



DELEGATE'S REPORT

13 October 2009

DR7

**PLANNING LEGISLATION SKILLS AND
KNOWLEDGE FOR COUNCILLORS**

FILE: 163

KEO (NRN)

{ Folio No. * }

SUMMARY:

Reporting on attendance at Local Government Learning Solutions' Councillor Professional Development Program on planning legislation skills and knowledge for councillors held at Macksville on 21 September 2009.

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DESCRIPTION:

This one day program was very informative and an enjoyable day. The aim of the workshop was to identify the responsibilities of local government for regulating land use and the role of local government councillors in developing and implementing environmental planning instruments. It commenced with the background and an overview to the development of planning law in NSW. It then went into the issues around the application to local government's involvement in planning for its respective communities.

The day then reviewed the changes to Planning Legislation recently introduced and touched on proposed changes which have yet to be enacted. All of which have major implications for local government councils. The day concluded with an overview of "Code of Conduct" and "Conflict of Interest" issues.

The background gave a history of the development of planning legislation (NSW), moving from Common Law to the development of legislative and court law, all of which can impact on council's planning decisions.

The discussion defined the role of the minister for planning (NSW) and their role in directing, reviewing, approving or rejecting council's planning plans (LEPs). Further, that council has very limited scope for questioning the minister's decision. This is clearly defined in the Environmental Planning and Assessment Act 1979 (NSW) (EPAA) and its many amendments, the latest of which is 2008. Further, that much of the detail is, or will be, contained in regulations and guidelines to the Act which do not require parliamentary approval and can be more easily changed. The overall impact is to further restrict local government councils' role in land use planning.

The workshop went into detail of the various aspects of planning and I will not re-state these here. However, some points raised were:

- Council's need to undertake sound strategic land use planning for incorporation into their local LEP.
- Climate Change needs to be incorporated into the local LEP.
- Other factors need to be included, including commonwealth legislation in relation to endangered species, while there are several other pieces of legislation which can impact on council's ability to make planning decisions.
- Use of SEPP 1 will disappear.
- DCP guidelines do not have force of law.
- REPs will be removed from the planning hierarchy but can be used as strategies.
- S149 certificates contain constraints and permissions applicable to the relevant piece of land.
- Where an illegal entity is discovered they must be given time to address the issues. However it is the responsibility of councils to enforce the law.
- Existing use rights may be extinguished after 12 months absence of the approved activity.
- Any extension of existing use activity requires approval.

There was discussion on state significant, integrated, designated, and complying development, with the role of the joint regional planning panels and the planning and assessment commission being outlined.

The workshop then went into the details of the zones and subzones included in the standard LEP which are mandatory for all local LEPs, and the criteria for each which apply across NSW.

The discussion of "conflict of interest" highlighted the necessity of councillor declaration even if there could be a perception of "conflict" rather than actual, with several case studies being reviewed.

Of particular interest was the issue of pre-judging councillor decisions before all the information was in the public arena. Again this also included the possible perception of councillor/s having pre-judged a decision before all the information was in the public area. Several case studies were discussed and issues identified specifically where they had led to the dismissal of individuals (ministers and councillors) or councils.

As stated at the beginning, this was a most informative day as it consolidated my knowledge of the planning legislation and where we are heading (at the present time). It is also good background for our workshop on 12 October in relation to the impacts of the new zones on Kempsey Council's land use plans.

RECOMMENDATION IMPLICATIONS:

- ***Environmental***

Understanding the planning legislation will enable councillors to include environmental issues in land use planning decisions.

- ***Social***

The need for good land use planning is essential in developing social cohesion within our communities.

- ***Economic (Financial)***

Poor land use planning could result in significant costs and poor economic returns. It could also result in significant legal costs.

- ***Policy or Statutory***

Nil

RECOMMENDATION:

1. That the information be noted.
2. That all councillors attend a similar workshop/seminar.

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COUNCILLOR E A GREEN