

6 May 2009

Mr John Young  
Principal Council Officer  
Standing Committee on State Development  
NSW Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [statedevelopment@parliament.nsw.gov.au](mailto:statedevelopment@parliament.nsw.gov.au)

Dear Mr Young

***Standing Committee on State Development – Inquiry into the NSW Planning Framework***

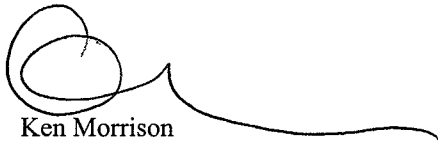
Thank you for the opportunity to participate in the Standing Committee on State Development *Inquiry into the NSW Planning Framework*.

We appreciate the opportunity to appear before the Committee at its public hearing on 30 March 2009 at Parliament House.

Please find enclosed our response to the 11 'additional questions from members'.

Please do not hesitate to contact me on 02 9033 1904 if I can be of any further assistance with the Committee's investigations.

Yours sincerely



Ken Morrison  
NSW Executive Director

**Attachment:**

*New Thinking on Infrastructure Funding – Tax Increment Financing to Fund Public Urban Infrastructure in Australia – November 2008 (PWC prepared for the Property Council of Australia – 96 pages)...*

# The Voice of Leadership

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## PROPERTY COUNCIL OF AUSTRALIA

### INQUIRY INTO THE NSW PLANNING FRAMEWORK

#### RESPONSE TO ADDITIONAL QUESTIONS FROM MEMBERS

##### Question

1. *Your submission recommends that the Department of Planning's Local Development Performance Monitoring Report should be extended to include information on LEPs, DCPs and developer contributions. Can you expand on what information detail you believe should be reported on with respect to LEPs/DCPs and contributions?*

##### PCA Response

The following information should be monitored and publicly reported based on local government area:

- Number of LEPs being considered for approval to commence formal preparation.
- Time to assess LEP prior to refusal/approval to progress formally.
- Number of DCPs placed on exhibition and approved.
- List of additional development assessment requirements imposed through new LEPs and DCPs.
- Number of DCPs repealed.
- Evidence of cost-benefit or economic analysis or analysis on housing affordability undertaken in relation to LEPs, DCPs or development contributions.
- Total development contributions received, being held in account and expended.

##### Question

2. *Service infrastructure and the natural environment in and around urban areas has an effect on property values. You argue that developer contributions should not exceed \$20,000 per lot. Do you think that that amount is enough to provide the required infrastructure for functional living?*

##### PCA Response

- Clearly there is an 'infrastructure need', and that need must be funded.
- However the critical issues are: (1) what is the most critical infrastructure that requires funding?, (2) the funding approach and (3) who funds the infrastructure.
- The property sector already makes a significant contribution to state and local government revenues through stamp duties, land tax, parking space levies, council rates and state and local (section 94) development contributions.
- In short, we strongly believe that too much is being funded through development levies.
- We commissioned Allens Consulting Group in 2003 to analyse infrastructure funding approaches on both a quantitative and qualitative basis. The approaches included government borrowing, general taxation, Public-Private-Partnerships (PPPs), users charges and development levies.

- The review titled *Funding Urban Public Infrastructure: Approaches Compared* found that development levies are the most ineffective, inefficient and inequitable way to fund infrastructure.
- Levies also run contrary to other government policies such as the need to improve housing affordability. There is a strong and direct correlation between housing affordability and the ability of the industry to develop and deliver product to the market at a reasonable price.
- Further, we understand the NSW local councils are sitting on around \$1 billion of unspent development contribution that developers and homebuyers have already paid for. This should be allocated as a priority.
- Over 90 section 94 plans have been submitted to the Minister for Planning to breach the Government's proposed \$20,000 per lot cap for residential development. A critical issue here is that we are not aware of any alternative funding methods that were investigated instead of continuing the reliance on development levies (copy attached).
- We have recently been urging the NSW Government to investigate Tax Increment Financing (TIF) as an alternative funding approach based on work undertaken for us by Price Waterhouse Coopers (PWC) completed in 2008.
- We believe a TIF approach would enable development levies to be reduced significantly which would subsequently unlock development and renewal opportunities. Importantly, it would enable infrastructure to be delivered.

#### **Question**

3. *In your submission you refer to Property Council member's experiences when dealing with State agencies. On p6 you refer to a developer being requested to provide endless studies, and on p8 you refer to a developer being caught in the middle of a difference of opinion between the Dept of Water and Energy and Sydney Water. This issue was touched on in your evidence before the Committee. However, can you provide some more detail (without needing to identify and developers in question) – what type of studies were requested and what was the difference of opinion.*

#### **PCA Response**

- The difference of opinion was in relation to the classification of a portion of land.
- The types of additional information and studies requested included flooding, geotechnical, site layout, vegetation management, drainage and pedestrian and vehicular movement.
- The ongoing requests for information and studies provided little certainty as to the final outcome of a determination.

#### **Question**

4. *You strongly support effective strategic planning and integration between land use and infrastructure planning, funding and delivery. However, you say implementation mechanisms and ties to infrastructure are weak. Can you suggest how these ties can or should be strengthened?*

#### **PCA Response**

- We strongly support strategic plans.
- As an example, in alliance with other groups such as the Urban Development Institute of Australia, Housing Industry Association, Sydney Chamber of Commerce, Total Environment

Centre, UnionsNSW and NSW Council of Social Services we advocated for the Government develop what is now the Sydney Metropolitan Strategy.

- However a critical issue is that long-term plans can become outdated such as where underlying assumptions are proven to be incorrect. As an example, the population assumptions under the Metropolitan Strategy were found to be severe underestimation based on current trends.
- For this reason, strategic plans need to be acknowledged as strategic direction and guidance documents that set broad parameters. Strategic plans are not a substitute for more detailed assessment or market drivers.
- Strategic plans also need to be closely monitored and updated.
- The first component of implementation that is weak is that high-level strategic directions are not translated into the more detailed plans such as LEPs. Nor are such strategic directions translated effectively at the development assessment level.
- At an example, a project could be located within an area identified for growth and compatible with strategic directions to provide housing or employment yet a consent authority does not recognise this as critical in their determination.
- Similarly, a strategy might highlight an area as a key growth centre, yet the local plans have not yet been updated hence a cumbersome rezoning process needs to occur despite the fact it's compliant with broader government direction. In such cases it should be progressed and assessed on its merits.
- Another weak link is between transport planning and infrastructure.
- Generally, we believe that transport planning and infrastructure is poor. There is no integrated transport for Sydney and there is an emerging trend of projects being announced and then cancelled.
- Aside from the infrastructure deficit, this provides significant mixed signals and uncertainty from an investment and development perspective, where the Government in essence directs where growth should go yet doesn't provide the adequate infrastructure.
- Relevant examples from a transport infrastructure perspective include the North and South West Rail Links in Sydney. In both of these cases, significant investment decisions and development has been undertaken in these areas based on promised infrastructure. Yet in both cases, these major projects have been deferred.

## **Question**

5. *You argue that the private sector should be able to initiate a rezoning or otherwise and appeal mechanism should be introduced. The ability of the private sector to initiate a rezoning is a very broad proposal – should there be some criteria which would have to be met in the first instance?*

## **PCA Response**

- This approach is used in other states including South Australia where developments that are 'non-complying' with the plans can be assessed on their merits. This kind of approach does not exist in NSW at the local council level based on provisions under the EP&A Act.
- The private sector is hence constrained in the ability to initiate the rezoning process.
- The Government can however initiate rezoning through the Part 3A process.
- There needs to be an overhaul in how rezoning including spot rezoning is treated.
- The Government has made commitments to a rapid rezoning process as part of the Job Summit. We strongly support this commitment.

- We also believe that such a system could be trialed through (for instance) Joint Regional Planning Panels (JRPPs).
- Such an approach should of course be based on criteria.
- Such criteria should include the consistency with broader government directions under the relevant regional planning strategy (e.g. Metropolitan Strategy) and other policies such as the State Plan, location to strategic centres, contribution to housing, short and long-term employment and the economy and the demonstration of best-practice sustainability.

### **Question**

6. *You make two recommendations where the Joint Regional Planning Panels would take over matters currently dealt with by Councils – rezoning and pre-DA meetings. Why do you think this is necessary?*

### **PCA Response**

- We are a strong supporter of JRPPs to depoliticise decision making.
- This new approach is necessary because the process is being bogged down with delays, uncertainty and increased local level politicisation. And this is increasingly the case for projects that are actually compliant with regional strategies and government directions.
- This new approach is necessary to increase efficiency and investor certainty and enable critical developments for housing and employment are not held up unnecessarily.
- It is important to note that we are not advocating that such projects should not be subject to appropriate levels of assessment.
- We believe JRPPs should operate openly and transparently.
- Applicants should be able to engage with the JRPP at the pre-DA stage similar to how local councils can be engaged and to avoid surprises later in the process.
- As noted in response to the previous question, JRPPs should be able to initiate rezonings (in the absence of the private sector being able to initiate) where the rezoning would be consistent with relevant state and regional planning directions.

### **Question**

7. *On page 7 of your submission you say that the NSW planning system is largely structured around what can not be done and you say there is a common disregard for facilitating an outcome. You say that in Victoria, South Australia and Queensland there is much more emphasis on facilitating an outcome – Can you describe some of the elements of these systems that make them more outcome-focussed?*

### **PCA Response**

- This includes various elements.
- One such element is the general culture and attitude within elements of the public sector.
- Premier Nathan Rees has generally acknowledged this as an issue as part of the NSW Jobs Summit initiative.
- Evidence from our members suggest this is a major difference ranging from the levels of customer service, the willingness to provide certainty and facilitate an outcome and deal with issues (sometimes conflicting) across Government.
- We have another member with a recent experience of trying to locate a major industrial tenant in one of its assets in either NSW or another jurisdiction. The approach of the NSW

Government was generally an outline of 10 reasons why it couldn't be done, whereas the other government went out of its way to attract the business with the broader goal of business development and jobs in mind (and it eventually won the business).

- Already, there appears to be a positive change just through the recent introduction of "Go To" people within Government and "Project Managers" within the Department of Planning as part of the response to the Job Summit.
- Another relevant issue is the way planning instruments are written to "control" development and growth. It is quite rare to see a new planning instrument that actually seeks to drastically improve the facilitation of a development outcome.
- We note here that the Government is making good progress on new Exempt and Complying Development Codes for commercial, industrial and retail developments.
- Further, the economic viability of planning instruments is often not tested. This means that new requirements are not developed in consideration of how it impacts the ability to deliver (for instance) new housing to the market at a reasonable price.

### **Question**

8. *You recommend a single point of State agency assessment where the Department of Planning coordinates with other agencies, receives their advice and makes the final determination. Is this really possible for all applications that require an agency referral. Does this occur in other States?*

### **PCA Response**

- We do not claim to be experts in public sector administration however this approach is no different to the role of a project manager within the private sector (for instance) delivering a major project.
- In such a position, a project manager deals with a myriad of stakeholders and issues.
- We hence believe such an approach is possible and entirely consistent with good governance and public sector reform.
- It is also consistent with the concept of the 'one stop shop' (e.g. Connecting NSW) that the NSW Government already implements for other forms of government services which aims to improve the way that people access and interact with the Government..
- This would mean that rather than a development applicant having to navigate the system and negotiate between agencies and conflicting policies, a single government contact would do it on their behalf. This would also provide the benefit of the applicant only needing to primarily deal with one contact point.

### **Question**

9. *With respect to using the planning system to improve sustainability you suggest that developers with superior green ratings could be rewarded with development bonuses such as density and yield bonuses. You cite the example of Ryde City Council. Can you provide some more detail on what you are suggesting?*

### **PCA Response**

- We believe the planning system could be used to better to encourage sustainability.
- What we are suggesting is essentially tied to superior environmental performance such higher BASIX points, 5 Star Green Star Ratings and 5 Star NABERS Ratings.

- For instance this could include a density (FSR) bonus where a developer meets a 6 Star Green Star requirement for their building.
- Similarly, development contributions could be waived or a guaranteed streamlined approval (similar to the “Green Door” approach announced by the Queensland Government).
- It should be noted that there are significant legislative requirements imposed on property developers already. Just recently COAG endorsed increases in the stringency of energy efficiency controls for both residential and non-residential development under the Building Code of Australia.
- Critically, any mandatory imposed requirement limits the ability to participate in other Government schemes including the Energy Savings Scheme scheduled to commence on 1 July 2009.

### **Question**

*10. You are against any mandatory water-energy-greenhouse reduction targets. You state that it is well documented that most climate change mitigation gains are to be made in existing buildings. Other stakeholders have noted that it is easier and cheaper to incorporate mitigation measures at the construction stage as opposed to retro-fitting. Do you agree?*

### **PCA Response**

- We support BASIX and have supported it since its inception.
- But there obviously needs to be a balance between mandating and the cost and using other mechanisms to drive the desired outcome such as greenhouse and water reductions.
- There is significant regulation already on the property sector in relation to sustainability.
- This includes BASIX, Building Code of Australia requirements, and Federal legislation including NGERS, EEO and the pending Mandatory Disclosure requirements.
- While it can theoretically be easier and cheaper to incorporate measures at the construction phase however this is increasingly becoming a compounded cost on top of increasing development levies and other requirements.
- Again, there also needs to be the right balance between mandating requirements and the cost impacts on delivering new housing or commercial developments to the market.
- Similar to the previous levies question, it is a question as to how much should be mandated versus other mechanisms (e.g. through the incentives noted above).

### **Question**

*11. You say that most councils as well as officers in the Department of Planning seek to mandate SEPP 65 guidelines as controls. The Institute of Architects see SEPP 65 as an outstanding success in regulating the design quality of residential flat buildings. Do you think the evident improvement in design would have occurred if most councils had not taken the approach of setting controls?*

### **PCA Response**

- We are not advocating for inferior design outcomes.
- We have members that are leading architects as well as developers that deliver design excellence through their residential and commercial projects.

- However the SEPP 65 'rules of thumb' and guidelines are increasingly being applied as mandatory standards without considering or enabling other design solutions to be used to achieve the desired outcome.
- In effect, it is becoming a tick a box approach.
- Architects or developers that believe they can devise a more effective solution are limited where a consent authority is blanketly limiting such innovation through applying prescriptive standards. This is hardly a positive design, development or community outcome.
- Further, SEPP 65 should be the non-exceedable standard. That is in part why it was developed.
- Local councils and the Government should not (and are not supposed to) impose increased or additional requirements that are often subjective, inflexible and based on a tick a box approach.