

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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enquiries refer

S Barnier

in reply please quote

Planning Reforms



5 December 2008

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

Dear Sir

Re: Inquiry into the NSW Planning Framework

I refer to recent letters from you in which Council has been invited to make a submission to the current inquiry concerning the New South Wales planning framework. Council appreciates the opportunity to participate in this process.

Council, at its Ordinary Meeting held on 27 November 2008, received and considered a report relating to the invitation that you have extended. The report provided a brief overview of some of the State Government's recent planning reforms. A copy of this report is **attached** for your information. Following its deliberations Council resolved to adopt the report's recommendation.

Council has previously conveyed to the NSW Department of Planning its concern regarding some of the legislative reforms that have, or have the potential to, impact adversely on planning and development assessment processes in Ballina Shire.

The State Government's introduction of the "standard template" for the preparation of new comprehensive local environment plans was not supported as it reduced the Council's capacity to produce and implement a planning instrument that reflects the circumstances and characteristics of this particular local government area.

Council also expressed its significant concern to the Department earlier this year in relation to the Minister for Planning's foreshadowed changes to Section 94 of the Environmental Planning and Assessment Act, which would substantially curtail Council's ability to levy development contributions.

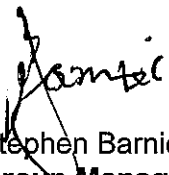
Of greatest concern to Council however has been the impact to its functions arising from the introduction of Part 3A of the Act and SEPP 71. The Department of Planning, in assessing and determining applications made to it, is heavily reliant on local councils to provide comments and draft conditions relating to the proposals. Council is requested to co-ordinate public exhibition material and is often in receipt of enquiries from members of the community who do not understand that the Council is not the consent authority.

To competently respond to requests made by the Department, and to comply with the timeframes that it sets, Council staff must put aside their other duties, which inevitably leads to backlogs of 'conventional' applications and delays in determinations. Council receives no fee from the Department in the provision of these services.

It is Council's view that this centralisation of the decision-making process has not had the Department's desired effect of streamlining or simplifying planning and believes it is difficult to substantiate that the reforms have delivered improved land use outcomes.

Once again, on behalf of the elected Council, I wish to thank you for the opportunity to comment and trust that regard will be had for the matters raised.

Yours faithfully



Stephen Barnier
Group Manager
Strategic Services Group

7.4 Planning Reforms

File Reference	NSW Planning Reforms
Sustainability Plan	Transparent and accountable governance
Management Plan	Strategic Planning
Objective	To invite the Council to make a submission to the government concerning the New South Wales planning framework

Background

Advice has been received that the New South Wales Legislative Council's Standing Committee on State Development is currently conducting an inquiry into the State's planning framework. A copy of the Committee's terms of reference for this particular inquiry is **attached** to this report for the information of the Council. Council has been invited to make a submission to the inquiry.

If Council chooses to make a submission to the inquiry, it must do so by 14 December. Apparently, as part of its procedures, the Committee also intends to hold public hearings in appropriate locations within the State during the early part of 2009. Presumably, the Council will have the opportunity to supplement its written submission by appearing at a public hearing to give further evidence, if it so wishes.

Key Issues

Whether or not to make a submission to the inquiry relating to the NSW planning framework.

Information

Aspects of the State's planning framework have, in recent years, been the subject of quite rapid and radical change. In reviewing the Committee's terms of reference it seems that the Government is looking to 'take stock' in relation to the current legislation and to assess the extent to which further changes are warranted to achieve the outcomes that are being sought. Council is invited to consider whether it wishes to be proactive in attempting to influence the inquiry, provide information or to simply monitor and observe the process.

The Environmental Planning and Assessment Act 1979 is the principal planning legislation and regulatory framework for NSW. It distinguishes the roles and responsibilities of the State Government from those of local government in terms of broad strategic land use planning and development assessment.

In more recent years also, the Act has enabled significant opportunities for the private sector to play an important role in development assessment procedures.

The key components of the Act, insofar as it applies to day-to-day type planning functions, are as follows:

- Part 3 relates to environmental planning instruments including State environmental planning policies, regional environmental plans and local environmental plans. This part of the Act also specifies the requirements relating to the preparation, operation and repeal of development control plans.
- Part 3A relates to major infrastructure and other projects which, by virtue of their nature, scale or location, are matters that are administered by the State Government;
- Part 4 contains the principal regulatory provisions relating to development assessment and land use control.
- Part 4A contains the provisions relating to roles and responsibilities of the private sector in terms of certification of development.
- Part 5, relates to environmental assessment for activities that are not subject to the provisions of other parts of the Act. Usually, the provisions of this part of the Act relate to public works and services; and
- Part 6, which contains the implementation and enforcement provisions, ranging from the appointment and functions of planning administrators through to powers of entry and the issue of orders.

There have been a number of occasions in recent years where the Government has initiated attempts to overhaul the planning framework in consultation with local government, business, industry and community interests groups. The key aims of these reviews have been to simplify and speed up the development assessment processes by removing unnecessary 'red tape' as well as increasing the participation levels of the private sector in development certification, following the principles contained in national competition policy.

More recently, the State's focus has been to stimulate economic activity and create employment opportunities. As a generalisation, it might be said that the most recent round of planning reforms has seen an emphasis on centralising the decision making, particularly for developments of a substantial scale and those proposed to be undertaken in more sensitive locations.

The previous Minister for Planning had expressed concerns that the policies and procedures of some councils in the State, and the planning instruments which they have administered, have impeded opportunities for private sector investment. In some cases also, the Minister had become concerned that councils were actively resisting or circumventing government planning policy, for example in respect of seniors living policy.

Over the last few years, the most significant aspects of the planning reforms have been as follows:

- 1 Centralisation of decision making procedures, with the State Government assuming responsibility for the assessment and determination of many types of development, depending on scale and location, and also substantial and large scale public infrastructure works. This has been done by either the Department directly managing development assessment and determination procedures, or those functions being transferred to newly established commissions or panels.

Some examples of developments, or projects, in our area that have been determined under the more recent legislation include the following:

- North Angels Beach residential development
- Pacific Pines Estate master plan
- Survey Street residential development
- Ballina Gateway mixed use development
- Ramada Hotel

- 2 Promoting a higher level of participation by the private sector in the certification of development. The Minister has actively promoted private certifiers dealing with increased numbers of applications that would, in other circumstances, be assessed and determined by local councils. As well as removing the 'monopoly' that councils have held, the Minister no doubt saw this intervention as a means of achieving increased efficiencies in development assessment and construction within a more competitive environment.
- 3 Increasing the scope of exempt development. These provisions have resulted in an increase in the range of minor developments that may be undertaken without the need for approval.
- 4 Standardising planning instruments. The former Minister had issued instructions to all councils in NSW to prepare fresh local environmental plans within a new standard format or 'template'. Apparently, this was in response to lobbying from the development industry, expressing concerns that the multitude of local rules and regulations caused confusion and uncertainty in the planning and assessment of development projects.
- 5 Standardising development codes. This element of the reforms would see the introduction of model codes for different types of development (eg dwellings, multi-unit housing and commercial proposals) irrespective of where they are being proposed. This would potentially result in homogenised development throughout the State, rather than development being responsive to the characteristics of a particular locality.

There are other aspects of the Government's planning reform agenda that will potentially influence the way in which development occurs and planning outcomes, such as the streamlining of rezoning processes, changes to the

developer contributions system and changes to appeal procedures. At this time it is too early to 'make a call' as to whether these initiatives will be beneficial.

As can be seen, the extent of the reforms is substantial. The introduction of improved efficiencies and the provision of greater certainty of planning outcomes must be seen as highly desirable. Further, the concept of competition in development assessment services is able to be supported.

From Council's perspective, certain observations can be made about the impacts of the various reforms. There appears to be no strong local trend, for example, that the community is embracing the concept of private sector certification. Whether this is attributable to the success of Council's development and building services, poor understanding by the community of available options for some forms of development or that the private certifiers have not fully 'mobilised' is unknown.

In terms of centralisation of development assessment, it is suggested that this intervention has impacted negatively from Council's point of view. The decisions to remove the Council as the determining authority in some instances has not produced better planning outcomes, has not seen applications assessed and determined more quickly, has provided confusion within the community, has consumed Council's resources with zero income and has not stimulated investment and employment beyond what might have otherwise been expected.

Council has spent much time engaged in discussion about the standard template that is to be used to prepare its new local environmental plan. Given our current progress in plan preparation, it remains to be seen whether this aspect of the reform will be effective in delivering improved planning outcomes.

Council has previously recognised the importance of enabling development of a minor scale to occur without the need for consent to be obtained. Our schedule of exempt development is comprehensive and appears to have operated well. In any event, Council encouraged its staff to enable development having little or no environmental impact to occur without consent well before exempt development provisions were introduced. In that regard the provisions within SEPP No. 4 were used quite extensively.

In terms of the standardisation of development controls, the Department of Planning is yet to produce a set of generic guidelines that have commenced operation. As a comment however, Council's strong preference in recent times has been to produce and implement development controls and design criteria at a locality level which reflect the particular characteristics, community views and values within the different 'places' in the shire (eg Lennox Head, Ballina Town Centre and Wollongbar expansion area controls that have been introduced). This is seen as a desirable and sympathetic approach in providing diversity and choice.

Sustainability Considerations

- **Environment**

It is suggested that the State Government's planning reform agenda has been driven primarily from economic motives, to stimulate investment and employment. Whilst commendable, reforms should ensure that the environmental and community values of particular areas are not compromised.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

Council is legally required to adhere to and to apply legislative reforms as determined by the State. As suggested earlier in this report, some aspects of the planning reforms have impacted adversely on Council's financial and human resources.

Consultation

Not applicable

Options

The main purpose for preparing this report is to provide a perspective on the planning reforms that have been, and continue to be 'rolled out' by the State Government. In so doing, Council may form a view about whether it wishes to make a submission to the NSW Legislative Council's Standing Committee relating to the State's planning framework.

Council has previously made written submissions concerning this matter to the Department of Planning when invited to do so, and there is no evidence to suggest that the Department has had any regard for what the Council had to say.

Council did also provide support to the Local Government and Shires Associations of NSW in terms of representations they made to the government concerning the planning reforms, including foreshadowed changes to developer contributions arrangements. These representations may well have been effective in the government's decision to moderate changes to Section 94 provisions under the Act.

Council may now determine to instruct the General Manager to arrange for a submission to be made to the inquiry and, as a further option, make representations to one of the public hearings as they are convened. It would be appropriate for the Council to identify the key issues that it would seek to have addressed in either a submission or at a public hearing.

Alternatively, Council can maintain a 'watching brief' relating to the enquiry and the Parliament's deliberations concerning the report that is produced.

On balance, it is suggested that Council should make a submission to the enquiry which focuses on the impacts to local government as a result of the NSW Government's centralisation of decision making in development assessment. This has seen an unreasonable and unnecessary consumption of Council's resources in responding to the Departmental requests for information, with no reimbursement for costs incurred and consequential delays in processing other applications before Council.

RECOMMENDATIONS

1. Council notes the contents of the report advising of the inquiry into the NSW planning framework currently being conducted by the Legislative Council's Standing Committee on State Development.
2. Further, that the General Manager arrange for a submission to be forwarded to the inquiry which focuses on the adverse impacts to this Council arising from the centralisation of development assessment and determination processes.

Attachment(s)

1. Letter from Legislative Council inviting submission to NSW Planning Framework including Terms of Reference