

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Crighton Properties Pty Limited
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The Committee Chair
Standing Committee on State Development
NSW Legislative Council
Parliament House, Macquarie Street
SYDNEY NSW 2000



Attention: The Hon. Tony Catanzariti MLC

Dear Sir

We refer to your Committee's "Inquiry into the NSW Planning Framework" Discussion Paper (November 2008), submissions for which, we now understand, close on Friday 13th February 2009.

The writer is the Managing Director of Crighton Properties Pty. Limited, a Company that has been engaged in the land development business in NSW for the past 28 years - in Sydney's Southern and Western suburbs, on the Central Coast and on the Mid North Coast.

The writer was a Councillor of the Urban Taskforce Council of Australia (NSW Division) for 8 years (1993 - 2001) and an Executive Committee member and Director, of the Urban Taskforce Australia Limited from 2002 to 2008.

The attached submission deals with Terms of Reference 1(e) of the above referred Inquiry, in particular, 1.21;

"Whether a consent authority (a Council) should (be required) to consider competition policy issues when planning land use or determining development applications".

The writer has strong views on the above issue and (if needs be) would be pleased to appear before the Committee to elaborate on the concerns expressed in the attached submission.

Yours faithfully
CRIGHTON PROPERTIES PTY. LIMITED



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MANAGING DIRECTOR
Attch.



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**SUBMISSION TO THE
STANDING COMMITTEE ON STATE DEVELOPMENT
LEGISLATIVE COUNCIL**

INQUIRY INTO THE NSW PLANNING FRAMEWORK

We refer to Terms of Reference 1(e)

Appropriateness of considering competition policy issues in land use planning and development approval process in NSW.

In particular 1.21

Whether a consent authority (a Council) should (be required) to consider competition policy issues when planning land use or determining development applications.

Local Government Authorities are exempt from conflict of interest protocol in circumstances, where they choose to process a properly lodged Development Application (DA), despite the fact that the development proposed would compete with a Council owned and run business enterprise.

To cite a case in point DA No. 10.2005.418.1 for a site in Jamberoo was lodged with Kiama Municipal Council (Council) by Crighton Properties Pty Ltd (Crighton) on the 12th December 2005, for a 190 home Retirement Village (RV) and a 90 bed Aged Care Facility (ACF) – a proposed development known as Woodstock, which was estimated to cost \$70,000,000.

Council is, and has been for many years, a Retirement Village and Aged Care Facility operator, in the town of Kiama. Council's RV and ACF are known as the Blue Haven Retirement Village. The DA lodged by Crighton was for a development located 14kms from Council's RV and ACF and, as a consequence, it was obvious that Crighton's proposed development would provide strong competition to Council's expensive high rise development, located as it is, in the Kiama C.B.D. During the course of the assessment of the DA, Council borrowed \$38,000,000 to develop Stage 5 of its Blue Haven village.

Council initially refused to process DA10.2005.418.1 claiming that the DA was incomplete, but the Land & Environment Court (L&EC) determined that the DA was a properly lodged DA, containing all the information needed for assessment and directed Council to process the DA.

Council subsequently claimed to have retained an "independent" consultant, to assist it in the processing of the DA, but the "independent" company retained by Council, Judith Stubbs & Associates (JSA) had already been engaged by Council to prepare an Exemption Certificate Application from SEPP (SL) 2004, (the Senior Living SEPP under which DA 10.2005.418.1 was lodged). The Exemption Application was

completed and lodged with Council by JSA on 20th December 2005 - 8 days after Crighton's Development Application was lodged with Council.

This serious conflict of interest arises when it is noted that:

- JSA's views on DA 10.2005.418.1 were obviously coloured by the Exemption Certificate Application that they were instructed to prepare for Council, which Application argued for all future RV's in the Kiama LGA to be located only on specific land parcels nominated by Council. The Woodstock site was not one of the two sites nominated in the Exemption Application.
- The Blue Haven Retirement Village and ACF is a wholly owned subsidiary of Kiama Municipal Council.
- Council's General Manager receives part of his salary package from the Blue Haven Retirement Village.
- Several of Council's Councillors are Board Members of Blue Haven Retirement Village.
- The Mayor is the Chairperson of the Board of the Blue Haven Retirement Village.

Council also owns and operates a subdivision business in the nearby town of Gerringong, the land sales from which, would have been adversely impacted upon, by Crighton's DA, because, the Crighton DA featured single storey low density homes, which compete directly for retired buyers who might have otherwise considered purchasing a block of land from Council, and erecting a spec home thereon - as an alternative to purchasing a new, completed home in the Woodstock Retirement Village, the subject of DA 10.2005.418.1.

In this case, a blatant conflict of interest arose, which cumulated in the Council refusing the Development Application on 22 grounds – 20 of which were rejected by a subsequent Land & Environment Court Appeal.

Action Requested:

In the next amendment to the EP&A Act, it must be made illegal for a Council to process a Development Application where any conflict of interest arises.



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