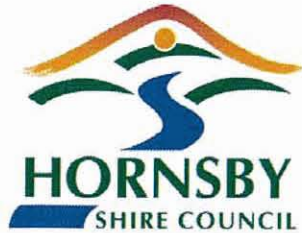


Submission
No 38

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Hornsby Shire Council
Name: Ms Karen Harragon
Position: Principal Planning Services
Telephone: (02) 9847 6945
Date received: 13/02/2009



Our Reference: F2008/00491
Contact Person: Karen Harragon
Hours: 8.30am – 5.00pm
Telephone: 9847 6945
Fax: 9847 6999

12 February 2009

The Director
Standing Committee on State Development
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam

Inquiry - Improving the NSW Planning System

Thank you for the opportunity to comment on the Discussion Paper titled “*Improving the NSW Planning System*”, prepared by the State Government as part of the Legislative Council’s Inquiry into the NSW planning framework.

At its meeting on 4 February 2009, Council considered a report outlining the contents of the Discussion Paper and responding to issues relevant to Hornsby Shire. Council resolved to forward a submission to the Legislative Council indicating its general support for the areas of the Inquiry outlined in the Discussion Paper.

Council also resolved that the submission request that the Inquiry address issues outlined in the report including the need for systematic reform of the planning framework to address incohesive planning objectives, legislative duplication and inconsistency, improved investigative and enforcement power, gaps between development and building controls and inappropriate planning and funding frameworks to support councils in performing their role.

Council resolved that the following specific comments on the eight (8) terms of reference detailed in the Discussion Paper should be addressed.

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 *Environmental Planning and Assessment Act 1979 (EPA Act)*, commenced as NSW’s first comprehensive legislation “*to encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*” Over the last fifteen years there have been numerous alterations to the *EPA Act*, all aimed at improving and making the planning system more efficient. The reforms introduced over the past fifteen years to simplify the system and reduce costs, have in many cases progressively led to increased confusion, complexity and delay. Additional procedures and processes introduced at

both local and federal levels have added layers of complexity for the judiciary, practitioners and members of the public.

- In broad terms, major reform of the NSW planning framework is supported to adjust to current issues, be responsive to changing issues in the future and improve overall outcomes. However, the planning system does not need more complex layers to respond to the shortcomings of the current system.
- Any further development of planning legislation within NSW should be done as part of a cohesive national framework, with commonality in aims and objectives. Looking ahead to the challenges that face our community, State and Local government will be less effective if they are not coordinated in the urban and regional policy arena. Key national objectives relating to population management, the setting of greenhouse emission targets, sound economic management and affordable housing cannot be delivered fully or efficiently without strong resource and policy partnerships between Federal, State and Local government in urban and regional policy. However, it also remains important that the future planning system for NSW be responsive to the system of governance in NSW.
- Any reform of the planning system should recognise the competency of councils to effectively manage planning in their local government area. Reforms in the planning system should ensure that improved support is provided to councils to perform their roles by:
 - Ensuring a sustainable funding mechanism to allow councils to appropriately resource planning;
 - Providing councils with appropriate levels of autonomy in developing strategic policy and assessing development applications; and
 - Consolidating into one Act, competing biodiversity, environmental, conservation, bushfire and like provisions.
- It is important that any reform of the planning framework embody a long term infrastructure framework, with enforceable outcomes and guaranteed income streams. There should also be improved opportunities for providers to seek complimentary funding for infrastructure.
- It is appropriate that any reform embrace a system of targeted annual review of legislation. Priority areas for further reform should be identified rather than reactionary legislative review which results in a series of cursory amendments, catch-up in nature with little forward thinking. Review of the legislation should be periodic and mandated, rather than single issue review driven by interest groups.

The implications of the COAG reform agenda for planning in NSW

Reform of environmental assessment and development approval

- Any further reform of planning legislation within NSW should be done as part of a cohesive national framework, with commonality in aims and objectives. Any future framework should also be responsive to the system of governance in NSW.

Housing Supply and Affordability Initiatives

- Although there is general support for endeavours to reduce the affordability of housing, any scheme which seeks to achieve savings in the delivery of a dwelling by reducing costs through a reduction in the provision of facilities and services is not supported by Council. Ultimately the costs of such savings are borne by the new resident, through reduced amenity and reduced access to appropriate services and facilities.
- It is also appropriate that robust mechanisms be implemented as part of any affordable housing initiative, to ensure that any cost savings facilitated by the planning system are ultimately passed onto the purchaser of a home rather than into the pocket of the developer.

Coordinated Housing Research

- The development of an Affordable Housing Framework should be developed at a National level with consultation with State and Local levels of government.

Climate Change Action Planning

- A unified approach to the development of a responsive *climate change action planning* framework at a national level is supported by Council. Overarching principles for sustainable urban and regional development and setting out measurable national targets are also supported and should include:
 - energy consumption per capita;
 - water consumption per capita;
 - water quality standards;
 - air quality standards; and
 - biodiversity retention and protection.
- The required response of the planning system to climate change is discussed in detail in respect of Term of Reference 1(d).

ePlanning

- Council already supports ePlanning as a tool through tracking of development applications, electronic S149 applications and masterview applications. The NSW and Federal Government should be mindful of resource streams available to councils, councils' investment to date and the ongoing costs of maintaining electronic data sources and systems over time. Any further initiatives should be carried out in consultation with councils.

Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation

- The ability to manage the environment is hampered by structural problems between different areas and levels of government. The Australian Federal system of government has resulted in two distinct sources of environmental legislation, those from the Commonwealth and the State Parliaments.

- The New South Wales and Commonwealth Governments both have laws to protect flora and fauna. Key laws for the protection of species and ecological communities in New South Wales include the *Threatened Species Conservation Act 1995 (TSC Act)*, the *National Parks and Wildlife Act 1974* and the *Fisheries Management Act 1994*. Federal protected species law operates in parallel to State protected species law. A development or activity may require assessment or approval under State and Federal protected species law. The *Native Vegetation Act 2003*, through its focus on habitat protection, also has a key role in species protection. It should be noted however that Hornsby Council is exempt from this Act.
- The key Federal legislation in relation to protected species is the *Environment Protection and Biodiversity Conservation Act*, which protects species and ecological communities by:
 - creating a process for the listing of protected species and ecological communities;
 - requiring the assessment and approval of proposals that are likely to have a significant impact upon a threatened species, an ecological community or a migratory species; and
 - requiring permits for actions in a Commonwealth area that involve the killing, injuring or taking of a listed threatened species, or ecological community.
- New South Wales laws do not protect threatened species as of right. Rather, the laws generally set up principles and administrative procedures to assist decision-making in relation to threatened species. Frequently, the State and Commonwealth governments' debate environmental issues and local government is given limited jurisdiction to participate in strategic environmental policy development. Although the National Environment Protection Council was set up (in part) to address some of these problems, little advancement has been made in this area since its inception.
- The TSC Act enables the Minister for Environment and Climate Change to certify Environmental Planning Instruments (EPIs), if the Minister is satisfied they will bring an overall improvement to, or maintain, biodiversity values. Biodiversity certification enables local government, in areas with high development pressure, to provide for the protection of biodiversity, including threatened species at the strategic planning stage.
- Notwithstanding biodiversity certification, the *EPBC Act* continues to apply in areas which are subject to an EPI which has been certified by the State. This negates the intent of biodiversity certification under the *TSC Act*. The *EPBC Act* requires a similar level of investigation, survey and assessment as that which is required to be undertaken under the *TSC Act*. Any reform should address this inconsistency to ensure a consistent approach for the environmental assessment of applications.
- As there is no role for assessment by Council under the *EPBC Act*, Council is generally unaware of there being any parallel processes in place. Although there are advantages to having parallel processes in place to ensure both Federal and State conservation objectives are being considered, it is appropriate that there be only one concurrence for these two actions and this concurrence be coordinated by the State.
- There is also duplication of processes and areas of conflict between the *EPA Act* and numerous other NSW and Commonwealth Acts which require additionally streamlining. This is not limited to conflict between the *EPA Act* and the *EPBC Act*

but includes conflict within the Act itself, as well as various practises established by NSW legislation. For example, Schedule 4 of the *Environmental Planning and Assessment Regulations* requires councils, in respect of 149 certificates, to include advice in respect of whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land. No procedure is in place for these notations to be removed when the Order is satisfied. As such, reference to particular orders issued under the *Trees (Disputes Between Neighbours) Act 2006*, will continue to appear on S149 certificates long after the terms of the order have been completed.

- Although there is unnecessary duplication under the *EPBC Act* and NSW legislation, the two levels of legislation have a different strategic focus and this provides benefit in respect of endeavours to protect flora and fauna at both the local and regional levels. As such, the value in maintaining threatened entity protection systems at both State and Federal level should be recognised.
- The absence of a role for local government in either the *EPBC Act* or the *TSC Act* should be regarded with concern, particularly in respect of the consideration of offset agreements at National and State level. Biodiversity offsets are increasingly being considered by all levels of government as appropriate actions for long-term management to improve biodiversity conservation to counterbalance specific impacts on biodiversity. Unfortunately, Council has no role in the certification of such agreements and evidence to date has shown that certified agreements at the State level have often had no regard for local conservation objectives. Councils should have a role in the consideration of any biodiversity offset proposal, particularly councils seeking to develop their own conservation/biobanking schemes such as Hornsby Shire.

Climate change and natural resources issues in planning and development controls

- Climate change represents some of the community's greatest economic and environmental challenges. The planning system is in a unique position to assist the community in understanding and adapting to the expected consequences of climate change. Adaption measures assist to reduce the implications of the most serious consequence of climate change. These changes include greater flood risk, more extreme weather conditions, water shortages, and changes to ecosystems and micro-climates. Councils are in a position to actively develop responses to mitigate impacts and guide changes to environmental behaviour such as promoting energy and water efficiency, sustainable land management practices, incorporating efficient energy use in buildings, and including climate change information in environmental assessments.
- The following actions to ensure planning can continue to implement adaptation and greenhouse abatement strategies are supported:
 - Inclusion of climate change in long term strategic planning to enable communities to better adapt to future climate variability;
 - Consolidation of relevant, reliable and consistent information. Commonwealth and State Agencies can assist with dissemination and compilation of climate change information to planners and decision makers;
 - Adoption of consistent timeframes to provide planners with meaningful targets;

- Development of national targets for governments, through policy and adaptation at all levels, including the local/household level;
 - Adoption of a national framework for adaptation with scope for local adaptation strategies; and
 - Preparation of regional and local assessments of climate change trends, vulnerabilities and adaptation options. These findings should be readily accessible and relevant to affected stakeholders.
- To progress Council's adaptation activities, Hornsby Council joined ICLEI's pilot Cities for Climate Protection Adaptation Initiative. The initiative seeks to identify the projected risks of climate change to the local area and develop an Action Plan to address those risks. To aid in the identification of the risks of climate change, Council is working collaboratively with the Sydney Coastal Council's Group (SCCG) and CSIRO who have undertaken research on a regional systems approach to managing climate vulnerability in the Hornsby region.

This research will identify risks for Council to consider within an Adaptation Action Plan. A number of the actions anticipated to be generated through this process will relate to development of appropriate development controls responsive to climate change scenarios. Accordingly, this will rely upon the ability of the planning system to support these endeavours.

- A National/State framework is required to ensure that there is a unified approach to climate change adaptation initiatives and the development of appropriate standards. This is particularly important to pre-empt anomalies which are likely to occur across boundaries, on opposing sides of streets, within opposing sides of catchments and within shared waterways. An authority may progress a climate change adaptation scenario and another authority may pursue an alternate scenario, possibly with different aims and objectives.
- Should a National or State initiative not be progressed, it will be necessary for local provisions to be investigated by each council. The appropriate mechanism for implementing many of these actions is through the planning process. There is currently no opportunity within the planning framework to accommodate climate change adaptation initiatives at the local level. The Standard LEP template, prepared to provide consistency in the application of development standards within the State, does not accommodate opportunities for the development of standards directed at climate change adaptation. The inclusion of such initiatives should be addressed in the next issue of the Standard Instrument.

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

- Any requirement that seeks to ensure that new regulations are subject to rigorous assessment, including an analysis of alternatives should be supported. Support should also be given to targeted public annual reviews of significant legislation by the State to identify priority areas where reform would provide significant net benefits to the community.
- The stated objective of the National Competition Policy, as it applies to the public sector, is to achieve the most efficient provision of publicly provided goods and services through reforms designed to minimise restrictions on competition.

Although this objective should be supported in general terms, the strategic development of any policies targeting competition should be pursued at regional or state level, within an appropriate national framework.

- There has been considerable debate in NSW in respect of competition versus Centres Policy. Increasing competition is seen to be ultimately in the interest of the public. However, care should be given in the development of any land use policy directed at increasing competition, to ensure that ultimately the community does not pay for the “*public benefit*” through loss of amenity, privacy, road efficiency and safety etc. There is a need to create competitive retail environments. However, at the same time there is a need to protect existing centres to ensure they remain vibrant and active spaces that are integrated with public transport systems.
- If centres do not have the space to accommodate retail demand, planning should be undertaken within a State Policy context. A regional approach to retail planning policy should be undertaken and councils provided with resources to fund local retail studies within the State Policy context.

Regulation of land use on or adjacent to airports

- Hornsby Shire is impacted upon by the flight path of aeroplanes. However, the local government area does not contain land set aside for airport development.

Inter-relationship of planning and building controls

- Any further reforms in the planning system should ensure that there is continued security provided to the community in respect of the role of certification by:
 - Increasing accountability of private certifiers;
 - Increasing accountability of development which is certified privately; and
 - Increasing the effectiveness of investigative and enforcement powers available to councils to manage private certification in their area.

In particular, gaps in the legislation between development and building controls should be closed. Specifically, changes to the planning system should require that a Final Occupation Certificate be obtained within 12 months of the issue of an Interim Occupation Certificate. Once an Interim Occupation Certificate has been issued there is no obligation on either the Principal Certifying Authority or the property owner to complete the works. This has ongoing problems for the community and frequently negates measures put in place through the development assessment process to mitigate a range of potential impacts. It is appropriate that legislation impose a penalty on any property owner that fails to obtain a Final Occupation Certificate within 12 months of occupation.

- Council also supports a revision of current energy efficiency requirements under the *EPA Act*. Legislation should require design certification of compliance with Part J of the *Building Code of Australia* at development assessment. It would then be appropriate that prior to the issue of an Occupation Certificate, an Energy Validation Certificate be obtained from the accredited consultant. A certificate would also be required to be submitted to Council in the same way as the *Environmental Planning and Assessment Act* requires an annual fire safety certificate be submitted.

Implications of the planning system on housing affordability?

- The decline in housing is a pressing issue for Australians and improving affordability is critical to addressing financial stress and disadvantage within communities. Although local government is in the business of creating liveable and sustainable communities, it does not provide housing. Local government does however have access to a number of indirect levers that enable it to have a role in facilitating and encouraging the provision of housing by others. These indirect levers include housing research and policy development, strategic and land use planning, including identifying land for housing development, building regulations and the application of planning and development controls. Although local government may have a role in implementing affordable housing initiatives, it is appropriate that the development of any initiatives be within a national framework, with clearly articulated objectives and targets.

- The draft Subregional Strategies identify that the State Government will develop initiatives to provide for a unified approach to affordable housing through the Affordable Housing Framework. To date the State Government has been unable to provide Council with a timetable for the delivery of this document. Although a number of Comprehensive LEPs have been endorsed by the State Government, none have included either broad reference to, or specific provisions in respect of affordable housing. Indeed the Standard LEP continues to contain no reference to affordable housing provisions, ensuring an absence of unified response to the delivery of affordable housing provision.

Thank you for the opportunity to make this submission and I trust the above comments are of assistance in progressing the Inquiry into the NSW planning framework.

Yours faithfully



SCOTT PHILLIPS
Executive Manager
Planning Division