

**Submission
No 4**

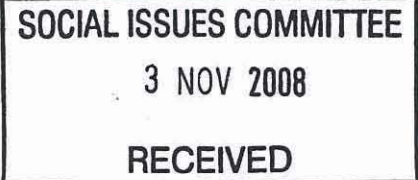
INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Reference: CB:DM

23 October 2008

Hon. Tony Catanzariti MLC
Committee Chair
Standing Committee on State Development
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Mr Catanzariti

Subject: Inquiry into the NSW Planning Framework

Thank you for your invitation to make a submission to the Inquiry into the NSW Planning Framework.

Council considered a report on the planning framework at its Meeting held on 21 October 2008 and makes the following submission.

The current NSW Planning System has recently been rated by planning professionals themselves as the worst in Australia and based on key indicators is well behind other States. The principle planning legislation is nearly 30 years old and in comparison to other States is no long cutting edge. The NSW system continues to be fragmented, complex, resource hungry and overly bureaucratic. The continual incremental approach to reforms does not solve the underlying problems. A complete rethink and rewrite of the planning system and legislation may even be considered appropriate.

The planning system should operate at two broad levels i.e.

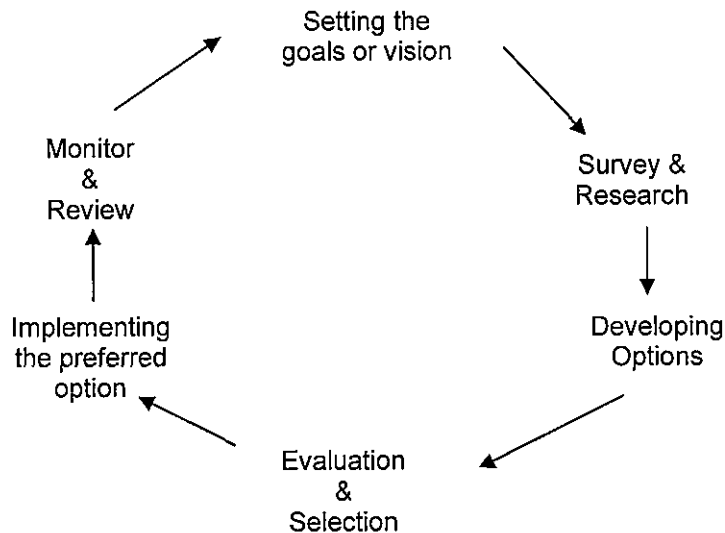
- Strategy, policy and land use rules
- Development assessment of individual projects

Strategy, Policy and Planning Rules

To regulate land use activity and development planning rules or statutory controls need to be in place. To be clear why these rules are in place it is essential that they clearly follow from a policy basis. This also provides a basis to assist interpreting the intent of the rules and regulations in dispute situations. This part of the planning framework has two elements – preparing policy or strategy and designing the rules or statutory controls.

- **Strategy and Policy**

Producing planning strategy is a simple cyclic process i.e.



At each step in the process there is an element of community and stakeholder involvement.

Strategic plans need to be prepared at three levels i.e.

- State
- Regional
- Local

The planning framework should compel strategy plans to be prepared at each of these levels following the same consistent cyclic planning process.

This process provides the policy framework for the drafting of statutory land use rules, investment, resourcing and non-regulatory programs. At the local government level this includes:

- Statutory controls (eg. Local Environmental Plan, Development Control Plans, Development Contribution Plans)
- Non-regulatory Programs (eg. Management Plans, capital works and service programs)

Unfortunately the NSW planning framework emphasises the regulatory controls with virtually an entire industry built around this aspect of the system. Greater emphasis is needed on the rule that the non-regulatory programs, the investment and resourcing strategies of the public and private sectors in achieving strategic outcomes. Without a clear well articulated, forward looking strategy both the non-regulatory and regulatory systems will appear disjointed and uncoordinated.

The legislative system should follow this simple approach for all agencies charged with the responsibility for preparing plans and the planning rules.

It is recognised that some central control on the preparation of plans is warranted to ensure coordination and consistency across the State and between the different planning levels. This is clearly a role for the State Government.

- **Land Use Regulation**

One of the outcomes from these planning strategies is a regime of land use regulation (eg. LEPs, DCPs, CPs). The preparation of these documents should also follow the same cyclic process. For example, local government holds planning forums with government agencies, community groups and residents; this information is used to develop some plan options; a preferred option is selected; community and agencies comment on the selection; submissions are considered and the planning document is adopted with or without changes. The outcome from this process can be checked by the State Government planning agency for compliance with any higher level plans.

In this process there is no role for progressive approvals by the State planning agency. If the State agency has issues with the strategy development they should make submissions to the process like any other agency.

Once the strategy is endorsed then the drafting of land use and development planning rules can take place. Again if the State Government planning agency is seeking consistency and coordination then a template for the planning rules can be provided for those agencies charged with the responsibility for preparing these documents.

Land use regulation should clearly articulate what development and activity does not need permission, what is permitted subject to meeting predetermined standards, what is discretionary (i.e. permission required) and what is prohibited. Again the only role for the State planning agency is to ensure the proposed rules do not conflict with a higher level strategy or policy.

Planning is more about opinions and views rather than facts and the process of legal and Parliamentary Counsel checks on these documents should be tempered by this context. These processes have not stopped legal challenges in the past and are unlikely to do so into the future. Any issues identified with implementation of the plans can be managed by an amendment process. Also the introduction of wider review processes, at arms length from the planning authority, for project assessment and the merits of projects will reduce the need for legal checks in the plan making process.

Rather than being the guardian and watchdog of the planning process the State planning agency can more sharply focus its scarce resources onto strategy development, planning education, research and development, major project assessment. Continuing to micromanage the planning system will only lead to greater bureaucracy.

- **Development Assessment**

Once the planning regulations and statutory rules are in place there needs to be a system of assessing discretionary matters on an individual project basis.

Local government with branch offices across the State is ideally situated to be responsible for individual development assessment. The development assessment system should therefore start with local government. However, not all of these are equally resourced so it is recognised that for large scale, complex and contentious projects that a State agency assessment is warranted. To be clear on this division of responsibility and the handing up of applications a State planning policy is required.

Again the development assessment process should not be complicated i.e.

- Lodge application
- Further information request (if needed)
- Referrals and public notice (if necessary)
- Assessment and decisions
- Review of decisions

- **Lodging Applications**

This process should permit applications to be lodged with sufficient information to enable an appropriate assessment to take place. The information should indicate how the proposal complies with land use regulation and policy and how relevant economic, environmental and social impacts are proposed to be mitigated. There is no need for this information to be in different document formats (i.e. Statements of Environmental Effects, Environmental Impact Statements, Environmental Assessments, Review of Environmental Factors). The supporting documents can simply be tailored by the proponent to the type and scale of development proposals without the need to be prescriptive about the format. Any deficiencies with the documentation will emerge out of the assessment process itself and/or through any consultation. It should be in the interest of the applicant/proponent to furnish whatever information and in whatever format to give their proposal the best possible chance of success.

Any activity requiring approval, whether by a public authority or private interest should follow the same approvals process. This would do away with the current Part V assessment process for public authorities. Similarly, there is no need to fragment the approvals process across multiple pieces of legislation and administering agencies. The “one stop shop” should be achievable.

The ability for the assessing agency to request further information essential to making an assessment should be retained.

- **Referrals and Public Notice**

Consultation is an important element of the planning process – this includes government agencies, community groups and neighbouring residents. However, this step should not give the power of veto or concurrence to these third parties. These stakeholders should all be able to make a submission and have it considered, ask for further information, offer an opinion and/or object but the assessing agency should determine the appropriate response.

Consultation is not about reaching agreement. It is a process of taking into account the view and opinions of the various stakeholders. The process should also provide for a review by any of the stakeholders aggrieved by the outcome from this process. This process should be the same of all stakeholders, including public agencies. This mechanism is discussed further below.

It should also be noted that consultation need not be mandatory. It should only be undertaken in situations in which the proposed land use is different to the primary zone objective, is likely to have negative impacts and the views of third parties may have a real influence on the outcome. For example activities consistent with the primary planning objectives of a zone should not involve referral or notification (eg. house in a residential zone). However, the establishment of a child care centre or church in a residential area should involve notification.

- **Assessment and Decisions**

The assessment process should be a general assessment of a project's compliance with planning strategy and regulation and management of its likely impacts rather than a prescriptive process.

There needs to be a degree of flexibility for planning agencies and stakeholders to determine the issues of concern in the particular circumstances rather than the present situation of having to address everything regardless of the situation. In other words, a general duty of care to examine issues rather than the current prescriptive process.

Notices of decisions, reasons and assessment reports should be articulated to all stakeholders.

- **Review of Decisions**

The present planning system limits the review of decisions to applicants and only extends this to third parties in certain circumstances (eg. EIS involves, some Major Projects). For a more robust and transparent decision making process all applications for approval should be subject to merit reviews/appeals by any stakeholder (i.e. applicant, government agency, resident, objector).

The planning framework should therefore allow any party aggrieved by the decision of a planning agency to have the right of review at arms length from that agency. This would allow the merits of a proposal to be tested independently of the decision maker, reduce potential for corrupt behaviour and provides a basis for better decisions.

Rather than limit who can appeal or seek a review the focus should be on better management of the review/appeal process. A variety of review pathways depending on the type and scale of development, number of submissions and issues raised would assist in managing this process. For example a review of conditions could be by written submissions to the appeal agency by the planning authority and the applicant without the need for a hearing; minor projects could be by a roundtable between objectors, local planner and applicant (eg. tribunal style review without experts/lawyers); major proposals are reviewed in a more formal forum such as a Court or Tribunal.

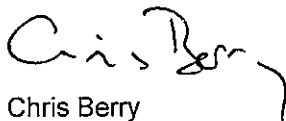
To ensure accessibility to this review process the emphasis should be on tribunal style hearings, limits on representation and venues in local/regional areas (again local government has a network of officers for such hearings).

Conclusion

There is no doubt there is a loss of public confidence in the NSW Planning System. The 30 year old system has been allowed to fragment by successive governments and ministers without any clear direction. A complete rethink of the system is now warranted along with the role of the public agencies involved.

I trust the Inquiry finds the above comments of assistance. Please do not hesitate to contact me on 4823 4480 if you wish to discuss these issues further.

Yours faithfully



Chris Berry
Director Planning & Community Services