

**Submission
No 93**

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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SUBMISSION BY THE
Housing Industry Association

to the

NSW Parliamentary Standing Committee on State
Development

on

Inquiry into the NSW Planning Framework

Discussion Paper

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Statement:

The enclosed submission has been prepared by the Housing Industry Association in response to the *NSW Parliamentary Standing Committee on State Development – Inquiry into the NSW Planning Framework*.



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Date: 23 March 2009

1. Introduction

From all accounts the NSW Planning System has long been considered the most difficult in the country. It remains so, despite efforts at a state and national level to improve its standing.

The importance of planning and building regulatory systems to national competitiveness is recognised at the highest Government level. Despite COAG's interest, our planning systems remain disparate and under pressure. There is no consistency in approach or cohering of best practice across Australia's 700 planning jurisdictions.

Planning reform can and must deliver smarter and easier-to-understand processes for all users of the planning system – investors, practitioners, families and builders. Planning processes must be predictable and must incorporate sufficient flexibility so as not to stifle innovative design and development opportunities.

Importantly, planning reform outcomes must be affordable. Access to affordable and appropriate housing is fundamental to our living standards. Affordability is a key determinant of industry activity. Planning regulations that needlessly increase the cost of land and housing must be eliminated. Practical planning reforms can remove the inherent uncertainties of our planning system and help to remove its unnecessary costs.

Key 'planning system' factors that have impacted on approvals times and housing costs more recently include:

- a significant increase in the number of housing proposals that now require planning approval;
- a more complex assessment process, accompanied by a plethora of planning legislation and referral or concurrence agencies;
- increased time and costs associated with a diverse and layered planning system;
- a monopoly in the undertaking of all development assessment work, exacerbated by a shortage of skilled planning and associated professionals at the local government level; and
- a 'zero-tolerant' application of development standards that has discouraged housing mix and choice.

Efficient planning systems can deliver affordable outcomes by:

- reducing complexity and providing greater certainty for the applicant, adjoining owners and the wider community;
- involving the community in the development of strategic policy and subsequent planning rules and limiting third party intervention for "compliant" applications;

- increasing competition in development assessment;
- undertaking comprehensive regional and local strategic planning;
- embracing a nationally consistent approach, as endorsed by COAG; and
- incorporating housing affordability as a distinct object of legislation.

It is appropriate to acknowledge the recent planning reform initiatives including –the introduction of a State Exempt & Complying Development Policy, improvements to the concurrence and referrals procedures, improvements to the plan-making and development assessment system, the introduction of new planning panels and more.

Notwithstanding these recent improvements, HIA supports the *NSW Parliamentary Standing Development Committee – Inquiry into the NSW Planning Framework*.

The NSW Planning Framework is based on the Environmental Planning & Assessment (EP&A) Act and Regulation but is interlinked with a multiplicity of other legislation – including the Building Professionals Legislation, Local Government Legislation, Sydney Water Legislation, Land Contamination Legislation, Rural Fire Service Legislation, Fair Trading Legislation, Protection of the Environment Operations Legislation, Strata Legislation and more.

Improving the NSW Planning Framework does not simply involve amending the Environmental Planning & Assessment Legislation but also reviewing and amending associated legislation.

This submission highlights eight key issues raised by HIA members and provides appropriate recommendations to address these matters.

2. Issues and Recommendations

Issue 2.1

A large number of rezoning and/or development proposals often require concurrence or sign off from a variety of state agencies. Processing delays often occur whilst these comments are being sought. The integrated planning provisions of the EP&A Act are a common cause of this delay. The recent gazettal of the State Environmental Planning Policy (SEPP) – (Repeal of Concurrence and Referral Provisions) 2008 is a positive step in the right direction but may not have the desired effect as it provides an opportunity for councils to refer development applications to agencies “for advice” if needed. HIA anticipates that this opportunity may be exploited by councils which will defeat the purpose of the amending SEPP.

Recommendation 2.1

To improve the relationship between agencies (such as the RTA, DWE etc.) and the consent authority (whether council, Department of Planning or other) each agency should provide a mechanism for approval similar to the complying development approval for houses under the EP&A Act. One central database should provide all of the complying requirements for each agency – removing the need for a separate approval from each agency. This approach would remove the exorbitant upfront costs for unnecessary detailed technical and consultants reports, research and design analysis prior to the approval being issued.

It would be appropriate at the Local Environmental Planning (LEP) formulation stage to include all of the relevant agency criteria by which developments are to be assessed. This criteria could be supported by relevant practice guidelines. Only those proposals which depart from the established criteria would then need to be referred for comment or concurrence from external agencies.

Issue 2.2

A mechanism for appeals against a consent authority’s decision to refuse a rezoning application should be introduced into the NSW planning legislation. A fair judicial review process should be available for proponents of rezoning applications. Recently amended, Section 23F of the EP&A Act states that no appeal can be taken against decisions by the Planning Assessment Commission (PAC) after a public hearing.

Recommendation 2.2

This new section of the legislation needs to be reviewed and amended to provide an applicant the opportunity to appeal to the Land & Environment Court (within a given timeframe) against a decision (including a PAC decision) to refuse the rezoning application.

Issue 2.3

The housing industry has long been subjected to a frustrating, time-consuming planning approval process in NSW for many years. Time delays caused by incompetent and unsupportive council staff, agency referrals, administrative delays within councils, deficient information to assist applicants, lack of resources within councils and more has for many years created huge problems for the housing industry. Time delays relating to the planning approval process impact significantly on the affordability of residential dwellings in NSW. Additional holding costs and rising material costs are two of the main reasons for the increases in the cost of the completed housing product.

Recommendation 2.3

HIA urges the Committee to consider a mechanism for inquiry into excessive planning delays relating to individual development applications (DA). HIA suggests that consideration be given to the establishment of an "independent" NSW Planning Ombudsman, or similar authority. The Ombudsman, engaged by the proponent following the lapsing of a deemed refusal timeframe would be authorised to inquire into the reason/s for delays in a council's assessment of a specific DA or number of DAs and importantly, the extent to which the delays are unnecessary, unreasonable and excessive. The Ombudsman would have no power to question the merits of a planning decision or to influence the decision-making process in anyway. However, having investigated the council's assessment process in the particular circumstances and reasons for delay, an "independent" Planning Ombudsman would be tasked with reporting directly to the Minister for Planning for action.

Issue 2.4

While the termination of a strata scheme is legislated by the Strata Schemes (Freehold Development) Act, it plays a significant part in the strategic planning and urban renewal of NSW, especially in Sydney and regional city locations. The current legislation only allows for the termination of a strata scheme if a unanimous decision has been reached by all of the strata title owners within the scheme. Urban renewal is a critical part of Sydney's development as a global city and therefore needs to be considered seriously to ensure that Sydney's growth is not constrained by onerous legislative requirements.

Recommendation 2.4

HIA recommends that the NSW Government considers an amendment to the Strata Schemes (Freehold Development) Act to allow termination of a strata scheme by a majority vote where a percentage of the owners (e.g. 80 per cent) agreed.

Issue 2.5

The existing State Environmental Planning Policy 53 (SEPP) – Metropolitan Residential Development only applies to one council area in NSW. The policy permits integrated housing and dual occupancy to occur as long as the controls contained within the policy are adhered to. In NSW, councils are permitted to use the existing State policy or produce their own policy relating to dual occupancy and integrated housing. The majority of NSW councils currently have in place a dual occupancy policy that is impractical and onerous and therefore not utilised by industry and landowners. The inconsistent approach by NSW councils in relation to dual occupancy policy formulation is causing significant problems for industry and landowners alike. A new compulsory State policy is well overdue.

Recommendation 2.5

HIA encourages the introduction of a policy approach to stimulate redevelopment and moderately increase the density of residential lots in the Sydney metropolitan areas. A more compact form of development, dual occupancy projects make excellent use of the existing infrastructure, reduce car reliance and improve the sustainability of cities. HIA urges the NSW Government to review ways of implementing a State policy for dual occupancy development in metropolitan areas of NSW. A key imposition and barrier to dual occupancy developments relates to councils' reluctance to permit subdivision of dual occupancy projects – this requires urgent attention.

Issue 2.6

The effects of climate change are increasingly impacting on the housing industry through planning and development controls in NSW. HIA understands the need to monitor future climate change impacts and take necessary measures to protect existing and new dwellings throughout NSW.

In the recent months, a number of NSW councils have implemented climate change policies (e.g. *Lake Macquarie Sea Level Rise Preparedness and Adaptation Policy*) based on data and results from the Intergovernmental Panel on Climate Change (IPCC 2007) report.

Recommendation 2.6

HIA recommends that the NSW Government establish a climate change working group consisting of government and residential industry representatives to properly analyse the potential for and the impacts of climate change, the consequences of various response options and the cost of action/non-action. Area specific monitoring and data collection must occur before a suitable policy can be developed.

Councils should be prevented from implementing policies that conflict with the current housing development standards within the councils' Development Control Plan (DCP) or Local Environmental Plan (LEP) until a NSW climate change policy is established.

Issue 2.7

The Australian Building Codes Board (ABCB)¹ recently released a study which looked at the cost impacts on housing affordability due to local councils increasing building standards through planning codes. The investigation focused on nine variations in a variety of NSW council areas. The results vary widely, but all added to the construction cost, ranging from a 1% to 14% increases. The samples used were multi-storey apartment buildings and two commercial buildings, where additional council requirements for increased ceiling heights, natural lighting, rooms sizes, energy efficiency, disabled access and termite protection were applied.

HIA is concerned about the consistency between planning and building controls in a number of NSW council areas. HIA recommends that the ratcheting-up of development standards that occurs through local council planning policies should be removed and legislated to prevent further occurrence. Newly developed planning criteria, for instance, should not be able to usurp controls that exist in the Building Code of Australia (BCA).

Recommendation 2.7

NSW State and local planning policies should not be permitted to include building standards that exceed the requirements within the BCA.

Issue 2.8

While the existing State Environmental Planning Policy (SEPP) 65 - *Design Quality of Residential Flat Development* has received some support in the past, HIA believes that this State policy requires modifying to improve the application of the policy and to remove any negative impact it has on housing affordability. For example, the minimum apartment sizes illustrated in the SEPP need to be reduced to reflect consumer and market needs and capacity.

Recommendation 2.8

The Residential Flat Design Code which is called up by SEPP 65 was published by the Department of Infrastructure, Planning and Natural Resources in 2002, over 7 years ago. Over the past 7 years, the housing market in Sydney has changed dramatically. Housing affordability issues have resulted in consumers looking for less expensive,

¹ Australian Building Codes Board - Impacts on Housing Affordability (Local Government Regulatory Measures that Exceed the Requirements of the Building Code of Australia: Results of Preliminary Analysis 2008.

more compact apartments. In light of this, HIA advises the Committee to consider reviewing SEPP 65 to reflect current consumer demand for affordable, sustainable and compact apartments in metropolitan locations.

3. Conclusion

HIA acknowledges the recent NSW planning reforms and supports the NSW Government's intention to review further potential improvements to the NSW Planning System through this inquiry.

Notwithstanding these recent improvements, HIA supports the *NSW Parliamentary Standing Development Committee – Inquiry into the NSW Planning Framework*.

Whilst HIA endorses a comprehensive inquiry, there are clearly a number of priority components that will deliver much-needed relief for everyday users of the planning system. These core aspects are highlighted in this submission and recommendations provided to support the concerns.

HIA urges the Government to assign appropriate priority to these aspects of the inquiry.

HIA is keen to assist the Government in providing additional information with respect to any of the issues raised in this submission and to participate in any further debate as part of the inquiry.