

Local Government and Shires Associations of NSW Submission 66

Dated 27 April 2009

Response to Supplementary Questions

Response to Question on Notice

Question by Hon Matthew Mason – Cox and Hon Michael Veitch

What sort of delays are you typically seeing from the Department of Planning? Can you provide some further information in relation to some of those delays across the councils areas that you are aware of? And How many Councils and the period of time? And which councils would be great, just to help us understand and form our views.

Our view is based on observation and feed back from councils. The advice from councils is that the preparation of LEPs are being delayed by the Department by inadequate policy formulation, inconsistent advice to council staff and lack of resources to fast track these plans.

Our comments are as follows.

a. The implementation of the LEP Standard Template

In September 2004 the Minister for Infrastructure, Planning and Natural Resources announced a set of planning reforms that required all councils to have a new local environmental plan in place within five years. These LEPs would be in alignment with the Standard LEP Template.

In April 2004 every council (152 in all) was directed by the Department of Planning to commence or revise their current Environmental Planning Instrument (EPIs) to comply with the LEP Standard Template. Specific directions varied across the sector, so that to what extent that each council was required to comply with the Template could be resolved. Nevertheless, each council was placed on a schedule to amend their plans.

At the same time the LEP Template was amended significantly to address issues generally raised by councils during the adoption process that caused delays. Other issues, such as how the Template was to integrate Natural Resource planning, were ignored until recent months, which again caused a policy vacuum that caused delays on how to apply the template in rural areas.

The changes to the Template and the lack of direction on some issues, raised many debates between the Department of Planning and council staff – some to be expected but some of which could have been avoided.

Feedback from councils on where and why delays have occurred include the following:

- Some councils have received different advice from regional and head office staff of the Department of Planning that has caused matters to be changed and delayed.
- The introduction of the LEP Panel, at head office in 2006, was suitable for 'spot rezonings' but has not been beneficial in resolving the scope of issues arising for a comprehensive LEP (Principal LEP).
- Issues of substance such as how to deal with Natural Resources within the Template have been ignored until recently- a fuller explanation is provided under question 5.

The application of the LEP Standard Template across the sector is well behind schedule. Only a handful of LEPs have been gazetted to date and it is considered unrealistic that the remaining 140 or more will be finalized by 2010.

In addition, under the current set of reforms, the plan making process is again to be amended, yet the implications on how these changes are to affect the comprehensive LEPs 'in the pipeline' is unclear. The Associations recent submission to the Planning Reform Implementation Advisory Committee in April 2009, has requested the Department to advise each council how the new changes will affect the comprehensive LEPs in preparation before the commencement date by 1 July 2009.

2. Case Study

An email from one council that supports many of the issues raised above. The email states:

'I have been the Director Environment and Planning at X council since the beginning of 2005. For the past 4 years we have been attempting to put in place a comprehensive LEP in line with the template. Prior to that, the previous 2 years had been spent drafting a LEP on the Plan First model, but that's another story.

Over the last 4 years, the draft LEP has languished on Department desks for a combined total of just over two years. That's right - 50% of the time. I know how Council has spent that time - organising supporting strategic reports, analysing data, informing and educating community and Councillors, drafting the local provisions for inclusion into the LEP etc, however I am unsure as to how the Department have spent theirs. As a standard instrument, we could have expected most issues to be well sorted, but basic elements such as the construction of the land use tables are still a shambles in my opinion. our draft LEP contains no contentious matters and as we were one of the first to submit a template LEP, I feel we have been treated poorly as they have used us to sort out internal differences of opinion. It took 18 months to get the first s65 certificate to exhibit and then when we decided we should re-exhibit after the first run, it took another 6 months to get the Department OK. (Note: they changed the template the week after they gave us the first s65 and before we decided to re-exhibit we had a sit down meeting with head office and Legal Branch). So we've done all we can but been let down badly.

My frustration is not with the regional office, who, by and large, have provided Council with good support and co-operation. I think they share the frustration. The problem clearly rests with head office and the bottleneck through Legal Branch and PC, who clearly rule the roost and are adept at turning planning documents into legal ones (without necessarily keeping the original planning intent and without actually making the document any less likely to be legally contentious). In other words every ones a loser. The recent DoP Circular acknowledges the hold up is with Legal and PC without really getting to the heart of the problem or offering any long term solution.'

The Associations acknowledge that the preparation of a comprehensive LEP requires a partnership between State and Local Government. Many of the issues are procedural. Any planning reform needs to separate what can be improved by better processes rather than more regulations. Unfortunately this point sometimes gets lost in the desire to achieve reforms on paper not in practise.

Response to Additional Questions from Members

1. Local Governments Financial Base

Question 1: You say that Local Government in NSW faces a huge infrastructure renewal backlog of more than \$6 billion that continues to grow by more than \$500 million per year. As a result, you state that there is a need to strengthen the financial and resource based of Local Government.

How should or could the financial and resource base be strengthened?

In 2006 the Independent Inquiry into the Financial Sustainability of NSW Local Government headed by Percy Allan, produced its Final Report: *Are Councils Sustainable?* The Independent Inquiry found that around:

- 25% of NSW councils are not financially sustainable under current policy settings;
- 50% are potentially vulnerable; and only
- 25% are in a relatively strong financial position.

A key finding of the Independent Inquiry was that, based predominantly on data from the financial year 2004/05, NSW Local Government had accumulated a huge infrastructure renewal¹¹ backlog of \$6.3 billion that continues to grow by \$500 million per annum. The Inquiry estimated that Local Government would need to increase revenues by at least \$900 million per annum to deal with the backlog and ongoing renewals. This does not include the additional revenue required for growth infrastructure or to deal with demands for improved services.

There are several, sometimes interrelated reasons for this financial situation, including:

- Rate pegging and other legislative constraints on councils fees and charges;
- The decline in Commonwealth and State financial support for Local Government relative to economic growth (GDP, GSP) and the growth in national taxation revenues;
- The expanding roles and responsibilities of Local Government, a trend explicitly recognised by the Commonwealth Grants Commission, The Hawker Report and other reviews;
- Cost and responsibility shifting onto Local Government by the State and Commonwealth Government, again a trend recognised by the Hawker Inquiry and subsequently acknowledged by the national Intergovernmental Agreement Establishing Principles Guiding Intergovernmental Relations on Local Government Matters, (2006); and
- Deficiencies in Local Government financial and asset management practices.

The central issues that need to be addressed to improve this situation are:

- Defining Local Government's role and establishing a mechanism to allocate functions and associated revenue raising powers to Local government; and
- Improving the adequacy and flexibility of Local Government's revenue base to meet the demands being placed on it.

The latter would include the relaxation or removal of rate pegging and the allocation of a greater share of national taxation revenue to Local Government.

2. Locality Based Model

Question 2: In your submission you suggest for consideration the introduction of a single planning document to apply to whatever land use control format is adopted. Such a document would replace SEPPs, REPs, and LEPs, with a single document. You also advocate using a land parcel or locality model instead of zoning controls as the format for land use control. This concept was raised with the Committee at its previous hearing.

Should such a document also incorporate what is currently contained within Development Control Plans?

How do you envisage such a document would be created, and amended when necessary, in terms of approval and right to seek amendment. Would it be the current process for LEPs?

Can you expand on the land parcel or locality model concept?

Currently councils are required to draw together, and where necessary, interpret all relevant Environmental Planning Instruments (at regional, state and local level) as well as any relevant Development Control Plan, to determine the planning controls for a parcel of land in relation to a specific activity, during the assessment process (under s 79C of the *Environmental Planning and Assessment Act 1979*).

It would be in Local Government interest to have a process for combining all planning controls within 'one document' on a spatial basis. The Associations do not have a fully developed proposal on how this would be achieved. However, the need to combine relevant controls into a more accessible, coherent and logical manner to avoid misunderstandings and potential for disputes is accepted as critical in reforming the planning process. The ability to compress such into a single document is possible with e planning initiatives.

The Associations suggest that placing EPIs and DCPs within a spatially based electronic format would contribute to the process of simplification of the delivery of complex information.

This does not necessarily mean that all planning documents are compressed into 'one plan' or that the system has to be inappropriately 'dummied down' in an attempt to make the process more coherent. This is considered unrealistic and counter productive in achieving better planning outcomes which requires the consideration of a diverse range of issues that cannot be condensed.

What e-planning can achieve is the use of technology-based tools and systems to deliver planning information and services to the community in a format understood by the community. Translating EPIs and DCPs into an e-planning formats will allow the applicant to interrogate the system to ascertain the specific controls that apply to a certain parcel of land and applied to the proposed activity.

Many councils have adopted e-planning practises to their current practises. Currently the Associations are working with the Department of Planning to convert the NSW Housing Code into an e-planning format.

The current reform agenda focuses on the standardisation of information across the sector. As reasonable as this approach may be, there are limits to what such as approach can achieve. Planning and environmental issues are complex by their nature and the pressure on the consent authority to consider more rather than less issues, is likely to increase in the future as climate change and other more compelling issues have to be wrestled with. A robust system needs to be implemented that can deal with complexity rather than the reverse.

E- planning is not the panacea for the ills of the planning system in NSW, but the process of converting and delivering information into a e planning context forces clarity and precision in the decision making process, allows for complexity and identifies the range of choices required. When applied on a spatial basis it provides clarity to councils and applicants alike. It can be specifically useful in areas where ambiguity currently reigns.

3. Sustainability and Population Growth

Question 3: In your submission you state that Local Government believes there is a limit to sustainable population growth and that all planning and development decisions need to consider whether this limit has been reached.

When is population growth unsustainable? At what locations or areas do Local Government think the limit for population growth is close to being reached?

This is a complex question that involves a multitude of variables. It is exceedingly difficult to prescribe a specific limit for any particular locality, city, region or state that would remain static over time. Its determination involves consideration of social, technological, economic and environmental changes and practices. It can only be attempted to be answered though the planning system of which Local Government has a role to represent local communities.

Local Government recognises that population growth should be accommodated in a manner that provides for housing choice and affordability, access to employment, and efficient transportation systems, while responding to the diversity of constraints, circumstances and needs that characterise different localities.

Local Government considers that it has a vital role to play in protecting the liveability of communities – existing and proposed, by managing growth in light of constraints – economic, social and environmental. This principle allows for legitimate and well placed growth and renewal across the sector, in locations and of a scale that is to enhance the liveability of the area that it is planned for. The co-ordination and provision of infrastructure is a practical issue that constrains the opportunity for growth when delayed, ignored or ill considered by inadequate funding mechanisms in place.

The debate is generally about the scale of the proposed growth and its location on the edge or within existing communities and who pays for provision of local infrastructure and services. Local

Government engagement in all these issues is essential to ensure that the growth is based on principles of sustainability.

4. The Integration of natural resource planning and land use planning

You advocate the development of an integrated and spatially expressed natural resource plan produced by the State Government in which all interagency issues regarding natural resource management have been resolved. You say the detail in this plan needs to be at a scale consistent with the LEP.

Can you expand on the detail/information required in such plans to place them at a scale consistent with the LEP development?

The Associations recently commissioned a study called the *Review of the Integration of the NSW Land-Use Planning System and Regional NRM Delivery Model*.

This report produces a set of findings that advocate for the improved integration of Natural Resource Management within the land use planning system.

The review identifies how greater integration of NRM and land use planning can be achieved through the improved mechanisms that might be adopted for the gathering, compilation and distribution of land use planning and NRM spatial information. Currently information is collected at very different scales between that of the Catchment Management Authority and Local Government. In addition, the information provided by the CMA and other agencies is in a format that is difficult to translate into a Local Environmental Plan. Agreement is needed between local and state government on the scale and accuracy required to translate regional information into a local context.

The discussion paper is available from the following link.

[http://www.lgsa.org.au/resources/documents/Integrating NRM Planning Discussion Paper 170209 .pdf](http://www.lgsa.org.au/resources/documents/Integrating_NRM_Planning_Discussion_Paper_170209.pdf)