

Supplementary
Submission
No 33a

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: The Village Building Company
Name: Mr Robert Winnel
Position: Chief Executive Officer
Telephone: (02) 6241 7419
Date received: 19/06/2009

The Village Building Co. Limited

Argyle Corner, Unit 7, 92 Hoskins Street, Mitchell, ACT 2911 • PO Box 178 Mitchell, ACT 2911

Phone (02) 6241 7419 **Fax** (02) 6241 8499**Email** bwinnel@villagebuilding.com.au **Web** www.villagebuilding.com.au**Regional Offices** Brisbane, Wollongong, Canberra, Coffs Harbour • ACN 056 509 025

The Office of the Chief Executive



18 June 2009

The Hon. Tony Catanzariti, MLC
 Committee Chair
 Legislative Council,
 Standing Committee on State Development
 Email: tony.catanzariti@parliament.nsw.gov.au

Dear Mr Catanzariti,

We appreciated the opportunity to appear before your committee in Queanbeyan to make a submission on your committee's enquiry into the NSW Planning Framework. Unfortunately our submission was forced to deal with issues that I believe are largely outside of the terms of reference of your committee. Our submission focused on responding to Canberra Airport's attacks on the proposed development of South Jerrabomberra, which is being processed by the Planning Minister in accordance with the 1998 ACT Sub Region Planning Strategy, signed by the Federal, NSW and ACT Governments and by Queanbeyan City Council outlining the future direction of residential development in the region. It is also being processed in accordance with the NSW past and current Canberra Sydney Corridor Strategy, with Queanbeyan City Council's Strategy Plan and the Queanbeyan City Council Residential and Economic Strategy endorsed by the NSW Planning Minister in December 2008.

It is this ability of individual proponents from industry and from the public to attack clearly established statutory planning that has led us to preparing the attached broader submission about the need for a Planning System which defends established strategic planning from attacks by all parties. Strategic Planning should be adhered to and should be subject to formal review processes from time to time. Whilst it prevails however, it should be adhered to for predictability, transparency and proper decision making.

Our submission was prepared by Mr Gary Prattley who accepted our brief prior to being offered his current position as Chairman of the Western Australian Planning Commission. His background is outlined at the beginning of the paper. We have had a long professional relationship with Mr Prattley and his views on planning support and reflect our experience in the development industry over many decades.

I would appreciate it if you could distribute this to members of your committee.

Yours sincerely,

R. Winnel
 Chief Executive



SUPPLEMENTARY SUBMISSION TO THE INQUIRY INTO THE NSW PLANNING FRAMEWORK

**Prepared for The Village Building Company
By Gary N Prattley BA MTP FPIA FAPI
Principal GN Prattley Consulting
Braddon ACT**

May 2009

Background

The Village Building Company has previously submitted a detailed submission to the inquiry focussed on aircraft noise and residential and employment land supply in Queanbeyan. This supplementary submission prepared by Mr Prattley for The Village Building Co. addresses broader philosophical and practical issues around the NSW Planning Framework with particular emphasis on defensible strategic planning and housing affordability.

Mr Prattley has had over 40 years experience in Government across six jurisdictions in Australia and New Zealand. He has been responsible for the planning system in Tasmania, ACT and Western Australia as Executive Director, Planning, Tasmania, Chief Planner/Executive Director Planning and Land Management ACT, CEO National Capital Planning Authority and Chief Executive Minister for Planning WA. For 5 years from 2001 Mr Prattley held the position of Executive Director Metropolitan Planning and Executive Director Major Projects in the NSW Department of Planning and its predecessors.

Over the last 3 years Mr Prattley has provided strategic advice on major developments and policy reviews around Australia as National Planning Director and Director of Government Relations for Macropolitan Australia. Since accepting a brief by Village Building Co. to write this paper, Mr Prattley has recently been appointed by The Governor in Council as Chairman of The West Australian Planning Commission.

Executive Summary

This submission reviews a number of the submissions made to the Inquiry. It is noted that there is widespread recognition in the submissions of the major industry and professional groups of the need for fundamental reform of the existing legislation by way of a new Act. The EP & A Act is now over 30 years old. In its current form, it represents years and in fact decades of amendments and tinkering. The result is a largely incoherent planning framework far removed from its original purpose.. A substantive over haul is well over due.

In particular this submission supports the thrust of the submissions by:

- i) Planning Institute of Australia (PIA)
- ii) Urban Development Institute of Australia (UDIA) NSW Division
- iii) The Urban Task Force

The Village Building Company has a clearly stated mission of serving the affordable end of the housing market and it is amongst the leaders nationally in developing innovative approaches to meet the overwhelming needs in this area. Few other development companies have pursued affordable housing with such a strong and successful focus. The Company is committed to

achieving its affordability objectives without compromising quality, design and residential amenity.

This submission attempts to identify themes from the submissions of key industry and professional stakeholders which are fundamental to this focus on affordability.

NSW has contributed to the national failure of the planning system to address issues of land supply and housing affordability. While there have been significant initiatives over the past five years, the complexity of the issue of detailed local planning regulations and levy impositions have put housing out of reach of many families. This has been accentuated by the current housing downturn where construction levels in NSW are as low as 50 years ago.

An irony is that falling house prices caused by the current market decline, have demonstrated that when house prices fall below \$400,000 the market is again able to expand at the affordable end.

As PIA has noted, process complexities and unnecessary regulations not only reduce affordability, they inhibit the market from responding to significantly changing demographics, lifestyle and housing formation needs. It reaffirms the need for a strong strategic and coherent basis for making decisions.

Planning delays impose high costs on development and, especially in the current economic climate, inhibit capital investment in jobs and economic development.

Key conclusions from the previously listed submissions that should be emphasised are:

- The NSW Planning System needs fundamental reform.
- Effective strategic planning and mechanisms to deliver that, should be the critical focus of legislative reform. Strategic Planning must have authority within government and the wider community and must be able to provide a stable and predictable investment framework if we are to house and employ our future population. Otherwise planning decisions will always be subject to erratic political processes where proper planning decisions are delayed or reversed by one interest group or another.
- The importance of cultural change within planning administrations at both a state and local level, is however even more critical than reform of the legislation. The Department of Planning must become more than a mailbox or “assemblers” of other agencies views and must be proactive in trying to resolve problems and issues. It must become focussed on achieving outcomes rather than being stymied by problems and process issues.
- Public consultation must be properly structured and focused on achieving the debate at the intellectual framework/policy level, rather than going on interminably at the development level. The process should be depoliticised at the individual development level as much as possible.
- The focus must be on outcomes not just process.
- Local government regulations can have a dramatic impact on housing affordability through issues such as density, verge widths, street widths, set backs etc. Any effective planning

reform needs to address these issues and review all planning regulations. The financial implications of regulations must be accounted for through a proper costs/benefits analysis.

There is a recognition throughout Australia, of the need for a much greater strategic focus and simplified planning approval system. The current economic situation has highlighted the simplicity of the approval system.

Reform is not an option, it is essential to ensure and secure the economic future.

The Multilayered Legislative Framework

It is important to recognise that the issues surrounding planning and development approvals do not simply relate to the EPA Act but the broad range of legislation, including environmental legislation, that applies at a local state and federal level. The submissions dealt with in the attachment, have thoroughly demonstrated how many of these pieces of legislation have been introduced without thorough consideration of their interaction and cumulative impact.

It is ironic that the only part of The NSW Planning legislation that works reasonably effectively is Part 3A, – introduced to overcome some of the crippling inefficiencies and contradictions in the overall approval framework. It succeeds by placing limits on process and by achieving a single decision making process.

While this process has been controversial, it has by comparative measures been successful.

It can be argued that the extent of use of Part 3A, is a consequence of its effectiveness in achieving outcomes (at least historically). However it should also be remembered that Part 3A picked up a whole range of other planning instruments and policies where the Minister was the approval authority. This situation in itself demonstrates the failure of the planning system to achieve outcomes desired by Government. This impacts on housing affordability by extensive delays and holding costs and by supply restrictions.

Legislative Reform is Not Sufficient Itself

It is important to recognise that organisational culture within State and Local Government bureaucracies and the development industry is just as important as the legislative framework.

Experience around Australia demonstrates that the worst legislation can work with the right attitude and equally the best legislation will fail if those administering it have the wrong attitude.

Both legislation and administration need to move to an outcome/performance focus rather than the process/control focus that currently exists.

The Importance of Policy Framework

The capacity of individuals and groups to use technology to instantly access a wide cross-section of people has had both positive and negative impacts on consultative processes.

In a positive sense it can enable wide input to policy formulation and decision making. In a negative sense it enables individuals and groups with particularly agendas to abuse the process and create widespread misunderstanding or misrepresentation. For example at Bulli, north of Wollongong, VBC proposed 450 dwellings on a disused Brick and tile manufacturing site near to Bulli railway station, with dwellings from 1 to 5 floors in height. A local objector group devised a website showing 15 storey buildings across the site and ran a campaign that purported this to be the proposal.

At present action groups can attack all stages of a rezoning proposal and depending on the stage in the electoral cycle, are sometimes able to achieve the intervention of a Council or Minister in

a manner contrary to the strategic planning for the area. When a planning framework is properly developed and approved, industry must be able to rely on it as well as being constrained by it, so as to make investment decisions. Otherwise economic development will be constrained.

For these reasons the focus and consultation should be at the policy level so that at the development approval stage it should be primarily about the detail not the principle.

If Strategic Plans once adopted become the responsibility of an administrative body which handles rezoning applications and which is bound at law to make decisions consistent with the plan, then the decision will be depoliticised. Proponents and objectors should have appeal rights on rezoning decisions, solely on the grounds of inconsistency with the Strategic Plan.

Proper strategic planning can dramatically simplify the approval process and diminish the level of combat between proponents and objectors, by having more debate at the policy level and clearer rules at the implementation phase.

Capacity building

Good and well informed decision making requires a level of competency and capacity within Government and an investment in the planning system.

Key Issues

Objectives of Planning

Both the PIA and UDIA submissions have well articulated principles and objectives.

Critical amongst these is the importance of a strategic planning focus and a strong clear policy framework.

The community and the industry need reliability and predictability. With a strong strategic focus, rules can be simplified and outcome focussed.

It is critical that the political and community debate occurs at the intellectual framework/policy level and that the implementation is depoliticised as far as possible.

Independent Assessment

Experience across Australia (and internationally) suggests that the most stable/predictable planning frameworks occur where there is a degree of independence and depoliticisation of the decision making framework. By focussing Government/Ministerial attention on strategic/policy issues and keeping administrative decisions at arms length, Governments and industry are protected from perceptions of undue influence.

The strongest depoliticisation of planning framework has occurred via the West Australian Planning Commission and the South Australian Development Assessment Commission.

The proposed Planning Assessment Commission in NSW, while not as strong as these has the potential but is yet to prove itself.

Gary Prattley
29/5/09

ATTACHMENT

Other Submissions Supporting Strategic Planning and Housing Affordability

PIA:

“The Institute submits that the current planning system in NSW has become too complex and cumbersome, and progressively orientated to development control at the expense of strategic planning, environmental concerns and public participation. The Environmental Planning and Assessment Act 1979 is 30 years old, has been significantly altered in recent years and is struggling to serve the community. A thorough “back to first principles” review of the legislation is now needed.”

“PIA NSW believes that major legislative change is necessary if NSW is to successfully manage growth and create sustainable communities for current and future generations. The Institute advocates an integrated strategic planning approach to deal with the many, interrelated and often complex issues, including those of climate change and natural resource management that directly affect the more “traditional” areas of land use planning.”

“Integrated strategic planning involving all three levels of government is badly needed to set the policy framework and reconcile competing interests from the outset. The alternative is to resolve these issues ‘down the track’ at the local LEP or development assessment stage, which is time consuming, expensive and ad-hoc. Strategic planning is, in our opinion, the key missing link and the precursor to sustainable statutory plan making and development assessment.”

“PIA therefore has taken the opportunity of the Inquiry to consider the NSW planning system in its broadest sense, including how it might be integrated with national legislation affecting the planning, uses or development of land, with the view of improved consistency between all States and Territories of the Commonwealth.”

*“PIA NSW proposes that the planning framework should include a new **Strategic and Integrated Planning Act**, preferably based on overarching principles adopted at the national level. This would ensure that strategic planning actions have greater pre-eminence in the planning framework and are clearly distinguished from the development control process. “*

“The current system in NSW has derived from a process of incremental amendment to the Environmental Planning and Assessment Act, 1979 which has created greater complexity and uncertainty and reduced its efficiency in managing the use and development of land. Plans are often outdated and insufficiently nimble to keep pace with rapidly changing conditions and community expectations, and often fail to satisfy competing interests. This causes frustration and delay.”

“The NSW planning legislation has become progressively more orientated to development control at the expense of strategic planning, environmental concerns and public participation in the planning and implementation processes; processes that were at the heart of the 1979 Act but have been gradually eroded. Along with the lack of clarity in terms of public planning policy, this has generated increased inefficiency, uncertainty, delay, cost and frustration particularly with

- *The increasing need to deal with key strategic issues on a project by project basis, especially for the larger more complex projects,*

- *The progressive constraining of public participation in planning and development approval processes, often in the name of efficiency, and*
- *The increased tendency or need to seek redress from the court system as an independent review mechanism.”*

“PIA NSW supports the replacement of the EP&A Act with new legislation as part of a major overhaul of planning legislation in NSW. Further ‘tinkering’ or amendment to the current Act is unlikely to resolve the current problems. Nor would it signal real change and provide the necessary impetus for associated cultural change. The new Act should properly integrate with other relevant Acts to avoid duplication and remove multiple approval/legislative provisions. It should be based on a set of core values or principles that deal with:

- *Environmental, social and economic sustainability*
- *Community consultation*
- *Clear definition of the roles and responsibilities of planning authorities, government agencies, Ministers, local council’s, proponents and the public, based on procedural fairness, equity, accountability and good governance that minimises the potential for corruption*
- *A framework that is non-adversarial and based on engagement*
- *A framework that is fully integrated across different Federal and State legislation, across spheres of government and is comprehensive in its dealing with planning issues (natural resource management, catchment management, heritage, climate change, etc)*
- *An obligation to do strategy first before implementation of plans*
- *An imperative to improve the sustainability of the environment*
- *An emphasis on spatial planning (the relationship between land uses and activities across regions) not just site planning*
- *Setting out a process for approvals that provides for an appropriate level of assessment according to activity, holds to the primacy of the public interest over private interest, is certain, quick and logical*
- *Provide for mechanisms for appeal and administrative review of decisions*
- *Be developed to use emerging trends in information technology to facilitate assessment, information availability, decision making and monitoring of outcomes.”*

“The existing, highly complex process of land use planning approvals, particularly when coupled to the construction, structural and servicing elements of building as a prelude to certification, has arguably contributed to an environment in which housing affordability has been significantly eroded. In particular this can be seen if there is a post hoc need to resolve fundamental design, environmental, heritage or other matters.”

“The control of land use on or adjacent to airports (or for that matter any other major item of infrastructure, such as ports) should be considered as part of a strategic planning framework in the first instance. That strategic framework needs to take into account the national, state and local needs associated with airports, as well as their impacts. Airports should be subjected to the same regulatory regime as applies to all other major critical infrastructure in NSW, and non aviation uses of airport land (for example shopping facilities serving the general community) needs to be subject to state and local zoning and regulation in the same manner as any other non-critical infrastructure, irrespective of their location on or off land under the control of the Civil Aviation Authority.”

“Perhaps most critically the impact on housing affordability arises from the lack of land zoned for housing particularly in the Sydney Metropolitan area, whether for low density Greenfield sites on the fringe or land zoned for medium and higher densities in the existing urban areas. The complexities and delays in rezoning and upzoning as a result of the NSW planning system (including often the delivery of services and infrastructure, and in some cases community resistance to such proposals) can severely restrict the release of land for housing. The constrained residential land supply ultimately impacts on housing supply, increases prices and reduces affordability. With improved strategic planning, and political commitment to resolving often difficult issues associated with densification, the supply of appropriate zoned residential land could be delivered more quickly. Some housing could also be delivered more quickly on that land if it qualifies as exempt or complying development, as is intended with the new Housing Codes due to commence operation in NSW February 2009.”

UDIA

“UDIA NSW contends the NSW Planning System is the most expensive, legalistic and complicated planning system in Australia. Complexity in the planning system is derived from layered regulation and multiple planning instruments which combine to make the assessment process long and onerous.

Since the introduction of the EPA Act thirty years ago, the concepts of sustainability and sustainable development have evolved to incorporate environmental considerations in the planning system. Conservation outcomes have traditionally been incorporated into the planning system through peripheral legislation or retrofitted into planning policy.

This complexity has substantial impact on development feasibility, development costs and housing affordability. Single purpose legislation, generally conservation focussed, increases complexity and cost as individual Acts do not necessarily complement either each other or the EPA Act. Attempts to streamline the planning system previously have tended to add additional layers of complexity.

Adding to the complexity, which affects certainty in land use, are delays in the rezoning process. Such delays arise from sections of the EPA Act which require consultation and decision making processes at various stages in the making of a plan. Such processes are inefficient and result in excessive assessment timeframes that directly impact on project costs and ultimately, on housing affordability.

UDIA NSW advocates a simplified planning system in NSW is required that is adaptable and capable of efficiently integrating natural resources issues, the commercial realities of development proposals and social issues such as housing affordability.”

“Strategic policy initiatives such as metropolitan and regional planning are not sufficiently robust across government and its agencies to provide for a sufficiently effective tool within the broader planning framework. Strategic planning must have authority within government and the wider community and must be able to drive outcomes in budgetary processes and general agency decision making.”

“The planning framework in NSW is focussed on process and not the facilitation of development or delivery of outcomes. A cultural shift within government that aligns with strategic planning objectives is required. It is necessary for the Government to assume a leadership role in

collecting and disseminating key planning data, and responding to trends and implications of that data, to facilitate and encourage development and economic growth.”

“A comprehensive reform of the NSW Planning System must be expedited consistent with recognition of the key failings of the existing planning framework and key principles that should form the strategic basis of a new planning system. Immediate priorities for reform, as outlined above, are required to ensure investment certainty in the short term prior to the development of a less complex, more efficient planning system.

- 1. The consent authority must be empowered with responsibility for development assessment outcomes. Too many government departments and agencies are involved in the assessment process. These departments and agencies are not accountable and regularly raise issues and impediments that the consent authority fails to resolve. A simplified decision making process is required.*
- 2. An inefficient planning system is supported by an inefficient and uncompetitive economic framework of property taxes and levies comparable to other states. There are underlying constraints with the existing tax and levy framework at Commonwealth, State and Local Government level that must be addressed to improve affordability in NSW.*
- 3. The EPA Act is designed around the assessment of specific development applications and projects. Consideration of the larger scale context within which they fit, such as the neighbourhood scale or regional scale, and the economic and social benefits of those projects at that scale must be incorporated into the assessment framework provided by a new Act.*
- 4. The primacy of the EPA Act is compromised by competing legislative agendas, particularly in regard to conservation legislation which has emerged since the EPA Act's introduction. One singular legislative Act governing planning, and related conservation issues arising out of the planning process, must be developed to simplify the planning system.*
- 5. The EPA Act does not sufficiently account for new and evolving issues, which are as a result, subject to disparate and inconsistent responses. Climate change is an example of an emerging issue that affects development and is subject to a range of regulatory responses from various agencies, departments and scales of government. A new Act must be able to effectively integrate such issues into the planning process without restricting assessment times.*
- 6. There is insufficient integration between strategic planning undertaken under the auspices of the EPA Act and budget processes. Strategic planning and strategic land use decisions must be linked with the Treasury Budget process to deliver capital investment in infrastructure.*
- 7. The EPA Act fails to sufficiently account for the concept of affordability within the wider range of influences that impact on affordability. Improving affordability must be done in the context of increasing land supply, strata reform to enable urban renewal and reducing taxes and charges. The planning system must support affordability through increased efficiency in regulation by instituting a new simplified and less complex Act.*

8. *There is a lack of commitment from Government to key long term planning policy initiative. The Metropolitan and Regional Strategies are not sufficiently robust to guide public infrastructure delivery and investment certainty in NSW. Further, the planning system in NSW must provide a framework supportive to the effective implementation of the Metropolitan and Regional Strategic.*
9. *There is a lack of accountability at all levels within government agencies and at different scales of government for decision making processes, the impact of those decisions or the necessity to balance perspectives to achieve outcomes.*
10. *There is a culture within certain government agencies that does not align with strategic growth objectives reflected in the State Plan, Metropolitan Strategy and sub-regional strategies.*

Identification of Key Policy Principles That Should be the Strategic Basis for Measuring a Successful Planning System

1. *Clear integration of strategic policy initiatives with the legislative framework.*
2. *Clear integration of strategic planning with budget capital expenditure priorities to provide greater alignment of land use with access and amenity.*
3. *Agency accountability to strategic policy initiatives – cultural consistency within government towards delivering growth and facilitating development.*
4. *Certainty in land use and the development potential of that land as guided by metropolitan and regional strategies.*
5. *Flexibility in development control. Regulation should be performance and outcome focussed not overly prescriptive or focussed on process.”*

The Urban Taskforce:

“Firstly, the planning system should support the development of NSW and by so doing provide employment opportunities, permit competition, support business productivity, raise living standards and improve the competitiveness of the state’s economy.

Secondly, the planning system should promote of ecologically sustainable development – as defined in the 1992 Intergovernmental Agreement on the Environment.

Thirdly, the planning system should promote liveable communities.

Fourthly, the planning system should manage development whose public infrastructure requirements exceed the capacity of existing local infrastructure, by providing:

- *Where public funds are available – a clear mechanism to determine which projects will proceed in accordance with the available public funds; and*
- *Where no public funds are available – a mechanism for a private sector proponent to voluntarily contribute to the costs of expanding the public infrastructure to accommodate the requirements of the development.*

Finally, the planning system should promote private investment in the development of NSW by enshrining a respect for property rights as a fundamental tenant of planning law.”