Facilitating faster approval: council reflections on the changing NSW planning and development assessment process
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Running head: Changing NSW planning and assessment process
Abstract
The time taken to approve residential development by local councils has long been identified as a central factor in debates centred on housing affordability. Many argue that delays in approval limit housing supply and thereby place upward pressure on prices. This paper explores two significant changes to the policy framework directing development assessment in NSW over the past 5 years: the implementation of Part 3A within the *NSW Environmental Planning and Assessment Act, 1979*; and, a series of reforms implemented under the *Improving the NSW Planning System* agenda. According to the Minister for Planning these reforms will significantly decrease the average time taken for assessment. Unsurprisingly, local government claims that these reforms will: reduce the amount of funds made available for services/infrastructure; reduce local autonomy; and, change the local character of neighbourhoods. However, from a planning/development assessment perspective, these opinions are far from universal.

In the context of this changing policy environment, this paper explores the experiences and opinions of councils from across NSW. The paper presents the results of interviews conducted with senior officials responsible for development assessment. Each of these policy changes is discussed in the context of the diverse populations and development pressures facing councils across NSW.
Introduction

Over the past five years the NSW planning and development assessment system has experienced significant change. This paper will explore some of the major policy shifts, including the inclusion of Part 3A in the *Environmental Planning and Assessment Act 1979*, and a suite of changes flagged under the *Improving the NSW Planning System* reforms (DOP, 2007), ratified under the *Environmental Planning and Assessment Amendment Bill 2008*. This paper provides a timely insight into the opinions and experiences of local government in relation to the changing nature of planning/development assessment. In particular, it focuses on the impacts these changes will have on assessment speed, cost, council workload, community participation and any spatial ramifications. This analysis is set in the context of Federal (e.g. the Development Assessment Forum [DAF, 2005; COAG, 2007] and the National Housing Supply Council) and State Government objectives to decrease development assessment times, policy duplication, and application and legal costs.

According to Beer *et al.* (2007) planning policy developed in the post-World War II period has become increasingly neoliberalist in orientation, with these recent policy interventions in NSW representing a continued push in this direction. These policy shifts are the outcome of an increasingly neoliberal turn in NSW governance driven by deregulation and privatisation objectives which reorient the function of planning away from spatial equity to entrepreneurial and competitive city paradigms (Gleeson and Low, 2000; McGuirk, 2005; Cook and Ruming, 2008). Here planning power is delivered to the private sector (through functions such as private certification) or independent assessment bodies or higher tiers of government in an effort to mediate the input of local actors and facilitate efficient planning/development outcomes (Ruming, 2010). Ostensibly, these reforms are designed to facilitate fast assessment, thereby increasing housing affordability through the delivery of housing stock, as well as moving to detach local politics from the process which has led, in some cases, to lack of due process and corruption (Ruming, 2010; UDIA, 2009). While concerns over the affordable nature of housing (and the capacity of an efficient private sector to provide it) are the drivers of this new round of planning legislation, it is beyond the scope of this paper to test the success of these policy reforms in meeting their stated objectives of increasing affordability. Rather, this paper reviews the opinions and
experiences of council staff charged with implementing (or working within) these new policy frameworks.

Although this paper centres on recent policy shifts in NSW, the issues and findings have significant parallels to, and implications for, other Australian States and Territories. Since the early 2000s, each State government has initiated a review of their planning framework (table 1). While each State framework mobilises different legislative tools, the broad goals are strikingly similar as all attempt to expedite development assessment, ‘cut-red tape’ associated with planning and development, increase the level of certainty of assessment and improve housing affordability (Gurran, et al., 2008). The opinions and experiences of senior council officers in NSW potentially provide an insight into the operation of new planning instruments across Australia.

**Insert Table 1 here**

This paper is based on 21 in-depth interviews. All interviewees were senior council officers charged with implementing the new planning framework in their local area (i.e. either Managers or Directors of Strategic Planning or Development Assessment). In an effort to recognise the locational differences, quotations have been attributed to different types of councils (abbreviations outlined in table 2). While the opinions of councils are legitimate, it is recognised that they represent only one sector in the planning/development/building matrix. Further, it is recognised that local council often has a discursive position which is often opposed to higher tiers of government (Kuebler, 2007) and, indeed, local communities (e.g. Save Our Suburbs movement) and this positionality should be recognised when assessing the views/experiences of local council staff. The following section provides an overview development assessment in NSW. The third section of the paper reports the findings of the research. Some conclusions follow.

**Geography of Development**

According to Smith (2008) local government in NSW is responsible for assessing $20 billion worth of development each year (approximately two-thirds of total development value). Further, 70% of this value is tied to residential work, while 90%
is lodged by ‘non-developers’ (Smith, 2008). Nevertheless, development is not evenly distributed across NSW. As such, the paper frames this discussion of shifting planning policy in the context of diverse development locations. Seven categories of Local Government Areas (LGAs) have been identified (table 1)

Insert Table 2 here

Figure 1 provides an overview of the average number of Development Applications (DAs) council receive per annum for each group. Three groups of councils are observed. First, Outer-ring Sydney and Regional City LGAs on average have the highest number DAs per annum (above 1750 in 2005/06). Importantly, Outer-ring and Regional city LGAs also experience the most fluctuation in DAs due primarily to the larger proportion of greenfield development and susceptibility to fluctuations in the housing market more broadly (Berry and Dalton, 2004). The second grouping includes those in Inner- and Middle-ring Sydney and Large Regional Centres (around 1000 DAs per council in 2005/06). Finally, Small Regional Centres and Rural LGAs have lower numbers of DAs.

Insert Figure 1 here

Each group of LGAs is also characterised by different assessment profiles. Figure 2 presents the average number of days to assess DAs. It can been seen that while Middle- and Inner-ring LGAs do not experience the highest numbers of DAs, they do, on average, take the longest time to assess applications. In 2005/06 Inner- and Middle-ring LGAs had average assessment times of around 63 days. It should be recognised that many of these Inner- and Middle-ring applications centre on complex development sites which require significant studies and referrals to other agencies (NSWDOP, 2009a; 2008a). Nevertheless, Inner- and Middle-ring LGAs have equally been attacked for deliberately delaying approval and obstructing the development process (Morrison, 2008; SMH 11/3/07).

Outer-ring and Regional City LGAs, while experiencing larger numbers of DAs, have lower average assessment times (54 days in 2005/06). Large Regional and Small Regional LGAs have the next longest assessment periods (average of 40 days). Finally, Rural councils have the quickest assessment times (27 days on average). It is
important to note that for all groups (except Inner- and Middle-ring which are characterised by fluctuations) the average time for assessment has been increasing between 1998/99 and 2005/06.

**Insert Figure 2 here**

In the context of increasing development assessment times one of the principle objectives of the planning reforms is to increase the efficiency of council development assessment. The NSW Minister for Planning argued that the new policy direction would decrease the time taken for application assessment for single dwellings of 78 days, on average across NSW (DOP, 2008c). The reforms are seen to have the capacity to change a system which is based on process rather than outcome (Smith, 2008).

**Council Opinions and Experiences of Changes to the NSW Planning Framework**

This section explores council reflections on recent changes to the NSW planning system, starting with Part 3A of the *Environment Assessment and Planning Act 1979 (EP&A Act)* followed by the series of initiatives being implemented under the *Improving the NSW Planning System* reforms.

**Part 3A of Environmental Planning and Assessment Act 1979**

In June 2005 the *Environmental Planning and Assessment (Infrastructure and Other Planning Reform) Bill* was passed. A central component of this Bill was the introduction of Part 3A into the *EP&A Act* (DIPNR, 2005a). According to the Department of Infrastructure Planning and Natural Resources the new Part 3A would:

‘… facilitate major project and infrastructure delivery and encourage economic development, while strengthening environmental safeguards and community participation’ (DIPNR, 2005, p.1)

In addition *State Environmental Planning Policy (State Significant Development) 2005* defines developments which are considered major and State significant projects under Part 3A. Under Part 3A, applications deemed to be of State significance require approval from the Minister for Planning.
Part 3A was positioned as a policy tool which facilitated fast and efficient approval for developments identified as vital at either a State-wide or regional context (DIPNR, 2005; Lyster, et al., 2007). Nevertheless, support for the new planning instrument has been far from universal. Some of the main criticisms levelled at Part 3A revolve around the lack of council autonomy, the lack of appeal rights, the reduction in community consolation and a decreasing emphasis on environmental considerations (Mant, 2009; Ratcliff et al., 2007, LGSA, 2007). Many critiques position Part 3A as a technocratic response to approval, which places too much emphasis on politics (at a State level), rather than recognition of the unique characteristics of developments site (LGSA, 2007)iv.

Unsurprisingly, given the removal of approval authority from councils, few senior council officers saw the Part 3A as a positive planning tool in terms of either facilitating faster assessment or appropriate development. Importantly, opinions of Part 3A show a clear spatial pattern, with many smaller regional and rural councils having had few applications assessed under Part 3A, while in contrast many urban and coastal councils have had considerable experience and are much more vocal in their opposition. This trend is illustrated in Table 3 which outlines the number of times Part 3A determinations have influenced councils within each region. While there is a relatively even distribution between the regions of councils influenced by Part 3A (i.e. each region accounts for roughly the same proportion of total councils influenced), with the exception of rural regions, when the number of councils in each region is taken into account a different picture emerges. In can be seen that Regional City councils (12.3 per council), Inner-ring Sydney councils (9.4 per council) and Large Regional Centre councils (7 per council) are those most likely to experience Part 3A applications.

**Insert Table 3 here**

The criticisms of Part 3A are wide and varied. One of the main issues which councils are seen to face is the lack of clarity of the Part 3A process and how it differs from the more traditional assessment process run through council. Council officers identified the fact that the public are unaware of the Part 3A process and incorrectly assume that council is the consent authority:
There is a lot of confusion in the local community between State and Local Government; people don’t understand what [Part] 3A is. (RC)

Tied to this, it is suggested that much of the community is unaware of the revised avenues for consultation and appeal (despite the publishing of Part 3A applications). Further council officers view Part 3A as a tool which removes local autonomy and the capacity to make planning decisions in the context of local communities. The main critique is that approval is granted by a Minister who has limited knowledge of the local context:

Most of it unfortunately gets done away in Sydney, so whilst you might have a role in it you don’t really have a say in the outcome. (SRC)

The Part 3A process is a waste of time. It can be better handled at a local level. (LRC)

In many instances, the council actively positions itself in opposition to the approval process at a State level. In these instances the council operates as a lobbyist for the local community. This is a politically savvy movement on the part of the local council who does not want to be seen supporting unpopular State-based planning decisions:

…in those instances we act more as a lobbyist … we’ll act on behalf of the community and lobby the State Government. (IRS)

Although the Part 3A process is targeted at applications seen to be of State significance, council staff criticise this approach as one which fails to present a coordinated planning system. Interviewees suggested that both the type of developments and the approval process lack continuity with local planning schemes (LEPs and DCPs) and create precedents for future development approval which both the State Government and council will be held accountable:

It sets precedents that we find difficult to follow later on. There is not enough continuity between State Government decisions and Local Government decisions in relation to Part 3A. (ORS)

In addition, the removal of assessment authority from council is seen as something which negatively impacts on the financial status and workload of councils. The argument from officers is that, despite the removal of consent authority, councils remain the central point where studies/reports are managed and conducted:
The Department asks us what the issues are, because they haven't got a clue, and I give them the bare bones because they don’t pay us. (SRC)

Council staff also challenge the cost effectiveness of the Part 3A assessment process as one which increases the cost of development through higher approval fees. Most councils argue that they offer a more cost efficient assessment mechanism:

Typically the State Government charges anywhere between three and five times what a council would charge for a similar DA. (RC)

Nevertheless, given the previous discussion about time taken by LGAs to assess applications, the decision by typically large developers to seek State Government approval represents an outcome of their own cost-benefit analysis of running assessment through the local council. Whilst Part 3A might be a more expensive assessment process, these costs are potentially outweighed by faster approval and reduced consultation (especially on controversial applications) (Property Council, 2008)vi.

Ironically, officers see the removal of assessment from the local councils and the constant back-and-forward process of gathering relevant data as a process which increases the time taken to assess applications. This position directly challenges the Part 3A process:

It’s not a faster approval process because there are a lot of statutory steps involved in it. (IRS)

Interestingly, where the DOP (or the Minister) has returned assessment authority to local councils, support is more forthcoming. In these instances assessment/approval rests with council officers. Council staff suggest that they have the appropriate knowledge and experience to make informed/appropriate planning decisions. Where this does occur, the role of elected officials is usurped, effectively removing (local) politics from planning:

The Department has delegated its functions back to council. We’ve gone in as planning consultants for the Department, assessed the application … [and] report back to the Department who have then provided it to the Minister to sign off. You’ve bypassed the councillors. (IRS)
This arrangement is also seen as a more financially viable option, as the DOP pays the council.

It should be recognised that not all interviewees had negative perceptions of Part 3A. Where Part 3A has been seen as playing a significant role was in developments which impacted upon multiple LGAs:

*The Part 3A process is probably a good thing because there are certain applications that are of State significance and of State importance. (ORS)*

Importantly this cross-boundary co-ordination was also identified by some as one of the advantages of more recent changes to the planning system implemented under the *Environmental Planning and Assessment Amendment Bill, 2008.*

**Environmental Planning and Assessment Amendment Bill, 2008**

The draft *EP&A Amendment Bill* was released in early 2008 following a series of discussion papers released in 2007 (DOP, 2007). According the DOP (2008b) the reforms responded to a series of issues inherent in the planning system (table 4), with the Minister for Planning arguing that the reforms would:

‘... cut red tape for ordinary homeowners and small businesses and introduce independent decision-making into the system’ (Sartor, 2008)

*Insert Table 4 here*

Ostensibly, these reforms respond to long development assessment times and are designed to limit the approval authority of councils through the introduction of a series of independent approval bodies. The planning reforms were seen as necessary to bring NSW in line with best planning practice being implemented in other States (UDIA, 2009; HIA, 2009; Sartor, 2008). Unsurprisingly, the development industry is generally supportive of the changes outlined under the *Amendment Bill* (Smith, 2008; UDIA, 2009; Urban Taskforce, 2009; HIA, 2009). In contrast, local government claims that the changes implemented under the *Amendment Bill* will reduce the amount of funds made available for services and infrastructure, reduce local autonomy, and change the local character of neighbourhoods (www.keepitlocal.org.au; Ruming, 2010).
The discursive position put forward by the DOP that the reforms will increase the efficiency of assessment of smaller applications is also challenged. The majority of interviewees see the reforms as an attempt to facilitate (often controversial) large-scale developments:

*It’s all a smoke screen. It is supposed to be aimed at helping the mum-and-dads; the reality is it’s all about delivering easier approvals to the big end of town.* (MRS)

Further, it was suggested by the majority of respondents that the new planning framework, and its regional approval emphasis, downplays the specificity of individual locations:

*It’s the State Government getting involved where they don’t have to be … It’s another layer on an already complicated planning system.* (RC)

Despite concerted efforts from the DOP to dispel (what they refer to as) myths about the new system (DOP, 2008b) concerns about the new framework remain. From a council officer’s perspective, concerns centre on the universality of the changes, with the reforms seen to represent a large scale policy response to issues apparent in a limited number of locations:

*It is using a sledge hammer to crack a walnut. Some councils didn’t follow proper process.* (ORS)

*[All councils are] tarred with the same brush.* (ORS)

Alternatively, many interviewees viewed the reforms as a piecemeal policy response to endemic problems. Here, officers argued that the reforms offered little solution to a planning system which was fundamentally flawed – a position supported by many outside local government (Mant, 2009) and in industry (UDIA, 2009). In these instances, council officers suggested that the establishment of a completely new planning system, whilst a large change, represented the best long-term solution:

*The system’s stuffed. It’s a 30 year old system. Successive Departments, Ministers, bureaucrats have aided to it and they’ve got a system that’s hopeless.* (SRC)
It is such a complex process. Tinkering with the Act is probably the wrong way. They probably should have just looked at an Act that actually achieved something into the next generation. (IRS)

This new system would provide a more integrated planning system than neither the existing or revised system can achieve:

So there should be a simple way of preparing your planning rules, not giving government agencies multiple goes, not having the [DOP] micromanage the system. (SRC)

The State planning policies are separated from the regional are separated from the local. We don’t have the one stop shop planning document. (SRC)

Nevertheless, reflecting the locational differences in the type, number and assessment times of applications, many council officers suggested that the reforms would have minimal impact upon assessment (at least in the short-term):

[The reforms] won’t have a huge impact on us initially, but as the city grows, as you get more and more big developments they may. (ORS)

While the overall picture is one of senior council staff challenging the validity of the new framework, it should be recognised that potential positives of the new system are also identified. Echoing the objectives of the reforms, interviewees suggest that some of the changes will reduce the political nature of assessment at the local level:

All of these things add up to less politicised systems at a local level and that is what they’re aimed to do. (RC)

Interestingly, council officers identified local politics as a factor responsible for delays in approval. Council officers see the potential of these new independent regional structures as means for facilitating developments which they support, but which are challenged by elected councillors:

Most applications will still be dealt with by delegated authority and when these other decision makers come into play you are reporting to them rather than to the councillors. There is a huge difference for the councillors, to get their head around the fact that they may not have any particular say in DAs. (LRC)

The concerns expressed by councils over the broad changes to be introduced under the Amendment Bill are paralleled by their concerns over individual components of
the legislation, including the Joint Regional Planning Panels, the Planning and Assessment Commission and the Planning Arbitrators.

**Joint Regional Planning Panels**

One of the central pillars of the planning reforms is the establishment of Joint Regional Planning Panels (JRPPs). According to the DOP, the JRPPs will:

\[ \text{... determine, and provide advice to the Minister, on development proposals of regional significance. They will provide stronger-decision making through greater expertise, independence and local knowledge} \]

The function of the panels will be to determine applications which are deemed to have regional significance (table 5).

**Insert Table 5 here**

The regional focus of the JRPP was recognised as a positive by some council officers and was seen as a vital in the establishing a more responsive planning system:

\[ \text{The [JRPP] is a good idea because it will affect more than one council. We should be able to do that, as long as they speak to everyone. (ORC)} \]

In particular, the regional focus of the JRPPs was emphasised in metropolitan locations characterised by, in some case, very small LGAs and where large development have an increased chance of impacting upon neighbouring LGAs. However, the regional focus of the panels is equally challenged at regional/rural locations as being of little use given the larger LGAs (spatially) and the dispersed population. Alternatively regional councils suggested that they were ‘regions’ in their own right and assessing the impacts of developments on councils a considerable distance away (although in the same ‘region’) was pointless:

\[ \text{The [JRPP] are just another level of decision making. We are our own region and developments here don’t really impact on [neighbouring LGA]. I can understand it in Sydney where you have a lot of councils close. (LRC)} \]

Further, many of the councils challenged the regions identified by the DOP, suggesting that they did not represent regions with shared characteristics, but rather administrative areas which did not respond to the unique locations within them.
There was recognition from council officers that the JRPP were instruments designed to explore larger developments, which may otherwise have triggered Part 3A applications. For many LGAs in regional/rural locations the emphasis on larger applications meant that the JRPP would have minimal impact:

*The panels are more for the bigger development, so may not occur that often. My only concern is you’ve got more referrals, more costs you’ve got to get off the developer. (LRC)*

While councils recognised the potential for the JRPP to aid in assessing large, cross-LGA applications, overwhelmingly there is a sense of apprehension and uncertainty about their operation. In most cases councils challenged the capacity of JRPP to facilitate faster assessment. The JRPP were seen simply as another point of referral requiring additional documentation costs:

*I can’t see how it will make it faster when you’ve got another referral to an external group of people. It might improve it as far as court stuff, because people mightn’t be game to go against the panel. (LRC)*

*I don’t see there being any net gain. You’re replacing one consent authority with another. If anything they’ll be manned by Sydney people, and it’s the pedantic nature of the assessor process in Sydney that’s led to a lot of the developer complaints. (SRC)*

A number of important points arise from the previous quotations. It is recognised that the JRPP may be of greatest use in assessing applications which may have otherwise triggered appeals to the Land and Environment Court. Thus, JRPPs are seen as mechanisms with the potential to impact upon the assessment times of those applications which take a very long time to be resolved. Secondly, and echoing concerns about the regional structure, rural/regional councils challenged the composition of the panels, suggesting that the (potential) dominance of members from outside the region (Sydney based) would not facilitate faster approval, but also decrease the capacity to recognise local conditions.

However, metropolitan councils saw JRPP as tools for achieving better planning outcomes through the removal of consent authority from elected councillors. In these instances, the political nature of some urban councils was seen to work against the achievement of good planning and the implementation of an independent panel was seen as advantageous:
[JRPP] is a good idea, certainly in terms of getting more professional assessment of whether proposals are suitable or not, and not relying on some vested interests that happen at a political level. (IRS)

Further, councils argued that the JRPP replicated structures already in place in some areas. Many, primarily metropolitan, LGAs had established Independent Hearing and Assessment Panels (IHAP) as a mean of generating independent comment on significant developments, which are then fed into the assessment process. Councils with this system in place argued that the existing structure was extremely beneficial and that the JRPP would only be replicating this function:

The [JRPP] and the Planning and Assessment Commission is going to downgrade the operation of IHAP. Because a lot of those applications that go to IHAP will now go to these groups. It’s watering down council’s involvement. (ORS)

[DOP] are trying to encourage councils to adopt an IHAP, and then on the other hand they’re also handing a greater delegation role to the [JRPP] (ORS)

As hinted to in the first quote above, the concerns expressed by senior council officers over the introduction of JRPP are echoed in their discussion of other frameworks implemented under the planning reforms, such as Planning Arbitrators and the Planning Assessment Commission.

**Planning Assessment Commission and Planning Arbitrators**

In addition to introducing JRPP, the establishment a Planning Assessment Commission (PAC) and Planning Arbitrators (PA) were initiated under the *Improving the NSW Planning System* reforms. Importantly, most council officers saw these new structures playing similar roles to the JRPP or existing structures (such as Part 3A) and were less likely to offer a detailed opinion. Rather, the PAC and PAs were simply identified as further structures reducing the autonomy and capacity of local government.

The PAC is designed to perform a function similar the Minister of Planning under Part 3A of the *EP&A Act*. The PAC would assess applications of State significance while the Minister remains the consent authority for ‘critical’ infrastructures and development (Smith, 2008). The PAC has the capacity to conduct public hearings and
provide advice to the Minister (DOP, 2008c). Given that the PAC essentially operates in a fashion similar Part 3A, council officers have few issues beyond those raised previously – little difference is identified from a council assessment perspective:

*I would rather not see the PAC. I could never understand why the Minister thought it was a good idea to invest all that authority in himself when he was talking about open transparent decision making. However, the PAC, in the main you are talking about very significant projects and I think that is probably a reasonable thing to introduce.* (LRC)

The PAC represents a system whereby regional applications can be assessed by a higher level authority. Nevertheless, council officers identified the PAC as a more appropriate assessment tool that an absent (and according to some, uninformed) Planning Minister under Part 3A.

The *EP&A Amendment Bill* also facilitates the appointment of Planning Arbitrators. The PA will be responsible for reviewing council determination for minor developments where a request has been made by an applicant and mediate disputes between councils and applicants over the content of applications (DOP, 2008d). Like most of the interventions discussed here, opinion over the value and impact of PAs was mixed. Most council officers saw PAs of value only when further appeals are likely. Thus, in the cases where applications might trigger appeals to the Land and Environment Court, PAs were seen as potentially advantageous to both parties (especially given that court expenditure is an often cited indicator of council performance [DOP, 2008e])

*The arbitrators have got probably some scope to impact on us. People loathe going to the court – largely because of cost. I think they would pursue the [PA] avenue.* (SRC)

Nevertheless, it should be recognised that some councils are more litigious that others (see LGSA, 2005-2009) and many questioned the relevance of this new structure in the context of efficient existing mediation practices (e.g. Development Review Panels). Further, others saw the implementation of PAs as just another ‘bite at the cherry’ allowing applicants multiple points of appeal, potentially decreasing the authority of council:
It gives somebody two goes. So the council refuses your DA, we’ll try the planning arbitrator, they refuse it, then they go to the Land and Environment Court. How many times do they have to get something knocked back? (ORS)

Finally, It should be recognised that a series of other legislative changes have been made as part of these broader changes to the NSW planning and assessment system. The most significant recent development is the phased implementation of the NSW Housing Code which is designed ‘to unclog the development assessment system’ (DOP, 2009b, 5). The Housing Code frames Complying Development, Exempt Development and Private Certification. A more detailed analysis of this new policy framework will be provided in future research.

Conclusion

This paper has provided an overview of the issues and concerns of senior council planning staff from across NSW in the face of a series of new policies which are changing the nature of development assessment. Unsurprisingly, the initiatives and structures implemented under Part 3A of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Amendment Bill 2008 received far from universal support from councils. The arguments put forward by senior officers are not unexpected. Council staff argue that these new structures will:

- Remove local autonomy from the planning process.
- Fail to recognise the unique character of councils (social, cultural, economic, environmental).
- Decrease community participation/consultation.
- Decrease council revenue and increase expectation to fund new structures.
- Fail to recognise the geography of development and assume issues (and solutions) are consistent across diverse development sites.
- Fail to recognise the institutional history and knowledge developed by councils over long periods of time. Thus, leading to replication, repetition and a series of superfluous planning measures.
- Result in a technocratic, tick-the-box, black-and-white assessment process with little flexibility in the system. This, in turn, results in too much power being given to the State Government and the Minister for Planning in particular.
Facilitate the unfettered movement of developers between development locations, which fail to acknowledge local conditions.

Destabilise existing and efficient assessment structures (eg IHAP).

Despite the objectives of the policy reforms, result in a more complex planning and assessment process which will fail to deliver more efficient (faster) assessment.

However, what is apparent from this research is the identification of an underlying support for planning reform in NSW. Senior council staff, while critiquing the new institutional framework, simultaneously echo a call for a more efficient, less politicised planning and development assessment system in NSW. In particular, planning and assessment officials support:

- The remove of politics (especially that at the local level) from development assessment
- Support the capacity to engage in cross-boundary planning (although not necessarily in a manner under the frameworks outlined under the current reforms)
- The recognition of council staff as ‘experts’ in their local area
- A level of consistency across council planning frameworks

Perhaps the most significant finding of this research is a latent desire to entirety scrap the current legislative framework and work towards a new, more appropriate planning system in NSW. Something which can not be achieved through periodic reforms, such as those changes discussed in this paper. Further, more research is need to assess whether these new policy frameworks will have an observed impact on the affordable nature of housing – one of the key rationales behind their implementation.

References


Sutherland Shire Council (2006). *Submission to the NSW Department of Planning regarding Kurnell Desalination Plant and Associated Infrastructure*. Sutherland: Sutherland Shire Council.


Urban Development Institute of Australia (2008). *NSW Planning Reform, submission to the NSW Department of Planning by the Urban Development Institute NSW*. Sydney: UDIA.


Figures and Tables

Figure 1: Average Number of Development Applications per Council, 1998/99 to 2005/2006 (Source: DLG, 2000-2007)

Figure 2: Average Number of Days to Determine Development Applications per Council, 1998/99 to 2005/2006 (Source: DLG, 2000-2007)
Table 1: New planning policies (adapted from Gurran et al., 2008)

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Table 2: LGA categories

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<td>Inner-ring Sydney</td>
<td>IRS</td>
<td>Defined by Department of Planning</td>
</tr>
<tr>
<td>Middle-ring Sydney</td>
<td>MRS</td>
<td>Defined by Department of Planning</td>
</tr>
<tr>
<td>Outer-ring Sydney</td>
<td>ORS</td>
<td>Defined by Department of Planning</td>
</tr>
<tr>
<td>Regional Cities</td>
<td>RC</td>
<td>Population more than 60,000</td>
</tr>
<tr>
<td>Large Regional Centres</td>
<td>LRC</td>
<td>Population between 30,000 and 60,000</td>
</tr>
<tr>
<td>Small Regional Centres</td>
<td>SRC</td>
<td>Population between 10,000 and 30,000</td>
</tr>
<tr>
<td>Rural Area</td>
<td>RA</td>
<td>Population less than 10,000</td>
</tr>
</tbody>
</table>

Table 3: Part 3A determinations 2006 – June 2009

<table>
<thead>
<tr>
<th></th>
<th>Number of times councils within each region impacted by determination</th>
<th>Percent of total councils impacted by determination</th>
<th>Number of Councils</th>
<th>Average number of determinations per council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner-ring Sydney</td>
<td>113</td>
<td>16.6</td>
<td>12</td>
<td>9.4</td>
</tr>
<tr>
<td>Middle-ring Sydney</td>
<td>72</td>
<td>10.6</td>
<td>14</td>
<td>5.1</td>
</tr>
<tr>
<td>Out-ring Sydney</td>
<td>112</td>
<td>16.5</td>
<td>17</td>
<td>6.6</td>
</tr>
<tr>
<td>Regional City (pop. &gt;60,000)</td>
<td>123</td>
<td>18.1</td>
<td>10</td>
<td>12.3</td>
</tr>
<tr>
<td>Large Regional Centre (pop. 30,000 - 60,000)</td>
<td>119</td>
<td>17.5</td>
<td>17</td>
<td>7.0</td>
</tr>
<tr>
<td>Small Regional Centre (pop. 10,000 - 60,000)</td>
<td>128</td>
<td>18.9</td>
<td>29</td>
<td>4.4</td>
</tr>
<tr>
<td>Rural (pop. &lt;10,000)</td>
<td>12</td>
<td>1.8</td>
<td>53</td>
<td>0.2</td>
</tr>
</tbody>
</table>

Table 4: Benefits of the Environmental Planning and Assessment Amendment Bill (adapted from DOP, 2008c)

<table>
<thead>
<tr>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA approval times in some councils of upward of seven months</td>
</tr>
<tr>
<td>Unnecessary costs associated with court appeals</td>
</tr>
<tr>
<td>Approvals being based on political reasons</td>
</tr>
<tr>
<td>Infrastructure contributions being used as tax on homes</td>
</tr>
<tr>
<td>Concerns about conflict of interests in regards to private certifiers</td>
</tr>
<tr>
<td>Extended periods required to complete LEPs</td>
</tr>
</tbody>
</table>
Table 5: Development to be assessed by JRPPs (adapted from DOP, 2008c)

<table>
<thead>
<tr>
<th>Type of Development</th>
<th><em>Note</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial, residential, mixed use, retail and tourism development with a capital</td>
<td>This is also the objective of changes to the political donations legislation not discussed in this paper.</td>
</tr>
<tr>
<td>investment value more than $10 million and less than $100 million</td>
<td></td>
</tr>
<tr>
<td>Community infrastructure and ecotourism developments more than $5 million both public</td>
<td>The state agency then responsible for planning policy</td>
</tr>
<tr>
<td>and private, such as schools, community halls and child care facilities</td>
<td></td>
</tr>
<tr>
<td>Certain coastal developments <strong>SEPP (Major Projects)</strong></td>
<td></td>
</tr>
<tr>
<td>Designated development (e.g. environmental impact statement)</td>
<td></td>
</tr>
<tr>
<td>Development where the council is the proponent or has a potential conflict of interest</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) This is also the objective of changes to the political donations legislation not discussed in this paper.  
\(^2\) The state agency then responsible for planning policy  
\(^3\) Also known as **SEPP (Major Projects) 2005**  
\(^4\) Recent public examples of this debate include the approval the Kurnell desalination plant (SSC, 2006) and the Barangaroo development in central Sydney (Farelly, 2006)  
\(^5\) On the advice of Department of Planning staff  
\(^6\) Exemplified by the ‘All the way with Part 3A’ workshop held by the UDIA in 2007.  
\(^8\) The numbers do not equal the total number of determinations, as determinations can impact upon multiple council areas  
\(^9\) Some of these issues would also be addressed through the Building Professionals Amendment Bill 2008 and the Strata Management Legislation Amendment Bill 2008.