

Submission
No 6

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Organisation: Beecroft-Cheltenham Civic Trust

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The Chair
Portfolio Committee No7 – Planning & Environment
Legislative Council
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SUBMISSION ON THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES.

Thank you for the opportunity to make this submission.

The submission has three separate components.

1. Private Certifiers

For some time this Civic Trust has been unsuccessfully seeking changes to how private certifiers are appointed and the measure of their accountability.

It is the experience of this Civic Trust that the inherent conflict of interest in the accredited private certifier system means that often the private certifier does not certify in ways consistent with the outcomes delineated by the conditions imposed by Council as part of Council's approval of a development application. The result is that conditions specifically tailored for changes climate conditions are not being implemented. Because of the inherent difficulties identified by our experience we submit that there are flaws within the governing legislation that need to be changed.

The more significant of the difficulties that we have identified are set out below.

Inherent conflict of interest and managing approvals

At present an accredited private certifier is, according to the Fair Trading website, to be appointed by the "person having the benefit of the development consent." No

matter what the education or requirements for certification, the person who appoints the private certifier must have influence on the person appointed. This is an inherent flaw. The experience of this Civic Trust is that this influence evidences itself in a myriad of small ways – and all to the advantage of the person appointing and paying the certifier and always contrary to the neighbour seeking to object. This can be seen in minimising the objections, speed of responsiveness or even acknowledging the concerns raised.

The fact that the *Building & Developers Certifiers Act 1989* sets out in section 28 a process to manage conflicts of interest, it is a reality that the legislation requires a certifier to be appointed by the developer and this must build in a conflict of interest and must therefore be outside that section.

A related issue is that situations can arise where an accredited private certifier acts without authority, for example, approving a development application for a property within a heritage precinct when such a development application requires a full development application.

To avoid this inherent conflict it would be preferable for local government to maintain a register of accredited private certifiers prepared to operate in that local government area and then allocating the next accredited private certifier off the register once the developer seeks one. The arrangement and payment of fees can then be between the developer and the accredited provider but the act of selection is done automatically and under the control of the Council.

To accommodate the variety of accredited private certifiers, the register could be established to permit council (at its discretion) to maintain separate registers for specific developments such as residential, low and high units.

As with planning panels each panel of accredited private certifiers should be reviewed at least once in every term of council.

Having a register would also minimize the risk of the accredited private certifier acting outside of his authority by council checking the process to be followed and reinforce this process with the accredited private certifier prior to work being commenced by the accredited private certifier.

In addition to the inherent conflict of interest there is also a possibility of an actual conflict of interest. As noted above this is already precluded by the legislation and the Fair Trading Practice Standards of October 2022. This regulatory regime would be enhanced if accredited private certifiers were required to supply council with a written declaration that they had no pecuniary conflict of interest with the developer.

Council access to records of accredited private certifier

Once appointed there should then be a right of the Council to access all records of the accredited private certifier (at the cost of the accredited private certifier to supply) concerning advice provided and compliance. At present where a neighbour lodges a complaint about non-compliance with a condition on the development approval, the Council (despite the accredited private certifier being a delegate of the council as the consent authority) being the enforcement agency has no capacity to seek all relevant information to help understand the complaint as to non-compliance. This stifles the ability to bring enforcement action.

Again, if Council approves the panel then access to records sits more comfortably with council.

2. Considering matters relevant to climate change before approving a development application.

Many Councils do not consider making certain conditions standard requirements prior to approving a development application. These might include:

- in any multi-residence development a capacity for vehicles to charge electric batteries,
- in all buildings the inclusion of solar energy
- consideration of the cumulative impact of tree removal on raising the temperature of the locality
- allowing too great a percentage of a residential site to be built on and not requiring multiple use of adjoining battle axe drive ways each of which will deny the ability to plant trees as available land no longer exists.
- Considering tree corridors across a local area to permit wildlife – especially birds being able to traverse areas between parks. This is especially the case when a domestic single dwelling is replaced by an aged care facility or villa dwellings that occupy the whole block without the ubiquitous row of trees on the rear boundary.

3. The legislating of minimum standards applicable across all local governments.

The absence of baseline uniformity across local government areas creates uncertainty and a deleterious impact on those local government areas without more rigorous requirements.

A prime example are heritage requirements. The Heritage Act, and related regulations, are primarily concerned with State registered items leaving local level items the province of local government. Some local government, such as Hornsby, says that its heritage requirements are only guidance whereas the neighbouring local government area of Ku-ring-gai holds that it is mandatory.

Some local governments take into account not just what is visible from the street, but all aspects of a proposed development within a heritage conservation area. Thus, how close a dwelling might be to a neighbouring heritage house will differ between neighbouring local government areas. Indeed the very size of each lot in a heritage conservation area will differ.

If, instead, minimum standards were imposed on local government then community requirements about what might be necessary to preserve heritage or impair the impact of climate change might be better managed.

Please advise if further information is required on any of the above three points.

Thank you for this opportunity.

Roderick Best PSM
President
30 October 2023