



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

Administrator Delegations Meeting
31 March 2017

CONFLICTS OF INTEREST

A conflict of interest arises when the Administrator or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Administrator or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Administrator or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Administrator or General Manager, or another Council employee to determine whether or not a person may have a conflict of interest.

Should you be unsure as to whether or not you have a conflict of interest you should err on the side of caution and either declare a conflict of interest or, you should seek the advice of the Director General of Local Government.

The contact number for the Director General of Local Government is 4428 4100.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Administrator, members of staff and delegates of the Council attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Administrator and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Administrator or General Manager are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Section 360(3) of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Administrator, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Owners of Land

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Ngunnawal and Walgalu people and their Ancestors past and present who pass on this duty of custodianship of the land to us the current custodians.

We are proud to be Australian and celebrate the diverse backgrounds and cultures that make up our Nation – our Land.

**ADMINISTRATOR DELEGATIONS MEETING
TO BE HELD IN COOMA OFFICE, 81 COMMISSIONER STREET, COOMA NSW 2630**

**ON FRIDAY 31 MARCH 2017
COMMENCING AT 9.30AM**

BUSINESS PAPER

1. OPENING OF THE MEETING

2. APOLOGIES/REQUESTS OF LEAVE OF ABSENCE

3. DECLARATIONS OF PECUNIARY INTERESTS/CONFLICT OF INTEREST

(Declarations also to be made prior to discussions on each item)

4. ADOPTION OF COMMITTEE MINUTES/RECOMMENDATIONS

Nil

5. CORPORATE BUSINESS - KEY DIRECTION 1. SUSTAINING OUR ENVIRONMENT FOR LIFE

Nil

6. CORPORATE BUSINESS - KEY DIRECTION 2. EXPANDING CONNECTIONS WITHIN THE REGION AND BEYOND

Nil

7. CORPORATE BUSINESS - KEY DIRECTION 3. STRENGTHENING OUR LOCAL ECONOMY

Nil

8. CORPORATE BUSINESS - KEY DIRECTION 4. CREATING SAFER, HEALTHIER AND THRIVING COMMUNITY

Nil

9. CORPORATE BUSINESS - KEY DIRECTION 5. ENHANCING OUR HEALTHY, ACTIVE LIFESTYLE

Nil

10. CORPORATE BUSINESS - KEY DIRECTION 6. MANAGING DEVELOPMENT AND SERVICE DELIVERY TO RETAIN THE THINGS WE VALUE

10.1 Building Line Reduction (DCP Variation) - Smith Lane Cooma

3

11. CORPORATE BUSINESS - KEY DIRECTION 7. PROVIDING EFFECTIVE CIVIC LEADERSHIP AND CITIZEN PARTICIPATION

11.1 Submission regarding changes to the Environmental Planning and Assessment Act

8

12. ADMINISTRATOR'S REPORT (IF ANY)

Nil

13. CONFIDENTIAL MATTERS

10.1 BUILDING LINE REDUCTION (DCP VARIATION) - SMITH LANE COOMA

Record No:

Responsible Officer:	Director Service Planning
Key Direction:	6. Managing Development and Service Delivery to Retain the Things We Value
Delivery Plan Strategy:	DP6.7 Ensure that Council's policy, land use planning, development assessment enhance liveability.
Operational Plan Action:	OP6.13 Ensure development assessment is undertaken in accordance with adopted Local Environmental Plans, Development Control Plans, Council Policy and State and Federal legislation.
Attachments:	1. Deposited Plan ↓ 2. Site Plan ↓
Cost Centre	
Project	
Further Operational Plan Actions:	

EXECUTIVE SUMMARY

The request to vary the building line setback in CMSC DCP 2014 is supported due to the unusual frontage of the allotment to Smith Lane, and to accommodate the necessary setback from Council's sewer main which traverses the rear section of the property.

This report is only in reference to the building line setback. The assessment of the Development Application for the erection of the dwelling will continue under delegated authority pending the determination of the requested DCP variation.

The following officer's recommendation is submitted for Council's consideration.

OFFICER'S RECOMMENDATION

That Council agree to vary the building line for Lot 1 DP 1172180 to 3 metres from the frontage boundary to Smith Lane.

BACKGROUND

A development application has been submitted for the erection of a single dwelling at Lot 1 DP 1172180, in Smith Lane Cooma.

The attached site plan shows the location of the proposed dwelling with a 4 metre setback to the Smith Lane frontage, however, following advice from Council's Water and Sewer staff, and confirmation from an on-site inspection, it is considered reasonable to allow the setback to be

reduced to 3m from the Smith Lane frontage, to ensure better clearance is achieved from Council's sewer main asset.

The attached Deposited Plan extract also indicates the unusual shape of the lot in reference to other allotments in Smith Lane, with a 3.675m road widening indicated.

Council's DCP 2014 requires a prescribed setback of 6m, however, with the road widening, the proposed reduction to 3m will still achieve a setback of greater than 6m from the alignment of property boundaries to the West of the site.

This reduction will not impact on the streetscape (the dwelling located on the corner of Smith Lane and Bradley Street has a side wall setback of approximately 1m).

The combination of the unusual frontage and the sewer main creates some difficulties in the siting of a dwelling. It is considered that the proposed variation to the DCP requirement is justified on those grounds.

The Administrator has inspected the site with a staff member to enable familiarisation with the site constraints, visual aspects, and street frontage.

Part 1.9 of CMSC DCP 2014 provides that variations to development standards can be considered on the merit of the individual application, with the following parameters listed for consideration:

- a) whether exceptional circumstances apply in the particular case such that it is unlikely the same variation would be warranted elsewhere;
- b) the impact that setting a precedent may have;
- c) the need for Council to make consistent decisions;
- d) whether, considering the objectives of the particular DCP standard, permitting the proposed variation would result in a better planning and/or practical outcome for the development as opposed to complying with the standard;
- e) if there is some reason why meeting the DCP requirement would be unreasonable in the circumstances of the development application; and
- f) if the variation is so minor or insignificant as to be of little or no consequence.

It is considered that the variation in this instance is reasonable on at least parts a, b, and d as listed above, as explained in the earlier commentary.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

It is not expected that the variation to the building line will create any adverse social outcomes. The eventual erection and habitation of a dwelling on this vacant site will provide a positive contribution.

2. Environmental

The variation will not create adverse environmental outcomes, and the visual aspect of the streetscape is not considered to be affected by the proposed reduction.

3. Economic

By permitting the variation, the builder will be able to avoid the costly exercise of having to either pier down below the zone of influence for the sewer main, or to encase the sewer main. It will also enable better access to the main should repairs be required at a later date.

4. Civic Leadership

Council's Development Control Plans set prescriptive and performance based objectives to encourage good development and good design. Allowing flexibility for the variation of prescriptive requirements enables better outcomes for the built environment, where it can be justified to do so. In agreeing to vary the requirement in this situation, Council is demonstrating flexibility in the application of its prescriptive requirements.

Determination by Administrator

Approved by Administrator Dean Lynch in accordance with *Section 226 dot point one (1) or two (2) of the Local Government Act 1993*.

Signature:

Date:

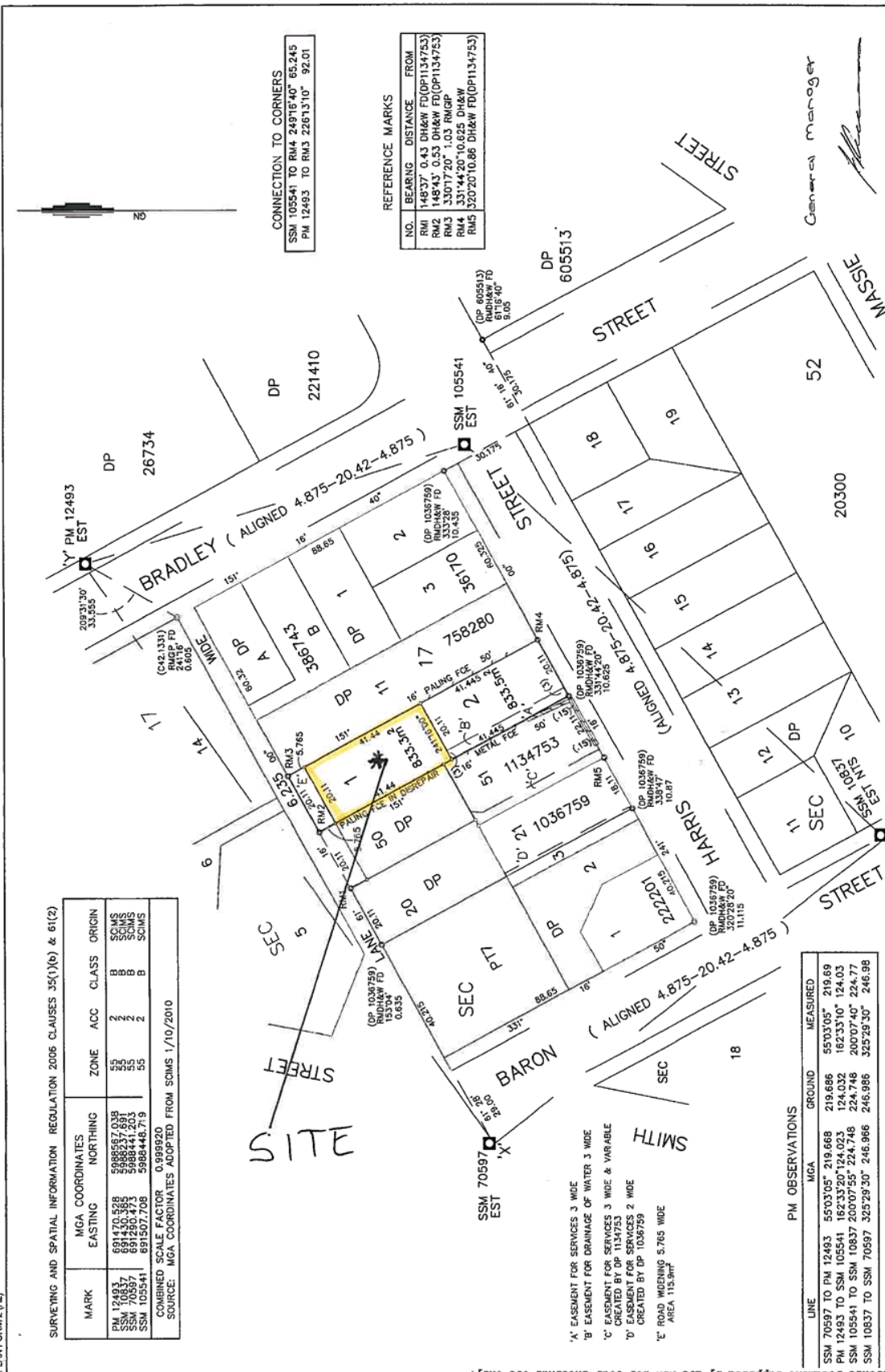
PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 1 Sheets

MARK	MGA COORDINATES	ZONE	ACC	CLASS	ORIGIN
PM 12493	5988567.039	53	2	B	SOMS
SSM 10837	5988567.591	53	2	B	SOMS
SSM 105541	5988444.203	53	2	B	SOMS
SSM 1036759	5988446.719	53	2	B	SOMS

COMBINED SCALE FACTOR 0.999920
SOURCE: MGA COORDINATES ADOPTED FROM SOMS 1/10/2010



CONNECTION TO CORNERS

SSM 105541 TO RM4 24915'40"	65.245
PM 12493 TO RM3 22513'10"	92.01

REFERENCE MARKS

NO.	BEARING	DISTANCE	FROM
RM1	148°37'	0.43	DM&W FD(DP1134753)
RM2	148°33'	0.53	DM&W FD(DP1134753)
RM3	330°17'20"	1.03	RMGP
RM4	331°44'20"	10.625	DM&W
RM5	320°20'10.66	DM&W	FD(DP1134753)

PM OBSERVATIONS

LINE	MGA	GROUND	MEASURED
SSM 70597 TO PM 12493	55°03'05"	219.668	219.69
SSM 10837 TO SSM 105541	162°33'20"	124.023	124.03
PM 12493 TO SSM 10837	200°07'55"	224.748	224.77
SSM 10837 TO SSM 70597	325°29'30"	246.986	246.98

- 'A' EASEMENT FOR SERVICES 3 WIDE
- 'B' EASEMENT FOR DRAINAGE OF WATER 3 WIDE
- 'C' EASEMENT FOR SERVICES 3 WIDE & VARIABLE
- 'D' EASEMENT FOR SERVICES 2 WIDE
- 'E' ROAD WIDENING 5.765 WIDE
- AREA 115.9m²

Surveyor: PETER JAMES WILLIAMS
Date of Survey: 1/10/2010
Surveyor's Ref: 08036(1)

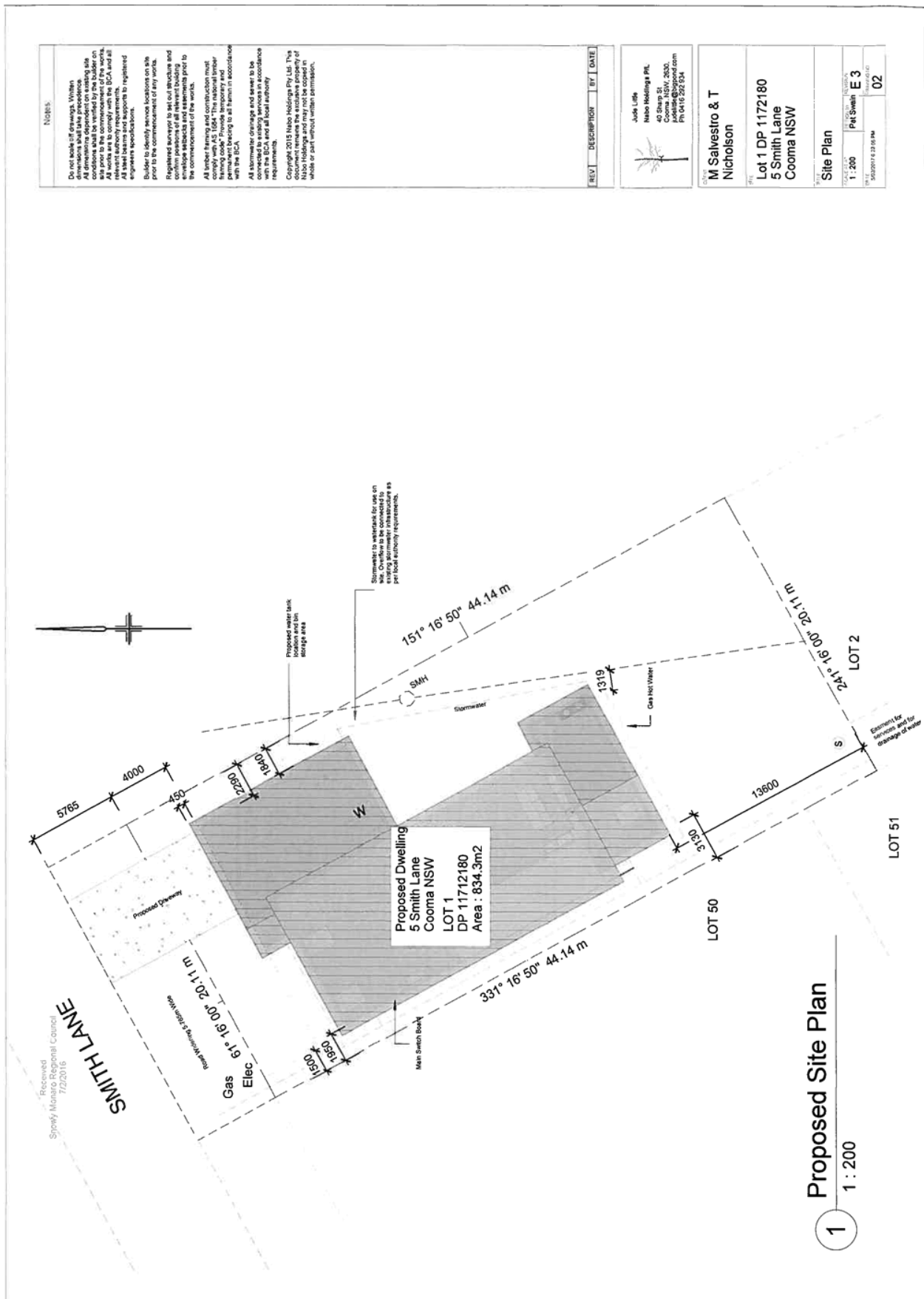
PLAN OF SUBDIVISION OF LOT 10 SECTION 17 DP 758280

LGA: COOMA MONARO
Locality: COOMA
Subdivision No: 5711 SUB
Lengths are in metres. Reduction Ratio 1:750

Registered
15-02-2012

DP1172180 P

Box:e-Dw / Doc:DP 1172180 P / Rev:15-Feb-2012 / Sta:SC.OK / Pct:16-Feb-2012 01:38 / Pgs:ALL / Seq:1 of 2
WARNING: Electronic Document Supplied by LPI NSW for Your Internal Use Only.



11.1 SUBMISSION REGARDING CHANGES TO THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Record No:

Responsible Officer: Director Service Planning

Key Direction: 7. Providing Effective Civic Leadership and Citizen Participation

Delivery Plan Strategy: DP7.1 Ensure that legislative obligations are met throughout all Council departments.

Operational Plan Action: OP7.4 Manage Council's community and land use planning processes to achieve regulatory requirements and community aspirations.

Attachments: 1. Summary of draft points for submission [↓](#)

Cost Centre

Project

Further Operational Plan Actions:

EXECUTIVE SUMMARY

Council's planning and building staff members have examined the proposed changes to the Environmental Planning and Assessment Act and recommend that Council makes a submission based on the points included in the attachment.

The following officer's recommendation is submitted for Council's consideration.

OFFICER'S RECOMMENDATION

That Council make a submission regarding the proposed changes to the Environmental Planning and Assessment Act based on the issues raised in the attached summary.

BACKGROUND

Submissions on the proposed changes to the Environmental Planning and Assessment Act (EP&A Act) are due on 31 March. Council staff have examined the proposed changes, and the Director and Planning Manager (Cooma office) attended a briefing session with Department representatives in Queanbeyan on 13 March.

There are some very positive changes recommended, however, there are aspects of the proposed changes outlined in the attached summary that may need further clarification, particularly as the detail of some changes will be included in Regulations which have not yet been released for comment.

There are also some aspects that may be seen as further examples of cost-shifting to Local Government, in particular, the oversight and regulatory role for Council in the investigation of potential breaches relating to Complying Development Certificates involving private certifiers, being a role currently under the responsibility of the NSW Building Professionals Board.

Submissions are due on 31 March. It is recommended that Council make a submission based on the items listed in the attached summary, and that our submission also be provided to CBRJO as part of a combined submission.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

There are no direct social impacts of making a submission regarding the proposed changes.

2. Environmental

There are no direct impacts of making a submission on the proposed changes.

3. Economic

The submission will include comments regarding potential financial impacts on Council due to additional roles in investigating alleged breaches for developments approved under the Complying Development provisions.

4. Civic Leadership

Council is demonstrating civic leadership by keeping up to date with proposed legislative changes and by making submissions regarding potential effects to its operations by those changes

Determination by Administrator

Approved by Administrator Dean Lynch in accordance with *Section 226 dot point one (1) or two (2) of the Local Government Act 1993*.

Signature:

Date:

Draft points for inclusion in submission re EP&A Act Changes - SMRC

Snowy Monaro Regional Council is encouraged that the NSW Government is progressing with important reforms and updating of the Environmental Planning and Assessment Act, and is pleased to provide the following comments in relation to the proposed changes currently under consideration:

- The NSW Government is requested to be mindful that some of the proposed changes are seen as further examples of cost-shifting from State to Local Government. For example, the proposal for Councils to have a regulatory role to investigate complaints regarding potential breaches under Complying Development and/or Construction Certificates appears to be a direct shift of a regulatory or oversight responsibility which was previously the role of the Building Professionals Board.
- This will also create potential conflict as Councils are a market competitor to the same private certifiers they are now being asked to regulate. The potential conflict will be much harder to manage within smaller regional Councils where there are far fewer regulatory staff than potentially in larger urban Councils.
- There also appears to be a lack of procedural understanding regarding the issuing of 'stop work' notices to enable a Council to investigate an alleged breach. Once a Council has issued such a notice, there is also an implied obligation to ensure that the requirements of the notice are being followed. That places the Council in a potential enforcement role, for example where the stop work notice has been ignored. When this aspect was pointed out to Department staff at a recent briefing, there did not appear to be an understanding of the procedural obligations that would be required to be followed.
- If this role is to be transferred, the proposed Levy must be adequate to cover both the initial and on-going investigative and enforcement actions. Additionally, where an enforcement or non-compliance action is escalated to Court action, Councils should not be left to carry the burden of legal costs. It is suggested that more detailed information is required regarding the levy and payment arrangements to enable Councils to more fully assess any likely impact on their operations.
- It again appears that more administrative burden is being passed onto Local Government, with Council's being the levy collector for the State.
- The push for more Complying Development still does not recognise that the Codes SEPP is far too complex for average applicants to navigate, and permitting deferred commencement (stated to cover things like delayed registration of subdivisions, payment of contributions, up-front Section 68 approvals etc) might only complicate it further
- Monitoring of things like the "Owners Building Manual" (detail subject to the Regulations so that is unknown at the moment) – again more responsibility is being allocated to Local Government, with little detail provided, and the means of funding the oversight/regulatory role are not well explained.

- Changes to have standard format DCPs and model provisions are supported in principle – provided that the format is not so restrictive as to eliminate the place of necessary local content or too focused on the metropolitan setting.
It appears a positive step to create stronger content and model provisions around some definitions which really should mean more or less the same thing wherever you are in the state. In some cases current inconsistency may mean the significance of definitions may be rendered meaningless or potentially the value of that positioning or terminology to an industry as a whole is undermined/lost. The terminology around *eco-tourist facilities* as a particular example here.
Creating stronger content and model provisions adopting approaches to management of issues based upon experiences across the state could be particularly useful for establishing sound thresholds for more performance-based controls. Having standard format and clear definitions may free up Council resources that may otherwise be duplicating the research and development process described above in each individual Council area.
- A local strategic planning statement (LSPS) is supported in principle, however, more clarification is required as to what the LSPS will comprise and where it will be located in hierarchy. It is assumed that this isn't simply a reference to strategic planning documents already existing or being developed and is a distinct new item, but ideally a concise summation of these existing strategic directions and directions from the Council's Community Strategic Plan. Clarification of that would be appreciated.
- It is unsure whether the Department has confidence that the addition of a Local Strategic Planning Statement – in addition to existing Community Strategic Plans and Local Environmental Plans – will provide clarity to the general public or detract from it. Clarification should be provided as to whether the role of the LSPS intended to be similar/equivalent to the Local Planning Policy Frameworks or Municipal Strategic Statements within Victorian planning schemes, noting that in the Victorian system that those items are contained *within* the planning provisions of local authorities, but the LSPS will specifically *not* be a part of Local Environmental Plans.
- Clarification is required regarding the implications of the LSPS in a practical 'mechanics-of-planning-system' sense – how will it be used and what precedence does it have? Do underlying strategic documents adopted by Council that inform local planning still carry weight when seeking amendments to LEPs or must all such documents be specifically referenced by the local strategic planning statement? Much strategic planning study will be undertaken and adopted within the five year intervals that the LSPS must be refreshed. Can amendments to LEPs be sought arising from new strategic studies but before these are reflected in the LSPS during a refresh? If a development proposal does not meet the prescriptive requirements of the LEP but is argued by the developer to uphold the LSPS, is this a basis to request a 4.6 variation, or alternatively to challenge Council determinations of development applications?

- *To avoid duplication, councils do not need to prepare a separate community participation plan if their community strategic plans, prepared under the local government legislation, meet these requirements. [1] cl. 2.23(4) We support provisions to prevent duplication of plans.*
- The “shut down” between 20 December and 10 January for notification appears to be contrary to the aim of reducing delays – this puts a halt on notification for 21 calendar days, most Council DCP’s will already have a provision to account for public holidays and office closures, but a 21 day close down is not supported. If any such ‘close down’ period is introduced, a commitment must be provided by the Department that those days will be excluded from the calculation of Gross DA processing times, which have previously been used as a measurement of a Council’s efficiency, even though such a measure is statistically flawed.
- Mandatory public exhibition periods of 14 days for all development applications are not supported as this would be an excessive measure, as it creates excessive administrative load upon staff in both managing the practice of public exhibition and reporting and addressing public commentary in the course of providing reports to Council – and if high volumes of submissions are received where they were not previously, this further complicates working considerations around which applications would be determined under staff delegation and which would require Council’s consideration. This is not a method which is considered will enhance application processing times.
- Unrealistic expectations that passable applications could be altered or rejected – Council cannot act *ultra vires* irrespective of how much community angst may be put forward via a public exhibition process.
- Having a unified notification period is considered to be a positive step in unifying processes; however, there still needs to be flexibility and discretion for individual councils.
- Notification of minor development (particularly modifications) is not considered to be necessary.
- Any requirements should recognise the lowered performance standard for mail delivery through Australia Post, in some regional areas there are experiences where it takes 4 working days for mail delivery.
- *Planning authorities are required to prepare a community participation plan. [1] cl. 2.23(1) More information is needed on what is required in the preparation of the plan to determine whether this is viewed as a preferable change, the concept of increased community participation is in keeping with the council’s current practices, the proposed flexibility in the provisions is considered to be positive.*
- *It is also a mandatory community participation requirement that planning authorities give notice of the following decisions, and provide reasons for them (including how community views were taken into account): development application determinations*

(including modification applications); approving or deciding to carry out an activity where an environmental impact statement was obtained and exhibited under Part 5; and State significant infrastructure determinations (including modification requests).

[2] cl. 19. More information is needed on the definition of 'notice' in relation to this statement; it is questionable whether this would be necessary for all the stated types of development

- Investigative powers – under section 119C, a Council Investigation Officer should have the same specific powers as a Departmental Investigation Officer. The current differences between subsections (1) and (2) are open to exploitation, along the lines that the legislature did not intend for Council officers to have the powers as specified in Subclause (1)(b). In a recent experience, the reliance on subsection (2)(a) was stated as not allowing a Council to use its investigative powers for the purposes of gathering evidence for a potential prosecution of a breach.
- Lapsing provisions – Section 95 – it was questioned at a briefing session whether the proposed clarification of the lapsing provision, which was raised in earlier discussions on the EP&A Act reforms, was still being considered. It is viewed as an ideal opportunity to ensure that the previously suggested clarification is included in the current process.