

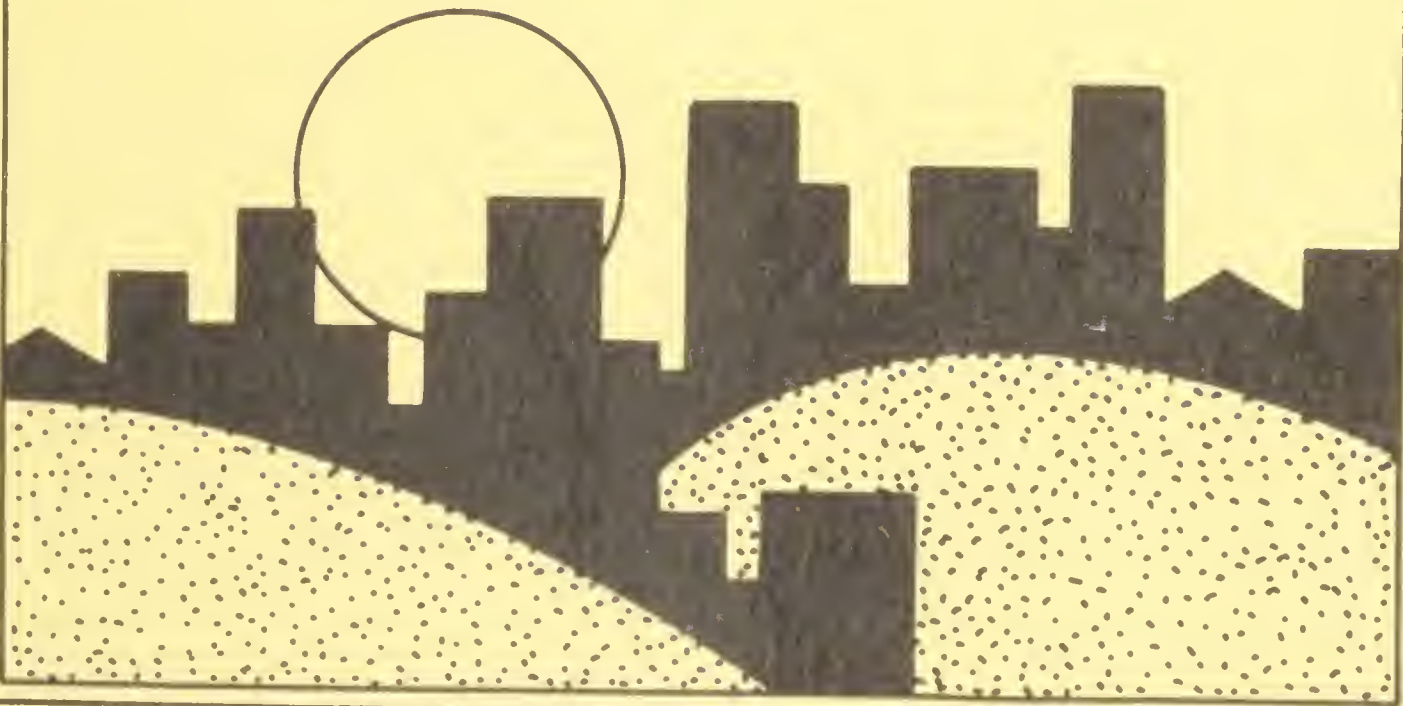
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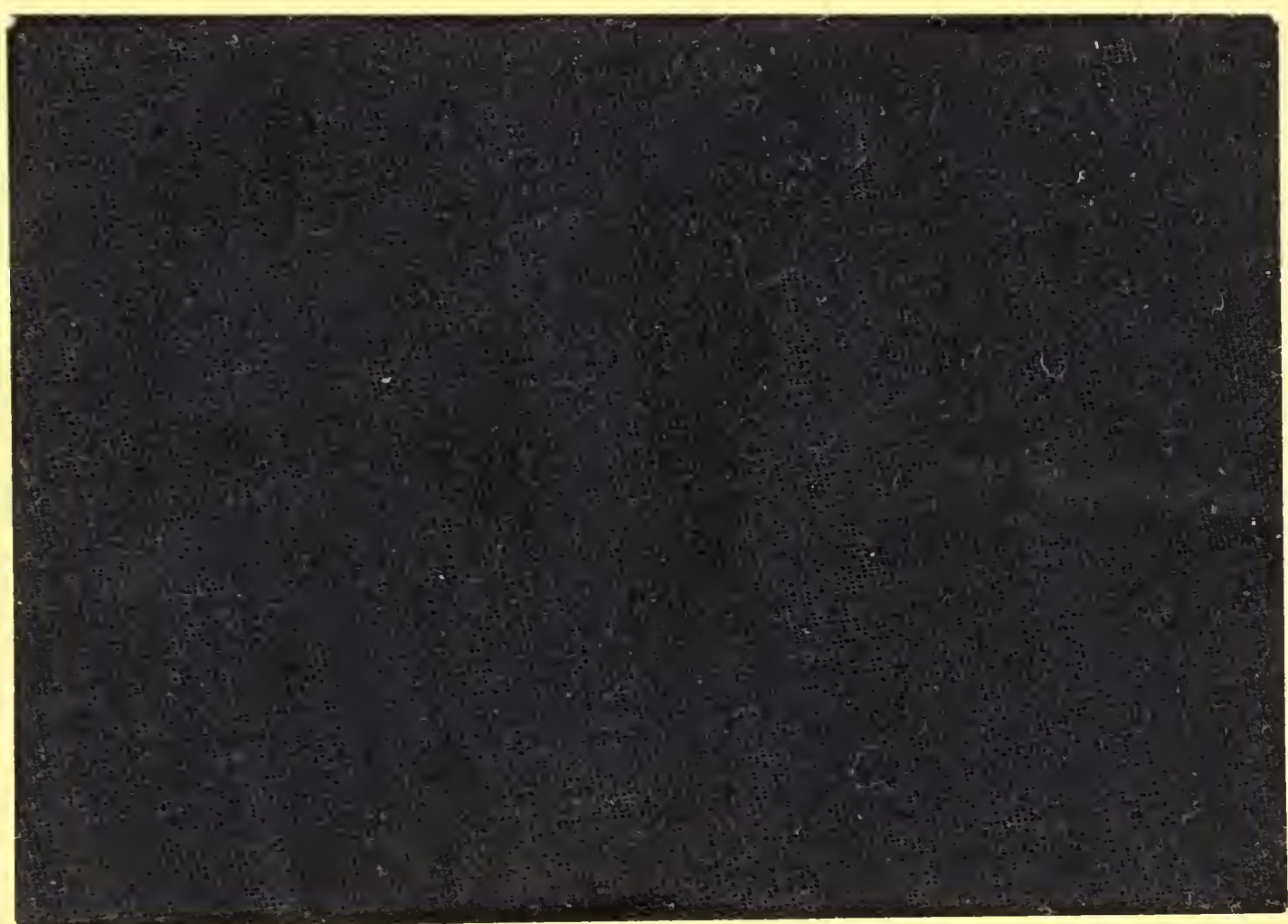
**METROPOLITAN PLANNING IN AUSTRALIA:  
The Instruments of Planning - Regulation**

**Lyndsay R. Neilson**

URU Working Paper No. 2  
April 1988



AUSTRALIAN NATIONAL UNIVERSITY  
RESEARCH SCHOOL OF SOCIAL SCIENCES



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# METROPOLITAN PLANNING IN AUSTRALIA

## A URU Sponsored Seminar

Lyndsay Neilson's paper is a contribution to a two-day seminar on *Metropolitan Planning in Australia* organised by the Urban Research Unit in February 1988. The foci of the seminar were the metropolitan plans or strategies which have recently appeared for four of Australia's largest cities. On the first day, papers describing the evolution and present state of planning policies and machinery in Melbourne, Adelaide, Brisbane, Perth and Sydney were discussed. On the second, a variety of metropolitan planning themes were addressed. These included 'Planning Objectives' and the 'Instruments of Planning', with an international perspective provided by Peter Self. A full list of the papers delivered at the seminar can be found in the endpapers of this publication. Papers from the seminar will appear in this series in the coming months.

In the view of the Urban Research Unit, the seminar was timely. Sydney has a new metropolitan strategy covering urban growth and change for a population of up to four and a half million. Adelaide is the subject of a new 25-year metropolitan development strategy. Perth's corridor plan has been the subject of a recent major review. Melbourne has seen the transfer of metropolitan planning from the Melbourne Metropolitan Board of Works to the State Government, and the appearance of a 10-year urban strategy as part of a new integrated system of Cabinet policy-making. In the present unfavourable economic and political climate for strategic government planning, this revival of Australian metropolitan planning holds considerable interest. What can the big cities learn from each other's plans or from overseas experience? How useful are long-term land use plans and how do they relate to problems of urban management and service coordination? How much 'planning' is possible as opposed to incremental change and *ad hoc* decisions? What time horizons should be used? How far and how will metropolitan plans be actually implemented?

In the discussion, it emerged that all big cities (except Brisbane) wanted to reduce the extent and the cost of further peripheral growth, and to encourage urban consolidation and the promotion of stronger suburban centres. All of them wanted to retain the vitality of the capital city and its central area. The seminar revealed that these goals will not be easy to achieve, and that further study of the methods of implementation would be well worthwhile.

The second day produced heated discussion of the respective virtues and vices of statutory land use plans *versus* coordinated but pragmatic urban management systems. The machinery of State Government was given attention, as was the

prospective role of local government, highlighted by the case of Brisbane. International experience suggested the key importance of land, housing and transportation policies for the achievement of metropolitan objectives, subjects which get too little attention in the Australian metropolitan plans. Some participants brought attention to the desirability of directing some growth to other centres in the same State. Others noted the weak understanding by planners of the property market and the need for more long-term evaluation of development costs and benefits.

The seminar achieved its aim of a useful review of the present state of metropolitan planning in Australia. In its wake, lies a formidable agenda for further research, comparison, evaluation and effective government action.

# METROPOLITAN PLANNING IN AUSTRALIA: The Instruments of Planning - Regulation

Lyndsay R. Neilson<sup>[1]</sup>

## Introduction

Regulation of land use and development within metropolitan areas and elsewhere has been the primary basis for and justification of town planning as an activity in Australia, and remains so. Statutory planning is the basic activity of town planners throughout Australia, and is almost the sole basis for contact between most of the community and the town planning profession. Equally, statutory planning processes and the administration of regulations forming the core of those processes are the primary tools available to town planners and the organisations which employ them, to exert any continuing influence on the form, structure and nature of metropolitan development. This paper seeks to address some of these realities, to examine some of the strengths and weaknesses of statutory processes and regulations, and to analyse the administration of them in achieving the policy objectives which underlie the participation of governments in the management of metropolitan development.

## Planning and Development Control

It is fundamental in discussions of this nature to draw a distinction between planning and development control. Planning can be usefully regarded as any activity involving the preparation by relevant agencies of plans for land use, development and investment. It is of little importance if the organisation preparing a plan is a public sector or private sector agency; the act of preparing a plan for some future development, land use allocation or investment in facilities is what is significant.

Development control is the process of approval or otherwise of proposals for the use and development of individual parcels of land, including the creation of those land parcels through subdivision or amalgamation of titles or otherwise defined existing land holdings. In some circumstances, the process of approving plans can also be regarded as development control -- for example, when a land development company has prepared plans for the development of a housing estate and those plans are required to pass through a series of approval procedures prior to development proceeding.

In most of the Australian States and Territories, legislation specifies processes for the preparation of land use plans, and determines who is responsible for plan preparation and who has the authority to approve plans. The process of plan preparation and approval is therefore subject to regulation. Normally, the process of development control is regulated via the same legislation as the process of plan preparation and approval. Typically, legislation provides for the preparation of statutory planning schemes and the preparation of supplementary regulations, both of which are administered by specified planning authorities. Systems of appeal against the decisions of responsible authorities exist in all States, and in an embryonic and limited form only in the ACT, and are designed to limit the capacity of authorities to act capriciously or in a manner not judged to be in the public interest.

In discussing regulation as an instrument of planning throughout this paper, reference will be made to planning and to development control, and to statutory planning as a general term encompassing aspects of both. Examples will be drawn from the systems applicable in a number of States and in Canberra to illustrate the points made.

## The Objectives of Regulation

Irrespective of stated objectives in legislation, planning schemes, and regulations, the objectives of having regulations at all are as follows:

- to allow governments to regulate market activity with respect to the development and use of land;
- to protect the community's interest in the development and use of land;
- to protect the community's interest in the efficiency and quality of urban and rural development generally;
- to constrain individuals and organisations from acting in a manner which is detrimental to the interests of the community, irrespective of their private rights, either presumed or real; and
- to provide a simple set of standard provisions governing the nature of development with a view to ensuring safety of structures, adequacy of protection of public health, fire prevention and protection, environmental quality, and similar aspects of development over which the community wishes to have an influence or control.

There is no such thing as a free market in the development and use of land in Australia. Freehold title, despite often being otherwise regarded, does not carry with it unrestricted rights to development and use of land. Governments have, at least during this century, progressively withdrawn elements of a property-owner's freedom to use and develop land, in order to protect interests which are seen as wider and of greater political importance than the interests and rights of the individual property owner. These interests are loosely referred to as 'the public interest', although a more accurate description might be the interests of that group of citizens which has the strongest political influence on a particular government at any point in time.

Mr Justice Rae Else-Mitchell, in the First Report of the Commission of Inquiry into Land Tenures, made the position clear:

*The 19th century laissez-faire philosophy, emphasising as it did private property rights to the virtual exclusion of the public interest, was a digression in the development of land policies and land tenure systems. ...The need for social controls has long been accepted in Australia, as in other Western countries. What has been slower gaining acceptance has been the need to apply these controls impartially and to distribute equitably the benefits or burdens which flow from government decisions affecting land use. But opinion is changing as more and more people recognise that, in our modern complex society, an individualistic approach to property rights and land ownership is incompatible with the public interest, unless individual rights are restricted to the enjoyment and use of land.*

*...We conclude that the dividing line between public and private rights over land depends on enjoyment and use, and on the obligations which go with enjoyment and use, rather than on ownership or mere possession.<sup>[2]</sup>*

The fundamental purpose of regulation of land use and development, therefore, is to provide the means for expressing public rights over land.

Private land owners, and especially those active in the land and development market, normally accept that their activities will be constrained to a greater or lesser degree through this exercise of public interest. They may seek to eliminate or alter those constraints through all the means available to them, or they may willingly operate within the framework those constraints provide. Private land owners' responses to the existence of constraints are what make up the substance of much of the political content of the land use planning process. Much of the remainder of the politics of planning consists of the attempts of various interest groups to articulate, and have taken into account, their version of what comprises the public interest. Politicians have the task of adjudicating any conflicts, and take advice from town planners and others. Judicial and administrative tribunals

offer a counter-balance to any potentially capricious political behaviour and are frequently the final decision-makers on land use and development matters.

Town planners, as advisers to government and to private interests, are called upon to perform the balancing act of articulating public interests while respecting private rights, and at the same time bringing to bear any of their own professional training which might be relevant to the development of solutions to an issue or a development proposal. That balancing act is frequently daunting and, because it is explicitly political in the long run, turns many otherwise competent town planners into cynical and cautious bureaucrats on the one hand, or equally cynical and hardened representatives of private interests, on the other. A few remain as principled independents, actually capable of establishing the balance and of convincing politicians, who hold the ultimate decision-making power, that they are correct.

## **Application of Regulations**

The heart of the process of regulation of land use and development is normally a planning scheme, specifying the uses to which land within the scheme, in various zones, may or may not be put, and establishing conditions affecting the use and development of land in different zones. Separate controls over the subdivision of land and the development of buildings normally also exist, although there have been recent legislative steps to bring the various forms of control affecting individual land parcels together within a single approvals procedure (for example, in the new *Victorian Town Planning Act* and the accompanying administrative arrangements).

Legislation and accompanying regulations normally empower a Minister, a specified State Government agency, a local government, or some combination of these three, to receive, consider and determine applications for approval of a plan

or a development proposal of some kind. Regulations specify the manner and processes by which such applications are to be considered, the manner in which parties other than the applicant may be involved or may have rights in the process, and procedures for administrative and/or judicial consideration of the determinations of the agencies involved, where parties are aggrieved by those determinations.

Applicants for planning approval and other forms of approval of land use and development proposals will normally have the choice of ensuring that their proposal either satisfies pre-stated conditions within regulations which specify that the proposal automatically is approved if it satisfies those conditions, or, where the proposal does not satisfy the conditions for automatic approval, of seeking the approval of the relevant agencies in the terms specified by the regulations.

Legislation and regulations control the manner of preparation of planning schemes and the matters they are expected to contain, and specify procedures for amendment of schemes. Non-compliance with the provisions of schemes or with other accompanying regulations is punishable under the law, normally through the application of fines. The system of statutory planning is very much a legal system, and one which involves a specialist body of law, specialist legal and administrative tribunals, and experts within the legal profession who specialise in the field. Town planners may also become specialists and expert at the administration and interpretation of statutory provisions and the application of the law.

Because statutory planning is based in law, and operates within a framework of legislated and regulated decision-making procedures, it is often heavily criticised as inflexible, insensitive to changing market and community needs, and inappropriate as a means of expressing many of the matters with which town

planners and communities wish to deal within the generic processes of town planning and urban management -- for example, the planning and development of community services, the co-ordination of infrastructure investment and the introduction of new forms of development and activity.

Else-Mitchell criticised statutory planning processes in the following terms:

*Zoning is negative or permissive rather than positive or compulsive. It can prevent particular forms of undesirable use but it cannot ensure that land is developed and used in some particular manner perceived to be in the public interest...*

*Zones are determined only after a lengthy period of consideration, exhibition of planning schemes, and the hearing of objections. As a result, the zoning is frequently out of date by the time the plan comes into effect, so that some extraordinary step, normally Ministerial intervention, is required. This step cannot await the lengthy procedures of exhibition and objection, with the result that the carefully contrived but cumbersome statutory procedures are immediately negated, not infrequently with considerable protest, charges of favouritism and the like...*

*Zoning is inflexible and legalistic. Under statutory planning, many appeals are fought on the legal question whether a particular proposal falls within a predefined land use table rather than on whether its relevant features, including its particular scale and design, are appropriate in the circumstances...*

*Zoning is not well understood by the public.<sup>[3]</sup>*

It is easy to agree with these criticisms, and even to add others. However, a central concern must be with ways to address these criticisms and to improve statutory land use planning and development control processes, given that they are likely to remain the basic armoury of the town planning system in Australia for the foreseeable future. Despite many attempts, not the least being those of Mr Justice Else-Mitchell and latterly those of John Mant in various forums for legislative reform, no-one has come up with politically acceptable alternatives to

statutory planning processes as a major means of expressing and implementing public policy with respect to land use.

## **Regulation as an Instrument in Metropolitan Strategic Planning**

Regulation is only one among many instruments available to governments and urban managers (but not necessarily to town planners and town planning organisations) to manage metropolitan development. Public capital investment, the geographic allocation of recurrent expenditure through government programs, direct development activity by the public sector, and even the structure of government itself all influence the way governments seek to involve themselves on behalf of the community in metropolitan development. However, only rarely are governments able to muster all their available resources to achieve the co-ordinated action which is required to bring about positive and effective intervention in development to achieve desired results.

The following quotation from the City of Melbourne Strategy Plan Review illustrates one municipal government's awareness of the potential of its full range of powers to influence development outcomes within that municipality:

*The Plan forms the framework within which the Council will make its town planning decisions, including the development controls to be applied throughout the City. It will also guide investors, large and small, to areas of the City where the Council has established priorities for action. It provides the basis for co-ordinated public sector action and investment to stimulate and support private activity.*

*The Council is one decision-maker among many when it comes to development. But, because of its particular powers to regulate and administer activity, as well as its powers as a provider of services, a developer of property and a taxing agency, the Council has a powerful influence over the decisions of others. That influence can be supportive and can positively encourage City development, provided that it is based on a clear and far-sighted plan.<sup>[4]</sup>*

It is noteworthy that the Council's recognition of the capacity of its wider powers to influence development in the City resulted in only 15 percent of the over 600 specific actions set out in the City of Melbourne Strategy Plan relating to statutory planning and planning regulations. The remainder encompassed the full scope of Council's taxing, development, works and service provision powers, as well as its political role as an advocate and major participant in metropolitan politics.

The capacity of local government, with its locally comprehensive powers, to confidently set out such a scope of internally co-ordinated activity as the means of implementing a strategic plan contrasts sharply with the capacity of State Governments to achieve a similar approach to metropolitan-wide planning, at least where there is no metropolitan planning agency.

The Victorian Government's 1987 report, *Shaping Melbourne's Future*, lists 125 measures identified as the means of implementing the Government's policies for Melbourne's future development. Of these, only 19 related to statutory planning controls or regulations affecting development. The remainder ranged across commitments to implement metropolitan transport plans to proposals to provide unspecified assistance to the development industry to identify opportunities for medium density development<sup>[5]</sup>

The bulk of the non-statutory actions involved agencies and organisations other than the Ministry for Planning and Environment, a situation which reflects both an awareness of the role of those agencies in influencing metropolitan development and the disaggregated structure of State Government. Co-ordination of activity across State Government is a major problem in metropolitan development, as are the limited powers of planning departments and their necessary focus on administration of statutory planning systems.

The development of the Metropolitan Services Co-ordination System for Melbourne, a function of the Ministry for Planning and Environment, is one step in overcoming the difficulties of co-ordination and in providing the planning agency with an additional string to its metropolitan management bow. Nevertheless, the requirement to adopt such measures reflects the perceived weakness of statutory planning processes in ensuring effective management of urban development. How necessarily real is that weakness?

The basic mechanism for the control and management of Melbourne's urban structure remains the Melbourne and Metropolitan Planning Scheme. This Scheme, first proposed in 1954 and variously modified since, remains the framework for determining which areas will be converted from non-urban to urban uses, and for determining the basic land use structure of the rest of the metropolitan area. Despite various legal challenges to segments of the scheme at the rural/urban fringe and elsewhere (some successful, as in the case of Melbourne's earliest regional shopping centres), it has been widely accepted by landowners and the development industry as an established set of rules within which they are expected to operate.

It is also clearly accepted by the Government as the appropriate and continuing framework for managing Melbourne's urban structure. For example, with respect to Melbourne's outward expansion, the Government has stated that:

*Melbourne will still grow outwards. The Government will continue to concentrate growth in established corridors, which have sufficient capacity to absorb it well into the next century.*

*...The Metropolitan Services Co-ordination System ...will be used to program the provision of infrastructure in these areas.*

*Metropolitan expansion places pressure on the green wedges separating the corridors. Protection of these areas will continue as a fundamental aspect of Melbourne's growth patterns.<sup>[6]</sup>*

The established corridors are, of course, the corridors zoned for future urban development under the Metropolitan Planning Scheme: their 'establishment' is a statutory device only -- they exist in no other form than zones on a map, yet they have a standing which enables them to be used as the determining framework for Melbourne's future outward growth. Their existence does not make development happen, but it establishes where development will principally occur over time.

Similarly, the Government states that:

*The Government's metropolitan policy builds on Amendment 150 to the Melbourne and Metropolitan Planning Scheme ... and the 1982 Central City IDO, which will all remain major planks of government policy.<sup>[7]</sup>*

These two references are to statutory provisions relating to the development of the central city and to district centres across Melbourne -- the key elements of the non-residential, non-industrial activity structure of the metropolitan area. The Government has expressed its policies through statutory provisions and regulations, and, with appropriate adaptation, is seeking to use those provisions and regulations as the means of implementing those policies. The effectiveness of this approach can be questioned, again on the basis that the statutory provisions do not actually create anything, but its significance to government as the metropolitan manager is apparent.

In Perth, the Metropolitan Region Scheme was the statutory expression of the strategic Corridor Plan, a plan which has recently been reviewed. The review report comments that:

*In his original announcement the Minister pointed out that the Corridor Plan had been prepared in 1970 and in the 15 years which had elapsed since then there had been significant social and economic changes. As a result many organizations and individuals felt that the Plan was no longer appropriate for meeting the needs and problems*

*of Perth today. Similarly, the MRS was seen as being too rigid and, by virtue of its statutory format, difficult to adapt to contemporary circumstances.<sup>[8]</sup>*

However, in addressing the future of the statutory scheme as a major means of implementing metropolitan policy, the Review Group had the following to say, after citing an extensive list of advantages and disadvantages of the scheme:

*The review concluded that the MRS should be retained generally in its present form but that consideration should be given to changing the zoning classifications in order to accurately reflect the preferred strategy. In the particular case of the Major Regional Centres there should be a "Major Regional Centres" zoning so that detailed planning would be carried out by means of development plans in which the emphasis would be on the physical layout of the designated area in terms of roads, parking areas, building sites, public reserves etc, rather than on precise delineations of permissible land uses.*

*...The Metropolitan Scheme has provided an important instrument for introducing metropolitan perspectives and priorities into the consideration of development proposals. It will continue to be valuable as attention shifts from residential expansion to consolidation and to the location of jobs and services in centres throughout the Region.<sup>[9]</sup>*

It is worth noting that this Review Group, a group strongly supporting the continuation of a statutory scheme as a primary instrument for implementing a metropolitan plan, included such leading people in the field of urban management as Max Neutze, (Chairman), Tony Lloyd, Tony Powell and Jeremy Dawkins. It is further worth noting that their proposed means for implementing their preferred strategy for Perth, to complement the Metropolitan Scheme, was described as follows:

*The review concludes that a new approach to the planning and development of urban growth and change is needed in Western Australia. A new urban management system is proposed by the establishment of a Metropolitan Development Programme, to be co-ordinated by the State Planning Commission and administered by*

*a joint committee of responsible State agencies, in order to achieve greater co-ordination of public works programmes with private sector development throughout the region. [10]*

The similarities with Melbourne are apparent. Despite vigorous criticism of the statutory plans applying in each city, and equally vigorous attempts to devise alternatives to them as a means of metropolitan management, not only have two State Governments not been able to discard their statutory schemes, but they have also concluded that they need enhancement and development. The only major additional tool for managing metropolitan development which these Governments have accepted as viable has been a system for co-ordinating public capital works expenditure -- and even those systems are not new, as anyone familiar with Victorian planning in the past will know.

This conclusion says quite a lot about the effectiveness of statutory planning processes at the metropolitan scale. One must conclude that, at least in Melbourne and Perth, the statutory schemes, despite weaknesses and disadvantages, have satisfied a sufficient number of interests to ensure that they are not to be discarded totally. They may not have achieved development, but they have been effective frameworks for the management of that development which has taken place. What is more, they are seen as tools adequate for the task of continuing to provide a means of managing development in the future, albeit with some modification and adaption to update them, and supplemented by measures to achieve more co-ordinated activity within the public sector and between the public and private sectors.

The proper role of statutory plans in a metropolitan context should be to give legal standing to the propositions embodied in strategic plans. Statutory plans are an instrument for implementing public policy, policy which is increasingly expressed in broad terms as a strategic plan with accompanying statements of intent. The sequence of preparation of a strategic plan or an outline plan or a policy plan (the title doesn't matter) followed by expression of that plan's

principles in a statutory form, is a familiar one. Indeed, in New South Wales and Queensland, explicit statutory requirements exist for the preparation of strategy plans (Queensland) and environmental plans (New South Wales) which, as well as being statutory in their own right, provide the framework within which detailed zoning plans and development control procedures operate.

One of the frequently criticised weaknesses of statutory schemes is that they did not adequately reflect the objectives and principles of strategic plans which overlay them, and hence are not an effective means of implementing strategic plans. This was a key criticism cited by the Perth review team:

*Whereas a regional plan should include aims and objectives, a broad strategy for future development and the policies and general proposals which are designed to achieve the strategy, the MRS is essentially an administrative and legal document and contains little more than a set of maps and a text.<sup>[11]</sup>*

The Melbourne City Council made a more detailed criticism:

*There is no provision in the Act whereby Schemes or IDO's can reference policy documents, such as a Strategy Plan, to give meaning or direction to development controls. As most schemes or IDO's contain a considerable degree of governmental discretion in considering applications for approval of proposed developments, the lack of such a referencing provision has proven to be detrimental to the implementation of longer-term strategic plans.*

*...It has become clear ... that, as any strategic plan relies to a considerable extent on implementation through statutory development controls, a clear and certain method for linking controls to the plan must be established.<sup>[12]</sup>*

It is of interest to note, in a recent decision by Judge Wylie in the Queensland Local Government Court relating to the rezoning of a cane farm, His Honour referred several times to the provisions of the strategic plan prepared by the Pioneer Shire Council as one basis for his refusal to rezone the farm.<sup>[13]</sup> This was the first time in Queensland (at least with respect to a proposed change of

rural land use) that a strategic plan rather than the provisions of a statutory scheme, had been cited as the basis for a refusal to re-zone land.

Part of the answer to strengthening the role of statutory plans and regulations as tools of metropolitan management is therefore, to strengthen their links with strategic plans and their role as the means of implementing strategic plans. We cannot do without the statutory instruments, that much is evident at least from the experience of most metropolitan areas, but it is possible to make them more effective in the role they are intended to fulfill. Part of increasing their effectiveness is to educate the members of the various judicial and administrative bodies involved with interpreting statutory plans, and members of the legal profession, in the importance and relevance of applicable statements of policy as guidance for the interpretation of statutory schemes. Another part is to provide a means for ready incorporation of wider policy and strategic objectives into statutory schemes. This is partly what the new legislation in Victoria seeks to do.

A further step in increasing the effectiveness of statutory plans as tools in metropolitan management would be to have such plans bind the Crown -- to ensure that Government agencies were required to comply with the provisions of planning schemes. This is a difficult matter politically, especially in circumstances where local government may have the right to prepare schemes and administer them (not the right to approve them, which always rests with the State Government) and may therefore be placed in a position of over-ruling the proposals of a State Government agency. There is an increasing acceptance that State agencies should, as a matter of course (and in Victoria, as a matter of Government policy, albeit one selectively applied) accord with the provisions of applicable planning schemes, but there is no statutory requirement for them to do so.

Having State agencies seek some form of planning approval for their developments would have the distinct advantage of significantly increasing their awareness of other developments proceeding in a local area and of likely community concerns with their proposals. It would also give more weight to statutory processes generally, and focus more attention on the strengths and weaknesses of statutory planning systems and on associated systems of co-ordinating infrastructure investment and land use. It would substantially strengthen the role of statutory schemes as instruments of metropolitan management.

### **Alternatives to Regulation as a Means of Managing Metropolitan Development**

Statutory planning and associated processes of regulation, and fully government managed and funded development (the Development Corporation model) lie at either end of the spectrum of politically acceptable possibilities for managing metropolitan development in Australia. Canberra is the only 'metropolitan area' which provides an example of fully publicly funded and controlled development. We are currently observing the rapid and serious breakdown of that city's management organization and management processes, with development outcomes which would be unacceptable in any city where statutory planning processes and self-government applied.

The weakness of the development corporation model has been clearly demonstrated in Canberra in recent years through three factors:

- the unwillingness of the Commonwealth Government to continue to fully fund Canberra's development;
- the failure of the National Capital Development Commission to adequately manage processes of redevelopment; and

- the growing pressure for self-government, spurred on by community concerns with the outcome of the above two processes.

With respect to the National Capital Development Commission's role, the Commission has been guilty of a misinterpretation of the public interest on a massive scale. The Commission adjudged that the concerns of retailers in Civic and of developers interested in the construction of office space for Commonwealth occupancy should be paramount. The interests of residents, commuters, taxpayers and ordinary citizens both within and outside Canberra were considered secondary. The consequence has been a rapid and large scale overdevelopment of Canberra's central city area, creating what can only be described as a metropolitan office park, with a consequent and equally massive underprovision of parking, road space and public transport facilities. The public costs of providing these facilities will be huge.

This situation has come about because of the unique decision-making powers of the Commission, an organisation statutorily answerable to the Commonwealth Parliament but effectively having almost unrestrained power to determine development proposals. The absence of any processes for formal public or other consideration of Commission decisions has created enormous community frustration in Canberra, and will undoubtedly result in some form of statutory decision-making and appeal process being introduced. At the same time, the absence of any statutory standing for the various metropolitan and local policy plans produced by the Commission has resulted in the ludicrous situation of the Court system having to determine which of the Commission's plans have priority over each other when evident inconsistencies have been revealed.

If the recent lessons of Canberra's development reveal anything about models of metropolitan management they show the necessity for effective statutory systems offering at least checks and balances, if not specified procedures for the

preparation and amendment of plans. Greenfields development was the role which the development corporation best fitted in Canberra. Its management of redevelopment, where the politics are vastly different, has been an indictment of that model.

Somewhat short of the development corporation model working metropolitan-wide are the various forms of specialist statutory corporations which the States have adopted to undertake the development of specific areas. Examples include the Darling Harbour Authority, the Expo authority in Queensland, and organisations such as the Joondalup Development Corporation in Perth. In each case, the agency has virtually complete control of development within their areas of jurisdiction.

Mixed models also apply. The Macarthur Development Board both sought to co-ordinate development within its region of Sydney and to administer statutory planning controls, with mixed success. State agencies such as the New South Wales Land Commission, undertaking urban development as a Government agency, but generally complying with statutory planning processes administered by State and local government, are yet another possibility on the spectrum.

Essentially, the choice of where along the spectrum of possibilities a government wishes to lay its bet depends on the extent to which it wishes to achieve specified outcomes within a defined timetable, rather than simply regulate development by the private sector and leave the timing to market forces. By actively participating in development as well as regulating the private market, governments can certainly expect to achieve more than they can by regulation alone. However, where there is not the political desire to participate actively in development, it is clear that regulation is the preferred course.

## Simplification of Regulations

Modifications to statutory regulation of development to achieve greater simplicity essentially relate to the form of statutory control and the degree of discretion given to decision-makers to approve projects. At the extreme are 'blanket' Interim Development Orders, which effectively specify nothing about development in an area other than that all proposals require consent from the responsible authority. As a means of managing metropolitan development, such freedom to determine each development on its merits, while the ultimate in flexibility, would be totally unworkable -- the appeals system would see to that. Total flexibility has traditionally been available in the past in rural shires, but that practice is rapidly disappearing.

Systems for more flexible decision-making within a broad statutory context, utilising guidelines to indicate the outcomes expected (as in the City of Adelaide) are meeting with some success, but rely on a highly professionalised process of advice to decision-makers on each development proposal, something which cannot be expected to occur consistently across all the municipalities making up a metropolitan area. Nevertheless, the principle of simplifying the statutory process and providing greater scope to interpret and assess individual proposals has considerable merit.

The most recent attempt to simplify land use and development control regulations as an alternative to a traditional planning scheme has been made by the City of Melbourne in its document, *New Planning Controls Outside the Central City*, which is a plain English ordinance for a planning scheme, setting out for each specified zone a series of performance indicators for development projects, as well as the objectives for each zone.<sup>[14]</sup> The purpose is to avoid a totally prescriptive land use table and totally prescriptive development

conditions: in other words, to improve flexibility while maintaining clarity of intent in terms of the policies Council wishes to apply.

The ultimate effectiveness of any statutory system comprising a plan and some development control procedures as a tool to manage development depends, of course, on the preparedness of decision-makers, normally local or State politicians, to support and adhere to the provisions of such schemes. While politicians have the power to alter the development status of individual parcels of land either through a statutorily defined process or the exercise of Ministerial discretion, no planning scheme can be described as totally inflexible. There are numerous instances of the quite proper exercise of Ministerial powers to amend planning schemes to allow developments to proceed which would otherwise have been delayed, or would otherwise have been inconsistent with stated planning policies, or inconsistent with the provisions of a scheme. There are probably more numerous instances, depending on which State one is referring to, of such proposals being refused by Ministers.

Normally, such exercise of Ministerial discretion does not pass unnoticed, and that is a reflection of the essential system of checks and balances on which statutory regulation of land use relies, and with which most participants in the process (especially local government) are familiar. The outcry in Brisbane over the office tower supported by the former Premier, and the subsequent disowning of the proposal by the current Premier is one example of the impact of public opinion on the exercise of Ministerial power. In Melbourne, the approval given to Coles-Myer to erect a suburban office headquarters on a disused drive-in theatre site is another, although that development has proceeded.

Statutory schemes would be ineffectual and ineffective if they were so flexible and so simplified as to be readily amended by any interested decision-maker or to allow any development to proceed without assessment and

review. The very fact that planning scheme amendments normally involve public exhibition, the consideration of objections by arbitrating panels and tribunals, (and in Queensland, the Local Government Court), ensures that detailed consideration is given to the proposals involved, and that interested parties have an opportunity to have their opinions heard. At the same time, these processes for establishing and amending statutory provisions create a measure of public confidence that the public interest in land is being cared for, a feature sometimes absent in less formal systems.

The growing concern for public participation in all aspects of plan preparation (even non-statutory plans), development approval and similar processes involved in urban management reflects an awareness in the community of the value of its statutory rights to a knowledge of and an influence over decisions which affect their interests, frequently their private property interests, but their interests nonetheless. People are increasingly seeking the protection of statutory processes and also are exercising direct political pressure to achieve involvement in non-statutory decisions. And in many cases, such as in urban conservation areas and in areas where urban consolidation policies may impact, communities are calling for more rigid controls and regulations, and are condemning flexibility as a device for enabling their interests to be subverted.

There is an interesting tension associated with the current development and exercise of regulatory powers over land use in Australia's metropolitan areas, arising partly from the processes of legislative reform; partly from the fact that a significant number of major planning exercises have recently been undertaken which have focussed public attention on planning issues; and partly from the growing exercise of community political power and community energies to ensure that people have a voice not as individuals but frequently as powerful groups, in influencing planning decisions. Much of the focus of that tension is on the nature and form of the regulations which are applied to manage and control

development across the city and in individual neighbourhoods. People are not seeking to cast away regulations, but rather to ensure that those regulations adequately reflect and protect their interests. Simplicity may be desirable from the viewpoint of the exercise of political will by a State Government intent on getting the development runs on the board, but it is not necessarily seen outside the corridors of power as being in the public interest.

## Conclusion

Statutory planning and the regulation of development will remain a basic means by which Governments manage metropolitan development in Australia. Strategic plans, policy plans, measures to co-ordinate public sector investment and all of the other arms of government activity have a major role to play as expressions of government policy and as means of implementing policy, and some will be more effective than others in achieving Government objectives. Government participation in development has played a growing part in recent years and is likely to continue to do so. But regulation of private activity will still be the most common form of management activity, and that which affects the private land owner most directly.

It is axiomatic that steps are needed to make statutory and regulatory processes simpler and more effective. Such changes will be achieved through innovations such as the City of Melbourne's new ordinance, through progressive education of lawyers, legal and administrative tribunals and town planners themselves, and through legislative reform. The objective of such changes has not yet been, nor should it be, to do away with regulation as an essential part of the planning process.

It is perhaps time for a revival of interest in and development of the art of regulation, rather than the tedious dismissal of this aspect of planning as either

too dull to be worthy of attention, too ineffective in a positive sense to be considered seriously as a management tool, or too detached from social and economic issues to be politically acceptable to the new urban managers. The fact is that statutory planning schemes and statutory regulations are here to stay, and it is time more of those in the planning and management field learned how best to make use of them and devoted some energy and intellect to their refinement and improvement.

This is especially the case as the call for greater public involvement in planning grows, and statutory processes for the preparation and amendment of plans, the approval of developments and the structuring of the public's right to participate assume increasing importance. Regulation of development and the framework within which it occurs is likely to be of far greater importance in metropolitan management in the future than it has been in the past or is now. That may be an iconoclastic prediction, but it is, I believe, a perceptive one.

## Footnotes

- [1] Lyndsay R. Neilson is the Principal of Neilson Associates Pty Ltd, Canberra, ACT.
- [2] Australia. Commission of Inquiry into Land Tenures. *First Report, November 1973*, AGPS, Canberra, 1974: pp 7-9.
- [3] Australia. Commission of Inquiry into Land Tenures. *Final Report, February 1976*, AGPS, Canberra, 1976: p 37.
- [4] Melbourne City Council. *City of Melbourne Strategy Plan 1985*, Melbourne City Council, Melbourne, 1985: p 21.
- [5] Victoria. *Shaping Melbourne's Future: The Government's Metropolitan Policy*, Govt Pr, Melbourne, August 1987.
- [6] *Ibid*, p 37.
- [7] *Ibid*, p 37.
- [8] Western Australia. State Planning Commission of Planning - Review Group. *Planning for the Future of the Perth Metropolitan Region*, SPC, Perth, November 1987: p 17.
- [9] *Ibid*, pp 157-158.
- [10] *Ibid*, p 14.
- [11] *Ibid*, p 157
- [12] Melbourne City Council, *op cit.*, p 300
- [13] *Rosebank Pty Ltd v. The Council of the Shire of Pioneer and Amalgamated Sugar Mills Pty Ltd and Farleigh Co-operative Sugar Milling Association*, before His Honour Judge I. McG. Wylie Q.C., 24 April 1987, in the Local Government Court of Queensland at Mackay.
- [14] Melbourne City Council. *New Planning Controls Outside the Central City*, Melbourne City Council, Melbourne, November 1987.

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