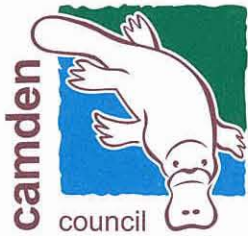


## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

**Organisation:** Camden Council  
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**Date received:** 2/02/2009

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29 January 2009

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

Dear Sir,

**RE: INQUIRY INTO THE NSW PLANNING FRAMEWORK.**

Thank you for providing Camden Council with an opportunity to provide its comments in relation to possible planning reforms. Council, at its meeting of 27 January 2009 considered the matter and resolved to forward a submission based on the report from officers. A copy of the report is provided for your information and has been prepared in response to the issues raised. In addition, further suggestions for consideration are included at the end of the report.

Should you have any enquires in relation to the issues raised, please contact me on 4654 7826.

Yours sincerely

SUE MORRIS  
DIRECTOR, DEVELOPMENT & ENVIRONMENT  
Attach.

#### English

"This information is important. If you need help understanding this document please call the Translating and Interpreting Service (TIS) on 131 450 and ask them to contact Council on 02 4654-7777 on your behalf."

#### Arabic

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#### German

Diese Informationen sind wichtig. Wenn Sie beim Verständnis dieses Dokuments Hilfe benötigen, wenden Sie sich bitte unter der Rufnummer 131 450 an den *Translating and Interpreting Service* (Übersetzer- und Dolmetscherdienst) und bitten Sie diesen Dienst, sich in Ihrem Namen unter 02 4654-7777 an die Kommunalverwaltung zu wenden.

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Αυτές οι πληροφορίες είναι σημαντικές. Εάν χρειάζεστε βοήθεια για να καταλάβετε αυτό το έντυπο παρακαλώ τηλεφωνείτε στην Υπηρεσία Μεταφραστών και Διερμηνέων (TIS) στο 131 450 και ζητήστε τους να επικοινωνήσουν με το Δημοτικό Συμβούλιο εκ μέρους σας στο 02 4654 7777.

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Din l-informazzjoni hija importanti. Jekk ikollok bżonn għajnuna biex tifhem dan id-dokument jekk jogħġbok ċempel it-Translating and Interpreting Service (TIS) (Servizz ta' Traduzzjoni u Interpreter) fuq 131 450 u itlobhom biex jikkuntattjaw lill-Kunsill fuq 02 4654 7777 f'ismek.

#### Serbian

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#### Spanish

Esta información es importante. Si necesita ayuda para entender este documento sírvase llamar al Servicio de Traducción e Interpretación (Translating and Interpreting Service / TIS) al 131 450 y pídale que se comuniquen por usted con el Municipio llamando al 02 4654-7777.

#### Tagalog

Ang impormasyong ito ay mahalaga. Kung kailangan mo ng tulong upang maintindihan ang dokumentong ito mangyari lamang na tawagan ang Serbisyo para sa Pagsasalang-wika at Pang-interpreter (TIS) sa 131 450 at hilingin sa kanila na kontakin para sa inyo ang Konseho sa 02 4654 7777.

#### Chinese

這是一份重要的資料。如果您在了解這份文件方面需要幫助，請致電 131 450 聯絡翻譯及傳譯服務 (TIS)，然後要求代致電 02 4654 7777 聯絡市議會。

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# ORDINARY COUNCIL

ORD07

**SUBJECT:** INQUIRY INTO THE NSW PLANNING FRAMEWORK  
**FROM:** Director Development and Health  
**FILE NO:** Binder: Governance/Legislative Amendments

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## PURPOSE OF REPORT

The purpose of this report is for Council to determine whether it makes a submission to the State Government in relation to the planning framework and to provide suggestions as to the content of that submission.

## BACKGROUND

The Environmental Planning and Assessment Act was made in 1979 and took effect in 1980. Since that time several amendments have been made however the basic framework remains the same. The most significant amendments have involved the move away from local government assessment to state government control of major developments and private certification of work. Initially this occurred through the introduction of Part 3A of the Act which relates to Major Infrastructure and Other Projects and Part 4A which provides for private certification of certain building and subdivision work. More recently amendments to the Act have introduced new assessment bodies which remove many decisions from local Councils and also the Minister. These include the Planning Assessment Commission, Joint Regional Planning Panels and Independent Hearing and Assessment Panels. A number of other changes were also made to the Act, however at the time of writing this report they had not taken effect.

Subsequent to these changes, the NSW Legislative Council's Standing Committee on State Development is currently conducting an inquiry into the NSW planning framework. Terms of reference of the Committee are:-

1. That the Standing Committee on State Development inquire into and report on national and international trends in planning, and in particular:
  - (a) the need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development,
  - (b) the implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales,
  - (c) duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation,
  - (d) climate change and natural resources issues in planning and development controls,
  - (e) appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales,
  - (f) regulation of land use on or adjacent to airports,
  - (g) inter-relationship of planning and building controls, and
  - (h) implications of the planning system on housing affordability.

2. That the committee report by 14 December, 2009.

Committee members are:

The Hon Tony Catanzariti MLC (Chair)	(Australian Labour Party)
The Hon Melinda Pavey MLC (Deputy Chair)	(The Nationals)
The Hon Matthew Mason-Cos MLC	(Liberal Party)
Revd The Hon Fred Nile MLC	(Christian Democratic Party)
The Hon Christine Robertson MLC	(Australian Labour Party)
The Hon Mick Veitch MLC	(Australian Labour Party)

Closing date for submissions is 13 February, 2009 and Councillors were advised of the enquiry last year and asked to provide comments on issues they consider relevant for incorporation into this report. No issues had been raised by Councillors when the report was finalised.

### **MAIN REPORT**

Planning reform is high on the agenda of State and Federal Governments in Australia at the present time. Strategies to standardise and simplify the process through the removal of red tape, adoption of standard LEP templates and definitions and changes to legislation have not, to date, achieved the primary objective of simplification. A raft of Acts, both state and federal, together with state planning policies, regional plans, the Building Code of Australia and individual local government planning instruments ensure that the system remains complex and challenging to most.

The need to stimulate economic growth and provide affordable housing is an integral part of any review, as is the need to ensure that local input and representation remains the central focus of any reform so that a community owns its plan. The mooted changes to the Local Government Act planning and reporting requirements suggest a more tangible link in a Council's Strategic Plan with its land use plan which is to be developed in association with a Community Vision Statement. Whilst such planning must integrate with the State Plan, Regional Planning Strategies etc, local content is the focus of local government's strategic planning. Accordingly, any review of the planning framework must guarantee this local community input.

To assist in preparing a submission, the Standing Committee has prepared a series of questions in relation to each matter. Council staff have workshopped the issues and this report reflects the views of staff across the organisation in an attempt to simplify the legislation and make it more relevant to individual communities. Discussion is provided on each Term of Reference.

#### **1(a) The need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development.**

*Questions.*

##### **1. Is there a need for further development of planning legislation in NSW?**

Since 1979 the principal act, the EP&A Act, has been amended on numerous occasions and supplemented by a series of state, regional and local policies (the Regulations, SEPPs, REPs, regional strategies, S117 directions, the standard LEP template). Rather than simplify the process, these various layers of controls complicate

the system, make it extremely difficult to use and therefore lead to the potential for confusion and misunderstanding of legislation.

In addition to the EP&A Act, there are many other Acts which provide controls relating to development of land. Examples include the Roads Act, the Water Management Act, the Heritage Act and the Rural Fires Act.

It is considered the opportunity to re-write the Act should be taken and that a new Act should include but simplify all current layers and provisions relating to the development of land across the State including those that are contained in other Acts.

## *2. What further changes to the planning legislation are needed?*

The most recent amendments made to the Act have further eroded the opportunities for local content and local "ownership" of plans. Whilst Councils still prepare a LEP for an area, the ability to include local provisions that reflect the needs and desires of its community have been severely compromised through the inflexibility of the Standard Template. Whilst it is acknowledged that LEPs need to be consistent across the state, there will always be a need for local variations to be incorporated to reflect individual circumstances. This includes definitions, land uses, zones and development standards and the plans must allow for mixed uses and activities rather than be limited by inflexible standard zoning.

DCPs need to be given proper effect and have legislative weight so as to ensure that they are applied consistently, are recognised by the court and accepted by all parties.

There needs to be a clear relationship between Council's LEP, its Community Strategic Plan and the supporting DCP, and this must be enshrined in the legislation.

Plans need to be flexible to respond to local conditions and the standard LEP Template in its current form does not facilitate this, particularly in release areas. In release areas the final development forms are not always known at rezoning stage. Therefore it is preferable that the LEP provide the broad structural elements and leave the detail to the DCP which would include an indicative layout plan and all relevant development controls. In this way the LEP establishes the planning principles and objectives for the area and all controls are contained in a DCP which, as mentioned above, should have proper legislative status. This provides both certainty to the land owners and flexibility to accommodate innovative design solutions at the development application stage.

Removal of concurrence provisions has assisted in more timely determination of applications, however agency referrals still hinder the process. This is the case in both applications to rezone land and those seeking development consent. It is often the case where one state agency will have conflicting requirements from another, and similarly, be provided with multiple opportunities for involvement/imposition of conditions, and require different issues to be addressed at the alternate referral stage rather than provide consistent advice. Currently agency referral is required during the preparation of an Environmental Study and during exhibition of a draft plan. It is often the case that the same matter is revisited again at subdivision stage and can also be at building stage. It is imperative that all of these requirements are clearly specified within the legislation, only one opportunity for comment is provided and reasonable timeframes for the provision of information are established. The Department of Planning must be the arbitrator of agency conflict and broker a solution that addresses a sustainable outcome.

Restoration of local democracy is required so that the community can decide how it wants its area to be developed and its representatives retain the ability to determine applications. If the legislation contained sufficient certainty, there would be no need for the various assessment/ determination layers recently introduced. Public participation in all aspects of the system is imperative and clarification of consultation/communication/ notification needs to be made and consistently applied.

Clarity of process is also required to ensure that all parties that use the system understand what is required, when and why it is needed and how it is used to determine the issues.

The plan making process needs to be clear and timely as does the process to amend those plans.

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

Future legislation must ensure responsiveness to local communities, be flexible so as to respond to changing needs, reflect place focused issues and be site responsive, but it is imperative that the legislation remains certain.

Local democracy must remain the centre of legislation as it is about people and the community that they are involved in. A balance needs to be struck to ensure proper strategic planning across state agencies and local governments and then these policies will ensure consistent application and approach and the timely delivery of infrastructure.

It is imperative that the objectives, strategies and structure of the Act are clear, and similarly that State, regional and local direction is understood.

**1(b)The implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales.**

*Questions:*

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

The Federal Government through the Development Assessment Forum has become more involved in land use planning policy review and aims to introduce best practice legislation throughout Australia. The work includes recommendations for development assessment with six levels of assessment ranging from exempt development to Impact Assessment. The principles of this proposal have been supported at both Local Government and Planning Ministers level and are in fact similar to that currently within the NSW planning legislation. Provided the involvement at Federal level is to ensure effective and efficient planning controls are introduced rather than looking at micro level issues, the review can complement the work being undertaken. Local variations are needed in any system introduced.

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

The Federal Government, through the Housing Affordability Fund, has provided

funding to State Governments to facilitate the implementation of an E-DA system. \$6 million has been provided to NSW to assist the implementation of that system. Whilst this is highly desirable, long term funding will be needed to pass to local government for the purchase and maintenance of the system.

**1(c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation.**

*Questions:*

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

Camden Council has not had any examples of controlled action approvals to date.

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

Unable to provide comment.

3. *Are there areas of duplication that need to be addressed?*

Unable to provide comment based on Camden's experience, however it would appear that there is duplication in the two Acts and this should be addressed.

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

*Questions:*

1. *How should climate change be addressed in the planning framework?*

Climate change should be addressed through development standards. Basix is a means of ensuring consideration of this issue. The state government needs to examine the impacts of climate change and introduce appropriate controls eg levels for development in coastal areas.

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

Not enough is known about the impacts of individual developments and how to measure this against any indicators. The current framework requires consideration of ESD principles, however provides no guidance in how to consider the effects of climate change.

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

Strategic plans need to be prepared for all natural resources and infrastructure and this should be done at a state level. This is then interpreted in local plans which need to be consistent with the state plan.

**1(e) Appropriateness of considering competition policy issues in land use**



## **planning and development approval processes in New South Wales.**

### *Questions:*

1. *Should competition analysis be a part of local planning decisions?*

Competition should not be a planning consideration, however local areas should be planned to ensure that residents have access to viable goods and services whilst minimising travel. The ACCC review of supermarkets has suggested that it is planning that limits the establishment of competition in this industry. However experience in Camden does not support this and it is in fact the supermarket industry which contractually restricts the owners of retail premises from introducing a competing business.

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

No, the matter should be addressed by a review of the leasing arrangements and conditions attached which restrict competition.

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

#### *Questions:*

1. *Is the current arrangement for regulation land use on or near airports appropriate?*

The Federal Government's Airports Act, 1996, controls development within the site of an airport and whilst the legislation has a requirement for consultation with the local authorities in which the development is located, the local authority is given no power of veto. It is possible for a masterplan to be prepared for an airport which is contrary to the strategic planning undertaken by both local and state governments. Issues such as impacts on road networks and employment lands as well as residential amenity can all be over-riden under the current process. It is considered that any activity which is not airport related should be justified against local plans.

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

The legislation does require community involvement, however in most cases the community does not understand the intent of the legislation. The proponent is well removed from that community and may not actively seek the appropriate level of input. Again, it is imperative that all planning is consistent and complementary to local plans. If the above recommendations are adopted, those plans have been developed in association with that local community and therefore the need to involve that community in airport masterplanning is not as critical.

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

#### *Questions:*

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

Despite attempts to simplify the system of building works, the current legislation in fact complicates the matter because of the different layers of approvals required. In

addition to the controls under the EP&A Act, Councils' LEP and DCP and the soon to be introduced NSW Housing Code, the Building Code of Australia (BCA) and associated standards still provides over-arching controls.

The option of self-assessment of the less complex forms of development up to say, two storey dwellings should be explored. This allows assessment against a specific range of quantitative criteria developed to reflect local expectations. This, coupled with the construction requirements set out in the BCA, would be less complex and better reflect local conditions than the proposed Model Code which is to apply universally across NSW.

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

*Questions:*

##### *1. What is the impact of the planning system on housing affordability?*

The planning system should be structured to deliver affordable housing by the delivery of appropriately zoned land to accommodate housing choice and needs. It is considered that the main issue that affects housing affordability is in fact the issue of who should pay for the infrastructure associated with the release of new areas or that which needs to be amplified to accommodate more dense development forms. In the past the major infrastructure items such as railways, schools, hospitals and main roads were fully funded by the state government, however in recent times an attempt to pass on those costs through the land development process has occurred. Similarly local councils require additional land and buildings to provide open space, recreation and community facilities for the new population and the current legislation allows collection of funds to pay for this.

There is no doubt that this affects the issue of housing affordability, but it is only one of a huge range of factors that do. Issues such as preferred location and waterviews also affect affordability and have no relationship to the planning system. An alternate means of providing necessary infrastructure is required, however at some stage the homeowner will pay, be it by taxation, rates or other forms devised by government to pass on those costs.

#### **Other Matters**

Whilst not included in the list of questions raised by the Committee, there are a number of other matters that should be addressed in the review of the legislation.

##### **1. The role of the Land & Environment Court.**

The Court has been established to determine a range of legal scenarios, one being the arbitrator of appeals lodged in relation to development applications. It is considered appropriate to restrict this role to determining whether the particular application that was determined by a Council, Planning Panel or determining authority was the correct decision, rather than resolving the development options available to the proponent. This would save considerable public funds from being used to defend appeals and ensure that developments were consistent with a Council's well developed requirements. Provided the legislation is clear and responsive to community concerns, the likelihood of matters needing resolution through the Court would be reduced.

##### **2. Voluntary Planning Agreements (VPA).**

Recent amendments to the legislation seriously restrict those matters that can be encompassed in a VPA. This is considered a retrograde step and the ability to deliver positive outcomes is constrained. The fact that the agreements are entered into on a voluntary basis and are subject to public scrutiny provides sufficient certainty that the agreement is in the best interest of both the developer/applicant and the community which will enjoy the facilities or services to be provided as a result of the agreement.

For this reason there should be no limits imposed on what can be contained in a VPA and matters such as heritage conservation works and forward funding of services should be encouraged.

### **CONCLUSION**

The review of current legislation that affects the planning system provides an excellent opportunity to develop a clear concise Act that covers all matters that affect land development. It is hoped that the review endorses the importance of preparing a new act rather than continued amendments to what is a complex piece of legislation supported by a plethora of supporting acts, regulations and policies.

It is imperative that any new act maintains the ability of local communities to have their say in what happens in their area and that local democracy is the foundation of the legislation.

The above responses are recommended to Council as its submission to the Standing Committee.

### **RECOMMENDED**

**That Council make a submission to the NSW Legislative Council's Standing Committee on State Development Inquiry in terms of the above report.**

### **RESOLUTION**

Moved Councillor Warren, Seconded Councillor Cagney that Council make a submission to the NSW Legislative Council's Standing Committee on State Development Inquiry in terms of the above report.

THE MOTION ON BEING PUT WAS **CARRIED**.

ORD11/09

### **ACTIONS**

Link to CRMS document

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