

Submission
No 19

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Kempsey Shire Council
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Ref: 170
RBP:LJK

17 December 2008

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



Dear Sir

INQUIRY INTO NSW PLANNING FRAMEWORK

I refer to the above and advise that Council, at its meeting of 16th December 2008, resolved to make a submission to the inquiry in accordance with the issues and recommendations detailed in the attached report. For your convenience the adopted recommendations relating to the terms of reference are as follows:

- a) Principles guiding NSW planning legislation development over the next five years

Issue: Unnecessary centralisation of planning powers/ lack of local knowledge

Recommendation: That the State review the NSW planning system based on a decentralised, regional-focussed approach. Through its regional offices, the State should concentrate on setting broad policy direction for different types of development for councils to implement, having regard to their specific local context.

Issue: Effective and meaningful consultation with Local Government

Recommendation: That any review of the NSW planning system include engagement with Local Government in a meaningful manner from the beginning of the process (*determining the scope of the review and agreed outcomes*) through the consultation phase (*identifying the key stakeholders and determining the depth of information to be provided to the community*) and implementation (*determining the means by which agreed outcomes may be best delivered*)

Issue: Reduced complexity

Recommendation: That the NSW planning system be restructured to ensure that the requirements of related legislation are incorporated through the strategic planning and LEP making process with any conflicting requirements or interpretations by Government agencies, whilst remaining matters to be considered, would have no binding effect at DA stage.

b) Implications of the Council of Australian Governments reform agenda for planning in NSW

Recommendation: That NSW comply with DAF recommendations in respect to significant developments by reinstating consent authority powers to local councils.

c) Duplication of State and Federal planning, environmental and heritage legislation

Recommendation: That state governments remain free to determine legislation relevant to the conditions applying in each state and across the regions, whilst remaining consistent with Federal policies.

d) Climate change and natural resources issues

Recommendation: That a consistent policy direction be provided by the State and Federal governments which specifies parameters such as expected sea level rise and storm intensity on which councils can base their planning in order to provide councils with adequate legal protection.

e) Appropriateness of Competition Policy in Planning and Development Approval Process

Recommendation: That approvals open to competition with private certifiers be restricted to certification of development against a set of simple objective development standards.

f) Regulation of Land use on or Adjacent to Airports

This relates to airports on Commonwealth land and is not relevant in respect to Kempsey Airport.

g) Inter-relationships of Planning and Building Control

Recommendation: That a preliminary BCA report prepared by a suitably qualified and registered certifier be made a mandatory requirement to accompany all development applications for Class 2 to 9 buildings.

h) Implications of the Planning System on Housing Affordability

Issue: Infrastructure Funding

Recommendation: That consideration be given to replacing the current developer contribution system by providing Local Government with access to funding for the component of infrastructure projects required to service new development.

Issue: Suspension of Related Legislation on Urban Zoned Land

Recommendation: That consideration be given to reviewing the relationship between the Environmental Planning and Assessment Act and the Threatened Species Conservation Act or any other legislative changes that conflict with existing land use strategies which have been prepared having regard to ESD principles and approved by the Minister.

Yours faithfully



Robert Pitt
DIRECTOR
SUSTAINABLE DEVELOPMENT SERVICES



KEMPSEY
Shire Council

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

16th December 2008

DSDS1

**LEGISLATIVE COUNCIL INQUIRY INTO THE NSW
PLANNING FRAMEWORK**

FILE: 170 SDS

{Folio No. *}

SUMMARY:

Reporting that submissions have been called relating to an inquiry into the NSW planning system.

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DESCRIPTION:

The Standing Committee on State Development is currently conducting an inquiry into the New South Wales Planning Framework. [\(Appendix A – Part 1 – Page G1, Part 2 – Page G8\)](#)

The terms of reference are 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 NSW planning legislation over the next five years, and the principles that should guide such development,*
- (b) *the implications of the Council of Australian Governments reform agenda for planning in NSW,*
- (c) *duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW 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 NSW,*
- (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.*

a) Principles guiding NSW planning legislation development over the next five years

Unnecessary Centralisation of Planning Powers/ Lack of Local Knowledge

In recent years reforms to planning legislation in NSW have tended to be on an adhoc basis by attempting to amend the Environmental Planning and Assessment Act, 1979 rather than to develop a new system which addresses the demands of the 21st Century.

This adhoc approach has resulted in the centralisation of consent powers from Local Government to the State. Under the guise of State Significant Development, responsibility for many small-scale developments have been rested from council control.

The Department of Planning (DoP) has demonstrated that it is ill-equipped to deal with local issues and has sought to rely on local councils for advice for which no fees are provided. This represents another example of cost-shifting and seeks to address a lack of dedicated resources within the DoP as a result of hastily made policy decisions with little or no consultation with Local Government. In this regard, there appears to be a lack of consistency where, in the case of some larger regional councils, the DoP has sought to appoint councils to undertake assessment of Development Applications on their behalf.

The DoP has also demonstrated that it lacks an understanding of development engineering which requires knowledge of local issues and conditions. It is critical to sound planning outcomes that these issues be addressed at DA stage through the imposition of appropriate conditions of consent. As a result of this lack of knowledge the DoP relies largely on information provided by applicants which may not result in the most cost-effective and sustainable solutions for local communities.

Recommendation: That the State review the NSW planning system based on a decentralised, regional-focussed approach. Through its regional offices, the State should concentrate on setting broad policy direction for different types of development for councils to implement, having regard to their specific local context.

Effective and Meaningful Consultation with Local Government

In recent years, consultation with Local Government in respect to planning reforms has been ineffective due to a lack of detailed information provided. Rather than include Local Government as a partner (being responsible to deliver the majority of planning services in the State), Local Government has been denied the opportunity to become actively engaged in the reform process. As a result, Local Government has been forced to adopt an adversarial approach and proposed reforms have avoided proper scrutiny which would avoid unnecessary problems in the future.

Recommendation: That any review of the NSW planning system include engagement with Local Government in a meaningful manner from the beginning of the process (*determining the scope of the review and agreed outcomes*) through the consultation phase (*identifying the key stakeholders and determining the depth of information to be provided to the community*) and implementation (*determining the means by which agreed outcomes may be best delivered*).

Reduced Complexity

The NSW planning system has become overly complex due to related legislative requirements that have crept into the EP&A Act as a result of the urgings of particular interest groups. The most notable act contributing to complexity is the *Threatened Species Conservation Act*, which must be addressed at both the LEP preparation and DA stages of the planning process.

Having gone through a long consultative process to develop planning strategies and LEPs, Councils are confronted with subsequent legislative changes which, in some cases may significantly reduce the development potential of land with flow-on effects to infrastructure planning, which defeats the objectives of the EP&A Act.

Recommendation: That the NSW planning system be restructured to ensure that the requirements of related legislation are incorporated through the strategic planning and LEP making process with any conflicting requirements or interpretations by Government agencies, whilst remaining relevant matters for consideration, would have no binding effect at DA stage.

b) Implications of the Council of Australian Governments reform agenda for planning in NSW

Discussions between state planning ministers led to the establishment of the Development Assessment Forum (DAF) which has identified 6 key elements that a development assessment system should contain.

The previous NSW planning system contained all six (6) elements, however, the proposed NSW system differs from the DAF recommendations in respect to developments that are likely to result in significant impacts on the environment and neighbourhoods. Rather than follow the DAF recommendation that such developments be determined by elected representatives (Minister or Councillors), under the changes to be introduced, councils are to be replaced by independent planning panels with consent authority powers.

Recommendation: That NSW comply with DAF recommendations in respect to significant developments by reinstating consent authority powers to local councils.

c) Duplication of State and Federal planning, environmental and heritage legislation

For similar reasons stated in respect to local planning decisions, states should retain legislative control for planning, environmental and heritage matters under a broad policy framework determined at the Federal level. Such an approach is likely to encourage competition between the states resulting in ongoing improvements to systems through innovation.

Recommendation: That state governments remain free to determine legislation relevant to the conditions applying in each state and across the regions, whilst remaining consistent with Federal policies.

d) Climate change and natural resources issues

It is imperative that planning and development controls required to address the impacts of climate change are based on consistent policy direction from the Federal and State governments. The current policy void is resulting in councils adopting different planning controls which run the risk of either underestimating impacts

(with associated liabilities) or unnecessarily sterilising development and affecting flood classifications on zoning certificates for existing development.

Recommendation: That a consistent policy direction be provided by the State and Federal governments which specifies parameters such as expected sea level rise and storm intensity on which councils can base their planning in order to provide councils with adequate legal protection.

e) Appropriateness of Competition Policy in planning and development approval Process

Consideration to opening up the planning and approval process to competition from private practitioners should be restricted to certification of development against a set of simple objective development standards where there is little or no possibility of unintended consequences.

Private certifiers should not be able to approve applications that require subjective assessments due to the inherent conflict of interest between their duty to their client and in protecting the amenity of the broader community.

The checks and balances provided by a system overseen and administered by democratically elected councils substantially reduces opportunities for corrupt conduct. Conversely, the conflict of interest created by developer appointed certifiers creates the potential for corrupt conduct.

Any system of regulating private certifiers as proposed by the NSW Planning reforms such as dictating the number of Construction or Complying Certificates issued by an accredited certifier is an unnecessary restriction of trade, does not address the aspects of the system that give rise to conflicts of interest and defeats the purpose competition policy.

Recommendation: That approvals open to competition with private certifiers be restricted to certification of development against a set of simple objective development standards.

f) Regulation of land use on or adjacent to airports

This relates to airports on Commonwealth land and is not relevant in respect to Kempsey Airport.

g) Inter-relationships of planning and building control

The current system lacks flexibility in respect to building certification as Construction Certificates must be strictly in accordance with the development consent, with little scope to vary from the approved plans. In determining development applications councils have a duty to ensure that the consent may be acted upon, whilst maintaining compliance with the Building Code of Australia (BCA). This often requires councils to undertake extensive preliminary BCA assessments without any certainty as to who the Principal Certifying Authority (PCA) will be or details of how the certifier proposes to comply with the BCA.

The PCA, who may be a private certifier, is bound by the terms of the development consent and is required to certify that the development, when completed, will comply with the BCA, without having had any input to the development application or consent and is prohibited from involvement in the design of the building.

A means of providing greater certainty is to introduce a mandatory requirement for all development applications for Class 2 to 9 buildings to be accompanied by a preliminary BCA report prepared by a suitably qualified and registered certifier.

As the report would form part of the development consent, a PCA would have certainty in respect to consistency between the development consent and subsequent construction certificate plans, particularly where the PCA does not issue the Construction Certificate. The increased certainty would also reduce pressures from developers on certifiers to engage in corrupt conduct.

Recommendation: That a preliminary BCA report prepared by a suitably qualified and registered certifier be made a mandatory requirement to accompany all development applications for Class 2 to 9 buildings.

h) Implications of the planning system on housing affordability

Although the cumulative costs of delays in development assessment impact on development costs which in turn impact on housing affordability, there are several factors affecting the supply of land which could be addressed through a comprehensive review of development related legislation.

Infrastructure Funding

Whilst the DoP has developed a strategy identifying a footprint for development of each of the towns and villages on the Mid North Coast, there has been no commitment from the State Government in respect to funding infrastructure to support the expected population growth.

In respect to water and sewer infrastructure, Council is limited in its capacity to service loans for headworks required in advance of development with a lack of certainty relating to the time required to recoup the money through developer contributions. As a result, developers have to wait until such time as funding can be provided with resultant delays and associated costs and possible shortages in supply leading to increased land costs.

As a means of reducing the cost to councils, the Government (State or Federal) could provide councils with access to loan funding to meet the costs of the component of infrastructure required to service new development, to be repaid upon receipt of developer contributions. Many councils have developed Developer Servicing Plans and Land Release Strategies that could be used to indicate required funding and expected timing for repayment of any loans.

Recommendation: That consideration be given to the State or Federal government providing Local Government with access to funding for the component of infrastructure projects required to service new development, with funds to be recouped through developer contributions.

Suspension of Related Legislation on Urban Zoned Land

Councils plan and invest in infrastructure having regard to an anticipated income stream from developer contributions based on current legislative requirements. Subsequent legislative changes are introduced which may substantially reduce development potential, particularly in existing urban zones where the majority of infrastructure investment is based. An example is the *Threatened Species*

Conservation Act which threatens to render significant areas at South West Rocks as undevelopable, despite areas having long been zoned for residential development. This has the potential to either significantly reduce the income received by Council from developer contributions or to require developers of remaining areas to meet the shortfall, thereby significantly increasing development cost with associated impacts on affordability.

Whilst councils are committed to ecologically sustainable development, current legislation tends to largely ignore economic sustainability and the need to attract investment.

Recommendation: That consideration be given to suspension of the Threatened Species Conservation Act or any other legislative changes that conflict with existing land use strategies which have been prepared having regard to ESD principles and approved by the Minister.

RECOMMENDATION IMPLICATIONS:

- ***Environmental***

Nil

- ***Social***

Nil

- ***Economic (Financial)***

Nil

- ***Policy or Statutory***

Nil

RECOMMENDATION:

That Council make a submission to the inquiry into the NSW planning framework in accordance with the issues and recommendations contained in the above report.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES