

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: Department of Infrastructure, Transport, Regional Development
and Local Government

Name: Mr Michael J. Taylor AO

Position: Secretary

Telephone: (02) 6274 7573

Date received: 26/03/2009



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Local Government**

**Michael J. Taylor AO
Secretary**

Reference: 11388-2008

The Hon Tony Catanzariti MLC
Committee Chair
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Catanzariti

Inquiry into NSW Planning Framework

I am writing to you regarding the NSW Legislative Council Standing Committee on State Development Inquiry into the NSW Planning Framework.

I have enclosed a submission to the inquiry which I trust will be of assistance to the Committee. The submission also encloses a copy of the Australian Government's National Aviation Policy Green Paper. The paper is relevant to the Terms of Reference to the Inquiry and relates to (f) regulation of land use on or adjacent to airports.

Thank you for inviting the Department of Infrastructure, Transport, Regional Development and Local Government to contribute to the inquiry.

Should you have any queries regarding the submission, the appropriate contact officer is Brendan McRandle, General Manager, Local Government Policy and Finance Branch. Mr McRandle's contact details are email: Brendan.McRandle@infrastructure.gov.au or telephone (02) 6274 7664.

Yours sincerely



Michael J. Taylor
SECRETARY

23 March 2009

**NSW Legislative Council
Standing Committee on State Development
Inquiry into the NSW Planning Framework**

**Response to Terms of Reference by the Australian Government
Department of Infrastructure, Transport, Regional Development and
Local Government**

Terms of Reference

That the Standing Committee on State Development inquire into and report on national and international trends in planning, and in particular

- (a) the need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development**

Refer to the response for (b).

- (b) the implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales**

On 10 February 2006 the Council of Australian Governments (COAG) agreed to a new National Competition Policy reform agenda as part of the National Reform Agenda. The reform agenda targeted specific under-performing sectors, including development assessment. At that time, COAG tasked the Local Government and Planning Ministers' Council (LGPMC) to:

(a) recommend and implement strategies to encourage each jurisdiction to:

- *systematically review its local government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction, and*
- *ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times;*

(b) facilitate trials of electronic processing of development applications and adoption through Electronic Development Assessment; and

(c) report back to COAG on progress and recommended options for streamlining legislation by end of 2006.

The COAG Communique dated 13 April 2007 endorsed the LGPMC recommendations that

- o *all jurisdictions agree to review the outcomes of the current system and software trials of electronic development assessment processing and, if*

- appropriate, facilitate further trials, with the aim of maximising the uptake of electronic development assessment processing by the end of 2009.*
- *all jurisdictions agree that all new tender specifications for electronic development assessment software purchased by Commonwealth, State, Territory and Local Government will incorporate a National Communication Protocol for transferring development application information electronically from 1 July 2007.*

The specific recommendations to COAG supporting greater electronic processing of development applications drew on the work of the Development Assessment Forum (DAF). DAF is an independent think tank and advisory forum of government and industry members, which develops and recommends leading practice processes and procedures for planning and development assessment reform.

At the COAG meeting on 20 December 2007, the COAG Business Regulation and Competition Working Group (BRCWG) was established with the following objectives:

- *To accelerate and broaden the regulation reduction agenda to reduce the regulatory burden on business.*
- *To accelerate and deliver the agreed COAG regulatory hot spots agenda.*
- *To further improve processes for regulation making and review, including exploring a national approach to processes to ensure no net increase in the regulatory burden, and common start dates for legislation.*
- *To deliver significant improvements in Australia's competition, productivity and international competitiveness.*

In July 2008 COAG sought and has since received a report from the LGPMC and BRCWG (in consultation with the Housing Working Group) on:

- scope and time lines for taking the streamlining of processes further;
- options for fast-tracking the introduction of common performance measurement criteria;
- progress with rapid adoption of eDA across local councils to help speed up land release and reduce development costs.

At its meeting of 13 August 2008, the LGPMC agreed to the Development Assessment Forum (DAF) developed protocol (or standard) to support the electronic processing of planning and development applications.

Members noted that for a fully integrated electronic development assessment (eDA) to be possible, all organisations involved will need to develop e-DAIS compliant systems. To support the swift introduction of the e-DA Interoperability Specification (e-DAIS), the Australian Government agreed to commit up to \$3.6 million from its \$30 million e-DA Program, a part of the Housing Affordability Fund (HAF).

The funds will be made available over the next three years, commencing in 2008-09, to support the further development of the e-DAIS, including funding for State-based program officers to help deliver e-DAIS. It is expected that States and Territories will work collaboratively with the eDAIS National Coordination Office (NCO) to provide

the necessary resources. The NCO is based within the Western Australian Government Department for Planning and Infrastructure.

The Council also agreed to the establishment of a Ministerial sub-group, chaired by New South Wales and including Victoria, Queensland, South Australia and the Australian Local Government Association to develop proposals for further streamlining development assessment reform for circulation and agreement on a work program. The Sub-Group is expected to review DA reform and e-DA, inclusive of complying development, performance monitoring, electronic planning systems and nationally consistent principles for planning systems.

(c) duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation

Suggest referral to the Australian Government Department of Environment, Water, Heritage and the Arts which has responsibility for this matter.

(d) climate change and natural resources issues in planning and development controls

In response to COAG directions in 2007, LGPMC has undertaken some preliminary work on climate change initiatives aimed at encouraging more energy efficient land use planning practices and infrastructure provision. It is understood this is being reviewed by the COAG Climate Change and Water Working Group.

At its meeting in March 2008, LGPMC Members also agreed that a report identifying planning related initiatives to support adaptation in the states, territories and local government be passed to COAG for consideration as part of the Council's response to the COAG National Climate Change Adaptation Framework. LGPMC also endorsed the need to progress a nationally consistent approach to coastal mapping and to guidelines as a priority.

LGPMC has also developed and agreed to a set of national planning principles for reducing energy and water demand through land use planning and infrastructure design. The principles have been submitted to COAG for its consideration.

(e) appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales

On 22 January 2008 the Assistant Treasurer and Minister for Competition Policy & Consumer Affairs requested the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries pursuant to Part VIIA of the *Trade Practices Act 1974* (www.accc.gov.au).

The ACCC subsequently released its report in August of this year.

The report specifically raised concerns about the possible impact of existing planning and zoning laws on competition and their impact on the establishment of new supermarkets.

At its meeting of 29 November 2008, COAG agreed to examine further planning and zoning policies and processes from a competition perspective as recommended in July by the ACC's inquiry.

(f) regulation of land use on or adjacent to airports,

Current Situation

The regulation of land use on the leased federal airport sites is conducted within the framework of the *Airports Act 1996* (Airports Act) and the associated Airports Regulations 1997 and Airports (Building Control) Regulations 1996 and Airports (Environment Control) Regulations 1997.

In New South Wales, the leased federal airports are Sydney (Kingsford-Smith) Airport, Bankstown Airport and Camden Airport. Two of the five land titles for Gold Coast (formerly Coolangatta) Airport are in New South Wales. Hoxton Park Airport transferred to freehold private ownership on 27 October 2008 and this airport closed at the end of 2008. The boundaries of each airport site are identified in the Airports Regulations 1996.

The regulation of land use on leased federal airports is the responsibility of the Australian Government Minister for Infrastructure, Transport, Regional Development and Local Government.

The primary means of regulating land use, planning and building controls is under Part 5 of the Airports Act, which specifies the process in the form of airport master plans, major development plans (MDPs) for significant developments, the approval of building activities on airport sites and the certification of buildings and structures on airport sites.

Master plans, 20-year forecasts produced every five years and requiring 60 business days' public consultation, must ensure that uses of the airport site are compatible with the areas surrounding the airport (s.70(2) (d)). Relevantly, airports are required to specify an Australian Noise Exposure Forecast (ANEF) for the areas surrounding an airport (s.71(2)(d)), flight paths (s.71(2)(da)), undertake consultations with local government bodies in the vicinity of the airport for managing noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels (s.71(2)(e)) and identify and manage environmental issues (s.71(2)(f), (g) and (h)).

Major airport developments require an MDP, which must be consistent with the airport lease and master plan. Similar consultation provisions apply and an MDP must set out, among other matters, an assessment of environmental impacts and managing noise intrusion and also have regard to Australian Standard AS2021 (*Acoustics – Aircraft Noise Intrusion-Building Siting and Construction*).

For both master plans and MDPs airports must demonstrate how they have addressed the concerns of state and local government and other stakeholders before submitting their proposals to the Minister for approval.

All building activity on airport also requires approval from the Airport Building Controller, independent experts contracted by the Australian Government.

Part 6 of the Airports Act provides for environmental management at the airports and requires each airport to produce an environment strategy.

The Airports (Protection of Airspace) Regulations 1996 provide a system for the protection of declared prescribed low level airspace at and around airports. Intrusions into prescribed airspace are permitted as 'controlled activities' subject to an assessment of impacts on safety, efficiency and regularity of existing or future air transport operations in and out of airports. Under Regulation 8 of these regulations a local government body is required to give notice of proposed building activities that would constitute a controlled activity.

The Civil Aviation Safety Authority (CASA) administers the Civil Aviation Safety Regulations 1998 of which Part 139, and the associated part 139 of the CASA Manual of Standards, prescribes the detailed regulation that is determined to be necessary for the safety of air navigation on and around aerodromes. The Civil Aviation (Buildings Control) Regulations 1988, also administered by CASA, specifies controls on building heights within the vicinity of airports.

Green Paper on Aviation

Chapter 8 of the Australian Government's Aviation Green Paper *Flight Path to the Future*, released on 2 December 2008 considers planning at the leased federal airports and responses to the following related themes identified in the initiating National Aviation Policy Statement Issues Paper in April 2008. The Australian Government's Aviation White Paper is anticipated to be released in late 2009.

The Aviation Green Paper commits the Australian Government to work with the state and territory governments on airport planning and development, with clear consultation and decision-making processes, including the key initiatives outlined below:

- establishment of Airport Planning Advisory Panels, drawn from industry, community and government, for each of the major airports, to provide independent expert analysis and advice to the Minister;
- examining the impact of airport development on surrounding transport and community infrastructure and how the leased federal airports might contribute to this infrastructure;
- strengthening of the airport Master Planning process to provide greater transparency and certainty about future land uses at the airports;
- providing a power for the Minister to call for additional detail in precinct plans for areas which have been proposed for non-aeronautical development;
- a review of triggers for the airport major development process to ensure those developments of most interest to the community are subject to proper consultation;
- establishment of community consultation groups at each airport to foster effective community engagement in airport planning issues; and
- establishment of a clear policy on the definition of public safety zone areas around airports, which can be taken into account in local planning.

The Green Paper notes that for airport operators, it is essential that local planning schemes support the development of the airport and prevent development which would impact on current and future operations. And, in turn, the Green Paper acknowledges that planning authorities are seeking more effective input to airport development processes.

A copy of the Aviation Green Paper is attached for the Standing Committee's consideration. Submissions to the Green Paper closed on 27 February 2009.

(g) inter-relationship of planning and building controls, and

At its meeting of 27 March 2008, the LGPMC noted a progress report to COAG from the Building Minister's Forum (BMF) against six priority commitments relating to building regulation reform. The LGPMC also agreed to support development of a nationally consistent sustainability tool for the assessment of building which supports the targets set by signing the Kyoto protocol in terms of measuring a reduction in CO2 emissions and water usage. Priority will be given to the application of a tool to residential development.

The Building Ministers' Forum is established under the Inter-Governmental Agreement between the states, territories and Commonwealth to discuss building control matters that affect Australia. Secretariat functions of the BMF rests with the Department of Innovation, Industry, Science and Research.

(h) implications of the planning system on housing affordability

Through the Local Government and Planning Ministers' Council (LGPMC) and supporting bodies, the Australian Government has been active in encouraging more efficient land use planning and development approval systems which should reduce the costs of providing housing.

The LGPMC is coordinating the national response to COAG's direction to streamline and reform planning and development assessment (DA) systems. This work, which is primarily the responsibility of the states and territories and local government, includes reform of legislation and reviewing the extent of inter-agency referral practices. It is also encouraging a fully integrated system to support electronic development assessment (eDA) based on a protocol known as the eDA Interoperability Specification (eDAIS). The Housing Affordability Fund (HAF) has provided financial support totalling up to \$30 million to develop and implement the eDAIS as well as support for selected eDA projects being undertaken by councils in high growth areas.

The LGPMC's approach to DA reform has been assisted by the Development Assessment Forum (DAF). The DAF, a Commonwealth initiative, is an independent 'think tank' and advisory forum to government and industry which develops and recommends leading practice processes and procedures for planning systems and development assessment. The DAF has broad membership from across the three spheres of government, industry and professional associations. The Department of Infrastructure, Transport, Regional Development and Local Government provides secretariat support for the DAF.

DAF developed a *Leading Practice Model for Development Assessment Reform*. The model is based on 10 leading practices covering the way planning and development policies are developed and applied, appeal processes and opportunities for private sector involvement. It offers efficiencies in the DA process by streaming development applications into assessment processes (or tracks) that match the complexity and impact of the proposal. Under the model simple developments receive less assessment than those which are more significant and environmentally sensitive. The tracks are designed to ensure that an application is streamlined into the most appropriate and efficient assessment pathway.

The model is a useful tool kit that jurisdictions can adapt and adopt to best suit their specific needs. Most jurisdictions are in the process of implementing the key elements of the model and regular updates are provided to the LGPMC and COAG. In August 2008, the LGPMC agreed to establish a Ministerial Subgroup to further accelerate the pace of reform. It will focus on developing proposals which will focus on greater consistency in planning and development across the country. It is examining areas such as consistency in performance monitoring; expanding the use of electronic systems; and encouraging the greater use of 'code' or 'complying' DA systems to speed up approvals for simple projects.

In addition, the LGPMC has also been collaborating with the Housing Ministers' Conference on components of a Framework for National Action on Housing Affordability. A key outcome of this joint initiative has been an *Affordable Housing National Leading Practice Guide and Tool Kit*, (the Tool Kit) which is due to be finalised later in 2008.

The Tool Kit is a resource to assist housing, planning and local government practitioners and other key stakeholders work in partnership with private and not-for-profit developers in facilitating more affordable housing.

The Tool Kit aims to:

- provide examples of how planning systems can help to deliver affordable housing in various urban and regional and market conditions;
- provide local and international examples to illustrate leading practice; and
- promote nationally consistent principles, terminology and mechanisms.

The Australian Government is also receiving advice from Infrastructure Australia and the newly created Major Cities Unit on infrastructure investments it can make that will improve the liveability of our cities.