THE LAW SOCIETY
OF NEW SOUTH WALES

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14 September 2012

New Planning System Team
Department of Planning and Infrastructure
GPO Box 39
SYDNEY 2001

Email: http://haveyoursay.nsw.gov.au/newplanningsystem

Dear Sir/Madam

A New Planning System for NSW – Green Paper

I am writing to you at the request of the Law Society's Environmental Planning and Development Committee (Committee).

The Committee has responsibility to consider and deal with any matters relating to or associated with environment planning and development law, and to advise the Council of the Law Society on all issues relevant to that area of practice. Membership of the Committee is drawn widely from experienced professionals whose expertise has been developed variously in representing the interests of local government, government instrumentality, corporate and private clients.

The Committee applauds the initiative of the NSW Government in embarking on the most comprehensive and radical reform of the planning system for over thirty years.

Consultation

In the Green Paper, the NSW Government has given a broad policy outline of its proposed "transformative reforms" and sets out the principles which will shape a new land use planning system for NSW. Public submissions are being invited on the Green Paper until 14 September 2012. The Green Paper contains a high level overview only of the proposed strategic framework to be included in the new planning system with the missing detail proposed to be supplied in a subsequent White Paper and draft legislation. Further public consultation on the detail of the reforms as set out in the White Paper and draft legislation is essential.

It is proposed that the new planning legislation will be introduced to the NSW Parliament in early 2013. The Committee stresses it will be of great benefit to the integrity of the reform process if an appropriate period of consultation is allowed before the final version of the Bill is introduced into Parliament. More comprehensive details of the proposed changes and proposals for implementation are required to enable a proper evaluation of their efficacy.

Green Paper

The Green Paper refers to and adopts some conclusions from the document "A Review of International Best Practice in Planning Law". The Committee notes, in this context, that planning law in each country operates within a specific legal, constitutional, institutional and financial context and the totality of the system that delivers planning outcomes must be considered.

The proposed planning system needs to be clear about how the planning legislation will fit with other State and Federal Legislation planning and assessment processes and be designed so that processes are compatible, e.g. obligations assessment processes under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) , the *Threatened Species Conservation Act 1995* (NSW), *Heritage Act 1977* (NSW), etc. It is also unclear if there will be a review of the Land and Environment Court.

The Green Paper is unclear as to how the Planning System and proposed legislation will integrate with planning under the *Local Government Act 1993*. The integrated community plan was conceived in that Act as being the principal strategic planning document for a Local Government area. Local plans were shown in all discussion materials and presentations proposing and explaining the amendments that introduced integrated community plans as flowing from the Integrated Community Plan.

A new Planning Act

The Green Paper contains the Government's proposed "blueprint for change" to the NSW planning system. Central to the changes will be a new "enabling" Act (Act). The new Act will establish a broad framework for the planning system. "Under this model, land use planning and development assessment policies will still be provided but will be in the form of delegated instruments or practice notes and guidelines".

Key elements of the statutory scheme, in the Committee's view, should be contained in the Act itself and not be left to be made by regulation or notes and guidelines.

Objectives

The new Act will establish a "broad framework for the planning system" and the overarching purpose is to:

- promote economic development and competitiveness;
- connect people and places;
- protect the environment;
- improve people's quality of life;
- resolve land use trade-offs based on social, economic and environmental factors,
- effectively manage growth and change.

These purposes are expressed in extremely wide terms and the Committee considers there is merit in providing some specific references to the objects which, whether broadly captured or not, should inform a new planning system. Some examples include objects from the current Act, as set out in section 5, including:

"5 Objects

The objects of this Act are:

(a) to encourage...

(vii) ecologically sustainable development, and.....

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment".

The Green Paper states that: "The achievement of sustainable development will remain the main objective of the Act" (page 17). However, the Committee is concerned at what it perceives to be a focus on economically sustainable development as opposed to ecologically sustainable development.

It is also crucial, in the Committee's view, that any new planning system must be considered and developed against the backdrop of the rule of law.

This was the theme of the Committee's earlier submission to the Independent Panel's Issues Paper "The Way Ahead for Planning in NSW?" The Committee's submission focused on the philosophy underpinning the current Act and the principles of the rule of law which should inform the development of a new planning system. A copy of that submission is enclosed.

The Green Paper states that the objectives of the broader planning system, which will also inform the objectives of the new Act need to be:

- Simple;
- Certain;
- Transparent;
- Efficient;
- Effective;
- Integrated;
- Responsive.

The Committee would add to this list the basic tenets of the "rule of law":

- Generality
- Equality;
- Public accessibility;
- Prospectivity;
- Clarity;
- Certainty and predictability;
- Stability;
- An independent and impartial judiciary.

The Committee stated in its earlier submission that the principle of independence is particularly apposite to a specialist court, such as the Land and Environment Court (LEC) which deals with environmental and planning disputes where there is a high

potential for significant external pressures. This independence has particular resonance for the later discussion of "depoliticising" of planning.

It is also worthwhile addressing other particular legal principles and issues in this context:

Certainty and predictability:

Currently, a decision maker can search widely for government policy, and avail itself of draft policies, old and new, in discovering the public interest (this is the so called Terrace Tower principle – see [2003] NSW CA 289 at 81)

Will Government, in the name of certainty and consistency, reverse this principle, so that the so called "Planning Policies" become a Code for the new Planning System? If not, it runs the risk that the "search widely" approach will erode the strategic certainty that the new system promises to deliver.

Clarity and stability:

The transition from the old system to the new is obviously a massive task. How is Government to avoid the obvious difficulties in dealing with the "imminent and certain" problems that will accompany applications caught up in the transitional "maelstrom"? There have been many examples of highly complex transitional provisions delivered at the "11th hour" which leads to anything but clarity. How will Government avoid these problems which are likely to occur on a much larger scale?

The need for adequate notice, procedural fairness, and transparency is very important in delivering the new Planning System. A well planned and open transition phase will demonstrate the Government's commitment to these particular aspects of the rule of law.

Blueprint for Change

The NSW Government's blueprint for change to the planning system is based on four fundamental reforms. One of these is the aim of restoring community confidence and integrity in the planning system by making planning information accessible and planning decisions transparent. "Public participation will be genuine and occur earlier in the strategic stages of the process" (page 19).

The Committee examines the four changes proposed by the Government to empower the community to give effect to these aims.

A Public Participation Charter

The Green Paper notes that the major shift in the new planning system is to engage communities as an integral part of making key planning decisions that will affect the growth of their communities.

The Committee noted in its earlier submission that the Issues Paper identified the concept of community ownership as a key objective of implementation of a new planning system.

The Green Paper notes that it is proposed to engage the community early at strategic planning stages in the setting of the overall planning outcomes for an area. While the Committee agrees that community engagement is crucial to the ensuring a sense of

community ownership with a new planning system, the challenge will be to achieve community engagement at a strategic level.

The Committee notes that the Green Paper proposes a Public Participation Charter "to require **appropriate** community participation to occur in plan making and development assessment" (bold emphasis added). Although some detail is contained in the Green Paper in relation to proposals for community participation at the plan-making level, there is no detail about the role, if any, of community consultation in the actual assessment process. Indeed, from the information supplied in the Green Paper, it is clear that the streamlined approval process outlined in the Green Paper proposes to:

- increase community engagement at a strategic level;
- increase the availability of code assessable development (i.e. no community engagement) see Change 14;
- provide for an "amber light approach" which would allow authorities to suggest modifications which would overcome objections (see Change 15 – p39)

Better and more effective community consultation is seen as replacing the current system "key issues being revisited by the community at various subsequent development assessment stages". The difficulty with such an approach is that community members will perceive the lack of opportunity to participate in later stages as disenfranchisement, in favour of non-community members (developers). On a qualitative basis, for the majority of development applications lodged by householders building or renovating their homes, these are works which have an enormous impact on neighbours. The average dwelling home represents a house owner's life savings. The preservation of the value of the home is one of the most significant issues facing that owner. Given a choice between a relatively lengthy wait for approval and the situation where a substantial proportion of residential development becomes exempt and complying, many householders may prefer the current system.

Transparency in decision making

The Green Paper notes that the Government proposes to increase community confidence in decisions made under the new planning system by developing a strong evidence base, improving access to planning information and providing accountability in a strategic context for decisions. It is stressed that under the new planning system decisions will be evidence based, not political. To "depoliticise" decision making, the NSW Government is proposing that decisions on development applications will be streamed to appropriate independent and expert panels. State and regional scale development will continue to be assessed by the Planning Assessment Commission and the Joint Regional Planning Panel".

While the Committee supports the concept of an independent and expert panel for local level development, it considers that depending on their constitution, the Planning Assessment Commission (PAC) and the Joint Regional Planning Panels (JRPP) can be seen to be highly politicised. It is unclear what the system for transparency and accountability will be if decisions are to be made by a panel of experts.

E-planning

The Committee supports the greater integration of the planning system with electronic systems.

The Committee is concerned however, with the resource and implementation implications for Councils, the Department and the Government.

Code assessable development

The Green Paper notes that code complying development will be maximised to reduce transaction costs and speed up approvals.

In earlier Law Society submissions, the Committee has noted that the majority of development applications lodged by households to renovate or build a new dwelling are works, on a qualitative basis, that have an enormous impact on neighbours. Despite delays, it is the Committee's view that many "householders" may prefer the current system to any expansion of exempt and complying development to remove their right to consider the impact of any development on their own property. The Committee also notes ongoing concerns with any proposal that further expands the private certification regime. The problems with the current system are well known. The proposals require a seismic cultural change to accompany the focus shift to re-education and up-front involvement for communities.

The default mandatory compliance code must be backed up by a robust certification regime. This will mean a more active role for town planners, who in turn will need a legislative accreditation system (apart from the CPP system) if that involvement is to have any legitimacy.

Expanding appeals and reviews

The Green Paper states that "it is proposed the existing appeal rights under the Act be retained". The Committee strongly endorses the retention of existing rights of appeal.

In its earlier submissions, the Committee opposed any review by a body other than the LEC in accordance with "rule of law" principles, given the perception of the independence of elected officials in comparison with panel members who may be appointed or removed by the Government.

The Committee emphasises its support for the current system of merits appeals to the LEC which effectively depoliticises decisions. The decisions are made by an independent court, subject to obligations to provide for a fair hearing, by persons with a duty to act judicially and who have security of tenure. This contrasts with the position of members of the JRPP or PAC who retain the right to act for parties in their private capacity which raises at the very least a perception of conflict of interest.

However, the "depoliticisng" of the process can be aided by a move towards an inquisitorial rather than an adversarial process and further clarity as to how the appeals process itself is to operate.

The Green Paper proposes the expansion of existing review mechanisms under sections 82A and section 96AB of the current Act. These reviews are proposed to be undertaken by an expert not involved in making the original decision e.g. if the development was determined by Council staff, the review will be undertaken by a

more senior staff member. Where the original decision is made by the JRPP or PAC no review mechanism will be available.

The LEC has a pivotal role, in the Committee's view, in ensuring a sense of community ownership of the planning system. It also plays an integral part in a system based on the rule of law. It is the Committee's view that there should be no extension of appeal or review rights to the JRPP or the PAC. Where there is to an appeal in respect of a planning decision, that appeal should be to the LEC.

Strategic Planning

The key issue is how this will work in practice where most of the policies and plans will not be given statutory force.

The Green Paper states that "where existing State Environmental Planning Policies include important development control provisions these controls will be collapsed into Local Land Use Plans and associated development standards and guidelines or adopted in the development of the relevant Subregional Delivery Plans". This aspect of the new Planning Act has the potential to create uncertainty and result in litigation unless it contains very carefully drafted provisions setting out how the hierarchy of instruments will operate.

State Significant Development (SSD)

The Green Paper is largely residential development focused but does make it clear that a separate assessment regime will remain for SSD (subject to minor amendments). The Committee supports the retention of the current SSD regime. The Committee identifies some potential issues with the current SSD regime which the Planning Act could resolve such as:

- the integration of all NSW government assessment requirements into the one assessment process removing the current extent of duplication;
- ensuring that the conditioning power for SSD is sufficiently wide; and
- removing the "substantially the same development" test for modifications in favour of a wider power to modify.

In the Committee's view, the Minister or the Council and not the PAC or JRPP should remain as respondent for any appeals. The Committee supports in principle the statement in the Green Paper that State Significant Development will still be:

".....made consistently or in accordance with established strategic planning and principles, and government endorsed policies and technical standards. In cases where the consideration of a proposal raises some issues about strategic direction or planning or endorsed policies and technical standards these will be referred to the Minister or Department for consideration in a State-wide policy context, rather than adopting a new principle, policy or standard ad hoc in determining a particular application."

Other Opportunities

The new Planning Act provides an opportunity to address some basic issues including amending:

- the definition of development so as to exclude any activities carried out for the purpose of assessing the impacts of a project or enabling the preparation of detailed designs (e.g. geotechnical investigations or water monitoring bores); and
- the definition of the subdivision of land so as to exclude a lease of part of the land (or at least exclude leases for a term of less than 5 years).

Certainty

The Government is to be congratulated on the magnitude of the task that it has undertaken and its aim to provide transformative change to the planning system. Given the size of the task and the fundamental nature of the reforms it is clear that significant effort will be to be put into the drafting of savings and transitional provisions to provide clarity for projects and planning proposals which are underway or about to commence.

The Committee and the Government agree that certainty is a crucial element in enabling both investors and the community to interact with the planning system positively and with confidence.

The Committee notes that it will be necessary for the Government to allocate substantial resources to implement the proposed reforms and that substantial procedural and cultural change will be necessary. In view of these factors it will be incumbent on the Government to ensure there is a workable framework for participants in the planning system during this transitional phase.

Conclusion

The Committee appreciates the opportunity to participate in the reform process and looks forward to the opportunity to comment further following the release of the White Paper and exposure draft Bill.

If you have any questions in relation to this submission, please contact Liza Booth, Policy Lawyer for the Environmental Planning and Development Committee, by telephone on (02) 9261 0202, or by email to liza.booth@lawsociety.com.au

Yours faithfully,

Justin Dowd
President

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2 March 2012

The Hon Tim Moore & the Hon Ron Dyer
Co Chairs
NSW Planning System Review
GPO BOX 39
SYDNEY NSW 2001

Dear Mr Moore and Mr Dyer,

***NSW Planning System Review Issues Paper: The Way Ahead for Planning in NSW?* (Issues Paper)**

I am writing to you at the request of the Law Society's Environmental Planning and Development Committee (Committee).

The Committee has responsibility to consider and deal with any matters relating to or associated with environment planning and development law, and to advise the Council of the Law Society on all issues relevant to that area of practice. Membership of the Committee is drawn widely from experienced professionals whose expertise has been developed variously in representing the interests of local government, government instrumentality, corporate and private clients.

The Committee applauds the initiative of the NSW Government in embarking on a major review of the system which defines how planning decisions are made. The Committee appreciates that consultation with stakeholders is a critical part of this process.

The Committee notes that the terms of reference for the review require the Planning System Review to:

"1. Consult widely with stakeholder groups and communities throughout the State to identify the issues that require consideration in developing a new planning system;

2. To consider stakeholder and community submissions on issues identified during the consultation process".

After the consultation and consideration of stakeholder views, the Planning System Review is to recommend a statutory framework and necessary implementation measures for a new planning system in New South Wales.

Introduction

The Issues Paper contains a list of 238 feedback questions. Stakeholders are also invited to comment on matters that may not have been included in the paper but which are relevant to the review. The scope of the specific questions range from those exploring the philosophy and underlying principles of a new planning system to matters of detail arising from issues raised in the consultation phase relating to the present system.

The Committee considers that it is neither possible nor productive in the time available for its members to attempt to provide detailed comments on each of the questions raised in the Issues Paper. The Committee has chosen instead to focus on the objectives underpinning the Act and operation of the planning system. Any review must in addition, in the Committee's view, be considered against the backdrop of the rule of law.

The Committee has also made specific comments on the issues raised in Chapter E of the Issues Paper relating to appeals and reviews and to the role of the Land and Environment Court.

Objectives of the Act

The original philosophy underpinning the *Environmental Planning and Assessment Act 1979* (Act) and the operation of the planning system was:

1 The Act would bind the Crown and public authorities.

2 The level of environmental assessment and public participation was to increase where a proposal was likely to have an increased environmental impact.

3 Where a development application was required under Part 4 of the Act certain matters had to be taken into consideration and relevant planning instruments would apply.

4 Where development consent was not required (for example those matters set out in schedule 1 of the Environmental Planning and Assessment Model Provisions 1980) environmental assessment was nevertheless required and where the proposal was likely to have a significant impact on the environment a higher level of assessment was also required.

5 There was to be an increased level of public participation to that which had existed under the previous planning regime and in particular there was provision for public exhibition and public participation in respect of planning instruments under Part 3.

6 A specialist Land and Environmental Court (LEC) was set up to deal with both merit appeals and judicial review matters under the Act.

7 Whilst there was power for the State government to make State Environmental Planning Policies and for the Minister for Planning to call in a particular development application (section 101) this would be subject to checks and balances.

This was reflected in the objects of the Act set out in section 5.

The Committee considers that these objects remain valid and should inform the development of a new planning system.

The Act has been amended on many occasions since the original enactment, one of the most substantial amendments being the introduction of Part 3A (now repealed) providing for a planning and assessment regime outside the provisions of Part 3, 4 and 5 of the Act.

The rule of law

Overview

The Honorable Justice B Preston, Chief Judge of the LEC delivered a paper to the Environment and Planning Law Association (NSW) annual conference on 30 October 2011 entitled 'The Enduring Importance of the Rule of Law in Times of Change'. The paper is reproduced on the LEC website.

The theme of the speech was that public confidence in the Australian legal system rests in part on the "rule of law". Basic tenets of the rule of law were set out on pages 5 to 8 of His Honour's paper and some excerpts from those pages are reproduced below:

Generality
The law must be general and should apply without exception to everyone whose conduct falls within the prescribed conditions of application.

Equality
Everyone is equal before the law, including government officials.

Public Accessibility
Laws need to be publically promulgated, adequately publicised and readily available.

Prospectivity
Laws ordinarily need to be prospective, not retrospective.

Clarity
The meaning of the law must be clear as to what it enjoins or forbids.

Certainty and Predictability
The law is not contradictory or requiring of the impossible.

Stability
Relative stability for consistency in the law is necessary for developers, investors, residents and the community to be guided in their short-term and long-term decision-making.

An Independent and Impartial Judiciary
This statement of the principle of independence is particularly apposite to a specialist court, such as the LEC which deals with environmental and planning disputes where there is a high potential for significant external pressures.

It should also be noted that in his address to the Opening of Law Term dinner on 30 January 2012, the Chief Justice of New South Wales, the Hon Tom Bathurst, also spoke of the importance of the rule of law, saying "while the rule of law and sound governance are the foundations of a free and stable society, they are also essential to a prosperous one". While his comments were directed to the criminal justice system primarily, they are nevertheless apposite in the context of the planning system. He made reference to the fact that public confidence in a system is essential

and that those who have the least confidence in a system tend to be those who have the least information about it. Public participation at every level of the planning system will improve the level of information available and consequently understanding of and confidence in it.

Application to the planning system

It is the Committee's submission that any review of the planning laws of NSW should be conducted within a framework which incorporates the concept of the rule of law.

Core attributes of a planning system guided by rule of law principles include:

1 The continued right to approach the LEC to restrain a breach of the planning laws by any person (open standing)

2 The continued role of the LEC both as a court of judicial review and in respect of merit appeals for planning decisions.

3 The planning laws (and subordinate provisions, regulations, state policies, local environmental plans etc.) should be readily available, understandable and applied consistently by consent authorities.

4 Where there is proposed to be a change in the planning laws or planning provisions then generally there should be advance notice and an opportunity to comment on such changes. [Many examples come to mind of significant changes of the planning laws which were effected with no notice whatsoever such as the Affordable Housing SEPP and the changes to existing use rights provisions].

Community Ownership

The Issues Paper identifies the concept of community ownership as a key objective in implementation of a new planning system.

F3 What can be done to ensure community ownership of a new planning system?

This theme was the subject of a number of discussion papers preceding the introduction of the Act. It was acknowledged that in the face of very limited opportunity for public participation in the planning system civil disobedience had occurred manifested in particular by the "Green Bans."

Accordingly the Committee considers it imperative that the review of the NSW planning system should allow adequate time for all stakeholders (including local councils given their pivotal role in the planning system) to make informed comment.

The role of the LEC

The Committee considers that the LEC is an institution that enjoys public confidence and respect. It is perceived as an impartial and authoritative forum where applicants, respondents and concerned third parties are afforded a full hearing. The LEC has a pivotal role in the Committee's view in ensuring a sense of community ownership of the planning system. As previously discussed it also plays an integral part in a system based on the rule of law.

It is the Committee's view that where there is to be an appeal in respect of a planning decision, that appeal should be to the LEC and not to another body (e.g. the Planning Assessment Commission or the Joint Regional Planning Panel).

The types of matters that should be the subject of an appeal

Merit appeals against refusals and deemed refusals of development applications have existed for a long time in the NSW system. Those appeals have generally (except for designated development) been only available to the applicant.

Some stakeholders have expressed the view that there should be a more general third party appeal right granted.

The Committee is of the view that the original philosophy of the Act that third party rights of review be available to certain classes of development is a sound one; however consideration may be given to a review of the classes of development.

The Issues Paper raises the possibility of a right of appeal against a council decision not to proceed with a re-zoning application or a council decision to so proceed.

It is the Committee's view that to provide such a right of appeal would inherently conflict with the strategic planning role of zoning.

The following observations of McClellan CJ in *BGP Properties Pty Ltd v Lake Macquarie City Council* [2004] NSWLEC 399 at 117 are apposite:

In the ordinary course, where by zoning land has been identified as generally suitable for a particular purpose, weight must be given to that zoning in the resolution of a dispute as to the appropriate development of any site.... planning decisions must generally reflect an assumption that, in some form, development which is consistent with the zoning will be permitted. The more specific the zoning and the more confined the range of permissible uses, the greater the weight which must be attributed to achieving the objects of the planning instrument which the zoning reflects (Nanhouse Properties Pty Ltd v Sydney City Council (1953) 9 LGR(NSW) 163; Jansen v Cumberland County Council (1952) 18 LGR(NSW) 167). ***Part 3 of the EP&A Act provides complex provisions involving extensive public participation directed towards determining the nature and intensity of development which may be appropriate on any site. If the zoning is not given weight, the integrity of the planning progress provided by the legislation would be seriously threatened.*** (Bold emphasis added)

Chapter E: Appeals and Reviews; Enforcement and Compliance

The Committee's comments in relation to the specific questions in this chapter are set out below.

E1 What appeals should be available and for whom?

The current classes of appeal and standing in those appeals are appropriate, although it might be appropriate to review the classes of development.

E2 Should anyone be able to apply to the Court to restrain a breach of the Act?

The current "open standing" provisions are considered appropriate.

E3 In what circumstances should third party merit appeals be available?

Third party merit appeals should continue to be available in the case of designated development. There is an argument that third party merit appeals should be available in other cases, for example where a proposed development does not comply with development standards in a Local Environmental Plan (LEP).

E4 Should approval bodies or concurrence authorities be the respondent to some appeals?

Yes. Concurrence authorities should be the respondent to appeals that concern a challenge to conditions of consent in relation to a concurrence.

E5 What should be the time limit for any appeal about local environmental plan provisions?

The Committee does not support a merit appeal about LEP provisions. If this question is really about judicial review then the current period of three months should remain.

E6 Should the Court have absolute discretion as to costs orders? Or should the Court's discretion be limited and, if so, in what respects?

Yes. The Court should have absolute discretion as to costs orders.

E7 Should any appeal be allowed against the reasonableness of a development contribution if it has been approved by the Independent Pricing and Regulatory Tribunal?

If IPART review of section 94 Contributions Plans continues, an appeal against the reasonableness of a plan should not be allowed.

E8 What sort of reviews should be available?

Current arrangements are satisfactory.

E9 Who should conduct a review?

There should be no extension of appeal or review rights to Independent Hearing Assessment Panels, Joint Regional Planning Panels, or the Planning Assessment Commission. All appeals (whether called 'reviews' or 'appeals') should be to the LEC.

E10 What rights should third parties have about reviews? And what provisions should apply regarding the costs of the review?

See the answers to E3 and E6 above.

E11 How might recommendations by the Planning Assessment Commission be reviewed?

The Committee considers that all appeals should be heard by the LEC.

E12 Do some penalties need to be increased?

Current penalties are adequate. Councils should be allowed to undertake enforcement action for recovery of fines and costs rather than relying on the State Debt Recovery Office.

E13 What new orders should there be or what changes are needed to the present orders?

The Committee does not suggest any changes.

E14 How can enforcement be made easier and cheaper for consent authorities?

See the response to E12 as to recovery of fines and costs. For consents, and if a principal certifying authority (PCA) is involved in respect of a development, then the PCA should be required to monitor and enforce its own approvals. The removal of section 127(7) of the Act (which would enable a council to take injunction proceedings and prosecute simultaneously) would make enforcement easier and cheaper for councils.

E15 Should councils have a costs or other remedy against private certifiers in certain circumstances?

No. The Building Professionals Board (BPB) should be the regulatory body to monitor and review the actions of private certifiers.

E16 Should monitoring and reporting conditions be reviewable?

No comment.

E17 Should there be an appeal right for third parties in proceedings against private certifiers?

No. Third parties have the right to lodge a complaint against a private certifier to the BPB.

E18 Should a consent authority have a wider right to revoke a development consent?

A consent authority should not have a wider right to revoke a development consent than at present.

E19 Should councils have a statutorily created 'best endeavours' defence?

No comment.

E20 Should council compliance officers be given rights of entry and inspection and of access to official databases for compliance and enforcement inspections under planning legislation on the same basis as they have such rights under the Local Government Act?

No comment.

Conclusion

The Committee appreciates the opportunity to participate in the review process and looks forward to the opportunity to comment further following the release of the Green Paper in April 2012.

Yours sincerely,

Justin Dowd
President