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By

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I thank the Planning Institute of Australia (PIA) NSW for the opportunity to present the Liberal/Nationals views on our planning system.

The PIA has tendered invaluable professional objective advice to the Government and the Liberal/Nationals Opposition on all aspects of NSW planning law.

During the State Government's process leading up to major amendments to the planning laws last year, the PIA was readily available to the Government and the Opposition and ensured critical issues were considered.

Whether or not advice is acted upon is a constant challenge in dealing with political parties!

Having taken advice from the PIA and many others, the Liberal/Nationals have determined that, notwithstanding Labor's amendments to the planning laws last year, the planning framework in NSW needs a complete review.

The Liberal/Nationals are committed to undertaking that review and providing a new legislative framework in the first term of Coalition Government if successful in the next State Election due in March 2011.

The State Labor Government's stated position is quite different! It considers there is no need for a new legislative framework and the current Minister has been critical of the Coalition's commitment to review the legislative planning framework.

Interestingly the former Minister for Planning (the Hon Frank Sartor) recently told a Legislative Council Inquiry that NSW needed a new Act. ("There was a view amongst...the planning profession that we actually need a new Act. I agree..." – Hansard, Legislative Council Committee on State Development, 15.6.09)

The former Minister's position markedly differs from the position he presented to the NSW Parliament during the 2008 overhaul of the Planning Legislation. Not once in the Parliamentary debate did he or any member of the Government concede the need for a new Act.

Law evolves as the community evolves. Planning law is no exception.

The Environmental Planning and Assessment Act was enacted in 1979 – three decades ago. The Liberal/Nationals believe we need a new Act.

Pre the 1979 legislation, it took over four years of consultation with community and industry groups to enact that legislation which, for its day, was a giant leap forward in achieving a workable planning framework.

For the first time legislation recognised the entitlement of local communities to have a say in the development of their local areas.

Albeit that legislators may have had the best of interests – the concept of trying to develop a legislative framework for the planning system and in the same document, deal with development control and assessment processes has proved to be very problematic.

However the current Government still sees no need to completely overhaul the Act. Instead there have been numerous major and minor “add ons” to that legislation.

Major changes were made by State Labor in 1997, 2005 and again in 2008.

It helps to review the essence of these amendments.

The 1997 amendments saw the number of development applications to consent authorities more than double. The stated intention of the Government had been to reduce the number of development applications and simplify the process.

The Government’s intent was admirable. The result was a disaster.

The 2005 amendments saw the introduction of Part 3A to the EP&A Act which was a major step by the State Labor Government toward removal of power from local communities to have a say in the determination of developments.

Its genesis was a recognition that development approvals for major state infrastructure were often mired in bureaucracy and took too long to approve.

However the solution from Labor was to deny local communities any voice at all. Such a denial inevitably leads to conflict in local communities and a lack of ownership in outcomes.

Worse still, under State Labor the use of Part 3A has extended to hundreds of projects that arguably are not of state or regional significance. And community alienation has grown.

There has also been strong suggestion of undue influence through donations to the State Government which has also added to the community’s distrust of Part 3A.

The Liberal/Nationals have already announced we will legislate to remove Part 3A.

We also acknowledge that it will be necessary however, to ensure there is legislative capacity to entitle the Minister for Planning (on behalf of the Government) to deal with development applications for what should be a limited number of truly State significant developments.

The challenge will be to ensure that the new framework guarantees that no future government will abuse the process the way the current Government has done.

It will also be critical that there be complete transparency in the process which is sadly lacking in the current Government's Part 3A deliberations.

The 2008 amendments to the EP&A Act continued to develop the theme of denial of local community involvement in development decisions.

These amendments have also introduced new layers of bureaucracy with "panels" of non-elected officials being established to remove certain responsibility from local government.

The Liberal/Nationals shared and share concern with the Government regarding unnecessary delays in processing development applications.

The Liberal/Nationals did not share and do not share the belief that panels are the panacea for these concerns.

The pivotal role of panels in the new State Labor planning framework was one of many reasons why the State Liberal/Nationals opposed the 2008 Labor amendments to the EP&A Act.

We have particular concerns about the additional layering onto an already complex Act with the Joint Regional Planning Panels (JRPPs) and the Planning Assessment Commission (PAC).

The critical concern is the lack of accountability of the JRPPs and the PAC by removal of any final obligation to any elected officials.

Currently councils are accountable for their decision-making. Elected officials may be removed at each election if they fail to reflect the right balance for their local community in the constant tension between development and conservation.

Another concerning aspect is the uncertainty around how the JRPPs will interact with councils (eg: why should councils/ratepayers have to bear the expense of a Land and Environment Court proceeding defending the decision of a JRPP which may have been inconsistent with the council's view?)

Striking the right balance is critical. That's what government's are expected to do!

Making provision for the expected increase in population in NSW (approximately 74,000 per year) and specifically Sydney (approximately 54,000 per year) is a major challenge for government.

Ensuring the economic health of NSW through appropriately expeditious development approvals is part of the equation.

But also there is a critical need for communities to have a voice in how their local communities will evolve.

In that context the State Labor model of panels removing all entitlement for elected officials to have a final say is an issue worthy of further debate and is certainly one for concern.

The Liberal/Nationals want this issue addressed in the review to be undertaken of the EP&A Act under a Liberal/Nationals Government.

By the time of the election we will have had the JRPPs and PAC operating for 21 months and we will be closely monitoring their effectiveness and their capacity to reflect community concerns.

Community groups often ask for the Coalition to commit to completely remove all panels.

However, it has been argued strongly to the Coalition that at least one form of panel is very beneficial.

A panel which some councils voluntarily use currently (which don't require legislation), is the Independent Hearing and Assessment Panel (IHAP) which it is said have extremely positive outcomes where recommendations of such a panel are then considered by elected councillors.

It is argued that such panels give an opportunity for the applicant and the community to be heard in an open and transparent forum and any elected councillor wanting to override a recommendation from such a panel has grave political risks if such opposition is not well justified.

Whether or not such panels or the State Labor Government's current incarnation of panels (JRPPs and PAC) are appropriate would be fully evaluated in the complete review of the EP&A Act proposed by the Coalition.

Within the context of the review some aspects will however be critical from the Liberal/Nationals perspective.

Of great concern is that the current Government appears to not understand the necessity for strategic planning.

A critical and far reaching concern for the Coalition in our proposed review of the EP&A Act will be a focus on a strategic planning framework.

To get NSW back on top (where it was when the Liberal/Nationals lost Government in 1995), there has to be a strategic planning framework that can deliver a clear sense of where we want NSW to be in the decades to come.

Planning is not just about the development application process. Planning underpins how NSW will deliver a better living and working environment for our citizens.

The Liberal/Nationals have noted the view that such a strategic framework is best contained in a structure away from the legislative framework setting out the processes for development control and assessment.

We are also aware of the arguments that a strategic planning framework may or may not be best contained in its own legislation.

These issues will be addressed in the Liberal/Nationals review.

The review will also allow progression of some of the themes recently highlighted at the Council of Australian Governments (COAG) – briefly it should be acknowledged that the Liberal/Nationals see substantial merit in seeking to achieve a consistent planning framework across all States and Territories.

No commentary on planning would be complete without acknowledging that a major concern for the community and for the development industry has been heritage conservation. The community often perceives that heritage is not well protected. The development industry sometimes sees heritage conservation as an obstacle to development.

Clarity and transparency around heritage conservation decisions is critical.

State Labor remains committed to the Planning Minister also being the minister responsible for heritage conservation.

Only one other State or Territory in Australia (Victoria) adheres to that view.

The Liberal/Nationals have accordingly already announced that there will be a Minister separate from the Planning Minister responsible for Heritage.

This will ensure there is a strong and independent voice at the Cabinet table to argue the case for heritage conservation.

Whether it is conservation of our heritage or ensuring our planning framework and system are appropriate for NSW in the 21st Century, the Liberal/Nationals will ensure a framework is developed to ensure transparent planning processes which guarantee the best outcome for NSW citizens.