



**SUBMISSION ON CHANGES TO DEVELOPMENT ASSESSMENT  
PROCESSES UNDER PART 4 OF THE *ENVIRONMENTAL PLANNING  
AND ASSESSMENT ACT***

**DATE**

AUGUST 2009

### **Opening:**

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the regions of the NSW Aboriginal Land Council. The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community and the media.

### **Executive Summary:**

The Department is looking to introduce significant changes to the Part 4 development assessment (DA) process. These changes comprise:

- Legislative amendments contained in the *Environmental Planning and Assessment (Amendment) Act 2008*.
- Guidelines for applicants and councils.
- A set of standard forms (templates).

The changes to Part 4 will have significant impacts on councils' business processes including development assessment (from pre-lodgement through to determination), customer service, document management, corporate reporting and external reporting. The changes will require councils to:

- alter or upgrade their IT systems where they have an electronic system for the management of DAs and corporate reporting systems;
- amend advisory information provided to applicants and the public; and
- educate and train the range of council staff involved in the DA process including customer service staff, planners, internal referral staff (engineers, building surveyors etc) and corporate managers.

Importantly, it is likely that the changes to Part 4 will prompt a review of the way in which councils currently administer their DA process, particularly around the acceptance of incomplete applications, the degree of advice to or negotiation with applicants on proposed development, requests for information, management of referrals and timeframes for completing the assessment report. The commencement of JRPPs will also need to be considered in terms of their requirements on council staff and meeting cycles.

The LGSA believes that the Department needs to properly engage with and gain feedback from councils, the development industry, IT vendors and the general public on the package of changes to the Part 4 development assessment process. Such engagement should inform the proposed legislative changes and Departmental policies (guidelines and templates) as well as the timetable for the gazettal and commencement of changes to Part 4.

The LGSA recommend that:

1. A small committee of Local Government representatives and key stakeholders, similar to the Complying Development Expert Panel, be convened to consider the submissions on Part 4 and to review and provide advice on the legislation, guidelines and templates.
2. Councils and key stakeholders be offered the opportunity to attend consultation sessions with Departmental officers prior to finalisation of the Part 4 changes.
3. When finalised, the Part 4 changes should be presented and explained to councils and key stakeholders as a package i.e. the legislative amendments should be provided in a consolidated form with the supporting guidelines and templates.
4. The Department should run training and education workshops for council staff and key stakeholders prior to commencement of the Part 4 changes.

5. A minimum period of three months should be provided between gazettal and commencement of Part 4 changes.

There currently is a high degree of ‘reform’ fatigue’ amongst councils due to the pace and extent of changes made to planning legislation over the past year. To ensure an efficient and effective roll out of the Part 4 changes, supported by a set of practical and useful guidelines and templates, it is important that Local Government is properly consulted and engaged in this process and key stakeholders are informed well before these changes are finalised and implemented.

## **Background**

The Department of Planning has circulated for comment proposed changes to the development assessment process under Part 4 of the *Environmental Planning and Assessment Act*. These documents include:

- Draft Development Assessment Guidelines – Part A – Development Applications under Part 4 of the EP& A Act, dated June 2009.
- Draft Development Assessment Guidelines- Part B – covering the Development Proposal, Statement of Environmental Effects, and Standard Development Application Form.
- Draft Development Assessment Guidelines – Part C – toolkit for Consent Authority, Template for Notification and Template for Development Assessment Report.

The circulated documents support key changes to Part 4 of the *Environmental Planning and Assessment Act* made in June 2008 which include:

- removal of the ‘stop the clock’ provisions where an application is referred to a state agency or delayed by requesting and obtaining additional information from the applicant;
- changes to statutory time limits for determining DAs – to introduce 50, 70 and 90 day deemed refusal periods for different scale developments that requires a progressive level of assessment based on potential environmental impacts;
- revised requirements for development applications- including the introduction of guidelines for Statement of Environmental Effects (SEE);
- increasing the time to reject an application from 7 to 14 days due to lack of information;
- changes to referral requirements; and
- limiting the ability of applicants to provide additional information and thereby amend the DA or re-exhibit those amendments during the assessment process.

## **Key concerns**

### **General issues**

#### *Cumulative and constant change that requires costly administrative changes*

The scope and level of change that councils have been and will be required to assimilate into their local development assessment process within a few short months is substantial. Unfortunately, many of the changes have been delivered in an uncoordinated manner (based on sections of legislation not processes) which requires councils to decipher and ‘piece together’ the relevant changes, many of which are still being developed and changed. Recent changes include new and amended codes under the Codes SEPP, four separate and uncoordinated changes to s149 certificates and the implementation of the regional panels.

The cumulative nature of changes delivered in an ad hoc way has created considerable confusion and fatigue amongst council staff and is undermining business and public confidence in the planning system. In addition, the changes have required costly amendments to business and IT systems, and placed a burden on administrative and professional staff across the various council departments. It is essential that the Department recognise these problems and provide a realistic period of time for

councils to understand the changes and then implement them. For the Part 4 changes a minimum period of 3 months is recommended between gazettal and commencement.

### *Lack of effective engagement with Local Government and key stakeholders*

The Department's consultation procedures have been ineffective in facilitating informed and positive feedback from the sector on how to improve the DA assessment process. The Local Government sector generally has been provided with little opportunity to provide timely and meaningful input into such a major reforms of the DA system.

Improving the DA process as a whole and as an 'end to end' business process will not be achieved through the current piecemeal approach and singular focus on legislative change. Consideration needs to be given to improving not only the 'rules' but also the supporting tools (templates, guidelines and advisory material) and in assisting people to understand and implement the proposed changes. The opportunity to explore more innovative and practical ways of delivering better development assessment processes has been overtaken by a focus on 'ticking off' legislative changes.

### *Lack of an integrated education and training program*

Councils are faced with the challenge of implementing and integrating the raft of legislative changes to the *Environmental Planning and Assessment Act* into their existing legislative requirements, policies and business processes. While the education and training programs run by the Department in relation to particular reforms are useful, they have not enabled councils to forward plan for the scope and extent of changes that have been made and are proposed.

The education and training program run by the Department to date has reinforced a segregated approach to the reform process. The LGSA recommend that:

- Local Government be provided with a 'roadmap' and integrated program for the implementation of future planning reforms. This will enable councils to plan ahead for investments in IT systems, staff management and training and amendments to business processes.
- The Department revise the education and training program with a focus on the practical information required by councils to implement changes.

## **Specific concerns**

### *Legislative changes*

The proposed changes to Part 4 apply more stringent procedural rules to the assessment process for all types of development applications. While there is support from councils for a more rigorous assessment process, concerns have been expressed that:

- The proposed changes emphasise councils' role as the regulator, which may result in a more legalistic approach to assessment and a greater number of DAs being rejected by councils at the start of the process.
- The imposition of unrealistic timelines may give rise to arguments with applicants on inconsequential issues.

Some councils have raised concerns that the new rules may undermine some of the benefits of the current system. In principle, councils have the capacity to exercise discretion under s 79C of the *Environmental Planning and Assessment Act*. In practice the applicant has the opportunity to amend plans following lodgement, based on advice provided by council and referral agencies and facilitated by applying the existing 'stop the clock' provisions. Currently, council staff have the opportunity to resolve issues with the applicant during the assessment process. However, the new rules may reduce the opportunity for negotiated outcomes, and result in more refusals. Councils that have adopted a more stringent legalistic approach to development assessment have indicated that they have experienced a 'backlash' from the development industry.

In addition, council staff have indicated that rejecting an application in 14 days based on inadequate information is extremely difficult in practice and requesting additional information (within 21 days) before resident feedback has been received is often impractical.

Councils have requested a review of the proposed legislative changes to allow 'stop the clock' provisions to apply in limited circumstances i.e. where the applicant and council agree that the extra time would allow an amendment to be negotiated and the DA to proceed. The LGSA support practical measures to allow a reasonable opportunity for the applicant to modify a development application within the system, without time penalties on the council. This option needs to be presented to Local Government and the development industry for consideration.

### *The Guidelines*

Part A, Part B and Part C of the Development Assessment Guidelines need further scrutiny. The guidelines and templates are detailed and cover an extensive range of issues and processes. As such, they need to be practical, useful and readily understood by councils and applicants. The level of detail that is included in the three Parts of the Guidelines is unnecessary in some areas and too prescriptive in others.

The LGSA believe that there needs to be more extensive consultation with Local Government and key stakeholders on the content and application of the guidelines and templates. The Department needs to clarify the legal status of the guidelines and templates and whether they are mandatory or optional. While there is value in having standard forms, the lack of direct feedback from councils makes it difficult to assess whether Local Government will voluntarily adopt them or ignore them. If the Department intends to mandate the use of the templates, then further and more directed consultation with Local Government is critical.

### **Recommendations**

The LGSA recommend that:

1. A small committee of Local Government representatives and key stakeholders, similar to the Complying Development Expert Panel, be convened to consider the submissions on Part 4 and to review and provide advice on the legislation, guidelines and templates.
2. Councils and key stakeholders be offered the opportunity to attend consultation sessions with Departmental officers prior to finalisation of the Part 4 changes.
3. When finalised, the Part 4 changes should be presented and explained to councils and key stakeholders as a package i.e. the legislative amendments should be provided in a consolidated form with the supporting guidelines and templates.
4. The Department should run training and education workshops for council staff and key stakeholders prior to commencement of the Part 4 changes.
5. A minimum period of three months should be provided between gazettal and commencement of Part 4 changes.