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Director
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Attn: Jeff Horn

Dear Sir

Draft Policy Statement: Plan Making and Delegations

The Associations welcome the opportunity to provide feedback on the draft *Policy Statement: Plan Making and Delegations*. The key proposals being the:

- delegation of plan making powers back to councils; and
- introduction of independent reviews;
 - for applications for re-zoning before the Gateway Determination; and
 - for applications for re-zoning after the Gateway Determination.

The Associations acknowledge the Ministers overall objective of improving the plan making process. To this end we welcome the proposal to delegate additional plan making powers back to councils. However, we find the proposed changes to be relatively insignificant as they stand and we recommend a greater level of delegation if substantial efficiency gains are to be made.

On the other hand, the Associations strongly object to, and warn against, the implementation of appeal rights for applicants for re-zoning. This proposal has serious implications for the planning system which are expanded on below. Furthermore, this is a fundamental change to the planning system and we find it totally inappropriate that this proposal is being advanced while the NSW planning system remains under review.

Independent reviews for applications for re-zoning

The proposed introduction of review processes for proponents and owners for applications for re-zonings (planning proposals) are the more significant set of changes proposed under the Draft Policy Statement.

These rights will enable proponents to request a review of council decisions on an application for re-zoning. These rights will also apply where a council has not made a decision within 60 days of lodgment of a planning proposal.

The intent of these changes is to enable applicants and owners to contest land use decisions and in particular overturn a decision of council.

The stated purpose of this proposal is to restore confidence, integrity and certainty in the planning system. However, the Associations maintain that it is more likely that it will achieve the opposite.

The Associations suggest that these objectives may be compromised as the proposed changes will:

- encourage 'ad hoc' land use decisions to be made that could undermine confidence in the long term strategic planning processes that are informed by professional expertise, community engagement and public exhibition;
- be driven by the private interest of the proponent and may conflict with the long term public interest for the area;
- raise the level of conflict on zonings that will increase uncertainty in the system;
- weaken the status of current zonings under Local Environmental Plans (LEPs) and create uncertainty for purchasers of land; and
- slow down the planning process because of the level of applications for review that are likely to be made given the breadth of the eligibility criteria and potential number of contested sites where an application could apply.

Importance of strengthening the strategic planning process

The Associations support the sound and rigorous strategic planning process that underpins the LEP process. This builds confidence in the planning system.

It is poor planning practice to encourage 'ad hoc' decision making on land use decisions as it:

- undermines the credibility of the strategic planning process;
- sends a message to all land owners that zonings can be contested; and
- focuses decisions on specific sites and having them considered out of context with planning objectives for the area.

The Associations recognise that the plan making process is time consuming. Therefore, there are many areas in NSW where the current zonings are out of date or are under review. Consequently, it may be reasonable to allow certain lands to be fast tracked for a re-zoning where the zoning is out of date, or the application is consistent with a draft LEP and where the proponent can demonstrate that the zoning of the land is holding up an appropriate development. However, this process should be driven by councils.

Eligibility criteria

The eligibility criteria on which the Department is to rely on to assess an application for a review are wide open. The proposed eligibility requirements will allow all forms of development that very broadly meet general infrastructure requirements and comply with local or relevant regional strategies. This is very broad and will encourage applications for all manner of proposals, from land releases to shopping centre developments, to apply for a review.

The Associations suggest that these criteria will open the gate to a wide range of applications that will be difficult for the Department to assess and the Joint Regional Planning Panel (JRPP) to evaluate.

Review by JRPP

The proposed changes would:

- enable JRPPs to be given advisory plan making powers on important land use decisions, JRPPs were set up to assess development applications which is a very different process to plan making. It is doubtful if JRPPs possess the skills and experience to make significant plan making decisions.

- undermine the long standing role of Local Government in the plan making process. Councils are elected by the community to make plan making decisions for their area. The JRPPs are not accountable to the community and it is totally inappropriate for them to take on a plan making role.

Delegating more plan making powers back to councils

The Associations support measures that will deliver a more efficient and flexible plan making process at the local level. Hence, we support the proposed changes to the plan making process that will enable councils to administer minor changes to their LEPs.

Nevertheless, it is observed that the proposed changes:

- are of a minor nature;
- mainly procedural;
- do not alter the existing policy on re-zonings; and
- will not substantially alter how spot re-zonings (planning proposals) are approved or the number that are likely to be approved under the current criteria.

The proposed changes are helpful but do not give councils sufficient powers to approve and manage spot re-zonings.

The level of delegations need to be extended to give meaningful decision making powers to councils to allow more significant decisions on re-zonings to be made and managed locally.

If councils were given more substantive powers within agreed boundaries, real improvements to the plan making process could be delivered at a local level that could:

- ‘unblock’ the plan making process;
- enable LEPs to reflect local planning issues;
- shift the responsibility to councils to manage amendments to their LEPs; and
- enable councils to be able to approve economically sustainable development that is currently that is currently not able to be approved under out of date environmental planning instruments.

The extended delegations would apply to:

- small adjustments to the LEP (maps and wordings), where the amendment is small and innocuous or is correcting a mistake and that does not constitute a change in planning policy; and
- a limited range of planning proposals (spot re-zonings) for local developments, that met agreed criteria, established in consultation with the Department.
- Adjustments not able to be approved under out of date environmental planning instruments.

The Associations have a number of proposals to sensibly expand delegations to councils beyond what is being proposed in the draft policy, without adversely affecting state and regional planning objectives.

Spot re-zonings

Councils are well placed to be able to assess and implement re-zonings of a local nature that are consistent with the regional or local strategic planning policy. Allowing councils to be able to approve and manage re-zonings ‘in-house’ would:

- recognise that existing planning controls under an LEP do not necessarily achieve the desired outcome at a local level;

- provide a more suitable pathway to amend a LEP for a specific site, so that applicants do not have to resort to the use of a SEPP 1 Applications, which are often over used and not considered to be best practice;
- allow appropriate development to be approved in a timely way;
- enable the planning instrument to be able to adjust to local context; and
- help ensure that the LEP delivers appropriate economic, social and environmental outcomes at a local level.

The Associations have suggestions to sensibly expand delegations to councils without adversely affecting state and regional planning objectives.

Associations proposal

Local applications that involved a spot re-zoning (planning proposal) could be managed 'in-house' by councils. Councils should be given powers of delegation to approve a class of development that is consistent with the regional and local strategic planning policy and will only have a local impact. Such planning proposals would not be required to proceed to a Gateway Determination and can also be processed by councils under delegation.

However, matters that constitute regional development would require a Gateway Determination.

The policy should be that councils should be able to approve re-zonings for local planning issues. Such a policy would allow councils to more efficiently assess applications for DAs and re-zonings concurrently as the ambiguity as to whether the Department would support the rezoning would be taken out of the system.

The majority of applications for re-zoning, supported by councils, are to enable development to proceed that 'sits outside' the controls of the LEPs. Controls under the LEP may prohibit development that is found to be acceptable but fails to comply with all aspects of the LEP.

It is recommended that the Department, work together with the Associations, to develop suitable requirements and criteria to establish parameters to extend consent powers to councils. This may limit delegations to:

- eligible councils that have an up-to-date comprehensive LEP in place, so that amendments can be assessed within an agreed local strategic framework;
- planning proposals that comply with all relevant strategic plans and strategies; and
- planning proposals that only vary the LEP to a minor degree and enable the approval of a local DA.

Changes to maps and references

The current proposal requires these changes to proceed through a Gateway Determination for a planning assessment of the proposed change.

It is questioned whether small inconsequential matters need to go through the 'gateway determination' and that councils be required to instead report subsequently to the Department on such changes of a minor nature.

Associations proposal

To correct small mistakes to LEPs, council delegations should be expanded, to enable council to go directly to the Office of Parliamentary Counsel (OPC) for approval of the amended drafting and then exhibition. This would provide a fast track process for small changes that do not change a policy position.

Heritage LEPs

Currently these changes are required to proceed through a Gateway Determination. Again these matters do not require a planning assessment but rather a heritage assessment.

Associations proposal

It is recommended that the changes be fast tracked through the Heritage Office (HO), the appropriate agency to approve such changes. However, given the sensitivities around heritage the proposed changes must have been on public exhibition prior to approval from the HO. Once approval has been granted the changes can be referred directly to the OPC for approval of the drafting.

Conclusions

The Associations are very concerned that introducing review rights to proponents will result in poor planning outcomes and undermine well founded strategic planning making processes. The current focus on finalising strategic plan making and LEPs in particular, will be diverted by councils having to address numerous small planning proposals (spot re-zonings), usually instigated by private interests in an attempt to maximize the development potential of every site. What the changes will do is to reduce the status of LEPs to guidelines and set up an easy pathway for proponents for contesting every land use decision and the associated planning rules.

Although some environmental planning instruments are out of date, this proposed change is so radical that a regularity impact assessment is required. In addition it is recommended that the findings of the Planning Review be awaited, as such a significant change will be hard to reverse once introduced.

The Associations support giving councils delegations to make changes to LEPs. However, the proposed delegations are inconsequential and need to be expanded. If they were expanded to allow councils to be able approve some local spot re-zonings, a more flexible and responsive plan making process would be established.

This would be a far more practical and effective way of allowing some re-zonings to be fast tracked by Local Government without fundamentally shifting the land use planning roles contemplated by the Act by giving proponents greater power to alter the strategic planning framework of a local area.

Overall, the additional changes recommended by the Associations would allow a more flexible plan making process that is able to respond to local planning issues, correct anomalies and adjust planning controls to site specific applications in a timely way.

If you wish to discuss these matters further, please contact Jenny Dennis, Senior Policy Officer Planning on 9242 4094 or email jennifer.dennis@lgsa.org.au.

Yours sincerely



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