

Submission
No 115

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Name: Ms Christine Lloyd

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

Dear Sir/Madam

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Summary of submission

Competing planning instruments under 79C of the *Environmental Planning & Assessment Act 1979 (the EPA Act)* allow decisions relating to **mixed use commercial/residential development** to be tipped in favour of the applicant. Developers are not required to comply with significant parts of the Development Control Plan (DCP) the Local Environmental plans (LEPs) and State Environmental Planning Policy 65 (SEPP 65). Where there is doubt about non compliance the applicant may rely on SEPP 1.

There is no adequate merits review process available to objectors of these developments.

Submission

A DCP is usually the result of consultation with relevant and affected community group. The DCP acts to provide additional requirements controlling the development under the LEP. In the DCP there are often clear numeric compliance requirements in the often disputed areas such as height, depth, density, setback, carspaces and internal courtyard for proposed mixed use commercial/residential development. Where there is a residential area surrounding a DCP the numeric compliance aims amongst other things to provide a 'smooth transition' from the land zoned in the DCP to surrounding residential areas. Therefore compliance with the DCP should mean compliance with the LEP.

When a mixed use commercial/residential development proposal is submitted to a local Council it is a procedural requirement for those affected by the development to be invited to make submissions to the local council regarding objections about unfavourable environmental impacts. Objections should be considered in the decision making process.

Local Councils having met basic procedural requirements may derive significant confidence that objectors do not have recourse to a merits review making it easier to decide favourably towards non complying developments.

Equally the applicant may also be confident presenting non complying development proposals to Council which clearly flaunt specific numeric calculations in heights, density, depth, setbacks, carspaces, internal courtyard sizes set out in a DCP knowing merits review rights by objecting citizens is unavailable. Applicants receive further support for a non complying proposal through reliance on SEPP 1 that compliance is unnecessary and unreasonable. Applicants have recourse to merits review in the Land & Environment Court should a Council not approve a proposal. This is a consideration for a Council when making cost efficient decisions.

While no merits review is available to objectors, a Class 4 action (Judicial Review) is available in the Land & Environment Court. Unlike merits review this is a potentially expensive and therefore prohibitive option for most citizens objecting to a proposed mixed commercial/residential development. Presently objectors are limited to merits review in the Land & Environment Court only for 'designated' development'.

It is difficult to reconcile the integrity and transparency of such an administrative structure when Council Planning Committees report to and advise elected Councillors who then perform the dual role of acting as the consent authority as well as the merits review forum for decisions by a Council Planning Committee about mixed use/residential developments. Usually administrative review is undertaken by a review panel, tribunal or court.

In contrast, it appears under the *Environmental Planning & Assessment Act 1979* there are a significant number of administrative consent authorities and review processes available to applicants when determining and reviewing 'designated' and Part 3A developments including:

- Independent hearing and assessment panel (s231)
- Joint Regional Planning Panel s23G
- Planning Arbitrator s23K
- Planning Assessment Commission s23B
- Planning Assessment Panel (panel listed in Schedule 5B)
- Planning arbitrator s96B of the EP&A Act
- Class 1 & 4 Action Land & Environment Court

It also seems unfair where there is wilful and deliberate non-compliance with numerical controls outlined in a DCP residents have to form lobby groups, gather petitions, pay for costly legal advice and write lengthy submissions to request a Local Council to ensure compliance with a DCP. It is perceived that the Council Planning Committee and Councillors may also use the strength of objections merely as a barometer in ascertaining the extent they may allow non-compliance or cede to minimal compliance.

Where these non complying mixed use residential developments are continually approved as in the case under the Matraville DCP, the cumulative effect is the same as imposed by larger developments – it just happens in increments.

Like other development models it is time an independent consent/review authority is established to determine mixed use commercial/residential developments.

Recommendation

Development of an independent consent/review authority for mixed use commercial/residential developments

Simplify the approval process for objectors by strengthening compliance requirements of DCPs

Inclusion of objectors in Class 1 merits review in the Land & Environment Court.