

## Department of Planning and Environment

Our ref: IRF23/3079

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7 December 2023

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Subject: DPE Final Report on Operation Dasha Recommendations

Dear Mr Moy

In September 2021, the Department of Planning and Environment sent the Commission its plan of action in response to the Commission's recommendations 1-2, 4-6, 8, 10-20 and 22 (Action Plan) in its report on Operation Dasha.

I have enclosed the final report with this letter. I am pleased to report that the Department has implemented its Action Plan to address the majority of the 18 recommendations that the Commission made. Key actions completed since the previous progress report in October 2022 include finalising the review of clause 4.6 (recommendations 10-15) and implementing a new definition for the estimated cost of development (recommendations 18-19).

### **Actions to be completed after November 2023**

At the time of writing, the remaining four actions are on track for completion in the coming months, which are:

- Issuing lobbying guidelines and a model lobbying policy for councils (recommendation 8), noting that the work is being finalised following exhibition.
- Publishing an updated practice note on height and floor space ratios (recommendation 16) as the department continues to address stakeholder feedback before finalisation.
- Release of a new planning circular and other guidance in relation to estimated development cost (recommendations 18-19).
- Updating the risk-based assessment for when councils are best suited to be the local plan-making authority (LPMA) (recommendation 17). While the Department previously completed this action by introducing a risk-based assessment tool during the Gateway and Finalisation determination processes when with the Department, we are looking to revise this to include clearer guidance on when it is appropriate for a council to be the LPMA.

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### Other actions

#### *Recommendation 20 – splitting development applications*

I would also like to draw the Commission's attention to the issue of splitting development applications (DA) as per recommendation 20. In our previous responses, we advised we would investigate and publish updated guidance addressing application splitting. Having considered this issue further, we believe that additional guidance is not required.

#### *Reasons for splitting DAs*

Although not common, splitting of DAs can be a legitimate and practical part of the planning system. Two (or more) DAs may be lodged on one property or site which could otherwise be lodged as a single application, either concurrently or close together, for reasons such as:

- to enable timely commencement of component works,
- to enable timely assessment of simpler components ahead of more complex or contentious components,
- where there are different applicants for different parts of the development, or
- applicants being uncertain about funding or timing of construction.

#### *Reason for not issuing additional guidance*

It is a government priority that DAs are progressed expeditiously and not unnecessarily delayed by requiring all split DAs to be determined together or by overburdening planning panel resources.

The department acknowledges that there is also the possibility (as was the case in Operation Dasha) that a DA could be split to seek a more favourable consent authority. However, we are concerned that requiring a council officer to judge the motive behind the splitting of a DA (i.e. to ensure that justifiably split DAs are not held up unnecessarily and to ensure inappropriately split DAs are considered together and referred to panels) has its own risks and creates challenges in clearly defining panel determination thresholds.

#### *Other planning safeguards*

Further, changes already made to the planning system since the events investigated in Operation Dasha make the risk of splitting DAs to avoid a panel determination low.

The planning safeguards already in place are extensive, and they include:

1. **Local planning panels (LPPs):** Referral to LPPs is not based on capital investment value (CIV). This means that there is no benefit to applicants splitting DAs to artificially reduce the CIV. Rather, the referral criteria include conflicts of interest, number of submissions, departure from development standards or sensitive development such as development

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subject to *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development*.

2. **Sydney District and Regional Planning Panels (regional panels):** Regional panels determine regionally significant development which is defined either by CIV or certain prescribed development. (Note: Under recommendations 18-19, from 4 March 2024, the *Environmental Planning and Assessment Regulation 2021* will replace “cost of development” and “capital investment value” with a new single definition and calculation method for “estimated development cost” (EDC). EDC will apply to all regionally significant development and has clear cost elements that make it harder to manipulate and easier to verify than CIV and cost of development.)

Our review indicates that 83% of regional panel referrals due to CIVs exceeding \$30 million are in places where there are LPPs, meaning the majority of DAs that could theoretically be split to avoid the regional panel would most likely be caught by the LPP referral criteria in any event adding a layer of anti-corruption safeguards.

3. **Council governance:** In places without LPPs, the risk of DA splitting is much lower than in metropolitan Sydney as there are significantly fewer DAs that could potentially be split to avoid regional panel referrals. There are also other safeguards in place. For example, in the Hunter and Central Coast region, the City of Newcastle has governance arrangements in place for the determination of large and/or controversial development applications that involves a committee of elected Councillors and Council staff.

### *Future work*

In addition to the above, we intend to make further changes to streamline approval pathways and reduce duplication across panel layers, which will include extending the coverage of panels for local development into regional areas.

We will reach out to the Commission to discuss preliminary thinking on these changes in the coming weeks.

Based on these findings, reforms to the planning system in recent years and other work underway, we believe that no further changes are needed to specifically address recommendation 20.

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If you would like to meet with us to discuss our remaining actions, please contact Ms Paulina Wythes, Director, Planning Legislation and Economic Policy, at the Department on 02 8275 1376 or [paulina.wythes@planning.nsw.gov.au](mailto:paulina.wythes@planning.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Kiersten Fishburn".

**Kiersten Fishburn**  
**Secretary**

Encl: DPE Final Report on Operation Dasha Recommendations