

## **Inquiry into NSW Planning Framework** **Public Hearing Monday 15 June**

Hon Frank Sartor, Member for Rockdale

### **Additional questions from members:**

1. In your submission you recommend the development of a new Planning Act. Throughout the Inquiry a number of witnesses have suggested that the Act be split into two parts: one part to deal with the plan making process; and one part to deal with the development control.

What is your view on that proposal?

**Answer: The Act should not be split.**

**My view is that development control and plan making are both parts of land use planning and are both important in determining the nature of our towns and cities. Their separation would serve no value and would further fragment the development and planning processes of this State.**

2. A frequent recommendation made to the Committee is that any new Act should rationalise and incorporate all the elements of other legislation land use and control of property rights.

Do you think the new Planning Act that you are recommending should encompass all other environmental and land use planning legislation?

**Answer. Yes in principle. It should be a one stop shop for the making of all land uses decisions. This is especially so at Plan making stage where the effect of other Acts (and public objectives) v such as native vegetation, and threatened species, should be determined. This would render the need for such concurrences unnecessary at DA stage. So, to the extent possible, the new Act should provide for all other types of consent necessary to determine land uses.**

3. In your submission at p16 you say that regional planning strategies should have statutory force. It has been put to the Committee that a major part of the planning system, for example the State Plan and regional strategies, need not be statutory. And that you only require legislation to give effect to control over individual property rights.

Why do you think there needs to be provisions to allow for strategic land use planning to have statutory force?

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**Answer: Yes there should be a statutory process. The reason for this is that the strategic planning phase is the most important phase of land use planning, where all of the bigger decisions are made. More specifically, it is where:**

- **it is logical to identify and provide for infrastructure;**
- **key decisions are made about the future character of large parcels of land with significant environmental implications;**
- **land values are changed as greenfields land is released.**

**Good strategic land use planning, integrated with infrastructure plans, will greatly improve downstream land use and development decisions.**

4. Your submission at page 16 notes that strategic planning and plan making process should address and deal with key environmental considerations so as to avoid the need for multiple concurrences at the development assessment stage. Many witnesses have called for resolution of issues at the strategic level so they do not end up as conflict at the DA level.

Do you think the various agencies have the required technical information and data, or the capacity to obtain such information, to resolve key environmental considerations at the strategic planning stage?

**Answer: Ideally all multiple concurrence issue should be settled at strategic stage. However, in reality, some of the detailed work may need to be carried out at plan making stage. Our aim should be to eliminate the need for concurrences at DA stage. As strategies are driven by the State government or a local council, they may not always have the resources and technical skills to do the detailed work at strategic stage, but this still should occur at Plan making stage. However, significant work should, and can, be done at strategy stage.**

**The demand on skills does not change. All that would happen is that it would apply at an earlier stage.**

5. A number of witnesses argued that there was no clear overarching strategic vision for planning in NSW. Some saw the metropolitan strategy as simply a inexact population predict and provide exercise, rather than an expression of the type of community and city that we were aiming to grow.

Do you think the planning framework has sufficient overarching strategic guidance?

**Answer: We are not a control economy and the market for property will still heavily influence the relative growth that occurs in different parts of the State. So long as we have sound regional strategies with adequate infrastructure provision, there is no utility in further prescribing planning and land use controls in the State.**

6. Currently regional planning strategies exist for some parts of the State. Do you think that there should be a regional plan for all areas of the State?

**Answer: Yes. The priority will of course remain with those areas of the State experiencing growth, but all regions would be well served by having regional planning strategies.**

7. In your view how the success of the planning system should be measured?

**Answer:** In general terms, a planning system is working well if it allows development to be determined in accordance with community and stakeholder expectations. More specific measures may include:

- Clarity of regional land use strategies;
- The clarity and simplicity of planning instruments;
- The number of layers of planning and development controls;
- Time taken for plan making processes;
- The simplicity and certainty of development application processes;
- Time taken for development determination processes;
- Absence of duplication and multiple processes;
- The degree to which small private applications (eg home extensions) are being dealt with as complying development rather than as development matters;
- The costs of each stage of the regulatory process;
- The cost and efficiency of appeal processes;

8. Throughout the Inquiry participants have argued that the planning system needs to provide certainty with respect to land use in order to encourage investment, at the same time it is argued that it needs to be adaptive to change.

Do you think that the system you are proposing in your submission would allow for the ability to provide both certainty and flexibility?

**Answer: Some applicants want certainty, while others prefer flexibility. The balance between flexibility and certainty should be determined according to the following principle:**

**There should be certainty as to major issues that determine land use and land values (such as zone and density controls), but flexibility on matters that are not of strategic importance and do not undermine the objectives of a planning instrument.**

9. In terms of planning principles being the same or similar in each State, is there not a fundamental difference between States like NSW and SA in terms of population, land use conflicts, competing interests and community expectations? How should planning systems take into account such unique differences?

**Answer: There should be harmonisation of processes rather than substantive controls. State by State land use controls should always be different, reflecting the different climate, topography, culture and history of different regions.**

**However, processes should be similar in all States and there should be common performance standards. T**

**The role of the Commonwealth EPBC Act needs to be addressed as it provides scope for adhoc Commonwealth intervention and uncertainly.**

10. In appointing panels to deal with the vast majority of developments applications (p20), how do you deal with the criticism that panel appointments themselves can be politically motivated and the perception that panel members are less accountable than elected representatives?

**Answer: It is proposed that at local level Councils appoint their own panels, based on prescribed criteria such as skills and experience, from a list of accredited experts. Their performance would be monitored and perhaps appropriate accountability mechanisms can be created**

**All persons bring their personal values to any situation, but the big advantage is that they will not come under undue, and often hidden, pressure to favour one point of view or another.**

**On a scale of 1 to 100 it will remove 95% of the partiality out of development decisions.**

**To ensure accountability, I have proposed a reform of appeal processes, and the expansion of appeal rights for third parties such as objectors.**

**In my view, the combination of these measures would increase accountability, and improve consistency and certainty.**

11. Does the creation of a separation of powers with respect to policy and decision making have the potential to create a silo effect, given that the panel cannot make decisions against policy that has not adapted to the community's needs?

**Answer: The separation of policy making and implementation is common in many other areas. In any event the system already provides for adequate flexibility such as the use of SEPP1. Coupled, with better and expanded appeal processes, flexibility can remain. Such a separation would improve the certainty of development assessment processes.**

12. You mention the pressures applied to the Minister by people keen to pursue outcome in the planning process. How would your proposed system of independent planners overcome this difficulty? Surely those persons would still find themselves the target of considerable interest by a whole range of people, protesters, concerned neighbours and developers?

**Answer: They would avoid such pressure in the same way that magistrates, commissioners of the L& E Court, and members of the judiciary avoid such conflicts. There would be mandatory protocols governing such contacts (including informal lobbying) and members of a panel would be bound by them.**

**Unlike elected representatives they will not feel a compulsion to listen to people outside of the structured processes of decisions making. These processes would be transparent and available to all comers.**

**By contrast, elected representatives are expected to hear all representations.**

13. On page 10 your submission you note one of the DAF leading practices namely that of technically excellent assessment criteria. It says that it is important to engage with the community early in the policy making process and to convert that into explicit rules and assessment criteria.

Once developed these rules are the criteria by which development assessment are assessed.

At what level, that is either state, regional or local government area, should or could this community involvement leading to assessment criteria rules take place?

It has been noted to the Committee that it is difficult to generate community interest and involvement in policy at the strategic level – as opposed to community interest in developments that have a direct impact upon them. Can you suggest how greater community involvement in strategic planning could be achieved?

**Answer: There are three sequential processes involved in use decisions, namely strategies, plans, and DA's. All significant changes to either strategies or plans should be subject to a public process. At strategy stage environmental and infrastructure inputs (such as from agencies) will often be more significant than community inputs, especially in greenfield areas where there is little existing population.**

**But at Plan making stage processes can be improved by:**

- **producing less technically complex policy proposals that are more easily understood by members of the community. This is now possible under the new Part 3 of the E P & A Act passed in June 2008;**
- **extensive public consultation;**
- **the development of model community consultation protocols to apply across the State;**
- **clarifying public agency requirements prior to the public consultation processes so that all constraints are publicly available during the consultation process;**

14. On page 12 you state that any expansion of private sector involvement in any new Act would have to be approached with caution. It has been put to the Committee that the role of private certifiers should be to submit advice, confirming that set criteria has been met, to the relevant consent authority.

What role do you think private certifiers should have in the assessment process?

**Answer: The role of private certifiers should not be expanded beyond their current roles in issuing complying development certificates, construction certificates, and occupation certificates.**

**If they are turned into advisors only (as is proposed by local government) it will add another step in the assessment processes. For example, if council officers only can issue complying development certificates, they will be obliged to recertify all applications so as to minimise liability.**

15. Many participants in the Inquiry have emphasised the important relationship between strategic land use planning and provision of infrastructure. You recommend on page 17 that the resources needed for the provision of infrastructure are allocated at the time of plan-making.

Can you explain how this could operate in terms of who would be responsible for funding the infrastructure, and should it be the case that a new plan, or rezoning, should not be made until any required infrastructure is confirmed?

**Answer: As I indicated in my oral testimony the requirement for infrastructure should be tied to development or population milestones itemising which items should be built at what stage of the development process within a precinct or a region.**

**These would then become firm policy commitments to which Councils and government can be held accountable if they are not honoured.**

16. You quite strongly advocate a role for independent hearing panels to be appointed by each council drawn from an accredited listed of experts.

Would councils be responsible for the employment and remuneration of these panels?

**Answer: Council would be responsible for this as the panels would be carrying out a delegated local government function. Additional costs, if any, could be recovered by a small adjustment in the DA fees a Council can charge.**

**8 July 2009**

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