Department of
Infrastructure, Planning and Natural Resources

Submission No 48

Office of the Director General

Mr Kevin Greene MP
Chair
Legislative Assembly
Standing Committee on Public Works
Parliament House
Macquarie St
SYDNEY NSW 2000

DGC04/ 1440

Dear Mr Greene

I refer to your letters of 22 June addressed to me and to the Minister for Infrastructure, Planning and Natural Resources concerning your Committee's Inquiry into the Joint Use and Co-location of Public Buildings. The Minister has asked me to reply on his behalf.

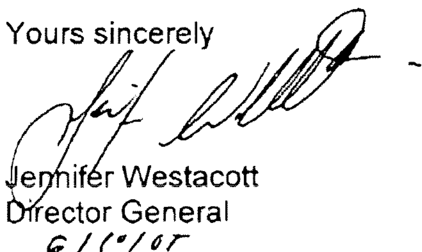
The regulation of the joint use and co-location of government buildings does not fall within the jurisdiction of any single Department, and I presume that the Department of Infrastructure, Planning and Natural Resources (DIPNR) is just one of several agencies that you will be consulting.

DIPNR officers have studied your inquiry's terms of references and have provided the preliminary advice that is attached to this letter. We have tried to address the Committee's main areas of interest, but given the general nature of the terms of reference, we may not have covered some issues. If this is the case, I invite you to submit a list of specific questions.

I also understand that you wish a DIPNR representative to give evidence at a Committee hearing on 13 October. I nominate Ms Petula Samios, Director of the Metropolitan Planning Coordination Unit, to give evidence on behalf of the Department.

Should you have any further inquiries about this matter, I have arranged for Mr David Newman, A/Manager Executive Support to assist you. Mr Newman may be contacted at on telephone number 9228 6459.

Yours sincerely



Jennifer Westacott
Director General
6/10/04

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Attachment

Comments by the Department of Infrastructure, Planning and Natural Resources on the Joint use and Co-location of Public Buildings

DIPNR understands that the Committee is interested in promoting joint-use of buildings by State and local governments, public and private bodies (including community and sporting groups) and that its definition of "buildings" extends to land and facilities such as sporting grounds and courts.

- The issues relevant to DIPNR's activities that may be of most interest to your Inquiry are:
- whether or not the planning and approval system encourages or discourages the joint use and co-location of public buildings;
- whether building regulations have a similar positive or negative effect; and
- whether there is scope to use s94 contributions to facilitate the provision of public facilities.

Planning

General

From an urban planning perspective, the joint-use and co-location of public buildings and facilities is desirable because it is compatible with the Government's (and DIPNR's) objective of more compact and efficient cities.

The current planning legislation neither encourages nor discourages the joint use of public facilities. The Department applies the current planning legislation as flexibly as possible, consistent with the Government's objectives of equity, sustainability and economic health.

When considering development applications, some local councils may take a broader view than others of permitted uses within particular land-use zones, and this may affect the scope for joint-use.

The Minister for Infrastructure Planning and Minister for Natural Resources has just announced a major package of planning system reforms that will increase the flexibility of the planning system. Details are available at www.dipnr.nsw.gov.au/planningreform

Community use of schools

In the mid 1970s the Department and its predecessors considered that it was desirable to allow schools to be used for a wider range of activities. Advice was issued to councils suggesting that they should make community use of schools permissible in their local planning schemes. When the EP&A Act came into force in 1980, this position

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was formalised in the form of a Section 117 Direction which advised councils to include in draft LEPs provisions to allow community use of the facilities and sites of schools, colleges and other educational institutions. If such a provision was not to be included, a justification acceptable to the department would have to be provided. Hence that provision became standard but not mandatory. DIPNR has no information about the extent to which the provision has been translated into actual joint-uses.

The management of schools is a matter for the Department of Education and Training and for individual schools. Some schools may restrict use for a variety of reasons, including security, child protection, insurance or general risk management.

In the package on Standard Provisions for LEPs the department released for comment recently (see the DIPNR website for details), the mandatory provisions required to be incorporated in LEPs include provisions re community use of educational establishments and child care centres (see pages 27 and 32).

More generally in terms of metropolitan planning, DIPNRs general approach to joint use is to:

- promote more efficient use of existing and new infrastructure;
- manage travel demand by enabling a range of activities to be accessed at a single location;
- support strategies to make neighbourhoods more liveable and accessible on foot;
- support the creation of strong centres that contain employment opportunities, services and public transport;
- locate a significant proportion of Sydney's future housing in nominated growth centres and corridors; and
- support the development of stronger links between commercial activity and health and education activities as a catalyst for employment growth, especially 'knowledge' jobs in western Sydney.

Another long-standing instance where DIPNR has supported joint-use as an objective for better use of land is encouragement is in its approach to stormwater management in new subdivisions under the label 'Dual Use of Open Space and Drainage'. The idea is that drainage should be via natural creek systems rather than concrete channels, and stormwater management can be combined with the open space network to make more efficient use of land. For example, some playing fields also serving as stormwater detention basins. A manual was issued to councils and the development industry called "Better Drainage" which won prizes from the Stormwater Association.

Section 94 contributions

Section 94 of the Environmental Planning and Assessment Act 1979 provides for consent authorities to require developers to make contributions to the increased cost of public infrastructure that will be generated by their developments. Developers may be asked to contribute land or money. Councils and other consent authorities (including the State) can apply s94 contributions to provide range of infrastructure and services, but the key point is that contributions can only be levied where the impact of the developments means that there will be a greater demand on public infrastructure and services.

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As part of the package of planning reforms, the Minister announced that there will be more flexible application of local developer contributions under s94. Specifically, proposed reforms will:

- allow cross-boundary levying;
- allow flat-rate levies;
- allow borrowing between accounts within a contributions plan;
- codify voluntary developer agreements;
- provide consistency in the format of contributions plans;
- require regular reviews, better accounting and publication of collection and expenditure data.

Building regulations

<u>Background</u>

Before commencing any new use, inquiries need to be made with the relevant council regarding what prior approvals (if any) are required eg. a development consent (and construction certificate) or complying development certificate. Development consent is usually required when a change of building use (involving a change in the Building Code of Australia classification of the building) is involved - however, development consent may also be required for changes of use that do not involve a change of classification.

Although the Crown is exempt from the need for a construction certificate for proposed building work, Government agencies are obligated to obtain development consent for certain activities and certification in accordance with s116G of the Environmental Planning and Assessment Act 1979 (EP&A Act).

<u>Existing Buildings</u>

If an approval is required for a proposed <u>new use (in an existing building)</u> and that approval is a development consent, upon receipt of a development application, the *consent authority* will consider numerous matters including the heads of consideration under Section 79C of the EP&A Act, which includes consideration of - whether the proposed use is permissible under the relevant environmental planning instruments (EPIs) and satisfies the relevant development standards in those EPIs or in any relevant development control plan and, the public interest.

In determining the development application, the *consent authority* is to take into consideration whether the fire protection and structural adequacy of the building will be appropriate to the proposed new use. They are also obliged to insist on compliance with certain <u>fire safety matters</u>.

In relation to a development application for <u>alterations and additions to existing buildings</u>, the *consent authority* needs to consider, among other things, if measures contained in the building facilitate safe egress in the event of a fire and restrict the spread of fire to other buildings nearby.

The *certifying authority* in relation to any proposed alterations/additions to an existing building, in addition to checking whether the proposed works comply with the BCA and

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are not inconsistent with the development consent, needs to be satisfied that the works do not unduly reduce the existing level of fire and structural safety of the building. They are also obligated to insist on compliance with certain fire safety matters.

The *consent authority* in the above situations may also require the upgrading of the existing building if they deem such is necessary.

There needs to be careful consideration that security arrangements which may be required to allow additional uses of existing buildings and additional people to use these buildings, must not contravene the fire safety and egress provisions required for the building or impact adversely on the ability of occupants to evacuate the building in the event of an emergency.

Existing buildings that rely on Alternative Solutions to satisfy the requirements of the BCA, rather than by complying with the prescriptive Deemed-to Satisfy Provisions, may be limited in relation to their use. In this situation, there will need to be a re-evaluation of any parameters/conditions of the Alternative Solution, to ensure that the proposed new use/occupation is not in contravention with such.

New Buildings

In designing new buildings to allow for a variety of functions and uses, the building must be designed to comply with the BCA for each of the proposed functions/uses it is likely to be used for.

While a new building can be designed to be suitable for conversion from one function/use to another over time, this will not negate any requirement under the EP&A Act, to obtain another approval in the future to change the use of the building and/or carry out any associated/necessary building work.

The different approval processes for private building work and Crown building work under the EP&A Act need to be considered in relation to co-location of public/private buildings. This aspect needs to be considered as there are different requirements that apply to these processes, eg the essential fire safety provisions of the EP&A Regulation.

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