



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:DH1b1621368

19 December 2018

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Community Participation Plan – exhibition draft

The Law Society of NSW appreciates the opportunity to comment on the draft Community Participation Plan (“draft CPP”). The Law Society’s Environmental Planning and Development Committee contributed to this submission.

While we make no comments in relation to the content of the draft CPP, we would like to take the opportunity to comment on the legislation which underpins the Plan. We suggest legislative amendments are required to promote the community participation principles set out in s 2.32 (2) of the *Environmental Planning and Assessment Act 1979* (“Act”).

Plan making mandatory exhibition timeframes

We note that s 2.21(2) of the Act details the proposals that must be considered in the draft CPP and that the draft CPP mirrors the minimum exhibition timeframes set out in Schedule 1 of the Act.

The mandatory exhibition timeframe for “Planning proposals for local environmental plans subject to a gateway determination” as set out in Table 4 in the draft CPP specify:

28 days or as specified by the gateway determination which may find, due to the minor nature of the proposal, that no public exhibition is required.

Section 3.34 (2) states that after reviewing a planning proposal, the Minister is to determine:

(c) the minimum period of public exhibition of the planning proposal (or a determination that no such public exhibition is required because of the minor nature of the proposal),

Note. Under Schedule 1, the mandatory period of public exhibition is 28 days if a determination is not made under paragraph (c).

Section 3.34 (4) states that the regulations may provide for the categorisation of planning proposals for the purposes of the section, “and may prescribe standard community consultation requirements for each such category.”

We submit that more transparency is required in relation to such determinations.

A categorisation system, set out in the regulations, could provide more clarity as to what is a reasonable exhibition timeframe in relation to the relevant proposal. For example, a Category 1 proposal might be defined as a simple adjustment to a Local Environmental Plan (“LEP”) such as an amendment to a planning instrument to add another permitted use in the body of the instrument (that does not infringe the zone objectives) or to make a site-specific rezoning of a small allotment. Such a proposal could have a 14 day exhibition period. A Category 2 proposal could include a rezoning of a collection of sites on a moderate scale to increase height from 15m to 25m which would have a minimum 28 day public exhibition period. A Category 3 proposal could include a major rezoning to permit a different range of permissible uses which are totally different to the current zoning and which may have a dramatic effect on the desired future character of an area. The minimum exhibition period for such a proposal, should, in our view, be a minimum period of 45 to 60 days, which would enable affected residents within and around the periphery of the earmarked land to properly consider the impacts and if need be engage suitably qualified consultants to make submissions on the affected community’s behalf. This is simply not possible in 28 days.

The current regime of public exhibition periods under Part 3 and Schedule 1 of the Act and the draft CPP does not provide adequate time for the community to properly respond. By implementing a categorisation system, appropriate graduated timeframes can be introduced, rather than applying a ‘one size fits all’ discretionary system. This will provide greater certainty while ultimately ensuring that the community is not deprived of a proper opportunity to participate in the planning system.

Non-mandatory exhibition timeframes Exhibition of State Environmental Planning Policies (“SEPPs”)

Since the commencement of the Act, when a new LEP or an amendment of an LEP is proposed by a council, there has been a mandatory exhibition period. This recognises the effect of an LEP on community members’ property rights and its impact on their environment. It is also in keeping with the object of the Act regarding public participation in planning which is set out in s 1.3 as follows:

- (j) to provide increased opportunity for community participation in environmental planning and assessment.

It has never been mandatory to exhibit a draft SEPP, even though these instruments can have major impacts on community members, their local environment and property. We acknowledge that the Department may, in practice, exhibit a draft SEPP or, more usually, an Explanation of Intended Effect (“EIE”). However, in our view, this is not sufficient to give effect to the community participation objectives set out in s 2.32 (2) of the Act or to the relevant object of the Act in s 1.3 (j).

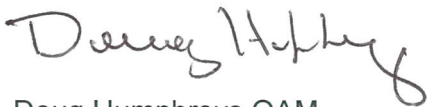
We submit that the necessary legislative amendments should be made to allow the draft CPP to provide for the mandatory exhibition of any draft SEPP for a minimum period of 28 days.

In previous submissions to the Department, we have also expressed our concern about the practice of publishing lengthy EIEs in place of the amending legislation. We consider that proper consultation requires publication of, and consultation on, the actual legislation. In our view it is not possible to give full and appropriate feedback, which includes comments relating to unintended consequences or perceived drafting errors, unless the consultation includes scrutiny of the proposed legislation itself.

We look forward to the publication of any amending legislation, in conjunction with the explanatory materials, in all future consultations.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Doug Humphreys". The signature is written in a cursive, slightly slanted style.

Doug Humphreys OAM
President