Submission
No 57

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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

Dear Sir/Madam,

RE: INQUIRY INTO THE NEW SOUTH WALES PLANNING FRAMEWORK

Thank you for the opportunity to comment on the above inquiry. The attached submission contains Council's comments under each of the terms of reference.

Please do not hesitate to contact the undersigned or Ms Lorena Blacklock on 6298 0276 if you require further information.

Yours faithfully

DAVID CARSWELL
EXECUTIVE MANAGER
STRATEGIC PLANNING

CC The Mayor
General Manager
Lorena Blacklock

SUBMISSION

Queanbeyan City Council Submission to the Inquiry into the NSW Planning Framework

(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

Taking the latter part of the question first, the principles should include:

- Simplifying the planning system in New South Wales. The history of the *Environmental Planning and Assessment Act 1979* has been one of making the Act and the processes under it more complicated. In the last 10 years there have been 2 major attempts to simplify the system i.e. one in 1997 and the current reforms. To a large extent the 1997 reforms made it much more complicated and slower to react which was despite clear objectives to the contrary. Again the current reforms establishing a whole host of new committees and relevant planning authorities (ss 4 (1) and 34A) is likely to do little to simplify it.

- Over the last 15 years the planning system has also been subject to numerous reforms brought about by other legislation, policy and the requirements of government departments. This includes:

    - Native vegetation clearing
    - Biobanking
    - Climate change
    - Heritage – Aboriginal and European
    - Water Management
    - Bushfire Protection
    - Flood mitigation
    - Infrastructure provision and cost recovery
    - Delegation of State functions to local government.

    All these reforms have relied on local government as a key player often allocating it the sole responsibility for implementation. This exacerbates a situation which is difficult for Councils experiencing skills shortages.

- Making it more strategic and/or reactive to critical issues such as climate change, housing affordability and future changes in private transportation modes as a result of increasing fuel prices. More is said about these later but the current planning system and proposed changes in the form of a standard template do not assist to make the planning system more reactive.

Moving on to the first part of the question to a large extent the need, if any, for further development of the New South Wales planning legislation over the next five years is dependant on the implementation of the reforms in the *Environmental Planning and*

Assessment Act 2008 and other legislation reform that are brought in by this Act and whether or not the reforms achieve their stated objectives. At the time of writing much of this Act remains to be enacted and much of the details is contained in Regulations and other supporting material which is yet to be written.

When comment was sought on the Planning Reforms contained in this Act, Council made submissions on the reforms proposed and included reservations on the effectiveness of the changes. Many of these concerns remain current and are reproduced later in this submission.

The Standard Instrument (LEP) template should be revised in conjunction with input from practicing planners from regional NSW as well as the Sydney metropolitan Councils along with Department officers to produce three separate LEP templates to reflect the different circumstances of rural, coastal and metropolitan areas.

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

In April 2007 the Local Government Planning Ministers' Council (LGPMC) Report to COAG on Development Assessment amongst other things continued to support the concept of ePlanning.

The concept of ePlanning is supported, however, the Department of Planning should confirm how the initiatives will be consistent with, or at least complimentary to, the online development assessment systems developed as part of the national Development Assessment Forum (DAF) work. This work was done on a national scale and has at this stage 70 councils across Australia on track to install standardised internet based systems for the lodgements and tracking of development applications.

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

Feedback to Council is that it is a source of frustration that more or less equivalent processes under the Commonwealth *Environment Protection and Biodiversity Act 1999* and New South Wales planning, environmental and heritage legislation have to be duplicated. However it is noted that some attempt has been made to reduce duplication through bilateral agreements which accredit State/Territory processes. Nevertheless more needs to be done on this to simplify this aspect of the planning system and avoid duplication between legislation.

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

The New South Wales planning system was recently rated D+ (inadequate progress and no action underway) by practicing professionals in regard to climate change by the 2008 Planning Institute of Australia Report Card. In addition the Standard Instrument (LEP) template (December 2008 edition) has limited provisions dealing with climate change and natural resource issues. This needs to be looked at and could include provisions dealing with:

- Carbon neutral development
- Reducing need for car travel
- Maximising opportunities for energy sources that are low carbons
- Promoting renewable energy sources.

BASIX has gone some way to addressing energy and water efficiencies for buildings. However much more needs to be done especially in strategic land use planning and the Act needs to be amended to reflect this. At a minimum this could include amending its objects of the Act.

(e) Appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales

Competition policy issues have generally been excluded from assessment process although economic and social impacts are considered. It is considered that including competition in the assessment of development applications would open a new area of complexity and costs for preparing and lodging development applications.

The discussion paper seems to indicate that this term of reference focuses on the findings of the ACCC inquiry into grocery retail prices and its conclusion that new ways of incorporating competition analysis into planning decisions should be considered. It is considered that the ACCC should continue to assess big business takeovers, such as Woolworths at Karabar in Queanbeyan, as the scope of such analysis is beyond the resources of Councils.

The impacts of proposed smaller developments such as restaurants, clothing shops, hardware stores, automotive repairs and the like should be left to market forces to deal with competition issues as it would be extremely difficult for Councils to assess the impact of such developments. For example, it is understood that the relocation of businesses such as CBA and NRMA to Riverside and City Link Plazas (local centres) in Queanbeyan has had an impact on remaining businesses nearby. However, the assessment of individual and cumulative impacts of such developments would introduce a level of complexity in the development assessment process that may be detrimental to overall economic growth.

There is some concern that Home Activities and Occupations have an unfair advantage over businesses in commercial and industrial zones because of their lower overheads. Any consideration of competition issues in this regard could be dealt with in Local

Environmental Plans and Development Control Plans, although it is again acknowledged that these are complex issues.

It is believed that the planning objection processes can be deliberately manipulated by competing businesses to frustrate or prevent proposed developments. A review of these processes to further examine ways to eliminate unjustified objections would be welcome.

Current planning procedures allow for the consideration of economic impacts of developments such as Googong (a local urban release area) at the strategic level.

There is sufficient scope in Section 79C of the *Environmental Planning and Assessment Act* for Council's to assess social and economic impacts and the public interest.

(f) Regulation of land use on or adjacent to airports

This item deals with two matters; 1 land use on airports and airport land; 2 land use adjacent to airports and under flight paths.

1. Land uses on airports
It is the non-aeronautical land uses and developments that are an issue. It is Council position like the Planning Institute of Australia's position that Airports should be subject to the same local planning controls as adjoining sites.

For many airports the substantial amount of non-aeronautical development has caused major concern and litigation. At present substantial commercial developments on airport land adjacent to urban areas may proceed without reference to state, territory or local government planning policy. This is despite the fact that these developments can be very large with potentially major impacts on external infrastructure and facilities. This includes the maintenance of retail and commercial centre hierarchy with in region and associated traffic management issues. In the case of Canberra International Airport, while the Commonwealth has administrative responsibility, the use of these facilities for commercial activity un-related to the normal operation of an airport puts at jeopardy the efforts of the National Capital Authority, the Territory and Queanbeyan City Council to deliver a proper land use planning strategy for Canberra and Queanbeyan region.

Such impacts can be a concern to all stakeholders including owners of Airports. A recent local example of this is the traffic problems on roads adjoining Canberra International Airport. In these cases there is an argument that Airports should be required to contribute towards their proportion of any necessary upgrades of infrastructure and pay developer contributions in a similar manner to those paid by major developments in New South Wales which are outside of airport leased land. This would put the two situations at a level playing field.

While it is appropriate for the Commonwealth to administer airport related matters, the development of very substantial non-airport related commercial development should not be considered by the Commonwealth but rather the responsibility should be properly passed to the relevant urban planning authority. This could be achieved by requiring major airport

developments of a non-aeronautical nature to be subject to relevant state and local or territory planning requirements.

2. Land use adjacent to airports
It is Council's position that the ANEF system supplemented by other sources of information on Aircraft Noise remains a reasonable approach. This means that the current section 117 Ministerial Direction 3.5 Development Near Licensed Aerodromes is supported. However as much information as available should also be provided on aircraft noise. Consequently section 149 (2) *Environmental Planning and Assessment Act 1979* and Schedule 4 *Environmental Planning and Assessment Regulation 1980* should be amended to:

- Make it mandatory for every planning certificate to refer to whether or not the site is within ANEF 20 and above
- To refer to sources where information can be obtained in regard to aircraft noise.

In addition the Standard Instrument should be amended to include a mandatory clause which requires construction in accordance with the relevant Australian Standard (currently AS 2021) when a site is within ANEF 20 and above.

Further, where the ANEFs are reviewed by airports and are expanded (for projected ultimate capacity and the like), the land identified as within ANEF 25 and above should be listed for acquisition by the airport or other compensatory measure agreed to by the affected land owner.

(g) Inter-relationship of planning and building controls

This is basically what the reforms of 1997 were about and a by product has been the creation of an extremely complicated and expensive development consent system often involving 100's of conditions. Prior to 1997 many of the issues and conditions could be dealt with at BA stage. Perhaps what is needed is a new section in the Act which only requires the assessment of development applications and one that specifically deals with construction certificates.

While many believe that the old DA and BA system had many advantages over the current system, it is considered that there is little chance of a return to those days. The current Complying Development process has some of the benefits of the BA system as only one approval is required for such development. The inquiry should consider increasing the amount of complying development as Council's existing DCP provides for more exempt and complying development than does the new NSW Housing Code.

Modifications of consents and construction certificates, particularly minor changes, continue to be a heavy workload for Councils often without producing any real planning benefit. Introduction of a system of acceptable tolerances for variations from consents could be considered.

Again it is emphasised that any changes should be aimed at simplifying the process as any additional controls would introduce further confusion and complexity to an already complex system.

(h) Implications of the planning system on housing affordability

The New South Wales planning system was recently rated D+ (inadequate progress and no action underway) by practicing professionals in regard to housing by the 2008 Planning Institute of Australia Report Card.

Problems which impact on housing affordability include:

- Time taken for rezonings and development assessment contribute to cost as does the "user pays" policies for infrastructure provision.
- The increasing matters to consider in rezoning land for residential development.
- Impact of State levies and lack of investment in regional infrastructure particularly new roads. Local government has little capacity to fund this infrastructure and the S94 and S64 is unresponsive for the forward provision of infrastructure especially in new release areas. This all affects housing affordability and liveability of new release areas.

Other Concerns with the current Planning Reforms

In relation to the gateway processes (section 56) the screening/evaluation criteria should be developed with input from practicing planners from regional NSW as well as the Sydney metropolitan Councils along with Department officers. This should also include input from Government agencies to codify their requirements for LEPs according to various levels of complexity and for these to be included in s117 Directions.

Screening/evaluation criteria should recognise that local circumstances can be unique and their impacts extensive, going well beyond local place boundaries. It is important that the criteria include all sustainability issues – social, economic and environmental, otherwise they will lack credibility.

It appears that from the new gateways procedures that a Planning proposal (draft LEP) can get the go-ahead, before issues of impact on threatened species have been addressed by the Director General of the Department of Environment and Climate Change (section 34A). In non metropolitan areas these matters are often the critical issues affecting a draft LEP. As a consequence the Act/Regulations need to be amended to ensure that consultation is done either prior to or simultaneously to section 56 where there are issues of threatened and/or vulnerable species are involved.

A step in the right direction has been recently undertaken by the Department of Planning by issuing a letter to a number of Councils inviting them to nominate a staff member to be part of Standard Instrument Liaison Group. It seems that this group will be looking at how to strengthen the Standard Instrument.

Whilst the creation of new planning committees has become a reality there is still a real concern that these have the potential to increase complexity and delay. This has been a major criticism of legislative amendments over the last decade which is likely to be compounded by many of the reform proposals. The creation of so many new panels would also seem to fly in the face of community concern that the planning system is complex and difficult to follow.

Other concerns with the introduction of new panels include:

- How will the consistency of panels, both in membership and decision making be monitored?
- By taking regionally significant development applications away from Councils how will the skills of Council planners be expanded and built upon if only local applications are dealt with. In the future this could have negative impacts on the panels themselves as suitably experienced planners with experience in major development applications may not be able to be sourced.
- Costs associated with remuneration, costs and expenses of the Planning Advisory Commission, regional panel and/or planning arbitrator operating in a council's area (sections 23O (1), (2) and (3).
- Increased administrative costs associated with the roles of Planning Advisory Commission, regional panel and/or any planning arbitrator operating in a council's area (sections 23N (1)(a),(b) and (2)).
- Other costs such as the indemnification of a planning arbitrator (section 23P).

The Minister may nominate any person or body prescribed by the Regulations as a "relevant planning authority" (section 54) to prepare an environmental planning instrument (EPI).

It seems that "relevant planning authorities" empowered to prepare EPIs are not required to consult with Local Government. This could raise issues with property records, Section 149 certificates, liability of Councils for issue of inaccurate information, section 79C assessments etc.

Creating multiple Relevant Planning Authorities for EPIs also has a real potential for information to slip "between the cracks" e.g. issue of section 149 certificates and development consents to know exactly what instruments, DCPs apply to the land.

Affected Council's should be included in any consultation processes and must be notified when an EPI or DCP is exhibited and adopted (made). The Act still needs to be amended to require consultation with Council's in the event that an EPI is not prepared by the affected Council(s) as well as for variations to "planning proposals".

The efficiency of the system would be improved by reducing the layers of approval hierarchies, planning instruments and the ever increasing matters for assessment arising since the *Environmental Planning Assessment Act 1979* came into operation in September 1980. This could be done by taking a fresh look at the *Environmental Planning and Assessment Act 1979* and other relevant Acts (both State and Commonwealth) to see how they can better integrate to deliver on improved physical and natural environment within a sustainability framework.