

28 June 2013

[Plans and Policies](#) via on-line upload

New Planning System
GPO Box 39
SYDNEY NSW 2001

Dear Stephen

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *NSW White Paper – A New Planning System for NSW*.

The [Australian Sustainable Business Group](#) (ASBG) is a leading business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 130 members comprising of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

ASBG strives to assist regulatory agencies to prepare more efficient regulatory process, with the outcome of achieving practical, efficient, low cost solutions to achieve high environmental outcomes.

ASBG's submission looks at the proposed planning system and draft legislation from a business perspective and one focused on the larger, and in an increasing number of cases, the more controversial developments. In addition to better planning certainty our members also require an effective infrastructural environment in which to thrive in and benefit the economy of NSW. So not only are large industrial developments and the certainty of their progression a desired outcome, so is the certainty of provision of utility infrastructure.

There is no question that environmental protection and management are essential. Permitting only appropriate developments in appropriate areas taking environmental issues into account is standard practice for business and the ASBG.

Businesses are just as affected by poor environmental performance as everyone else. Poor or lack of consideration of environmental issues are simply poor business choices and must be part of long term sustainability. Environmental protection and sustainability are important and must be part of the planning system and the on-going operations of any business.

However, the current planning system has in part degraded in to a rather adversarial process. New developments face a tough uphill process of dealing with the range of objectors, which increasingly includes competitors as well as those politically based. This is in contrast with the increasingly stringent and considerable environmental, engineering and other requirements on new developments. So why have major developments become so adversarial? Why cannot a better balance be struck between both public and private goals?

The answer is generally linked to the current planning system which has in part encouraged an adversarial process to develop, so much so an industry has been formed.

The next question can be answered by another; will the White Paper fix the current planning system? Can the adversarial attitudes, processes and expectations that have become so ingrained be reduced and cooperation increased? ASBG considers there is more room for improvement on the White Paper over the improvements it has already made.

1 General Overview of the Draft Legislation

ASBG supports the general thrust of the new planning legislation and considers it a major improvement on the current planning system. It embraces elements of separating the objective issues from the subjective issues, on which the planning decision processes are based. Expanded use of exempt and complying develop is an example, in ASBG's mind, of an objective and scientific approach to planning issues. However, the more difficult are the subjective issues, which span from visual appearance to objection based on non-environmental issues e.g. commercial, emotional, political etc.

ASBG considers that the two should be separated within the planning system as much as practicable. The reason for such a split is simply the issues are addressed in different ways. Objective processes are science based and where high certainty exists the performance level is set using such principles. In many cases the emissions from a new development are well covered by the requirements and criteria under the environmental agencies. In contrast, subjective issues need to be addressed in a demonstrative and symptomatic manner dealing with the subjective and emotional issues.

While the White Paper improves the separation of these issues, it could progress this process further and as a consequence, deliver further certainty. ASBG is still concerned that certainty, compared to what other Australian states can offer, is lacking in the White Paper, especially for major and controversial developments in NSW.

2 Major Developments and Planning

The White Paper makes attempts to improve certainty for major developments, but does not go far enough in ASBG's view. Pre-assessment and approval of zones for controversial developments, such as waste facilities, it is feared will not be able to deal with the outrage when an actual development is proposed. The question is will the proposed planning system be able to provide certainty for a controversial development, if local opposition is strong at the time of development consent?

Obviously the strength of opposition against a development is a determining factor, but there are many cases where important developments were stopped due to the level of opposition, objectors' support by the media and a dysfunctional legislative system which undermines certainty. An example of where this is common is in the area of waste infrastructure.

ASBG looks forward to a planning system that can better address community concerns, limit or counter the amount of false information campaigns, which can accompany a contentious development and prevent legislative loopholes stymieing developments at the eleventh hour.

ASBG considers there is a requirement for a range of processes, some legislative and others procedural and optional to assist in the community acceptance of such proposals. Ideas for these are provided in chapter 3.

2.1 Waste Infrastructure

There is an obvious need to improve the certainty for unfashionable, unattractive, but necessary and essential developments. Waste infrastructure is an obvious candidate of the problems facing the planning system and is used as an example for other similar types of developments. Waste infrastructure is an essential requirement to ensure the health and safety of the public and communities, but it is having increasing difficulties with certainty in the current planning system.

Waste infrastructure development ranges from the highly controversial, such as putrescible waste landfills, hazardous waste treatment facilities, waste incineration to recycling centres and drop off centres. Currently the Sydney Metropolitan area is reliant on 3 putrescible landfills for municipal waste, which will drop to one within five years¹. The last putrescible waste landfill approved was Woodlawn, about 230 km south of Sydney just east of Lake George.

Siting of a new putrescible landfill, which will be inevitable², will be a very difficult task under a planning system as gaining a local community acceptance will be very difficult.

The question is can the proposed planning system provide certainty for a new putrescible landfill (or other similarly controversial developments) in the future?

An extreme example of where planning failed in siting a replacement landfill occurred in [Naples, Italy](#) 2007-2011. A high level of perceived corruption with local waste management resulted in substantial opposition from the public to any replacement solution for municipal waste. Waste, vermin, flies piled high in the streets. Large tracks of land outside Naples had 100,000's tonnes of waste illegally dumped. The European Union threatened to fine the Italian Government on health grounds over the issue. Eventually the Italian army was brought in to reopen a closed landfill while a solution was found. The partial result was a waste incinerator, but this still only accepts 50% of the waste stream with the rest exported internationally at great cost.

While landfills are very difficult to site this trend also affects other waste facilities, including recycling centres. For example, the Remondis' development proposal in Camellia for a waste recycling facility [was ceased](#) following considerable community opposition lead by fear of asbestos on site. This is despite WorkCover stating the risk was minimal as it was a fully capped site.

Waste recycling centres are an essential infrastructure for the delay in requiring a new municipal waste landfill. The Environment Protection Authority (EPA) has told ASBG³ that the Sydney area alone will require 27 new waste recycling centres by 2015, increasing to 33 by 2021 for commercial waste alone. Domestic waste requires a similar level of facilities. Given the outcome of the Remondis proposal, any waste facility will have major community issues and difficulty under planning laws.

¹ See 1) Public Review Landfill Capacity and Demand, NSW Department of Planning and

2) [Australian Landfill Capacities into the future](#) 2009 Hyder (DEWHA) Table 7

² Increased recycling and pre waste treatment should prolong the life of putrescible landfills, but if the recycling facilities are also blocked at the planning stage this will bring forward the need for a new putrescible landfill. This is put forward as an example of the potential failure of a planning system.

³ EPA presentation at ASBG's NSW Waste Reform Update Seminar and Workshop 30 October 2013

Waste management is a utility requirement and as such can be considered infrastructural and may qualify for *Division 5.3 Public priority infrastructure*. However, this process is made more complex as waste utilities are now largely privately owned, which may introduce complications when being included in State, Regional or Local Plans. New tools are required.

Some examples include:

- In the United States development-impact fees is common for a proposed new waste facility.
- A similar approach worked successfully for the Lucas Heights landfill expansion in the late 1990s. \$1.50 per tonne was allocated to support local sporting clubs and interests with over \$50m being provided to the local community. As a result of a comprehensive process the local community supported the landfill's expansion.

What is required from government is a better way of addressing community fears and concerns from developments which meet all appropriate environmental, health and other objective requirements. In some circumstances the Government will have to accept that the benefits of development to a region or the state will be so high as to require overruling local community concerns. Again a better set of well funded processes should be employed to win over the local community and also provide accurate information to those who will benefit from the development, including the region and the entire state.

2.2 Industrial and Mining Developments

An increasing trend under the current planning system is the high expectation that local objectors can be successful in blocking developments, especially large high value industrial or mining activities or waste as discussed above. Again the White Paper provides some increased certainty that such a major development may not be stopped close to the end of many years down an expensive planning approval process. But will this be enough to encourage major investments back into NSW after so many have been burnt? To make NSW No 1 again means planning will have to deliver equivalent or better certainty and support as provided by other states which NSW competes against for such projects.

A case in point is the Walkworth Mine⁴ in the Singleton area. After three years in design and planning arrangements and after being approved by the Planning Assessment Commission and supported by the Minister, it was disallowed by the Land and Environment Court on a merit appeal. This is one of the faults of the current planning system. There are multiple layers of approval which can be required on a major development. Even if one layer approves there are alternative pathways for a negative decision to be made, either under the courts, by the Minister etc.

ASBG therefore supports the Planning Bill's s9.3 *Decisions subject to appeal to Court under this Division*, which, among other actions, makes the decision of the *Planning Assessment Commission* final. However, this may not be enough.

Members cite the current merit appeal process as subject to abuse. Objectors can commence a merit appeal on one subject matter, but then introduce a continuing list of other objections. In some cases the list becomes a fishing exercise and a process of attrition. Many spurious claims can be made with outcomes of extending the time in court and to exhaust the proponent through both time and funds.

ASBG recommends that merit appeals should be subject to a preset listing of the objections. If new objections arise they should be subject to a separate appeals process.

⁴ CCW's overview of the case <http://www.corrs.com.au/publications/corrs-in-brief/court-refuses-expansion-of-rio-tintos-walkworth-coal-mine/>

3 Improved Certainty for Major Developments and Investment

Considering the need by large investors to be more confident in gaining planning approval in NSW, attract investment from other states and provided appropriate environmental and other planning conditions are met ASBG proposes the following ideas :

- Establish long term special zones (20 year+) for noxious or controversial industries e.g. for waste, sewage, electricity and large heavy industrial developments (noting mines are limited to sites with commercial minerals).
- Provide increased up front certainty in the types of developments that could be permitted and what their likely environmental and acceptance criteria will be. ASBG wishes to avoid the process of *“Show us [the determining authority] what you have and propose and we will tell you if we like it or not with no guidance as to what that is.”* And also *“Perhaps we may change our minds due to various pressures placed upon us.”*
- Dealing with the objective issues: Create a section of the Department of Planning to assist major developments in navigating the path towards a more certain outcome. This can involve special consultation panels to deal with the objective issues associated with the proposed development focusing on the environmental and other certain requirements.
- Dealing with the subjective issues: Create a section within the Department of Trade and Investment to assist major developments through the planning process by providing advice and assistance on a range of mechanisms in achieving with community acceptance and managing outrage, media issues and scare campaigns.

Use of the NSW Department of Trade and Investment to assist industrial and infrastructural development is consistent with their objectives, unlike the Department of Planning, which is the regulator. ASBG believes this is a better balance of Government, in contrast to the current process of having a regulatory role only. Under this proposal the DTI can assist by suggesting a number of options, which may vary from the educative to the facilitative, including:

- Undertaking community consultation → how best to do this and mistakes of the past
- How to best promote community benefits of the development
- Use of funding schemes for community groups such as sporting clubs to bring them into the debate as representatives of the local community.
- Processes to help manage outrage and smear campaigns
- Dealing with merit appeals
- Dealing with the media and assistance with media training
- Use of public affairs processes and techniques

This submission was prepared by ASBG’s Policy reference Group member of which assisted in this submission’s development.

Should you require further details or information in relation to this submission please contact me.

Yours Sincerely

A handwritten signature in black ink that reads "Andrew Doig". The signature is fluid and cursive, with the first name "Andrew" written in a smaller, more regular script and the last name "Doig" in a larger, more stylized cursive font.

Andrew Doig
CEO

Australian Sustainable Business Group (ASBG)
T. +61 2 9453 3348
F: +61 2 9383 8916
(PO Box 326, Willoughby NSW 2068)

Email address:

andrew@asbg.net.au
www.asbg.net.au