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4 November 2011

Tim Moore and Ron Dyer
Co-Chairs
NSW Planning System Review
GPO Box 39
Sydney NSW 2000

cc. Minister for Planning and Infrastructure

Dear Mr Moore and Mr Dyer

SHOROC submission on the NSW Planning System Review

SHOROC, a partnership of Manly, Mosman, Pittwater & Warringah Councils, welcomes the opportunity to comment on the NSW Planning System Review. Please find attached a copy of SHOROC's submission.

Please note that this submission is made on behalf of council staff and covers key strategic issues in regard to the planning system. Further submissions may be made by SHOROC or individual councils at a later date in regard the Planning Review Panel's Issues Papers released later in 2011 and in 2012.

The attached submission focuses on the following key areas:

1. Aims & objectives of the Act & planning system
2. Strategic planning
3. Standardisation of local planning instruments
4. Development Assessment
5. Governance
6. Appeals
7. Infrastructure funding

The SHOROC region covers an area of approximately 288km^2, has a population of around 270,000 people and is home to around 100,000 jobs. Our residents value the region's outstanding natural environment and vibrant communities and as such regional and local planning are of major importance.

Local government will play a pivotal role in the future of greater Sydney and we consider this planning review process is a unique opportunity to reshape the planning system to provide greater confidence in the system and achieve positive outcomes for the residents of NSW and Australia. As such, the SHOROC councils would appreciate your response to this submission and would welcome further discussion with the NSW Government on the matters raised therein.

Yours sincerely

Ben Taylor
SHOROC Executive Director

NSW Planning Review submission

November 2011

Background

SHOROC is a partnership of Manly, Mosman, Pittwater & Warringah Councils located in north east Sydney. The SHOROC region covers an area of approximately 288km^2, has a population of around 270,000 people and is home to around 100,000 jobs. Our residents value the region's outstanding natural environment and vibrant communities and as such regional and local planning are of major importance.

Local government will play a pivotal role in the future of greater Sydney and this planning review process is a unique opportunity to reshape the planning system to provide greater confidence in the system and achieve positive outcomes for the residents of NSW and Australia.

This submission has been developed by experienced planning professionals and approved by the council general managers. It focuses on the following key areas:

1. Aims & objectives of the Act & planning system
2. Strategic Planning
3. Standardisation of Local Planning Instruments
4. Development Assessment
5. Governance
6. Appeals
7. Infrastructure funding

1. Aims & objectives of the Act & planning system

Generally speaking, SHOROC councils support the overall Aims and Objectives of the current Act.

However, it is not considered the Aims and Objectives integrate well with the Act as a whole and form more overarching 'motherhood' statements. There is a need to ensure that there is strong integration with the Aims and Objectives throughout the Act and that the Act and any subsequent revisions continue to remain true to the Aims and Objectives.

The planning system and legislation should focus on the overarching goals of sustainability, including the three spheres of environmental, social and economic sustainability, with an underlying focus on public benefits.

A key element of any new planning Act and system is a clear and easily understood hierarchy of state and local planning responsibilities and roles in plain English. This is needed to establish the responsibilities and roles of Local, State and Federal Governments and align implementation and funding responsibilities with delivery of priorities such as infrastructure. It is also required as a means by which deliverables or actions under the Act can be monitored and measured.

Significant improvement in accessibility and availability of planning information is required and the new Act and system should provide this, including by providing a robust electronic system and integrating all information and relevant legislation in one place. The legislation should be restructured to flow logically and to revise SEPPs and other tools that are voluminous and hard to understand for most residents.

Electronic spatial expression of the legislation should be a priority for implementation, including state and local controls that allow for interrogation on a lot by lot basis. There is a need to recognise the technological and cultural shift towards an online future. Any new act must facilitate this change and include regard for the following:

- Improved customer interface
- Consistent mapping system across the state
- Spatial delivery of data that allows interrogation on an individual parcel basis
- Ability to interrogate online what land uses are permissible and what is prohibited
- Clearly define information required to be submitted with applications
- Transparent application tracking system
- Standardised reporting and monitoring system

Above all, the priority of any planning Act and system should be to restore confidence and certainty for all users of the system.

2. Strategic Planning

Structure

Strategic planning is fundamental to the planning system and planning legislation as it should set the overarching framework for planning on a state, regional and local level. A hierarchy of plans should be detailed as part of the Act and include the State Plan, the Metropolitan Plan, Regional or Sub-regional plans and local plans.

This defined hierarchy of plans is vital to determining and balancing state and local roles, responsibilities and decision-making ability. There is a greater need for coordination at a state level as well as coordination by councils in conjunction with NSW Government at a regional level to ensure optimal strategic planning outcomes are reached when determining issues such as metropolitan housing and employment targets.

In addition, accountability of preparation and delivery is needed on a state as well as a local level. This is vital to ensure that those priorities agreed by Cabinet in state, city-wide and regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans rely on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered.

Process

The process of plan-making requires complexity differentiation, that is, the same process should not need to be followed for complex plan making as that for from simple plan making. For example there should be a greater emphasis on community participation at the regional plan making stage compared to the development application stage, particularly where compliance with local plans increase.

There is also a need for distinction between prescriptive versus non-prescriptive processes and the hierarchy of processes must be clearer. For example, when certification for public exhibition is under review the rules need to be clearly set out and consistency is required for all levels and steps such as certification should only happen when content is ready for public exhibition.

In addition, consultation is vital on the strategic level and when changes to the Act, regulations, standard instrument elements, orders or at any level of the planning system are proposed as the flow-on effects from changes at this level to the local level can be significant.

There is a need for the Act to provide greater guidance to councils through the new process such as the contents of EPI internal structure, local area studies, strategic mapping and development of local strategies and plans can sometimes be considered as 'flying blind' without guidance.

In summary, consistency and certainty is needed. Parameters should be set to provide more guidance through a strategic planning framework that outlines the process and hierarchy and responsibilities of all levels.

3. Standardisation of local planning instruments

There has been general acceptance for some time that complexity in the planning system has been compounded by differences in the form and content of various planning instruments. After initially considering a template approach to local environmental plans the NSW Government determined by inclusion of section 33A of the Act to implement a standard instrument (SI) approach which included mandatory form and content relating to provisions, zones and mapping.

While it is accepted that there is a need for standardisation of instruments the approach to-date has been clumsy and poorly conceived and has not led to efficiencies in preparation or finalisation of LEPs.

The drafting of the provisions has been very legalistic and not easily amenable to interpretation by lay persons. Similarly mapping conventions have been intricate and introduced elements which have provided no value to users other than conformity. Standard definitions across all LEPs are a useful initiative. The limited number of available zones and several gazetted changes to permissible uses without notice has made it difficult for councils to pursue any rational strategy regarding landuses.

The practice has been that some draft changes have been exhibited for comment but final SI orders have included unheralded changes often with significant consequence. If the SI approach is to be persisted with it should be on the basis of proper consultation in respect of proposed changes. Under the present arrangements an SI Order may be made without any consultation or submissions but, by contrast, the LEP which it would amend has had to undergo a stringent and often costly and time consuming process of engagement and review.

The structure of the SI LEP has been based on clauses which are classed as:

- Compulsory;
- Optional; or
- Local

The SI LEP includes compulsory provisions and permitted uses which have no existing or likely application to some local government areas but still must be included, e.g. development along rail corridors or "farm stay" for inner metropolitan areas. There are other examples.

Optional provisions must take the mandated form which can be demonstrated to have unintended consequences including significant costs if applied without amendment to some areas. There should be scope in the optional approach to allow for local amendments where a case can be demonstrated.

Some Optional provisions have been deemed by the Department of Planning and Infrastructure to be compulsory e.g. Suspension of Covenants (contrary to the view of councils and submissions from the

public). If certain matters are to be compulsory then they should be determined to be such but to have clauses which the council has opposed included in an LEP and listed as a Local provision is not reasonable.

In accepting the SI approach most if not all councils understood that local matters would be able to be dealt with by use of local clauses provided they did not derogate from other adopted provisions. In practice inclusion of truly local provisions has proved very difficult to achieve because of a practice by the Department of Planning and Infrastructure of adopting, so called, Model Local Clauses. The development of drafting guidelines and sample clauses would be a reasonable approach but this has not been the case. Rather, if a clause is accepted by Parliamentary Counsel as being acceptable in the case of one council it has been deemed that the same provision will be suitable for all council areas. Changes to Local provisions clearly were contemplated when the Act was drafted as Section 33A (6) of the Act provides:

Where a standard instrument has been adopted, the provisions of the environmental planning instrument (other than the mandatory provisions of the adopted standard instrument) may be amended from time to time by another environmental planning instrument or in accordance with any Act.

The imposition of standard model local clauses therefore seems to be at odds with the existing content of the Act. If an SI approach is to be contemplated for the future there should be clear expression of the need for councils to be able draft and include Local provisions applicable to their areas without unwarranted interventions from the Department of Planning and Infrastructure.

In conclusion, it is clear that a certain degree of standardisation should be included in the drafting of Local Environmental Plans; however, this should include a balance between mandated provisions which are consistent across the state and local provisions which deal with the particular circumstances prevailing in that area. Where amendments are contemplated to any of the mandatory components it seems reasonable that they should be exposed to the same level of public scrutiny and procedures as amendments proposed by local councils.

4. Development Assessment

SHOROC recommends a tiered approach (relative to the complexity) to development assessment within any new planning system. The amount of information as well as the assessment required for a development application should be revised to suit the relative size and associated risk of the proposal.

Development proposals vary considerably in terms of their risk/impact and the assessment process should address this variation. The provision of information, depth of assessment, public scrutiny and deemed Consent Authority should vary according to the type and risk of a proposed development. It is recommended that future legislative development assessment procedures reflect this tiered assessment approach.

A key area is modification procedures, currently under s.96 of the Act, and the application of such provisions within any future planning system. The new planning system should clearly distinguish between development constituting a modification and that requiring a new development application. It is recommended that any future system provide a clear distinction between development deemed as a modification and that requiring a new development application.

SHOROC supports continued efforts to depoliticize Development Applications and expand the role of the planner in assessing and determining development applications. We stress the importance of development assessments being made by experienced professionals, being both impartial and accountable. SHOROC notes that the development application process would benefit from separation of Councillors from involvement in these matters.

5. Governance

Roles
The role of IHAPs and JRPPs is generally supported, but any duplication of responsibilities should be removed. There is a need for clearer articulation to all stakeholders regarding the hierarchy of determination authorities and the roles of agencies.

The role of Private Certifying Authorities (PCA's) needs to be better defined. There are problems associated with PCA's correctly interpreting conditions related to planning matters.

Interpretation
The planning legislation should define issues of regional significance so all stakeholders can have a clear understanding of where an application will sit in the assessment and determination hierarchies.

Enforcement
The current environmental planning system does not offer effective deterrents to non-compliance. There is a perception that the building industry sometimes avoids obtaining necessary approvals, as there is a general belief that Councils lack either the will or the resources to take effective action to demolish unauthorised structures, and even if action is taken, that the consequences are unlikely to outweigh the benefits gained through early construction of a project (eg. reduced holding costs).

There is a clear need for more effective enforcement to build public confidence and to engender respect for environmental planning laws and the authorities involved, including stronger penalties and harsher financial implications.

Consistency and co-ordination of State agencies
There needs to be consistency and co-ordination between state agencies, including improved communication and greater buy-in where the initiatives and policies of one agency rely on another, such as the delivery of services and infrastructure to support increased housing and employment in locations identified through the metropolitan and regional strategies.

It is confusing for councils and communities when information coming from state agencies is inconsistent. There is a clear need for greatly improved co-ordination in infrastructure delivery. To this end, the Department of Planning and Infrastructure should insure that the infrastructure and services identified in the metropolitan and regional strategies is fully funded, can and will be delivered in appropriate timeframes. Without such commitments it is difficult for communities to have confidence that necessary infrastructure will be delivered, which makes it difficult for communities to accept increased development.

Consultation
The Department of Planning and Infrastructure often announces changes to legislation and policy with little or no consultation with councils or the broader community. This practice is unacceptable as often these changes can have significant implications at a local level. The DP&I should be an advocate and also practice appropriate public participation to fulfil its own obligations to provide effective consultation.

6. Appeals

It is agreed that applicants should maintain the ability to appeal determination decisions, however extending merit appeals to third parties is not supported under the current appeal system primarily due to the potential financial impacts on councils. In any court based appeal system there should be an increased emphasis on mediation to facilitate out of court resolutions.

A simplified non-adversarial, non-legal and low-cost merit appeal system that removes lawyers and courts from the equation for merits based appeals would be preferred, especially for single dwelling applications (eg. The Planning Inspectorate system used in the UK, where most appeals relating to householder applications are completed via 'written representations', have minimal costs to all parties and are generally completed in 8 weeks). It is considered that a system like this would be much more equitable than the current system, which is only available to those with the ability to pay and also places a large financial burden on Councils.

One of the negative by-products of the current court based adversarial appeal system is the complex legal wording which persists in most LEPs. This is considered to be directly related to the nature of the appeal system.

7. Infrastructure funding (section 94)

In most cases Local Government does not have the capacity to provide the infrastructure needed in relation to new development. The upfront cost of providing infrastructure and services required as a direct result of a development should be paid for by the developer.

Any requirement for Local Government to pay for infrastructure related to development would have severe financial implications and would add to the already significant financial burden associated with ongoing maintenance and improvements to existing infrastructure. It is noted that funding available to Local Government is limited by rate capping.

It is not fair or equitable for rate payers to suffer the full burden of paying for infrastructure directly needed for a development that financially benefits a developer. In many cases communities do not want increased population or development in their local areas and will be even less likely to accept it if they are also being asked to pay for related infrastructure through their rates.

The setting of levies for infrastructure should be clear and transparent, and the requirement to show where, how and when funding will be spent is supported. The existing guidelines for section 94 plans need improvement in order to facilitate increased transparency, consistency and efficiency. The levies imposed should reflect the real costs of providing both hard and soft infrastructure (including community facilities and services) directly related to a development.

The use of broad caps on infrastructure levies and contributions is not supported as every local government area has unique requirements and the costs for providing similar infrastructure in different locations can vary considerably. Councils need the ability to demonstrate the levies required to meet the real costs associated with essential infrastructure provision.

To this end there is also a need for greater transparency in relation to the collection of State infrastructure levies. The State should have the same responsibility as Local Government in relation to justifying and reporting on how, when and where infrastructure contributions will be spent.