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Mosman COUNCIL



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New Planning System Team
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Dear Team,

Re: A New Planning System for NSW - Green Paper

I am writing on behalf of Mosman Council in response to your call for submissions on A New Planning System for NSW - Green Paper, dated July 2012. Council considered a report summarising the main issues in the Paper at its meeting on 7 August 2012 and resolved that a submission be prepared by staff.

Mosman is a small local government area with a track record of taking the initiative in implementing planning reform. Our management of heritage, protection of the significant harbour foreshores, high quality, architect designed housing and recent adoption of a standard instrument local environmental plan are indicative of our commitment to current planning practice and delivering good planning outcomes. An effective and robust planning system is in the best interests of the council. Local government is a key stakeholder in strategic planning, development assessment, infrastructure planning and delivery, and planning and managing our heritage, built and natural environments.

I support the Government's initiative to review the planning system which has become overly complicated and process driven. Council has participated in the preparation of a comprehensive submission by SHOROC, of which it is a member, and supports the points made in that submission. Rather than reiterating these points I will focus this submission on the following areas, with particular reference to our experience in Mosman and the effects on Mosman:

- The purpose of a planning act
- Public consultation and how it will be done effectively
- Extension of code assessment for development proposals
- Non compliant development assessment
- Changes to mechanisms for council to collect money for infrastructure
- Probity issues in the new planning culture
- General comments

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PURPOSE OF PLANNING ACT

The fundamental purpose of planning is not to promote economic development and competitiveness. The aims of planning are to regulate development, protect the environment, and provide communities with opportunities to be involved. The objects of the current Environmental Planning and Assessment Act are more ranging than seem to be proposed by the Green Paper. A narrowing of the focus of planning would be detrimental to the social wellbeing, environmental management and built environment of the State. Another concern is that the content of the Green paper seems to suggest an emphasis on developing areas with more consideration for Greenfield than established areas.

CONSULTATION

Public consultation is an important and necessary part of any effective planning system. The consultation as suggested in the Green Paper is not detailed enough to be able to evaluate whether what is proposed would be effective. The community currently has an expectation and a desire to be consulted about development. The case has not been made as to why the community can only be involved in strategic planning and not development assessment. If the State wants to dictate how the community can be involved it needs to demonstrate that there is a better alternative. The Green Paper has not done that.

At Mosman we have a current example of a strategic planning project, the Spit Junction Masterplan, which has had a comprehensive, project specific consultation strategy. Resourcing of the consultation has been expensive and time consuming despite the area involved being just one business centre. It highlights the potential difficulties of engaging different communities in sub regional planning. Subregional Delivery Plans are proposing a level of detail (eg building envelopes, car parking) across a sub-region that would make the plan unwieldy and virtually impossible to have effective consultation or obtain meaningful submissions. Making effective and readily available responses is a necessary part of consultation that should be addressed by the Government. People haven't the time or interest until matters are local enough to affect them. Because of this it is unreasonable to seek to remove people from the development process. In a democratic society the State should not be dictating what people can participate in.

It is important to define clearly what the expectations for consultation are for government, stakeholders and the community. It is generally accepted that governments expect communities to be actively involved in their consultation strategies and expect them to be cooperative and compliant. By having an economic focus in the Green Paper the reforms are addressing the expectations of developers. There are too many opportunities proposed for proponent review and alternative pathways, for example Strategic Compatibility Certificate, after community involvement on agreed strategy. I object to these as it provides no certainty for the public. It proposes a situation which is not a level playing field in terms of ability to advocate and influence decision makers. The new planning system should provide for equity of access and opportunity.

Previous and current examples of the State consulting with the community have not demonstrated that it can satisfy the expectations of the community or even raise broad community awareness about planning issues. The Green Paper itself is a case in point that shows there has been little penetration into people's consciousness of its existence let alone consequences. The Government should have used this Review as an opportunity to show the community and stakeholders what it has in mind for effective consultation and evaluate its outcome. Local government has many fine examples of consultation. Mosman Council has received two Planning Institute of Australia awards for excellence in communication. Despite this success however, we are very aware of

shortcomings and problems with consultation. The cost of consultation must also be considered in terms of time and money and the detail provided in the Green Paper does not go to this.

CODE COMPLYING ASSESSMENT

The State has had 15 years of trying to implement a system of code complying assessment. The low uptake is directly attributable to poor implementation, that it is too complicated and a reluctance to accept that no one size does not fit all. Private certification is problematic in NSW and any suggestion to increase the role of private certifiers is objected to. Rather than proposing to increase penalties for wrong doing as announced by the Minister recently their role should not be expanded until evidence shows that the system has improved. The fact remains that poor supervision by private certifiers still leads to councils having to take responsibility and bear the cost of non-compliance. This is unreasonable and should be addressed in any reforms.

The absence of wide community understanding of the role and responsibilities of councils and private certifiers after 15 years of implementation suggests that State level communication with the community, not to mention consultation, has failed. It does not bode well for the consultation approach advocated by the Green Paper.

The notion of “partial compliant development” is also objected to. Development needs to be considered in its entirety and in context and if it cannot be considered in its entirety the evaluation process will likely be flawed.

DEVELOPMENT ASSESSMENT

‘Amber light’ approach that is proposed has been practiced at Mosman for years. Such a practice takes time for good outcomes to be resolved. The measures for processing DAs should recognise the extra time that would be taken if this approach was mandatory. Measures of performance should not be the simplistic counting of days. The number of days suggested in the Green Paper would not be achieved if an ‘amber light’ approach is taken.

Other points in relation to development assessment are:

- Merit assessment only on part of a development that is non compliant is flawed. This concept shows no understanding of development in context and reasonable expectations of the public and in particular other nearby land owners. This proposal should not proceed.
- The roles of council and PCAs need to be more clearly defined. Council is left to act as compliance officer often without full knowledge of the situation and without any means of recompense for time taken to rectify problems brought about by poor management by the certifier.
- Council has had an independent panel assessing applications and has found the results to date to be beneficial.

INFRASTRUCTURE

I am concerned that the list of infrastructure types for which contributions could be collected does not include:

- Contributions from non-residential development for purposes such as public carparking, or
- Open space embellishment. This is particularly important in established areas. Land in Mosman is very expensive and scarce. In order to provide for the recreational needs for future communities Council needs to make more of its limited resources. Embellishment allows for existing open space to be used by various different user groups more effectively.

I support the retention of Voluntary Planning Agreements as an alternative funding mechanism and would not like it removed from the planning system.

PLANNING CULTURE

The “can do” approach advocated in the Green Paper raises issues of probity. At Mosman we have clearly defined roles for planning advice, development assessment and determination of applications. These roles need to be separated in order to ensure no real or perceived conflict and to ensure public trust in the system. Public confidence in the State planning system is not high so any change in the culture needs to ensure that it is all ‘above board’. The suggestion that council staff would fulfill a facilitation role seems to overlook the fact that the same staff are expected to be regulatory officers.

GENERAL COMMENTS

Much of the basis of the Green Paper content is reliant on structures which are yet to be defined and enabling legislation not available. This is not fatal in itself but for the approach advocated will require co-operation of all players especially where issues such as infrastructure funding and provision are concerned. If this is not functional the focus on strategic planning will fail.

The paper also refers repeatedly to evidence based decision making. This is highly desirable; however, there seems to be a need for supporting research to be the basis for such decisions. Too often in the past this has not been available and the results are evident.

I note also that heritage appears to be given little or no status in the process and this should be addressed.

CONCLUSION

It has long been recognised that the Environmental Planning and Assessment Act needed a major review. Since its original enactment in 1979 it has had many amendments and additions making it confusing and unwieldy. The Government’s initiative to carry out a review is commendable; however, it does seem to be driven by the need to provide more housing and facilitating economic development rather than broader social objectives. The content of Green Paper is focused on:

- Housing supply;
- Facilitating economic growth;
- Providing the means for developers to change zones, planning controls, development standards;
- Development; and
- The need to rezone. Established areas such as Mosman already have plans and strategies in place with a high level of community acceptance.

There appears to be a focus on developers and proponents rather than the environment and people. This observation is supported by the report in the Sydney Morning Herald on 15 September, “*Developers seen as winners from planning overhaul, survey shows*” (Kelly Burke).

As stated in other submissions to the Green Paper by councils (for example, Hornsby, Warringah, North Sydney) there is a lot left unsaid:

- Details of much of what is proposed;
- Heritage conservation;
- Social impact; and
- Environmental management.

I also note that most of the recommendations of the NSW Planning System Review by an Independent Panel are not included. A lot of time and effort went into consultation on the Review which begs the question - What's the implication for effective consultation?

If you have any questions regarding this submission please contact Linda Kelly on 9978 4041.

Yours faithfully,

V H R MAY
GENERAL MANAGER

Per:

(Linda Kelly, Manager Urban Planning)