.
3. That the Council formally request the Department of Planning and Environment to meet with Council staff when undertaking further work in response to the issues raised in Council's submission.

The Motion on being Put was **CARRIED**.

Independent Hearing and Assessment Panels

Frequently Asked Questions

August 2017

What is an Independent Hearing and Assessment Panel?

- An Independent Hearing and Assessment Panel, known as an IHAP, is a panel of three independent expert members and a community member which assesses development applications made to local Councils.
- IHAPs are to become mandatory for all councils in Sydney and for Wollongong City Council. IHAPs are to be put in place so that the process of assessment and determination of development applications (DAs) of high value, sensitivity or strategic importance is transparent and accountable.
- There are a number of criteria that will determine when DAs will be determined by IHAPs. If they don't meet the criteria they will be determined by council staff. Criteria are set out at the end of this FAQ.

What is the role of the Minister for Planning in relation to IHAPs?

- The Minister's role in relation to IHAPs will be to facilitate their establishment and ensure their operations are independent and fair.
- The Minister will approve a pool of independent, qualified persons from which the chair and two other expert members must be drawn by councils.
- These members will have to be qualified in one or more of the following disciplines: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration.
- The Chairs will have to have expertise in law or government and public administration.
- It will be up to council to appoint a community member to the panel.

How will the pool of experts be recruited?

- The recruitment process will seek the best from the planning and related professions. This will ensure the appointment of chairs and members of high standing and integrity, who are able to balance all the competing issues that Sydney and Wollongong City Council face, listen to the community and provide fair and merit-based technical decisions on local development.
- The Department of Planning and Environment has extensive experience in recruiting independent experts to panels.

Independent Hearing and Assessment Panels

Frequently Asked Questions

August 2017

- The process for recruiting the pool of experts will be very similar to the robust and merit-based process previously used for recruiting Joint Regional Planning Panel and Sydney Planning Panel members.
- It will include a state-wide expression of interest for applicants, based on:
 - the expertise requirements;
 - the four general standards set out by the Public Service Commission in its Appointment Standards– merit, fairness, diversity and integrity; and
 - specified role capabilities.
- Councils will be invited to nominate suitable experts for consideration as part of this process.
- Members will need to comply with Council's adopted Code of Conduct. Additional criteria will also apply.
- The code will ensure that panels members appropriately report and manage any perceived, potential or actual conflict of interests.
- To ensure panels meet their obligations, the Department will undertake a robust monitoring of their operations both in terms of the recruitment and maintenance of the pool of experts but also the ongoing operations and decisions of the panels.
- Councillors, property developers and real estate agents will be ineligible to sit on the IHAPs.

Can chairs and other expert members sit on more than one panel?

- Yes, the chairs and other expert members will be able to sit on more than one panel, as long as they do not have conflicts of interest in the relevant local government areas.
- Some neighbouring councils may choose to share a panel. The Department will help to facilitate this.

How do I apply to become a member of an IHAP?

- A clearly marked '**Candidate application for IHAP Chair/member**' addressing the capability areas in the Role Statement, the criteria and expertise specified in the advertisement and a current curriculum vitae should be forwarded by email to enquiry@planningpanels.nsw.gov.au

Independent Hearing and Assessment Panels

Frequently Asked Questions

August 2017

How do I find out more information?

- Role Statements and more information about the role and function of the IHAPs may be found on the Department of Planning and Environment website at <http://www.planning.nsw.gov.au>
- Please contact Stuart Withington at the Planning Panels Secretariat, on (02) 8217 2061 for any queries about the positions.

What will IHAPs decide?

Value	Development applications with a value of between more than \$5 million but less than \$30 million.
Conflict of interest	Development applications for which the applicant or owner is the council, a councillor, a member of a councillor's family, a member of council staff, or a state or federal member of Parliament.
Contentiousness	Development applications that receive 10 or more objections from different households.
Strategic importance	Development applications accompanied by a proposed voluntary planning agreement.
Departure from development standards	Development applications seeking to depart by more than 10% from a development standard.
High-risk development types	Development applications associated with a higher risk of corruption: <ul style="list-style-type: none"> • residential flat buildings assessed under SEPP 65 • demolition of heritage items • licensed places of public entertainment and sex industry premises • designated development, as set out in the <i>Environmental Planning and Assessment Regulation 2000</i>.
Modifications	Modification applications that meet the above criteria.



Role Statement: Chairs and members for the Independent Hearing and Assessment Panels

1. Scope

The scope of this Statement of Appointment is for the appointment of Chairs and members to Independent Hearing and Assessment Panels (IHAP) for each council in the Greater Sydney Region and Wollongong. The IHAPs have been created under the *Environmental Planning and Assessment Act 1979* (the Act).

Description of Entity

The IHAPs are constituted under the Act and are independent bodies and are not subject to the direction of the Council, or Minister, except on matters relating to IHAP procedures. The Chairs and members are required to be experts in at least one area of planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. The Chairs must have expertise in at least law or government and public administration.

The principal functions of the IHAPs are to determine local development applications (DAs) and provide advice on planning proposals.

2. Capability Areas

IHAP Chairs and members must be able to demonstrate the following:

- a. An ability to communicate complex and sensitive information in a tactful manner to all planning panel stakeholders;
- b. A sound understanding of:
 - i. Accountability measures;
 - ii. The planning and environmental framework of NSW, and legislative process;
 - iii. The business and environment in which the panel will operate; and
 - iv. Risk management principles.
- c. Extensive senior level experience in a designated area of expertise relevant to IHAPs;
- d. A professional and ethical approach to the exercise of duties;
- e. Qualification, related industry experience and subject matter expertise in a relevant field.

Chairs should additionally be able to demonstrate:

- f. Leadership qualities and the ability to promote effective working relationships in complex organisations;
- g. Extensive knowledge in areas such as: risk management, management control frameworks, and governance and business operations; and
- h. A capacity to form independent judgements and willingness to constructively challenge suggested approach, with a view to tact and inclusion of all relevant opinions of the panel.



3. Competencies - Role Related

The following competencies are required to be successful in the role:

- **Knowledge and Specialist Expertise** – to be viewed as the authority in one or more of the following disciplines: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. Chairs must have expertise in at least law or government and public administration.
- **Communication** – ability to communicate technical matters and decisions with a diverse range of stakeholders

Chairs must also be able to:

- **Facilitate Leadership** – the ability to inform and debrief fellow panel members and relevant stakeholders on current matters and strategies, and the ability to lead constructive and timely discussion and debate, drawing on the expertise of the panel to review strategies.
- **Influence, Negotiate and Drive** – the demonstrated ability to influence a variety of stakeholders, negotiate suggested approach with the business and drive contentious strategies against organisational resistance.
- **Management of Risk**– experience in managing areas of major risk to the organisation.

4. Competencies – Personal

The following are personal competencies which will form part of an effective individual in either of these roles, however Chair candidates would be expected to show these at a higher level:

- **Integrity** – fulfilling a Panel member's duties and responsibilities, acting ethically, not disclosing commercial in confidence information, having appropriate independence, putting the panel's interest before personal interests.
- **Collegial Communicator** – the ability to engage and communicate with all relevant stakeholders.
- **Emotional Intelligence** – as well as self-awareness and self-management.
- **Commercial Astuteness** - demonstrated good business instinct and acumen, and be able to use this in a variety of situations.
- **Commercial Judgement and Instinct** – all Panel members need to demonstrate good business instinct and acumen to be able to assimilate and synthesise complex information.
- Be an active contributor with genuine interest in the panel and its business.

5. Remuneration

To be set by the Minister. Indicative rates are \$1866/meeting day for Chairs and \$1435 /meeting day for members.

6. Term of Appointment

The maximum term for a single appointment to a panel is up to three (3) years.

14. CONFIDENTIAL REPORTS FROM OFFICERS

14.3 Blaxland Road, Campbelltown Land EOI - Review and Recommendations

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)((c)) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following: -

information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.