



Council of Social Service of New South Wales

66 Albion St, Surry Hills NSW
phone 02 9211 2599 fax 02 9281 1968
email info@ncoss.org.au web www.ncoss.org.au

abn 85001 797 137

7 February 2008

Planning Reforms
Department of Planning
GPO Box 39
Sydney NSW 2001
planningreform@planning.nsw.gov.au

Dear Sir or Madam

As the peak body of the social and community services sector in NSW, NCOSS welcomes this opportunity to comment on the November 2007 discussion paper *Improving the NSW Planning System*.

Our interest in the planning system particularly relates to how the system assists or hampers the development of

- sustainable (mixed use, mixed income) communities,
- the provision of necessary community facilities and services,
- provides for affordable housing and
- improves opportunities for key population groups including older people and people with disabilities.

NCOSS recognises that, over the last 10 years, significant planning reforms have already occurred in NSW. The implementation of some key changes, including a number that were announced as part of the Metropolitan Strategy in December 2005, has yet to be completed. Despite this there has been continuing dissatisfaction expressed with the current system. On the one hand, the State Government and industry groups have been critical of the performance of local government in relation to delays and other performance issues. On the other hand, the local government sector and environmental groups have been critical of the State Government for assuming control of projects that were previously the responsibility of local councils.

NCOSS believes that the current polarised debate on these matters is not productive. We have not sought to take sides in this debate. Our interest is in achieving better outcomes for disadvantaged groups and communities. We believe the best course of action would be to attempt to reach consensus on some broad directions for reform to both improve the efficiency and effectiveness of the current system, and to build community confidence. We believe that attempting to make too many further changes too quickly will undermine the community support that is necessary to achieve the Government's State Plan and Metropolitan Strategy housing and employment growth targets and objectives.

Rather than comment on each of the 95 recommendations that were contained in the discussion paper, we make some general comments about suggested directions for reform at

both the Council and State Government levels. We then make specific comment on the proposals in the discussion paper regarding ePlanning and Strata Schemes.

Council level reforms

NCOSS supports efforts to reduce delays in processing development applications by councils and for elected councillors and senior local government staff to focus more on their strategic planning and policy making responsibilities. That said it does not appear that the changes that need to be made at the local council level are anywhere near what appears to be envisaged in the discussion paper.

While a number of councils are clearly not performing satisfactorily in terms of the timely determination of development applications, the discussion paper itself tends to suggest that these councils are very much in the minority. For example, the number of councils taking an average of over 100 days to assess development applications in 2005-06 was 12, and the number taking an average of over 100 days to assess minor developments was 8 (p.16).

NCOSS believes that the State Government should focus on improving the performance of those particular councils that compare poorly with most other councils. Councils that consistently underperform should face having some or all of their planning powers transferred to a planning panel until they put in place adequate corrective measures. The Minister for Planning already has the legislative power to appoint planning administrators in these circumstances. NCOSS believes that decisions to do this should be taken with reference to objective indicators such as average processing times, the frequency with which the recommendations of council staff are rejected, and the frequency with which the council loses appeals before the Land and Environment Court.

The one area where across the board changes appear to be needed for local government as a whole relates to apparent regulatory creep. The discussion paper indicates that the number of development applications processed annually in NSW has more than doubled from 45,924 in 1995-96 to 117,923 per annum in 2005-06, having reached a peak of 147,206 in 1999-2000 (p. 66). By contrast the number of applications processed in Victoria is currently around 55,000 per annum. A change of this magnitude suggests that councils are requiring property owners to seek approval for increasingly minor changes.

To reverse this trend NCOSS would support moves to increase the categories of 'complying development' that provides property owners with an 'as-of-right' to proceed if their project meets predetermined statewide standards. Matters that could be dealt with in this way include the fit out of commercial premises, the erection of industrial sheds, and certain alterations and additions to residential premises. We would stress, however, that the development of codes for such complying development must happen via a proper consultative process that involves representatives of both the local government sector and building and design professionals, and must be subject of adequate community consultation. In this regard we believe that the timetable advocated in the discussion paper, with the first codes implemented in July 2008, is totally unrealistic.

State Government level reforms

NCOSS considers that any planning reform agenda needs to consider a review of the volume of development matters being dealt with by the head office of the Department of Planning.

NCOSS notes that the Department has a key role in providing leadership and guidance to councils; for implementing the Metropolitan Strategy and various Regional Strategies and Subregional Strategies; and for the assessment of major projects or projects impacting on environmentally sensitive areas.

Over the past few years the State Government has made the Minister for Planning the consent authority for an increasing number of major projects and projects that the Government considers to be of regional or State significance. It has also established the Growth Centres Commission to plan for the new release of areas in South West and North West Sydney, and has transferred powers over part of the City of Sydney to the Redfern Waterloo Authority.

NCOSS accepts that no State Government is likely to delegate to local government planning powers over major State Government transport or health infrastructure projects, or over the redevelopment of large government-owned sites. Equally we believe that any planning reform agenda must include a review of which categories of development projects should be dealt with at the state level, and which should be devolved to the local council concerned.

Where the Minister for Planning is to remain the consent authority, we believe that the proposed Planning Assessment Commission should deal with the vast majority of such projects. This would enable these projects to be assessed in a more transparent and efficient manner than is currently the case. NCOSS seeks further clarification on how matters that should be referred to the Planning Assessment Commission will be determined, and how the Commission is to be constituted.

Another key function of the Department of Planning is to develop and update State Environmental Planning Policies (SEPPs). These provide the framework within which the development application system works. A number of these SEPPs are of particular interest to the social and community services sector, including SEPP 70 Affordable Housing (Revised Schemes), SEPP (Sydney Region Growth Centres) 2006, SEPP (Housing for Seniors or People with a Disability) 2004 and SEPP (Infrastructure) 2007 (which deals with group homes and some health and education facilities).

NCOSS is disappointed at the lack of progress in advancing the Government's Metropolitan Strategy commitments on using planning mechanisms to provide affordable housing. These commitments are that advice and guidance would be provided on the use of negotiated developer agreements, density bonus schemes and inclusionary zoning for affordable housing, and that affordable housing provisions would be incorporated in the standard Local Environmental Plan (LEP) template. This has not yet occurred.

NCOSS also believes that efforts should be made to achieve more a consistent approach to the question of adaptable and accessible housing. This is a pressing need that will only increase with the progressive ageing of the population. A study conducted by Shelter NSW in 2006 revealed that around one third of the State's councils include requirements for adaptable housing in either their Local Environmental Plans (LEPs) or Development Control Plans (DCPs). The remaining two thirds of councils appear not to have adopted any formal requirements in this important area. NCOSS believes this is an area of the planning system that requires increased attention by the Department of Planning, and suggests that a working party of relevant stakeholder groups should be established to develop a suitable statewide strategy.

ePlanning

NCOSS believes there is considerable scope to expand the current ePlanning agenda. We welcome the proposals in the discussion paper to enable development applications to be lodged and processed electronically, to provide readily accessible information on all planning controls that apply to a particular site, and to enable developers and interested members of the community to track where a particular application is up to at a particular time.

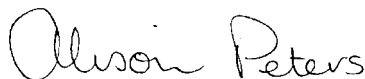
Strata schemes

NCOSS also notes that a number of problems have been experienced by purchasers of apartments in some new developments. As not all apartments will be sold or occupied at once it is fairly unavoidable that the body corporate will initially be controlled by the developer. There have been reports of situations where effective control of the body corporate is in the hands of individuals who appear to be acting on behalf of the developer long after this initial period has passed. This can be a particular problem where there is dissatisfaction with the state of the building or where defects emerge during the seven year warranty period. There have also been problems where developers have sold car parking spaces to other parties before a building is fully occupied.

NCOSS believes this is an unacceptable. We support requiring body corporate executive committee members to disclose any connection they have with the developer, builder or building manager; preventing binding decisions about car parking being made until an initial occupancy period has expired; and outlawing the inclusion in sale contracts of any provision that requires the purchaser to transfer their body corporate voting entitlements to another party. These matters will need to be progressed by the Office of Fair Trading.

If you wish to clarify any matter contained in this submission please do not hesitate to contact Mr Warren Gardiner, Senior Policy Officer, on 02 9211 2599 ext 112 or email warren@ncoss.org.au

Yours faithfully



Alison Peters
Director