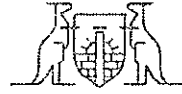


Submission
No 62

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Australian Institute of Architects

Ms Rachel Simpson
Director
Standing Committee on State Development
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Simpson

INQUIRY INTO THE NSW PLANNING FRAMEWORK

I am pleased to attach the submission from the Institute's NSW Chapter to this important inquiry.

The Institute proposes an overhaul of the NSW planning framework that forms part of a new nationally coordinated and harmonised planning framework.

We would welcome the opportunity to meet with the Committee to discuss our proposals.

Yours sincerely



Dr Deborah Dearing
NSW President



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Australian Institute
of Architects

Inquiry into the
NSW Planning
Framework

**Submission to
Standing Committee on
State Development
NSW Parliament**

February 2009

SUBMISSION BY

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PURPOSE

- This submission is made by the NSW Chapter of the Australian Institute of Architects (the Institute) to the Legislative Council Standing Committee on State Development in response to its Inquiry into the New South Wales planning framework.
- At the time of the submission the office bearers of the NSW Chapter are: Dr Deborah Dearing (President), Caroline Pidcock (Immediate Past-President), Stephen Buzacott (Vice President), Roger Barrett, Paul Berkemeier, Adam Haddow, Chris Jenkins, Steve Kennedy, Nicholas Murcutt, Peter Poulet, Eva-Marie Prineas, Gerard Reinmuth, Agi Sterling, Brian Zulaikha.
- The Office Manager of the NSW Chapter is Roslyn Irons. This paper was prepared by Michael Neustein and Murray Brown, Policy & Advocacy Manager, with the advice of an expert panel consisting of Michael Neustein (Chair), Dr Deborah Dearing, Russell Olsson, Peter Jensen, David Chesterman, Philip Thalys, Peter Smith, Professor Alan Peters, John Mant, Jeremy Dawkins, Richard Smyth and Professor Peter Webber.

INFORMATION

Who is making this submission?

- The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organization with approximately 9,783 members, of which 5,557 are registered architect members. Members are bound by a Code of Conduct and Disciplinary Procedures.
- The Institute, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.
- The Institute's New South Wales Chapter has 3,059 members, of which 1,610 are registrable architect members – representing 53% of all registered architects in NSW.

Where does the Institute rank as a professional association?

- At 9,783 members, the RAlA represents the largest group of non-engineer design professionals in Australia.

- Other related organisations by membership size include: The Design Institute of Australia (DIA) - 1,500 members; the Building Designers Association of Australia (BDAA) - 2,200 members; the Australian Institute of Landscape Architects (AILA) - 1,000 members; and the Australian Academy of Design (AAD) - 150 members.



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Inquiry into the
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INQUIRY INTO THE NSW PLANNING FRAMEWORK

1.0 INTRODUCTION

This Inquiry is very welcome. After 30 years of operation and numerous amendments, the increased complexity and administrative problems of the Environmental Planning & Assessment Act 1979 are contributing factors preventing New South Wales from performing effectively in the 21st century globalised economy. The state's planning system is unduly complex and lacking in transparency and the process itself discourages good design. The system has a negative effect on business efficiency and the quality of governance, and on the quality of life of the population as a whole.

2.0 THIS SUBMISSION

In the Institute's view the Inquiry's terms of reference focus far too narrowly on land use planning, which is only one of several factors needed to effectively manage growth and change in the state.

The Institute proposes an overhaul of the NSW planning system that forms part of a new nationally coordinated and harmonised planning framework. This submission therefore principally addresses term of reference 1(a). The other terms of reference are addressed in the final section of the submission (pp 8-11).

Our principal conclusion is that we need a new planning act which establishes a process of strategic planning for NSW and which is quite separate from an act proscribing the process of development control. This latter piece of legislation could be a simplified Environmental Planning & Assessment Act.

3.0 PRINCIPLES

The new planning system should embody the following key principles:

3.1 Strategic planning

Strategic planning asks basic questions; for example, about Sydney, the questions would be:

'What sort of future do we want?'

'What sort of city should Sydney be?'

'What size should it be?'

A strategic plan answers these questions and bases its projections on sound data and analysis and alternative growth scenarios; it protects cultural and natural heritage resources and models a future that accommodates growth while still enhancing the quality of life of the population. It takes account of potential effects on the economy, social policy and environmental, transport and infrastructure requirements and builds them into the plan. An adopted strategic plan can provide a degree of certainty for planning decisions over a specified time frame.

There is a great deal of 'planning' in NSW, but very little of it is strategic; when it is, it is carried out by rural and coastal councils, but does not encompass the major population centres that are in the greatest need of it. The Institute considers that the lack of strategic planning is one of the biggest failures of the NSW planning system.

3.2 Expert analysis

Strategic planning needs to be based on sound data and defensible growth projections, backed by sound analysis of the figures and alternative scenarios. This is not happening in NSW.

The Metro Strategy, in many respects a laudable document, proposes:

'Sydney needs to plan for a high growth scenario. The Metropolitan Strategy assumes average growth to 2031 will be 10 to 15 per cent higher than the recent average. Consequently, population growth of 1.2 million people or a total of 5.3 million by 2031 is assumed, but this will be reviewed.'¹

To back up its predictions, the Strategy says:

'Data for the past 25 years shows that Sydney's population growth ranged from a low of 400 people per week in 1990 to a high of 1,150 people per week in 1996. In the last decade, growth in Sydney has twice topped 50,000 per

¹ *City of Cities: a plan for Sydney's future*, Department of Planning, 2005, Introduction, Background Analysis, Employment Growth & Change – new housing for the future (accessed from the internet 27.1.09)

year. On average Sydney grows by about 780 per week or around 40,000 per year.²

So the strategy's projections are based on historical data and growth patterns. There is no hard analysis of the proposed population growth, no suggestion there might be a limit to that growth; merely a plan to accommodate 5.3 million people by 2031. The weakness of this process as the basis for strategic planning is demonstrated by a recent government announcement³ that the population projections in the Metro Strategy have now been revised upwards. Ad hoc decision-making of this kind is the antithesis of strategic planning, but has become common for planning in NSW due to the limitations of the Environmental Planning & Assessment Act.

However, an 'estimate and provide' strategy does not substitute for a document that investigates future planning options for Metropolitan Sydney, analyses the options and recommends a strategy based on a vision for the future. Endlessly replicating development as currently conceived is not a plan for the future but merely a mathematical demonstration of the capacity of the existing system to absorb a greater population.

3.3 National consistency

The Institute notes the progress of COAG in encouraging greater consistency in development assessment procedures in Australia's states and territories. The Institute's Planning Reform Policy (November 2008) endorses the *Leading Practice Model for Development Assessment in Australia*, developed by the Development Assessment Forum, and recommends that it be adopted by the Local Government and Planning Ministers Council and in turn implemented by State/Territory and Local Governments.

COAG needs to go much further than these first stage reforms. There must be a recognition by the Federal Government that many of its decisions have important implications for the growth and development of Australia's cities. If strategic planning is to be introduced at state level, the national government needs to lead the way, assessing the major impacts of Federal decisions on our cities.

² Department of Planning, op. cit

³ *Get ready for high-rise Sydney*, Sydney Morning Herald, 6 January 2009

3.4 Community involvement

The preparation of strategic plans of the type outlined here is necessarily a job for governments. The completed plans will only work, however, if all sectors of the community are involved in the plan-making process. This is necessary both to make sure that the planners are asking the right questions and to get the process moving in a direction acceptable to the bulk of the community.

3.5 Good design

Planning is about determining limits, accommodating future growth and enhancing quality of life and the sustainability of our environment. Good design enhances quality of life by producing buildings and urban landscapes that create liveable spaces, manage issues of sustainability and result in energy efficient buildings. The new NSW Housing Code provides an objective set of rules that enables most private owners to build houses that, at worst, will have an acceptable impact on their locality in all of the many terms by which we judge such outcomes. Mechanisms to encourage good design need to be built into new legislation - SEPP 65 is a good model of what is required.

3.6 Separation of planning and development control

There's an important distinction between first setting the objectives for planning and then framing the right rules to achieve them, both of which processes should precede development control. A coherent strategic planning process with full community involvement will alert the public to the intentions and implications of a strategic plan. The community will then be engaged in the translation of strategic objectives into planning instruments which define, in concrete terms, the kind of cities and regions the community wants.

Development applications can then be assessed against the planning instruments with the confidence that the ground rules are accepted by the public and that the broad intentions of the plan are understood. This separation of planning and policy decisions from development control decisions is one of the key components of the planning system proposed by the Institute.

However, because the public in NSW is so rarely engaged in the preparation of planning codes and land use zoning, many development applications are debated on fundamental planning and land use issues instead of on compliance issues. The

separation of the two aspects of planning may focus development decisions more closely on issues of code compliance rather than strategic planning.

The extremely difficult condition of the NSW planning arrangements can be seen in the number of stop-gap measures that have been put in place to 'work around' the delays and complexities in the system, such as Part 3A.

The Institute supports the creation of the Planning Assessment Commission and Joint Regional Planning Panels, as they will (hopefully) be independent bodies capable of making development control decisions without parochial or political baggage.

3.7 Separation of development and building decisions

A sense of confusion has resulted from the decision to collapse the previously clearly demarcated development and building application processes into one. A development application should provide sufficient information to enable a consent authority to decide whether or not the application complies with its planning controls. The extent of the architectural issues in a development application should be limited to the external built form elements that create the character of the building and ensure that it is compatible with its environment.

3.8 Political decision-making

The Institute firmly endorses the democratic system of government, whereby the people elect politicians who are ultimately responsible to the people for the decisions they make. The political dimension of planning makes it all the more important for the advisory bodies and public service organisations advising and supporting the various levels of government to be clearly independent of them.

3.9 Transparency

A coherent planning system in which the roles, relationships and statutory functions of the key players are known and understood will generate public confidence. It will also require the publication of advice provided by independent agencies to government.

Because the democratic system requires politicians to be accountable for their decisions, it is therefore important that the public is aware of the advice given to them and the basis for their determinations. Whether or not the public agrees with a

decision that goes against this advice is an intrinsic part of the political process; the important point is that the advice is known. This is transparency, and it is fundamental to the functioning of a good planning system, and indeed of good government. Any new planning legislation must enshrine these principles of good governance in the making of planning and development decisions.

3.10 Integration of transport and infrastructure planning with land use planning

Transport and infrastructure planning can only work effectively if they are subsumed within strategic planning, as they are critical factors in making possible higher population densities and in bringing large-scale developments on stream in an orderly manner. The current separation of transportation infrastructure planning from urban planning in NSW is a major reason why the recent north-west and south-west railway line cancellations have thrown co-ordinated urban planning for many areas into confusion. This separation is highlighted by the unexpected announcement of the West Metro project⁴. These decisions reveal the dysfunctional relationships both between transport and land use planning and between the various transport agencies.

3.11 Economic effects and social policy objectives

Strategic planning should also address economic and social issues of urban land use and development. The protection of natural and cultural heritage, zonings for future permissible development and the siting of transport corridors and other infrastructure all have an impact on future investment decisions by business and government.

Social policy objectives, such as objectives to encourage the mixing of a variety of socio-economic groups within a particular area or to allow medium-density development close to railway stations or bus terminals, need to be built into strategic planning. Whilst reform of the planning system should not subsume the normal functions of government, consideration of the social impacts of planning for our cities must be an integral part of any strategic planning.

4.0 APPLYING THE PRINCIPLES IN NSW

The Australian Institute of Architects recommends the following components for a revitalised planning system in New South Wales:

⁴ *Go west – it will take only 27 minutes from the city*, Sydney Morning Herald, 6 January 2009

4.1 A NSW planning system that will operate in accordance with a **national planning framework** established through COAG consistent with harmonised planning systems in all states and territories. Such a system will require a new NSW Planning Act which consolidates planning provisions currently included in the Environmental Planning & Assessment Act, the Heritage Act and other relevant legislation, supplemented by an act proscribing the process of development control. This latter piece of legislation could be a simplified Environmental Planning & Assessment Act.

4.2 An independent State Planning Commission be established, with statutory powers to prepare **strategic plans** which, with the endorsement of the elected government will bind all state agencies responsible for land and infrastructure development and make infrastructure funding recommendations. This Commission should have the authority to make public its recommendations to government. By publishing its recommendations, the **transparency** principle will be achieved.

The Institute recommends the WA Planning Commission as a model for the kind of organisation needed in NSW. The Commission has operated for over 50 years with bipartisan support and has an enviable record of making decisions on the basis of evidence and expert advice, not for political reasons. It brings together all the relevant department heads; to this extent the Commission operates as an inter-departmental committee.

4.3 The Department of Planning be retained to support the State Planning Commission by providing **research**, preparing statutory land use plans, encouraging and managing community consultation and advising local government on best planning practice.

4.4 The Planning Assessment Commission and Joint Regional Planning Panels, good models of the DAF-endorsed process, be retained to determine State and regionally significant development, other than development called in for direct Ministerial or Cabinet decision. In all cases, determinations should be published with their reasons in order to meet the principle of **transparency**.

- 4.5** Development decisions in the new planning system should be required to be made on the basis of compliance with the principles laid down in strategic and local plans

Building applications, prepared after development consent, should reflect the elaboration of building information required to demonstrate BCA compliance. No longer should DAs be burdened with building detail.

- 4.6** **Good design** must be a fundamental ingredient in the new system. While exempt and complying codes can adequately cover small-scale development, such as single houses and small commercial buildings, the Institute considers that **all** buildings, including non-residential development, that require merit-based assessment should be assessed against appropriate design criteria based on the very successful SEPP65.

5.0 RESPONSE TO THE TERMS OF REFERENCE

- 5.1 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 entirety of this submission addresses the need for considered, long-term and strategic improvements to the NSW planning system – including legislation, administration and practice – to correct progressive complexities..

As noted earlier the Institute considers a new approach to planning is required in NSW as part of a nationally harmonised system. The principles involved, and actions required are outlined above. The process could be underpinned by research and advice provided to COAG by the Development Assessment Forum. We note that DAF's *Good Strategic Planning Guide* (2001) is very basic in its scope but provides some good models and case studies.

The Institute has outlined above the essential principles:

- 1 Strategic planning
- 2 Expert analysis
- 3 National consistency
- 4 Community involvement
- 5 Good design
- 6 Separation of planning and development control
- 7 Separation of development and building decisions
- 8 Political decision-making

- 9 Transparency
- 10 Integration of transport and infrastructure planning with land use planning
- 11 Economic effects and social policy objectives

This submission has proposed the following components for a revitalised planning system in NSW:

- national planning framework
- strategic plans
- research by Department of Planning
- transparency and community consultation
- statutory land use plans
- development assessment
- building applications
- good design

5.2 The implications of the Council of Australian Governments' reform agenda for planning in NSW

The Institute's Planning Reform Policy (November 2008) endorses the *Leading Practice Model for Development Assessment in Australia*, developed by the Development Assessment Forum, and recommends that it be adopted by the Local Government and Planning Ministers Council and in turn implemented by State/Territory and Local Governments. The introduction of the NSW Housing Code's exempt and complying development protocols is consistent with the Leading Practice Model.

Another important task we would like to see led by COAG is the harmonisation of planning regimes across Australia. The model should be a planning system that coordinates state development through strategic planning carried out by a State Planning Commission supported by a revamped Department of Planning.

5.3 Duplication of processes under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW planning, environmental and heritage legislation

The December 2005 Sydney Opera House and January 2007 impact assessment bilateral agreements between the Australian and NSW Governments are helpful mechanisms that significantly reduce the duplication of processes in the two jurisdictions.

There are still areas of overlap that could be rationalized. For example, a cooperative arrangement between the two governments could enable the assessment of places

being considered for heritage or environmental protection under both jurisdictions to be carried out at the same time. Similarly, it would be helpful if conservation management plans prepared for places on the National Heritage List and the NSW State Heritage Register are prepared at the same time, taking into account the differing requirements of each jurisdiction.

5.4 Climate change and natural resources issues in planning and development controls

Climate change and natural resource management issues are too little understood and often not considered in plan making. Environmental goals can be balanced with economic and social outcomes through the mechanism of strategic planning. Developers and communities want certainty, while climate change is characterised by scientific uncertainty and extreme unpredictability; standards of measurement, analysis and projections are still in very early development.

The two key planning matters arising from climate change are:

- Protection or prevention of low-lying coastal development in areas vulnerable to rising water levels
- Alternatives to the loss of productive rural land due to drought or development

5.5 Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

Adoption of a centres policy has led to a concentration of retailing at key transport nodes in order to increase public transport use. However, expansion of the centres has been limited for various reasons, including a desire not to allow too great a spread of retailing and a diminution of public transport use. An unfortunate consequence has been a reduction in land available for competing retail uses. This dilemma requires further study and consideration in order not to stifle economic competition between retailers.

5.6 Regulation of land use on or adjacent to airports

Bringing the airports under state control planning control is essential, not only for equity issues but more importantly for resource allocation efficiency. There is no good reason that the privately owned airports should enjoy a complete freedom from planning controls that apply to all other users. Bringing the airports into the state planning system will allow local government to ensure that development on the airport sites meets its fair share of community infrastructure costs.

5.7 Inter-relationship of planning and building controls

There have been serious consequences flowing from the shifting of building control from the Local Government Act into the Environmental Planning & Assessment Act a decade ago, especially as this was done simultaneously with allowing private certifiers to issue certificates. Because councils may not demand to see the detailed design of structures and works post approval of development applications, all detail is now demanded in development applications, rather than accepting a 'sketch plan' development application followed by approval of 'working drawings'.

Limiting the extent of detail able to be demanded by a consent authority dealing with a development application is a possible solution. Provision could be made for issues of detail which are important to the consent to be the subject of consent authority officer's overview – not approval. A small time could be allowed for the consent authority to consider the matter and, in the event that no answer is forthcoming in, say, 14 days, the issue could be considered resolved. This would put the onus on the consent authority to speedily resolve design issues without going to an authority vote or leaving important detail issues in the hands of certifiers who lack the design knowledge to resolve such issues.

5.8 Implications of the planning system on housing affordability

Affordability is inextricably related to ability to pay; government intervention through social policies targeted to those most in need is required to improve the availability of different housing types in a range of different locations at the low to medium price level. Recent moves by the NSW government (through title transfers and community loans) and the Australian government (through infrastructure funding and lot purchase rebates) are potentially effective moves in this direction.

Areas in which planning system improvements can affect affordability are principally:

- Streamlining the approvals process to reduce delays and minimize unnecessary costs for applicants;
- Relaxing density restrictions to allow for more flexible and adaptable housing on individual lots; and
- Allowing for frequent and reliable public transport and increasing housing densities at transport nodes to reduce reliance on private transport.