

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Ashfield
Council

Office of the Mayor



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

Dear Sir/Madam

INQUIRY INTO THE NSW PLANNING FRAMEWORK

The Ashfield Council offers the following comments in relation to the Committee's inquiry into the NSW Planning Framework.

Term 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.

The recent planning reform changes introduced by the State Government, which are being implemented progressively, have seen a major shift away from the community engagement process in decision making on development. In addition, there appears to be a strong push to more 'centralised' decision making bodies with local government having a much lesser role in determining the future character of its areas from both a major and minor development perspective.

With the implementation of the new housing code about to commence shortly the full impact of these changes is yet to be realised. However, this major expansion of exempt and complying development provisions will have a significant impact upon communities and is likely to see the need for future legislative changes which will 'claw back' some of the former consultative process most councils had in place. In addition, there is also likely to be the need for more 'local variations' to be allowed for councils to shape their own exempt and complying provisions to suit their local character.

A more detailed response to other specific provisions of the new sweep of planning reforms is included in the attachment to this submission.

The principles that should guide any new planning legislation should be a fair and reasonable balance between the interests of the community and that of developers – the balance at present is certainly biased towards developers.

Term of reference 1(b) The implications of the Council of Australian Governments reform agenda for planning in NSW.

COAG has an important role to play in developing and promoting national standards for planning processes and procedures. There is no reason why in a country with a relatively small population we can't have a nationally recognised 'system' for dealing with development applications, the mechanics of which do not vary significantly between each state. Having national standards and/or protocols will lead to significant savings across local government in terms of dollars and human resources and will enable benchmarking to occur to improve performance across the sector. In addition, smaller rural councils with far fewer resources would benefit significantly from a nationally developed system whose cost can be offset through economies of scale.

Term of reference 1(c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW planning, environmental and heritage legislation.

Ashfield Council has had no specific experience involving assessment processes under NSW and Commonwealth environment legislation so is not able to comment on the use of bilateral agreements and relevant processes and procedures.

Term of reference 1(d) Climate change and natural resources issues in planning and development controls.

Climate change needs to be given greater recognition in the planning framework. Recent court decisions involving development proposals clearly highlight that climate change will be an important consideration in assessing the suitability of a project. Amendments to the EP & A Act will be required to mandate this important issue as a 'heads of consideration' in the assessment of development applications and the preparation of new planning instruments. While the science on the future impact of climate change is still emerging it will be important in establishing appropriate standards for new construction, energy savings and land use management.

Term of reference 1(e) Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW.

An important component of good land use planning is the consideration of economic impacts likely to arise from the introduction of a new or modified planning regime. This should not be about developing anti-competitive policies but establishing the desired form of development that best fits the vision for an area. The fact that potential competitors have a vested interest in protecting their investment will not change and irrespective of what planning regimes are in place competitors with the financial means will always use whatever processes and opportunities are available to stifle their competition.

'Centres' policies are a vital part of good planning practice and whilst on the face of it may be viewed as limiting development opportunities and hence be anti-competitive, they are a far better alternative than a laissez-faire approach. Many established local centres have been irretrievably damaged economically through the 'Wal-Mart' practice of establishing 'fringe commercial' development away from existing centres.

In terms of the assessment of development applications economic impacts are already a requirement for consideration and there would be very few local government authorities who would not be able to distinguish a 'genuine' submission to an application from one based on competition grounds.

Term of reference 1(f): Regulation of land use on or adjacent to airports.

Although Ashfield Council has no specific interface with a major airport the current 'protection' afforded airport sites through Commonwealth legislation continues to undermine the effective planning of areas in the vicinity of airports. The fact that most airport sites have no effective applicable planning controls other than 'master plans' that they prepare themselves creates an opportunity to exploit this lack of accountability. The privatisation of a number of capital city airports has only exacerbated the issue of inappropriate development on these sites as is evidenced by the recent attempt of SACL to create a major regional scale shopping facility on the fringe of Sydney Airport.

The current arrangement for regulating airports is woefully inadequate with very limited opportunity for the community or local government to have a say in how these sites are developed. One needs to ask the question why such sites are still excluded from State based land use planning regimes, particularly now that many sites are now no longer in government hands.

Term of reference 1(g): Inter-relationship of planning and building controls.

There is no question that combining what used to be planning applications and building applications into a 'development application' has, over time, added to the complexity and delay in processing development applications. Hence the State government's push to create more exempt and complying development categories and mandate these requirements across all local government authorities.

In NSW we appear to be going full circle and the new complying development certificates are essentially a return to the former building application days where, provided certain basic parameters were satisfied, the issue of an approval was a fairly straightforward process. Whilst this process will no doubt simplify minor scale residential development it remains to be seen whether or not the broader community will see this as 'progress'. After being consulted so extensively for a considerable

period of time on development matters, the community's reaction to being shut out of the process will be monitored with interest.

It is probably too late to go back to a separate planning/building process but there are further opportunities that could be pursued to 'standardise' the system without excluding all community participation in the process.

Term or reference 1(h): Implications of the planning system on housing.

The planning system has a significant impact on housing affordability. The new planning reforms are likely to address some of the impacts that contribute to the affordability of housing but more can be done to address the issue in a broader sense.

There is an important role for the State government to take in providing additional resources towards public housing. Capital works contributions towards new public housing continue to decline with more and more State governments spending less each year. The provision of public housing infrastructure appears to be diminishing as more governments sell what remaining assets they have. Why are there no new major programs?

The NSW government also needs to better coordinate the release of land on the urban/rural fringe. Many other States have active land acquisition policies in place which are used to coordinate and regulate the release on land in these areas. This can have a significant impact on the affordability of housing by ensuring the release of land is in sync with demand to keep prices stable and affordable. In NSW we appear to have an ad hoc arrangement largely reliant upon the private sector to regulate. This is not only inefficient but has the inevitable consequence of driving prices up as the timely release of land is often delayed with the specific intention of driving prices higher.

Thank you for the opportunity to comment on the inquiry.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ted Cassidy', written in a cursive style.

Councillor Ted Cassidy PSM
Mayor

ATTACHMENT - FURTHER COMMENTS ON NSW PLANNING REFORM INITIATIVES

1.0 Improved Plan Making

(a) Gateway Screening System

Comment: The proposal to introduce a 'whole of government' approach to advise on the introduction of a new LEP or amending LEP is welcome. It is agreed that councils need feedback early on in the plan making process to avoid the unnecessary expense of undertaking major new policy work only to find that the State Government has an issue with the new initiative. Involving all relevant State agencies in this process would provide a much needed sounding board before major resource commitments were made by councils.

(b) Stream Local Environmental Planning

Comment: Streaming plan making into different paths depending on the complexity of the amendment is also an initiative which is supported. Refer to earlier comments.

(c) Community Consultation

Comment: A community consultation process which is specifically targeted to the plan type and complexity of the amendment is also supported. Mandatory timeframe for reporting comments could also be considered as part of this process.

(d) One Stop Shop

Comment: Streamlining the legal drafting of plans and resolution of State agency issues is supported. For this to be successful adequate resourcing needs to be provided to the legal services area to improve response time to the drafting and/or checking of new amendments. Alternatively, more work could be undertaken on standard clauses and wording to enable council's to choose from a suite of already agreed to terms and wording.

(e) Reform Government Referrals

Comment: Rationalising the needs to refer amendments to State agencies is a welcome initiative.

(f) Council Delegation - 'Minor' LEPs

Comment: The new initiative for the Minister to have the ability to delegate plan-making powers to councils for those matters that do not raise issues of State significance is supported.

(g) Improve Plan-making Processing Times

Comment: Introducing a system whereby accountability is built into the plan making process is long overdue. The new reforms should set specific timeframes for the determination of key stages of the plan-making process. If it is good enough for development applications to have a legal framework built around determinations there is no reason why a similar system cannot be introduced for the plan-making process.

(h) Reducing SEPPs & REPPs

Comment: This needs to be a genuine exercise not an initiative which 'amalgamates' a number of SEPPs into fewer more substantial SEPPs. Surely with such a complex planning system already in place one needs to question the future of SEPPs per se. Perhaps integrating SEPPs into LEPs, if at all necessary, might be a better approach than maintaining a separate hierarchy of controls which is distinct from local planning controls.

(i) Guidelines for DCPs

Comment: A 'consistent' set of criteria for how a DCP should be structured is supported. Likewise, incorporating such initiatives into an approach which will aid future ePlanning initiatives is also welcome.

(j) Spot Rezoning

Comment: With over 50% of LEPs comprising the bulk of the workload of the Department of Planning the State Government needs to consider whether such an approach is the best way of dealing with what is essentially 'non-complying' development. Many other States have a non-complying development category which allows a similar process of approval without the need to amend a planning instrument such as an LEP. This then ties the development of the site to a specific redevelopment proposal rather than allowing a site to be rezoned to a new generic classification. The concept presented with a rezoning proposal often bears little resemblance to the subsequent development proposal which can occur at a much later time. Removal of the spot rezoning regime would free up State Government resources to focus on more significant plan-making proposals.

2.0 Improving Development Assessment

New Development Assessment Regime

(a) Planning Assessment Commission

Comment: Setting up a specific authority to determine major development proposals is a welcome initiative. What is unclear at this time, however, is the extent of authority to be granted to the Commission and the specific type of development such a body would be responsible for determining.

(b) Joint Regional Planning Panels

Comment: See above comments in relation to what types of development such a panel would determine. If a development is of regional significance under this category and the region could include several councils how is representation on the panel to be determined if only two local government representatives are allowed as is proposed. This appears to be a new level of bureaucracy in what is already a complex system that will need to be resourced and serviced by the respective councils.

(c) Simplifying DA lodgement requirements

Comment: Tailoring information requirements to the complexity of the development application sounds reasonable, however, the reality is that a significant proportion of DAs, whether complex or relatively straightforward, are poorly prepared. Writing simplified guidelines will not change this situation rather what is needed is more attention by applicants to provide all relevant information requested and for councils to undertake more thorough checking of applications at the 'front end' of the process. Alternatively, a 'compulsory pre-lodgement' process could be considered which requires all applicants to present their proposals to appropriately experienced council officer for thorough checking prior to formal lodgement and acceptance.

(d) Tailoring development to the level of complexity

Comment: The suggested determination target dates for different forms of development depending on their level of complexity will never be realised while the assessment criteria councils apply across development assessment is left to individual councils to set. Many of the timeframes are totally unrealistic and presume that all councils are well resourced with development assessment officers (the skills shortage in assessment staff is well documented) and other key professional officers.

(e) Streamline Integrated DAs and concurrences

Comment: Making State agencies more accountable for providing timely advice on DA referrals is welcome. Likewise the concept of agencies providing 'standard conditions' for certain DA types without the need for referrals would be a more efficient way of dealing with the majority of integrated DAs.

3.0 Exempt & Complying Development

Expand exempt and complying development categories to 50% of all applications within 4 years.

Comment: Such an approach may well be suitable and achievable in rural or outer urban councils where uniformity of standards can be mandated more easily and where environmental amenity impacts may not be as significant. Greater difficulties are likely to arise in those council areas which have established and unique characteristics. A 'one size fits all' approach proposed in the new housing code is not likely to attract local community support or achieve good planning outcomes.

The very limited 'code variations' suggested by the State government will not allow sufficient flexibility for local councils to protect areas of local character.

4.0 Improving the certification process

Comment: Without an adequately resourced system to regulate the private certification process issues around the competency of certifiers will continue to escalate. The legislative changes will result in minor improvements but the inherent conflict of interest issues arising from the current system will still remain.

5.0 ePlanning

Comment: The proposal to expand ePlanning services is a welcome initiative and should be backed by a reform program supported by the State Government to assist councils in developing such a capability. A program which provides grant funding is essential to deliver a timely migration to such services across all local government.