

STANDING COMMITTEE ON STATE DEVELOPMENT
LEGISLATIVE COUNCIL

Inquiry into the New South Wales planning framework

**Response Evidence by Mr. Sam Haddad, Director General Department
of Planning**

By John Mant

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***Response to Evidence of Mr. Haddad, Director General
Department of Planning***

By John Mant

You have asked me to comment on the evidence given by Mr. Haddad regarding the relative virtues of the standard form Liverpool LEP using a land use zoning format and the parcel/place formatted Warringah LEP which is modeled on the South Australian system. It is understood that in comparing the two LEPs he held up the two documents and noted their relative length. The issue of the relative length of control documents was also referred to in written answers to question 11.

In his answers it seems that Mr. Haddad has unintentionally misled the Committee. As my response will explain, the comparisons he made were not like with like. In detailing why this is so, I will first describe the format of the Warringah LEP 2000.

The Warringah LEP 2000 – a single document

Apart from the support of the local community for development controls that reflected their planning objectives for each locality (while having regard to the Department of Planning's demands for an increase in dwelling units), the format of the plan was designed to enable all of the controls applying to a parcel of land to be integrated into one document referenced by a lot number. The controls for each parcel are to be found either in the General Principles of Control that applied to every parcel or in the controls for each locality. (Although a locality could be a single parcel, it is usually is a collection of parcels with similar desired future characteristics.)

*The Warringah document included in its text the effect of the relevant 16 SEPPs and three REPs and a number of DCPs and, as a consequence, those separate control documents no longer applied to Warringah. The objective was to make the LEP the *only* document of controls in the same manner as the 'Development Plan' in SA is the *only* document to which regard can be had in making a development control decision. Both are intended to simplify the assessment and appeal process by avoiding the need to search through a number of different control documents and then work out how any that may apply to a particular parcel alter the effect of others that apply.*

Mr. Haddad misleading comparison

If Mr. Haddad wanted to make a proper comparison he should have included with the Liverpool LEP all of the SEPPs, REPs and DCPs that applied at the same time as the Warringah plan came into effect. Even now, while the number of SEPPs and REPs have been reduced State-wide, the 'single DCP' document which accompanies the LEP document for Liverpool has several hundred pages.

The new Liverpool LEP has 168 pages. The main DCP has 140 pages of controls that apply everywhere in Liverpool and then there are hundreds of pages that apply to a number of specific places. For example, the CBD Part has 80 pages. In addition the Council's website advises 'It is advisable to check State Environmental Planning Policies and Regional Environmental Plans (prepared by the NSW Government) that may apply to your land.'

When Mr. Haddad sought to physically compare the development control document applying to Warringah with those applying to Liverpool, he should have held up the Liverpool LEP and its accompanying DCP of many Parts and pages together with the full texts and maps of the still relevant SEPPs and REPs. It was misleading to merely compare the size of the Liverpool LEP to the Warringah LEP.

The Warringah LEP 2000 - a parcel formatted document

A user of the Warringah LEP need only obtain a copy of the General Principles of Development Control and 2-5 pages of integrated locality specific controls apply to the parcel/locality of interest. In these few pages and the one page locality black and white map will be found the land uses in that locality, the set backs, FSRs, other place controls and a list of heritage items or parcels of special (such as threatened species areas), if any. The format facilitates the inclusion of any parcel controls that are applied from any other legislation. Being a single document the relative weight to be given to each control will depend on the wording of the specific control, rather than which level of document it is in.

Unfortunately the General Principles of Development Control on the Warringah plan were longer than they needed to be. The Council had to demonstrate to the Department that all of the provisions of SEPPs and REPs which were to be integrated into the LEP were to be found somewhere in the document. A number of the General Principles were superfluous given the specificity of each of the locality controls. This has been demonstrated by the Department's recent cull of irrelevant SEPPs and REPs.

It was not intended that the whole of the document be published physically. The original intention was to publish the plan digitally as part of a cadastral database which would provide an efficient and effective planning system. Unfortunately, unlike in SA, the NSW legislation requires a LEP to be physically published in the Government Gazette and Parliamentary Council would not support a change to that requirement. Also, rather than make it available for interrogation free online, the Council wanted to only make it available as a printed copies of the plan, presumably to recover some costs. In SA, while a printed copy is obtainable, the official record is digital and most people merely download the two parts of the document applying to the parcel or parcels of interest. Given the black and white maps this is easy.

A more honest comparison therefore would have been to hold up the Liverpool LEP in its entirety (because the format is driven by the land use zone format, rather than the neutral parcel/place format, the relevant controls for a parcel are to be found in most of the Parts in the LEP), the parts of the DCP that applied to a parcel in Liverpool (such as the General controls of 140 pages and the 80 pages of CBD controls) plus all the pages of the SEPPs and REPs that still apply. Undoubtedly many hundreds of pages in all.

This collection of documents would then be compared to those applying in Warringah, namely, the General Principles pages and a set of locality controls of say 5 pages, amounting to a single development control document of just over 100 pages. (This number may be considerably less now that some SEPPs and REPs have disappeared, enabling a reduction in the pages in the General Principles.)

The weak case against the Parcel format

The simplistic and misleading comparison made by Mr. Haddad is typical of the manner in which the Department has failed to intellectually address the case for parcel/place-formatted controls. The only substantive criticism that I have heard against the single document parcel format was that the necessary requirement that any amendment to the controls applying to a parcel must specifically amend the control document, would mean that the Department would no longer be able to just layer over the existing controls a new SEPP or a spot rezoning, or Part 3A approval, without having to clearly identify how the existing controls were affected. It would mean more work for the Department if it had to work out how every LEP using a parcel format had to be amended if new policy was intended.

There are several things that can be said about this criticism:

- *Firstly, that being about State and Regional concerns it is likely that the relevant control would be in the General Principles, rather than the individual locality controls. Given that many of the General Principle controls in each LEP would be the same, the task of specifically amending each council's digitally recorded single document of controls would not be nearly as complex as apparently envisaged by the Department.*
- *Secondly, every user of the layered control documents in the existing land use zoning formatted system has to work out how a provision in a SEPP or REP affects a provision in a LEP or DCP. Why should not the State take responsibility for creating a single set of integrated and certified controls thereby reducing substantially the legal and other professional costs inherent in the existing system? In SA you can rely on the relevant two parts of the Development Plan. In NSW there are a stack of control documents, competing not only in their wording but in their relevant 'weight'. Every user has to do the reconciliation job, and take the risk that others may come to a different view of how one layer of controls affects another layer. Would it not be better if the Department did it once and then publish an authoritative integrated set of controls on which all could rely?*
- *That the discipline of working out how the existing controls would need to be amended if new policy was to be implemented might reduce the tendency to constantly make amendments to the controls. The ease with which a SEPP can be layered over the mass of existing documents, encourages lazy policy making. This is evidenced by the over 100 SEPPs that have been made since the Act was proclaimed.*

The Department's alternative way of simplifying the confusion of the current system

In his answer to Question 11 Mr. Haddad is extolling the virtues of the standard template LEP and 'single DCP' alternative to the single parcel formatted control document.

In answer to his exposition, the parcel/locality format has other virtues, besides integrating all the controls applying to a parcel into a single document:

- *One is that it recognises that everywhere is not the same as everywhere else and that communities want controls that might lead to more 'contextual' development.*

With a locality format one can start with agreeing on a desired future character and then draft the controls that will help achieve that future.

This approach does not mean that things will not change. In response to Departmental demands to increase dwellings in Warringah, the local communities decided to accommodate the additional development in concentrated areas well served with public transport. The desired future characters of the various localities in the Dee Why centre were quite different from that which existed before the year 2000. The result of the new LEP was very extensive changes to the use and form of land and buildings in Dee Why. Place formatted controls did not inhibit extensive redevelopment.

- *The locality format allows communities to understand what is intended to understand clearly the controls that apply. The drafting of the DFC and controls can include a high degree of community involvement and support. The opposite applies to understanding the standard format LEP where the separate parts for each type of control requires trying to put together the effect of provisions from a number of different places in a highly legalistically expressed document.*
- *While the locality format document allows the controls to help achieve the objectives for a place. By contrast, the standard land use zone format requires different places to fit the format. Under the drafting rules each of the limited number of standard zones must enable exactly the same land uses.*

This has some absurd consequences. The two+ kilometer Paddington shopping strip, with retail rentals the fourth most expensive in Australia and a much do tourist attraction, is zoned under the standard 'neighbourhood shopping' zone with an objective of serving 'local shopping for local residents'.

While there may be height and set back differences between places, the wording of any locality based DCP cannot override the effect of the provisions of the LEP. Place differences are at the margin only. Standard zones, standard heights and set backs, standard codes for house types and no doubt soon commercial and retail buildings. With limitations on the use of heritage provisions, it is clear that the planning objectives for NSW are that everywhere is intended to look like everywhere else.

Conclusion

In closing, I find it difficult to believe that nearly ten years after the Warringah plan was brought in, Mr. Haddad had not been provided with advice that allowed him in his oral evidence to describe simply the differences and the pros and cons of each system and to resort instead to comparing the differences in length of documents that did not play the same role.

Surely, given the Department's insistence in State wide conformity with the everywhere will be the same standard format LEP, the relative advantages of the two formats would not be still a matter for research and consideration by the Department. Had the Department done its work properly then maybe Mr. Haddad may not have unwillingly mislead the Committee in his oral and written evidence.

John Mant

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