

Submission  
No 37

## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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12 February 2009

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

Dear Sir/Madam

**Submission to the Inquiry into the NSW Planning Framework**

Thank you for the opportunity to make a submission to the abovementioned Inquiry.

Council's comments are set out below:

General Comments

In relation to the Inquiry itself, Council welcomes it, but questions why the Standing Committee for State Development was selected to conduct this inquiry and the reasons for instigating the Inquiry. Insufficient information has been provided in this regard, and based upon the background provided it is suggested that the Standing Committee on State Development may not be the most appropriate body to carry out the Inquiry, and further that the terms of reference are inadequate (hence this general comments section of this submission).

Council generally supports continued reform of the NSW planning system and its current short comings are acknowledged. The need to improve efficiency and cut "red tape" is also generally supported. However, in relation to recent and previous planning reforms, as a major regional council, we have found the planning reforms to be too Sydney metro-centric, making them either irrelevant, too simplistic (particularly in regards to natural resource/ coastal management issues), and/or difficult to apply to a regional Local Government Area (LGA). Regional areas are increasingly becoming a focus for development as housing (and land) becomes less accessible and affordable in metropolitan areas and due to the continuing trend of retirees, sea changers and tree changers moving to regional areas. This should be reflected in contemporary State wide planning legislation.

The recent reform of Section 94 (Contributions Planning) of the Environmental Planning and Assessment Act 1979 (EP&A) is the most recent instance of metro-centric planning reform. It has been developed for the Sydney growth centres and as such is based on unbalanced analysis with the infrastructure needs of regional areas, and infill development has not been fully considered. The new system also appears to be weighted towards the development industry due to the strong influence and early involvement of the Property Council in the reform process.

Further, Section 94 reform has been implemented too quickly with a sunset date given but supporting information, such as the regulations and other guidelines, not yet provided. The implications of this is that Councils, being the end users of these reforms, have only been able to comment on an incomplete system and are unable to implement these reforms even though the deadline of June 2009 is rapidly approaching.

More detail also needs to be provided up front in relation to Arbitrators, Planning Assessment Commissions etc. It is this detail that will determine whether these "additions" to the planning system will make the system more complicated rather than simplifying the process. Of concern is the funding sources and lack of community representation in this process.

#### Terms of Reference

(a) As acknowledged in the Committee's Discussion Paper, the EP&A Act has undergone significant revision and reform. This has resulted in a complex and somewhat frustrating planning scheme in NSW. Council believes there is a case for starting afresh with planning legislation, beginning with a comprehensive bottom up review. NSW planning reform over the last 10 years could, at best, be described as "ad hoc" and hap hazard.

The review and rewrite of the Act should aim to simplify the planning system, maintain the role of Local Government and either integrate environmental and planning legislation or at least remove the current conflict and provide clear links between environmental and planning legislation. For example the dual consent role that exists in relation to the clearing of native vegetation. Reform of the planning system needs to focus on providing a clearer tailored system for all users.

The further reform of the planning system needs to be undertaken with upfront and meaningful consultation with the end users to ensure its applicability and its useability. The recent release of the NSW Housing Code is an example of poor consultation resulting in a State Environmental Planning Policy (SEPP) that will be difficult for Local Government to effectively implement and confusing for users. Initial consultation was undertaken, with a rewrite of the Code and further consultation promised prior to gazettal.

A number of months later, the SEPP (Exempt & Complying Development Codes) 2008 was gazetted with few changes or issues being resolved, and with little notice to Councils. The result is a Housing Code that does not acknowledge that a house being built in a Sydney suburb is different to a house being built in a small, bush fire prone village in coastal NSW, and yet another SEPP that is inconsistent with the Standard Instrument/Order that Councils are required to use to prepare Local Environmental Plans (LEPs).

Clear, strategic principles, rather than "one off" issues or individual development proposals, should guide the future of the NSW planning system and associated legislation.

**(b)** Council supports the continuing progress of e-planning in NSW. Many Councils, including Shoalhaven, have put in a considerable amount of work in this regard. The model put forward by COAG is supported but Council would welcome the opportunity for more Local Government input into the proposed model as it progresses.

**(c)** The issue of dual consents is of concern not only between State and Federal legislation where clarification is required in the application of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999, but also between State and Local legislation.

For example, the introduction of the NSW Native Vegetation (NV) Act 2003 has created a situation where removal of native vegetation may require separate consents be granted by Council and by the Catchment Management Authority (CMA). This was an unnecessary and complicated step to take as this issue could have been addressed via "integrated development" under the EP&A Act. It seems that dual consents create an additional layer in an already complex system, where there is no inter-relationship between planning and environmental legislation.

The Standard LEP Instrument also introduces dual consent requirements as all waterways, including those which form part of marine parks, will now be zoned and consent from Council, as well as consent from Marine Parks Authority, may be required for any works undertaken in certain waterways.

**(d)** Clear, State wide direction is needed in regard to climate change to enable Councils to consider it in a consistent and meaningful way. Stronger direction for, and integration of, natural resource management into the planning process is also required. As an example, the Standard LEP Instrument does not contain standard clauses for the consideration of natural resource management. Each Council is left to formulate its own approach, even though it is clear that climate change and natural resource management is a State or National issue that will not be effectively addressed if legislation (including LEP clauses) varies between LGAs.

**(e)** Council considers that while competition policy issues and land use planning and development approval processes do relate to each other, competition policy should not influence strategic planning and development approval processes. It is the role of other government agencies to encourage development and competition. Too much interaction between these issues will result in the erosion of the objectives and principles of the EP&A Act.

**(f)** In relation to this issue, there is a need to also consider military airports that do not fall under the Airports Act 1996. There is little indication of long term strategy, and limited or no consultation with the community and Local Government, as to future plans or changes to operational requirements which can change ANEF zones. For example, in relation to the Naval Air Station (HMAS Albatross) at Nowra, inconsistent comments have been provided to Council on proposed new developments and major projects with little strategic justification provided. Council supports the continued operation and protection of HMAS Albatross and has policies in place in this regard, however, unless Council is made aware of the long term operational requirements we are unable to effectively undertake strategic planning that responds to these requirements.

**(g)** Council supports the continued inter-relationship between planning and building controls, however, the draft accreditation scheme for building certifiers is considered to be overly onerous and regulatory. Unless State Government legislation changes, it is difficult for Councils to create a stronger links between the two. More important than closer inter-relationship between planning and building controls, is creating better appreciation of building controls and their application for those in the planning field and, vice versa, better of appreciation of planning controls and their application for those in the building certification field, to ensure that these two systems effectively complement each other.

This term of reference also provides an opportunity to state that exempt and complying development has operated successfully, mainly within the domain of Local Government, since 1997. Major concern is raised in relation to the "ad hoc" approach that is about to be implemented via the SEPP (Exempt & Complying Development Codes) 2008. There is a need, that should be a given, for all Environmental Planning Instruments (EPIs) to successfully co-exist, instead of creating inconsistencies that are not addressed via each EPI.

**(h)** Council agrees that the planning system impacts on housing affordability. The user pays system of infrastructure provision and the increasingly complex regulatory environment in NSW contributes to higher costs in the provision of housing, therefore, decreasing affordability. State direction is required to tackle this state-wide issue. This should consider housing choice, infrastructure provision, housing for seniors, and look at the issues associated with the rise in manufactured home estates for affordable housing provision. A number of countries have put in place strategies to deal with this issue e.g. the United Kingdom, and NSW should draw from other countries experiences.

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Public Hearing

The Mayor (or a Council representative nominated by the Mayor) of Shoalhaven City Council wishes to appear at a public hearing on this matter.

Council wishes to be represented at the public hearings on this matter, possibly by the Southern Councils' Group or a regional representative.

It would be appreciated if you could please advise Council in regards to the dates, times and locations of the public hearings.

If you need further information about this matter, please contact Cinnamon Dunsford, Strategic Planning & Infrastructure Group on (02) 4429 3511. Please quote Council's reference 31157-07 in any correspondence.

Yours faithfully



**Ernie Royston**  
**Director Strategic Planning & Infrastructure Group**