Submission No 138

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

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Parliamentary Inquiry into the NSW Planning System

ToR "how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes"

I congratulate the Parliament for initiating this inquiry and its Terms of Reference. Parliament in its wisdom has recognised that a problem exists and solutions start with Parliament.

I suggest the planning system has failed!

Background

I remember in the early 1970s when Neville Wran and Paul Landa widely rejected proposals for quantitative embedment of environmental impacts into economic analyses / business case approaches. They preferred to adopt a risk based / regulatory approval approach to assess and consider environmental impacts as part of consideration of planning approvals. This was an excellent approach that foresaw the downsides from "big-picture economic" considerations overriding environmental considerations as inputs and recognised the need for the precautionary principle to address lack of knowledge and the management of uncertainty. Importantly the Parliament saw that these were national sovereign risks and must be managed accordingly as policy solutions cannot rely on purely market-based solutions because un-elected, non-democratic private markets cannot address national sovereign risks as they have a conflict of interest between national sovereign risks and their duties to shareholders.

The suite of legislative and regulatory environmental / heritage instruments has proven very successful in addressing environmental matters. As a by-product it has created an entire environmental / heritage service industry and incrementally moved into greater and greater quantitative and semi-quantitative analysis in support of environmental outcomes. The environmental / heritage industry has grown from an embryo into singularly focussed youthful adult exuberance repeatedly touting its own successful best practice. It has acquired greater and greater powers incrementally over decades, eg it acquired planning approval powers from traditional transport agencies.

Current Position

Climate change is the latest focus of suite of legislative and regulatory environmental / heritage instruments. In contrast to the 1970s it has lots of quantitative and economic analyses and its solutions entail a lot of private sector business cases demanding investment certainty using private equity interest rates.

We naively assume all nations will meet their Paris treaty commitments, but given the common good nature of the climate, we fail to use risk management standards to provide fail-safe solutions.

We agonise over our national energy budget but fail to integrate land use and transport planning with never ending urban sprawl in megacities requiring exponential increases in total energy demand. We fail to secure circulation of ideas, people and goods in urban areas that has underpinned the growth of civilisation over thousands of years and personal interfaces that are key to social stability and mental health; choosing instead to congest the arteries on the altar of property developers – transforming arteries into capillaries; then subsidise private monopoly motorways on the flawed and partial premise of "road pricing' while ignoring the inequity aspects of neo-classical economics. (Note 1) Land use and transport are symbiotic. We must address systemic incentives to disregard the unsustainable energy demand from the gigantic disjoint between transport and land use investments and its gigantic backlog. We must pursue integrated land use and transport planning. Transport has been the "tail of the planning dog". Heads of each cluster publicly bemoan the cultural differences, indeed "bureaucratic warfare"! This disjoint is reflected in the trillions (?) backlog of new transport infrastructure, of the massive exponential increase in prices of infrastructure and project lead times arising from the environmental / planning system. For example, arrogant Transport Agencies repeatedly seek to regain their planning approval powers, but conveniently forget the original Hansard for the NSW Heritage Act indicating Parliament was worried whether the Act was strong enough to constrain the Commissioner for Main Roads' bulldozers; or the deliberate disregard for environmental and heritage impacts that blighted the former Department of Main Roads.

We now have a potential surfeit of investments in extremely cheap renewable energy generation being constrained by, and indeed curtailed in outputs by the anachronistic pattern of multi-generational investments in

1 I have not yet reviewed the recent High Court decision on electric vehicle distance charging/fuel excise. Implications of transport pricing on sustainability are separate more complex matters.

fossil fuel distribution and storage. This distribution and storage bane has been foreseen for over a decade, yet it continues to blight climate change mitigation as well as green renewable energy opportunities. Worse it is exacerbated by the singularly-focussed environmental / planning system following its now multi-decade "successful best practice" model, eg in considering whether undergrounding of new transmission lines is appropriate, of multi-year analyses of potential impacts. System practitioners are too close to see its systemic failures. Worse we now see the environmental impact assessment processes sterilising climate change action, and worse being manipulated for "climate-change-denying" political purposes.

But there are other dimensions to the climate change interface with the environmental / planning system associated with climate change. For example

- **infrastructure asset management is massively underfunded, under-resourced and financially unsustainable**, yet it is critical to managing the **resilience** of strategic infrastructure to climate change. It has also suffered from the old 1980s NSW Treasury dilemma of reconciling economic analyses for business cases and long-lived infrastructure not fitting into social discount rate norms let alone private equity interest rates.
- the environmental / planning system has triggered a variety of **tensions with other public sector outcomes**. Within my 40 year career in NSW infrastructure I saw environmental outcomes dominate and subjugate work health and safety, (civil and criminal) common law negligence and public safety, eg road safety outcomes. I have witnessed environmental agencies threatening public servants with criminal prosecutions when they have similar criminal exposure from fire safety. Environmental planning approvals have been touted to exercise micro-management control over basic maintenance interventions on existing infrastructure footprints – despite obviously fanciful environmental risks – and despite asset managers' common law (civil and criminal) negligence risks. (Note 2) Yet we see the NSW arterial road network falling to bits during wet weather due to the environmental sterilisation of any drainage that isn't paved. Its resilience is pitiful! This reflects the singularly-focussed environmental / planning system. The entire environmental / heritage industry continues to subjugate its own public safety objectives.

But there are important lessons available. The "tail of the planning dog" metaphor reflects the model for public roads embedded in the Roads Act; an Act that describes (but does not prescribe) common law rights of freedom of movement and access to private property; an Act that sets out a Road Classification system that evolved during the 19th and 20th Centuries to address inequities between local populations providing road infrastructure for local benefit (via parishes and then triggering the formation of local government) and inter-regional arterial movements requiring a role for State funding to reflect State benefit. Yet large parts of this Roads Act model have fallen into abeyance as the cult of ransoming to achieve approvals for road development projects dominated the former Roads and Traffic Authority (RTA) and now Transport for NSW/Roads and Maritime Services. There are analogies in the rail portfolio. I suggest the multi-century model is ok. During my period in TfNSW, I outlined how it could support a multi-modal transport model. It can provide a foundation for Integrated Land Use Transport Planning. But it needs to be complemented by **institutional and governance reforms** – matters for Parliament to ensure are in place. For example

- the Environment and Planning and Transport Clusters are so large and complex they can become unmanageable.
- At times they mix service delivery functions with regulatory functions and standards setting.
- In Transport they reflect functional service provision modal silos not accountability.
- Key Performance Measures for asset management and operations of existing networks are very different from measures that support expansionary projects, eg they would focus upon managing risks to services from existing assets, assessing the resilience of the networks to climate change, to asset failures from say overloaded trucks. In contrast, an agency focussed upon – and 'rewarded for' - leveraging Commonwealth funds for grand expansionary development projects has an incentive to ignore low cost asset and operational solutions that support network resilience.
- Service provision silos should not set their own standards without assuring Treasury of the affordability of standards. Governance over standards setting needs a variety of key auditable processes to be defensible

2 "Maintenance" entails activities that asset managers initiate to manage risks to existing built assets and consequent service outcomes.

under common law (civil and criminal) negligence, to be transparent, to engage with key stakeholders, to be benchmarked etc (Note 3).

- In planning and environment, there is a clash between regulatory functions, service provision functions and project approval functions that can drive unethical behaviour.
- Treasury's fiscal discipline has been marginalised as the power of the Clusters grew. Fiscal discipline over setting polices, standards, guidelines, processes etc – in both the planning and environment as well as transport clusters - has been either non-existent or been used as bargaining tool to leverage funds from Treasury.
- Too many agencies mix effectiveness with service efficiency due to confusion in the jargon of economic analysis. Any public policy scholar would know that this mix of effectiveness and service efficiency can create "evil outcomes"; eg the preposterous rules of the Commonwealth Grants Commission setting incentives in Commonwealth-State financial relations for multi-generational high risk asset management of key arterial road infrastructure.
- In the absence of agency objectives and funds, agencies manage by transferring risks to other service outcomes or to the future by disinvesting in preventive maintenance. "Savings" from "efficiency dividends" are an illusion; there is just risk transfer.

Please recognise the above failings and anecdotes are not due to "evil public servants" or "single-minded zealots" but simply good talented passionate – often frustrated - people trying to do their job. Their failings reflect the systemic incentives created in their agencies. These responses simply reflect a failure of Parliament to set objectives, eg the former RTA had NO objectives in the Transport Administration Act. Parliament also failed to provide clear guidance on ensuring agencies managed risks in a structured systematic manner using Risk Management Standards; let alone managing risks across multiple public sector outcomes in a manner that reflected the Minister's published balanced value judgements, eg between environmental and road safety outcomes for which the Minister is then accountable to Parliament. Parliament also failed to drive Governments to resource independent audits. Parliament failed to drive proof of affordability in setting standards. Parliament failed to demand audits to demonstrate whole of life financial impact statements on environmental and heritage policies. Parliament retained the combination of standards setting and service provision in functional silos. Parliament has exacerbated these failures by creating a separate judicial system for the environmental / planning system.

Conclusions

I suggest examining Professor Alison's categories of Types of Public Policy Errors especially solving the wrong problem. The excellent environmental industry capability is to assess environmental impacts from human building and changes to the environment. BUT these environmental impact assessments are inputs to a separate decision-making process. Climate change is not an environmental problem. The consequences of catastrophic climate change are an existential threat to humanity – public safety outcomes with a variety of catastrophic national security dimensions, eg across global and national defence, border, air pollution, food, water, energy, trade, extreme weather events, economic and employment security and inequality threatening national social cohesion, eg mass migrations from hundreds of millions of illegal immigrants from drought and sea-level rises, wars, etc. Climate change is a global emergency entailing an existential risk to humanity from a global common good, an urgent intolerable national sovereign public safety risk. There is no moral equivalence against the overwhelming global, scientific opinions including CSIRO, US Pentagon, US National Academy of Sciences, NASA, etc. US Pentagon analyses indicate risk of total social and economic and military collapse as near-term impacts from climate change. The world needs an urgent paradigm shift to change – despite the constraints of economic relations – in energy, food, transport etc industries. Doing Nothing is not an option.

Parliament can reflect on the 1970's risk-based approach and use the precautionary principle to address the climate change risks.

3 Contrast TfNSW's Asset Standards Authority's suite of governance arrangements to that of the Roads Portfolio!

Recommendations

Manage climate change as an urgent intolerable national sovereign public safety risk.

Use Risk Management Standards to find solutions; specifically for Parliament to:

1) assert that climate change represents intolerable public safety risks

2) require Ministers articulate Risk Evaluation Criteria by stratification of risks within public sector outcomes and normalisation of risks across public sector outcomes – and in doing so balance the public safety outcomes associated with environmental impacts and all other public sector outcomes.
   a) Initially Parliament itself should legislate Climate Change Risk Evaluation Criteria (to secure it against legal challenge) to obfuscate and delay reforms and actions for political purposes.
   b) Appendix 1 provides an old RTA example from about 20 years ago.
   c) If an agency cannot implement International Standards for Risk Management using a Minister's stratification of risks within public sector outcomes and normalisation of risks across public sector outcomes, then it has a failure of governance. Such failure would be either incompetence or corruption. Each has a clear process to follow; eg ICAC or the Ministers can clearly initiate Parliamentary Committee processes to distance themselves from the agency's or executive's incompetence. (Note 4)

3) require adoption of fail-safe mechanism as contingency plans to preclude such intolerable risks; eg from recalcitrant nations not complying with their Paris treaty obligations affecting a global "common good".
   a) Hence Australian investment targets must pursue a significant over-achievement against our Treaty Targets, eg towards becoming a renewable energy superpower.

4) initiate Treasury Policy that requires policy solutions cannot rely on purely market-based solutions because
   a) the economic (*ceteris parabus:* "all other things being equal") premises of fair comparisons for economic analyses must ensure a valid equivalence of risk
   b) un-elected, non-democratic private markets cannot address national sovereign risks (Note 5)

5) require that policy solutions must be risk based and adopt a two stage, steered economy business model; an initial strategic plan to identify the problems and effective solutions before applying the economic analyses to get the efficient solutions. (Note 6)

6) Initiate Legislative and Institutional Reform of both the Planning / Environment and Transport Clusters based upon accountability not functional silos such as transport modes
   a) Separate regulatory from service delivery functions in each of the Transport and Planning Clusters
   b) Separate standards-setting functions from service delivery functions

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4 In doing so Parliament creates a systemic incentive to minimise risks of corruption and incompetence.

5 The private sector has failed to ensure fossil fuel security, affecting defence and freight security. Private companies have a conflict of interest between national sovereign risks and their duties to shareholders. They can declare bankruptcy and have limited liability vs nations with unlimited liability. They can deliberately deceive disregarding intolerable risks, demanding equal consideration between falsehoods and truth and seek to defer actions to future generations.

6 The economic (*ceteris parabus:* "all other things being equal") premises of fair comparisons for economic analyses must ensure a valid equivalence of risk.

One keynote speaker at the National Infrastructure Summit in Federal Parliament House on 25 March 2011 was the UK's Chief Scientist. He expressed major concern at the UK's reliance on laissez faire and solely market driven policy approaches because strategic national sovereign risks (eg foreign ownership, ageing assets, climate change) that are not market driven, > 100 year long term renewal perspectives that are very difficult to justify in a privatised market context, and to ensure interdependency between infrastructure, eg energy, transport, water, waste, information and education.

Ex-NSW Premier Nick Greiner was the other keynote speaker. He was sceptical of blind adherence to economic analyses, emphasising the need for a two stage, steered economy business model; an initial strategic plan to identify the problems and effective solutions before applying the economic analyses to get the efficient solutions.

c) Ensure each agency has clear objectives and accountabilities set by Parliament not by a Minister – including minimising the total energy demand for transport
d) Separate agencies into Planning/Investment v Service Functions
    i) Planning and Transport Development – thereby building fiscal discipline into planning and driving integrated land use and transport planning with objectives to minimise transport energy demand
    ii) Asset Management and Operation of Infrastructure, eg arterial roads vs rail vs railway rolling stock
e) Reconfigure Planning and Transport Portfolios
    i) Planning/Transport Development, Asset Standards Authority, Independent Transport Regulator, Independent Planning Regulator
    ii) Multi-Modal Transport Services
    iii) Environmental and Planning Services
f) Delegate planning approvals for maintenance of existing infrastructure networks to Transport Service Agencies accountable for the Asset Management and Operation of Existing Networks.

7) Reform the Annual Reports legislation to report the financial sustainability of the existing infrastructure networks – as measured by the *Capital Sustainability Ratio*:
    a) capital renewal (capital maintenance plus development dividends) divided by depreciation of all infrastructure agencies; expressed both as a percentage and in quantum. (Note 7)

8) Re-empower NSW Treasury, the Budget Committee of Cabinet and the State Audit Office.

7 Capitalisation and depreciation are independently validated via the State Audit Office using Accounting Standards; and capital v recurrent acquittals are independently validated via the State Audit Office using embedded accountants within agencies.

APPENDIX 1: RISK EVALUATION CRITERIA

EXAMPLE OF STRATIFICATION OF RISKS WITHIN PUBLIC SECTOR OUTCOMES AND NORMALISATION OF RISKS ACROSS PUBLIC SECTOR OUTCOMES

HIGH RISK ASSET SCENARIOS	MODERATE RISK ASSET SCENARIOS	CONTROLLED RISK ASSET SCENARIOS
✓ Critical systems failure over a large area for an extended period. ✓ Loss of confidence in State's ability to manage. Serious public outcry. ✓ Significant prosecution & fines, major breach of regulation. Serious litigation including class actions. ✓ Significant widespread disruption to at least one industry sector ✓ Financial costs and losses exceed 0.5% of RTA's entire annual Budget.	✓ Critical systems failure puts severe pressure on community's capacity to function normally ✓ State's capacity for normal business impaired. Significant diversion from policy goals ✓ Some disruption to at least one industry sector ✓ Serious prosecution & fines, breach of regulations, investigation that may lead to litigation including class actions. ✓ Financial costs and losses up to 0.5% of RTA's entire annual Budget.	✓ Critical systems failure for a short period or over a small area ✓ State able to continue normal business ✓ Minor legal issues, non-compliance and breaches of regulations. ✓ Financial costs and losses managed within normal financial provision.
Inability to support agreed terrorism mitigation and response capability in a timely and cost effective manner.	Inability to support agreed terrorism mitigation and response capability in a cost effective manner.	
Widespread prolonged inability to provide reasonable response capability for declared natural disasters.	Widespread short-term inability to provide reasonable response capability for declared natural disasters.	Isolated short-term inability to provide reasonable response capability for declared natural disasters.
Widespread prolonged loss of route availability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6.	☞ Widespread short-term loss of route availability on the Australian Land Transport Network or State Road Unsworth Bus Routes, Sub-Networks 2-6. ☞ Widespread prolonged loss of route availability on other State Roads, Regional or Local Roads.	☞ Isolated short-term loss of route availability on the Australian Land Transport Network or State Road Unsworth Bus Routes, Sub-Networks 2-6. ☞ Widespread short-term loss of route availability on other State Roads, Regional or Local Roads.
Mass casualties from a single incident at a single site or from multiple incidents at a single site *or* mass casualties cumulatively from a single asset type *or* multiple child casualties.	Multiple casualties from a single incident at a single site or from multiple incidents at a single site *or* multiple casualties cumulatively from a single asset type *or* a few child casualties.	Single loss of life from a single incident at a single site.

Widespread prolonged loss of pavement serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders.	☞ Widespread short-term loss of pavement serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders. ☞ Widespread prolonged loss of pavement serviceability on other State Roads, Regional or Local Roads.	☞ Isolated short-term loss of pavement serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders. ☞ Widespread short-term loss of pavement serviceability on other State Roads, Regional or Local Roads.
Widespread prolonged loss of bridge serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders.	☞ Widespread short-term loss of bridge serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders. ☞ Widespread prolonged loss of bridge serviceability on other State Roads, Regional or Local Roads.	☞ Isolated short-term loss of bridge serviceability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6 resulting in (safety constrained) loss of normal travel speed and many complaints from road users and stakeholders. ☞ Widespread short-term loss of bridge serviceability on other State Roads, Regional or Local Roads.
Widespread prolonged loss of travel reliability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6.	☞ Widespread short-term loss of travel reliability on the Australian Land Transport Network or other strategic State Roads, eg Unsworth Bus Routes, Sub-Networks 2-6. ☞ Widespread prolonged loss of travel reliability on other State Roads, Regional or Local Roads.	☞ Isolated short-term loss of travel reliability on the Australian Land Transport Network or State Road Unsworth Bus Routes, Sub-Networks 2-6. ☞ Widespread short-term loss of travel reliability on other State Roads, Regional or Local Roads.
Significant widespread irreversible environmental damage arising from RTA asset management.	Serious local irreversible environmental damage arising from RTA asset management.	Isolated reversible environmental damage arising from RTA asset management.
Major losses of aesthetic image at many bridges or the Sydney Harbour Bridge.	Major losses of aesthetic image at many bridges other than Sydney Harbour Bridge.	Major losses of aesthetic image at a bridge other than Sydney Harbour Bridge.
Widespread prolonged systemic inability to manage RTA assets on State Heritage Register to minimum standards.	Widespread short-term inability to manage RTA assets on State Heritage Register to minimum standards	Isolated short-term inability to manage RTA assets on State Heritage Register to minimum standards.
Widespread prolonged ineffective enforcement & compliance management.	Widespread short-term ineffective enforcement & compliance management.	Isolated short-term ineffective enforcement & compliance management.

Widespread prolonged ineffective asset, project and contract management.	Widespread short-term ineffective asset, project and contract management.	Isolated short-term ineffective asset, project and contract management.
Widespread systemic failure to incorporate latest OH&S, road safety, environmental, legislative, regulatory and ethical standards for all works and services. Widespread external perception in community, government & media that RTA does not provide value for money. Widespread systemic failure to evidence appropriate levels of governance.	Many failures to incorporate latest OH&S, road safety, environmental, legislative, regulatory and ethical standards for all works on RTA assets. Some perception in government that RTA does not provide value for money. Many failures to evidence appropriate levels of governance.	Isolated failures to incorporate latest OH&S, road safety, environmental, legislative, regulatory and ethical standards for all works on RTA assets. Isolated perception in government that RTA does not provide value for money. Isolated failures to evidence appropriate levels of governance.