SD09/276

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File Ref: CM/06/337923

29 April 2009

Chairperson
Standing Committee on State Development
Legislative Council
NSW Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir

Inquiry into the NSW Planning Framework (Submission 46)
[In response, please quote File Ref: CM/06/337923]

Following receipt of your letter of 2 April, 2009 I am pleased to provide further evidence in response to the additional questions from members. Given the specific contents of some of the questions I will endeavour to provide a comprehensive response drawing upon my experience in environmental planning.

It is intriguing that some of the issues being raised with the Committee are presented as being new. In reality urban development and planning issues follow a predictable cycle. Generally, today's important issues have been confronted in the past. Some were resolved successfully but others less so. What is important is that lessons be learned from the past. Both successes and failures provide valuable insights that assist in overcoming current concerns.

Question 1: *Within the overall planning framework what do you believe should be included within its legislative component?*

A clear distinction can be drawn between statutory recognition and the inclusion in legislation of controls on content and procedural matters. The cumbersome components of planning legislation can be those provisions that unnecessarily specify the processes to be undertaken to formulate a plan and the content of documentation to be authorised at various stages.

As a matter of principle it should be adequate for the legislation to state in the broadest terms "that the Premier shall make a plan for the future development of NSW and it shall be called the State Plan". Similarly, in the broadest terms, the legislation would provide that a regional strategy shall be made for each region within NSW to specify how facilities and services will be provided to the region in order to implement the State Plan.

Within this same legislation similar reference and recognition should be given to the Community Strategic Plan that is the local equivalent of the State Plan for each local

government area. While it is accepted that the Local Government Act is presently being used as the vehicle to introduce the requirements for the Community Strategic Plan it would be preferable for those provisions to be contained within this one "planning" act.

To be clear, it is submitted that all elements of the planning framework should be identified in legislation but that legislation should not impose constraints upon how the plans are formulated. All that the legislation would provide is that the various elements of the planning framework shall be made.

If desired other legislation may specify details of content and process. Other legislation may also refer to plans formulated under this legislation as being relevant to action under that other legislation. So, for example, a budget Bill may refer to the allocation of funds to implement the State Plan. Another Bill may provide for the sale of assets in accordance with the State Plan.

The framework illustrated on the following page is submitted to explain the concept of what should be outlined in the legislation. It is presented as a concept, not a definitive scheme. Where possible the names of existing documents have been used. Tabulating this framework will have several consequences:

a) it will specify the relationships between various plans, strategies and programs

b) it will provide a vehicle for various government agencies to determine how their plans relate to the plans of other agencies, promoting a whole of government understanding.

c) it will identify potential duplications and possible gaps.

An example of point (c) would be the Regional Development Program. The government has recognised the importance of regional development. For some regions a Minister has been allocated responsibility for promoting the development of that region. However, these Ministers do not have a regional development strategy to promote. Using information currently held in many locations a regional development strategy could be prepared so that regional development is coordinated rather than fragmented.

In conclusion it is submitted that a separate piece of legislation could establish the planning framework for NSW. This framework should be comprehensive so that it reflects a whole of government solution. Details of how each element should be formulated would not be prescribed. If necessary, such details would be contained in other related legislation. For completeness, the planning framework legislation could refer to this other legislation. One benefit would be that the planning framework legislation would need to be routinely reviewed and updated. Additionally, the framework should encompass the complete planning cycle including implementation, monitoring, reporting and review.

INDICATIVE PLANNING FRAMEWORK

PLANNING UNIT	STRATEGIC DOCUMENT	IMPLEMENTATION TOOLS		ANNUAL ALLOCATION OF RESOURCES	REPORTING
		Plans for delivering facilities and services	Plans for environmental regulation		
State	State Plan	State Infrastructure Strategy	State environmental planning policies	State Budget	Annual report
Regions	Regional Strategy	Regional development program	Agency plans eg natural resource management plans	State agency business plans	Annual report of agencies by region
Local Government Area	Community Strategic Plan	Delivery program	Local environmental plan	Operational Plan	Annual report

Question 2: *What has been the result of this lack of recognition and integration (of the State Plan)?*

Those agencies and organisations that were able to benefit from the change in government direction embraced the State Plan and used it to support their position. Where an agency gained no potential advantage, the document was ignored or dismissed. Comments were made that the State Plan was a political or public relations document and could therefore be ignored.

Certainly at local government level there was little recognition of the importance of the State Plan. A common observation was that the State Plan was not relevant to local government because it only related to NSW government agencies and their activities. At meetings between local government staff and representatives of State agencies it was apparent that differences existed with government. It has emphasised the lack of integration.

Perhaps the relevant test for the State Plan is yet to come. There has only been one State Plan. The relevance and impact of the State Plan will come when a new Plan is formulated and released. In recent times there have been changes in direction and priorities. These have been reflected in budgets but not the State Plan. Consequently, there has not been a clear statement explaining these changes. A new plan would highlight which matters had previously been a high priority and were now less important. At present, unless a budget item has changed, it continues to be business as usual.

How should the state Plan be recognised and integrated within the planning framework?

This issue was covered in the answer to question 1.

Question 3: *What difficulties are posed for councils when they have a significantly different regulatory tool to implement their overall plan and vision for an area?*

Different councils would have had a variety of experiences but three common occurrences are:

a) Disputes with applicants over development applications – if the council does not support a particular provision within a local environmental plan because that provision was imposed upon it, there are several common responses. These would not be universal and not be used unless the council strongly opposed the control that was imposed. However, if those circumstances existed the council would find it necessary to divert resources to ensuring that this form of development did not receive approval.

At a policy level the council will attempt to introduce into its development control plan other provisions that will counter the LEP provision. For example, the LEP may permit a form of development that the council opposes (eg brothels) so the council will make development control plan provisions that are so restrictive that no proposal could satisfy the requirements.

Should an applicant choose to submit an application obstacles would be created to frustrate the applicant.

Should the proposal then come before the council it would be refused so that the applicant was forced to appeal to the Land & Environment Court.

From the council perspective directing resources towards defeating the first proposal would be justified because it would indicate to any other potential applicant that gaining approval would require the investment of significant time and money.

b) Provision and utilisation of infrastructure – councils have a greater understanding of the need for infrastructure and its associated cost than the Department of Planning. Over the decades a council would have developed infrastructure and prepared plans for future provision of infrastructure. Councils are also better placed to have an overview of State provided infrastructure (eg schools) and community infrastructure (eg churches, clubs). All of this information is taken into consideration when a council makes planning decisions.

The Department of Planning can make decisions that may have some justification at a State or regional level but are not appropriate at the local level. Where the council has made a decision to better utilise existing and planned infrastructure, the Department of Planning can ignore that decision and facilitate development that requires resources to be allocated elsewhere.

Sutherland Shire Council has had experience where it has sought to reduce the potential for villa/townhouse developments in isolated locations away from schools, shops, public transport etc. The intention was to concentrate more development closer to underutilised infrastructure. The Department enabled a concentration around existing infrastructure but did not reduce the potential in the isolated locations. New development will now be more dispersed making it more expensive to provide infrastructure.

c) Favouritism, flexibility or unethical behaviour – in direct contrast to situation (a) above there are instances where the planning instrument made by the Minister prevents or limits the extent of development that the council would prefer. These situations also occur where current controls impose a limitation upon the ability of the Minister to approve development. At times this can result in some applicants receiving favourable treatment but this can often produce unethical behaviour. In a few extreme cases corruption can be involved.

By way of illustration, there may be coastal areas where the Minister has imposed a height limit of three storeys in the local environmental plan. Some councillors may support the position of local developers who argue that development of four or five storeys is acceptable. When an application comes before the council for higher development the council can use its powers under State Environmental Planning Policy No. 1 to override the development standard imposed by the Minister.

While the council may choose to offer this concession to every applicant, it may also choose to restrict the concession to a few well known or well connected applicants. A system of favouritism could be created. While this may not be corrupt conduct (as defined by ICAC) it can be unethical.

Where the concession powers of SEPP No. 1 have been used too often so that the Department of Planning becomes concerned it may direct the council to be more restrained. This provides an even greater reason to favour some developers rather than all developers.

Unfortunately, councillors can develop the opinion that this type of behaviour is acceptable or expected. Councillors observe what routinely happens at NSW government level where successive Ministers have made decisions that appear to benefit some developers or some applicants receive more favourable treatment.

At the more general level where the council favours less restrictive controls than what the Minister has considered desirable, the council will find ways of circumventing the restrictions. The use of SEPP No 1 is the most obvious. The introduction of provisions into a development control plan is another avenue. While excesses may be avoided, the form of development desired by the Minister will not be what eventuates.

Ultimately, the system is corrupted. The community loses because the development assessment system is abused but a few applicants benefit.

Within my original submission the principal point was that the separation of powers argument raised by some development industry representatives is legally incorrect and in practise only partly correct. Through its council a community has some influence on the content of a local environmental plan but ultimately the plan reflects the policy position of the NSW Government. Should the council and the community have a different policy position the only avenue available for the council to pursue its policy is through the development application process. Unfortunately, poor outcomes can result and the process for gaining approval is more expensive.

Question 4: *Can you give examples of this poor execution (of a plan because it is not linked to the budget process)?*

At the outset it is acknowledged that this is not a new problem. However, it should be recognised that one of the major reasons for introducing better urban planning after World War II was to ensure that scarce resources were efficiently used by coordinating the provision of infrastructure in accordance with an agreed plan. For various reasons over the subsequent decades the focus on common agreed goals was lost as individual agencies sought more of the limited budget to pursue their own priorities.

Examples of the lack of resources to enable implementation of a plan abound. At the broadest level the development of Sydney's north-west sector is an example. Through my personal experience I saw how the need for infrastructure was identified as part of the planning process.

At the time it was accepted that recurrent funding would be required to realise the plan. Several decades later the houses and the people have arrived but not the necessary infrastructure. Where developers have provided roads, water and electricity connection etc. this infrastructure is available. However, important

infrastructure such as public transport and health facilities have not been delivered. The necessary financial commitment has never been provided.

Many local government areas have examples of residential neighbourhoods that have been built and occupied many years before the promised upgrade of the regional road network is completed. During the planning phase the necessary road network was defined and land reserved awaiting funds for construction. Funding may arrive but many years later.

In the western portion of Sutherland Shire the suburbs of Menai (eg Illawong, Barden Ridge) were developed ahead of the road connections. Only in recent years were the Bangor Bypass and the Alfords Point Bridge duplication constructed. This road construction occurred as a result of political agitation rather than a planned provision of infrastructure. For two decades the Menai district suffered significant traffic congestion because the road network was inadequate. The planning for the area identified the components of the road network but the funds were not provided.

This is but one example and most parts of Sydney that have developed in the last three decades would have similar instances.

How could or should this link to the budget process be strengthened?

Local environmental plans zone land for public open space purposes. Sometimes the land is not yet in public ownership. Before the plan is made the nominated acquisition body (ie council, State agency) must certify that it accepts responsibility for purchasing the nominated land when the owner desires to sell. There are other similar provisions in local environmental plans that relate to government agencies accepting responsibility to fulfil commitments.

To cover their obligations in this area councils provide financial reserves which can be used as and when necessary. Money collected from s94 contributions is added to the reserve when received and spent in accordance with the adopted s94 plan.

There is no equivalent commitment in relation to infrastructure. As a matter of principle if a local environmental plan enables land to be developed for a new purpose on the basis that infrastructure is provided, the development should not be approved until delivery of the infrastructure is assured.

Local environmental plans should be required to incorporate an undertaking that the necessary funds for infrastructure will be provided. A statement as to how the funds will be provided is not necessary but there should be a schedule that lists the obligations and allocates responsibility.

Both the council and the NSW Government would then be able to calculate their commitments and produce financial plans to honour the obligations.

Within the planning framework legislation it should also provide that annual budgets should take account of long term financial obligations and the relevant financial management plans.

Question 5: *Can you give us some examples of this over regulation (where instruments are used to achieve uniformity when consistency is not required)?*

There is a constant tension between local communities who value their separate identity and local character and developers who can operate more efficiently if they produce a common product without reference to local circumstances. The application of uniform controls on development allows a developer to easily replicate a desired form of development.

Rather than provide historical examples, reference is made to some current instances where enforced uniformity eliminates innovation.

a) Incentives for specified development – one of the long established benefits of a development control system has been the potential to encourage certain forms of development by providing incentives. Where appropriate developers have been provided with a floor space bonus that provides a financial incentive in return for the developer satisfying a policy objective. Bonus floor space has been provided for purposes such as:

- ensuring the conservation of heritage buildings
- providing affordable housing
- incorporating a community facility such as a child care centre, library etc.
- providing outdoor public space, public art etc.

These schemes are locally tailored to meet a specific need in a particular location. They cannot be accommodated in a uniform approach.

Under the Standard LEP template there has been no provision for bonus floor space schemes. As a state wide approach is not appropriate the opportunity for local innovation is being lost.

b) Local exempt and complying development – to increase the use of complying development the NSW government is introducing a series of state wide codes beginning with the Housing Code. Again, the aim of the Code is to have a uniform solution across NSW. Trialling of the draft Code found that rather than expanding the use of exempt and complying development the uniform Code would be an impediment. Consequently, the Code has been implemented in parallel with the existing local council provisions.

When complying development was first introduced into NSW a decade ago there was an initial standard system that applied across the state. Gradually, councils developed a local regime to suit local circumstances.

Examples of where the uniform approach will create difficulties exist in relation to development on flood prone land. This will become a greater problem as sea level rise causes more land to be flood prone. Within the Housing Code flood prone land is considered to be the same whether it is in suburban Parramatta, on the outskirts of a regional city such as Coffs Harbour or in a rural town such as Nyngan.

In some locations fences should be controlled on flood prone land because they can restrict water flow. Sometimes one form of fence is acceptable but not another. The

Housing Code recognises two forms of fencing – rural and non-rural. However, all forms of fencing are excluded from the exempt development provisions on flood prone land.

The consequence is that large rural properties in regional areas must apply for development consent to erect a standard rural fence should a small part of the lot be flood prone. A provision in the Housing Code that may be relevant in some parts of Hawkesbury Shire raises significant problems for most owners of rural land outside the metropolitan area.

Question 6: *Do you favour such a system (where a single statutory document contains all controls for a single piece of land)? Do you think this is achievable?*

When Sutherland Shire Council began formulating its current comprehensive LEP in 2000 one of the goals was to produce a comprehensive plan. The council accepted that it is only fair and reasonable that if a property owner is going to be subject to controls, those controls should be:

- consistent in their purpose, without contradictions
- comprehensive so that there are no later surprises
- comprehendible; capable of being understood
- easily accessed.

It was an explicit goal to create an integrated plan that contained all of the information that a potential applicant would need to prepare an application, confident that no other issues would be raised at a later time. Using computer technology council was able to formulate such a plan, that was adopted as draft Sutherland Shire Local Environmental Plan, 2003.

It is considered manifestly unfair and unreasonable to expect an applicant to prepare an application without knowing what is expected.

Sutherland Shire Council collaborated with many government agencies to document the requirements of those agencies. As would be expected the LEP was a very large document and the volume of material relevant to a single piece of land was extensive. Critics said this was too overwhelming because there were too many requirements. However, whether those requirements were incorporated in the LEP, or not, they would influence any later decision.

This submission argues that the current standard instrument approach is deficient. Applicants will not be treated fairly. During the assessment of a development application, the applicant can be asked to respond to issues about which there has been no prior notice. The applicant is forced to deal with issues as they arise.

Undoubtedly, the technology is available to deliver such a system. It is being used by councils such as Sutherland Shire Council, even if not being used to its capacity.

Question 7: *Why do you think (a parallel system with no statutory approval for public land) should be considered?*

Over recent years the assessment system for NSW Government projects has degenerated into a charade. A more honest system would be one that explicitly acknowledges that the government has no real interest in the opinions of councils, residents or the community in general. This submission argues that in the current circumstances the government should institute an approval process that stands apart from the system that applies to the remainder of the community.

Within the Environmental Planning & Assessment Act, s5 states that there are three objects.

The first object relates to the outcome of the environmental planning and assessment system but the other two explain how the process should operate. Object (b) states that there shall be shared responsibility between all levels of government. Object (c) says there should be increased opportunity for public involvement. These were important goals for government in 1979 and are probably still important to the community. However, there are interest groups within the community who argue that objects (b) and (c) impede their ability to maximise their financial return on investment. These interest groups are considered by the government to have a valid position.

Enactment of the Environmental Planning and Assessment Act came during a period of idealism. There was a general acceptance that a better future could be created for all by helping society to lift itself to a higher standard. It was considered that NSW could establish an environmental quality that other states and nations would also desire to achieve.

More recently the idealism of those times has been lost. Longer term goals for social and environmental improvement have been pushed aside for short term economic advantage. Globalisation has provided the opportunity for it to be argued that rather than lifting the social and environmental standards of other states and nations to remain economically competitive NSW should accept the social and environmental standards of those other governments.

Sutherland Shire is an area that is one of the most desired in Australia and has a high social and environmental standard. Residents of Sutherland Shire value these qualities and will strive to maintain that standard. This community supports objects (b) and (c) of the EP&A Act and would seek to have the NSW Government implement those objects. However, the reality is different.

If it is the opinion of the NSW Government that it knows what is best for the people in each community and wishes to impose its opinion then the legislation should allow for this to occur.

Numerous changes have been made to various planning instruments in recent years (eg Part 3A, Infrastructure SEPP) to allow the Minister and the Department of Planning to approve developments more speedily with less consultation and sometimes lower environmental standards. If this is the intention of the government then the assessment system should not be portrayed as being the same for it as it is for the remainder of the community.

So the suggestion for a parallel system for the assessment of government projects arises because of concerns about honesty and transparency. It is certainly not suggested because it is socially and environmentally desirable. A government that believes it is working in the interests of the community would not avoid community involvement and scrutiny. Whatever approach the government wishes to follow should be reflected in the legislation in an honest statement of intent.

Question 8: *Can you explain what you think should best occur in these instances (where a development fails just one criterion for complying development)?*

Central to this issue is the extent of assessment required under s79C(1) of the EP&A Act. Its extent is almost boundless. The wording requires the assessment to consider any issue that any person may consider to be relevant. There is no limitation on the range of issues and no specification of who determines the relevance of a consideration. This is an extreme method of merit assessment.

There is perhaps a need for this form of merit assessment but it should probably apply to projects of state or regional importance. However, these are the types of projects that are being removed from assessment under Part 4 of the Act and are being assessed under Part 3A.

Complying development requires an assessment to be undertaken but only in relation to specified criteria and the assessment determines whether full compliance is achieved. The proposal that does not achieve full compliance must then be subject to the total merit assessment system under s79C(1).

Consider, therefore, a form of development that can be complying development if it satisfies eight criteria. If a particular proposal satisfies seven criteria but fails one, that proposal must be subject to full merit assessment. That assessment is not limited to the eight complying development criteria but could potentially relate to twenty criteria, not because the criteria are significant but because they are relevant. Realistically, the assessment should be confined to the one criteria that was not satisfied.

What is required is a more sophisticated assessment system that allows the appropriate level of assessment according to the potential environmental risk. There are several options available to address this problem. The following suggestion illustrates that the problem can be addressed within the existing development assessment framework.

Currently, all development applications are assessed under s79C(1). This section could be amended to relate only to "major" developments. So s79C(1) would begin with the words "In determining a development application identified in a planning instrument as being a major development", and the remainder of the section can stay as it is. Therefore for major developments the full merit assessment would be completed.

A new category for "minor" developments could be provided. This could be, say, s79D and it would begin with the words "In determining a development application identified in a planning instrument as being a minor development, ...". Rather than

incorporating all of the matters listed in 79C(1)(a) to (e) this new section may just refer to those matters in s79C(1)(a). In this way minor developments would still be subject to the flexibility available with merit assessment but the range of matters to be considered would be considerably reduced.

As mentioned earlier there are other means by which the same result could be achieved. This example was provided because it requires the council to determine the application and if the relevant provisions are incorporated in an LEP the option is available for the controls to reflect local circumstances.

In summary, where a form of development is complying development in those circumstances where a particular development does not satisfy one or two of the development standards, the merit assessment of the proposal should only relate to those matters where the development standard is not satisfied. A merit assessment of all matters is not warranted.

Question 9: *Do you think that staged approvals are desired by or would be used by small local builders and/or individual families building or renovating a house?*

As explained in the initial submission, many local developers have expressed support for an assessment system that allows for a project to be approved in several stages. This proposition is not being promoted by council because it will benefit council. As part of its desire for continuous improvement council has sought the opinions of repeat applicants regarding reform of the assessment system. The principal request that council cannot overcome is the desire for a more responsive system.

It is not envisaged that individual families would have any need for a system of staged approval. Generally, families are wanting to undertake development that is permissible where the relevant development standards can be satisfied. Local builders who perform building work for such clients would also not benefit from a new approach.

This proposition relates to developments of the scale of a dual occupancy or larger. The need for a staged approach relates directly to the extent to which a development proposal will be determined based on a merit assessment. Where the extent of merit assessment is highest, the discretion available during assessment increases and, consequently, there is considerable uncertainty.

Consider a typical example. A local developer secures an option to purchase a site with the intention to erect three townhouses. Initially, the developer merely wants to know whether three townhouses of a particular size can be erected. Details of landscaping, drainage, car parking etc. are not relevant at this stage. So that the land purchase can be completed and a design prepared, the applicant merely needs an approval for the concept.

Under the current system the council will only see a development proposal at the initial stage. So the council will want to go beyond the concept and resolve all potential issues. This generates conflict because the applicant does not wish to spend money on designs and plans unless there is some assurance that the development concept is acceptable. Council is forced by the system to demand and

consider issues that the applicant has not considered and the council does not need to consider.

The local builder who develops dual occupancies or small residential complexes would prefer an assessment system that provides answers at several stages in the approval process.

This is also true for applicants who may wish to undertake a development that is not the principal activity in the relevant zone. A child care centre is a relevant example. A developer does not wish to spend $100,000 preparing an application if the council is opposed to that development on that site for fundamental reasons. Only through a development application will the developer obtain a decision from council. The developer would welcome a simple answer to the question "Will I be able to undertake this form of development on this specific site".

Question 10: *What specifically should the government do (to be effective in making housing more affordable)?*

Housing affordability is a very complex issue and providing an adequate solution to this question requires multiple answers.

The general tenor of the public debate has been that the planning system is the greatest contributor to housing not being affordable. While the planning system is an important influence there are other factors of greater importance. The initial submission argued that the planning system is an easy target but reform of the planning system would not produce the same gains as could be achieved by other reforms.

In order to provide a complete response to this question it will be addressed under several criteria. Some responses will be directly relevant to all housing but other comments will deal specifically with new housing lots produced on the fringe. It is the price of the vacant lots that establishes the benchmark for all house sites. Land with access to better facilities and services and that is better located will always have a value that is higher than new lots on the fringe. Therefore, some comments will specifically address the cost of lots in new releases.

Standard of Housing – first home buyers seeking affordable housing often have to choose between a new house on the fringe or an older house closer to the centre of the city. Comparatively, the cost of a fringe property consists of a cheaper land component but a more expensive house component. That ratio changes in older areas where the land has a higher value but the house is cheaper.

A more affordable package would be a fringe location with a cheaper dwelling. Over the decades the market for new houses has demanded larger buildings with more features. That section of the market that would be satisfied with a smaller and cheaper option is ignored.

Allied to this is an issue of sustainability. Houses that are unnecessarily large require more materials to build and more resources to operate. The environment would benefit from houses being smaller.

Government could encourage the building of smaller houses by:

a) promoting this proposition with project home builders
b) adjusting the taxation system to impose a financial penalty on large houses and a taxation discount on smaller houses
c) adjusting the BASIX system to better reflect the true cost of the house so that there is a higher cost penalty for building larger houses
d) amending the Housing Code for complying development so that it does not treat large houses (ie 380sqm) in the same way as more modest houses of half the size.

Speculation in land – balanced investment portfolios for companies and individuals contain property as one component. Amongst the property options available is vacant land on the rural fringe that will eventually have development potential. Around Sydney there are large tracts of land that are held for speculation rather than productive investment. Often this land is used for pseudo rural purposes but the motivation is to avoid land tax.

Speculation in such land distorts the market by removing the normal forces of supply and demand. Land for housing becomes available when it suits the investor not when it is needed for development. Others who are more qualified can describe the implications of this speculation but the result is that the price of raw land suitable for new housing is inflated beyond its "real" value.

Overcoming this problem would be controversial and probably unpalatable to the government. Nevertheless, for a government that was intent on lowering the price of residential land in order to make housing more affordable there are options.

Landcom was originally created, in part, to address this issue. Landcom was charged with converting rural land into housing estates. As the focus of Landcom has moved from its original purpose its influence in applying downward pressure on land prices has diminished.

Options for the government would include:

a) changing the focus of Landcom so that it returns to its original purpose.

b) make it more expensive for speculators to continue holding land within 20km of the urban fringe by imposing a higher rate of land tax that only excludes legitimate rural producers.

c) enact legislation to allow the Department of Housing to purchase land that is not zoned for urban purposes with the purchase price being based on the agricultural production value of the land. After rezoning and development the land would mostly be made available for private owners.

Defer provision of services – it is not usually appreciated that the establishment of a system for collecting development levies was not driven by local government. Representatives of the property industry present the impression that s94 was created to benefit councils. This is not correct.

Immediately after World War II new housing estates had gravel roads, no sewerage services and minimal open space. There was a significant market shift when some developers began providing infrastructure. Land purchasers were willing to pay a higher price if they received services that they valued. The developers received a premium for this higher quality product. This higher standard soon became the norm.

It would be worthwhile testing the development industry's claims about the impact of s94 contributions. If a housing estate was developed with gravel roads and no open space but a reduced s94 contribution would there be purchasers for these lots?

To address this issue it is expected that only the NSW Government would be willing to take the following initiative:

> As a trial Landcom could construct an estate that is built to lower standards eg no embellishment of open space. The sale price would be land content only with no payment equivalent to s94 contribution. The lots would be marketed subject to an agreement that over the next decade the purchasers would make an annual payment to Landcom to cover the cost of the original infrastructure and the cost of upgrading the facilities to a usable standard.

Windfall for rezoning – as a result of the rezoning process the value of the rezoned land increases according to the amount of additional development that can be accommodated. Under the current system the eventual sale price is determined by the prevailing price for similar development. Consider, for example, a dwelling house site that is rezoned to permit multi unit housing. When the site is developed the developer will make a capital gain from the rezoning as well as profit from the building work. The developer would not choose to sell the resultant units at a lower price than the market would allow on the basis that the site originally had a lower value.

This is a very significant issue that will undermine efforts to make housing more affordable by increasing the supply of sites available for higher density housing. It has been argued that rezoning of large sections of suburbs with older, poor quality housing (eg Auburn, Bankstown, Fairfield) would increase housing affordability. This is based on the view that the developer will set the eventual sale price at a level that is below the price of other comparable development in response to the lower price of the undeveloped land.

To ensure that reduced land value is transformed into lower prices for the final product the government would need to be more judicious in the rezoning of land. The government would need to gain a binding agreement with a landowner that most of the increase in land value was retained with the site.

One means for doing this would be to have Landcom acquire land in designated precincts. After arranging for the land to be rezoned Landcom would compile a development package that could be purchased by developers. Part of the agreement would need to ensure that the financial discount was carried through.

Opportunities for the private sector – previously the s94 contributions for some urban release areas have been calculated on the basis that the council should collect money for all of the services to be provided by the council. While this model continues to

change any opportunities for services to be provided in an alternative way should be utilised.

Within some s94 plans contributions have been collected for child care centres. These are centres built and owned by the council. If the goal is to ensure that a child care centre is available in a new community a private operator could provide the service rather than the council.

Government agencies should work with councils to identify opportunities for services to be provided by the private sector rather than the council.

Conclusion

The issues raised in the additional questions from members relate to some of the core concerns about the operation of the Environmental Planning & Assessment Act. It is acknowledged that the response to each question is lengthy. While this is not intentional it is recognised that superficial answers are not adequate. Where members desire further information it has been considered appropriate to provide some background comments to support the submission.

Thank you for the opportunity to make this further submission. Should the Committee desire to further explore any of these issues, I would be pleased to participate.

Yours faithfully

John Brunton
Director - Environmental Services
for J W Rayner
General Manager