

The tragedy of Planning in NSW

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Why planning has been a tragedy:

- Locked into a limited guild role
- Lack of critical intellectual examination and engagement
- Fatal flaws in planning system; worse through bungled reforms
- Failure to exercise discretion well
- Now taken over by those who want no design discretion
- Instead of designing for context, one size will now fit all

Planning Introduced as an Extra Guild

- Planners - Added to a guild structured State and local government bureaucracy
- An extra division or department with a monopoly over the word 'planning'
- Each guild needs a specialized output
- Guild power = specialist legislation = monopoly for a profession:—
e.g., building, public health, heritage, disabled access, threatened species, flooding, bush fires.....
- Planners - monopoly over the land use zoning mechanism adopted from public health and safety controls

Post war statutory Metro plans

Comprehensively zoned whole area

‘The purpose of planning is to:-

- separate land uses,
- get rid of non-conforming uses and
- increase the need to travel.’

Output of Planners became the outcome

The means, the end

Production is sequential

- Land use control layered over subdivision, building, and health regulation:–
- eg, Part 12A of the LGA Act - an addition to Parts 12, 11 & 10.
- Design of new development = the separate application of separate control systems – land use, subdivision, set backs from boundaries, heights, construction

Legislative but not design integration

- After a sixty-year battle for supremacy, finally subdivision and building incorporated into the planners' legislation
- Badly done - explosion in DAs
- And traditional process hasn't changed – still sequential – failure to take next steps

Intellectual and critical weaknesses

- What is planning? Not been satisfactorily answered
- Planning promises pretentious outcomes from a limited range of outputs
- Outputs have become the outcomes; the rest is spin
- Universities limited by demands to produce specialized professionals
- Undergraduate degree – with some outstanding exceptions, Patterson's 'dog catchers'
- No tradition of intellectual discourse by Department – rather suppression of criticism
- Capture of PIA by the system – doing business inside the tent;

The Fatal Flaws in the NSW system

- **Complexity**

- e.g., Layers of control documents – four statutory layers, many separate control documents in each layer
- With land use zone as the main control, format = separate layers of specialized controls e.g., Chapters in template 'single' LEP

- **Poor exercise of design discretion**

- No proper separation of powers e.g., councilors in legislative mode making arbitral decisions;
Minister – conflict of roles, lack of transparency
- Planners rather than city architects assessing applications; e.g., success of SEPP 65 panels

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- No third party appeals as a break on undue influence on council discretion
- No efficient but transparent spot rezoning system
 - corruption at council level or complex way around e.g., SEPPs
- Until recently, few due process hearings e.g., IHAPs

- **Adversarial merit appeal system**

- *Smith v. X Council* instead of

- *In the matter of the application of Smith in the Council of X*

- **Poorly executed reforms**

- Especially integration of subdivision & building control into planning legislation

The recent 'reform' agenda

- Improving outputs – time taken to grant approval
- Not about outcomes – better sustainable design

Restoring the Past

- **Standardise & Codify**
 - Template LEP and design codes for standard urban products – Schedule 7 revisited
 - Reject contextual controls & exercise of design discretion – Kibble No 1 report
 - Except in declining no of ‘heritage areas’ - Kibble 2

Consequences

- Places must fit template controls, rather than controls designed to achieve desired future character of places
- Easiest way is to use standard products in standard zones
- Unreformed Part 4 discretion decisions still difficult, but there is Part 3A

Part 3A

- ‘Everything subject to consent’ – c.f., the English planning system
- Process efficient but not transparent
- No compulsory independent hearing with written reasons for recommendation/decision
- Not available for everyone

New development remains:-

- Separated standard land uses, except for suspect 'mixed use' areas
- Sequential *subdivide first, build second* process
- Placement of standard urban products on standard lots in standard zones everywhere in Australia
- Each use with its own parking space
- Moonscaping land enables efficient placement of standard urban products
- Retail monopolies granted \Rightarrow no competitive market and only chains need apply
- Context and place play no role in design of development
- Architects and urban designers play no role

What could be done?

- The major purpose of planning is not to separate uses but create quality places with less need to travel
- Control system relies on simple performance measures for buildings and activities in their contexts with independent, transparent, expert discretionary assessments
- Development starts with buildings and supporting infrastructure designed to fit the place and purpose

Developments designed for places should be as easy to do as the 'could be anywhere' code developments

- That means:-
- Single digital document of integrated controls applying to each lot and 'locality' – a collection of like lots
- Land parcels provide a neutral format in which to integrate controls
- Any changes must 'specifically amend' the document
- Single staged approval system with certificates re measurable standards issued to assessment body
- 'Rezoning', i.e., a change to the controls, create a new place

‘Development Assessment Act’, not ‘Planning Act’

- Single lot control document is only criteria for exercise of discretion – no ‘S79C’
- Do away with subdivision control altogether. Control only uses, if necessary, and building and infrastructure design
- If selling lots only, must obtain consent for use and nature and location of buildings, if any
- Use buildings/persons/sq ms per hectare rather than minimum lot size for density control

Digital Cadastral Data Base

- Integration of development assessment system into digital title land information system; ie, a search of a lot would provide - title, controls, certificates, approvals, orders, licences ..
- Integrated digital land information = notice to world of development rights - necessary if not controlling subdivision and using density controls;
- Also allows more flexible land uses – performance rather than prohibition

Separation of roles

- All discretionary decisions potentially go to expert panels with hearing process – for advice or decision
- Broad-band assessment staff positions to employ more professionals with urban/architectural design skills
- Separate staff pursuing urban outcomes (e.g., ‘place managers’) from staff assessing applications
- Separate strategic planning and management from development assessment
- Inquisitorial merit appeal system

'Development Assessment Institute of Australia'

- Rather than 'PIA'
- Urban management is an *administrative*, not a *professional* activity;
- Development assessment is a very professional activity and should involve a wide group of professionals