

Submission
No 34

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Your Ref:

Our Ref: **SG:KEM:A02/0261-9 I/2008/24938**

12 February 2009

The Hon Tony Catanzariti MLC
Committee Chair, Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Catanzariti

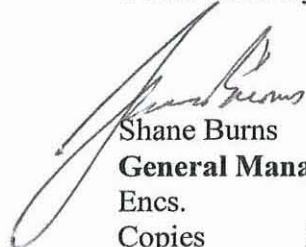
**NSW LEGISLATIVE COUNCIL'S STANDING COMMITTEE ON STATE
DEVELOPMENT – INQUIRY INTO THE NSW PLANNING FRAMEWORK**

Further to your letter of 17 November 2008, I have much pleasure in enclosing Council's submission to the Inquiry.

Should you have any further questions arising from the submission, please contact Council's Director Planning and Environmental Services, Stephen Gow, on telephone (02) 6770 3841 or by email to sgow@armidale.nsw.gov.au.

Thank you for the opportunity to present our position to you on the important issues being considered by this Inquiry.

Yours sincerely,



Shane Burns
General Manager
Encs.
Copies

Mr Richard Torbay MP
Cr Peter Ducat, Mayor
Mr Shane Burns, General Manager
Ms Kathy Martin, Strategic Planner
Local Government and Shires Association NSW
Planning Institute of Australia.

thrive
in Armidale

**SUBMISSION TO THE
INQUIRY INTO THE NSW PLANNING FRAMEWORK**

By the NSW Legislative Council's Standing Committee on State Development

TERMS OF REFERENCE

That the Standing Committee on State Development inquire into and report on national and international trends in planning, in particular:

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

Questions

Is there a need for further development of planning legislation in NSW?

The planning legislation in NSW is in need of significant change.

The current planning legislation in NSW is overly complex, resulting in unnecessary difficulties and costs for stakeholders. The NSW system has continued to rate poorly in the Planning Institute of Australia's annual "Report Cards" for 2006 - 2008¹. NSW continues to rate poorly against most other States in terms of its current governance structures for managing development and growth.

The planning legislation in NSW has been in place almost 30 years and has been subject to significant amendments. Implementation of the legislation at local government level has also been affected by case law and the introduction or changes to other legislation at both the Commonwealth and State government level. The resulting legislative complexity is further exacerbated by the regular release of State Government policies, circulars and practice notes.

Together with various forms of approvals and certifications now embraced under the one statute, the planning regime in NSW has become unwieldy and perplexing and the system is rarely well understood except by experienced specialists and legal practitioners. Councils have become increasingly concerned with process rather than environmental planning outcomes, as the system's complexity leaves Councils particularly vulnerable to legal challenges based on procedural matters.

To date, the introduction of the Environmental Planning and Assessment (EPA) Amendment Act 2008 is proving to be a mixed blessing in terms of the reducing the complexity of the current legislation. For example, the introduction of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 has resulted in a convoluted and complex system of dual policies which will be in place until February 2010². Generally the staged implementation of the range of amendments is adding to the confusion and complexity of the current system.

¹ See <http://www.planning.org.au> for further details

² See the attached flowcharts developed for Exempt and Complying Development at Armidale Dumaresq.

What further changes to the planning legislation are needed?

Given that the planning legislation is in need of a significant overhaul, the preferred approach is to repeal and replace the existing planning legislation for NSW with a new Act and regulations. The current planning system has become so unwieldy it is difficult to envisage any amending legislation being able to simplify or streamline the system.

What principles should guide any future development of planning legislation in NSW?

Principles to guide future development of planning legislation in NSW include:

- Planning legislation is consistent with and fits into a national planning framework (yet to be developed)
- Supports and encourages sustainable development
- Look at best practice legislation arrangements interstate and overseas.
- Preparation of the legislation includes extensive and genuine consultation with local government, the development industry and the public.
- Preparation of the legislation involves allocating sufficient resources and setting realistic timeframes to ensure that options can be fully researched and considered
- Provide a more legible and transparent platform for system administration.
- Avoid complexity of procedures. Implementation of the legislation should be able to be represented diagrammatically as a simple flow chart.
- The concepts and requirements are able to be readily understood by the public. Eg avoid terms like 'instrument'
- Avoid duplication with other legislation.

1(b) The implications of the Council of Australian Governments reform agenda for planning in NSW

Questions

Are the reforms and discussion at the Council of Australian Governments level important for the future development of the NSW planning framework? What are the specific implications of the work of the Council of Australian Governments on planning in NSW?

Until recent times, it appears that the reforms and discussions at the Council of Australian Governments (COAGs) level have been mainly focused on simplifying and reforming the development assessment systems across Australia, for example through the work of the Development Assessment Forum and the Australian Government's support for an electronic development application and assessment process. Many of the recent reforms to the NSW planning legislation reflect COAG's work, particularly with regard to development assessment.

Improving the development assessment system continues to be a COAG 'hotspot', particularly as part of its business regulation and competition reforms. Other matters on COAG's reform agenda³ which have implications for land use and planning in NSW include the following:

³ Communique of the Council of Australian Governments' Meeting, Adelaide, 26 March 2008

- Ensuring a sustainable water supply for Australia, including the new governance arrangement for managing water in the Murray-Darling Basin
- Meeting the challenges of climate change
- Having a more nationally-coordinated approach to infrastructure reform
- Addressing the decline in housing affordability
- Increasing productivity by reducing the regulatory burden on businesses and making it easier for companies and governments to do business in Australia.

Planning is increasingly dealing with national issues that traverse jurisdictions. The reforms being discussed by COAG will have a corresponding increase in relevance and importance to planning in NSW, particularly where resolution of issues requires a co-ordinated approach between the three tiers of government. Also, the types of planning issues to be addressed in the near future will extend beyond development assessment systems to the strategic level of land use planning.

The work of Business Regulation and Competition Working Group in advising COAG on improved regulation making and review will also have implications for planning legislation in NSW. COAG's agreement "on the importance of ensuring the ongoing flow of new regulation is stemmed through a culture of continuous improvement" is supported.

Given the seriousness and relative urgency of the issues that need to be resolved and their relationship with land use planning, a national planning system based on best practice that traverses jurisdictional boundaries may be worthy of consideration. Issues such as climate change and sustainable water supplies will affect population distribution and land use patterns over many years and co-ordinated planning initiatives and responses would be beneficial in managing change. A national approach would also make it easier for interstate developers, including families, to negotiate a common planning system. A more flexible and responsive workforce would be available if practitioners in both the private and public sectors are able to move interstate without having to learn a whole new legislative framework. A national legislative framework would also facilitate the implementation of reforms, such as streamlined development assessment systems and electronic development application and assessments.

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

Questions

What are your experiences involving assessment processes under NSW and Commonwealth environment legislation for controlled actions? Did the bilateral agreements reduce duplication of approval procedures for the controlled action? Are there areas of duplication that need to be addressed?

To date, Council's experience with the duplication of processes under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and NSW planning, environmental and heritage legislation has been relatively limited. However, as a general comment Council does not support dual requirements for approval or assessment processes under NSW and Commonwealth legislation. The duplication of processes may result in the inefficient use of public resources and be unnecessarily onerous on proponents.

Another area of duplication with Commonwealth legislation is the Disability Discrimination Act 1992 (Cth), the NSW Anti Discrimination Act 1977 and the Building Code of Australia.

The result is a system that is unnecessarily complicated for practitioners and the public.

1(d) Climate change and natural resources issues in planning and development controls

Questions

How should climate change be addressed in the planning framework?

It would be desirable for the response to climate change to be within a national framework with the policies and plans of each jurisdiction being consistent with an overarching national approach to such matters as population distribution, land use patterns and infrastructure provision.

When the likely impacts of climate change are known for a region and a risk analysis undertaken, the adaptation and mitigation measures relating to land use planning can be incorporated into planning strategies and policies.

Is the current framework adequate to consider the potential effects of climate change?

In terms of available tools, the current framework of local environmental plans, development control plans and development applications is considered to be adequate to accommodate the potential effects of climate change once likely impacts and appropriate responses have been properly identified.

How should natural resources issues be taken into account in the planning and development approval framework?

Natural resource issues should be taken into account at the strategic planning level, for example when identifying planning constraints as part of a land use strategy. Appropriate provisions should also be included in State or local plans and policies.

There is currently a range of legislation in NSW concerned with natural resource management and this legislation should be reviewed along with the planning legislation to ensure that the statutory framework is complementary. This may be particularly relevant to farming and associated activities which have not tended to require consent under the planning legislation.

An example of where legislation should be reviewed and clarified is the approvals required for the removal of native vegetation under the Native Vegetation Act 2003 and the EPA Act 1979. At present a development involving the removal of native vegetation may be granted consent under the EPA Act 1979 but not approval to remove the native vegetation under the Native Vegetation Act 2003. The assessment and determination processes are not integrated. Similarly the current provision for clearing native vegetation in the NSW Standard Planning Instrument does not allow Councils to require approval for the removal of native vegetation that is exempt from approval under the Native Vegetation Act 2003. This issue can be

particularly relevant for development on the urban fringes where it is desirable to retain scenic areas.

See also comments about the NSW BASIX system under 1(g) below.

1(e) Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

Questions

Should competition analysis be a part of local planning decisions?

Including competition analysis in local planning decisions is not supported. Competition policy is tied more to the political stance of the government of the day, rather than to land use planning which has a longer timeframe.

Of concern to planners has been the tendency for major retail enterprises to abuse the intent of the planning system, for example by lodging objections or appeals whose real intent is to delay market entry by competitors.

When considering the economic impact of a proposed rezoning or development, planning takes a more holistic approach considering community-wide economic impacts rather than focusing on specific issues such as competition between individual enterprises. Including competition policy as a matter for consideration would add to the complexity of development assessments and supporting information, particularly if such a requirement were extended across a broad spectrum of industries, not just the supermarket industry. This raises the question as to how it would be determined that a particular local planning proposal should be assessed in terms of its compliance with competition policy.

How should competition be factored into the planning system, if at all?

Including competition analysis in planning system is not supported. However, should it be decided that competition policy be a matter for consideration when making planning decisions, it should be introduced at the national level so that it applies across all State jurisdictions.

1(f) Regulation of land use on or adjacent to airports

Questions

*Is the current arrangement for regulating land use on or near airports appropriate?
Is there sufficient involvement of the community within which the airport is located under the current system?*

The Background information provided with the Terms of Reference for the Inquiry refers to the operation of airports under the *Airports Act 1996*. This Act applies to metropolitan, not regional airports, such as the Armidale Regional Airport. [*However, Council's Airport Manager has indicated that he will provide some comments in relation to the Term of Reference and our local situation*].

1(g) Inter-relationship of planning and building controls

Questions

Is the current inter-relationship between the planning system and the regulation of building works appropriate?

At present the inter-relationship between the planning and building controls is embodied in Part 4 of the EPA Act 1979 which has become overly complex. The associated Regulation is hugely complicated and it is difficult to ensure that all of the relevant provisions are captured, for example the provisions relating to temporary buildings.

Most of the complexity arises from the major reforms to Part 4 in the late 1990's and subsequent amendments which have resulted in lengthy assessment checklists for even simple developments. One suspects that the time and resources involved in preparing and implementing provisions for Exempt and Complying Development would considerably exceed those that were previously required for preparing and implementing Council Local Approval Policies or determining whether an activity only required building, not development, approval.

An ongoing concern has been the limitation that the State government has placed on Council's ability to require further energy efficiency measures than those provided for in BASIX. The option to go beyond BASIX controls for energy or water efficiency should be made available to local councils, where a policy initiative is supported by the local community.

In Armidale for example, there are concerns regarding winter woodsmoke pollution. Solid fuel heaters are included as a supplementary heating mode in BASIX, and although there is reference to local policies controlling their installation, our experience is that this is an activity where three Government agencies (DECC, DoP and DLG) all have a role to play and the ability for local Councils to introduce any ban on woodheater installations in particular localities is highly questionable.

This Council has now been seeking clarification from all three agencies for over six months on this important local issue, where staff are having to contend with a significant local pollution issue in an environment of legislative complexity and overlap.

1(h) Implications of the planning system on housing affordability

Questions

What is the impact of the planning system on housing affordability?

Our view is that market forces primarily dictate housing affordability – issues such as interest rates, building costs as well as supply and demand for land all have an impact.

In addition, a significant concern that has become apparent over the past decade is the tendency for Australian dwellings to increase in floor area, despite the fact that the average household size has been continuously declining for many years. This appears to reflect the impact of consumerism on Australian society, a trend which the planning system alone cannot control. It is highly questionable and of concern that larger and larger homes can be either affordable or sustainable.

Where there is an adequate supply of residentially-zoned land and where any developer contributions are financially reasonable, as is the case with regional areas such as Armidale Dumaresq, the planning system is likely to have a limited effect on housing affordability.

What changes, if any, need to be made to the planning system to improve housing affordability?

In terms of housing affordability, changes to the planning system that would streamline planning procedures would potentially improve housing affordability. Quicker rezonings to bring needed land onto the market as well as quicker development assessment times would assist in reducing the cost of housing. Further education of home builders as to sustainable dwelling design would also be a sensible initiative for governments across Australia.