

**Submission
No 104**

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Albury City Council
Name: Clr Patricia Gould
Position: Mayor
Telephone: 02 6023 8111
Date received: 1/05/2009

Received 1/5/09

29 April 2009

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

Dear Sir/Madam

Submission to Inquiry Into The NSW Planning Framework

AlburyCity Council has given consideration to the Discussion Paper prepared by the Standing Committee on State Development regarding "Inquiry Into The NSW Planning Framework".

In response to the information provided AlburyCity has prepared a submission for consideration and requests an opportunity to present or attend the "Public Hearing" to be held in Albury on 29 May 2009.

AlburyCity believes that the planning process remains lengthy, complex and confusing for some proponents and other users of the system. The vast majority of requirements that are required to be met in the development assessment process are due to state government regulations, complexity and processing delays rather than local policy or requirements.

I look forward to further discussion and opportunities to participate in this inquiry. Thank you for the opportunity to make this submission and the Committee's due consideration of the issues identified.

Should you wish to discuss any aspect of this submission please feel free to contact Council's Director Planning & Economic Development, Mr Michael Keys on 02 6023 8289.

Yours faithfully



Cr Patricia A Gould OAM
Mayor AlburyCity

TERMS OF REFERENCE 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 current NSW Planning legislation is cumbersome, complicated and overworked. The system relies on legislation that has been amended, modified and reshaped at various stages and on a variety of platforms over the last 30 years.

Whilst the legislation led the way in providing a platform for consideration of environmental concerns and encouraged community involvement there has been a fundamental shift in community expectations since its inception. To combat the changing expectations the system has become bogged down in legalities with legal interpretations and planning principles dictating outcomes.

The planning system is focused on process not outcomes, legalese and litigation prevents the best outcomes being achieved.

The community, developers and practitioners are becoming frustrated and dissatisfied with the system, the complexity and the lack of meaningful outcomes being produced. The current focus on mass roll out of "standard -one-size fits-all" legislation continues to promote this dissatisfaction and frustration.

The planning system has been subject to manipulation and alteration over various periods and this has not responded either to community or the development industries expectations. A new system must be developed that begins afresh without the complexity and frustration and especially without adding to this by amendments and 'improvements'.

AlburyCity has detailed these and other concerns, with the State Government's planning reforms in a submission to the State Government's Discussion Paper "Improving the NSW Planning System" and the draft exposure Bills outlining wide ranging changes to the State's planning system. These submissions are attached for your further reference and information.

The abolition of building permits in 1997, and subsequent incorporation of this level of development into the EP&A Act, thus requiring Development Consent for minor projects or new houses, has added chaos and confusion rather than providing any simplification. The rationale behind this was flawed at best and the statistics being rolled out now to force reform and blame Councils for delays is rhetorical in its best form, with the majority of these applications previously being assessed as building applications and not subject to the same legal scrutiny, cost and confusion that currently exists.

What further changes to the planning legislation are needed?

The future of the NSW Planning System is bleak without a wholesale change to legislation – the answer to reducing the conflict and confusion is clear, easy to understand rules and regulations that can be applied to different parcels of land. A one size fits all approach is not going to work. The mums and dads who want to build their dream home don't care or want to even consider at the initial stages what level of engineering work is required to build the home, they just want to know can they do it and what changes might be required.

The ability of local government and state government agencies to deliver the expectations of legislation needs to be strengthened. One of the greatest criticisms of the current system is the delays in processing and lack of cohesion across agencies. This creates dissatisfaction and distrust amongst the community and development industry. If responsibility is to be assigned and relied on in any legislation then appropriate resources and support must be provided to implement and enact the expectations, this will significantly reduce delays and conflicting advice.

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

The main principles of any legislation guiding planning in the future should be based on equity, clarity and responsibility.

The legislation should be responsible for delivering outcomes on the ground and not just in the form of statistics and paperwork. The provision of appropriate and suitable development that provides for sustainable development and growth of a region is imperative.

All parties, whether it be the development industry, community, neighbours or property owners should have equal rights and expectations about what can and might happen in their environment. The current legalistic system does not encourage transparency and there is a growing expectation in the community for this key element. A simpler process based on appropriate level of assessment dependant on relevant level of potential impact should be encouraged and fostered with clear expectations for all parties. This has been promoted in the "*Leading Practice Model for Development Assessment*" developed by the Development Assessment Forum.

It has been argued that elements of the model have been included in the NSW development assessment process. However this has also resulted in the creation of more layers of regulation and complexity rather than incorporating these concepts as the fundamental basis of legislation. The ad-hoc incorporation of these elements and their implementation has been the cause of great confusion and disruption to the development assessment process especially where a "*one size fits all*" approach has been promoted.

TERM OF REFERENCE 1(B): THE IMPLICATIONS OF THE COUNCIL OF AUSTRALIAN GOVERNMENTS REFORM AGENDA FOR PLANNING IN NSW.

Questions

Are the reforms and discussions at the Council of Australian Governments level important for the future development of the New South Wales planning framework?

Yes, the reforms and discussions at COAG are important. One of the greatest criticisms in NSW and Australian development assessment is a lack of consistency. It is imperative that outcomes and agreements reached at the COAG level are implemented and acted on in any progression or development of the planning system in NSW.

A national planning system that is based on best practice, and provides for cross jurisdictional consistency is fully supported by AlburyCity. We are one of a unique group of Councils located in an area that is subject to cross border anomalies and the vagaries, inconsistencies and weaknesses of the planning system in both NSW and Victoria are highlighted through our location. Promotion of a national system that is consistent across all jurisdictions and borders that is based on best practice development assessment is strongly supported by AlburyCity.

What are the specific implications of the work of the Council of Australian Governments on planning in New South Wales?

One of the clear principles enunciated by the forum is *"ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times"*.

This principle must be included in the establishment of any planning regime in NSW. The introduction of Integrated Development in 1997 proposed that the *"holy grail"* had arrived but instead the promulgation of separate priorities, lack of response to referrals and lack of resources in government agencies has all but eroded the substance of the system. There have been some achievements through the introduction of Integrated DA's but the principles referred to above have not been the basis for the ongoing review and operation of the Integrated Development assessment system. Government agencies continue to fail in their delivery of consistent, responsible and equitable outcomes.

In addition COAG has delivered a clear focus on streamlining the development assessment process. AlburyCity fully supports a system that delivers a responsive approach to development assessment. AlburyCity has consistently been one of the high performers in development assessment in NSW based on a system that focuses on appropriate levels of assessment dependent on the potential level of impact, outcomes based approach and delivery of service to the community and industry as opposed to a regulatory outlook or approach. AlburyCity has a strong commitment across all levels involved in the development assessment process for efficient administration and this is promoted through 'Customer Service Standards' for all services related to development assessment. This promotes responsibility and respect for customers and the community, and delivers outcomes rather than processes.

The commitment to funding of Electronic Development Assessment is applauded and the NSW Government should be taking a leadership approach for the implementation and rollout of the system in NSW. This was undertaken and completed in Victoria with much success and support from community and industry alike. To implement and encourage the adoption of a similar system in NSW, recognition must be given to the financial and human resource impost on local government. For too long the government has promoted change and improvement, without providing additional resources or funding to assist in implementation. This includes many situations where changes have not delivered on the outcomes promised or proposed.

TERM OF REFERENCE 1(C): DUPLICATION OF PROCESSES UNDER THE COMMONWEALTH ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 AND NSWPLANNING, ENVIRONMENTAL AND HERITAGE LEGISLATION.

Questions

What are your experiences involving assessment processes under New South Wales and Commonwealth environment legislation for controlled actions?

AlburyCity's experiences in this area have been limited but Council recognises the potential for duplication of processes with the operation of the *EPBC Act* and *EP&A Act*.

AlburyCity is currently seeking biocertification of the *Draft Albury Local Environmental Plan (2009)* which was intended to be the first EPI (entire LGA) to achieve this in NSW under both state and federal environmental legislation. However, the duplication of processes is threatening the outcome and it currently appears that EPBC biocertification will not be forthcoming with public exhibition. Despite initial recognition of the significant concessions and protection mechanisms provided within the strategic planning documents supporting and enacting the new LEP, there is reluctance from the federal departments to participate or encourage co-operation. There has been a complete about-face from federal representatives in promoting cooperation and facilitation with local and state levels and the opportunity to achieve a consistent and positive outcome appears to be dwindling in the distance.

Did the bilateral agreements reduce duplication of approval procedures for the controlled action?

In the case of AlburyCity and the current assessment of the Draft Albury Local Environmental Plan (2009) the success of any bilateral agreement is questionable and cooperation between governments does not appear to work or provide for effective outcomes.

Are there areas of duplication that need to be addressed?

The operation of biocertification assessment should be the subject of agreement and assignation of responsibilities to a recognised authority. Duplication of processes has not provided certainty or efficiency in outcomes and this has impacted on resource allocation to other tasks or responsibilities that could have benefited from an appropriate level of cooperation.

The lack of consistency in some areas between State and Federal systems relating to the significance of, or risk, to a specific species or ecological community is a significant cause for concern and has created doubt and confusion. Consistency between agencies and legislative provisions should be encouraged as a priority.

TERM OF REFERENCE 1(D): CLIMATE CHANGE AND NATURAL RESOURCES ISSUES IN PLANNING AND DEVELOPMENT CONTROLS.

Questions

How should climate change be addressed in the planning framework?

Climate change is a valid and real matter for consideration in the planning framework. However it is creating confusion in the administration of development assessment due to a lack of certainty and the potential implications of decisions and decision makers.

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

The current frameworks do not provide certainty for any sector of the industry or community. There needs to be clear frameworks with standards established and recognised across boundaries and preferably on a national level.

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

It is considered that natural resources are adequately considered and accounted for in the development assessment process. The greatest cause for concern is the myriad layers of legislation and agencies that participate or regulate the natural resources legislation, principles or guidelines.

There needs to be rationalisation of natural resource legislation to provide clear guidelines or limits for responsibility and a whole of government approach that is adequately resourced to meet demands of any regulatory system.

The current referrals and integrated development system may have removed some of the issues identified in the past and whilst this has been further improved through revisions to legislation. But fundamental concerns still remain with inconsistent responses, conflict across jurisdictions, lack of responsibility for outcomes and failure to respond within suitable or appropriate timeframes.

TERM OF REFERENCE 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?

Competition analysis should not be a part of local planning decisions.

The concerns aired by the Australian Competition and Consumer Commission relate to the practices of larger retail organisations manipulating the planning process to achieve desired outcomes either through the prevention of competition or to establish their position. Consideration of competitiveness in planning systems should not be a critical element as this will be manipulated in a similar manner to that currently occurring.

Current measures being promoted through the Department of Planning with a consistent policy and strategic approach through the *Draft Centres Policy* will assist in providing direction and guidance for future decisions and strategic approaches to providing suitable and appropriate outcomes. The market must still be relied upon to encourage improvement, growth and survival. Competition analysis can lead to assertions of protectionism and this myriad of interests that would seek to be included in this form of analysis should not be encouraged.

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

Competition can be encouraged through the provision of adequate and appropriate land use zoning and supply of land to meet demand. The key is getting the balance right and emphasis should be placed on the strategic planning process to encourage this balance being provided to meet demand and therefore reduce the effects of speculation and anti-competitive practices.

Greater emphasis should be placed on the functioning of centres and provision of services through strategic planning rather than assessment of competitive forces at a development assessment stage. This is especially true in regional centres as is the case with Albury. The current population of Albury is approx. 49,000, yet the commercial, industrial and retail sectors serve a regional catchment of approximately 170,000. The implications for assessing competition on this basis are improbable and will not achieve any net benefit in the long term as opposed to ensuring the regional centre has the capacity to grow, develop and operate to meet the needs of this growing catchment.

TERM OF REFERENCE 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?

AlburyCity is the owner and operator of the Albury Airport and maintains control over airport management and land use planning surrounding the airport. It is considered this question is aimed at metropolitan Councils or areas where federal legislation may not provide the same strategic management or control.

Is there sufficient involvement of the community within which the airport is located under the current system?

There is sufficient input from the community to be involved and aware of the provisions of the planning instruments and long term airport management plans. As above it is considered this question is aimed at metropolitan Councils or areas where federal legislation may not provide the same strategic management or control.

TERM OF REFERENCE 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?

The implementation of changes to the Local Government Act in 1993 to move building approvals to the *EP&A Act* and thus create the inter-relationship noted above would, in hindsight, be considered a failure by many. The complexity of the system has increased delays, created confusion and reduced community faith in the system as a whole.

The expansion of statewide mandated controls for Exempt and Complying Development under the SEPP (Housing Codes) will not provide the reduction in assessment times or simplify the process for 'mums and dads' but instead increase complexity, create further delays and expense and raise concerns in the community about the development system. The imposition of statewide controls does not recognise local expectations, local conditions and accepted practices.

AlburyCity has promoted and encouraged a high level of customer service provision in the development assessment and building regulation services. This service exceeds forecast outcomes from the mandated Exempt and Complying provisions and initial feedback is that even less proposals will be considered under the SEPP Housing Code provisions as opposed to AlburyCity's Exempt and Complying provisions which have now in the majority been superseded.

The introduction of private certifiers and lack of clear responsibility for actions relating to development, including building regulation undertaken by these parties has further confused the process for the community and serves to foster dissatisfaction and disenchantment. AlburyCity has a number of private certifiers operating within the area and continues to be involved in resolving disputes with the community and private certifier projects. Whilst provision has now been made for some compensation to be sought by local government, this does not resolve the dissatisfaction of the community with outcomes where satisfactory alternatives may have existed without private certification.

TERM OF REFERENCE 1(H): IMPLICATIONS OF THE PLANNING SYSTEM ON HOUSING AFFORDABILITY.

Questions

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

The impact of the planning system on housing affordability is reflected in a number of areas but essentially relies on the strategic level to ensure:

- a. the provision of land for development;
- b. the provision of developable land in close proximity to services and infrastructure; and
- c. an adequate supply to ensure choice in location, type and thus encourage market competition.

These factors will have a significant influence on housing affordability and are more appropriately controlled by the planning system than alternate measures such as reducing processing times or developer contributions.

The provision of affordable housing is seen as a key role of state government and there has been much conjecture and discussion over many years about the ability to regulate and provide affordable housing with little definitive action. AlburyCity retains the opinion that strategic planning actions listed above are the domain of local government yet the provision of affordable housing on the ground remains the responsibility of state government.

AlburyCity has been in a unique situation whereby the majority of developable land around Albury and our neighbours in Victoria, Wodonga, was controlled and developed by the Albury Wodonga Corporation (AWC) a federal government initiative as part of the Growth Centre platform in the 1970's. The AWC was initially the landowner, developer and planning authority and evidence of the affordability of housing/land during this time indicates the ability to be all manner of authority only served to increase the price of land and decrease affordability. The reasons for this are numerous but include a lack of competition in the market, supply to the market as well as the location and type of development provided for.

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

AlburyCity maintains that our focus has been on encouraging housing affordability through the provision of new development areas, fast processing times, confidence in the planning assessment process with Council, appropriate land use zoning and supply as well as subsidised developer contributions.

Inquiry into NSW Planning Framework Draft Submission



The current emphasis on reducing developer charges may be relevant to metropolitan areas but the reality is that in regional centres there is little or no provision for full cost recovery of infrastructure provision. Of significant concern is the reliance on neighbouring authorities (North East Water in Victoria) where the State Government of Victoria has capped developer contributions to a level that is significantly less than our current subsidised contribution rates. This interference in the market provides a significant saving to developers and anecdotally this is reflected in the end price of land to the market. There is potential for State Government intervention in the funding and provision of key infrastructure and this would reduce overall development costs.

The long term burden of infrastructure provision, maintenance and development is not financially viable for local government alone and should not be borne by future landowners. There must be some level of intervention from state and federal governments to alleviate the burden on future development and especially local government.