

Circular Details	Circular No 17-01 / 09 January 2017 – A531757
Previous Circular	16-01 New Local Government Act Development Consultation 16-30 Local Government Amendment (Governance and Planning) Act 16-35 More Phase 1 amendments to the Local Government Act commenced by proclamation
Who should read this	Councillors / General Managers / All council staff
Contact	Office of Local Government Relationship Manager
Action required	Information

Exhibition draft of Bill to amend the Environmental Planning and Assessment Act 1979

What's new or changing

- As announced in May 2016, the Government is exhibiting draft amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act). The draft Bill will be on exhibition from 9 January 2017 to 10 March 2017.
- The draft Medium Density Design Guide and an Explanation of Intended Effect for a Medium Density Housing Code were exhibited from October to December 2016, and submissions are currently being considered.
- These changes will support increased housing supply and choice by making the planning assessment process more efficient for terraces and other low-rise medium density housing where they are already permitted under councils' planning policies, and where they meet a set of new detailed design guidelines. This will ensure that these homes are consistent with the local character of the area.
- The exhibition follows 10 roundtables discussion forums across regional New South Wales (Queanbeyan, Gosford, Newcastle, Tamworth, Griffith, Coffs Harbour, Wollongong and Dubbo) and metropolitan Sydney (including Parramatta) attended by 373 representatives from 235 key stakeholder organisations, including councils, industry, practitioners, Aboriginal groups, the community and environmental groups.

What this will mean for your council

- The following proposed amendments are of particular relevance to councils.

Community participation

- Planning authorities, including councils, will be required to prepare community participation plans. The plan will set out how and when the planning authority will undertake community participation in relation to upcoming proposals and development applications.
- In preparing community participation plans, planning authorities will be required to have regard to prescribed community participation principles.

- It is also proposed to update the current minimum public exhibition requirements. For example, all applications for consent for local development will be required to be exhibited for a minimum of 14 days.
- To reduce duplication, a council will not need to prepare a separate community participation plan if it can meet the EP&A Act requirements through the broader community engagement strategy it has prepared under the *Local Government Act 1993*.
- Decision makers, including councils, will be required to provide reasons for their decisions. The statement of reasons should be proportionate to the scale and impact of decision.
- The Department of Planning and Environment (DPE) will provide guidance material to assist decision makers, and implementation timeframes will be developed following consultation with councils.

Local planning

- Councils will be required to publish local strategic planning statements. These will:
 - explain the strategic context within which the Local Environmental Plan (LEP) has been developed, including the rationale behind the application of zones and development controls;
 - explain how strategic priorities at the regional and/or district level are given effect at the local level; and
 - incorporate and summarise land use objectives and priorities identified through the council's Community Strategic Plan process.
- Councils will also be required to undertake a five-yearly LEP check against set criteria. The criteria relate to demographic changes in an area, infrastructure investment, and number of planning proposals.
- The outcomes of the LEP check and any recommendations will be provided to the Minister for Planning, or the Greater Sydney Commission in the case of councils located in the Greater Sydney region. The check may result in planning proposals for minor amendments or full LEP reviews.
- Development Control Plans (DCPs) will be required to follow a standard format. The standard format will be developed in consultation with councils to ensure that DCPs have the right balance of consistency and flexibility.
- Model DCP provisions will also be developed, which councils will be able to opt to use.

Local development

- For integrated development, the Secretary of DPE will be able to give advice, concurrence or general terms of approval on behalf of another agency where:
 - the agency has not provided the advice, granted or refused concurrence, or provided general terms of approval within statutory timeframes; or
 - the advice, concurrence or general terms of approval from two or more agencies are in conflict.
- The framework for independent hearing and assessment panels (IHAPs) will be standardised, with the new panels to be known as local planning panels. Existing IHAPs, whether established under the EP&A Act or the *Local Government Act 1993*, will be deemed to be local planning panels with appropriate savings and transitional provisions.

- The Minister for Planning will have the power to direct a council to use local planning panels and/or to direct that more planning functions are carried out by council staff, in order to address performance or conflict of interest issues.
- Thresholds for regionally significant development will be adjusted, which will result in more developments being determined by councils.
- The draft Bill ensures that construction certificates must be consistent with development consents. This addresses the issue raised in *Burwood Council v Ralan Burwood Pty Ltd* (No. 3) [2014] NSWCA 404.

Complying development

- The regulations will be able to specify certain categories of development for which only a council certifier is authorised to issue a Complying Development Certificate (CDC).
- A new investigative power is proposed for councils, whereby councils will be able to suspend building works for up to seven days to investigate whether the works are being completed in accordance with a CDC.
- A compliance levy will be established as part of the fee structures for CDCs to support councils' compliance role, whether issued by council or private certifiers.
- The draft Bill ensures that CDCs that do not comply with relevant standards can be declared invalid. This addresses the issue identified in Land and Environment Court decision of *Hornsby Shire Council v Trives* [2015] NSWCA 158.

Planning agreements

- The power for the Minister for Planning to make directions about planning agreements will be broadened in relation to the circumstances in which agreements may be entered into, and the basis on which public benefit can be determined.
- A draft Ministerial direction, Practice Note and Planning Circular are currently on public exhibition following an announcement in November 2016.

Where to go for further information

The draft amendment Bill, a summary of proposals, and a Bill guide are available for review at www.planning.nsw.gov.au

There are two methods to make a submission:

1. Complete the online feedback form available on DPE's website at www.planning.nsw.gov.au/Have-Your-Say/Community-Consultations.
2. Send written submissions to the Legislative Updates email box at legislativeupdates@planning.nsw.gov.au.

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