



**Response to the NSW Planning System Review
Issues Paper
*The way ahead for planning in NSW?***

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Council of Social Service of NSW (NCOSS)

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About NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the non-government community services sector in New South Wales. Through its organisational membership, NCOSS represents a vast network of service delivery and consumer groups.

NCOSS has a vision of a society where there is social and economic equity, based on cooperation, participation, sustainability and respect.

NCOSS provides independent and informed policy development, advice and review and plays a key coordination and leadership role for the non-government community services sector in NSW. We work with our members, the NSW Government and its departments, and other relevant agencies, towards achieving our vision in NSW.

Introduction

NCOSS welcomes this opportunity to respond to the NSW Planning System Review Issues Paper *The way ahead for planning in NSW?*, issued in December 2011.

Successive governments have made a raft of changes to the NSW planning system over the past three decades. It is timely to take stock of the cumulative impact of these changes and consult widely with stakeholders on the development of a new legislative planning framework to replace the current *Environmental Planning & Assessment Act 1979*.

We note that while the review is not dealing with particular planning policies or strategies, such as the Metropolitan Plan for Sydney or the Infrastructure State Environmental Planning Policy (SEPP), there is an inherent difficulty in totally separating these matters from a legislative planning framework. This has been clearly apparent in the consultation process to date.

NCOSS also notes that the Review Team has not yet released any findings from its work on the Review's third terms of reference, which requires it to '*examine interstate and overseas planning systems to ensure that relevant best practice options are considered for inclusion in a new planning system for NSW*'. Like some other peak groups, NCOSS finds it difficult to respond to many of the reform options canvassed in the Issues Paper without having access to the findings of the examination of those interstate and overseas systems. We would hope that this omission is addressed in the forthcoming Green Paper.

NCOSS has participated in both Ministerial Planning Forums held to date, and had a private meeting with the Review Team in August 2011. We are grateful for these opportunities to have input.

In this submission we do not attempt to respond to the hundreds of questions raised in the Issues Paper, concentrating instead on the key concerns of our sector. The structure of this response follows that of the Issues Paper itself.

Key elements, structure and objectives of a new planning system (Chapter B)

Objectives of new planning legislation (Questions B1-B5)

NCOSS considers that the existing objectives in the Act generally remain appropriate but the wording could usefully be updated. We note that the existing objectives include ‘*the provision of land for public purposes*’, ‘*the provision and co-ordination of community services and facilities*’ and ‘*the provision and maintenance of affordable housing*’. We would support broadening the reference to ‘*communication and utility services*’ to ‘*essential public infrastructure, including public transport, utility and communication services*’. We do not believe that the Act itself should rank or weight particular objectives.

Decision making (Questions B16-17)

The respective roles of the Minister, the Department, elected councillors, council staff and expert panels (at both the state and local level) in decision making under the Act is at the heart of much of the controversy about the current planning system. NCOSS has no firm position on these matters and is happy to await the release of more specific reform options in the Green Paper.

As a general observation, however, we would note that the argument for the exercise of power by elected individuals, such as the Minister and councillors, is strongest in relation to plan making and policy making, and weakest in relation to development assessment, especially in determining if a proposal complies with the technical requirements of an existing plan or policy.

Making plans (Chapter C)

Plan making process (Questions C3-C8)

NCOSS supports a requirement for community consultation to be built in to all plan making processes, regardless of who the consent authority is.

This requirement should be accompanied by greater efforts to provide independent community education programs on how the planning system works and how to have effective input into it. Resources should also be available for the development of resources on how to engage ‘hard to reach’ and otherwise excluded groups¹.

Strategic planning (Questions C14-17)

Strategic planning is planning for an anticipated development pattern for an area, including the provision of supporting infrastructure. In our view it is one of the most important responsibilities of the Department of Planning and Infrastructure and of local councils.

In our view the Act should provide an appropriate statutory framework for the process of strategic planning and should ensure that strategic plans that are developed and adopted in line with the provisions of the

¹ See for example ‘*Community consultation and the ‘Hard to Reach’: Concepts and Practice in Victorian Local Government*’, Nicola Brackertz et al, Institute for Social Research, Swinburne University of Technology, December 2005 and *Social inclusion principles for spatial planning in Tasmania*, TasCOSS, 2011.

Act are given legal recognition. It is anomalous the statutory basis of the Metropolitan Plan and various Regional Strategies is not absolutely clear².

NCOSS notes there are of course broader concerns about the relationship between strategic plans, once adopted, and wider government decision making and budgetary processes. To address this problem, robust annual reporting and monitoring processes need to be built into such plans and the Auditor General encouraged to conduct independent audits at periodic intervals.

Environmental planning instruments (Questions C18-C31)

NCOSS considers there is a continuing need for systems of State Environmental Planning Policies (SEPPs) at the state level and Local Environmental Plans (LEPs) at the local level, perhaps with revised terminology such as State Planning Policies and Local Landuse Plans. All should be open to public comment before being put into place.

Former Aboriginal missions and reserves (Question C35)

As the Issues Paper indicates, it is anomalous that former Aboriginal missions and reserves, now owned by Local Aboriginal Land Councils (LALCs), are not properly integrated into the present planning system. NCOSS supports the recommendations of the NSW Aboriginal Land Council that specific transitional provisions and measures are developed to allow for the reintegration of these sites into the NSW planning system, without undue expense, and that administrative and resource support be provided to enable this transition to proceed.³

Development proposals and assessment (Chapter D)

Development types (Questions D1-D5)

NCOSS reserves judgement on whether there is a need to rationalise the current nine different types of development categories, pending the Review Team's examination of systems in place interstate and overseas.

Making decisions (Questions D62-D85)

NCOSS reserves judgement on these matters, pending the release of the Green Paper.

Infrastructure contributions (Questions D95-D106)

As the Review Team notes in the Issues Paper, there are *intractable tensions* involved in the question of infrastructure contributions required of developers under the Act. Councils are naturally concerned about the demand for additional facilities that directly arises from development. They generally consider that the current per lot caps (which vary between greenfield and infill areas) leave them with substantial future infrastructure shortfalls. For their part, developers claim that such contributions add to their costs and impact on the affordability and viability of development.

² Although we are aware that the Minister has at various times issued formal directions to councils, under the provisions of the Act, requiring them to take into account the content of such strategies in the performance of their functions.

³ See *NSW Aboriginal Land Council's submission to the Planning Review Panel*, NSWALC, November 2011, p. 20. Available on the Review website at

<http://www.planningreview.nsw.gov.au/Submissions/ListeningScopingSubmissions/tabid/105/Default.aspx>

Meanwhile the community finds the system difficult to understand, and experiences great difficulty in establishing who is responsible for what facilities and services and in tracking the use of contributions by councils and state agencies over time. There is also no automatic linkage between the construction of community facilities under an approved plan and the availability of funding to staff and operate them.

Philosophically NCOSS supports the concept of imposing a charge for the externalities of development, such as increased demand for community facilities, open space and the like. There is also a value capture argument that the community should benefit from part of the windfall gains accruing to landowners as a result of government planning decisions, such as rezonings. It is also demonstrably the case that the provision of essential community infrastructure has improved since the commencement of the current Act in 1979.

Persistent advocacy on the issue by the housing industry raises a number of questions. While there is no denying that infrastructure contributions contribute to cost pressures, so do many other factors. It is notable that the industry has not been offering any affordability trade-off in response to any reduced contributions, such as the cap imposed by the previous NSW Government, or that would occur if contributions were abolished completely.

Industry also fails to acknowledge that a concern about possible infrastructure shortfalls contributes to public opposition to housing development in both new release and infill areas. Indeed recent British research revealed that commitments to additional public services and facilities and increased employment, transport and commercial facilities were the two factors that would most influence the general public to alter their opposition to housing developments.⁴

NCOSS believes that too many policy decisions about infrastructure contributions in recent years have been made behind closed doors, in response to industry pressure, without adequate consultation with other stakeholder groups. We welcome the decision to empower IPART to consider objections from individual councils to the Government imposed cap and suggest IPART be requested to undertake a broader review of the system so that future policy directions can be taken on the basis of factual information that is not currently available.

Appeals and reviews, enforcement and compliance (Chapter E)

NCOSS has no comments on the questions raised in this chapter.

Implementation of the new planning system (Chapter F)

Implementation issues (Questions F1-F9)

NCOSS strongly believes that proactive measures need to be implemented to assist non-government organisations and disadvantaged groups to better engage with the planning system. Consideration needs to be given to the preparation of resource material that clearly outlines how the legislation and system work and how to have effective input into it. Bodies such as the Planning Institute or the Urban Research Centre could be contracted to prepare such material. Translated versions should be available.

⁴ See Housing chapter of *British Social Attitudes 28*, NatCen Social Research, p128-9, available online at <http://www.natcen.ac.uk/study/british-social-attitudes-28th-report>

The current model of consultation also makes it difficult for disadvantaged or 'hard to reach' groups to have their say. Many people will feel they do not have the skills and confidence to write a written submission, let alone to face a hostile public meeting or hearing. As a result, assumptions about what the 'community' wants can be distorted and the negative consequences of not proceeding down certain paths not given sufficient consideration. Consent authorities can recognise that they receive comparatively few submissions from certain groups or localities but have few incentives to take active measures to change things.

NCOSS agrees that any new Planning System must incorporate improved reporting and evaluation measures (F8). Compared to many human services programs, there have been too many reviews that have involved little more than talking to key stakeholder groups, and far too few formal evaluations or audits.

Conclusion

In this submission NCOSS has not attempted to detail our policy position on specific planning matters. These are outlined elsewhere.⁵

We welcome the high degree of consultation that has characterised the Planning System Review to date, and look forward to making further input when the Green Paper is released in the near future.

⁵ See, for example, 'Better planning and infrastructure' in our 2011 state election policy platform *Vote 1 Fairness in NSW* (March 2010) and our submissions on the Review of the Metropolitan Strategy (May 2010) and the Review of the Affordable Rental Housing SEPP (February 2011), all available online at www.ncoss.org.au