

**Submission
No 41**

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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11 February 2009

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

Dear Sir/Madam

Enquiry into the NSW planning framework

I refer to the letter dated 17 November from the Hon. Tony Catanzariti MLC to the Mayor Councillor Susan Hoopmann relating to submissions to this enquiry.

The issue was considered at the meeting of Council on 9 February 2009 and Council offers the following comments on the terms of reference.

Term of reference 1(a): The need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development

Comment:

On assessing the need for further development of planning legislation in NSW it is worth referring to the Objectives of the current Act, which was introduced in 1979 these are:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

- (iii) *the protection, provision and co-ordination of communication and utility services,*
- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*
 - (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
 - (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

Any enquiry should focus on how effectively these objectives are being achieved when gauged against contemporary expectations and imperatives.

A major shift in expectations and imperatives since introduction of the current Act is toward the concept of sustainability built around the integration of the three recognised pillars of social sustainability, economic sustainability and environmental sustainability. The Act's objectives include reference to each of these and to ecologically sustainable development, but it can fairly be argued that in practice, plan making and development assessment has tended to emphasise the impacts of that on the physical element of the environment – particularly on the amenity of a place and/or the impact on natural elements. Economic and social considerations usually received less systemic assessment than the objects of the Act imply they should.

A fundamental review of the Act to compel an emphasis on the planning system delivering sustainable places is seen to be warranted.

In large measure that approach is the foundation of the Community Strategic Plans recommended by the Department of Local Government. There is merit in aligning these two as plan making and development assessment functions installed by the planning legislation are certainly among the most important tools available to governments – local or otherwise in shaping the future of places, be that at local or regional level.

Term of reference 1(b): The implications of the COAG reform agenda for planning in NSW

Comment:

COAG is the peak intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. COAG has recently committed to implement a new model of cooperation between all levels of government. In March 2008, COAG committed to a comprehensive new economic reform agenda for Australia, with a particular focus on health care, water resources, regulatory and competition reform and the broader productivity agenda.

Term of reference 1(c): Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation

Comment:

The discussion paper focuses on the appropriateness of the approach to development assessment developed by the Development Assessment Forum.

The development of a common national system would seem logical, as does the separation of assessment processes in line with the degree of complexity and impact of proposals.

This approach should retain sufficient flexibility to guarantee it's application is sensitive to particular local conditions.

These two terms of reference prompt the question of how all levels of government can operate with common purpose in delivering sustainable places and the role of planning legislation and practice as one of the effective tools in achieving commonly agreed outcomes.

The recent practice adopted by the Department of Planning of preparing quite specific Regional Strategies for the different regions of the State is a major step in defining programs that respond to the particular characteristics of and the differing pressures and issues faced by those particular regions. While these strategies do though now concentrate on the physical implications of growth and change. They could with a broader approach provide a valuable matrix for sustainable regional development and management.

It would be worth examining how these regional plans might be broadened to this status of regional sustainability plans by drawing in and coordinating:

- The contributions of other State agencies
- The State Infrastructure Plan.
- The contributions of the Council of the regions via Local Community Strategic Plans.

- Federal programs and environmental Legislation requirements.

Term of reference 1(d): Climate change and natural resources issues in planning and development controls

Comment:

While debate continues on climate change and it's causes, a precautionary approach should prudently be taken in both plan making and development assessment. Here too to ensure consistency there would be value in a standard "climate change" control template being developed by the Department. That could address the range of issues climate change management raises eg.

- Flooding
- Minimising emissions
- Alternative energy generation

From this template individual Councils could take relevant standard provisions and install them into their local planning framework.

Term of reference 1(e): Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

Comment:

It is considered that competition policy per se should not be a specific planning consideration.

There should be care taken in planning centres that the appropriate economic role of that place is reflected in the relevant plans and is capable of being realised. It is important that the correct planning principles are not distorted or abandoned on the basis of simply installing competing enterprises. Significant consequences such as transport accessibility, infrastructure adequacy amenity and similar could be generated by that type of approach.

Term of reference 1(f): Regulation of land use on or adjacent to airports

Comment.

The local government area does not contain land set aside for airport development.

However, as a general issue it is considered quite inappropriate for airport planning and development to occur without regard to its contextual environment given the impacts that use inherently has on its surroundings. Mechanisms should be installed that require airport plans and major developments to have regard to their effects, to examine alternatives, to quantify impacts, to engage the affected communities and to address issues of compensation.

Development not central to airport operations shopping centres, but which are essentially commercial ventures – shopping centres and similar should be regulated by the local planning regime.

Term of reference 1(g): Inter-relationship of planning and building controls

Comment.

Any further reforms in the planning system should ensure that there is continued security provided to the community in respect of the role of certification by:

- Increasing accountability of private certifiers;
- Increasing accountability of development which is certified privately; and
- Increasing the effectiveness of investigative and enforcement powers available to councils to manage private certification in their area.

In particular, gaps in the legislation between development and building controls should be closed. Specifically, changes to the planning system should require that a Final Occupation Certificate be obtained within 12 months of the issue of an Interim Occupation Certificate. The reason for this request is that once an Interim Occupation Certificate has been issued there is no obligation on either the Principal Certifying Authority or the property owner to complete the works. This has ongoing problems for the community and frequently negates measures put in place through the development assessment process to mitigate a range of potential impacts. It is appropriate that legislation impose a penalty on any property owner that fails to obtain a Final Occupation Certificate within 12 months of occupation.

Term of reference 1(h): Implications of the planning system on housing affordability?

Comment

This issue does not bear on this area's planning agenda to any significant degree, given the largely settled nature of the Municipality. As a principle the planning system should not generate costs to its users as a result of inherent inefficiencies, as distinct from its ability to identify legitimate requirement that might involve costs.

Implementing Change

In addition, to the specific terms of reference Council considers that there is a need to provide for cost and resources involved in installing a changed planning framework. It must be recognised that any significant review of reform of the planning framework and the planning administration system will inevitably require changes to planning instruments of practices at the local. This could, as is the case with the reforms promoted by the 1993/4 reviews and the current round of reforms involve implementation measures requiring resources beyond those normally available to Council's.

This in Council's view dictates a need for a funding framework to supplement the normal resources. This approach was employed to assist programs like the introduction of standard LEP's and consolation of DCP's and has undoubtedly facilitated those processes.

It is noted that public hearings are to be arranged. Council would be pleased to amplify its submission at that time.

Yours faithfully

A handwritten signature in black ink, appearing to read "Barry Smith", with a stylized flourish at the end.

Barry Smith
GENERAL MANAGER