

Environmental Planning & Assessment Act 1979

Planning Legislation updates

March 2017



CENTRAL NSW
COUNCILS



Centroc's Mission is to be recognised as the lead organisation advocating on agreed regional positions and priorities for Central NSW whilst providing a forum for facilitating regional co-operation and sharing of knowledge, expertise and resources; effectively nurturing sustainable investment and infrastructure development.

www.centroc.com.au

Acting Chairman: Cr John Medcalf, Mayor, Lachlan Shire Council

31 March 2017

Reference gr:jb 031731
Enquiries: Ms J Bennett: 0428 690 935

Planning legislation updates 2017
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

To whom it may concern,

Re: Draft amendments to the Environmental Planning and Assessment Act 1979

Central NSW Councils (Centroc) represents over 200,000 people covering an area of more than 50, 000 sq kms comprising the Local Government Areas of Bathurst, Blayney, Cabonne, Cowra, Forbes, Hilltops, Lachlan, Lithgow, Oberon, Orange, Parkes, Upper Lachlan, Weddin, and Central Tablelands Water.

It is about the same size as Tasmania with half the population and a similar GDP.

Centroc's vision is to be recognised as vital to the sustainable future of NSW and Australia.

Its mission is to be recognised as the lead organisation advocating on agreed regional positions and priorities for Central NSW whilst providing a forum for facilitating regional cooperation and sharing of knowledge, expertise and resources.

Centroc has two core objectives:

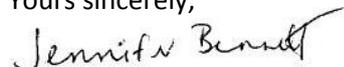
1. Regional Sustainability - Encourage and nurture suitable investment and infrastructure development throughout the region and support members in their action to seek from Governments financial assistance, legislative and/or policy changes and additional resources required by the Region.
2. Regional Cooperation and Resource Sharing – Contribute to measurable improvement in the operational efficiency and effectiveness of Member Councils through facilitation of the sharing of knowledge, expertise and resources and, where appropriate, the aggregation of demand and buying power.

The Centroc Board is made up of the 28 Mayors and General Managers of its member Councils who determine priority for the region. These priorities are then progressed via sponsoring Councils. For more advice on Centroc programming and priorities, please go to our website www.centroc.com.au

Thank you for the opportunity to provide feedback to the Planning legislation updates. We applaud the commitment from the State Government to simplify good design for Planning in NSW.

Centroc make the following comments.

Yours sincerely,



Jennifer Bennett

Executive Officer

Central NSW Councils (Centroc)



Fit for the Future

Centroc was selected as one of five regional pilot Joint Organisations to assist the NSW Government strengthen and reform local government.

Ministers Foreword

The Minister indicates that the key aims of the amendments are to achieve:

- A balance of different views and values
- Elevate the role of design in the built environment to deliver neighbourhoods, streets, parks and recreation spaces that balance the needs of communities with the need to accommodate growth.

Comment: These aims are relevant to the Centroc Region and are supported.

Introduction

Objectives of the legislative updates:

- To enhance community participation
- To promote strategic planning
- To increase probity and accountability in decision making
- To promote simpler, faster processes for all participants.

Comment: These objectives are relevant to the Centroc Region and are supported.

Updated Objectives

- Propose a new objective to promote good design in the planning system.

Comment: The inclusion an objective to promote good design is supported. “Good design” is a bit subjective. Would be preferable to link this with outcomes such as “good design that promotes walkable neighbourhoods, enhanced streetscapes, WSUD, crime prevention etc...”

Enhancing Community Participation

Community Participation Plans

- Each Council will need community participation plan in relation to plan making and development decisions. (Note Bathurst’s current community engagement strategy would not cover the new requirements).
- “All applications for local development will be required to be exhibited for 14 days”

Comment: Centroc currently identifies those categories of local development considered to be of interest to the community. It is unclear if the proposal is to require all local development (as implied by this statement) to be exhibited. If so this will increase approval times for those local development applications that are of little or no interest/concern to the community (e.g. front fences). It is suggested that local councils determine their own local development categories that should be exhibited and that a minimum 14 day exhibition period be applied. Noting that In rural and regional areas, where the take-up of complying development is not high, this requirement could further push out development application processing times for relatively minor developments such as those identified in Council’s notification policy as not requiring exhibition.

Centroc supports the preparation of model plans and guidelines that can assist Council's in preparing their own community participation plan provided model plans and guidelines are provided as a tool box and not imposed as compulsory one size fits all plans/guidelines.

Community Participation Principles

- "Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made."

Comment: It appears that this will only apply to state significant developments initially and will be a Departmental requirement of the applicant's environmental impact statement. If applied to other development types it is not clear how such a process might work effectively. Some neighbours feel intimidated by developers and might change their opinion when the application is actually lodged.

Statement of Reasons for decisions

- Decision makers will be required to give reasons for their decisions through a mandatory notification requirement.

Comment: Not clear what the mandatory notification requirement will be. More detail in relation to the format and level of detail of such statements is required to be able to make informed comment on its function and impact on resources.

There is not a great deal of information about this and planning systems in the past have required a consent authority to put reasons for each condition that was imposed in a consent, this was removed a number of years ago. Councils are not sure what this will look like but the concern these will be vague and tokenistic at best. Clarification is required to confirm whether "reasons" are to be integral to development consents i.e. would only those conditions related to explicit reasons be defensible? Or are reasons intended to provide an overall background to the consent? Also confirm that issues not picked up in "reasons" can and should still be relevant matters for protection.

Completing the strategic planning framework

Local Strategic Planning Statements

- The Local Strategic Planning Statements will tell the story of the LGA, set out the strategic context within which the LEP has been developed, explain how strategic priorities at the regional/district level are given effect and incorporate and summarise CSP objectives.

Comment: It is noted the statements will need to be endorsed by the Department it is therefore also assumed the statements will be given due weight by the Department when they consider state significant development proposals, gateway decisions and so on. To avoid another sit on the shelf and gather dust document.

It is noted that there are no District Plans in Western NSW to our knowledge. At the time of writing the Central West and Orana Regional Plan is in draft form.

Councils should be given an opportunity to have input into the implementation staging to consider available financial and staff resources to complete this task.

Will the DoP provide funding for Council's to outsource this to consultants?

Keeping LEPs up to Date

- Five yearly LEP check against set criteria.

Comment: Supported, Councils already regularly review and update its LEP. Clarification that an LEP does not require a check to maintain its statutory weight i.e. just because the 5 yearly review may be overdue does not become grounds for variations / rezonings etc... still a need to be consistent with existing LEP & adopted strategy framework

More consistent DCPs

- DCPs will be required to follow a standard format.

Comment: Centroc does not support a one size fits all approach to any planning instrument and struggled to implement its strategic landuse plans under the SILEP. Centroc would not support a standard format unless it remains flexible in its implementation to enable councils to modify, add to, subtract from that format if necessary. In particular the differences between metropolitan areas and rural/regional locations must be considered. Importantly the Department's regional offices must be involved in any standardisation process.

Additionally there needs to be a Central West member on the working group.

Landuse planning around the world is an innovative and experimental profession. Different jurisdictions have responded to local issues and developed various responses and formats. For example prescriptive v merit based, land use segregation v form based codes. Standardising the regulatory approach reduces the ability for the profession to innovate and respond to local issues. It would therefore be preferable to pursue a set of possible DCP formats as a toolbox of options, rather than one preferred approach.

Centroc supports the development of a toolbox set of model DCP provisions provided that they are not mandated and councils can adapt and alter them to suit local circumstances. Again the differences between metropolitan areas and rural/regional locations must be considered.

Will the Department of Planning be going to issue model clauses like the standard LEP template?
Are there going to be provisions for local variations?

A key issue not addressed by these amendments is the weight given to DCP provisions in Land and Environment Court proceedings.

Better Processes for Local Development

- The goal is to make local development processes simpler and faster for all participants.

Comment: Individual councils are in the best position to know the types of “bread and butter” developments that are straight forward, unlikely to be contentious and best allocated to an exempt or complying development process. Councils should be allowed to develop their own exempt and complying development provisions as has been enabled for Bathurst under the current Codes SEPP. Bathurst Regional Council achieves greater exempt and complying development under its LEP provisions than under the provisions of the Codes SEPP. Some 85% of new dwelling applications in the suburban areas of Bathurst are submitted as complying development and are assessed by Council within 24 hours of receipt.

Early Consultation with neighbours

- It appears nothing will be regulated initially until after trials have occurred with selected councils.

Comment: Trials on early consultation should include trials in rural and regional locations and should involve the Departments regional offices.

Members feel the suggestion of neighbours discussing DA’s with neighbours is fraught with complexities and is not encouraged. This assumes that neighbours all get along with each other which is not the case and to place monetary incentives to this process at worst encourages corrupt activities and at best places undue stress and pressure on neighbours to sign-off a proposal to save a neighbour some fees in the interest of keeping on good terms and therefore should be avoided.

Asking neighbours to sign off a proposed development may also muddy the waters by creating the impression that a neighbour has a veto power over a proposal.

The following key concerns and areas for further research should be highlighted:

- The potential for harassment and coercion techniques to be used to gain neighbour support particularly if fee incentives are to be implemented
- The potential for Council to be drawn into neighbour disputes starting with neighbour consultation requirements further draining on Councils resources
- What would constitute evidence of early neighbour consultation (letter, signing of plans?)
- What level of detail is needed to be provided to neighbours to start the conversation?
- How would Council be sure that neighbours have been consulted with the full and correct information from applicants?
- How would an ongoing conversation with neighbours occur over the life of the design and planning phase of a development?
- The administrative oversight of this requirement may far outweigh the benefits if it is implemented as a requirement under the Act.

Centroc welcomes further research into this initiative before committing to support of its implementation.

Efficient approvals and advice from NSW agencies

- Step in powers for the Secretary to give advice, concurrence or general terms of approval.

Comment: The provisions of such reserve powers are supported.

Centroc Councils generally have the greatest delay with agencies which are not based regionally, e.g. Heritage Office.

Centroc Councils welcome the ongoing review of concurrence and referrals to improve the outcomes from these processes. There is concern however that the “step in” powers will be used as a last resort and experience has shown that it is very rare for the Secretary to become involved in local development. Some Councils are currently experiencing delays with ‘integrated’ authorities on a monthly basis.

Preventing the misuse of modifications

- Remove ability to allow modifications for works already completed.
- Require modification assessments to give consideration to the statement for reasons for issuing the original consent.

Comment: The amendments are supported, however caution should be given to the use of new building certificates as a mechanism to authorise works that are not consistent with the original development consent as building certificates, as they currently exist, do not have to consider planning considerations such as impact upon amenity. This would leave the only alternative in these circumstances as demolition of the unauthorised work and may leave Councils exposed to appeals to the Court for refusal to issue a building certificate.

Modifications must take into account reasons for original consent - supported and will provide greater clarity and transparency around development consents and any modification thereto.

Improving the complying development pathway

- The objective is to grow complying development (developments that have a low impact). Provide clearer and simpler rules. Provide more education. Implement an Inland Code.

Comment: It is suggested that local LEP provisions developed by councils to suit their own LGAs provides a greater opportunity to increase the complying development pathway as proved in the Bathurst case. A one size fits all approach is not supported. In particular the differences between metropolitan areas and rural/regional locations must be considered. An Inland Code is supported but it is recommended that councils still be permitted to run a parallel system under their own LEPs to capture more development as exempt and complying than the State Code where circumstances warrant, as is currently permitted to Bathurst under the Codes SEPP.

- Include medium density forms of housing as complying development.

Comment: Medium density forms of housing in Bathurst are not considered low impact by the community and are usually the type of development that the community wish to be consulted on. The amount of medium density housing as compared to single dwellings in Bathurst at this time does not necessarily warrant a shift to the complying development process in terms of the efficiency gains that might be achieved. Bathurst would be better served through Council developing LGA specific complying provisions for some forms of medium density housing (e.g. dual occupancy) rather than relying on State provisions that may prove inappropriate or too cumbersome to achieve a shift to the complying development process.

- Private certifiers, after issuing a certificate, will be required to give a copy of the certificate and any endorsed plans to Council and the direct neighbours.

Comment: Is it necessary to provide neighbours with a copy as we move to electronic tracking systems and the Planning portal? Any provision of plans to a neighbour should be given to the land owner not necessarily a tenant of a property.

Further concern relates to who is classed as “neighbours” in greenfield areas and how private certifiers would gain access to property ownership information. Would they be requesting that information from Council, creating yet another drain on Council resources?

- It may be necessary to put in place safeguards to ensure appropriate consideration of proposals with greater potential to impact local values or sensitive issues only to a council certifier.

Comment: Agree, some Councils have little faith in the private certifying system. However, proposals with the potential to impact on local values or sensitive issues should not be complying development in the first place as complying development is described by the Department as being development with a ‘low impact’. Again locally developed provisions can better avoid the potential for impact on local values or sensitive issues.

It is incongruent to have “sensitive” categories of complying development for which only Council certifiers should be able to consider. It also suggests that there is an inherent flaw in the private certification system where private certifiers cannot be entrusted to certify development with the potential for greater impacts.

This proposal will further complicate the complying development pathway and create a two tiered system for certification.

- Council will have power to issue a temporary stop work order on a CDC project to investigate if it is being constructed in line with the CDC and a compliance levy is proposed to support councils in their role in enforcing complying development standards.

Comment: Support the additional investigative power on the basis that Council will be reimbursed through the levy. The levy needs to accurately reflect the resources of councils expended in enforcement of privately issued CDCs.

Concerns relating to the impact upon Council’s resources and the shifting of costs related to the regulation of the private certification scheme should be raised.

- Complying development certificates will be able to be issued as a deferred commencement (e.g. requiring subdivision to be registered prior to development commencing) and will enable special infrastructure contributions to be required.

Comment: Deferred commencement conditions will need to be enforced by councils and will increase the enforcement burden on councils.

Better processes for State significant development

Clarifying the regulation of major projects

- Changes proposed aim to improve the responsiveness and efficiency of conditions of consent for State significant development.
- Set up transferable conditions – that is conditions that will no longer apply because they are substantially consistent with conditions subsequently imposed under other approvals or licences.
- Amendments will clarify that conditions of consent can require financial securities to fund the decommissioning or rehabilitation of sites.

Comments: The amendments are generally supported.

Improved environmental impact assessment

- The Government has released a discussion paper with ideas about how to improve the assessment of major projects. Feedback on the discussion paper will be used to develop draft guidelines which will then be released for consultation.

Comments: Centroc Councils will review the guidelines when they are released.

Discontinuing Part 3A

- Existing approvals under the former Part 3A or the transitional provisions will be moved to the current State significant development and State significant infrastructure pathways.

Comments: The amendments are generally supported.

Facilitating infrastructure delivery

- Amendments will extend the current ability of environmental planning instruments to require concurrence or notification of public authorities to activities under Part 5 within future infrastructure corridors.

Comments: The amendments are generally supported.

Fair and consistent planning agreements

- The government is developing a clearer policy framework for the role and use of planning agreements. If adopted, the direction will require that local councils have regard to specific principles, policy and procedures when negotiating/preparing planning agreements.

Comments: Separate submissions have been called in relation to the draft changes.

- A review of the infrastructure contributions system is being undertaken including special infrastructure contributions in high growth areas (metropolitan), reviewing local infrastructure guidelines and section 94a guidelines.

Comment: The proposed amendments need to include a review of the “Urban Release Area” provisions in LEPs in regional and rural areas, including their ongoing relevance and the delays in receiving certification from the Department in relation to the need for state infrastructure contributions.

Concern is raised regarding the timeliness of finalising such guidelines noting that the current ‘Development contributions Practice notes’ are dated July 2005.

Confidence in decision- making

Better Local Decisions

- Amendments are proposed to make local planning panels more widely used in the planning system, this will include giving the Minister the power to direct a council to appoint a local planning panel where warranted (e.g DA timeframes, manage conflicts of interest/corruption).
- Amendments will enable the Minister to make a direction, where warranted, that councils are to delegate the determination of DAs to council staff where appropriate to avoid delays in decision making.

Comments: The amendments are generally supported. Power to direct that a local planning panel make determinations - Used properly the local planning panel model may be a positive initiative to assist Council with its planning functions for more complex development assessments.

Refreshed thresholds for regional development

- New thresholds proposed for regionally significant development that will be referred to Regional planning panels for determination.

Comments: The amendments are generally supported.

Strengthening decisions at the State level

- Planning and Assessment Commission will be renamed to the Independent Planning Commission.
- Commission will no longer have a statutory function to review development proposals as part of the determination process.

Comments: The amendments are generally supported.

Managing conflicts for panels

- Model Codes of Conduct will be prepared for members of planning bodies.

Comments: The amendments are generally supported.

Review of Decisions

- Internal reviews of DAs will be extended to integrated development and State significant development (except for high-risk developments such as mining if the Planning Commission held a public hearing into the development).

Comments: The amendments are generally supported.

Clearer building provisions

- Amendments will consolidate building regulation and subdivision certification provisions into a single part of the Act.
- Enable certifiers to place conditions on the issue of construction certificates and complying development certificates.
- Ensure construction certificates do not allow proponents to depart significantly from planning approvals.

Comments: The amendments are generally supported; it is considered however that, three months may not be long enough in rural areas.

Elevating the role of Design

- Promoting good design is to be included as an object of the Act.
- Government Architect will develop a design led planning strategy, comprising incentives and measures to assist the planning system users to achieve well designed places.

Comments: The amendments are generally supported.

Enhancing the enforcement toolkit

- Councils will be given the ability to enter into enforceable undertakings with holders of a development consent. This gives the Council the power 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. The Council can then apply to court if necessary to enforce the terms of the agreement.

Comments: The amendments are generally supported. Councils would welcome the guidance material to assist in employing this new tool.