

LGSA Leaders Forum

Wednesday 30 January 2008

Cr Genia McCaffery: The NSW Government's Planning Reform Agenda and Issues Tabled by Local Government for Further Discussion

As I said in my introduction, the Government has set about its reform agenda on two fronts: development contributions which we have discussed, and its discussion paper on planning reform.

This Government has a lot to say about what's wrong with the system and our role in that.

But when it comes to fixing the system, it is clear that many of the proposals in the discussion paper deal with symptoms rather than addressing the underlying problems with planning in NSW.

The discussion paper is a complex list of 83 recommendations for change.

Some of these changes are sensible and have been welcomed by Local Government – these include:

- the proposals to improve plan making;
- the establishment of an independent commission to determine Part 3A developments; and
- the extension of e-planning initiatives at both the State and Local Government level.

Several of the proposals in the paper aim to reduce the complexity of the development approval process.

But the Associations argue that – rather than reducing 'red tape' – there will be more regulation and greater complexity which will be costly for councils and confusing for applicants.

Reforms should deal with the real problems facing the planning system and they should not result in unacceptable consequences for local councils or their communities.

Everyone agrees that current processes are too complex.

In the last round of reforms building control was brought under the Planning Act and, at the same time, private certifiers were allowed to give building approvals to their clients.

Not only did this result in a conflict of interest for certifiers but it made the planning approval process a whole lot more complex.

Now the Minister is proposing to extend an already unworkable private certification

model by greatly increasing the amount of complying development that can be approved by private certifiers.

This will result in many cases in homeowners being denied a say in what is proposed next door and the character of many neighbourhoods will be lost with the same rules being applied to residential developments regardless of whether you are in Bourke or Balmain.

Minister Sartor has challenged Local Government not just to critique his reforms, but to put up alternatives.

The planning principles we have released, and our preliminary response to the Government's discussion paper are positive documents.

They start from the premise that the EP&A Act was right in placing the community at the centre of planning.

And they keep up our consistent message that the only key outcome required of the planning system is that it creates communities where people want to live.

Bruce and I have decided to take up the Minister's challenge and put on the table for discussion a number of alternatives to the current proposals which we believe need to be discussed by the industry, the Government and the wider community.

As we noted in our submission on the discussion paper, there is a real need for more time to consider the planning reforms proposed and to discuss alternative solutions.

Local Government agrees the development approval process is too complex.

We should aim for a process that is simple, flexible, reliable and affordable.

It must deliver certainty to applicants, security to neighbours, and a solid foundation for councils to give approvals.

Private certification

The introduction of private certification coupled with the combining of development and building control into one process was intended to deliver flexibility, simplicity and speed.

Instead, it split the development assessment process between councils and private certifiers.

In order to ensure the safety and amenity of neighbours and the community generally, councils have sought more complex and complete designs at the development approval stage.

Applicants have been forced to submit expensive and complete applications before they

know if their developments are acceptable.

The core problem here is the private certification system.

The private certifier has a conflict of interest which cannot be solved.

And the lack of appropriate remedies and enforcement has brought the system into disrepute.

A solution is that the certifier's certificate should be made to the council and council should issue the detailed construction consent, relying on the information supplied by the private certifier.

The certifier would still be hired and paid by the applicant.

In the same way councils used to obtain a certificate from the applicant's engineer before signing off on a building approval, however, council can rely on the certifier's expert advice on compliance.

Confident that the development complies, council will be free to consider whether the application is good development.

Strict time limits can be set on turnaround of decisions about matters which have been certified.

These reforms would encourage councils to accept first stage DAs with minimal detail, given that the detail of subsequent stages will remain with council.

Issues such as compliance with first stage approval conditions or minor variations can be dealt with in the one process.

With a simplified process and the ability to consider either staged approvals or combined approvals for minor developments, the DA process will be quicker and there will be no need to attempt to exempt more classes of development from the proper consideration and with the input of neighbours.

Broad third party appeal rights

Further, unlike Victoria, South Australia, Queensland and Tasmania, we do not have broad third party appeal rights in New South Wales.

Unhappy neighbours can only mount a legal challenge to a development approval based on a legal flaw in the approval.

Currently council staff must make sure that approvals are free of legal flaws on which a legal challenge might hang.

This means preparing lengthy and exhaustive reports dealing with a multitude of planning controls across many control documents, no matter how peripheral to the planning impacts of the actual development proposed.

This does not contribute to good and speedy planning outcomes and in the end, a clever lawyer can always find a legal technicality or point of argument somewhere.

Far better that, subject to reforms to court procedures, we look at the pros and cons of introducing broad third party appeal rights, especially to residential developments in existing built up areas.

With appeal rights, which can deal with merits rather than just procedures, councils' DA processes should be able to be simplified and expedited.

Ensuring decisions are made properly and in the right forums

The Minister and the development industry complain councils politicise the decision making process.

To depoliticise the process and simplify it, the Minister proposes to impose additional layers of bureaucracy and decision making –

- the Planning Assessment Commission for state level matters;
- the Joint Regional Planning Panels for major regional developments;
- Independent Hearing and Assessment Panels for local matters; and
- arbitrators to intervene between councils and the Court.

Surely these proposals simply make the decision making process more complex rather than less.

What is important is that decisions are made properly by the right people.

Local Government supports the **Planning Assessment Commission** with an important change.

The Commission will be a great improvement on making Ministerial level decision making transparent and accountable, but the independence of the Commission can be enhanced by allowing Parliament to oversee its operation and be consulted on its membership – just as happens with ICAC appointments.

Joint Regional Planning Panels are simply the wrong model.

They offer no accountability and indeed, set up a focus for community and council dissatisfaction.

Who would want to sit on such a panel and take responsibility for its decisions in the face

of community hostility?

They are an additional layer of decision making in a reform agenda supposedly designed to reduce red tape.

Which brings me to **Independent Hearing and Assessment Panels** themselves.

This is an area which has generated much controversy and disquiet, most of it around the threat or the perception of the threat to make them compulsory decision making forums to replace local councils.

I acknowledge the councils using IHAPs to remove the hearing of applications from the political arena – Sutherland, Fairfield and Liverpool for example – report that their IHAPs have been very positive reforms.

The down sides of IHAPs are well known – a lack of qualified panel members in many areas, doubts that panel members can be independent when they must rely on applicants and governments for employment, and the exclusion of elected community representatives.

But with the qualifications that IHAPs are not compulsory and are advisory only, this is an area where we can negotiate with the Government without compromising the essential role of councils.

The Minister has given every indication that he supports advisory IHAPs along the lines of the Sutherland model.

We should encourage a debate on the establishment of IHAPS to conduct hearings outside the adversarial arena of the council meeting where findings are reported to elected councils for a decision.

Arbitrators, though, like Joint Regional Planning Panels, are just another new layer in an already complex decision making system which we have agreed needs to be simplified.

Conclusion

I have outlined key areas where Local Government has identified alternatives to the Government's agenda.

At this stage with the help of Mr John Mant, our external planning consultant, and your input today, we will refine our arguments with a view to putting these issues and our ideas on the table and meeting the Minister's challenge.

We aim to encourage debate - amongst councils and professionals, with the Government and stakeholders, and with the community.

Planning is fundamentally a community tool to be used by and on behalf of the

community to make places where people want to live.

Local Government agrees the planning system must be reformed - but that it can be done without compromising this fundamental truth.

John and Association staff, as well as Bruce and myself, are available to answer your questions on the way forward.

ENDS