

## **INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK**

**Organisation:** Central NSW Councils (CENTROC)  
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**Date received:** 1/05/2009

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*Forwarded by Ms Jenny Bennett Submission  
Friday 1 May  
Inquiry into NSW Planning Board*  
*Jenny Bennett*



**CENTROC**

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Chairman: Cr Neville Castle  
Mayor Lithgow City Council

Director of the Standing Committee on State Development  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney 2000

Dear Sir/Madam

#### **RE Review of planning legislation in NSW**

Thank you for providing an opportunity for the region to respond to you regarding planning legislation in NSW.

Central NSW Councils (Centroc) represents over 236,000 people covering an area of more than 70,000sq kms comprising Bathurst Regional, Blayney, Boorowa, Cabonne, Cowra, Forbes, Harden, Lachlan, Lithgow City, Oberon, Orange City, Parkes, Upper Lachlan, Weddin, Wellington and Young Councils and Central Tablelands County Council.

Over the past two years the issues that have arisen specifically regarding planning are the following:

- broadband where Centroc members are keen to see the State introduce planning legislation to assure broadband into greenfield sites
- accreditation of building surveyors
- implementation of the standardised LEP
- State SEPP for Rural Lands

**Most importantly Centroc commends to you that planning legislation needs to be completely reworked** with a view to NSW being the best of breed in Australia. The current pace of change needs to be slowed and time taken to conceive, design and develop a new nationally competitive planning system.

Overall, we commend that smart sensible and simple legislation be developed that gets our members out of the barrage of change and amendments with their corollary impacts especially training and travel where our members are already short staffed.

Further, while tackling it in different ways, our members are typically pro-development. We go out of our way to encourage growth in our region and find that the current framework has a variety of impacts where the net affect is more pressure on our Council staff and budgets as well disaffected developers and community members. This creates a downward spiral of poorer management of the development process.

Not raised in your heads of consideration but very poignant in this region is skills shortages. The toxic work environment generated under current legislation has affected planners and more recently building surveyors. We have less and less of these professionals in this region, and those we can attract are at top dollar due to shortfall of professionals in the industry (on the Government side) as well as normal rural attraction issues.

Please contact the Centroc Executive Officer, Ms Jennifer Bennett, on 0428 690 935 with any enquiry regarding this matter.

Yours Sincerely

A handwritten signature in dark ink, appearing to read 'N. Castle'.

Cr Neville Castle

CHAIR

Attachments

1. Addressing the heads of consideration
2. The Building Professionals Board Submission

## **ADDRESSING THE HEADS OF CONSIDERATION**

### ***(a) The need if any for further development of the NSW Planning Legislation over the next 5 years, and the principles to guide such development***

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Centroc commends a complete rework of NSW Planning Legislation such that this State is 'best of breed' in the nation.

The current planning and building systems are complex and overlapping. The following are the key areas where there could be considerable improvement. It is Centroc's view that the constant "branch" type of reform needs to be replaced by a systemic – "root and branch" – reform process. In this way the vagaries and complexities that have crept into the system can be ironed out and a new streamlined and integrated system put in place.

Regarding the development of any new legislative process, the region is looking for solid and reasonable lead times, good preparation and consultation on draft legislation.

When the implementation phase of implementation comes, consideration should be given to the special needs of Central NSW regarding training for field staff and for the Department's own regional office staff to assure similar interpretations of legislation.

We ask the Standing Committee to note that individual Centroc members have raised issues more specific to their local government areas and these should be taken into consideration too. The legislation should, where possible, enable the very different communities in Central NSW to retain their flavour and processes regarding development.

### **Environmental Planning and Assessment Act, 1979**

In the first instance, our members commend to you that it is time for the introduction of smart, sensible and simple legislation. Our members believe that the layers of regulation and reform are leading to court driven legislation not pro-active or smart policy by responsive change or design of legislators. In our experience, exempt and complying is about turn-around times on development applications to satisfy the political will by negative media, not making the system easier for Mum and Dad Builders or for the regulator.

Of particular concern in this region is the complexity of the system. Many of our developers are not savvy, they are Mum and Dad Builders. These people need to come to terms with their fit in the current framework that is :

- Implications and obligations of the Act and Reg's as well as SEPP's and Ministerials
- Designated, (Major Environmental Impact)
- Integrated (moderate environment impact needs a license)
- Part 3A – State Significant
- Local (Does not require State License and includes housing, commercial and industrial)
- Council Based exempt and complying (muddled by State Codes and SEPPs)
- Government Based Exempt and Complying
- Other legislation from other sectors of Council, for example
  - Water and Sewer
  - Wood fired heater
  - Skip bin out the front

Further, with ongoing ad hoc reform and regulation, the process to get to actually build involves more and more steps where the smaller players that typify development in our region find it bewildering and lay the blame at Councils' doors. This impacts on our standing in the community, development in general and on our staff in particular. One of our General Managers has an AVO taken out against him from a problematic developer.

The KISS principle should apply to changes in development legislation, particularly residential development. If a person is building a house in a residential zone, it should be permissible – if it's permissible it should be easy. The simple Building Permit process of 15 years ago was one of the better aspects of what we had.

### **General Planning Issues**

In addition, Centroc members make the following commentary regarding some of the general issues that need to be considered:

- **Efficient Making of LEPs**

The role of Parliamentary Counsel (PC) needs to be addressed. This is an area where the majority of delays in the plan making process occur. Councils cannot get direct access to discuss issues with PC, being required to direct enquiries through the Dubbo office of the DoP.

It is considered that PC should check the plan before it goes to advertising to ensure that it can be adopted if there are no changes.

Further, there is no consistency in the PC process. There are problems with the different approaches taken by any number of people who may look at a plan. There should be

consideration of one parliamentary drafting person being responsible for a region, such as Centroc, or a least only one PC for each new plan.

This causes delays in the process that cannot be blamed on councils.

- **Draft LEP legal status**

Legislation should include clear direction on when a Draft LEP has legal status. Section 79C requires consideration of a draft, but recent court decisions such as *Lithgow City Council v Oliver* gave no weight to the draft LEP that was on the Ministers desk at the time of the hearing.

- **Notification of Development**

Notification of Development needs to be addressed. Currently community members assume that making a submission against a development is a right of veto. Further, some are using the sec 123 due diligence appeal process as a back door way of moving against the merit of a development, that "I wasn't notified properly or if the Council did not deal desirably with my objection, and now I am going to have another go at the merit of the proposal."

- **Broadband into green field sites**

Centroc members believe that broadband is as necessary as a phone line or electricity for businesses and families to access educational, health and commercial activities. Any new legislation should mandate broadband into green field sites.

- **Business zoning in the standard LEP**

This is a significant issue for us. The current zones prescribed in the standard LEP instrument do not adequately provide land uses that appropriately protect the integrity and sustainability of existing CBD areas which is essential in regional areas. The current zones available within the standard LEP promote retail development outside of the CBD areas.

This issue is also addressed in the section on competition policy. In short however, to allow commercial activities outside our town centres has the net affect of decimating core CBDs. This is a real issues for regional communities and innumerable towns around the State can cite years of effort to try and shore up their CBDs after development on the town fringes takes place.

- **Lot sizes in a rural zone with a dwelling entitlement**

This has been an issue for our members, now addressed by a State SEPP, any modifications to legislation should take into account the needs of rural communities to

ensure continuity as outlined by the Centroc submission on this issue and available upon request.

- **Minor Modifications of consent**

Members are suggesting that there needs to be some commonsense movement here. Examples are the movement of a window or verandah by 300mm - representing no real change, but requiring a modification.

- **Court System Reform**

Legislative reform is required to provide protection to councils who file a submitting appearance in Court pursuant with direction of the High Court. The filing of a submitting appearance is required in cases where a point of law is not to be argued by council. In such cases, protection should be provided to council's from any additional court costs associated with other parties arguing issues. Currently case law determines the inconsistent application of these costs therefore casting doubt on the appropriateness of filing a submitting appearance.

- **SEPP 64 Advertising and Signage**

The prescriptive and inflexible nature of SEPP 64 is difficult to contend with on a day to day basis. Of particular concern of members is its impact on signage restrictions within Heritage Conservation areas, where the SEPP prohibits any signage other than that of building or business identification, therefore basic business details commonly expected such as a telephone number are prohibited.

- **Part 3A Development**

Members generally support the use of Part 3A for determining important, public interest development. Of concern to members is the possible misuse of Part 3A development for fast and inappropriate development proposals. Due diligence in the assessment and community involvement with such development is paramount.

### **Regarding the implementation of any change to legislation**

- **Location of training and time away from the office**

Location of training and time away from the office are issues for staff in Central NSW. Centroc has a regional training service and would welcome the opportunity to tailor regionally based training for our members.

- **Consistency of application in implementation**

Centroc commends regional offices work with Council planning staff to develop a consistent application of the any new legislation.

**Concerns regarding the need for further regulation to be developed under the existing system:**

Regarding recent planning reforms, the following issues have been raised as the "devils in the detail."

- Preparation of Regulations relating to procedures for IHAPs and Planning Arbitrators and the circumstances allowing legal or other representation (S.23J; s.23L).
- Circumstances under which physical and substantial commencement is taken to have occurred (s. 86A (5); s. 95(6))
- Regulations in respect to Deemed Refusals (s.96 (6))
- Review of the categories of development and criteria for which objectors can request a review (Reg 285).
- Regulations relating to the lapsing of consents for staged development projects and subdivision of land as against consents for other development where owners may have obtained finance for the staged project or sub division but are undertaking a work in phases or by a staged land release. (This also relates to clarification of physical commencement).
- The types of development to be dealt with by Regional Panels to be specified in a SEPP.
- Regulations governing the submission to and assessment by the PCA of Part 3A applications and concept plans;
- Regulations to set out the requirements for notification of reviewable development applications including the form and content of the notice, the extent of notification (to replace the unworkable proposed s88 (1A) for a 1 kilometre notification) and who may lodge an objection for review of a decision.

**Issues relating to the Builders Professional Board**

Centroc has lodged a submission to the Builders Professional Board regarding its concerns and it forms an attachment to this submission.

Centroc members are elected to look after our communities, Mum and Dad Housebuilder and his or her working family. These people are undertaking the single biggest purchase of their lives. Centroc submits that the recent changes particularly regarding private certification and accreditation have significant impacts over development in this region.

- **Private Certification**

The following comments are provided on private certification:

- Expansion of the role of private certifiers is of major concern to all councils in Centroc. Numerous examples were cited of certifiers who did not even consider or obtain copies of relevant DCP's and sanitary drainage plans for developments they were certifying. This is not one off, but happens consistently. Unfortunately councils have grown tired of the non action by the BPB and have given up referring these issues. Certifiers do not hold records of developments and do not check council documents. This has resulted in major problems in additions to large commercial developments such as: shopping centres and places of public entertainment where a check on the current fire safety systems has not been carried out by the certifier. This has resulted in the fire safety systems for the building being compromised. This has the potential to result in a major disaster. The extension of responsibility to a private certifier should be reconsidered based on such examples.
- Centroc Councils have varying take up of complying development. For example Bathurst has a very large proportion of complying development while complying development has not been taken up by applicants in the other council areas even though the option has been available. Most applicants when given the option select the combined DA/CC process. They are not discouraged from obtaining a CDC.
- As stated policy is to increase CDC percentages this should be mandated through legislation taking away the DA option for certain types of development.
- Legislation should say for a certain type of development you apply for a CDC, otherwise applicants will still take the DA option. If this does not occur, stated targets will be difficult to reach.
- There must be some flexibility in the restriction of targets on councils.
- Expanding complying development will lead to the deterioration of the streetscape through the creation of "McMansions", as complying development presents a 'tick a box' approach to development as opposed to merit based, performance design and assessment.
- Private certifiers do not concern themselves with this issue and the defining character of country towns will be compromised.

- Courtesy letters from private certifiers as proposed are a waste of time and will only get the adjoining neighbours complaining to council who will be unable to act. This requirement also represents a resource drain on councils' having to provide rating details of neighbours within the vicinity of the development to the private certifiers.

- **Accreditation**

The following comments are provided on accreditation where the response to the BPB is attached.

- Accreditation of council certifiers was not an issue in the "New Ideas for Planning" forum quoted as critical in the development of the discussion paper. It is simply a knee jerk reaction to the private certifiers lobby and an attempt to assist in BPB funding. It will not work and should be dropped.
- Regional councils will be unable to provide a service to its community if staff can only do A3 level (minor structures) certification.
- There are insufficient numbers of private certifiers in country council areas to do A1 and A2 level certification.
- Council accreditation is supported but must be for all levels of accreditation and should not include individual staff who should come under the council umbrella.
- Rural and regional councils have many staff who have been performing this role for years effectively without problems. They all work under a chain of responsibility that protects the council and the community from errors.
- Private certifiers in country areas do not operate under these structures. The majority are backyarders who may disappear the next day. The council will always be there.
- The proposal to accredit council staff at their current council to A3 level but require new staff and staff moving between councils to obtain accreditation is flawed. These staff should also come under the council accreditation irrespective of their movements or employment for the reasons already provided.
- Councils will not be able to afford to train staff who will need to obtain a university qualification at about \$16,000 for a two year graduate diploma.
- Councils are the main provider of trainees and require that they complete appropriate university level training in building surveying for which council pays as per the award. Any further accreditation of trainees after this training is unnecessary.

## ***(b) The implications of the COAG reform agenda for planning in NSW***

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The COAG reform agenda as understood by Centroc members has implications for

- the BCA,
- KPIs for State performance on the development assessment process
- E-Planning
- affordable housing
- competition policy
- attempted consistency across all States' Planning Laws

Regarding affordable housing and competition policy, these are addressed further into the submission.

### **The BCA**

Centroc members are generally happy with this document. There is scope for the introduction into the BCA of BASIX type requirements where these would extend to provide support to mitigation and adaptation in climate change. Focus would therefore be required to the appropriateness of existing conservation targets. For example BASIX does not require any passive solar access (north facing windows) into a dwelling.

### **KPIs for the State on streamlining the development assessment process**

Centroc submits that there is too much emphasis on speed of turn-around times on DAs and not on ensuring **quality** development. Further, the hold-ups in the development process are often little to do with local government and more about the complicated process, requiring the involvement of too many agencies who are often also short staffed in regional areas. Fast turn-around times require simple and easy to use legislation, not layers of amendments and controls. The system is now overly complex and requires more regulatory officer care and control to ensure no error.

Having said that, Councils remain cognisant that the development process should remain timely.

Members submit to you that change at both the Federal and State level has the media statement as a driver. Good development is not all about square meters and turn-around times on development applications, where a good media grab is. While members appreciate the needs for simple words regarding development, they often do not deliver on quality development. Re-drafting legislation in toto is suggested with a view to designing a better system as opposed to further adhoc tack ons and complications to an existing one.

### **E Planning**

The region supports this but notes that it has had poor uptake in those Council areas who have been implementing it. E Planning requires frontline resources especially in smaller Shire's where resources are thin, dollars less and staffing already overworked. While State models or templates may be easily adaptable to most web environments, implementation funding behind this would ensure a consistent front of shop for planning in each Council. Such innovations as I-Plan were well on the way towards this system of consistency before being stalled by State Government.

#### **Attempted consistency across all States' Planning Laws**

This will be a challenge.

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

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An example of our concerns regarding the planning process, is the 8 Part Test under Section 5A of the EPAA on threatened species etc.

Councils have neither the resources nor expertise to inform a test of this type with any certainty.

Further, varying authorities have "governance" over similar parcels of land, for example riparian zones. These varying authorities provide conflicting advice on the extent and nature of these zones which impacts on the development of our standard LEP instrument. Some simplification and reduction in duplication, or at the very least hierarchy of authority here would be helpful.

Another area of concern is the provision of advice to the community regarding in particular environmental matters. While it is clear that Council is not the agency the community should be talking to, our officers are often uncertain as to whom to turn for advice regarding these matters, for example the development by Mum and Dad Builders of Environmental Impact Statements or even a Statement of Environmental Effects (most DAs).

An interesting current example regarding possible duplication in legislation on its way is who will be doing what having regard to development and broadband, and its introduction into new subdivisions or even existing for that matter. Here both the State and Federal Governments are making commentary regarding introducing legislation mandating broadband services into green field sites.

***(d) Climate change and natural resources issues in planning and environmental controls***

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Central NSW Councils are starting to tackle this issue and look to the State and Federal Governments for leadership in the first instance and resources in the second.

Water security is a particular concern for the region.

As an agricultural region, our members have expressed interest in carbon trading, particularly soil carbon and how Councils or their business constituents (farmers) may fare in the trading scheme.

Members have also expressed an interest in encouraging and facilitating alternative energy development. Wind farms have been a contentious issue in a few of our Council areas, ethanol plants are being touted, low rainfall and good solar opportunities exist, and so on.

BASIX is an area that needs review and monitoring in the context of climate change. There is an opportunity for the development of both adaptive and mitigative regulation where the experience to date is that is challenging for Local Government to provide long term enforcement. It is recommended that where this is developed either at the State or Federal level (through COAG) that it come with monitoring, evaluation and enforcement funding.

***(e) Appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales***

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Centroc notes that the ACCC in July 2008 seems to be suggesting that commercial activities could be undertaken outside commercial zonings. Centroc submits that we must protect our CBDs. We rely on our strong vibrant town centres for tourism which is the third largest industry in the region.

Where there is a raft of reasons including carparking, transport, community amenity, consolidating urban centres, protecting the cost of land in other zonings and the fact that the system as it stands is working for our communities, we suggest that any changes to the legislation do not dismantle the commercial zone as it works at present.

Another area where councils are looking for a level playing field is in private certification where the current experience is weighted against councils.

A council can not turn down a client whom may be problematic, Councils often get to deal with the lower end developers where those with the greater capacity to pay go to the private sector. Often councils are left to clean up the mess of non compliance left by private certifiers at the rate payers expense.

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

Assuming this is about planning for flight paths there is little issue regarding this in the area.

Residential airport subdivisions come up from time to time at elected representative level but are generally not supported in bigger centres yet have proven successful in smaller regional towns (eg Temora) and are being considered elsewhere due to this success.

The one exception to the above is the intermodal hub at Parkes. There is potential here for regulation to ensure the development of state of the art air facilities that link with road and rail transport to both the national and international sectors.

#### **(g) Inter-relationship of planning and building controls**

##### **Conflicts between Council staff providing advice and their regulatory roles**

Of concern for our region where Mum and Dad Builders are the primary developers, is that Council typically provides a pre lodgment meeting for a Development Application or advice in relation to the Building Code of Australia. The upcoming changes would indicate that this particular staff member would then need to disqualify themselves from having any part in assessment of the Construction Certificate, the inspection of any part of the building or the issue of an Occupation Certificate. The Land & Environment Court has actively promoted and demanded Councils spend more time advising the public 'pre-DA' and now legislation complicates this matter dramatically for the "level playing field." How does the smaller 1 or 2 Building Surveyor Council handle this dilemma?

Advice by Council staff to developers in relation to the BCA and particularly pre lodgment meetings is a very important part of the development process and allows for streamlining of Development Applications. This service is currently available free to the rate payers in Central NSW Councils. Indeed it is part of a pro-development philosophy promulgated by all of our members, the Courts, the DLG in their promoting better practice reviews and as stated before is becoming "expected" by the public.

This advice will now have to be obtained at a cost by the developer through either a private certifier or building consultant (where available). Alternatively Council will need to have staff disqualify themselves from undertaking further action in relation to individual development applications. Due to the limited number of staff at many smaller Councils who make up the vast majority of our members, this may result in Councils being unable to provide advice or undertake inspections and therefore require the use of private certifiers at Council's cost to undertake the various inspections on larger buildings where advice had been previously given.

Should Councils continue this practice or management direct that staff provide assistance in this manner and that staff member is involved in the issue of a

Construction Certificate, inspection of building work or issue of an Occupation Certificate that staff member would be individually liable for disciplinary action by the Building Professionals Board.

### **Fire Upgrade Requirements of Existing Buildings**

The current planning legislation presents discriminatory challenges towards local government particularly in relation to fire safety within existing buildings. Currently, Clauses 93 and 94 of the *Environmental Planning and Assessment Regulation 2000*, require consent authorities (council) to consider existing and proposed fire safety measures within buildings at times of 'change of use', rebuilding, alteration, enlargement or extension. It provides the Council with a legal requirement to consider the fire safety of the whole building. Private certifiers on the other hand are not required to consider the fire safety of a building as a whole when carrying out their certification duties.

Certifiers need only to focus on the compliance of the specific part of the building that they are certifying.

### **Construction Plans Not in Accordance with Development Consent Plans**

As mentioned previously in the submission, the current legislation provides inadequate integration between planning and building controls in regard to minor variance between plans approved under the development consent and those associated with the Construction Certificate. Currently the plans submitted with the Construction Certificate are required to be exactly in accordance with the DA approved plans. This results in many unnecessary applications for the modification of consent due to minor variations such as the relocation of a window that ultimately do not change the approved development.

### **Other Issues**

While not specifically about the interrelationship between building and planning controls, Centroc members do want to highlight the problems they have been having with private certifiers.

*In our larger centres there are private certifiers at work, most of whom do a reasonable job though the nature of the process does have significant impacts on Council staff as outlined below. Unfortunately there are a few who have made our lives very difficult as outlined below.*

For our smaller centres there are few or no private certifiers.

The issue of private certifiers and cost shifting under private certification have been very challenging ones in Central NSW.

- **The bad private certifier**

The bad private certifier is a significant and recurring problem in this region. For example, a local private certifier recently had 13 complaints lodged by Orange City Council and around 30 with a neighbouring council. As well, yet another member Council cites an issue with this certifier regarding development within bushfire areas. Given the recent focus on this as a result of the Victorian experience, Council has little room to do anything other than ensure compliance with its significant impacts over the home owner.

All complaints were investigated, some with serious breaches of planning and building codes. The result of the investigations into all of these complaints was a number of warnings and two fines of \$1000 and \$4000. This well outweighed the cost incurred by Councils in making the complaints, let alone the financial burden that will be felt by the owners both now as owners must make rectifications and also into the future when they attempt to sell their properties. The end result is unacceptable development that still has to be resolved by the Council's in question, heartbreak for the owners who will have to demolish or relocate their houses, the cost shift in the work to clean up and the ability of the PCA to still trade despite such grave wrongdoings.

Other Councils are seeing examples of insufficient or nil inspections on whole houses yet Occupation Certificates being issued by PCA's. Such activity contravenes the requirements of the legislation.

- **Cost shifting under private certification**

Private certification has resulted in cost shifting to Councils. The BPB is not resourced to investigate complaints and legal advice to members suggests that Councils do not have jurisdiction to investigate on the sites in question and indeed may be exposed to claims of defamation if action other than the issue of orders to demolish or rectify works is undertaken. The BPB also appear loathe to remedy the problems created by the Private Certifiers as detailed above.

Meanwhile, Mum and Dad Builders do not understand the way the system works and believes the Private Certifiers are the way to go then ends up with a noncompliant dwelling where Council once again gets the blame. This creates a toxic work environment for our staff.

### **(h) The Implications of the planning system on housing affordability**

Regarding affordable housing, there is mixed response to this across the region. For many of our smaller Councils, this is not an issue for members due to relative house prices.

There is scope for changes to the legislation to assure a percentage of allotments in a subdivision to be for affordable housing and this would support the "salt and pepper"

approach to this type of development rather than the ghetto-ism that has occurred in the past and is yet to be remediated in the region.

Some members have expressed concern regarding the recent decision by the Federal Government to build significant numbers of affordable dwellings, for example 110 units houses are anticipated in Orange. The development control over this process is being fast tracked to the point where Councils have concerns that substandard accommodation will be the net result impacting on the lifestyles of our communities. Additionally, such fast tracked development is proposed to not include Councils. Those Councils that have a proven track record of performance should be given the opportunity to carry out the assessment of such developments. For example, Orange City Council was delegated in the past to carry out assessment of \$215 million hospital development yet it appears they will be excluded from the assessment process of the smaller, proposed residential development.

This approach to development also provides doubt as to whether contributions towards critical water and sewer infrastructure under Section 64 will be applicable to these developments.

For other of our members, affordable housing, this is not an issue due to relative house prices. Local government has few mechanisms to enforce affordable housing where it may be an issue.

Local government has few mechanisms to enforce affordable housing excepting coercive policy that allows for private speculation (if a market exists). A concern for our members is the continuing ghetto-ism in some of our communities through existing public housing systems of the past, and the lack of maintenance in government funded housing.

Centroc also submits that the simpler and cheaper the process is, the more affordable it will be.

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**Centroc  
submission to the  
Building Professionals Board**

**Draft Accreditation Scheme  
for Local Government**

Chairman: Cr Neville Castle  
Mayor Lithgow City Council

27 February, 2009

Building Professionals Board

P O Box 3720

PARRAMATTA NSW 2124

Dear Sir/Madam

**RE Proposal to Accredit Council Building Surveyors**

Central NSW Councils (Centroc) represents over 236,000 people covering an area of more than 70,000sq kms comprising Bathurst Regional, Blayney, Boorowa, Cabonne, Cowra, Forbes, Harden, Lachlan, Lithgow City, Oberon, Orange City, Parkes, Upper Lachlan, Weddin, Wellington and Young Councils and Central Tablelands County Council.

Central NSW provides the following commentary where it has significant concerns particularly for the workability of the mooted changes in regional NSW.

The Board recommends the accreditation scheme be reworked with a view to meeting the realities of development at an operational level within Councils.

**1. Accreditation**

The 17 Member Councils have been surveyed regarding accreditation and advise that their Environmental Health and Building do not wish to be accredited under this scheme. Concerns expressed by staff are:

- the parallel accountability of the process where staff are answerable to both their employing Council and the Builder Professional Board (BPB). Staff also

cited that the BPB has not had swift turnaround times and that this may have the effect of a sword hanging over their heads for long periods of time.

- that staff may be **privately** liable for disciplinary action by the Building Professionals Board for any breaches that may occur in relation to the issuing of a Construction Certificate, Occupation Certificate, documentation of inspections or any other issue. No other staff member employed by Council is subject to this action. Further, given the timing of how liability works in this sector where any insurance coverage from liability does not kick in until after court order are made, staff are concerned that unless Councils make other arrangements for them in this circumstance, that they will have to bear the brunt of personal liability in the interim period.
- the training to get to accreditation is too challenging, especially at the higher levels

Significant numbers of Council staff are indicating that they will not be taking up accreditation.

At the same time member Councils may not refuse to be the Principal Certifying Authority. This gives Councils two options, seeking exemptions from the Minister with its corollary time impacts and outsourcing work to consultants.

## 2. **Accreditation levels**

Member Councils have raised concerns regarding accreditation levels and the capacity and willingness of staff to meet these levels, the way these levels affect work flow, staff remuneration structures and the possible financial implications to member Councils.

Parkes Shire Council reports the following:

*"Three building surveyors would need to depend on their Ordinance 4 as Building Surveyors under the Local Government Act, 1919 which is a qualification recognized in the B1 category. Whilst we all have a minimum of three (3) years practical experience it could be argued that this is not recent practical experience with buildings over 2,000m<sup>2</sup> in size or some other buildings as listed in category B1. This is due to the fact that these buildings have not been built in Parkes over this period. Questions could then occur as to whether such officers are able to obtain a B1 accreditation. If they are not able to obtain a B1 accreditation and Council is appointed as the Principal Certifying Authority and therefore is required to issue a Construction Certificate, undertake inspections, issue an Occupation Certificate Council will need to utilize the services of either a private certifier or a Council Certifier working in another Council however accredited with Parkes Shire Council to undertake this work. Council presently has a number of projects approved which would require a B1 accreditation. If Council does not have an accredited certifier to undertake this work and Council cannot obtain an exemption for these jobs Council may have no other choice than to pay for a private certifier to undertake the work on Council's behalf.*

*Council has also been supporting a staff member undertaking the Diploma in Environmental Health & Building Surveying. This qualification and on the job*

*experience will not be sufficient to obtain a B3 accreditation under the proposed accreditation system."*

Outsourcing work to consultants, especially in the more technical areas such as fire control, may be significantly expensive where Orange City Council cited a quote of \$7000 as a plausible expense for the quantum of work and travel including site inspections to be undertaken. Considering that Councils must, under law, annually set fees and charges, concern has been expressed that Councils will have to find these costs from elsewhere in the budget at the expense of other services. Given that Councils are very limited in ways they can raise monies, the net effect will be a lowering of service to our regional communities.

A further implication here is the impact over workflow inside Councils, especially our larger members. Where the consideration of consents is currently divided among staff based on their areas of expertise, under the new accreditation scheme with its liability of burden, assessment responsibility will devolve to one person having impacts over Council efficiencies.

Members have also raised concerns regarding the affect accreditation will have over pay structures where currently Council officers are banded in accordance with experience in a stepped structure where the new accreditation will create staff shortages forcing Councils into competitive arrangements for remuneration creating inequities within Council staff. This will ultimately lead to increased Council costs.

### **3. Accreditation Transitional Arrangements**

The proposed accreditation arrangements including category B are transitional only for a period of five years. After this time a Council certifier will need to convert to an A1, A2, or A3 accreditation unless the current staff member remains at the same Council.

Should an existing staff member wish to progress within the same Council they are unable to do so after the transitional period.

Further, concern has been expressed at both the expense and difficulty of accreditation.

Staff at member Councils provide advice that these transitional arrangements are unfair and require a rework.

### **4. Appointment of Principal Certifying Authority**

Unlike a private certifier, member Councils cannot refuse to be the Principal Certifying Authority. This means that private certifiers have their pick of experienced developers and builders on large projects who are familiar with the certification process. Council remains the certifying authority on all others. Where Council has concerns in relation to

the person appointing them as the Principal Certifying Authority or the builder Council cannot refuse appointment as the PCA.

In addition to this where a private certifier has a dispute with their client which may be due to their non compliance with Development Application or conditions or the fact that they have not been called to undertake the mandatory inspections the private certifier can cancel their appointment as the PCA. The developer will need to appoint an alternate PCA. As Council cannot refuse this appointment this places Council staff that are individually liable in an awkward position given the non compliance with the existing development. For this and other reasons there can never be a level playing field to regulate private certifiers and council certifiers.

Further, it increases the likelihood of conflict between developers and Council staff as those less experienced developers will arrive at Council insisting on PCA with an already "broken" experience.

#### **5. Advice to Rate Payers**

In accordance with the regulations under the Building Professionals Board a certifier is unable to assist in the design of any building of which they would undertake certification or inspection work. In this regard where Council provides a pre lodgment meeting for a Development Application or any advice is provided in relation to the Building Code of Australia that staff member would need to disqualify themselves from having any part in assessment of the Construction Certificate, the inspection of any part of the building or the issue of an Occupation Certificate.

Advice by Council staff to developers in relation to the BCA and particularly pre lodgment meetings is a very important part of the development process and allows for streamlining of Development Applications. This service is currently available free to the rate payers in Central NSW Councils. Indeed it is part of a pro-development philosophy promulgated by all of our members.

This advice will now have to be obtained at a cost by the developer through either a private certifier or building consultant. Alternatively Council will need to have staff disqualify themselves from undertaking further action in relation to individual development applications. Due to the limited number of staff at many smaller Councils who make up the vast majority of our members, this may result in Councils being unable to provide advice or undertake inspections and therefore require the use of private certifiers at Council's cost to undertake the various inspections on larger buildings where advice had been previously given.

Should Councils continue this practice or management direct that staff provide assistance in this manner and that staff member is involved in the issue of a Construction Certificate, inspection of building work or issue of an Occupation Certificate that staff member would be individually liable for disciplinary action by the Building Professionals Board.

Given that many developers in the region are not "savvy," members foresee a raft of problems arising in this sector in our region.

**6. Costs**

Initially, annual accreditation for each Council certifier will be \$250. This will increase to \$1,500 per certifier after the five (5) year transitional period or where a current staff member obtains A1-A3 accreditation or Council appoints a new staff member with this type of accreditation.

Mandatory training will be required in addition to that already sought to keep up with the ever changing legislation which will again come at a cost.

Member Councils will also need to use private certifiers where it has no accredited staff, its staff are unable to meet accreditation levels or are disqualified from taking part in the assessment process. This will result in a huge increase in costs to the applicant and Councils ability to pass on the higher costs of engaging a private PCA will need to be addressed.

DEPA in its 2004 submission to DIPNR on this issue estimated that this proposal would cost local government between \$6 million and \$10 million each year.

**7. Delegations**

To protect the individual officer, delegation will need to be provided to enable each individual officer to Issue Construction Certificates, undertake inspections and issue Occupation Certificates. Delegation would also need to be provided to issue orders where any breach is detected and subsequent authority to commence legal action and issue demolition orders. Should the individual officer be directed not to take the appropriate action by a Manager, Director, General Manager or by resolution of Council and complies with this direction, then that officer will still be liable for disciplinary action by the Building Professionals Board.

**8. Impact on individual staff members and council functions**

The job descriptions of Councils Environmental Health and Building Surveyors require them to undertake a wide variety of duties including the issue of Construction Certificates, undertake periodic building inspections and issue Occupation Certificates. Should a current staff member not wish to or is unable to be accredited or in the event that there are competing work priorities Council will need to consider how this impacts on the functions of Council. Further, the accreditation proposals do not recognise the fact that in regional areas the building Certification role is more often than not carried out by professionals with a variety of additional functions including Planning, Environmental and Health.

Should a current staff member not wish to or is unable to be accredited, Council will need to consider how this impacts on their employment. This may result in redundancies being provided to individual staff members.

**9. Skill Shortages**

A majority of our Councils have provided the advice that the overall affect of the above will lead to further skill shortages in an already strained sector. This in combination with the difficulties local government in the region experience in attracting and retaining staff means that this will affect our region more so than others.

Forbes Shire Council provides the following advice regarding skills shortages and the effects over the proposals on their efforts to attract and retain staff:

*"Council currently has four Health and Building Surveyors to undertake certification and inspections on Council's behalf. Council has also recently appointed a Trainee Health and Building Surveyor. Two of Council's Health and Building Surveyors were previously trainees of Forbes Council. These staff members are young men from the Forbes community who were provided a career opportunity both within Local Government and the building profession. Council has spent significant amounts of rate payer's money on their education and eventual degrees in the belief that these employees will remain in the Forbes community and provide professional input into Councils activities. They are also mentored by Council's other Health and Building Surveyors to enable them to be competent in building certification areas and provided with relevant onsite experience. Council has been very proactive in providing training and ongoing education for its Building Surveyors and understands the importance of keeping abreast with ever changing legislation.*

*Council considers that there has been an informal accreditation system within Forbes Council and most likely all other Councils in New South Wales where building certifying staff are not given the responsibility of undertaking certification or inspection of work on buildings for which they do not have the necessary skills or competencies. Continuing mentoring is provided by the more senior members of staff to pass on this knowledge. Further the governance and accountability frameworks within Local Government surpass those existing of many private certifiers.*

*Under the proposed scheme Councils current Trainee Building Surveyor even after many years of on the job training and mentoring will not be able to undertake the simplest of inspections such as the footings for a single carport. These basic inspections will need to be undertaken by accredited certifiers. Not only will this put additional workloads on Councils accredited Building Certifiers it will more importantly make Trainee Building Surveyors obsolete. With dwindling numbers of Building Surveyors the employment of Trainees particularly in rural NSW is the very thing that the State Government should be promoting.*

*Council believes that the proposed system for the accreditation of Council Building Surveyors is unworkable and will lead to the exit of Council Building Surveyors from Local Government to private enterprise resulting in a huge disruption for Council, the building industry and the community."*

**One suggested solution from the Centroc Region: "The Parkes Proposal to Accredite Councils"**

Parkes Shire Council has suggested the following as an alternative the Accreditation of Councils.

Accreditation of individual Council officers will not provide any benefits in ensuring quality certification. In fact it will be an additional and parallel system which will operate independent of the checks and balances that operate in every Council.

Instead the accreditation of Councils would be a more positive proposal as demonstrated by the Food Regulation Partnership Arrangements between Councils and the NSW Food Authority. This was formed following collaboration between Local Government and the NSW Food Authority and is proving to be highly successful. The option to accredit individual Council officers was not pursued due to lack of support and for legal reasons.

Parkes Council would be happy to work cooperatively with the BPB in the implementation of a system to accredit Councils.

Consideration should also be given to investing in training of architects, drafts people and developers in compliant development rather than investing in an unworkable compliance system.

**Conclusion**

Centroc earnestly implores the reconsideration of this scheme, asserting that the proposed "one size fits all" approach is ill-considered with probable far reaching consequences on development activity within particularly regional NSW.

The Centroc Executive would be very pleased to represent this submission at the Hearings to be convened by the NSW Legislative Council's Standing Committee on State Development in March. Please do not hesitate to contact the undersigned should you wish to further discuss any aspect of this matter.

Yours sincerely,

*Jennifer Bennett*

Jennifer Bennett

Executive Officer