

**Submission  
No 108**

## **INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK**

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CLARENCE VALLEY COUNCIL'S SUBMISSION TO THE  
INQUIRY INTO NSW PLANNING FRAMEWORK

OFFICE OF THE MAYOR

The Clarence Valley Council is pleased to offer the following comments under the Terms of Reference Headings.

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**(a) & (b) Further development of the NSW Planning System and COAG agenda**

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A plethora of policy reviews and reforms by successive Governments and Ministers has resulted in a fragmented and confusing planning system. The system has become difficult to administer and has led to a lack of confidence in the planning framework by those employed in it and the public it serves.

There is a trend in planning system reform, which COAG will accelerate, to move towards homogeneity and a reduction of the role of local communities to have a say in what their Council area or place looks like. This one size fits all has recently been encoded by the move to uniform housing design under the new complying housing code rules in NSW, which were largely copied from Victoria and Queensland. Within 12 months it will be obligatory for Councils to adopt this one size DCP across the State and large developments will be taken away from Council control completely.

The result of this homogeneity of regulation will be that every area will start to look like another eg the Clarence Valley has now got a huge inflow of domestic tourist from South East Queensland to the valley, as they seek the village feel that their towns and cities once used to exhibit before they were besieged by look alike houses and high rise, very dense development now sprawling from the Gold Coast to the Sunshine Coast and been copied by Mackay, Townsville and Cairns. Interestingly, the State Government in QLD has passed special planning legislation to protect the look and feel of Noosa as an iconic place - or is it ironic place.

Similarly we see leafy heritage suburbs in Sydney starting to look like each other as the high rise juggernaut charges on.

Recently, the town of Yamba in the Clarence Valley was judged by the nation's main tourism magazine as Australia's number one town, a lot of this was to do with the low rise architecture in the town (although modern), which added to its ambience. A new version of the housing code for multi storey development will remove the local DCP in favour of a State wide standard which may remove Yamba's point of difference.

The Council's suggestion is that housing codes and uniform building codes are best left to 'greenfield suburbs' and should not be imposed on existing towns and suburbs. Any decisions in these areas should be left to local Councils to decide. This will at least ensure there is some difference in planning.

The planning system needs to find a balance between efficiencies and certainty through a codes based approach whilst still providing for local differences. There is concern that the current housing code approach tips the balance too far towards homogeneity as the processes developed to date to allow for local exclusions and variations are very restrictive.

It is acknowledged that in Sydney there is need for infill development. But rather the State Government doing this by stealth, they should identify clearly that a certain area around transport nodes will be transformed to high density, but leave the rest of the suburb to function with the local community having a say.

'Greenfield' suburbs need attention to good design which creates a village atmosphere that includes a range of housing styles to meet both affordable housing outcomes, adaptable housing outcomes and climate change objectives. The village should be designed on walkable principles which should have a service centre at the core with higher density housing then larger block housing at the village edge, allowing for a range of housing types and for the community to adapt to different life styles over their life, but remaining in their town or suburb.

These outcomes are not only possible under the current planning framework but are being achieved by many local Councils including Clarence Valley and so it begs the question as to what areas of the planning framework require changes?

The trend of changes introduced to date seeks to limit the opportunity for public involvement in the process which has increased tension between the foundational principles of the EP&A Act in a desire to reduce red tape and a perceived bureaucratic sluggishness of processes adopted under the Act. The risk to the legitimacy of the planning reforms is that the foundational elements around public involvement in the planning process are unnecessarily relinquished in a misplaced desire for reduced delays and unacceptable bureaucratic lethargy.

The Part 3A approvals process is an example of this. It seems from a local Council perspective that under the existing Part 3A process if your proposal is big and ugly enough you get a speedy process with little or no opportunity for public participation in the process. This potentially sets up an inequitable planning system and one that provides a very real incentive for abuse.

But is the reduced public participation desired by the reforms an absolute necessity? Under the current planning framework Clarence Valley Council processes an average of 300 development applications for single dwellings annually. These are processed by building surveyors with little or no input from planners. Approximately 10% of these are for Greenfield Sites and enjoy an express approval in 10 days or less. The majority are processed in under 30 days. So what is wrong with the existing planning process in terms of delivering approvals for mums and dads DAs, very little apparently.

Much of the recent reforms have been aimed at simplifying the planning system by reducing conflicting controls and the number of policies etc. In short, by reducing red tape. However, this approach assumes that you can address complex planning issues and differing community aspirations through a simplified system. The planning environment is by its very nature very complex. Simplifying the controls may be an unattainable goal. The Standard Instrument LEP is an example where this was created for exactly that reason, however, it is in Council's view, going to be

unsuccessful due to the additional overlapping regulation introduced to address issues that it cannot (eg the infrastructure SEPP).

An alternate approach to address the need to make the planning system more accessible and efficient may be to accept its inherent complexity but to simplify the navigation through it. Modern information technology (eg web based instruments) provide an opportunity to achieve this goal and would most efficiently be achieved through a State led program.

Despite intentions to the contrary, the current planning reforms and in particular the Standard Instrument is weakening the link between broader strategic planning policy and development control provisions. The planning system should be doing the opposite by creating closer links between the planning instrument and regional and local strategic planning policy objectives including Council management plans. This will strengthen development control decisions especially when challenged in the Courts. At present, the application of the Standard Instrument by the Department of Planning is resulting in an instrument with minimal policy direction to guide development control provisions. In particular, Council's LEP should be able to implement key Council management plan decisions which have clear planning implications (for example, make a clear link between an asset planning policy position for, say, its road network and planning criteria for rural subdivision). Current practice through the Department of Planning has been very restrictive in this regard. Councils are required by the Department of Local Government to prepare 10 year strategic plans and LEPs should be one of the key ways in which those strategic plans are implemented.

Another impediment to the implementation of broader, agreed strategic policy directions is the difficulty in gaining agency support to smaller scale decisions that are a consequence of that policy direction. Land release strategies are a typical example whereby they generally receive agency sign off at that higher strategic level. However, when it comes to rezone land in accordance with that strategy, it is common that the same agencies object essentially on the same broader planning issues addressed by the strategy. This causes extensive delays which impacts on, amongst other things, housing affordability (term of reference (h)). The planning system needs to prevent agencies revisiting previously agreed positions through a strategic process.

### **(c) Duplication of the EPBC Act and NSW Planning**

A good example of the complication from these dual controls and the impact on Council efficiency is a recent example of attempts to obtain a licence to disperse a flying fox colony near Maclean High School in the Lower Clarence valley. The issue involves the EPBC Act and the TS Act.

In the late 1990's over 1,000 students with support from their parents refused to attend the Maclean High school, located next to remnant rainforest, when the school was overrun by a large colony of flying foxes, at a time when the High School Certificate exams were also taking place. The story attracted national and international media coverage and had very high political dimension.

The result was that a limited licence was issued by the then DECC to disperse the foxes as they arrived before large numbers arrived. This licence has now expired. In the meantime the EPBC Act has come into existence which now means two licences are needed to undertake any movement of the flying foxes - NSW for all the foxes and federally for the grey headed foxes.

What we have found is that while the NSW Government licence which has been issued will make it very hard to disperse the foxes in the future, but that the federal requirements make it almost impossible. What we have also found despite seemingly bilateral agreements on these issues the agencies at a State and Federal level do not talk at all. So it is left to the Council and the Education Department to bring these bodies together and all the processing and monitoring costs are duplicated.

The new licence remains unresolved and may need a political solution in the end, which will be very heated.

In summary threatened species legislation needs to be administered by one jurisdiction.

#### **(d) Climate Change and natural resources issues in planning and development controls**

While Clarence Valley Council has a fairly active climate change agenda and is also a member of Cities for Climate Change Process, the Council feels very let down by the lack of State and Federal leadership at the cutting edge of climate impacts. For instance we have a village at Wooli which has over 30 houses which could fall into the sea at any time given a large storm. These houses are now worth over \$1 million each, far beyond Council's ability to buy them out. *This is repeated right along the NSW coast line and the effects of coastal erosion will be accentuated by sea level rise, yet the NSW Government has no definitive policy on these issues.*

Similarly there is no clear planning path for Councils to follow, in fact NSW Planning (despite some L&E direction) and especially the Department of Lands are constantly approving large new developments in areas where sea level rise will be a major issue. So how are Councils expected to be leaders when our **State Government does not lead.**

Clarence Valley Council has adopted a precautionary approach and will require any new developments to meet the 100 year IPCC 90cm sea level rise level and has a policy of planned retreat in vulnerable beach erosion areas like Wooli. But we have done this until recently with very little policy help from the NSW Government.

Clarence Valley Council is a leader in natural resource management and was recently recognised at the National Local Government Awards with the major excellence award for its restoration project on the Clarence floodplain. Similarly, our new draft LEP which will be, we hope, displayed shortly did have in it before NSW Planning has systematically stripped these controls out, measures to protect and enhance our natural resources to a limited extent.

Again the move to uniformity in the planning system having a one size fits all situation for the LEP's across the State makes it nearly impossible to use the planning system for natural resource management purposes. Although in every coastal catchment Local Government is ready to lead.

#### **(e) Competition in policy in land use planning**

The Council's understanding in this area is that this has largely been driven from a lack of competition in the supermarket debate, as the low cost players, like Aldi, find themselves excluded by the high rents of shopping centres.

The issue of allowing competition to be an argument in the land use planning debate is that you can quite easily fracture central shopping districts by locating new shopping centres outside the traditional town centres. We see this now in Ballina and Coffs Harbour, where the central business districts have struggled as major shopping centres have been located away from the main streets. In Grafton a new \$100 million shopping centre was located adjoining the main street and linked to the main street and seems at present to be leading to increased trade for both the traditional main street and the adjoining super centre.

In Maclean a retail study has revealed that if a new supermarket was located away from the main street that this street would suffer severely. The issue here is that land is very restrained in Maclean and as of yet no private enterprise player has offered to build a new supermarket as they claim the cost of acquiring sufficient space is too high. Council has rejected selling part of the community carpark which may have facilitated a new supermarket.

In general locating new shopping complexes away from town centres, particularly in relatively small town centres leads to the decline in the traditional main street and alternate site should only be allowed as a very last resort.

#### **(f) Development around airports**

Industrial development is the only logical development around airports. In the medium term Clarence Valley Council has identified that a new industrial area is desirable near our small regional airport which will also have the new Pacific Highway route adjoining.

#### **(g) Interrelationship of planning and building controls**

In the Clarence we now have a process where in the complex planning matters - eg heritage, environment etc the trained planners do the assessment, these represent about 30% of the total number of development applications and about 2% of these cases require determination by full Council. For the run of the mill project home on an unconstrained site the building surveyors will approve these within 20 days. Under this system we process over 1,100 DA's a year with a 29 day average turnaround, with the community fairly happy with the process and where necessary heavily involved in the process.

#### **(h) Implications of the planning system on housing affordability**

Clarence Valley Council has taken a lead role in its community in enhancing the provision of affordable housing for current and future residents. Our comprehensive Affordable Housing Strategy focuses on building partnerships and developing planning mechanisms that promote increased provision of a range of affordable housing options while building new community perceptions about those developments.

Our consistent efforts over the last three years will see the construction of between 16 and 24 new affordable rentable dwellings this year for our key workers and seniors. This will be complemented by further rental dwellings, 33 cheaper lots for individual residential purchase, planning reforms (policies, voluntary planning agreements, s.94 amendments, streamlining development assessment processes) and an officer to oversee delivery over the next four years.

All this has been achieved by Council contributing land (forgoing much needed income to address other equalling important priorities), seeking funding to engage a skilled officer to spearhead this work, nurturing existing relationships with the State Government, building new relationships with Community Housing Providers, working closely with other Councils, exploring various models of delivery nationally and internationally, engaging directly with our community, developers and real estate sector.

The National Rental Assistance Scheme has generated some interest amongst the private development sector locally. However, the application process has dampened that interest and the ten-year timeframe does not ensure better outcome into the longer term. The response from the local community sector has been varied as interest is determined by access to a significant asset (which Council has provided in the form of land) as well as the ability to assume the role of a developer which has not been part of their traditional field of operations.

In short, there are significant gaps which will limit achievement of the Government's goals. As a Council committed to those goals we have adopted a multi-pronged approach – provision (of land), partnerships (to deliver), positive perceptions (of the community and developers) and planning reforms to encourage the private sector. Our land is limited. Our partnerships become stale without something to offer. Perceptions will only change when affordable housing becomes sufficiently integrated into communities. Planning reform outcomes are limited by their 'weight' and uniformity of application. They also require officers' time and special skills to be effective as well as the State's approval to impose in some cases.

Planning mechanisms which are required to be uniformly applied in all areas mean an even playing field for all developers, equitable provision of affordable housing across all communities, guaranteed outcomes from developments, better outcomes for future generations and more cost effective processes for Councils. This is one area that begs for true national leadership and uniform planning outcomes if real gains are to be made and Councils are to enter or continue to work in partnership to address an issue which has proven itself to require collaboration between all levels of government as well as the private sector.