

Submission  
No 35

## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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## **Mosman Council's submission to the NSW Legislative Council's Standing Committee on State Development Inquiry into the NSW planning framework**

### **(a) *the need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development,***

The NSW planning legislation was developed over 30 years ago and has undergone significant changes since then, often in an ad-hoc manner. This has resulted in the NSW planning system becoming overly complicated and difficult to work with for all stakeholders. This was recognised in the Department of Planning's (DoP's) Discussion Paper titled "*Improving the NSW Planning System*", which identified recommendations for improvements.

Council's submission in relation to the Discussion Paper outlined concerns including:

- The lack of detail of the proposed reforms;
- Insufficient consultation with stakeholders;
- Reduced community participation in the planning process;
- Removal of Council's powers;
- Focus on process efficiency rather than achieving high quality outcomes; and
- Expanding the role of private certifiers in the face of the fundamental conflict of interest problems that exist in the existing certification system; and
- Increased cost to Council of administering the system and undertaking an enforcement role.

These concerns do not appear to have been taken into account by the DoP as planning reforms have been recently gazetted without appropriate consultation or stakeholder input. It is essential that planning reforms be undertaken only after the specific details of any draft legislation has been made publicly available, extensive community consultation has been undertaken and any submissions in response to the exhibition have been appropriately considered.

The principles that should guide further development of the NSW planning legislation include:

- Sharing of responsibility for planning between State and Local Government;
- Providing opportunity for public involvement in the planning process;
- Simplifying the planning system for all stakeholders; and
- Recognising the importance of environmentally sustainable development and climate change mitigation.

### **(b) *the implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW,***

The COAG's reform agenda broadly covers issues relating to regulatory reform, climate change, housing affordability and infrastructure planning. Reforms in these areas are generally supported, however, the specific details of any legislative reforms should be made publicly available for discussion purposes prior to adoption or implementation.

**(c) *duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation,***

The duplication of processes under State and Commonwealth legislation adds to the complexity of the planning system in NSW and should be amended.

**(d) *climate change and natural resources issues in planning and development controls***

The issues associated with climate change adaptation, such as responding to the risk of sea level rise, needs to be better integrated into the NSW planning legislation. The State government needs to take a lead on this issue. A piecemeal approach by local government is inefficient.

The NSW planning legislation, as it stands, requires a minimum standard of energy and water efficiency for developments via BASIX. Councils have no power to impose their own, more stringent requirements. While it could be argued that having a uniform system across the State gives developers necessary certainty, this benefit needs to be offset against other benefits that it cuts off. Individual councils are unable to exploit particular water and energy efficiency measures that have relevance in their areas. If BASIX was supplemented with specific measures incorporated into each local environmental plan, much greater progress could be achieved towards emissions reduction. At the same time the stock of energy and water efficient housing would be expanded (an important consideration for low income households). An example of a supplementary condition would be that where air conditioning was to be installed, roof-mounted photovoltaic panels would be a requirement. Where the development was not amenable to solar panels a levy could be imposed to fund panels on a local school shopping centre or other suitable site.

Allowing councils to specify additional requirements on top of BASIX would also provide a migration path for BASIX itself by encouraging experimentation and innovation across all local government areas. Where the local population, through its local Council, wished to follow a strategy of increasing property values by insisting on more rigorous building sustainability standards than surrounding areas, it should be free to do so.

This is not to say that BASIX itself should not be strengthened. Indeed it should as the efficiency of Australian homes falls well below international standards (C Hayes, R Horne, C Jensen and R Wakefield, "An International Comparison of Housing Energy Efficiency and Performance Standards, COBRA 2006, Royal Institute of Chartered Surveyors ISBN978-1-84219-307-4)

**(e) *appropriateness of considering competition policy issues in land use planning and development approval processes in NSW,***

There is a need to consider competition policy in a broad strategic planning sense at a regional level to ensure that land use planning provides for an appropriate mix and distribution of commercial centres. This should be considered in the preparation of regional development strategies which will underpin local environmental plans.

However, it is not considered appropriate to apply competition policy issues as a planning consideration when undertaking development assessment for the establishment of new businesses within an area appropriately zoned for such uses.

**(f) *regulation of land use on or adjacent to airports,***

Land uses on or adjacent to airports should be regulated in the same manner as the surrounding land as the impacts of development on such land extend to the surrounding area.

**(g) *inter-relationship of planning and building controls, and***

There has been significant change in the inter-relationship between planning and building control over the past 10 years, primarily as a result of the introduction of the private certification system. Council receives many complaints about private certifiers not doing their job properly. This is compounded by the perceived conflict of interest associated with the person responsible for checking the work – the certifier, being paid by the developer. Also, where private certifiers do identify unauthorised building work, the current system only requires the certifier to issue a notice and then leaves Council with the responsibility of resolving the issues but with no fees payable to Council.

The proposed expansion of the private certification system to allow private certifiers to issue approvals for a greater range of “complying” developments through the NSW Codes will exacerbate the problems of the existing system by giving certifiers greater power but with less accountability than Council. The community has a right to be notified about and comment on proposed new developments, especially where these may affect their amenity. Responsibility for impartially assessing such development, except for minor matters, should remain with Council. Further, if things do go wrong during the construction process, the community has an expectation that they can contact Council to resolve such issues. This is impractical if Council is not the consent authority.

**(h) *implications of the planning system on housing affordability.***

Councils need to have more scope for addressing housing affordability. Strategies could include removal of the barriers to the provision of affordable housing, preserving and offsetting the loss of low cost housing, providing incentives for new affordable housing and securing dedicated affordable housing contributions.

As an example of a strategy which is not currently used in NSW, although it is in SA and the UK, consider inclusionary zoning: when an area is rezoned for higher density development, or where planning rules are varied to permit higher density or some other valuable concession, an affordable housing contribution is imposed. This contribution could be a cash payment, or an in-kind contribution – a site, a dwelling, or an affordable lease. At present such contributions can only be made on a voluntary basis through a planning agreement.

Any modification of the NSW Planning Framework should be informed by the Australian Housing and Urban Research Institute (AHURI) Report 120 *New*

*directions in planning for affordable housing: Australian and International evidence and implications* <http://www.ahuri.edu.au/publications/projects/p60322>