Submission
No 42

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Date received: 16/02/2009

WYONG SHIRE COUNCIL
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CENTRAL COAST

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PJK/P Kavanagh
F2004/00503
D01358913; D01237179; D01358916

12 February 2009

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

Dear Sir

Legislative Assembly of NSW - Inquiry into the NSW Planning Framework

Thank you for your invitation to comment on the Terms of Reference for the abovementioned Parliamentary Inquiry.

There have been a number of inquiries into the planning system and housing affordability over recent years and it is hoped the Inquiry has regard for their findings. Council looks forward to the outcomes of the Inquiry leading to the resolution of a simplified and stable planning framework.

Please find attached issues and comments considered relevant by Wyong Shire Council. For any further information please do not hesitate to contact Council's Senior Planner, Planning, Legal & Policy Unit, Mr Peter Kavanagh on 4350 5537.

Yours faithfully

Gina Vereker
Director
SHIRE PLANNING

Encl.

Comments on Terms of Reference:

National and International Trends in Planning, particularly:

a. **Principles to guide further development of the planning legislation in NSW:**
   - Simplify the system/reduce duplication;
   - Build communities where people want to live;
   - Build accessible communities and facilities;
   - Enable connectivity, in pedestrian/cycle paths and access to efficient and affordable transportation modes, together with high-speed telecommunications infrastructure;
   - Appropriate and timely community infrastructure funding;
   - Communities should be entitled to have their say on planning schemes and local proposals - NSW planning legislation is currently very complex and difficult to navigate. Local Environmental Planning Instruments (EPI's) can be readily over-ridden by a large range of state EPI's (SEPPs). Therefore local planning based upon local conditions and community input can be over-ridden by generic 'one size fits all' state EPI's;
   - Part 3 which involves the rezoning process is long, relies on input from state government agencies and makes little distinction in process requirements between simple and complex rezonings. Part 3 needs to set in place categories with different process requirements for LEPs of varying complexity;
   - Part 3 A (which applies to declared 'major projects') provides a more streamlined process for significant applications. Some of the positive elements of the Part 3A process should also be applied to Part 3, including the 'Gateway or DGR's' consultation process;
   - Broadly, there should be a move toward less state EPI's and integrate relevant state requirements into local EPI's, through the 'Template' eplanning system; and
   - Consider whether State planning agencies should be replaced by a Regionally based planning system; setting broad guidelines and considerations for local government to implement local planning requirements.

b. **Implications of COAG reform agenda:**
   - The COAG Reform Agenda places "cutting cost of regulation" as a priority. The implication of this upon NSW planning framework should be a move toward simplifying the system and properly resourcing state government agencies and local Councils in order to reduce assessment and processing times.

c. **Duplication of environmental legislative processes:**
   - Simplify the system/reduce duplication/clearly differentiate responsibilities; and
   - Integrate the better elements of the various environmental legislations.

(i) Duplication of assessment processes:
   - There is currently a bilateral agreement in place between the Australian Government Minister for the Environment and Water Resources and the State of New South Wales which accredits the NSW assessment process under Part 3A, Part 4 and Part V of the Environmental Planning and Assessment Act, 1979 (EPA&A Act), for developments which are deemed to constitute "controlled actions" under the Environment Protection and Biodiversity Conservation Act, 1999 (EP&BC Act). The bilateral agreement does eliminate duplication in environmental assessments for proposals that are likely to have a significant impact on a threatened species, population or EEC. However, the issue of dual approvals has only been partially addressed - the bilateral

agreement only reduces duplication at the assessment stage for proposals that are a "controlled action", not at the referral stage;

- For species that occur or are likely to occur on a site and that are listed as threatened under both the NSW and Commonwealth legislation, the applicant must complete two preliminary environmental assessments that each address essentially the same criteria in order to determine whether the proposal is likely to have a significant impact or not (the NSW Threatened Species Conservation Act, 1995 (TSC Act)) or whether it is a "controlled action" (Commonwealth EP&BC Act). The duplication of preliminary environmental assessments does not add value to the process. It is recommended that the Inquiry research the number of proposals (if any) that were found not likely to significantly affect a threatened species under the NSW legislation but that were found likely to significantly affect the same threatened species under the Commonwealth legislation. If there are few examples of where the potential impacts to a threatened species were not adequately assessed under the NSW legislation, then it is recommended that assessment is not required under the EP&BC Act. In summary, it is recommended that preliminary assessment under the EP&BC Act should only occur if a species is not listed as threatened under the TSC Act;
- Problems with biocertification extend well beyond the "duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999". It is hoped that the Inquiry will include an investigation of biodiversity / biocertification planning legislation which is a major problem particularly for coastal growth councils. Problems with biodiversity / biocertification include:
    - The reporting required is extensive, expensive and very time-consuming. Given the vagaries of environmental analysis especially for ground orchids and migratory birds this is a major issue. It could be addressed in part by a "deemed to exist" approach which would enable a properly qualified scientific staff to assume that a threatened species existed in the area and move forward towards resolution;
    - The "black box" used to assess the biodiversity impacts of development proposals is not accurate, it is frequently applied without question or feedback. The offsetting ratios arising frequently exceed any reasonable analysis. The need to replace like for like habitat leads to lost opportunities for improved environmental outcomes;
    - The outcomes arising from biocertification analysis are not binding over the lifespan of many projects;
    - The entire process can be overridden by Cabinet, the Minister or through legislation, but these appear to be applied used in a random manner with no clear guidelines as to how this can be achieved;
    - The increasing involvement of the federal government, through their threatened species legislation, means the biocertification process is compounded if not impossible. When first introduced, the federal legislation allowed for the certification of State government authorities to biocertify under the federal legislation, but this does not appear to have been resolved.

(ii) Duplication of threatened species listings:

- In NSW there are many examples of duplication in the species listed as threatened under the Threatened Species Conservation Act 1995 (TSC Act) and the Environment Protection and Biodiversity Conservation Act 1999 (EP&BC Act). Such duplication leads to the inefficient use of resources, for example the preparation of species profiles for both jurisdictions;
- The duplication of listings can also cause confusion in relation to interpretation/comparison of Endangered Ecological Communities (EEC) that are listed under both the NSW and Commonwealth legislation. This issue will become more prevalent as more EECs are listed under the EP&BC Act. To

address this issue it is recommended that determinations for any EEC under both the NSW and Commonwealth legislation should include details regarding any equivalent EECs in other jurisdictions, as well as local vegetation map units;

- A strength of the EP&BC Act is that it places emphasis on the assessment of impacts to listed migratory species. In comparison, at a local level such species may be common and therefore potential impacts to them not considered in the assessment of significance under s5A of EPA Act/TSC Act. This a good example of the benefit of the different planning scales of the EP&BC Act compared to the TSC Act. With this in mind it is suggested that the to avoid duplication, the EP&BC Act should focus on biodiversity issues at broader scales, such as landscapes (regional) and ecosystems, whereas the TSC Act should continue to focus on the finer scale such as localities/local government areas (LGAs) in regards to individuals (of a species), populations (of a species) and communities;

d. Climate Change and Natural Resources issues:

- There currently exists at a state level a clear lack of direction in relation to climate change planning. There are no bench marks (even interim precautionary measures) to date dealing with sea level rise and flood planning levels associated with expected increased storm intensity and sea level rise;
- There is a need for consistency between LGAs in the adopted values of predicted sea level rise as a result of climate change and methodology to be employed in modelling and planning for climate change. It would be most appropriate for the State Government to provide this direction.
- From a transport sustainability perspective, urban design initiatives for increased residential densities are not underpinned by adequate infrastructure and service provision. Therefore new communities continue to emerge with car dependency, particularly on the Central Coast;
- It is hoped that in investigating climate change that the inquiry look closely at liability issues as we enter an ever-increasing period of coastal inundation. Decisions made with the best available information and a reasonable application of the "Precautionary Principle" should protect local councils from future liability due to the impacts of climate change;
- Planning and development controls need to include objectives in relation to adaptation to climate change to ensure the protection of biodiversity. For example, local environmental plans should not only consider and provide for the protection of threatened species and their habitat in the short-term, but should plan for the long-term impacts of climate change, including sea level rise, increased storm severity and increased temperature. Greater emphasis should be placed on protecting potential habitat that will enable a species to migrate/adapt to the impacts of climate change in the future. For example, although linear reserves are considered less optimal due to increased edge effects in the short to medium-term, if they traverse the contours of the land they may be more likely to facilitate the migration of a species in the long-term in response to sea level rise, loss of coastal frontage or increased temperatures;
- In line with the object of the EPA Act to encourage ecologically sustainable development, a greenhouse gas (GHG) emission trigger must be included in Schedule 3 Designated Development of the Environmental Planning and Assessment Regulation 2000. This would necessitate the preparation of an Environmental Impact Statement for those developments that are most likely to impact on GHG reduction targets;

e. Competition Policy in land use planning:

- No particular comments on this matter;

f. Airports, and adjacent land uses:

- No particular comments on this matter;

g. Planning and building controls:

- Continue the work commenced through transfer of approvals functions from the Local Government Act, 1993 (LG Act), to the Environmental Planning and Assessment Act, 1979 (EP&A Act), and examine whether these activity approvals could be categorised as Exempt Development, in order to streamline processes and reduce approval times;
- Reduce necessary concurrences and referrals;

h. Housing affordability:

- There is no doubt that the cost of housing in NSW is significantly higher than other states of Australia. This is due to many factors including, but not limited to, state and local levies, fees and charges;
- However, without the ability to collect local contributions under Section 94 of the EP&A Act, Councils will not be able to provide the essential infrastructure and facilities to new communities. Nor will Councils be able to fund significant community projects which solely benefit these new communities;
- Council is concerned that the recent introduction of Special Infrastructure Contributions by the State Government significantly impacts on housing affordability and the viability of development in general. This newly introduced State contribution seeks to raise funds from development for facilities that are currently funded from other State taxes such as land tax and sales tax.
- Without a suitable, workable alternative, developer contributions provide the best, most equitable mechanism for collecting funds for essential community infrastructure and facilities. Developer contributions are based on broad strategic studies of future community infrastructure and service needs (currently undertaken by s.94 Development Contribution Plans) rather than on an ad-hoc development by development basis. This more strategic approach needs to be adopted by the State Government with the State Infrastructure Contributions, together with transparency in terms of what, where and when levied funding will be spent; and
- There have been a number of inquiries into housing affordability in recent times. It is hoped that the Parliamentary Inquiry investigates the broad implications of the planning system, including Section 94 contributions and the ever-growing level of planning and environmental legislation impacting on the quantity and timing of the release of land for development.

Attachment 2: Terms of Reference.

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON STATE DEVELOPMENT

Inquiry into the New South Wales planning framework

TERMS OF REFERENCE

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

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