

Submission
No 27

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Griffith City Council
Name: Mr Peter Brooks
Position: General Manager
Telephone: 02 6962 8100
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**The Director
Standing Committee on State Development
Legislative Council
Parliament House
Macquarie Street
Sydney
NSW 2000**

RE: INQUIRY INTO THE NSW PLANNING FRAMEWORK

I refer to your letter dated 17 November 2008 with regard to the above-mentioned inquiry.

Griffith City Council would like to extend their appreciation to be invited to make a submission with regard to the Inquiry into the *NSW Planning Framework*.

Comments here hereby provided based on the Terms of Reference (ToR) as numbered in the relevant Discussion Paper.

ToR 1(a)

Is there a need for further development of planning legislation in NSW?

The planning discipline is not an exact science, but rather continually evolving as we grow in our knowledge and understanding of the environment and, to a lesser extent, in response to expressed community needs.

Given the continuously evolving nature of planning it is therefore not just a question of whether there is a need for further development of the planning legislation, but rather a question of 'how can we draft legislation to be responsive to continuous change?'

It stands to reason that the most significant failure of planning legislation in NSW is probably embedded in the various (mostly well-intended) ad hoc attempts made by our predecessors to 'fix the system for good'. Unfortunately, the reality of planning practice and property development is that the demands and benchmarks continuously change in response to a relatively volatile economy and fast changing environment. The legislation in its current form is too cumbersome to keep up with the demands placed on it by a volatile economy and fast changing climate and environmental issues.

The answer to this question is therefore resoundingly affirmative and more – in the sense that there is not only a need for further development of planning legislation, but a need for continuous and responsive development (and improvement) of planning legislation

What further changes to the planning legislation are needed?

In line with the above-mentioned comment the first response would be that planning legislation should be revised and/or re-drafted to be more responsive to allow continuous change and updating of provisions, whilst simultaneously limiting cumbersome legislative procedure. In this regard it may be a consideration to rationalize the current Environmental Planning and Assessment Act 1979 (EP&A Act) from detail, and move detail (procedures and provisions) to the Regulations or lesser environmental planning instruments (EPIs). This is particularly relevant to the plan-making process outlined in Part 3 of the EP&A Act.

Although the process showed some improvements since the last reforms, the inflexible nature of the plan-making/rezoning process in itself still warrants separate mention as a limitation factor for spatial development in NSW. The current provisions contained in the EP&A Act are not compatible with the more rapidly changing dynamics of urban (and rural) growth. The same applies to the gazetted standard template for LEPs.

Planning legislation is normally drafted within a metropolitan context and very seldom contains more than a peri-urban or coastal perspective. This is fully understood given the urbanised and coastal characteristics of our population. However, it may be worth considering the different requirements and planning needs of our communities. Development proposals differ vastly in terms of the area and region, e.g. a relatively small residential development in metropolitan terms may be of great significance in a more remote regional centre. Similarly, planners and decision-makers living in a predominantly metropolitan environment sometimes show little understanding of the intricacies, impacts and workings of regional infrastructure.¹ Given the geographical extent of our country and the contrasting nature of metropolitan, regional and coastal areas, it cannot be expected of anyone to have a full understanding of all aspects of planning and development needs in NSW. It is however important that the vast (contrasting) geographical extent of NSW be appropriately reflected in planning legislation. In this regard it may be appropriate to draft planning legislation to have specific provisions and requirements for metropolitan, coastal and regional areas.² In this context it may be an option to seriously consider the drafting of a new act and regulations to replace the current EP&A Act and Regulation instead of applying another 'band-aid' solution.

Further changes to legislation also need to focus on rationalization and simplification of state planning legislation and policy. Similarly to the expectation and requirements of Councils to 'trim down' on local planning policies and to provide a single DCP, the same should apply at state level. It

¹ Examples of these include bulk water supply contributions in parts of the Riverina for which no appropriate mechanism exists in the current planning legislation, on-site effluent treatment of agri-industries such as large production wineries, and locality decisions for long-range road transport facilities.

² An example of how this can be achieved will be by drafting a single new planning act with three sets of separate regulations applicable to metropolitan areas, coastal areas and regional areas, respectively.

is probably worth questioning the rationale and value of state planning policies (SEPPs), and whether the matter contained in SEPPs cannot be contained elsewhere in legislation – thereby reducing the sheer volume of legislation and policy confronting developers and assessing planners alike.

What principles should guide any future development of planning legislation in NSW?

Principles for guiding future development of planning legislation should still be established in the concept of Ecologically Sustainable Development (ESD). There should however be an active attempt to more appropriately quantify the concept of ESD specifically in planning terms to avoid selective interpretation and 'lip service'. The implication of this is that planning legislation should not just state ESD as a fundamental guiding principle, but should be clear on what will be regarded as development satisfying ESD under different circumstances and in different environments. Again this leads us to a case for separate provisions for the sometimes vastly different regions in NSW, e.g. what will represent ESD in a metropolitan context will not necessarily be the case in a remote regional area, or in a pristine coastal environment.

Another principle that may be worth investigating will be the principle of actively encouraging (reviving) decentralization by means of planning legislation. The congested nature of NSW metropolitan areas are not only a daily burden for planning decision-makers in metropolitan areas, but also impacting negatively on NSW's image as a desired destination for inter-state and overseas migrants, as well as businesses. This should however be preceded by detailed research to identify localities appropriate for decentralization in NSW. In the past decentralization has been met with limited to mixed success in NSW e.g. Albury, Bathurst and Orange. However, it is clear that there have since been substantial advances in technology and transportation, e.g. internet and advances in telecommunications, fuel efficient engines etc. In this regard it may be worthwhile to explore overseas examples of recent successful decentralization such as can be found in Ireland, Indonesia, China and Japan. As active decentralization normally requires substantial infrastructure investments, it is of the utmost importance that such localities should have the potential to compete with the massive economies of scale found in current metropolitan areas such as Sydney and Newcastle.

ToR 1(b)

No comments provided with regard to term of reference 1(b)

ToR 1(c)

No comments provided with regard to term of reference 1(c)

ToR 1(d)

How should climate change be addressed in the planning framework?

Climate change should be addressed as a potential and likely environmental impact of any proposed development or activity. However, it should always be kept in mind that climate change as such is an anticipated or predicted biophysical phenomenon. Climate change in itself is caused by various

impacts and processes, some natural (such as volcanic activity) and other more worryingly human induced (such as fossil fuel burning). It is therefore imperative to be specific to address the unnatural causes of climate change in planning legislation, and to be specific in the requirements for proponents and assessment staff alike.³

Again this leads us to a case for separate provisions for the distinctively different regions in NSW. For example, reducing per capita reliance on fossil fuels may be a realistic target for a metropolitan region where public transport infrastructure can reduce the likely impacts of a development; protecting low-lying coastal lands from future inundation may be a realistic target for residential development in a coastal region; and ensuring that some degree of diversification of agricultural produce is maintained may be a realistic requirement for regional agricultural areas.

The NSW planning framework should ideally emphasize contingency planning and scenario modeling for potential climate change impacts, where it is clear that a proposal has a high likelihood of being affected by climate change impacts..

Is the current framework adequate to consider the potential effects of climate change?

As outlined in the previous section, the current framework is not considered as adequate, i.e. being vague with regard to impacts and specific requirements for assessment. (s79C in the current EP&A Act is particularly outdated in this regard.) Furthermore, it is important not to limit considerations to the potential effects of climate change – that in itself is too vague to make a sensible contribution to our communities. The focus should rather be on specific impacts that may contribute to speeding up climate change as a result of a particular development or activity.

How should natural resources issues be taken into account in the planning and development approval framework?

As with the concept of 'climate change', emphasis should be on identifying actual and specific impacts that will reduce the amount of, or accessibility to natural resources – again within the context of the region. One aspect that needs to be more clearly outlined in planning legislation is that there is always a high likelihood of some depletion of natural resources associated with development proposals, particularly in regional areas. Emphasis should therefore not be on refusal of applications due to depletion of natural resources, but rather on limiting depletion of natural resources and (enforcing) responsible management practices – albeit within in the utopian view of 'ESD'.

ToR 1(e)

Should competition analysis be part of local planning decisions?

³ It is envisaged that there will be similar issues with the interpretation and application of the concept of 'climate change' in legislation as is the current experience and difficulty in interpreting and applying the concept of 'ESD'. Requirements in planning legislation should therefore be very clear in the exact requirements and expectations regarding to the specific impacts or likely impacts to be addressed in legislation.

Competition analysis should not form a part of planning decisions at all as it goes against free market principles, has the potential to create local and regional monopolies, and will imply a market system largely regulated by land use decisions at a local level.

It is acknowledged that some planning decisions may lead to unsightly vacancies and closure of some commercial entities not competitive enough. However, the net economic impact on the community should remain neutral, given that one market competitor is simply replaced by another.

Another practical and fundamental consideration is that such competition analysis will require significant or extensive knowledge of market forces and local economic dynamics – highly skilled knowledge that are limited in the local government sphere. The tendency will therefore be for assessing staff to either simply accept the analysis in the absence of any contrary evidence, or to engage in technical and potentially expensive commercial 'turf-wars'.

How should competition analysis be factored into the planning system, if at all?

See above

ToR 1(f)

Is the current arrangement for regulating land use on or near airports appropriate?

The current arrangements are considered appropriate with the exception of the determination of ANEF noise contours. It may be appropriate to invite state and local government in the determination of noise contours.

Is there sufficient involvement of the community within which the airport is located under the current system?

A response can only be provided from a regional perspective (smaller airport with limited adjoining land use) – where community involvement is considered appropriate.

ToR 1(g)

No comments provided with regard to term of reference 1(g)

ToR 1(h)

What is the impact of the planning system on housing affordability?

In a regional context it is observed that housing affordability appears to be fairly unresponsive to the planning system, but more responsive to market-demand and external incentives such as increases in 1st home buyer's grants.

The impact of the planning system on housing affordability is therefore relatively limited to assessment timeframes and developer contributions – based on the notion that savings on contributions will be passed on from the developer to the new resident.

The \$20K cap on Section 94 contributions is supported, however, it appears that savings incurred through this cap are not necessarily passed on to the consumer. It is more evident that housing affordability is more based on market-demand than anything else

What changes, if any, need to be made to the planning system to improve housing affordability?

In a regional context the access to water infrastructure and a secure supply of water has a relatively strong influence on development and therefore (bulk) water contribution/supplementation should be a separate consideration to general Section 94 contributions.

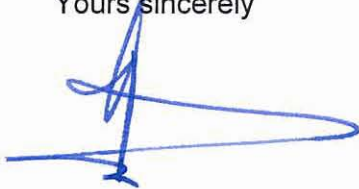
Further rationalization of planning legislation and policy is supported as a measure that may indirectly influence housing affordability – particularly by reducing the heads of consideration for assessment and therefore speeding up the assessment process.

Another option that needs some consideration and investigation is to impose controls on the “raw land price” component. In a regional context it is often found that that “raw land price” is inflated out of context with the actual value of the proposed residential development.

Lastly, but most importantly – clear commitment to improve infrastructure and direct infrastructure contributions by the State Government will have the greatest impact on housing affordability in NSW.

For further information regarding this matter please feel free to contact me at (02) 6962 8146 or by e-mail at George.Cilliers@griffith.nsw.gov.au .

Yours sincerely



PETER BROOKS
GENERAL MANAGER