Environmental Defenders Office

Planning initiatives to support economic recovery

21 July 2020

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:
Planning Group, Queensland Treasury
By email: bestplanning@dsdmip.qld.gov.au

For further information on this submission, please contact:

Deborah Brennan
Senior Solicitor (Brisbane)
deborah.brennan@edo.org.au
Ph: 3211 4466

Alternatively, please contact Revel Pointon (revel.pointon@edo.org.au).

Table of Contents

Introduction....2
Development assessment rules: public notification....4
Minister's guidelines and rules....6
Planning Regulation 2017....8
Proposal 1: Changes in tenancy without development approval....8
Proposal 2: Reduced level of assessment....10
Proposal 3: Expansion in GFA without development approval....11
Proposal 4: Ancillary uses....11
Proposal 5: Temporary uses/events....12

Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on proposed changes to the *Planning Act 2016 (Qld)* associated with the economic recovery from COVID-19.

While we support the need for appropriate economic stimulus, a number of the proposed changes do not accord with the principles we have proposed as guidance for any economic recovery measures[1] in particular where they remove environmental protections and community participation rights.

We make the following general comments about the proposals:

- **Accountability to communities is being reduced by these reforms**: Each of these proposals either reduces the scrutiny of development proposals or the opportunity for the community to have its views considered. Any consequential poor decision-making now could have consequences that the community will be living with in the long term through inappropriate changes to the built environment or the introduction of inappropriate uses.

- **Infrastructure designations will be subject to weaker environmental assessment**: The changes to the process for infrastructure designations will significantly reduce the necessary level of environmental assessment for potentially large-scale public and private infrastructure. The current proposal for these changes does not have a sunset date, with the result that they will remain in effect unless and until they are amended or repealed.

- **Draft amendments must be released public comment:** There is inadequate detail available in relation to the proposed changes to the *Planning Regulation 2017* to enable a comprehensive analysis of their risks. A further round of consultation should occur once draft amendments are available for review.

- **Flow on effects of reforms need better consideration:** There has been inadequate analysis of any flow-on effects of the proposals, such as whether there are adequate enforcement powers available and the effects the proposals may have on the ability of local governments to levy infrastructure contributions (or whether local governments will need to find alternative means of funding infrastructure, such as through rate revenue).

Our specific comments are as follows:

The proposed changes include amendments to the **public notification requirements** contained in the DA rules, which we acknowledge to be timely given the changes in the local media market. In order to ensure that the whole of the affected community for a development receive notification, we recommend that the Department:

- maintain the proposal to require that notice be given to occupiers (as well as owners) of adjacent land;
- include a requirement that all notifiable development applications be listed on the website of the relevant local government (regardless of who the assessment manager is), in addition to the other notification requirements; and
- be amended to provide guidance on how the 'identified area' should be chosen;

[1] https://www.edo.org.au/2020/05/29/edo-watchdog-legal-principles-for-covid-19/

- be amended to correct drafting and typographical errors.

The proposed amendments to the Minister's rules in relation to **infrastructure designations inappropriately remove the need for a comprehensive environmental assessment of projects**. This is of significant concern because of the range of infrastructure that can proceed under such designations and the fact that such infrastructure may not otherwise be subject to environmental assessment or community consultation. Any changes in relation to infrastructure designations should, at most, be temporary changes with an explicit expiry date, that are limited in their application to infrastructure proposed by government agencies on brownfield sites.

The proposed amendments to the rules for infrastructure designations should also amended to:

- correct the typographical error in paragraph 1.2 of both Chapter 7 and Chapter 8; and
- change paragraph 4.6 of Chapter 7 to provide that the 20 day consultation period is a minimum, which may be extended in appropriate cases in the consultation strategy (the current drafting would allow the consultation period to be reduced through the consultation strategy).

Proposal 1 of the proposed changes to the *Planning Regulation 2017* involved allowing certain **changes in use in tenancies within existing buildings to proceed as accepted development** (without a development application) in certain zones. This proposal has the potential to affect the amenity and safety of the surrounding area, including in ways that could be easily avoided. We would recommend that, instead of simply allowing uses to establish without any assessment or enforceable limits on the permissible level of impact adjoining land, the Minister:

- draft model temporary local planning instruments (**TLPIs**) with basic controls on off-site impacts for each use in each zone intended to be covered by this proposal; and
- amend the Minister's rules to create an abbreviated process for local governments to adopt a TLPI that accords with the model TLPI.

Proposal 2 involves **reducing the level of assessment** that applies to applications for certain uses in certain zones. The consultation documents do not contain any adequate justification for this proposal and it should not proceed.

Proposal 3 involves allowing building works to **increase the gross floor area of buildings without the need for a development permit**. We think that there is inadequate information available to properly consider the risks of such a proposal and whether, for example, the same result could be achieve with less risk through the use of a tool such as a TLPI. Further consultation should be undertaken if and when draft amendments to the *Planning Regulation 2017* have been prepared.

Proposal 4 involves **lowering the level of assessment** that will apply to certain uses in certain zones. While the consultation document appears to suggest that this proposal will be limited to **ancillary uses**, the detailed description of the proposal is not so limited. We recommend that any uses which become subject to a lower level of assessment under this proposal should be limited to ancillary uses and should be limited in scale to uses which have no, or limited, offsite impacts.

Proposal 5 states that it is intended to clarify that **temporary events (or possibly temporary uses) do not require development approval**. This proposal has not been adequately explained or justified in the consultation documents and does not appear to have a purpose related to economic stimulus. This proposal should be the subject of further consultation when it has been fully scoped and defined (including in relation to the types of uses it will apply to and the meaning of 'temporary').

Development assessment rules: public notification

This proposal involves changes to rules for public notification that apply where a development application is impact assessable or involves a variation request.[2]

The purpose of public notification is to:

- give the community potentially affected by the proposed development notice that the application has been made; and
- provide them with the opportunity to have any concerns considered by the assessment manager in deciding whether to grant a development permit and on what conditions.

The current rules require a notice to be published in a **newspaper** circulating in the locality of the proposed development, that **notices be placed on the premises**, and that notices be given to the **owners of adjoining land**.

The proposed new notification rules are as follows (using the formatting from the consultation document):

> "17.1 The applicant, or the assessment manager acting under section 53(10) of the Act, must give public notice by—
> (a) placing **notice on the premises** the subject of the application that must remain on the premises for the period of time up to and including the stated day; and
> (b) giving **notice to the adjoining owners and the adjoining occupiers** of all lots adjoining the premises the subject of the application; and
> (c) Where there is a **hard copy local newspaper** for the locality of the premises the subject of the application, publishing a notice at least once in a hard copy local newspaper circulating generally in the locality of the premises the subject of the application;
> (d) Where there is **no hard copy local newspaper** for the locality of the premises the subject of the application—
> (i) if there is an **online local newspaper** for the locality, publish a notice at least once in an online local newspaper for the locality of the premise the subject of the application; **or**
> (ii) Otherwise—
> (a) by publishing, at least once in a **hard copy State or national newspaper**, a notice that complies with the relevant public notice requirements for the application;
> (b) by publishing, at least once in an **online State or national newspaper**, a notice that includes the relevant information for the application;
> (c) by giving a notice that complies with the relevant public notice requirements for the application to the **occupier of each lot in the identified area** for the application;
> (d) if the **assessment manager** for the application publishes development applications and change applications on its website under the Planning Regulation 2017, schedule 22, section 7—by publishing on the **website** a notice that includes the relevant information for the application.

The following are the relevant definitions:

> "**Identified area** means an area identified by the assessment manager for the application as having occupiers that are likely to be interested in the application.
>
> "**State or national newspaper** means a newspaper that:
> (a) is published in Australia;
> (b) primarily publishes news in relation to the State or Australia; and
> (c) is intended for a State-wide or nation-wide readership."

[2] *Planning Act 2016*, s53

We **support** the proposal to require that notice be given to adjoining owners and occupiers (instead of just owners). This is a timely change that supports the intent of these rules.

We also acknowledge that there have been significant changes in the availability of local newspapers, with some closing and others changing to online only.[3] As a consequence, we acknowledge that there is a need for a changed approach to public notification to some degree. Any such changes should be aimed at ensuring that the development application is brought to the attention of as much of the affected community as possible. In that regard, we have concerns with:

- Drafting errors in the provision, in particular subparagraph (d)(ii), which makes it unclear whether the listed options are cumulative requirements or alternatives;
- The amount of discretion given to the assessment manager to specify what the 'identified area' should be;
- The fact that there is unlikely to be a single state or national newspaper read by the majority of the affected community for a development; and
- The failure to impose a logical requirement, that meets the intent of the legislation, to provide the community with a single point of reference (such as the local Council's website) that lists all development applications on public notification within their local area.

Subparagraph (d)(ii) above specifies the notification requirements that apply if there is neither a hard copy nor an online newspaper circulating in the area. Given that the list is not linked by an 'and' or an 'or', a reasonable reader may be in some confusion as to whether these items are alternatives (ie. allowing the proponent to select one) or cumulative requirements (ie. requiring the proponent to give notice in all four ways). The associated consultation document indicates that this subparagraph is intended to be a list of alternatives and that the proponent of the development can choose to comply with any one. **This drafting should be clarified in the statutory document itself to provide certainty as to the requirements around notification for all stakeholders.**

We also note that paragraph 15(a) of Schedule 3 appears to contain an error. That paragraph describes how to give notice to the occupiers of adjoining lots, but refers to all adjoining lots as 'residences'. **We recommend that the reference to 'residences' in this paragraph be changed to 'premises'.**

One of the proposed options available in the event there is not a local newspaper is to give notice to owners and occupiers within an 'identified area', the scope of which will be determined by the assessment manager exercising an unguided discretion. This is too important a step to be left to an unguided discretion and may be intentionally or unintentionally misused. Further, this option requires the assessment manager to identify the potentially affected area without having undertaken any real assessment of the proposal or impacts, which may result in parts of the affected areas remaining uninformed of the proposal.

Another proposed option is publishing a notice in a hard copy or online state or national newspaper. We are concerned that this option is **very likely result in the notice being seen by only one segment of the community**. Any of The Australian, Guardian Australia, the Financial Review or The Saturday Paper would qualify as a 'state or national newspaper' for these purposes – three of these publications must be purchased in hard copy or through online subscription (and are otherwise behind a paywall) and each attracts a quite different readership. As a consequence, this option is very unlikely to reach a significant proportion of the potentially affected community for any development.

[3] https://www.afr.com/companies/media-and-marketing/news-corp-print-closures-leave-regional-media-on-life-support-20200528-p54x7m#:~:text=News%20Corp%20will%20cease%20printing,the%20history%20of%20Australian%20media.

In our view, the most appropriate approach is to create a **single website** which the community can view at any time, **to identify all of the development applications currently on public notification in their area**. This should apply **in addition to** notices on the land, in any hardcopy or online local newspaper and notices to adjoining owners and occupiers. The current rules for giving public notification are derived from (and almost identical to) rules that were in effect before the internet was in common use and certainly before smartphones became such a ubiquitous part of everyday life for most people.[4] Instead of incremental changes which are likely to result in public notice being given in different and unpredictable ways, we recommend that the government consider the intent of public notification and the desirability to give the community a single point of reference for all public notification – which would apply in addition to the traditional ways of bringing the proposal to the attention of the local community.

It would seem to us to be relatively straightforward for notice of all development applications within a local government area to be notified in a single location on the website of the relevant council (regardless of which agency is the assessment manager).

Proposed solution:

In order to ensure that the whole of the affected community for a development receive notification, we recommend that the amended DA rules:

- maintain the proposed amendment which requires notice to be given to occupiers of adjacent land;
- be amended to require that all notifiable development applications be listed on the website of the relevant local government, in addition to the other notification requirements; and
- be amended to provide guidance for how the 'identified area' should be chosen;
- be amended to correct the drafting and typographical errors.

Minister's guidelines and rules

The 'Minister's Guidelines and Rules' are made under s17 of the *Planning Act 2016*. They set out rules for making and amending local government planning instruments, including planning schemes. The proposed changes are to the rules for making infrastructure designation by both the Minister and local governments.

The rules for making infrastructure designations, in particular the rules in relation to consultation and the environmental assessment, are important because development undertaken under a designation is 'accepted development' (see s44(6)(b) of the *Planning Act 2016*) which does not require development approval. As a consequence, **the process of making the designation may be the only significant environmental assessment such infrastructure undergoes** and may be the only opportunity the community has to ensure that environmental assessment is adequate and that its views are heard in relation to whether the infrastructure is appropriate or should be subject to certain requirements under s35(2) to ensure that its impacts are acceptable.

If the Minister is making the designation, they must be satisfied that adequate environmental assessment (including adequate consultation) has been undertaken.[5] The Act allows the Minister to be so satisfied simply by following the process prescribed guidelines (but may be satisfied that

[4] See, for example, section 4.3(4) of the *Local Government (Planning and Environment) Act 1990*, which was in effect from 1991 to 1998 (prior to the now repealed *Integrated Planning Act 1997* and *Sustainable Planning Act 2009*) and contained very similar requirements to the current DA rules.
[5] *Planning Act 2016*, s36(2)

environmental assessment has been adequate in another way. If a local government is making a designation, then it must follow the prescribed 'designation process rules'. Both of these processes are proposed to be amended.

The types of infrastructure that may be the subject of a designation include a variety of infrastructure of the type typically provided by local government (eg. roads, parks and recreational facilities, waste management, water cycle management), state government (eg. ports, electricity infrastructure, schools/universities/TAFEs, hospitals, correctional facilities and community residences) and other infrastructure that may be provided by the private sector (eg. communications infrastructure, oil and gas pipelines, crematoriums and other sporting facilities).

While the Ministerial designation process in the amended Guidelines is quite different from that in the current guidelines, the concerning element is the almost complete **removal of the requirement for a thorough environmental assessment**. The current version of the guidelines includes a requirement for a draft environmental assessment that is subject to public notification and then finalised by including the results of consultation. By contrast, the proposed new process required consultation to occur with material that merely 'acknowledges' certain impacts and how they will be managed. While it is not at all clear what such 'acknowledgement' will involve, it certainly seems to fall considerably short of the comprehensive assessment of environmental impacts, and how they may be avoided, mitigated and offset, that is required under the current process.

Given that the designation process may be the only assessment such infrastructure will undergo (with the exception of the technical assessment of building works), it is very important that the assessment be comprehensive and that it thoroughly consider whether such impacts are acceptable and how they can be avoided, minimised or offset. Such impacts will include not only environmental impacts (such as on habitat for native species and water quality in our water courses) but also impacts on homes, schools and businesses in the surrounding area (including traffic impacts and noise impacts).

We would also suggest that the overview document published by the department[6] understates the scale of the proposed changes in ways that might reasonably be called misleading.

Two issues should also be noted about the timeframes associated with the proposed changes.

Firstly, infrastructure designations remain in effect for an initial 6 years[7] and may be extended for up to another 6 years.[8] As a consequence, poor decision-making now as a result of inadequate assessment of impacts on the environment and the community, could permit inappropriate development to commence up to 12 years into the future. Any infrastructure constructed in this period, without appropriate controls, may of course remain in place for decades.

Secondly, the proposed amendments to the guidelines do not have a sunset date. They will remain in place until amended or repealed. It is therefore misleading of the government to undertake consultation on these changes in a way that creates the impression that these are short-term stimulus measures.

Finally, the proposed amendments to the rules for infrastructure designations should also amended to:

- correct the typographical error in paragraph 1.2 of both Chapter 7 and Chapter 8; and

[6] https://haveyoursay.dsdmip.qld.gov.au/58908/widgets/299847/documents/173540/download
[7] *Planning Act 2016*, s39(1)
[8] *Planning Act 2016*, s39(2)

- change paragraph 4.6 of Chapter 7 to provide that the 20 day consultation period is a minimum, which may be extended in appropriate cases in the consultation strategy (the current drafting would allow the consultation period to be reduced through the consultation strategy).

Proposed solution:

- The proposed amendments to the DA rules in relation to infrastructure designations inappropriately remove the need for a comprehensive environmental assessment of projects that may not otherwise be subject to environmental assessment. Any amendments made to the DA rules in relation to infrastructure designations should, at most, be temporary changes with an explicit expiry date, that are limited in their application to infrastructure proposed by government agencies on brownfield sites.

Planning Regulation 2017

The consultation material indicates that the proposed changes are to facilitate new and expanded uses which *"are aligned to where a particular type of development is reasonably anticipated and compatible with the zone intent."*

The fact that a use is compatible with the intent of a zone, doesn't mean that it will be appropriate in every part of the zone, or in any part of the zone without controls in the form of conditions to ensure that the use can exist harmoniously with residences or businesses in the surrounding area. This might be considered particularly important in zones, such as mixed use zones and centre zones, where a variety of different types of uses are expected to co-exist side by side and often to co-exist with residential development.

It should also be kept in mind that new uses, once established, may remain in place for many years and may create existing lawful use rights. As a consequence, the residents and businesses in the surrounding area may have to live with any poor decisions for years or decades into the future.

Further, the rules that will apply to new or expanded uses established under these provisions must be clear, certain and enforceable.

Finally, the consultation document does not contain any analysis of what the proposed changes will mean for the capacity of Councils to levy infrastructure charges. An infrastructure charges notice can be given only where a development approval is granted,[9] with the result that development which becomes accepted development under the proposed changes will not be required to contribute to the costs of infrastructure. If a Council cannot obtain an infrastructure contribution from the entity which generates the need for infrastructure capacity, it will need to find those funds from other sources, such as from the rates paid by the existing community.

Proposal 1: Changes in tenancy without development approval

This proposal involves allowing changes in tenancies within existing buildings to occur without the need for a development permit if the business is expected in the zone and only minor building work is involved.

Changes to the nature of business operating within a tenancy may be relatively low risk, if the previous and the new business have similar impacts, but will be higher risk in other circumstances. Changing from a shop to a hairdresser with similar business hours may be relatively benign, however, changing from a shop to a bar will result in a considerable change in the offsite impacts experienced by surrounding businesses and residents in terms of noise, operating hours and other impacts.

[9] *Planning Act 2016*, s119(1)(a)

The consultation document describes the proposal as being that *"development approval will not be required for a changing tenancy in the following circumstances:*

- *the new tenancy is consistent with expected uses in the area;*
- *the new tenancy involves the reuse of an existing building and only minor building work is required, or*
- ***any impacts on neighbouring sensitive uses and residential uses can be effectively mitigated."***

The test for whether *"impacts on sensitive and residential uses can be effectively mitigated"* is set out, using some rather confusing drafting (which appears to contain formatting and typographical errors), in the consultation document as follows:

> "• operational hours are:
> • within the range of hours of other lawful uses in the mixed use zone or centre or industry zones; or
> ‣ if not **within the range of hours of other lawful uses** in the mixed use zone or centre or industry zones:
> ‣ activity or patronage is **not expected to peak outside the hours of other lawful uses** in the centre or industry zone; and
> ‣ use of on street car parking or dedicated parking in the centre or industry zone is **not expected to peak outside the hours of other lawful uses** in the mixed use zone, centre or industry zones; and
> ‣ in a neighbourhood centre or local centre **heavy vehicle movements** and emissions do not occur outside the range of hours in a neighbourhood centre zone or local centre zone."

The final bullet point of the above excerpt appears to contain a typographical error, however, we assume it to mean that heavy vehicle movements will not occur outside the range of hours 'of other lawful uses' in the relevant zone. The bullet pointing used in the above excerpt also appears to contain formatting errors, which make the provisions somewhat unclear.

The considerations listed as relevant to mitigating impacts on surrounding uses appear to be limited to the hours of operation of the business. Even the criteria about parking and heavy vehicle movements are limited to the hours in which there will be heavy vehicle movements or demand for parking, and by not the likely number of heavy vehicle movements or number of parking spaces needed by the business (for example, a shop and a restaurant may both have (different) operating hours consistent with expectations of the relevant zone, but their hours of operation will be quite different, peak customer generation will occur at different times and the numbers of people present in the business – and hence the parking demand – may be quite different).

The consultation document doesn't contain any information about whether uses established under these rules would be required to comply with the conditions of any existing development approval applying to the land or whether such uses will be permitted to establish without any enforceable controls on the impacts they may have on the surrounding area (eg. impacts such as late-night noise in residences, unsafe numbers of heavy vehicle movements or heavy vehicle movements occurring at times likely to cause sleep disturbance in surrounding residences).

We also note that the uses proposed to have the benefit of the new provisions includes Home-based businesses,[10] which can include a broad range of activities beyond the home office that would come to mind for most people. For example, in the case *Quinn v Beaudesert Shire Council* [2004] QPEC 033 the applicant was operating a business repairing forklifts from his home, which was causing considerable noise impacts for adjacent residences.

Proposed solution:
The *Planning Act 2016* allows local governments to make temporary local planning instruments (**TLPIs**) which can suspend or otherwise affect the operation of other local planning instruments, such as planning schemes.[11] The process for making a TLPI is established in the 'Minister's rule's' (which is a statutory instrument made under s17 of the Act). A TLPI could be made to establish at least basic controls on such uses to ensure that they do not harm the surrounding area or create unacceptable amenity impacts that will prevent people from enjoying their homes.

We would recommend that, instead of simply allowing uses to establish without any assessment or enforceable limits on the permissible level of impact adjoining land, that the government:

- Draft model TLPIs with basic controls on off-site impacts for each use in each zone; and
- Amend the Minister's rules to create an abbreviated process for local governments to adopt a TLPI that accords with the model TLPI.

Proposal 2: Reduced level of assessment

The second proposal involves reducing the level of assessment that applies to development applications for certain uses in certain zones, in particular by reducing the level of assessment to a level below impact assessment (being the only level at which public notification and a right for community comment is available).

Rights of community participation in planning decisions are not only a key element of a functional democracy, they also result in better and more accountable decision-making. The community has a right to be heard on proposals for development that they may need to live with for years or even decades. Community participation also provides decision-makers with valuable insights that would not otherwise be available to them and result in better decision-making.

There has, over recent years, been a reduction in the number and type of development applications that are subject to impacts assessment and allow the community a right to be heard. A further reduction simply to reduce the time required for a development application does not appear to be warranted.

The consultation document justifies the need for this proposal with the following statement, which we believe to be unsubstantiated and incorrect:

> *"A planning scheme expects and supports certain land uses (e.g. businesses) to occur in appropriate areas set aside for those uses, particularly certain centre, industry and mixed use development zones. These types of businesses are reasonably considered when allocating land to a zone, centre uses in centre zones and industry uses in industry zones for example.* ***However, this is not always reflected in the levels of assessment for these uses in the planning scheme****."*

[10] Defined in schedule 24 of the *Planning Regulation 2017* as: ***home-based business*** means the use of a dwelling or domestic outbuilding on premises for a business activity that is subordinate to the residential use of the premises.
[11] *Planning Act 2016*, s23

Planning schemes were made through the process under the *Planning Act 2016* (or its predecessor) which includes detailed consideration of the balance of zones in the local area, the types of uses that should be able to proceed without the need for development approval, the types of uses which can proceed if they can achieve appropriate outcomes and the types of uses in respect of which more detailed consideration is required. **To suggest that planning schemes have not given detailed consideration to the appropriate level of assessment for all types of uses is, we think, misleading and incorrect and is certainly not supported by any evidence cited in the consultation document.**

Proposed solution:
This proposal should not proceeded. There are good planning reasons for identifying uses as requiring impact assessment and those reasons should be respected.

Proposal 3: Expansion in GFA without development approval

The precise scope of what is proposed here is unclear, however, it appears to be proposed that building works which expand the floor area of an existing building will not require development approval for either existing or new uses if:

- The expansion is a minor expansion (being less than 100m^2 or 10% of the existing building (whichever is lesser));
- The building work is for a use 'expected in the zone'; and
- The building work is not undertaken on, or adjacent to, heritage premises.

The justification for this proposed change appears to be that businesses will now require greater floor area to accommodate social distancing. This may provide some justification for relaxing some requirements such as parking spaces which are often calculated on the basis of GFA. However, it does not appear to justify relaxing other requirements such as boundary set-backs and landscaping. There are also other matters which remain unclear about this proposal, including:

- How existing development permits will apply to businesses wanting to take up this opportunity;
- Whether the test for a minor expansion is intended, as the consultation document suggests, to be based on the GFA of the whole of the building or to the individual tenancies within the building.

We do not believe that there is sufficient information available to properly consider the implications of this proposal, or the potential for mischief.

Proposed solution:

- There is inadequate information to properly consider the proposal in relation to allowing expansions of gross floor area to occur without planning controls and whether any risks could be more appropriately managed through the use of other tools such as TLPIs. Further consultation should be undertaken if and when draft amendments to the *Planning Regulation 2017* have been prepared.

Proposal 4: Ancillary uses

The consultation document for this proposal creates the impression that this proposal is limited to establishing ancillary uses on the same sites as already operating uses (eg. home-based businesses or farm-stays on existing farms). However, the detail of the proposal instead suggests that a list of uses will be subject to the identified (reduced) level of assessment in the specified zones, regardless of whether the use is ancillary to an existing use, an entirely new use or an expanded use.

As discussed above, some of the proposed uses that would become accepted development (for which development approval is not required) under this proposal, have significant potential to create

unacceptable offsite impacts – including some types of home-based business, which would become accepted development in all residential zones under this proposal.

Proposed solution:
Any uses which become subject to a lower level of assessment under this proposal should be limited to ancillary uses and should be limited in scale to uses which have no, or limited, offsite impacts.

Proposal 5: Temporary uses/events

This proposal is to amend the *Planning Regulation 2017* to confirm that temporary uses do not require development approval.

The consultation paper uses the terms 'temporary use' and 'temporary event' interchangeably, which creates uncertainty about the scope of the proposed change. A proposal limited to 'temporary events' may be limited uses similar to school fetes, concerts and markets, while a proposal including all temporary uses may include such uses as borrow pits (see below) or temporary outdoor storage of construction materials or waste.

While it may be appropriate to clarify that the planning regulation does not apply to such events as school fetes, such an approach may not be appropriate for other temporary uses. For example:

- Premises used regularly for markets may create regular traffic and parking problems if improperly located or otherwise not properly regulated. Further, 'market' is a defined use term in the *Planning Regulation 2017* with the result that the regulation of such use will have been considered in the preparation of most planning schemes; and
- Premises used for events such as outdoor concerts with amplified music may create unacceptable impacts even if only used occasionally for such events. The same is true for borrow pits used for occasional extraction of gravel for construction works.

The consultation paper is also silent as to whether the term 'temporary' is intended to encompass uses in effect for a few days, a few weeks or a few months and whether it is intended to apply to one-off events or to regularly recurring events/uses of limited duration.

It is not clear to us what problem this proposal is attempting to solve or why this proposal has been included with measures apparently intended for economic stimulus.

In that regard, we recommend that the Department undertake a thorough policy process to determine whether temporary uses are adequately addressed, at the appropriate local government level, through planning schemes, local laws or in another way.

Proposed solution:

- The proposal in relation to 'temporary uses' has not been adequately explained or justified in the consultation documents and does not appear to have a purpose related to economic stimulus. This proposal should be the subject of further consultation when it has been fully scoped and defined (including in relation to the types of uses it will apply to and the meaning of 'temporary').