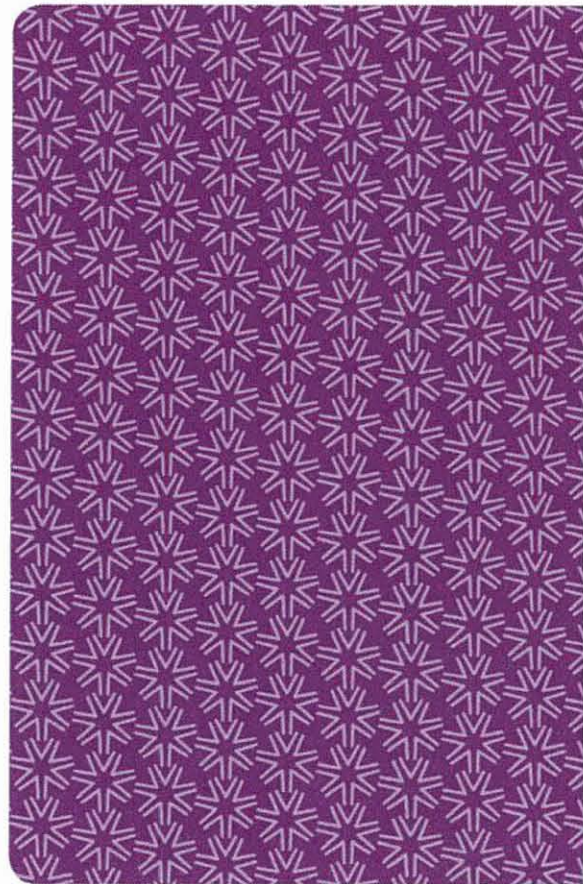
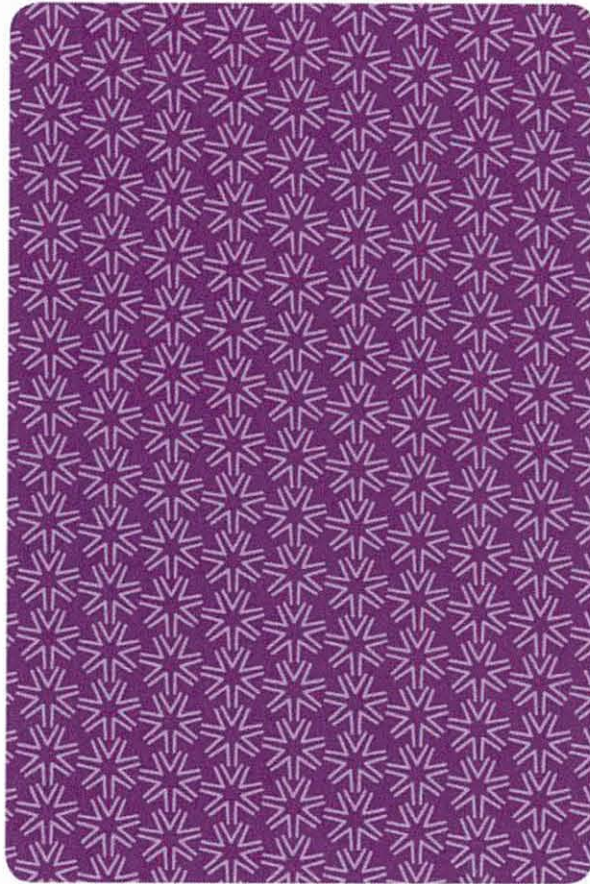


INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Date received: 10/02/2009

Inquiry into NSW Planning Framework

February 2009



Invigorating Business Representation

Executive Summary

The NSW Business Chamber remains supportive of the recent planning reforms, including increased use of complying development provisions and the de-politicising of approval decisions through the establishment of local planning panels.

We strongly urge the NSW Government to allow the impact of the latest reforms to take full effect before considering any further changes to the planning approval system: especially as this latest round of reforms are not yet fully implemented. The business community is seeking a period of relative certainty around the development approval process, so it can adjust to the new approvals process and allow for the proper evaluation of the impact these changes have on speeding up the development application process.

The latest round of planning reform is being introduced against a backdrop of major economic and social shifts. Climate change and housing affordability are two of the key policy issues of the day and developments in these areas both have implications for the overall planning system.

Key Recommendations

Our submission makes the following key recommendations:

- > Implement the latest round of planning reforms and assess their effectiveness before any further changes are made to development approval process in NSW.
- > Update the planning framework to provide increased certainty around climate change considerations for planners, developers and local Councils.
- > Update zoning restrictions, especially related to retail developments, to ensure they are not anti-competitive.
- > Reform Section 94 Developer Contribution system, including policies to ensure Councils spend the contributions in a timely fashion.
- > Increase housing densities in urban areas and around transport links.



Introduction

NSW Business Chamber represents over 30,000 businesses in NSW and connects over 100,000 businesses across Australia through the State and Territory Chamber Network. NSW Business Chamber's purpose is to champion the cause and growth of business. Through research, knowledge and policy achievements, we offer solutions that stimulate business growth nationwide and globally.

The NSW Business Chamber has been actively involved in many recent planning developments in the State. We provided input and comment on a range of areas related to Sydney's Metropolitan Strategy. We are also a member of the Coalition for Planning Reform, which actively worked with the NSW Government on the most recent development approval reforms. The NSW Business Chamber is also represented on the Planning Minister's Implementation Advisory Committee. This group advises the Minister on issues related to the implementation of the latest round of planning reforms.

Many activities associated with running a business interact with the planning system. Businesses are directly affected by planning issues around their own premises, including adequate provision of employment lands and land use regulations. In addition, they are indirectly affected by the broader community that is created by planning around residential housing and access to affordable housing for potential employees.

Our submission focuses on four areas of the Standing Committee's Terms of Reference.

1. 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.
2. Climate change and natural resources issues in planning and development controls.
3. Appropriateness of considering competition policy issues in land use planning and development approval process in New South Wales.
4. The implications of the planning system on housing affordability.

Key Recommendations

Planning reforms need time to be implemented

Following the recent round of planning reforms, we believe there now needs to be a period of stability to allow for the full implementation of the changes and to adequately assess if these reforms are meeting their objective - to make the planning approval process more timely, while still providing for community input.

The NSW Business Chamber is strongly supportive of the latest amendments to the state's planning laws. We believe the planning reforms provide an appropriate balance between allowing the timely approval of development applications in a de-politicized environment while still allowing for genuine community input and objections.

It is our hope that these reforms will be fully implemented in the coming months, as the recent establishment of the Planning Assessment Commission flows through to the local government level with the Joint Regional Planning Panels.

There are two key aspects of the latest round of reforms that we believe will help speed up the development approval process, while still maintaining the integrity of the planning system and allowing for appropriate community input.

Firstly, we support the increased use of complying development and the intention to lift this from 11% of applications currently, to 50% in the future. This will have the biggest impact on small applicants, including our members who wish to make minor alternations to their business premises or their internal fit-outs. We hope that this will reduce time delays for smaller applicants and free-up professional Council staff to deal with the larger, more complicated projects. In addition, we believe making increased use of complying development provisions will lead to less ambiguity and subjectivity in Development Control Plans, as Councils focus on ensuring clear directions for applicants who undertake small projects.

Secondly, we support the use of planning panels, with the Planning Assessment Commission at the state level and Joint Regional Planning Panels at the local level. Increased use of professionals involved in the planning process should result in more timely assessments without compromising community input. It is important that the community is represented on the panels and, as such, we are pleased that two of the five panellists will be local council representatives (and that at least one of these will have planning expertise). Recent experiences with a small group of NSW Councillors and developers highlights the importance of depoliticizing the planning process to ensure that the community gets quality projects approved on planning merit only. The planning system is suffering a 'crisis of confidence' in NSW and we believe these planning panels help restore the public's faith in its integrity.

Recommendation

Implement the latest round of planning reforms and asses their effectiveness before any further changes are made to planning legislation in NSW.

Planning and climate change

The planning system is already being impacted upon by climate change related issues, and this is likely to increase in the future. As with many issues related to climate change, the business community is looking for increased certainty about how the planning framework will deal with this far-reaching policy challenge.

Current planning legislation requires that planners consider the social and environmental impacts of a development when granting approval. However, the current wording of the act is broad and requires that "the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,"¹ are considered when approving plans.

The lack of clarity in the Act, together with an increased focus on climate change, has resulted in significant uncertainty for planners and developers.

In a landmark case in the Land and Environment Court in late 2006, the Court found that the NSW Minister for Planning should not have approved Centennial Coal's Anvil Hill mine project in the Hunter because it did not adequately consider the climate change impact of the additional coal that the development would result in. The Land and Environment Court did not say the project should not go ahead, just that climate change impacts had to be considered. Once this had been done by the NSW Government, the project was approved.

This example highlights the costly legal implications of having no clear direction about how planners should deal with climate change considerations. In addition, in many cases the impact of climate change is unknown and not easily measured; leaving planners and developers with considerable uncertainty and legal exposure when it comes to meeting planning regulations.

There are also implications for this trend towards climate considerations around transport planning. For example, freeway projects that may lead to increased motor vehicle emissions or new subdivisions that may need to have public transport provision (a government responsibility) as a condition of approval.

Climate change considerations do not just impact on industries with carbon-emissions; planners involved in coastal planning are also increasingly concerned about developments that may be affected by rising sea-levels in the future. This has major implications for the predominantly coastal-living population of New South Wales and coastal Councils.

The risk is that the planning system will become weighed down by legal action based on environmental concerns, unless there is increased clarity in planning laws about what environmental issues need to be considered and how these impacts, which are often hard to identify and quantify, should be measured.

Recommendation

Update the planning framework to provide increased certainty around climate change considerations for planners, developers and local Councils.

¹ *Environmental Planning and Assessment Act 1979 S 79C (b)*

Planning and competition policy

Out-dated zoning provisions, especially around retailing, may be acting as a restriction on trade and reducing competitiveness. Current planning provisions, including high-level plans such as the *Metropolitan Strategy* for Sydney, concentrate retail activity in certain designated areas. In addition, consent authorities have tended to take into account the impact of trade on existing businesses when considering an application for a new business. These two features of the planning framework mean that planning legislation has been used as a quasi-competition policy.

The latest round of planning reforms have made some attempt to address this unintended consequence by restricting who can object to a development application. Third parties can now only object if they live within 1km and are directly impacted by the building. This will avoid situations where nearby competitors hold up the planning process with objections, just to keep the new business from setting-up. Planning decisions should be based on the suitability of buildings for a particular area – competition issues are best dealt with by competition policy and legislation such as the Trade Practices Act.

Further action in this area is needed, however, especially around the restrictive nature of retail zoning. A recent study by Professor Allan Fels for the Urban Taskforce², found that a more flexible planning system could add \$52 to \$78 billion to the NSW economy and that a 10% increase in retail floor space could add 47,000 more jobs to the state.

Designated retail zones also have negative environmental and social impacts. Communities are increasingly demanding convenience for their shopping experience; they want to be able to do their shopping within walking distance of their work and/or homes. In addition, designated retail centres tend to be congested and need to be driven to, adding to the carbon-footprint of towns and cities.

Recommendation

Update zoning restrictions, especially related to retail developments, to ensure they are not anti-competitive.

² Professor Allan Fels (2008), *Choice Free Zone*.

Planning and housing affordability

Planning legislation can have a major impact on housing affordability – an issue the NSW Business Chamber is concerned about because of the difficulty this creates in accessing a wide-range of skilled employees.

The latest round of planning reforms will speed up the development application process and thus assist in improving affordability.

There are several other ways that the planning system can be used to make housing more affordable.

Section 94 Contributions

We support the recent improvements in the Section 94 contribution system, which restrict the types of projects Councils can levy contributions on. Nevertheless, we would like to see a further tightening of the system to prevent Councils from holding onto these contributions indefinitely.

Research conducted by the NSW Business Chamber in 2008 found that NSW Councils were holding almost \$900 million in Section 94 contributions as at June 2007. This figure is based on data from just 121 Councils that published these figures in their annual reports – leaving out 31 Councils. This is four times the funds collected in 2006/07. In other words, Councils are hoarding four years worth of contributions from developers that should be being spent on infrastructure for local communities. This is just an average figure - our research shows 40 Councils are hoarding more than five years of reserves and 25 Councils are holding more than a decades worth – denying the community critical infrastructure.

We look forward to working with the NSW Government on this issue following its announcement in the recent mini-budget that there would be a review of the Section 94 scheme in the first half of 2009.

Increase Densities

The other way to increase affordability is to lift housing densities, especially in urban areas and around public transport hubs. This concept is one of the underlying principles of the NSW Government's *Metropolitan Strategy*. It has the added benefit of delivering transport projects that previously may not have been viable because of patronage projections; thus reducing the city's carbon footprint.

As consent authorities, local Councils have a major role to play in increasing densities. Local Environment Plans (LEPs), particularly for those in urban areas, need to reflect this policy aim. Unfortunately, some local Councils have failed to recognise this link and continue to insist that their area should be treated differently from other suburbs. This trend makes it imperative that the Development Codes, that will support the new planning laws, are generic and apply to all local government areas.

Recommendation

Reform Section 94 Developer Contribution system, including policies to ensure Councils spend the contributions in a timely fashion.

Increase housing densities in urban areas and around transport links.

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