

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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

By email : state.development@parliament.nsw.gov.au

Dear Sir/Madam,

Re : Submission to the Inquiry into the NSW Planning Framework

This is a submission by AMP Capital Shopping Centres (AMPCSC) in response to the Inquiry into the NSW Planning Framework.

AMPCSC owns or manages several major shopping centres in NSW, varying between major regional shopping centres, local centres and bulky goods retail centres. Therefore, we take a strong interest in the Government's initiatives to reform and streamline what is a very complex planning system in NSW.

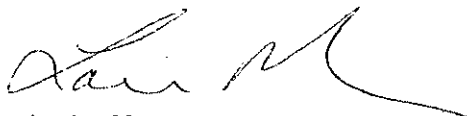
The Inquiry into the NSW Planning Framework entails an investigation into a range of considerations, as identified within the Discussion Paper by the Standing Committee on State Development, dated November 2008. The Inquiry provides an opportunity to present recommendations for further improvement to the NSW planning system. Despite the NSW Government implementing a range of planning reforms, it is evident that further reforms are much needed if NSW is to remain competitive as a place for investment and business.

The attached report has been prepared by Urbis on behalf of AMPCSC and forms the basis of the submission. It is recommended that the State Development Committee consider the following issues be pertinent items for inclusion in the rationalisation of the NSW planning reforms:

- The need to review the rezoning process to establish an independent appeal body/mechanism.
- Rationalising information requirements for DA lodgement and associated excessive costs.
- Standardising conditions of consent.
- The implementation of exempt and complying development for commercial developments.
- Facilitating investment - recognising and facilitating spot rezonings.
- Leveraging the benefits of an eDA system.
- Reforming the relationship of the Commonwealth land use planning relating to airport lands to promote comprehensive involvement for all levels of government over the future planning of Commonwealth airport land and consistent land use planning.

AMPCSC support the Government in the investigations and inquiry towards achieving a more efficient and simpler planning framework. The above issues have been highlighted as key areas where further consideration is required. We trust that the matters raised will be given appropriate consideration and AMPCSC would welcome the opportunity to discuss any of the above issues in further detail.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Louise Mason', with a long, sweeping horizontal line extending to the right.

Louise Mason
Head of Shopping Centre Development
and Acting Head of Retail Asset Management

Submission for the Inquiry into the NSW Planning Framework

February 2009

AMP capital
SHOPPING CENTRES

urbis



Submission for the Inquiry into the NSW Planning Framework

Prepared for AMP Capital Shopping
Centres

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1 Executive Summary

While the NSW Government has recently announced a range of reforms to NSW Planning legislation, there is no question that further reform to the planning system is required to ensure that NSW remains competitive on the national landscape.

Now more than ever before, the planning system needs to be a mechanism to facilitate as opposed to stifle investment. This is not to advocate an "open slather approach" but simply to recognise these barriers and investigate further improvements to address these.

There remain a number of further improvements that can be made to the NSW planning system that will facilitate investment while ensuring that over-arching environmental, social and economic considerations are still achieved. These improvements include:

- The need to review the rezoning process to establish an independent appeal body/mechanism.
- Rationalising information requirements for DA lodgement and associated excessive costs.
- Standardising conditions of consent.
- The implementation of exempt and complying development for commercial developments.
- Facilitating investment - recognising and facilitating spot rezonings.
- Leveraging the benefits of an eDA system.

2 Introduction

Urbis has been engaged by AMP Capital Shopping Centres (AMPCSC) to undertake a review of the NSW planning framework and to provide a submission to the Inquiry into the NSW planning framework which is currently being undertaken by the State Development Committee.

The Inquiry into the NSW planning Framework entails an investigation into the following considerations, as identified within the Discussion Paper by the Standing Committee on State Development, dated November 2008. The issues highlighted below are of particular interest to AMP in which this report provides a detailed response within the following sections.

- 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,*
- b) The implications of the Council of Australian Governments reform agenda for planning in NSW,*
- c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation,*
- d) Climate change and natural resources issues in planning and development controls,*
- e) Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW,*
- f) Regulation of land use on or adjacent to airports,*
- g) Inter-relationship of planning and building controls, and*
- h) Implications of the planning system on housing affordability.*

3 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.

Relative to the changes to the planning legislation last year, Urbis undertook a review of the proposed changes and provided advice to AMPCSC, which formed the basis of a submission to the NSW Department of Planning (DoP). This submission highlighted a range of reforms required, some of which have been adopted and incorporated into the reforms. The main changes to the NSW planning system relates to:

- Planning Assessment Commission to be established to provide advice and determine major projects delegated to it by the Minister.
- Joint Regional Planning Panels to be established to determine regionally significant development.
- A new system of planning arbitrators to consider applicant appeals against Council decisions on small scale development proposals.
- Tighter rules for private certification, including new limits on the annual income that can be earned from, and the number of certificates that certifier can issue to any one client.
- New rules to support a major expansion in the use of exempt and complying development.
- Introduction of a gateway system for amendments to an LEP / rezoning.

Despite the above reforms, there are a number of additional key considerations and suggestions critical to improving the effectiveness of the current planning system and thereby enhancing the attractiveness for investment in NSW as follows:

3.1 The need to provide an independent appeal body/mechanism to consider cases where Council refuses to prepare a draft amendment to an LEP.

The Gateway system adopted by the NSW Government is a proposed means of streamlining the LEP plan making process and appears to be a new step in the plan-making process; however it is not clear as to how it relates to the existing system of the LEP Review Panel and where this process actually applies. There is no certainty that this process will in fact expedite the process as it still relies upon the Council resolving to prepare a draft LEP in the first instance. This is often the critical path and the reforms do not sufficiently address this or provide the mechanism to appeal against the unreasonable conduct of Council in respect to a proposed LEP amendment.

Whilst there is a provision proposed that allows the Minister to direct the Director General to be the planning authority where *"the council has in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner"*, this mechanism appears only to be relevant in circumstances where a draft LEP has already been prepared.

To address the circumstances where Council refuses to prepare a draft amendment or fails to determine a request for rezoning within a reasonable time frame, we recommend that an independent appeal body/mechanism be established.

The political nature of potential rezonings reflects the need to reinforce the rezoning process as a merit based process and as such, the gateway screening system should represent the initial phase prior to the point of Council determining whether to resolve to prepare an LEP (Section 54).

Consideration to provide an avenue for open discussion between the proponent, DoP officers and Panel members during the decision making process of whether an LEP is to proceed is also critical.

The current LEP Review Panel process does not accommodate for this opportunity and this is considered to be imperative given that the gateway screening system would be the only avenue for progressing a rezoning.

Summary

An independent appeal body/mechanism relating to LEP Plan making (rezonings) is essential to ensure the timely consideration of LEPs in the event of unreasonable conduct of Council in respect to a proposed LEP amendment.

3.2 Information Requirements for DA lodgement and Excessive costs

Each local government agency currently requires a detailed scope of information required to accompany development applications, which varies from Council to Council. Councils have been increasingly requiring excessive detailed information for minor DAs, resulting in excessive costs and delays in the preparation of DAs.

It is recommended that the requirements for the lodgement of DA's be simplified such that DA documentation should be reflective of the nature and scale of the proposal. To ensure consistency, the most appropriate approach is to standardise the guidelines which outline minimum requirements for each DA type, as opposed to Council's preparing their own individual guidelines. This should aim to reduce the time and costs associated in preparing a DA.

Summary

Standardising information requirements are imperative to minimising costs associated with the preparation of a DA whilst enabling a timely process for development.

3.3 Standardising Conditions of Consent

At present, there is significant variation in the nature of consent conditions imposed. The standardisation of conditions of consent would assist in "across the board" interpretation by individuals and certifiers to minimise ambiguity.

As a further measure, a review into the conditions relating to the description of development and reference to approved plans should be undertaken. Councils either state that development is to be built in accordance to the approved plans or "generally" in accordance to approved plans. Private Certifiers have been overly cautious in issuing construction certificates (CC) where plans are not strictly in accordance to approved plans, requiring the submission of Section 96 applications. There should be some flexibility incorporated into the relationship between CC drawings and approved DA plans where minor amendments of no planning or environmental consequence occur, without requiring the need for a Section 96 modification.

Summary

To enable consistent interpretation NSW wide, standardisation of conditions of consent is recommended, to remove ambiguous interpretation.

3.4 Exempt and Complying Development

The current recent introduction State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 focuses primarily on residential development and does not accommodate for commercial development. Whilst a draft NSW Commercial Building Code was released in May 2008, these draft provisions have not been incorporated into the SEPP as yet. It is understood that the SEPP will include exempt and complying provisions for commercial land uses and includes consideration to reducing the extent of DA applications for minor works that result in structural or building related changes but have no environmental or planning impact.

It is recommended that the following considerations be given to reducing the number of unnecessary DA's including:

- Allowing structural works or associated building works be able to be dealt with as a complying development provided that certification by the appropriate engineer form part of the complying development certificate.
- Avoiding DA's for the fitout of food premises within retail shopping centres by addressing the common exclusion of such proposals from exempt or complying owing to the need to comply with the Food Premises Code.
- Avoiding a common requirement from Councils for tenancies within a newly approved development from obtaining a 'first use DA'.

Summary

Further consideration to expanding the range of exempt and complying development relating to commercial premises, including food premises is recommended to facilitate development and overcome unnecessary 'red tape'.

3.5 Facilitating Investment - recognising the need for spot rezonings

It is recognised that "spot rezoning" comprise a significant portion of the rezoning and plan making proposals. Whilst "spot rezoning" is often associated with negative connotations, the extent of draft LEP's rezoning proposals received by the DoP reflects the necessity to ensure provisions are retained for facilitating development via the "spot" rezoning process. It is imperative that flexibility be maintained within the planning system for land use changes to be sought at any time, without the need to be incorporated as part of a periodic review of a comprehensive LEP. Given that periodic reviews of the local statutory framework are likely to occur at a minimum of 5 years, it is imperative that the NSW planning system does not frustrate the entrepreneurial role of the private sector that contributes to NSW economic growth.

Summary

Imperative to ensuring ongoing investment in NSW is the retention of the flexibility to enable land use change/rezoning proposals to be considered at any period, as part of the NSW planning system and a process to enable the efficient assessment of such requests.

3.6 Rationalising the detail of Justification Reports

The sustainability tests associated with a "Justification Report" of the gateway screening system will provide an appropriate mechanism for assessment for land use change. However, the extent of information required upfront presents a conundrum. On the one hand, without clear guidance, the level of information to support a justification report would potentially require a full suite of specialist documentation, a costly process associated with a level of uncertainty. Conversely, given the significance of the decision being sought, it is often imperative that full justification be provided to properly articulate the merits of the proposal.

It is recommended that NSW Government identify an appropriate level of information that balances these issues. The Concept Plan approval process associated with Part 3A of the EP&A Act represents an example of a planning process that was intended to provide for a high level assessment of Major Projects without the need to provide detailed documentation but this has transpired into a lengthy process associated with detailed studies required by DoP officers equivalent to a Major Project Application.

Summary

An appropriate level of information to support rezonings is required to be established, taking into account costs associated with a process that has a level of uncertainty associated with the gateway screening system whilst ensuring a satisfactory level of detail is provided for making informed decisions.

4 The implications of the Council of Australian Governments reform agenda for planning in NSW

The Council of Australian Governments (COAG) comprises the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. The role of the COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance, such as the subject reform agenda for planning in New South Wales.

The COAG review of the NSW planning framework is considered to be highly important for the future development of the NSW planning framework providing for an "arms length" approach for the benefit of the wider community. Recent planning reforms by the NSW Government aims to simplify the planning process but in practice, results in further layers and complexity to the planning system.

Highlighted within the Discussion Paper is the introduction of the electronic processing of planning and development applications. It is understood that Australian Government committed \$30 million from the Housing Affordability Fund to develop an IT infrastructure and software needed to implement electronic development assessment (eDA) systems nationally as a means to reducing delays in planning approvals and producing savings for home buyers.

4.1 Benefits of an eDA system

The implementation of an eDA system is highly supported and was considered initially as part of the NSW planning reforms. However, it is not known as to the status of the implemented of such improvements. We reaffirm that the eDA system would be useful in respect to the following:

Understanding the status of an application by allowing on line tracking of the DA.

This is already available on some Council websites but it is noted that for this system to be beneficial, Council must provide regular updates and specific details on the progress of an application.

Providing property information

Section 149 Certificates currently provide the legal planning framework of a site but this often requires a minimum of a few days for Council to produce. The provision of detailed property information on line such as flooding characteristics, zoning maps, height and heritage maps provide ease of access for preliminary planning investigations, which may be confirmed by seeking a Section 149 Certificate. Such mapping should not only be limited to Council related information but include regional and state mapping details.

This information is essential and is provided by State Governments elsewhere such as Victoria.

Preparing and lodging development applications

Consideration to lodging development applications through eDA systems would significantly reduce time and costs in the physical preparation of a DA package. There is significant cost (\$,000's) in the printing of multiple copies of DA submissions and technical reports. Many of this printing is simply a waste which is not environmentally or economically sustainable.

While hard copies of information may be inevitable in the short term, far greater reliance should be given to the provision of electronic (soft) copies of information.

Public exhibition

As identified above, an additional consideration is the extent of accessibility of DA documentation during the exhibition phase of a DA. Currently, there is significant inconsistency between authorities in terms of the viewing arrangements of DAs and associated technical documents. At present, some Councils only allow "counter" viewing of the DA package and do not permit photocopying of any documentation. This is both frustrating and time consuming for the community. Other Councils, as well

as the DoP provide all application information available on-line with opportunity for printing hard copies to enable accurate review of a DA/Major Project Application. As such, it is urged that all DA documentation be required to be available and downloaded from all Council websites.

5 Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

Considerable debate over retail competition issues has occurred over recent years. The key issues arising in respect to land use planning, as outlined in the *"Report of the ACCC Inquiry into the competitiveness of retail prices for standard groceries"* are as follows:

- Lack of access to suitable sites presents a significant barrier to entry or expansion of supermarkets.
- Preference of developers and shopping centre managers towards major supermarket chains such as Coles and/or Woolworths and subsequent impediments for competing supermarkets to establish in prime access locations.
- Use of planning laws by supermarket operators to frustrate competitive entry, including where no legitimate planning concerns arise.
- State planning regimes act as a barrier to new supermarkets being established in local areas and ACCC recommends that the consideration of planning decisions should have specific regard to competition issues, particularly where the application contemplated would facilitate entry into an area of a supermarket operator not currently trading in the area.

It is acknowledged that issues of retail competition are partly indirectly attributed to by land use planning, however it is not considered appropriate that land use policy play a large role in regulating retail competition and that it should be subject to the general economic market for the following reasons:

- It is important that zonings identify and control land use to ensure transparency and maintain community and private expectations of the site. Whilst land use zones may identify general retail forms such as "retail premises" and "neighbourhood shops", it should not be too prescriptive to the point that it limits or encourages the number of supermarkets on a site.
- It is important that a centres hierarchy be identified and implemented to ensure the appropriate spread of activities and services in an array of centres across NSW to provide more equitable access.
- To ensure an adequate level of community feedback is achieved for future developments, it is critical that community input continue to be sought for development proposals. However, it needs to be emphasised that assessment of such applications can only be assessed on planning merit and not purely on economic impact, unless the economic impacts will affect the viability of a centre and therefore adverse impacts to the community.
- Competition analysis should not form an additional planning consideration. This would form another complex layer of assessment and would be more appropriately left to general market forces.

What remains critical is to ensure that the planning and development approval process properly facilitates the opportunity for investment in NSW. Competition issues are heightened when there are unreasonable or inflexible barriers in the planning system that does not allow the market to meet the demands of the community. This is not to advocate an "open slather approach" but simply to recognise these barriers and provide a means for sound proposals to be approved. Unfortunately today, there are many sound proposals that have not proceeded because of barriers of zoning and development control which are often historical rather than based on proper strategic planning principles.

6 Regulation of land use on or adjacent to airports,

The planning framework for regulating land use on airports is subject to the Commonwealth Airports Act and is clearly different to the NSW planning framework. The current Commonwealth land use planning framework for airport lands must have due regard to relevant State and local policies but there are no legal requirements for Commonwealth land use planning to be strictly in accordance with State and local policies.

6.1 Issues associated with regulating land use on or adjacent to airports

The inconsistency between levels of government is reflected through the following issues, demonstrating the need to reform the process that enables comprehensive involvement for all levels of government over the future planning of Commonwealth airport land.

Inconsistency with NSW Government Metropolitan Strategy and Subregional Strategies

- The potential establishment of development on airport lands that is inconsistent with NSW Government Metropolitan Strategy and Sub regional strategies. This is highlighted by a previous Major Development Plan for an extensive retail development on the airport land that was not recognised by the NSW Government retail hierarchy as a retail centre. This is similarly reflected in the current draft Sydney Airport Master Plan 2009 which aims to provide some 50ha of land for stand alone retail and commercial development, in conflict with the NSW centres hierarchy identified in NSW policies. Sydney Airport is recognised as a Specialised Centre in the NSW Metropolitan Strategy which notes that:

"The Strategy designates Sydney Airport as a Specialised Centre. This means its important role in the metropolitan economy should be promoted. It also means that the broader precinct should be carefully planned. Commercial development is appropriate around the rail station at Mascot. Elsewhere development should be focused on business activities that support or relate to the core airport function".

The NSW Government has established a clear planning policy which discourages non-core commercial/retail activities at Sydney Airport. This is reinforced in the Draft East Subregional Strategy which states that:

"non-aviation related commercial and retail facilities...are considered inappropriate by the State Government, particularly in relation to impacts on transport and surrounding centres".

Inconsistency with Draft State Environmental Planning Policy 66 and "Right Place for Business"

- Future large scale retail developments on land not identified for major retail development further reflects the inconsistency with a State planning policy, Draft State Environmental Planning Policy 66 and its companion document "Right Place for Business" which is the NSW Government's policy on Integrating Land Use and Transport. By providing zoned land to accommodate stand alone shopping centre(s) in congested locations that would be heavily car dependent, is clearly inconsistent with the following aims of the policy:
 - Improving accessibility to housing, employment and services by walking, cycling, and public transport;
 - Improving the choice of transport and reducing dependence solely on cars for travel purposes;
 - Moderating growth in the demand for travel and the distances travelled, especially by car;
 - Supporting the efficient and viable operation of public transport services; and

- Providing for the efficient movement of freight.

Varied interpretation of planning "terms" between levels of Government

- The difference in planning "terms" between Commonwealth and State levels provides a level of confusion when interpreting the legislation. For example, "Major Development Plans" relate to large scale proposals at certain thresholds for Commonwealth proposals, which is different to Major Project Applications for state or regionally significant development. Similarly, the NSW Standard LEP template provides for a State wide terminology for land use zones and land uses, which is not required to be followed by Commonwealth Master Plans.

Transparency

- To enable a more appropriate level of assessment of future non-aeronautical land use proposals, the recently released Federal Government Aviation Green Paper identified that State governments sought to establish an independent panel to assess such developments to better integrate airport development with local planning, improve community consultation and increase oversight of non-aeronautical development.
- There was some support for making non-aeronautical developments on airports subject to local planning laws or for the Commonwealth approval process to require consistency with local planning requirements. This was seen as a mechanism to remove the perceived competitive advantage for some on-airport non-aeronautical developments. One factor identified was the payment of developer contributions for infrastructure support costs.

The Green Paper notes that:

"a new level of cooperation is required between federal, state and local government on airport planning and development, with clear consultation and decision-making processes...planning authorities are seeking more effective input to airport development processes. The Government proposes to work with state governments to refine proposals for effective working arrangements, including the key initiatives outlined below:

- The move towards greater transparency and co-operation between State and Federal government and the general public is an important step forward towards a more 'level playing field' in the assessment of development proposals within airport lands and the assessment of the consequences of such development on surrounding communities

7 Inter-relationship of planning and building controls

Refer to comments regarding exempt and complying development and simplifying DA packages in Section 2.6.

8 Summary

The Inquiry into the NSW Planning Framework provides an opportunity to present recommendations for further improvement to the NSW planning system. Despite the NSW Government implementing a range of planning reforms, it is evident that further reforms are much needed if NSW is to remain competitive as a place for investment and business. It is recommended that the State Development Committee consider the following issues be to pertinent items for inclusion in the rationalisation of the NSW planning reforms:

- The need to review the rezoning process to establish an independent appeal body/mechanism.
- Rationalising information requirements for DA lodgement and associated excessive costs.
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