



Our Ref: PL:CL IMS 1926002
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John Young
Principal Council Officer
Standing Committee on State Development
Parliament House
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Dear Mr Young

Inquiry into the NSW Planning Framework

I refer to my previous letter dated 8 May 2009, in relation to the above Inquiry where you sought feedback from Council in relation to the transcript of the evidence given and additional questions from members.

As I advised, I now enclose for your information Council's responses to the additional questions from members.

Should you have any further enquiries regarding this matter please contact me on the above number during normal business hours.

Yours faithfully

Paul Lemm
Development Services Manager

Penrith City Council Submission Additional Questions from Members

Question 1

In your submission you recommend the drafting and introduction of a new Act to replace the EPAA. You also note that the planning system should not be simply about development control, and that the Metropolitan strategy and regional plans were not given statutory recognition.

In the previous hearing it was put to the Committee that legislation is not required for planning as such, but that it is required for imposing development controls over private property. The Committee also heard arguments for splitting the EPAA into two separate Acts – one dealing with the plan making process and the other with development control.

Do you have any view on the merits of two separate Acts or an Act solely for development control?

If two separate acts are proposed both would need to be carefully integrated with each other as they would go hand in hand. A concern with the concept of bringing in two separate pieces of legislation would further add to the complexity of our planning system more so than reducing it.

The plan making process which may include setting the strategic directions for the state or a region (Metro strategy, regional plans) must relate to development control which is the process that is responsible for the delivery of the strategic visions for the State.

One concern that if the two components had separate legislation any changes to one may result in the need to change the other. If this did not occur they may be inconsistent with each other. There may well be a lack of integration between the two pieces of legislation which result in each operating independently of each other when in fact there is a strong and very important relationship between them both.

Separating or unbolting the development assessment process from the strategic goals and plan making is only going to further isolate the two forms of planning from each other. There is already a gap growing between these two planning roles. To separate strategic planning and plan making from the implementation of those strategies runs the risk of strategic matters being left out of the statutory process. A challenge for many consent authorities is to ensure that the strategic directions that form the basis around which a local area should develop are appropriately considered in the implementation of those plans. Given that strategic planning is generally supplemented by a whole range of specialist investigations, any system that attempts to separate one process from the other may run the risk of strategic thinking or rationale being overlooked.

There is a need for statutory planners to rely heavily on strategic goals and objectives in order to arrive at a professional judgement about the merits of a particular development. Having two Acts to address both areas of planning may see the assessment process going down a simple deemed to comply process which is generally not something that will delivery quality outcomes.

The planning system needs to integrate policy and delivery to ensure outcomes encapsulate the vision. Separate Acts divide these roles and risk that necessary interaction.

The approach of one act to deal with planning both strategic (plan making) and development control would be an easier way to manage and integrate both the strategic and delivery of the strategic vision. This one act needs to further encapsulate both Metropolitan and Regional Planning outcomes/goals in the statutory planning process.

Question 2

Your submission says that the recent reforms focussed on process and did not recognise that the quality of an outcome is at least as important, if no more so, than the speed at which it is delivered. You also argue that the planning framework needs a focus on strategic outcomes.

Can you expand on what the strategic focus and its related outcomes should be for planning in NSW?

Since 1998 when the first major reforms to Part 4 of the EP&A Act took place one of the objectives was to improve efficiency and streamline the development assessment process. What has become apparent in more recent reforms is that it is the process that is being reviewed, not necessarily the outcomes that are being achieved. Recent planning reforms have implemented a standard template that will apply to the whole of the State. These reforms have also introduced standard definitions to be applied to the whole of the State. These reforms have introduced uniform development standards to apply to certain developments for the whole of the State. The uniformity in these reforms provides little flexibility for individual Councils to shape their own local areas. It is arguable that the “one model fits all” achieves quality outcomes across the whole State. They may well achieve a more efficient and streamlined development assessment process, but little else.

In many ways the reforms have focussed on Local Government and how it conducts its business of managing both development and strategic planning. Many of the most recent reforms have been reactive to either community issues that have surfaced or new issues that have surfaced within the planning landscape. The result of this continued process of amending the EP&A Act to respond to these issues on a case by case basis, has been to cause the current planning system to be overly complicated with no clear strategic vision.

Some of the key elements that need to be incorporated in a more direct way in any legislative change are outlined below:

- Ability to provide and deliver quality outcomes for affordable housing and greater housing choices in the market.
- To reduce the need for further expansion of the urban areas and causing increasing pressure on all infrastructure provided at all levels of government.
- Protection of sensitive and endangered ecological communities.
- Development being focused on sustainability and reducing the impact on the use of natural resources or resources that contribute to the green house emissions and impact on the climate change.
- Ability to provide quality outcomes and developments in an efficient and effective manner with a system of co-ordinating the other approval authorities in the process which is effective and efficient.

Question 3

Your submission includes a number of principles upon which a new EPAA should be based. One of which is reducing complexity through the development of planning strategies and statutory processes tailored to the scope, scale and significance of the planning issue. Can you elaborate on this?

It is accepted that the current planning system is over complicated and has been subject to numerous changes and amendments and there is a myriad of State, Local and in some cases Federal Government legislation that regulate all parts of the process.

Now is the time to collapse much of this legislation, remove unnecessary duplication and commonality in strategic direction into a more refined and straight forward piece of legislation.

The current strategic framework for the State is based firstly around the development of a State Plan and State Infrastructure Plan. These documents then inform the current Metropolitan Plan and Sub Regional Plans. There are many other specific Policy and Strategic Planning documents developed by the Department of Planning that provide direction and objectives in relation to a variety of issues such as the Employment Lands Action Plan, the Draft Centres Policy, City of Cities: A Plan for Sydney's Future, Right Place for Business and Services Planning Policy, Sea Level Rise Policy and NSW Coastal Policy. These documents have no statutory recognition. They reside outside the parameters of the EP&A Act. These documents inform and influence the development of Local Environmental Plans at a Council level but in themselves do not receive any recognition within the primary piece of legislation.

In order to deliver the strategic goals for the State, the Metropolitan Plan needs to have some place in either the EP&A Act or as a key component of all other Environmental Planning Instruments.

There are many pieces of legislation at a Federal level that play a role in shaping strategic policy and the development assessment process. An example is the Environmental Protection and Biodiversity Conservation Act which required particular consideration to the environment under particular circumstances when either undertaking specific development types or developing local environmental plans. The relationship between the Building Code of Australia and the Disability Discrimination Act which have different tests that need to be satisfied which provide uncertainty and confusion to the overall duty of care from a determining authority.

The Department of Planning also develops numerous Planning System Circulars, Building System Circulars and Local Plan Circulars. These documents are not recognised in the EP&A Act but provide a range of information and recommendations about how issues are to be assessed, processed and managed.

The current planning system needs to be simplified to rationalise all of the above examples where strategic direction and development commentary are provided but reside outside the parameters of the EP&A Act.

The current planning system is complex and very cumbersome with a range of different polices and strategies some which are not linked to the planning legislation but sit outside this frameworks but relate to major issues. (Climate change and sustainability).

Question 4

You note that Biodiversity Certification (BC) seeks to protect threatened species at the strategic planning stage rather than on a site-by-site basis. Many stakeholders have noted the ideal of having issues resolved at the strategic stage rather than at the individual development stage.

You note that the need for quality data to inform the BC process tends to limit the practical application of BC to spot rezonings and specific land releases.

Can you relate your Council's experience or use of BC? And can you expand on what financial and professional support from the Government is required to maximise the use of BC?

Consideration was given to the application of a Biodiversity Certificate to the preparation of Council's new LEP in accordance with the new Local Plan template. Early on it was determined that the uncertainty of the outcomes on listed threatened species associated with its broad scale application to the LGA made it impractical to incorporate into the Local Plan.

Although the Department of Environment and Climate Change (DEEC) was supportive of Council pursuing a Biodiversity Certificate there were no proven models to follow and coupled with the continually evolving local plan template there was a great deal of uncertainty as to whether a new plan could be delivered in a timely manner. Together with the uncertainty and practical problems at assessing the LGA Biodiversity for a Biodiversity Certificate, it was decided not to pursue a Biodiversity Certificate in the preparation of Council's new Draft LEP.

In regard to the financial and professional support required from the Government, these would need to be considerable. Detailed biodiversity surveys over large areas are extremely expensive such as Penrith, in the order of several hundreds of thousands of dollars.

The scale of such a project is beyond the resources of Council and should be resourced and managed by the State Government. Professional support needs to be provided jointly by the DECC and the Department of Planning (DoP). At present there does not appear to be an integrated approach to biodiversity conservation in the State Government. Whilst DECC is keen to support conservation initiatives, it is always at the risk of rejection from the DoP. Council has to bear the costs associated with this risk through potential delays in the process of preparing its new local plan. A greater commitment from the State Government of resources and leadership to produce conservation outcomes for LGA's would be required before Council would feel comfortable to committing to the broad scale application of a Biodiversity Certificate.

Question 5

You recommend that provisions reflecting those measures being developed in the NSW Climate Action Plan be incorporated into the EPAA to require and guide consideration of climate change impacts in the preparation of environmental planning instruments and the assessment of specific development proposals.

How detailed and specific would such provisions need to be? – can you give an example?

The EP&A Act (or supporting legislation) would need to include consideration for;

- the adequacy of current design standards in terms of their ability to withstand severe weather events
- the impacts of sea level rise

- the impact of more intense and frequent bushfires
- planning to support vulnerable communities
- protection of natural assets in a changing climate (particularly in vulnerable areas)

Other factors requiring consideration in planning reform include:

- identification of the long and short term impacts of climate change, with supporting planning regulations / strategies to mitigate and manage those impacts
- changes in flood regimes and flood affected lands
- the provision of vegetation / shading to minimise the impact of increased temperatures
- the need to improve building design so as to minimise energy and water usage (mandated for residential and non-residential – with higher targets than those already in BASIX)
- encouraging a complimentary mix of land uses (residential / employment / retail / education / childcare / food production) in close proximity to reduce reliance on private car use
- the incorporation of more localised resource management systems i.e. grey water and stormwater harvesting, waste water reuse systems
- requirements for transport options to reduce reliance on private car use

In terms of the actual specifics, more investigative work is required to establish how many of the above factors can be encapsulated into the Planning system. Any response to climate change is going to be a whole of Government responsibility and as such this in itself would suggest that the current parameters around which the current planning system is built need to be reviewed. This in itself presents a case for the review of the EP&A Act.