

LGNSW Submission
to
Department of Planning Industry and
Environment
on the Rapid Assessment Framework

February 2021

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1.0 Opening

Local Government NSW (LGNSW) welcomes the opportunity to make a submission to the Department of Planning Industry and Environment (DPIE) on the proposed new Rapid Assessment Framework (RAF). The proposed [framework](#) involves changes to the assessment process for major projects and includes new guidelines for environmental assessments plus a scheme for the accreditation of environmental assessment practitioners.

LGNSW is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

Councils are representatives of their communities, regulators of the local planning environment, and providers of local infrastructure and services. They also play a key role in identifying and advocating for the provision of State Government facilities and infrastructure to meet the needs of their communities (e.g. schools, hospitals). As such, councils support rigorous pre-development assessment for all major projects and expect to have input to their assessment.

By their nature, the scale and complexity of most major (state significant) projects necessitate a more complex assessment procedure, which not surprisingly involves longer assessment times than other less complex developments. LGNSW has supported calls for a reduction in the 'red tape' that surrounds current approval processes, but has always argued that sound planning principles should not be sacrificed for the sake of expedience. Shortening average development assessment times for example, must not come at the expense of consistent, transparent and appropriate development assessment.

It is apparent in the comprehensive package of exhibited documents and the changes proposed, that considerable thought has been put into how the quality of assessment and consultation can be improved without compromising – and in fact, with the aim of streamlining - assessment timeframes. LGNSW therefore welcomes the move to introduce improvements to the framework for assessing major projects. It is considered that many of the proposed changes will contribute to improved assessment quality and standards of engagement.

This submission was endorsed by the LGNSW Board in April 2021.

2.0 Background

The proposed amendments are outlined in the explanation of intended effects (EIE) which was released for consultation in January 2021. The exhibition package contains 22 documents, including:

1. Proposed regulation amendment.
2. Policy Paper and Explanation of Intended Effect (EIE) explaining the changes.
3. Draft industry-specific Secretary's Environmental Assessment Requirements (SEARs) for health, warehouse, distribution centres and development in State significant precincts.
4. New draft guidelines intended to assist in improving the quality of environmental assessments and documentation provided to DPIE:
 - State Significant Development guideline
 - State Significant Infrastructure guideline
 - Engagement guideline
 - Cumulative impact guideline
5. A proposed system to recognise certain accredited professional schemes for environmental assessment practitioners.
6. Registered Environmental Assessment Practitioner (REAP) guideline.

3.0 Summary of LGNSW Position

LGNSW's policy positions¹ are informed by the views of our member councils. LGNSW has two planning related Fundamental Principles². These two principles are of direct relevance to this submission and are as follows:

- *That local government is best placed to lead and influence local and regional planning processes according to the needs and expectations of local communities.*
- *That our communities' quality of life is a priority of local government planning.*

LGNSW supports a system in which councils are responsible for governing all matters that affect local communities that are most appropriately dealt with at a local level. We have always advocated the principle of subsidiarity³ when considering the most appropriate spheres of government for determining major developments and infrastructure projects. This principle is captured in LGNSW's position statement on 'planning and local decision-making' which includes the following:

¹ https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

² LGNSW Fundamental Principles are the overarching principles on matters of importance to local government endorsed each year at the Local Government Annual Conference

³ i.e. a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level

7.3 Local government to retain control over the determination of locally appropriate development – local planning powers must not be overridden by State plans and policies or misuse of state significant development provisions.

While we maintain that councils are best placed to determine local development, we also acknowledge the role of the state in assessing major state significant development (SSD) and infrastructure (SSI). For these projects, where council is not the consent authority, LGNSW maintains that councils and their communities must be given a significant voice in decisions about major projects and sites of state significance in their local area. (See section 4 below.)

This submission is based on the views of our member councils which are conveyed in LGNSW's Policy Platform. Appendix 1 contains a list of key extracts from LGNSW's Policy Platform⁴ which are pertinent to this submission.

4.0 Role of local government in SSD assessment

Local government in NSW has always recognised the need for a development assessment system that caters for major developments and large public sector infrastructure projects that clearly are of state significance. In the past, however, many large projects were declared as 'state significant' and removed from the local assessment process. While the original intent may have been to speed up assessments and/or remove 'blockages', the practice became widespread and subject to ministerial discretion, and only served to alienate local communities and diminish trust.

In the case of genuine SSD and SSI, it is appropriate that council is not the approval authority, but where this occurs, councils need to be confident that the significant local impacts of these developments on local infrastructure and community quality of life and amenity are fully recognised and addressed.

As representatives of their communities and regulators of the local planning environment, with responsibility for local infrastructure and service delivery, councils must have the opportunity to provide feedback and be involved in the assessment of major projects. On a practical level, some of the areas in which councils should have a role are:

- pre-lodgement discussions and formation of key issues and assessment requirements (SEARs);
- review of a proponent's preliminary environmental assessment and assistance in determining adequacy;
- assistance in notification and public consultation;
- review and comment on proponent's supporting documents; and
- input to preparation of conditions of consent by departmental staff.

LGNSW therefore supports any changes and additions to the framework for SSD & SSI assessment that enhances consultation with local government. (This is discussed further in section 5.1 below.)

⁴ https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

5.0 Key Issues

Local government's experience in assessment processes for major projects in NSW has highlighted that the main issues for councils revolve around:

- Pathways for consultation and engagement with councils and communities;
- Impacts of projects on adjoining local government areas; and
- Contribution towards impacts on local infrastructure

These are discussed below.

5.1 Consultation and Engagement on SSD

Councils and their communities should have a significant voice in planning decisions about major projects and sites of state significance. LGNSW has long advocated for provisions that strengthen consultation specifically with the relevant local councils in relation to assessment processes for SSD applications.

LGNSW therefore supports having clear obligations - as set out in the draft SSD Guide and industry-specific environmental assessment requirements (SEARs) – that encourage community participation at all stages of the project and require applicants to engage with the community and councils.

Under planning legislation, SSD applications are required be advertised for public consultation for at least 28 days⁵. However, the legislation does not require any consultation or engagement with the community or relevant council prior to the formal consultation period, towards the end of the assessment process, or just prior to the decision being made on the application.

The new *Undertaking Engagement Guide* which sets out DPIE's expectations for early and effective engagement on State significant projects, is therefore a welcome enhancement to the existing process. Early engagement is critical. Concerns raised by a community are often only considered at the project approval stage. The inclusion of community concerns at this stage may be far too late; realistically, proponents may have an expectation that they will receive an approval as they have followed the relevant agency requirements.

LGNSW strongly supports the importance of early consultation and strategic planning, and therefore endorses statements in the Guide which include:

On a State significant project, engagement with the community, local councils and government agencies should take place when conceptualising, scoping, preparing, exhibiting and assessing a proposal. (p 5)

Effective engagement occurs when the community, local councils and government agencies have the information they need to understand a project and its impacts, and are given the opportunity to participate in a meaningful way. (p 6)

⁵ <https://www.planningportal.nsw.gov.au/major-projects/assessment/state-significant-development/ssd-process/exhibit-da>

LGNSW also welcomes acknowledgement in the Guide that DPIE will seek feedback from councils during the assessment phase (p 8). However, we would like to see DPIE give consideration to how it can consult local government more comprehensively during the different phases of the assessment process for state significant development. One of local government's ongoing concerns has been to ensure that the conditions of consent for major projects reflect councils' local concerns. This necessitates an ongoing dialogue between the department and relevant councils.

Recommendation 1: LGNSW endorses having clear and consistent consultation obligations embedded in the Rapid Assessment Framework which aim to enhance and ensure effective engagement.

Recommendation 2: LGNSW requests that DPIE consider options to strengthen its commitment and procedures to consult with local government throughout the development assessment process for major projects.

5.2 Impacts of projects in adjoining local government areas

The direct impacts of SSD may not necessarily be limited to the local government area (LGA) boundary within which they are situated. Where major developments such as mining, resource activity or infrastructure hubs and corridors are expansive, this can not only place added pressure on local infrastructure, services and housing within that LGA, but can also have direct impacts in neighbouring LGAs. LGNSW has always advocated for mechanisms and processes to ameliorate and compensate for these impacts and additional pressures that may occur in some cases on neighbouring councils. This needs to be considered in any assessment for such projects.

In this regard, LGNSW requests the following amendment to the Glossary in the *Undertaking Engagement Guide*:

Council The relevant Council where the project is located and any relevant neighbouring council where direct impacts are likely to be evident.

In addition, LGNSW would like DPIE to consider what mechanisms could be put in place to ensure that where appropriate, neighbouring councils are consulted throughout the assessment process and have input to the conditions of consent for SSD.

Recommendation 3: LGNSW requests an amendment to the *Undertaking Engagement Guide* (Glossary definition of 'council') by including the words 'and any relevant neighbouring council where direct impacts are likely to be evident' to take into account instances where the impacts of a major project occurs in neighbouring LGAs.

Recommendation 4: LGNSW requests that DPIE consider, in consultation with local government, what mechanisms could be put in place to enable neighbouring councils to be consulted throughout the assessment process and have input to the conditions of consent for SSD.

5.3 Contributions for improvements to local infrastructure

As councils are not the consent authority for SSD, they have little control over and cannot rely on the inclusion of developer contributions as a condition of consent for these proposals. In many cases, councils therefore rely on the goodwill of individual companies and their own capacity to undertake negotiations for contributions towards local infrastructure. Mechanisms such as voluntary planning agreements (VPAs) are available to assist in this process. However, VPAs only benefit the LGA within which the development is situated.

As discussed above (section 5.2) there are occasions where a major project generates direct impacts on neighbouring councils outside the LGA in which the project is situated. The cumulative impact of multiple projects (particularly resource projects) can also have direct effects on neighbouring councils. LGNSW is not aware of any mandatory framework to formalise the requirement for such contributions, or to extend such contributions to benefit neighbouring councils that may be also directly affected as a result of the cumulative impacts of many major projects in adjoining LGAs.

During the preliminary pre-application planning and throughout the assessment phases for both SSD and SSI proposals, consultation is required with all stakeholders including the relevant council(s) to assess the demand for local infrastructure and consider impacts on local infrastructure capacity (e.g. roads, traffic network). There needs to be adequate assessment of proposals for SSD and SSI, particularly with respect to parking and traffic and potential impacts on the surrounding areas, considering the existing and future situations, based on strategic plans.

Recommendation 5: Due to the significance of local government's role in the provision of local infrastructure to support state significant development, LGNSW requests that DPIE consider, in consultation with local government, what mechanisms could be put in place to ensure that the relevant council(s) can have genuine input to the conditions of consent for SSD.

6.0 Conclusion

As representatives of their communities, regulators of the local planning environment and providers of local infrastructure and services, councils support rigorous pre-development assessment for all major projects and expect to have input to their assessment. The main concerns for councils in relation to the assessment of major projects revolve around:

- Pathways for consultation with councils
- Contribution towards impacts on local infrastructure
- Impacts of projects on adjoining local government areas.

LGNSW supports the NSW Government's intention to reform the planning system to stimulate economic activity and welcomes the proposed enhancements to the SSD & SSI assessment framework that will help facilitate early and effective consultation with local government.

LGNSW acknowledges the role of the state in assessing major SSD and SSI and maintains that councils and their communities must be given a significant voice in decisions about major

projects and sites of state significance in their local areas. It is critical that DPIE commits to engage with councils throughout the assessment process and particularly when preparing conditions of consent for SSD. This submission has also highlighted the importance of having genuine mechanisms that allow for neighbouring LGAs to have input to the assessment process where relevant.

LGNSW thanks DPIE for the opportunity to comment on the comprehensive suite of documents that make up the Rapid Assessment Framework.

A summary of all recommendations is provided in Appendix 2.

To discuss this submission further, please contact Vanessa Burow, Senior Policy Officer Planning at Vanessa.Burow@lgsw.org.au.

Appendix 1 - LGNSW Policy Platform – Relevant Extracts

LGNSW's Policy Platform consolidates the numerous policies and positions of Local Government NSW (LGNSW) – as determined by members – into a single document for ease of reference for members and stakeholders. Below is a list of key extracts from LGNSW's Policy Platform⁶ which are particularly relevant to this submission

4.4 New models for rural and regional infrastructure and service delivery, including consideration of council coordination and/or implementation, that are built on close collaboration between local, state and federal government.

6.1 Mandatory upfront engagement by State and Commonwealth governments with local government about specific local priorities.

6.3 State and Commonwealth Government growth plans and projects must make upfront provision for, and include, the delivery of associated local infrastructure.

6.4 Increased opportunity for community use of state and federal facilities.

7.1 The planning system to ensure the voice of local communities is heard through: • the well understood and accepted councillor representation system, which provides transparency and accessibility to communities; • genuine local representation, including councillors, on regional planning panels, and • third party merit appeal rights in respect of all categories of development applications, including decisions made by the Independent Planning Commission (IPC).

7.3 Local government to retain control over the determination of locally appropriate development – local planning powers must not be overridden by State plans and policies or misuse of state significant development provisions.

7.4 Local government to be treated as a partner (not just another stakeholder) in metropolitan, regional and district planning processes - the role and voice of local government is vital in delivering productivity, liveability and sustainability.

7.8 Reforms to the planning system to include a fundamental review of its primary purpose and work to improve its efficiency and effectiveness, by consolidating state policies and local plans in local planning instruments, streamlining plan-making and development assessment and ensuring councils have adequate powers to implement provisions.

14.4 the NSW Government to ensure that any new schools constructed in a local government area provide appropriately-sized off-street drop off and pick up zones.

⁶ https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

Appendix 2 - Summary of Recommendations

Recommendation 1: LGNSW endorses having clear and consistent consultation obligations embedded in the Rapid Assessment Framework which aim to enhance and ensure effective engagement.

Recommendation 2: LGNSW requests that DPIE consider options to strengthen its commitment and procedures to consult with local government throughout the development assessment process for major projects.

Recommendation 3: LGNSW requests an amendment to the *Undertaking Engagement Guide* (Glossary definition of 'council') by including the words '*and any relevant neighbouring council where direct impacts are likely to be evident*' to take into account instances where the impacts of a major project occurs in neighbouring LGAs.

Recommendation 4: LGNSW requests that DPIE consider, in consultation with local government, what mechanisms could be put in place to enable neighbouring councils to be consulted throughout the assessment process and have input to the conditions of consent for SSD

Recommendation 5: Due to the significance of local government's role in the provision of local infrastructure to support state significant development, LGNSW requests that DPIE consider, in consultation with local government, what mechanisms could be put in place to ensure that the relevant council(s) can have genuine input to the conditions of consent for SSD.