

Submission  
No 17

## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Our Ref: F08/464  
Contact: Erika Roka 9562 1873



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

Dear Sir/Madam

**Re: New South Wales planning framework (Inquiry)**

Thank you for the opportunity to comment on the Inquiry on the NSW planning framework.

Council is supportive of the recent amendments to the NSW planning system to streamline and simplify processes. There has been significant change within landuse planning and other related legislation since the commencement of the Environmental Planning and Assessment Act, 1979.

As such, a comprehensive review of the planning framework and related legislation is appropriate. To aid in the review of the existing framework, Council provides the attached submission.

If you would like to discuss this matter further, please do not hesitate to contact me on 9562 1851.

Yours faithfully



Erika Roka  
**Manager – Urban Strategy and Design**

## Important

This document contains important information about Rockdale City Council. If you do not understand, please visit Council's Customer Service Centre at 2 Bryant Street Rockdale, Monday – Friday from 8.30am – 4.30pm, Saturday from 9am – 1pm. Council Staff will be happy to arrange interpreter services for you.

You may also contact Telephone Interpreter Services on 131 450 and ask them to ring Rockdale City Council on 9562 1666 on your behalf.

### Arabic

هام:

تحتوي هذه الوثيقة على معلومات هامة عن بلدية روكدايل. إذا لم تكن قادراً على فهمها، يرجى زيارة مركز خدمة زبائن البلدية على العنوان التالي: 2 Bryant Street في روكدايل من الإثنين إلى الجمعة بين الساعة ٨،٣٠ صباحاً و ٤،٣٠ مساءً. والسبت بين الساعة ٩،٠٠ صباحاً و ١،٠٠ بعد الظهر حيث سيقوم موظفو البلدية بتأمين مترجم لك بكل سرور. كما يمكنك الاتصال بخدمة الترجمة الهاتفية على الرقم 131 450 والطلب منهم الاتصال ببلدية روكدايل على الرقم 9562 1666 نيابةً عنك.

### Chinese

重要消息

本文件載有關於 Rockdale 市政府的重要資訊，如果您有不明之處，請於星期一至星期五，上午 8 時 30 分至下午 4 時 30 分，及星期六上午 9 時至下午 1 時，前來位於 2 Bryant Street, Rockdale，市政府的顧客服務中心。市政府的職員會很樂意為您安排傳譯員的服務。

您也可以聯絡電話傳譯服務處，電話 131 450，並請他們代您致電 9562 1666 給 Rockdale 市政府。

### Greek

Σημαντικό:

Αυτό το έγγραφο περιέχει σημαντικές πληροφορίες για τη Δημαρχία Rockdale City Council. Αν δεν τις καταλαβαίνετε, παρακαλείσθε να επισκεφτείτε το Κέντρο Εξυπηρέτησης Πελατών [Customer Service Centre] του Δήμου στο 2 Bryant Street, Rockdale, Δευτέρα - Παρασκευή από 8.30πμ - 4.30μμ και Σάββατο από 9.00πμ - 1.00μμ. Το Προσωπικό του Δήμου θα χαρεί να κανονίσει υπηρεσίες διερμηνέων για σας.

Μπορείτε επίσης να επικοινωνήσετε με τις Τηλεφωνικές Υπηρεσίες Διερμηνέων [Telephone Interpreter Services] στο 131 450 και να τους ζητήσετε να τηλεφωνήσουν στο Rockdale City Council στο 9562 1666 για λογαριασμό σας.

### Italian

Importante:

Questo documento contiene importanti informazioni sul Comune di Rockdale City. Se avete difficoltà a comprenderne il contenuto, recatevi presso il Customer Service Centre del Comune a 2 Bryant Street, Rockdale dal lunedì al venerdì dalle ore 8.30 alle 16.30 e al sabato dalle 9.00 alle 13.00. Il personale del Comune sarà ben lieto di procurarvi un servizio interpreti.

Potete anche chiamare il Servizio telefonico interpreti (TIS) al numero 131 450 chiedendo che telefoni per vostro conto al Comune di Rockdale City al numero 9562 1666.

### Macedonian

Важно:

Овој документ содржи важни информации за Rockdale City Council (Градската општина на Rockdale). Ако не го разбирате, ве молиме, посетете го општинскиот Customer Service Centre (Центар за услуги на клиенти), кој се наоѓа на 2 Bryant Street, Rockdale, од понеделник до петок, од 8.30 наутро до 4.30 попладне и во сабота од 9.00 наутро до 1.00 попладне. Вработените во општината со задоволство ќе ви организираат да користите преведувач.

Исто така, можете да телефонирате во Telephone Interpreter Services (Служба за преведување по телефон) на 131 450, и да ги замолисте во ваше име да се јават во Градската општина на Rockdale на 9562 1666.

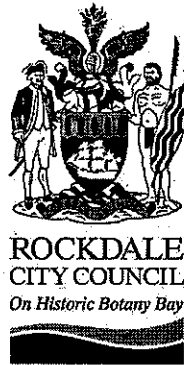
### Spanish

Importante:

Este documento contiene información importante sobre el Rockdale City Council (Municipio de Rockdale). Si no la entiende, le rogamos concurrir al Centro de Servicio al Cliente del Municipio, ubicado en 2 Bryant Street, Rockdale, atención de lunes a viernes, de 8:30 am a 4:30 pm y el sábado de 9:00 am a 1.00 pm. El personal del municipio se complacerá en obtener los servicios de un intérprete para usted.

Puede asimismo llamar al Servicio Telefónico de Intérpretes al 131 450 y pedirles que llamen de su parte al Rockdale City Council, teléfono 9562 1666.

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## Submission to the Standing Committee on State Development

### Inquiry into the New South Wales planning framework

Council is supportive of the recent changes made to streamline and simplify the land use planning process and recognises that there is still scope to further improve the NSW planning system.

The planning framework is underpinned by the Environmental Planning and Assessment Act, 1979. This piece of legislation has undergone significant change since its commencement to better respond to the planning needs of the State. However, the fundamental principles of the legislation and many of the controls are almost 30 years old. There has been significant change within planning as well as related legislation for building, environment and infrastructure (particularly roads).

As such, a comprehensive review of the planning framework and the legislation that underpins it is necessary.

The following concepts and issues are based on the terms of reference issued by the Standing Committee on State Development.

#### Future development of planning legislation

The principles that should guide the development of planning legislation in NSW should be based on delivering quality outcomes, efficiency of process and environmental response and adaptation.

##### Principle 1: Quality outcome focus

The overriding principle in the development of future planning legislation must be the quality of outcome. The existing planning framework appears to be more focused on the process rather than the outcome. This process needs to be re-engineered to ensure that the planning legislation delivers what is best for the people of NSW.

These quality outcomes include environmental performance/impact, urban design, building function, social sustainability and economic sustainability for a developer and Council. The necessary legislative changes to improve quality of outcomes includes:

- investigate the appropriateness of compulsory acquisition to ensure strategic planning outcomes are achieved
- support the emergence of new centres in established areas through the Metropolitan Strategy, rather than focus on expansion of existing major centres

- provision of appropriate and efficient funding mechanism to deliver infrastructure
- consistency between planning and infrastructure timing horizons
- recognition of the difference between new release planning and infill development

To help deliver quality outcomes, the LEP Standard Instrument needs more flexibility, particularly its ability to be adapted to peculiar local circumstances where the standard provisions do not facilitate the desired outcome. Mechanisms to enable the standard provisions to be adaptable (in appropriate circumstances) should be investigated.

A key determinant in the timing and quality of development in the City is the ability of developers to consolidate sites for strategic redevelopment purposes. Inclusion of compulsory acquisition to ensure planning outcomes are achieved should be a tool that is included within the planning framework. The circumstances in which compulsory acquisition may be used must be clearly defined and available in exceptional circumstances only.

Infrastructure provision is becoming a critical issue for Councils, particularly with recent changes to Section 94 Contributions. The cost associated with providing the necessary infrastructure to support the new jobs and dwellings that is required by the Metropolitan Strategy has not been adequately resolved to date and may impact on the economic sustainability of Councils. Additionally, determining the required infrastructure and the mechanisms for delivery will add economic certainty to new development required to meet the growth forecast in the Metropolitan Strategy.

There currently exists an inconsistency between the planning timeframes, which is generally up to 2031, and infrastructure timeframes, which is currently 7 years. It would be appropriate that the planning and infrastructure timing horizons are adjusted to be consistent, as the delivery of infrastructure should respond to development forecasts up to 2031.

As detailed within the Metropolitan Strategy, approximately two thirds of the new dwellings required will be provided within existing centres and urban areas. However, it is becoming increasingly apparent that many of the recent initiatives within the planning framework are more specific to new release areas rather than infill areas. In acknowledgement of the additional issues created by working within a dense urban environment, the planning legislation should be better able to facilitate infill urban development that is necessary to allow continued growth of Sydney.

By way of example, the LEP for the Bonar Street Precinct in Arncliffe was recently gazetted. This precinct consists of 7 hectares of predominantly industrial zoned land, that is being rezoned to high density residential. The Minister for Planning, however, amended the LEP by deferring a community park and approximately half of the sites from the LEP. The gazetted LEP has significant implications for the provision and funding of open space and other infrastructure within the precinct and significant financial implications for Council, the developer, and ultimately the end purchaser. Rockdale City Council had devised a simple mechanism whereby the community park would have been provided at nil cost to Council and the developers, through a simple process whereby the development rights for the land to be dedicated were transferred to the remainder of the site. The decision by the Minister to rezone part of the precinct and defer the remainder, including the community park, will mean that the provision of the park will be made more difficult. Furthermore, the developer will now bear the cost burden for the park, as it will be required to be included in a Section 94 contributions plan. This will increase the cost of the development which will be subsequently reflected in the end price of the development, only adding to issues of affordability. This is a poor outcome. The Council report of 19 November 2008 on the planning and financial implications of the gazetting of LEP 29 - Bonar Street Precinct is attached.

Principle 2: Efficiency



The concept of efficiency applies to all aspects of the planning system and in particular, legislative changes. To date, the planning reform process has been quite lengthy and is still in a state of upheaval. The NSW Government must be more efficient in the preparation and roll out of reform to the planning system, rather than the piecemeal process that is currently underway.

The planning framework should be simplified as a matter of priority. The legislation requires a decision on whether a development is exempt, complying, local, integrated, state, designated or a major project before any assessment can commence. These different types of development can lead planning legislation to be viewed as overly complex and confusing.

Additionally, including provisions within the LEP Standard Instrument that address statewide or state significant development matters will ensure a consistent and transparent planning system that will improve efficiency.

There are many Government departments that have an impact on development within the State, with the Roads and Traffic Authority and the Department of Environment and Climate Change playing a significant role. The opportunity currently exists where the Minister for Planning can approve a rezoning or development application and the RTA can effectively prohibit the development through not consenting to necessary infrastructure provision, or through unrealistic requirements. To ensure certainty within development, the necessary legislative changes are required to ensure that an approval issued by one NSW Government department cannot be compromised by another Government department.

There are recent advances in the use of e-planning solutions within the context of land use planning. The use of e-planning should be further enhanced to standardise Geographical Information Systems and provide access to this information across Council boundaries. E-planning should also include the ability to track development applications and rezoning applications that are with the Department of Planning, an option that is already available for development applications with Rockdale City Council.

Improvements in efficiency will allow the planning system to better respond to market forces and the needs of NSW and will ensure the planning framework facilitates rather than impedes development in the State.

### Principle 3: Climate change and environmental constraints

Future planning legislation must respond to climate change and other environmental constraints. There needs to be an increased sustainability focus within the planning framework so that short term gains do not compromise the opportunities of future generations. Given that business and the community at large have always demonstrated an ability to respond to environmental pressures, this shift in focus would be well received.

Council looks to the State Government for leadership on specific issues including climate change and infrastructure provision. Where appropriate, the mandatory provisions within the LEP Standard Instrument should be strengthened to ensure consistency across the State for issues such as climate change response that has impacts that extend beyond local government boundaries.

### Council of Australian Governments (COAG) reform agenda

The guidance of COAG in the land use planning system ensures a holistic, best practice approach that may not be achievable by State Government alone. As such, the continued leadership of COAG in guiding improvements to the planning system is necessary to ensure a more consistent approach to land use planning across the country.

The NSW planning system can have a major impact on the ability to adequately respond to matters on the COAG reform agenda. One of the key items on the reform agenda is

micro-economic reform. The State Government needs to ensure that the planning framework is simple enough to implement efficiently, yet robust enough to deliver acceptable economic, social and environmental outcomes. Council reiterates its desire for the State Government to further streamline all aspects of the planning framework.

### **Duplication of processes under Commonwealth and New South Wales legislation**

In January 2007, the Federal Government entered into an environmental impact assessment bilateral agreement under the Environmental Protection and Biodiversity Conservation (EPBC) Act with the New South Wales Government. The agreement allows the Federal Minister to rely on environmental impact assessment processes specified by New South Wales in assessing actions under the EPBC Act. This was initiated to ensure that proponents were required to submit only one set of assessment documentation when making an application.

There are currently differences in listings of endangered ecological communities and threatened species within the EPBC Act and State legislation, which means that assessment of a proposal may have to address both Acts to ensure that no significant environmental impacts are likely to occur. To ensure a smooth development assessment process, the circumstances in which either act apply need to be clearly articulated early in the process.

There needs to be a streamlined approach to ensure that once a proposal is approved by the State, Commonwealth concurrence is also forthcoming, or vice versa. This will save on time and money in assessing environmental impacts against two different sets of criteria.

### **Climate change and natural resources issues**

The planning framework plays a significant role in ensuring that the environment of a local area is both protected and enhanced. The natural resources and climate change issues are not unique to any one local government area. Council already responds to climate change through infrastructure improvements, community education, natural resource management and planning initiatives. As the impacts will be far reaching, the planning framework represents an important opportunity for Council to continue to adapt to climate change.

To ensure consistency across local government boundaries and a minimisation of risk exposure, Council is looking for leadership from the State Government for issues such as:

- thresholds for development in areas most affected by climate change
- tidal inundation and minimum floor levels in sea side areas
- appropriate zoning and land use controls in areas potentially subject to sea level rise

As a specific example, the LEP Standard Instrument does not provide Council with the opportunity to implement an ultra low density residential zone for areas that are most at risk from climate change. Council is able to prepare a map of these areas and draft a local provision, but the response to climate change is a matter of state and national significance and should be dealt with consistently by affected councils. These requirements have the potential to be quite restrictive in some areas. Therefore, there is a need for State Government leadership on this issue in terms of setting the threshold and educating the public.

Given the nature of climate change, any controls need to be reviewed regularly as the understanding and implications of climate change have the potential to be quite variable and to change rapidly.

Additionally, the development application process for proposals with environmental implications also requires consultation with a number of NSW agencies including NSW Fisheries, Department of Environment and Climate Change and Department of Water and Energy, which may also

require separate permits. This process should be made more efficient to ensure acceptable outcomes for applicants and the environment.

The primary concern with natural resource management in Rockdale is in regard to the lack of provisions within the Threatened Species Act for locally specific issues. It would appear that the majority of assessment of the impact on a locally endangered species is based on whether there is a sufficient number of the species across the State, and not on the importance of that species to the local community and environment.

Finally, extending the application of Basix to commercial and industrial development will ensure that the majority of major development is subject to the provisions of Basix and will better respond to changing environmental conditions. A follow up inspection (or annual certification) to ensure developments are complying with their Basix Certification is also encouraged.

### **Competition policy**

Council does not believe that the current planning framework has a negative impact on competition, as it focuses growth in appropriate locations to take maximum advantage of:

- existing infrastructure and services;
- economic sustainability of centres;
- the vitality and vibrancy of an existing centre; and
- competition within existing centres.

As such, Council supports the retention of the assessment of economic impact within the development application process to ensure that development is a positive for the wider community.

Recent studies indicate that permitting out of centre retailing will lead to lower prices for consumers. It is Council's belief that despite cheaper establishment costs, out of centre retailing will not ensure lower prices. Rather, competition is the primary mechanism to ensure lower prices are paid by consumers. By defining an area where retail uses are permitted, competition is assured.

As such, the assessment of the impact of out of centre retailing on existing centres is an integral component of land use planning and should be retained in the development approval process.

In respect of key strategic planning documents, Council urges the Department of Planning to be more ambitious and enhance competition through the Metropolitan Strategy. Firstly, the Strategy does little to encourage the emergence of new major centres within the inner Sydney region. In essence, the Strategy details the expansion of existing major centres and does not appear to address capacity or constraints within those centres, nor the capacity or opportunities within other centres.

The Metropolitan Strategy also lacks in the provision of infrastructure to support its vision. It appears that infrastructure provision coincides with enhanced development of an existing major centre. Infrastructure is one of the key issues related to large scale urban release and infill development, and the Metropolitan Strategy is requiring many new developments of this type. As such, the infrastructure provision within the Strategy needs to be addressed to allow local planning to progress with any certainty.

### **Regulation of land use on or adjacent to airports**

Council is supportive of additional regulation of land use within the Airport, as the operators of the Airport are not subject to NSW planning law, despite being a private corporation. It would appear



that the Airport is able to carry out any development within the precinct without putting the proposal through the same process as development anywhere else within the City of Rockdale.

A key example of this is in relation to the commercial development that is proposed in the Draft Sydney Airport Master Plan 2029. The quantum of commercial development is similar in scale to Parramatta, whilst the effects of this space on the subregion have not been addressed. There may be sufficient land within the Airport to accommodate this space, but the impact it will have on the southern Sydney region needs to be adequately addressed.

This process creates the opportunity for the operators of the Airport to make decisions based on local economic benefit, rather than on a wider, regional scale. This impact on centres is a fundamental consideration of any proposal assessed under the existing planning framework. Commercial development of the scale proposed at the Airport has the potential to cause a severe adverse impact on surrounding commercial centres, including those within the City of Rockdale.

### **Housing affordability**

As detailed in the discussion paper prepared in conjunction with the Inquiry, the additional time taken to approve development due to the complex planning process has an impact on the affordability of housing. The elapsed time can relate to rezoning processing, DA processing, intergovernmental referrals and subdivision. The longer these processes take, the greater the holding cost borne by the owner of the site, which leads to the need for cost recovery from the sale of the dwellings/home sites.

As such, the streamlining and simplification of all processes (most of which have been addressed within this submission) involved in the release of housing and home sites should be pursued as a priority to ensure that the approvals process does not add any unnecessary cost to a development.

It is noted that there is a policy conflict caused by the Metropolitan Strategy, in which large quantities of new housing is required, necessitating additional infrastructure, whilst also requiring affordable housing. The provision of this infrastructure will add to the cost of each dwelling, which will impact on affordability. One possible solution to this is for the State Government to forward fund the infrastructure requirements which would reduce the need for Councils to collect Section 94 contributions.

In addition, the State Government should investigate various models of provision of housing within a major city that achieve affordability, including rent control.