

enquiries refer
Matthew Wood
in reply please quote
Planning Reform (13/34455)

18 June 2013

New Planning System
GPO Box 39
SYDNEY NSW 2001



Dear Sir/ Madam

Re: NSW Planning Reform White Paper

This submission has been prepared in response to the public exhibition of *A New Planning System for NSW* White Paper (the White Paper). This submission discusses several aspects of the White Paper identified as being significant to Council.

Economic and Environmental Balance

The White Paper and associated policy material has a strong focus on delivery of economic development. Although there are various references to environmental considerations in the White Paper, it appears that there is a shift in the fundamental platform underpinning the planning system, away from environmental factors.

Whilst economic outcomes are acknowledged as very important for the State and its local communities, these outcomes should not be realised at any cost. The legacy of the balance afforded to environmental, economic and social considerations under the operation of the *Environmental Planning and Assessment Act* is worthy of retention in future planning frameworks in NSW.

Community Engagement and Strategic Planning

Extensive and early community engagement is a common theme in the White Paper. Basically, the White Paper proposes that communities focus their efforts in establishing planning rules and requirements through strategic planning. The opportunity for community involvement up front in planning processes comes with an implication that having set the 'rules', communities will have less opportunity for direct input or objection in relation to development when proposed.

The idea of engaging communities up front to guide establishment of planning frameworks is positive, but it is not new. Local government has been involved in this type of process for a long period of time and as such has significant collective experience that can be drawn upon, particularly in relation to resource needs, timing and translation of outcomes into policy.

The core challenge with the approach promoted by the White Paper is the establishment of understanding in the community about the shift in the places in planning where the public has a genuine influence and impact on decisions. It is likely that this will be extremely difficult to achieve and as a consequence, there could be considerable confusion and concern.

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In this regard, the State Government must provide sufficient resources and clear policy guidance to enable proper and comprehensive community engagement programs to be implemented. Sufficient time must also be allowed as 'half' engagements have the potential to cause long lasting problems given that the initial engagement will underpin any new system that is developed.

State, Regional and Local Planning

Regional Planning is a centrepiece of the proposed planning reforms, with the State Government indicating that it will develop integrated regional plans throughout the State. The State Government has also indicated that it will establish State policies to replace current State Environmental Planning Policies and provide overarching direction.

The State and regional planning elements proposed are considered to be commendable initiatives, particularly if integration with infrastructure delivery can be achieved. Again though, it should be recognised that these are not entirely new. Under the *Environmental Planning and Assessment Act*, the State has always had the ability to direct planning policy for the State and regional planning has commonly been undertaken (eg, North Coast Regional Environmental Plan and Far North Coast Regional Strategy).

An important consideration here is the relationship between State and regional planning and local community engagement outcomes. As outlined above, the White Paper indicates that local communities will be engaged to set the local planning 'rules'. However, it is unclear in the White Paper as to what happens where there is inconsistency between State or regional directions and local engagement outcomes. For example, it is conceivable that State developed regional policy will require accommodation of additional population growth in greenfield areas, but that a local community may disagree with this on the basis that it is not consistent with their preferred outcomes for their place. It is important that the State Government is absolutely clear and consistent about what aspects of the system local communities are able to have meaningful input into and that this is not left to local government alone to communicate.

Infrastructure Planning

Importantly, the White Paper identifies the current lack of integration between planning and infrastructure policy in the State. The White Paper proposes an improved system where these matters are fully integrated. This initiative, if achieved, would be highly beneficial in ensuring that communities have access to full and proper infrastructure and services and in setting community expectations for infrastructure delivery early in the planning process.

One challenge however, is that this has been discussed as a desired outcome on numerous occasions and inevitably, infrastructure considerations are subject to difficult financing considerations. As such, there is sometimes reluctance to commit to comprehensive infrastructure delivery over long time frames. This commitment is what is needed to achieve true integration with planning outcomes because planning typically operates on 10-20 years time horizons.

More specifically in relation to infrastructure delivery, the reform documentation implies that local government will be required to expend contributions collected for infrastructure projects within three years of their collection. This appears to relate to a State Government policy to accelerate the expenditure of monies on infrastructure projects. This timeframe, however, is unrealistic given that it can take much longer than three years to collect funds sufficient to enable construction of roads and infrastructure and facilities.

Department of Planning and Infrastructure staff have indicated that the reference to three year time period may have been poorly drafted. That is, it has been suggested that the intent is more to require expenditure of funds within three years once a sufficient amount for the required infrastructure has been collected. This approach is considered to be more feasible, although the need for a timeframe is still questioned.

The requirements around expenditure of contributions is considered to be a matter that requires clarification as a matter of priority as the approach currently implied will not support the delivery of large or quality infrastructure projects, but rather encourages piecemeal spending of a limited financial resource. This is an example of a one size fits all approach that is not necessarily the most effective way of addressing an issue.

The approach to determining the amount of funds to be collected from development for infrastructure delivery is also addressed in the White Paper. A key aspect of this is the idea that IPART will provide cost benchmarks for infrastructure which will guide how much money can be collected. Again, the details are important here, with construction costs being highly variable in different areas across the State. If the detail is not adequately examined and variation between areas acknowledged, there could be substantial shortfalls in contributions collected in some places, further exacerbating difficulties in provision of infrastructure.

Development Assessment

The White Paper establishes a policy framework that promotes a target of 80% of development being assessed via a faster process; namely via exempt and complying development and code assessable development. In considering this, it is important to acknowledge that the exempt and complying development concept has been operating in NSW for some time and Council has extensive experience in managing development of this type.

The introduction of a 'code' assessment track would appear to have merit in that it provides a clear link to strategic planning and development of local plans where core uses within zones are identified for a more straightforward and certain assessment path. However, if the introduction of a 'code' assessment track is to help in the delivery of the Government's target of 80% of all DAs to be complying or code assessment within five years, then lessons need to be learnt as to why 'complying development' has not effectively delivered to the extent the government had hoped.

The White Paper's analysis on why there has not been a much higher take up of complying development is considered to be flawed. Councils, like Ballina, have invested considerable resources in implementing the Codes SEPP provisions through their mapping and land information data base systems (eg. S.149 certificates), on-going staff training and education, and engagement with the local community.

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The reality is that the one size fits all State-wide approach (Codes SEPP), having a metropolitan focus is far too complex and attempts to cover all circumstances for all situations. The land-based eligibility criteria excludes a large number of land holdings and even when a property is not subject to exclusion, there are numerous standards to assess against to determine if the particular development can proceed through the complying assessment path.

Consequently, the level of complexity just to determine an assessment path before lodging a proposal for approval has proven to be a significant deterrent to proponents entering into the existing streamlined approval pathways. In local government areas, such as Ballina, where these routine, minor types of development are processed within reasonable timeframes, there is no or minimal incentive to lodge an application for a Complying Development Certificate.

Therefore, whilst the Government's 80% target is commendable, for it to be a reality, there needs to be an overhaul of the Codes SEPP and together with developing the 'Code' assessment track a more local focus needs to be re-introduced. Performing councils need to have more autonomy in developing local criteria for these various assessment tracks. This will ensure the local community is genuinely engaged and the setting of 'rules' more applicable to the local circumstance will ensure greater simplicity, relevance and ultimately a better take up of faster tracks for approval.

In relation to merit assessment, it would appear from the White Paper that there has been insufficient emphasis on how the complexity and layers in the current planning system can be reduced. The relationship between the *Environmental Planning & Assessment Act*, *Threatened Species Conservation Act* and *National Parks & Wildlife Act* (for example), the separate government agencies responsible for administering these Acts, the large number of State Environmental Planning Policies which often contain inconsistencies and the broad range of matters for consideration in relation to a development proposal has made the current system very cumbersome.

For many local governments, like Ballina, the reality is that 80% of Development Applications (DAs) are determined within reasonable/statutory timeframes. It is the 10-20% of DAs that consume significant time and resources for all involved. The 'amber light' approach is not a new idea and one which Council has adopted for many years. This approach, whilst maintaining open communication, does not assist in timely determinations.

The detail on how the complexity in the merit assessment track is going to be overcome in the new legislation is not apparent in the White Paper and should be given more attention on the basis that it is these applications that consume a disproportionate amount of time and resources in regional circumstances.

Electronic Planning Framework

The White Paper states that the new planning system will move away from manual and paper based transactions to an electronic planning service. This inevitably is the way forward for any new planning system. Whilst numerical planning controls and electronic certification of planning spatial datasets can readily be adapted for eplanning interrogation, planning provisions relating to investigating land contamination, Aboriginal cultural heritage and threatened species (for example) are more problematic as they require detailed site based examination, often with specific regard to particular types of development that may be proposed.

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In establishing a consistent platform in NSW, extensive consultation will need to be had with all councils across the State and with software providers to ensure time and money is well spent on compatible software and data bases. Consideration needs to be given to current commitments that councils have made to advancing electronic planning in their communities. Considerable financial and specialist resources will need to be provided by the State Government to all councils in a coordinated and well managed way to enable effective eplanning services to be delivered to local communities.

Delivery Timeframe

The White Paper sets out a vision for delivery of the reforms, but the delivery timeframes outlined are unrealistic. The 'delivering code assessment' timeframe for councils having to adopt development guides within 18 months of legislation commencing is one example.

There needs to be a greater level of clarity about how the new system will look and operate to enable councils to genuinely engage with their communities in preparing the Community Participation Plan. There also needs to be recognition of the significant amount of time involved in designing community engagement programs, executing their delivery and translating outcomes into planning policies.

More specifically, determining the types of development for code assessment in each zone and the accompanying development guides will involve significant time and community consultation to prepare. This level of detail will need to be understood for the community to feel they have been genuinely consulted, particularly when they no longer will have an opportunity to comment on these types of DAs under the new planning system.

Realistic timeframes to implement the new system need to be set after extensive consultation with councils. The effectiveness of any new planning system will largely hinge on councils delivering these changes to their local communities and the time and resources required to do so should not be overlooked.

Transition

There is presently limited detail available in relation to the proposed transitional arrangement associated with moving from the present planning system to a new one. These arrangements need to be made clear promptly as significant resources will be required to both maintain existing systems and commence work towards new plans and processes. There will also likely be significant lead time involved in developing processes to manage the existing and new systems whilst in transition.

Clear and consistent transitional arrangements are critical to avoiding ambiguity and ensuring that both time and financial resources are directed in the best possible way. The transitional arrangements should also acknowledge that both the State and local government have invested extensive resources in the Standard Instrument LEP program, including significant community engagement initiatives.

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Overall Summary

The White Paper proposes a vision for a less complex, more efficient, integrated and transparent planning system built on community engagement and strategic planning. These aspirations have the potential to deliver excellent outcomes in the longer term.

However, the way in which this aspiration is achieved is central to the implications for local government and local communities. In particular, the detail and intricacies of the function of the system, and transition to it, are important to understand and at present, many of these details are not apparent. Council will appreciate ongoing opportunities to review, consider and provide feedback in relation to the next level of detail associated with the reform process.

For the delivery of the proposed reforms to truly deliver community based outcomes and a more efficient and effective planning system, the State Government needs to work in partnership with local government. The State Government needs to provide clear leadership and policy direction, along with financial resources and expertise. There must also be acknowledgement that local government has extensive knowledge, experience and skill in relation to local planning, and indeed, has been doing many of the things promoted in the White Paper for a long period of time.

Thank you for the opportunity to provide feedback in relation to the White Paper. If you have any enquiries in regard to this matter please contact me on telephone 6686 1284 or email mattheww@ballina.nsw.gov.au.

Yours faithfully

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