Submission to the Information and Privacy Commission NSW on Guideline 3 – For Local Government – personal information in development applications

December 2019
Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and associate members including related entities such as special-purpose county councils. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW is registered as an industrial organisation of employers under the Industrial Relations Act 1996 (NSW) and separately under the Fair Work (Registered Organisations) Act 2009 (Cth).

We thank the Information and Privacy Commission of New South Wales (IPC) for the opportunity to review and comment on the revised Guideline 3 – For Local government – personal information in development applications.

This submission is a draft until approved by the LGNSW Board. Any revisions to this submission will be forwarded in due course.

Purpose

This submission is in response to the IPC’s invitation for comment and feedback on Guideline 3 provided to LGNSW on 15 October 2019.

LGNSW has consulted with members regarding Guideline 3 in preparing this submission, and the relevant feedback is provided below.

Commentary

The areas of concern for the sector are three-fold including:

1. lack of clarity of aspects of Guideline 3
2. confidentiality when dealing with complainants’ identities and
3. to consider the Environmental Planning and Assessment Act 1979 (NSW).

1. Clarity

There has been concern expressed in relation to item 9, specifically when referring to “1 July 2010”. Many local councils are unclear of the significance of the above date and whether it is a time stamp that precludes compliance mechanisms in development applications that have occurred prior to that date. It would be helpful to clarify the importance of the date especially for local councils dealing with development applications that have come in prior to 1 July 2010.

This becomes problematic for local councils that deal with properties that have had development applications prior to the above date to see whether it is compliant or not. This provision limits the ability for a purchaser to know in advance of any illegal developments to the property before sale and consequentially discourages purchases of real estate before that date as it presents substantial risks and in turn may lower the value of the property.
LGNSW submits that greater clarification around the identified date and the potential consequences that this may have on detecting illegal or improper development to properties prior to that date, will be beneficial for councils.

2. Confidentiality

Another item of concern relates to issues of confidentiality when community members lodge complaints about detected or perceived illegal developments after they have been built and occupied.

Our members are of the view that the complainant’s identity and other personal details should remain confidential and inaccessible to the public. Particularly, their identity should not be disclosed to the owner or the tenants of the property that may have illegally implemented developments.

This anonymity encourages community members to contact local councils about detected or perceived illegal developments without fear or repercussions. This is helpful as these developments cannot be regularly monitored by community members and are usually rectified at the point of sale.

Local councils employ specialised compliance planners and rangers for the above mentioned scenarios – these employees are trained to resolve compliance issues.

LGNSW submits that further clarification around the confidentiality requirements for stakeholders in the development application context is required. This will encourage community members to lodge complaints against detected or perceived illegal developments and in turn protect their identities.

3. Consideration of the Environmental Planning and Assessment Act 1979 (NSW)

Some local council have had ongoing discussions with the IPC regarding disclosure requirements during the development application process. Guideline 3’s introduction speaks to the link between the Government Information (Public Access) Act 2009 (NSW) (GIPA Act) and the Privacy and Personal Information Protection Act 1998 (NSW) (PIPP Act).

However, within the introduction, Guideline 3 explicitly excludes the guidance provided in the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act).

Local councils consider the EPA Act as important in the local government context as there are specific compliance requirements, like that of referrals and decisions under the EPA Act, that should be actively considered in Guideline 3. Local councils believe that the industry would be better served and assisted if regard is given to the EPA Act.

LGNSW submits that the IPC should consider the importance of the EPA Act for local councils and consider implementing the requirements within the EPA Act to assist and support local councils.
Conclusion

LGNSW thanks the IPC for the opportunity to provide feedback and we trust the matters raised will be helpful in considering the IPC regarding Guideline 3. For further information on this submission, please contact Andrew Olivares, Assistant Industrial Officer, via email andrew.olivares@lgnsw.org.au.