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Planning Reforms
Department of Planning
GPO Box 39
Sydney NSW 2001

CM003-08

7 February 2008

Re: Improving the NSW planning system – Discussion Paper

The Sydney Coastal Councils Group (SCCG) would like to take this opportunity to provide comment on the *Improving the NSW planning system: Discussion Paper*. In making this submission the SCCG is seeking to provide recommendations that assist State and Local Governments to work closely with local communities to deliver the appropriate environmental, social and economic outcomes desired by councils and their local communities.

The SCCG supports the submission of the NSW Local Government and Shires Association (LGSA) on the discussion paper and urges the NSW Government to consider the recommendations it contains. In light of the LGSA submission, this submission will focus on the key areas outlined in the discussion paper and their potential impacts on SCCG Member Councils and other coastal councils in NSW. This submission is structured into the following sections:

1. General Comments
2. Plan Making
3. Development Assessment
4. Exempt and Complying Development
5. Private Certification
6. e-planning

1. General Comments

It is important to recognise that good planning takes time and positive planning outcomes require the appropriate tools and capacity. Additionally, implementing planning objectives through development assessment requires equity amongst all stakeholders and relies on all participants having access to the relevant information as well as remaining well informed.

The intent of the reforms proposed in the discussion paper is to make plan making and development assessment processes faster and easier for applicants. The SCCG supports this goal but believes shortening average development assessment times must not come at the expense of consistent, transparent and appropriate assessment. The overriding goal of any reforms to the NSW planning system must be to assist in the achievement of sustainable built form and more liveable communities.

Additionally, the discussion paper and proposed reforms fail to note that applicants proposing developments also have responsibilities to provide the necessary information in an application as well as submit an application that complies with existing controls and standards. If this point is not enforced across all assessment scales the proposed reforms have the potential to increase development assessment times and frustrations with the process not decrease them.

The discussion paper outlines a wide range of recommendations and proposed reforms that will affect all NSW Councils and a wide range of stakeholders. Therefore, it is assumed that the Department of Planning (DoP) will receive a wide range of submissions and views on the discussion paper. To assist dissemination and understating of the views of all stakeholders and to outline the process for considering all submissions, the SCCG request a Representations Report for the discussion paper be produced prior to any amendments to the legislation. Such a report should contain a summary of the major views of all stakeholder in relation to each recommendation and the DoPs reasoning for implementing or altering each of the recommendations contained in the discussion paper.

Key Point

The SCCG supports the goal of improving the NSW planning System but believes a single focus on shortening average development assessment times should not come at the expense of consistent, transparent and appropriate assessment.

Recommendation:

A Representations Report for the discussion paper be produced prior to any amendments to the legislation. Such a report should contain a summary of the major views of all stakeholder in relation to each recommendation and the DoPs reasoning for implementing or altering each of the recommendations contained in the discussion paper.

2. Plan Making

As stated in the discussion paper, plan making is the preparation and adaptation of strategies, zonings and controls for specific areas or issues. Within this, the plan making process should allow for the delivery of strategic planning concepts and objectives through Environmental Planning Instruments (EPIs) including Local Environment Plans (LEPs).

The discussion paper notes a desire to shorten the time take to prepare plans as well as reduce the number of plans overall. In the context of plan creation the SCCG believes more emphasis should be placed on the development of appropriate and effective plans as opposed to the time taken for them to be developed. The time invested in the consultation of strategic direction and collection of the appropriate information (including: Local Environment Studies, Social Plans and Housing Strategies) during the plan making process will reduce development assessment times overall.

Recent amendments to the plan making process, including the development of the Principle Local Environment Plan have not placed enough emphasis on the following issues:

- The delivery of Environmentally Sustainable Development (ESD) as outlined in the *Environment Planing and Assessment Act 1979*;

- Utilising LEPs to implement the natural resource management goals and outcomes articulated in the State Plan, regional strategies and Catchment Action Plans through the incorporation of management targets and goals; and
- Ensuring that Local Government has the capacity to address and prepare their communities for hazards that occur in the coastal zone including climate change, cliff instability, storm surge, flooding and bushfire risks via the risk management process.

The lack of a clear link between the delivery of the targets and goals outlined in strategic planning documents and the development and implementation of EPIs has reduced the capacity of councils to meaningfully implement these targets and goals. This has resulted in the ad-hoc delivery of ESD or natural resource management through the plan making and development assessment process.

To maximise the efficiency of council participation in the NSW planning system requires clear direction on the process of delivering and reporting the goals and outcomes outlined in the strategic planning documents through EPIs. It also requires the consistent collection and management of environmental and social information to benchmark, monitor and assess progress towards achieving the desired outcomes.

Only when both of these actions are achieved can State and Local Governments meaningfully report on the delivery of the strategic plans through EPIs. Therefore the SCCG recommends that the NSW Government work with councils to develop and implement a process for the data collection and reporting of the achievement of strategic plans through EPIs and the plan making process.

Additionally, the SCCG believes councils require greater assistance in implementing the natural resource objectives in the regional strategies and Catchment Action Plans. To address this, the SCCG recommends that consistent with recommendation P8.1, *The Department of Planning should continue to streamline and reduce the number of REPs and SEPPs by: P8.1 Preparing and implementing the regional and subregional strategies*, the Department of Planning should provide councils with clear directions and provisions as to how, where and when the goals of these strategies are to be achieved.

One mechanism to achieve this would be through the development of implementation plans outlining roles, responsibilities and funding mechanisms for the actions outline in strategic planning documents. Councils should not be placed in the position of having to resolve conflicts and inconsistencies between newly created strategic plans and existing EPIs through the use of section 117 directions. A reliance on section 117 directions has resulted in the piecemeal and inconsistent implementation of the strategic discretion outlined in regionally significant strategic plans.

The SCCG opposes the recommendation that the DoP be able to directly amend an LEP if it is deemed to be of state significance without consulting with a council and its residents on the merits of any amendments. Additionally the SCCG requests that the definitions of regional and state significance within the plan making context be outlined prior to any amendments to the Act.

Key Points:

Recent amendments to the plan making process, including the development of the Principle Local Environment Plan have not placed enough emphasis on the following issues:

- The delivery of Environmentally Sustainable Development (ESD) as outlined in the *Environment Planning and Assessment Act 1979*;
- Utilising LEPs to implement the natural resource management goals and outcomes articulated in the State Plan, regional strategies and Catchment Action Plans through the incorporation of management targets and goals; and
- Ensuring that Local Government has the capacity to address and prepare their communities for hazards that occur in the coastal zone including climate Change, cliff instability, storm surge, flooding and bushfire risks via the risk management process.

The consistent collection and management of environmental and social information to benchmark progress towards achieving the desired outcomes of strategic plans and EPIs is required.

Recommendations:

The NSW Government works with councils to develop and implement a process for the data collection and reporting of the achievement of strategic plans through EPIs and the plan making process.

The Department of Planning provide councils with clear direction as to how, where and when the goals of strategic plans such as the sub regional plans are to be achieved through the development of implementation plans for these strategies.

Development Assessment

Following the development and implementation of strategic planning documents and EPIs, the development assessment process is a crucial step in the delivery of strategic planning outcomes to local communities. Therefore consistency, transparency and accountability are essential during the development assessment phase.

Measures to improve the efficiency and effectiveness of the development assessment process should be considered and supported. The implementation of these measures must not reduce the role of councils in the development assessment process or compromise public participation.

The establishment of Joint Regional Planning Panels (JRPPs) have the potential to significantly reduce the role councils in the development assessment process and limit public participation, without any evidence of achieving better planning outcomes. As an alternative, the utilisation of Independent Hearing and Assessment Panels (IHAPs) by councils to provide independent advice on difficult or contentious development applications is supported by the SCCG. Additionally, the SCCG strongly opposes council control of the development assessment process being removed by being forced to utilise JRPPs at the Minister for Planning's insistence.

A continued focus on the speed through which developments are assessed or the number of developments assessed rather than the quality of the application or the

outcome fails to note that development assessment for complex issues requires time and the quality of DAs submitted is often highly variable. To address these issues the SCCG recommends that the DoP work with councils to develop the necessary information resources to address the following issues:

- Informing applicants that they too have responsibilities to ensure that applications are provided with the necessary information;
- Development applications that do not comply with the existing controls or standards will be rejected or take longer to be assessed; and
- Any variations from existing controls or standards for a proposal should be raised and addressed at the pre-Development Application meeting prior to an application being submitted.

Meaningful community consultation during development assessment is also required to ensure outcomes desired by local communities and residents are delivered. It concerns the SCCG that the discussion paper outlines the development of consultation guidelines dependent on the scale of development proposed.

Therefore the SCCG recommends that prior to the reforms proceeding that the DoP release the proposed guidelines for public consultation. The guidelines for consultation should address the following issues:

- Criteria for minimum consultation times;
- Criteria for the provision of information related to impact assessment; and
- The maintenance of concurrence provisions for relevant State Government Agencies and Departments.

Key Points:

Measures to improve the efficiency and effectiveness of the development assessment process should be considered and supported. The implementation of these measures must not reduce the role of councils in the development assessment process or compromise public participation.

The SCCG strongly opposes council control of the development assessment process being removed by being forced to utilise JRPPs at the Minister for Planning's insistence.

Recommendations:

The Department of Planning work with councils to develop the necessary information resources to address the following issues:

- Informing applicants that they too have responsibilities to ensure that applications are provided with the necessary information;
- Development applications that do not comply with the existing controls or standards will be rejected or take longer to be assessed; and
- Any variations from existing controls or standards for a proposal should be raised and addressed at the pre-Development Application meeting prior to an application being submitted.

The DoP release the proposed guidelines for public consultation. The guidelines for consultation should address the following issues:

- Criteria for minimum consultation times;
- Criteria for the provision of information related to impact assessment; and
- The maintenance of concurrence provisions for relevant State Government Agencies and Departments.

Exempt and Complying Development

Exempt and complying development standards have the potential to provide the opportunity for faster development assessment of minor residential developments that have little or no impact on the surrounding neighbourhood or environment. While this process has merit, it should not come at the expense of the proper assessment of social, heritage and environment consideration or the necessary risk assessment in areas impacted by issues including but not limited to flooding, bushfire or cliff instability.

The SCCG strongly opposes the introduction of state-wide standards for exempt and complying development and the introduction of a mandatory default code for councils that do not meet the nominated quota of exempt and complying developments as outlined in the discussion paper.

To apply a one size fits all model for exempt and complying developments to every council across NSW irrespective of size, history, environmental character and population demographics could result in standards that lead to insufficient assessment of local or regionally significant issues. To address this, the SCCG recommends standard definitions for exempt and complying development are developed by the NSW Department of Planning and councils provided the opportunity to make these locally and regionally relevant through the addition of locally and regionally significant considerations.

Key Points:

The SCCG strongly opposes the introduction of state-wide standards for exempt and complying development and the introduction of a mandatory default code for councils that do not meet the nominated quota of exempt and complying developments as outlined in the discussion paper.

Recommendations:

The NSW Department of Planning and councils provided the opportunity to make these locally and regionally relevant through the addition of locally and regionally significant considerations.

Private certification

The intent of private certification is to decrease the time taken to assess exempt and complying developments as well as reduce the development assessment load on councils. In truth and role of private certifiers in building and subdivision certification has traditionally been a cause of conflict as well as additional time and financial cost for councils and development proponents.

Due to this, the private certification process needs to be closely monitored and stringently regulated. Additionally a less adversarial relationship between councils and private certifiers needs to be encouraged.

To achieve both of these the SCCG supports the following recommendations of the NSW LGSA:

- A review of fees under the Environmental Planning and Assessment Regulation be undertaken to ensure that councils can recover the true costs associated with processing DAs and issuing building and subdivision certificates;

- Councils be given the power to issue compliance cost notices to recover the cost associated with enforcement actions against accredited certifiers; and
- Legislation be amended to enable consents and certificates to be voided where the applicant has provided false or misleading information on which the consent authority or certifier has relied.

Of specific concern to the SCCG is the approval of developments by private certifiers in areas of flood risk, cliff instability or sites potentially exposed to natural hazards including climate change impacts. To ensure the properties and lives of residents are protected this process needs to be closely monitored and recorded with registers of private certifiers with the appropriate training and qualifications in the assessment of specific risk management issues. This should be underpinned with a central database of approvals provided by private certifiers in areas considered to be affected by specific risk management issues including but not limited to flood risk, cliff instability and bushfire.

Key Points:

The private certification process needs to be closely monitored and stringently regulated. Steps to achieve this are supported by the SCCG.

Recommendations:

The SCCG supports the following recommendations of the NSW LGSA:

- A review of fees under the Environmental Planning and Assessment Regulation be undertaken to ensure that councils can recover the true costs associated with processing DAs and issuing building and subdivision certificates;
- Councils be given the power to issue compliance cost notices to recover the cost associated with enforcement actions against accredited certifiers; and
- Legislation be amended to enable consents and certificates to be voided where the applicant has provided false or misleading information on which the consent authority or certifier has relied.

Registers of private certifiers with the appropriate training and qualifications in the assessment of specific risk management issues be established.

ePlanning

The implementation of electronic planning (ePlanning) has the potential to make the development application process simpler and easier for both councils and applicants. To assist with the development and implementation of an ePlanning process, the SCCG supports the NSW Government proposal to work with councils in assessing the capacity of councils and relevant government agencies in the area of ePlanning.

Three key outcomes of this assessment should be:

- An assessment of the benefits and areas of concern for existing ePlanning models in NSW and Australia;
- The development of a 5 year plan for the implementation of ePlanning that outlines funding sources for ePlanning initiatives to be implemented by councils
- An ePlanning communication strategy for councils and development applicants; and
- A strategy that ensures councils and sections of the community with limited capacity to utilise ePlanning tools are not marginalised by its establishment.

Overall the SCCG believes the development and implementation of ePlanning initiatives should be further explored. An open assessment of the capacity of councils to deliver ePlanning followed by a clear time line and funding schedule for its establishment would greatly assist councils in its implementation.

Key Point:

To assist with the development and implementation of an ePlanning process the SCCG supports the NSW Government proposal to work with councils in assessing the capacity of councils and relevant government agencies in the area of ePlanning.

Recommendation

Three key outcomes of any assessment of ePlanning possibilities should be:

- An assessment of the benefits and areas of concern for existing ePlanning models in NSW and Australia;
- The development of a 5 year plan for the implementation of ePlanning that outlines funding sources for ePlanning initiatives to be implemented by councils
- An ePlanning communication strategy for councils and development applicants; and
- A strategy that ensures councils and sections of the community with limited capacity to utilise ePlanning tools are not marginalised by its establishment.

Conclusion

I trust that the information provided in this submission will receive appropriate attention when assessing submissions for the Improving the NSW planning system – Discussion Paper. We look forward to further participation in this process and the opportunity to assist to improving the NSW Planning System. If you wish to clarify any matter in the submission or require further information, please contact Craig Morrison (Coastal Projects Officer) on 9246 7702 or craig@sydneycoastalcouncils.com.au

Yours sincerely



Cr. George Copeland
Chairperson