

**Submission
No 4**

LAND RELEASE AND HOUSING SUPPLY IN NEW SOUTH WALES

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The President
NSW Legislative Assembly
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Attention: Committee on Environment and Planning

Dear Committee on Environment and Planning

Calibre Submission to Inquiry on Land Release and Housing Supply in NSW

Calibre is a firm of consultants that work with the leading developers in NSW on the delivery of land releases for the provision of housing. Recently Calibre made a submission to the NSW Planning Reforms review which is attached for your reference and should be considered in the review of Land Release and Housing Supply. In addition to that submission, Calibre now presents its submission on the Terms of Reference for the subject Inquiry to be conducted by the Committee on Environment and Planning.

1 RESOURCES AND SUPPORT WITHIN THE DEPARTMENT OF ENVIRONMENT AND PLANNING

Issues that are recurrent in all activities conducted by the Department of Planning and Environment (DOPE) are:

- a) Lack of staff resources within the Department to expedite release areas
- b) Place Managers are needed to better co-ordinate State and Local Government resources for release areas
- c) Lack of buy-in from Local Government to attempt to resolve issues with release area planning at rezoning stage
- d) Staff changes in the DOPE resulting in in-experienced staff to manage release area planning

1.1 Delivery of Housing Supply Process

1.1.1 Duplication of Studies

The delivery of housing supply process contains duplication that does not add value to the process. For example; when land is rezoned it would be expected that all the environmental reports and studies would already have been completed to enable the land to be developed in accordance with its zoning. Yet we have this circumstance where the land is re-zoned and then the Developer must submit reports that often duplicate the previously prepared reports that were done to enable the rezoning. Such reports include, among others:

- a) Flora & Fauna reports
- b) Arboricultural reports
- c) Contaminated land reports
- d) Aboriginal heritage reports
- e) European heritage reports
- f) Bushfire Assessment reports
- g) Water quality reports
- h) Flooding reports
- i) Traffic impact reports

There are “horror stories” throughout the industry of reports being asked for by Councils which should have been dealt with at rezoning stage. One such example is when land was already zoned for rural residential purposes, the developer at the DA stage had to prepare an Aboriginal Heritage report which indicated that there were no heritage impacts and therefore the land was approved for subdivision. When the new land owner came to build on the newly created parcel of land the Council asked for another Aboriginal heritage report to be prepared to accompany the DA for the dwelling. Such duplication is totally unnecessary and adds no value to the outcome.

1.1.2 Agency Approvals

When a Development Application is lodged with the Council there are often subsequent approvals required from Agencies under a variety of Acts such as:

- Office of Water (*Water Management Act*) for connection to or work near a water course. One would think that the State agency would need to be involved at the rezoning stage when it would set its requirements for development of the land through the Local Environmental Plan (LEP). At the development phase the local authority would ensure these requirements are met through the development consent without further referral to the Office of Water. Professionals within the Councils and Accredited Certifiers are well qualified to ensure that the water courses within a development are appropriately treated. The intervention of the Office of Water actually adds no value to the development process as the outcomes it obtains are already consistent with the outcome objectives of the local Council. Prior to the intervention of the Office of Water and its predecessors under the Rivers and Foreshores Protection Act, the local Council were well able to determine how water courses in development areas should be treated. There are many examples in the State of well-considered and resolved treatments of water courses done prior to the Integrated Development provisions of the *Environmental Planning and Assessment Act* (EP&A Act) were introduced in the late 1990's. Indeed, the involvement of the Office of Water must be questioned in the development of urban land when it is considered that they are part of the Department of Primary Industries
- Roads and Maritime Services (*Roads Act*) for any roads under the control of the RMS (and for Traffic Control Signals) through a Works Authorisation Deed (WAD) process which also involves the procurement of an Independent Project Verifier (IPV) to verify to the RMS that the works are done in accordance with the RMS standards
- Aboriginal Heritage (*National Parks and Wildlife Services Act*). The consequences of this Act and the need for an Aboriginal Heritage Impact Permit (AHIP), can have extensive delays on a project delivery with delays of 6 to 9 months being experienced prior to construction commencement.
- European Heritage for state significant items (*Heritage Act*). Similar delays as the AHIP process can also be attributed to this process.
- Biodiversity Conservation Act 2016 (NSW) places restrictions on the removal of vegetation in addition to the Commonwealth Environmental Protection Biodiversity Conservation Act (EPBC) and includes new mandatory offsets for certain impacts. The NSW Act places onerous requirements on the removal of trees associated with development and subdivision of land. The retention of valuable vegetation needs to be identified at re-zoning stage. After the land is zoned there should be an expectation that the land can be developed for the zoned purpose. The development application process is to ensure that the proposal is consistent with the LEP and the Development Control Plan (DCP) requirements; not to carry out a repeat of the studies that were conducted at the rezoning phase which invariably delay the process of housing delivery without adding value. For example, in land zoned R2 most trees are removed in any case at subdivision or at housing construction stage. Housing buyers just do not want trees overhanging their new dwellings dropping leaves and potentially dropping branches
- *Rural Fires Act* requires the submission of a Bushfire Assessment report with any development application on land in a bushfire prone area. At the re-zoning stage an overall assessment is done for bushfire impact, and yet it is virtually repeated at the DA stage
- *Threatened Species Conservation Act* requires certain studies to be done which are best done at the rezoning stage, and contains provisions for Biodiversity Certification adding yet another layer to the already multi-layered approval process for housing in NSW
- *Sydney Water Act* for delivery of sewer and water servicing to a development. This is an essential service but still takes time to progress through the process. This process can be lengthened by the need for external infrastructure to the site (known as “lead-in” services) which must be done under Sydney Water's Urban Growth Procurement Guidelines
- *Pipelines Act* for any major gas pipeline such as the Eastern Gas Pipeline which runs through the south-west growth area. The process to construct over or near this pipeline can take 12 months to move through that process

The removal of these “other approvals” would enable much quicker delivery of housing sites by avoiding separate and subsequent applications to being lodged with various Agencies after receipt of the Development Consent from the local Council or approval body. Many of these approvals are required prior to commencing work on site which further delays the delivery of land for housing.

The integrated approvals should be resolved at the land rezoning stage and not be deferred to the land subdivision stage as this leads to unnecessary delays in the development approval process and the subsequent construction of roads and drainage for new home sites.

1.1.3 Construction Certificate

The EP&A Act requires that a Construction Certificate (CC) be obtained prior to commencing any work on the site. This CC can be obtained through the local Council or through an Accredited Certifier. The process through the local Council usually takes longer than through an Accredited Certifier due to Council's lack of resources, resources working on DA assessment as well as certification of engineering drawings, and other factors involved in the local government's administration processes and delegations of authority.

An Accredited Certifier is quicker due to the focus on delivery for clients, expertise of the certifier which is usually the same as or better than the Council officer doing the certification. Calibre has collected some data on the two processes and can conclude from this limited data that the average time with a Council certifier is about 70 days and with an Accredited Certifier is 35 days.

Barriers to the wider use of Accredited Certifiers for CCs are:

- a) Section 138 of the Roads Act which requires the Road Authority to issue approvals on activities conducted within a public road. Councils require any work no matter how minor (such as the connection to a stormwater pit in an existing road, a driveway across an existing footpath, the connection of a new road to an existing road) to be subject of a "Roads Act Approval". This applies even though an approval under the EP&A Act has been granted. This is a particularly simple matter to fix by including conditions of approval in the DA consent and changing the law to allow an Accredited Certifier to certify the work within a public road when an approval has been granted under the EP&A Act
- b) A fear that if the developer chooses an Accredited Certifier that the Principal Certifying Authority (being the Council for any subdivision in NSW unless otherwise stated in an LEP of which there are no one in metropolitan Sydney) will give then a "hard time" when the Subdivision Certificate is lodged
- c) Lack of clear design guides by some Councils
- d) Varying requirements of local Councils for engineering matters. For example some Councils want standard kerb and gutter with a vertical face on the kerb, other Councils accept "roll kerb" which was introduced in the 1970s to allow home owners to not have to construct a kerb layback to their garage; they could simply cross the roll kerb where required to access their land. A very sensible approach. Another example is some Councils require the installation of a drainage pit to accept the subsoil pipe from the rear of a retaining wall at the cost of about \$3000 when others only require the subsoil to drain to the kerb or to the granular material of a nearby drainage pipeline. There are many such differences between Council areas most of which are based on opinion of Council officers, not with regard to safety, functionality and durability of the infrastructure

1.1.4 Subdivision Certificates

Subdivision certificates are required to enable a Plan of Subdivision to be lodged at Land and Property Information (LPI) for registration and creation of new titles to enable new houses to be constructed on the new land parcels. Subdivision certificates at present can only be certified by the Principal Certifying Authority, ie the Council. This should be opened up to Accredited Certifiers as is the case with Strata Plans. Although the EP&A Act allows Accredited Certifiers to certify subdivisions, the practice is that they are prevented because Councils refuse to include this provision in their LEPs. The outcome of this is that we have Councils in developing areas taking months to consider and issue Subdivision Certificates even when all the information has been supplied by the developer through its consultants. The subdivision certificate stage occurs when all the developer's money has been paid out and interest is payable at the rate of about \$100,000 per month (for a 70 lot subdivision at Austral for example). This interest payment adds to the cost of housing as the developer must allow for such delays throughout the housing delivery process.

By allowing Accredited Certifiers to issue Subdivision Certificates the time taken to process would be dramatically reduced but with the same (if not similar) quality outcomes. One only has to look at the case law on invalid Strata Certificates to conclude that there are no issues that cannot be controlled by Regulation. Currently, section 109D (d) (iv) of the EP&A Act states a subdivision certificate may be issued "*in the case of subdivision of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority, by an accredited certifier*". There are however, no instruments in the developing Council areas that allow this, in the experience of Calibre.

There is only one case against an Accredited Certifier for a subdivision, The case is *Northern Residential Pty Limited v Newcastle City Council* 75 NSWLR 192 166 LGERA 352. In this case, which went to appeal, the court initially found that the breach had the effect of invalidating the subdivision certificate but this was overturned on appeal, with the Court of Appeal finding that:

1. There had been no breach of s 109E; and
2. Even if there had been, this would not invalidate the subdivision certificate.

The assessment of a Subdivision Certificate is purely an administrative process where the certifier checks that all the conditions of the consent have been satisfied by actions of the developer or the supply of documents. If all matters have been satisfied the certifier then signs the Subdivision Certificate. By allowing Accredited Certifiers to do this, weeks would be shaved of the time taken to process Subdivision Certificates thereby speeding up housing delivery and reducing costs which are always paid for by the new land owner.

1.2 Coordination and Funding of Enabling Infrastructure

Some issues which arise under this heading include:

- a) Uncertainty to Sect 94 contributions after removal of the cap in 2019/20,
- b) Uncertainty of works in Local Infrastructure Contributions as a result of IPART determination of Essential works lists

For example bioretention is not part of the essential works list for local infrastructure as approved by the DOPE and as a result IPART are recommending that bioretention basins are removed from contribution plans in large release areas. Any water quality measures should be in public ownership and domain, not in private ownership. Private systems are bound to fail due to lack of maintenance by property owners.

Large scale land release areas with their total water cycle management, should have bioretention as part of the local infrastructure works and it should form part of the section 94 contributions. These issues need to be resolved at the rezoning stage and then fully costed with the release of the residential land and not be open to conjecture when DAs for individual sites are lodged for determination.

2 DELIVERY MECHANISMS FROM REZONING TO CONSTRUCTION

The delivery process is a lengthy one with many contributors and considerations, however, it is also very time consuming in that it takes:

- a) Minimum of five years for rezoning.
- b) DAs are taking 12 months and longer and
- c) construction can take up to two years, including Construction Certificate process,
- d) actual construction and then the
- e) Subdivision Certificate process following construction.

This all leads to an *eight* year timeframe to deliver housing supply as a result of planning rezonings. Even a simple subdivision on an already zoned piece of land will take at least 18 months from preparation of DA to creation of new land titles for each new land parcel that is if all things go well. Up to two years is not uncommon for this process.

See Table 1 under Heading 7 on page 7 for a summary of the housing site delivery process which indicates a timeframe of approximately three years from when a developer first identifies parcel of land to develop to creation of new titles.

3 ROLES OF STATE AUTHORITIES, LOCAL COUNCILS AND UTILITIES

Need better co-ordination across all levels of authorities, to avoid duplication of approvals and to focus the appropriate attention on the approval of various components of the development.

3.1.1 Flood Evacuation and Planning for PMF

Flood evacuation for the Probable Maximum Flood (PMF) impacting on planning for release areas, contrary to the formal planning policy of the State. The State Emergency Services (SES) has become the planning agency of the State by trying to ensure evacuation is possible in extremely rare floods which if they did occur would be widely impacting on the ability of the road system to handle *any* traffic let alone evacuation traffic. For example, the rainfall intensity in a 100year Average Recurrence Interval event is so intense that drivers of cars cannot see resulting in very slow or stationary traffic. The flood evacuation events being considered are well beyond this event. Already it can be seen that many roads are cut by blocked stormwater drains in much less rare events than the 100year ARI event which was the adopted design design standard.

The relevant planning policy for flood prone land is set out in Planning Circular PS 07-003 dated 31 January 2007 issued by the Department of Planning, "*New guideline and changes to section 117 direction and EP&A Regulation on flood prone land*". The guideline confirms that "*unless there are exceptional circumstances, councils should adopt the 100year flood as the flood planning level for residential development*". (Page 1 right hand column).

The circular does acknowledge that controls may need to apply to critical infrastructure such as hospitals and consideration given to evacuation centres and vulnerable developments (like nursing homes) in areas above the 100year flood. The Department has, with new releases, established limitation on residential development in terms of restricting medium density developments in areas above the flood planning level. This has occurred in the Marsden Park release area with restrictions on residential development as well as delays in the Vineyard and Marsden Park North precincts as a result of representations for flood evacuation by the SES.

The consideration of flood evacuation is one of the many matters to be considered in release areas but this is not adopted planning policy. The matter of flood evacuation is stifling residential development contrary to the current planning policies for residential development.

3.1.2 Works Authorisation Deed

The WAD process adds further complexity and timing to an already protracted development approval process. Once the DA is approved by the local Council taking into account comments by the RMS, a WAD must then be entered into by the Developer. Under the WAD an Independent Project Verifier (IPV) must be commissioned by the developer to ensure that the design and works are done to the RMS standards. However, the RMS remains fully engaged in the process as if the IPV was not there. The RMS should declare its requirements in the DA consent and then allow an IPV to take over the technical delivery of the works. This would be consistent with the concept currently in the EP&A Act where technical matters can be approved by an Accredited Certifier. Often the same people are IPV's and Accredited Certifiers.

3.1.3 Controlled Activity Approval

The Water Management Act requires a CAA to be obtained when one of the following activities is proposed on "water front land":

- a. the erection of a building or the carrying out of a work (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
- b. the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- c. the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- d. the carrying out of any other activity that affects the quantity or flow of water in a water source.

The Act defines waterfront land as the bed of any river, lake or estuary and any land within 40 metres of the river banks, lake shore or estuary mean high water mark. This definition has been interpreted to cover a stream within land that has been rezoned for residential development. This has caused CAA's to be obtained for many developments where the State does not need to be involved to secure the required outcomes. The same results would occur if the State's requirements were incorporated in an LEP and conditions of development consent could cover the whole processing of the CAA. An easy way to remove this unnecessary process from residential land zonings would be to make it not apply to any land that is zoned for residential purposes. Consideration of impact on urban watercourses would then be handled by the local Council which cured prior to the 1998 revisions to the EP&A Act which saw the introduction of Integrated Development. An example of such a stream preserved is at Figure 1, below.



Figure 1 An urban stream preserved without a CAA, Hawick Court, Kellyville

4 CHARACTERISTICS OF GREATER SYDNEY AND NON-METROPOLITAN NSW

Calibre's work is focussed in the Sydney, the Illawarra and the Hunter regions which tend to have similar characteristics.

5 OTHER RELATED MATTERS

Large land holdings are depleting and more fragmented ownership is stifling the delivery of release areas. The government needs to take the role of an enabler to provide more land supply in a timely manner. The role of a government agency such as Landcom would greatly assist in the assembly of fragmented ownership such as is occurring at the moment with the Riverstone Scheduled Lands.

6 CONCLUSION

In summary, the land release development process and the supply of housing to the people of NSW is a highly fragmented and multi-faceted process that would benefit from consideration and implementation of the following suggested key issues:

1. Department of Planning to take a lead role by employing Place Managers to coordinate the land release process
2. Integrated approvals should be resolved at the land rezoning stage and not be deferred to the land subdivision stage
3. Role of Accredited Certifiers to be acknowledged and enhanced to be able to issue Construction and Subdivision Certificates for all forms of work related to development approved under the EP&A Act thus freeing up Council resources to focus on the issues that only Councils can address
4. Funding of local infrastructure to be resolved at the rezoning stage and not to defer until the Council prepares a s94 Contribution Plan
5. Flood evacuation, whilst a relevant consideration, should not be the overall driver of rezonings and development of residential land in the State
6. Any measure that reduces the timeframe from rezoning to the creation of a new parcel of land for housing should be examined and changes made to Acts and Regulations to reduce multiple layers of approvals

Yours faithfully

Calibre Consulting (NSW) Pty Ltd

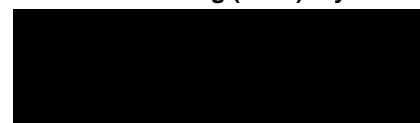


Stuart Green

Baulkham Hills Business Leader

Yours faithfully

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Peter Lee

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ATTACHMENTS

1. Land Release Delivery Process (see Heading LAND RELEASE DELIVERY PROCESS7 on page 7)
2. Planning Legislation Updates – Submission of Calibre (Separate Document)

7 LAND RELEASE DELIVERY PROCESS

The process in Table 1 assumes that the land has already been rezoned to the required zoning; in the case of land subdivision for residential housing this would be R2 zoning. Considerations for the scenario presented:

- a) Simple sale with settlement 6 weeks from exchange of contracts. Other options such as delayed settlement, settlement upon DA approval and Options are not considered here
- b) Some of the activities can be run concurrently which reduces the overall time
- c) Does not consider the need for a:
 - a. WAD through RMS,
 - b. Sydney Water infrastructure procurement process
 - c. Office of Water approval (Controlled Activity Approval (CAA))
 - d. EPBC referral to the Commonwealth
 - e. Bushfire referral to Rural Fire Services
 - f. Referral to National Parks and Wildlife for an AHIP
 - g. Referral to Heritage Office
 - h. Other such referrals

Table 1 Housing Supply Rezoned Land to Subdivision Certificate

ID	Activity	By Whom	Approx Timing - weeks
1.	Developer identifies land opportunity	Developer	0
2.	Due Diligence	Consultant planner and engineer Lot layout plan and development costs taking into account contamination and other site specific risks such as sewer and water lead-in infrastructure, electrical supply available Developer also conducts research into sale prices likely to be achieved and inserts development costs into a project feasibility study	4
3.	Acquisition period – offer, negotiation, acceptance, sale contracts	Developer and land Vendor	4
4.	Transfer of Title to Developer	Developer and Vendor	6
5.	Assembly of project team	Developer	4
6.	Specialist reports for the DA	Consultants such as: <ul style="list-style-type: none"> • Flora & fauna • Contamination • Geotechnical • Aboriginal heritage • European heritage • Acoustics • Civil engineer 	8

ID	Activity	By Whom	Approx Timing - weeks
		<ul style="list-style-type: none"> • Water Sensitive Urban Design engineer • Flooding and stormwater quantity • Stormwater Quality • Electrical engineer • Comms consultant • Registered Surveyor 	
7.	Survey of land and boundaries	Registered Surveyor	4
8.	Preparation of Statement of Environmental Effects (SEE) and assembly of specialist reports	Consultant Planner	4
9.	Pre-lodgement meeting with the Council – These often need to be booked weeks in advance	Consultant Planner	1
10.	Amend SEE to suit outcomes of pre-lodgement meeting	Consultant Planner	1
11.	Lodge DA with Council and assessment period	Council	16
12.	Receive DA consent	Council	1
13.	Make servicing applications to: <ul style="list-style-type: none"> a) Energy Authority b) Sydney Water c) Telstra or NBN d) Gas 	Project Manager	1
14.	Servicing consideration and Notices of Requirements	Servicing authorities	8
15.	Prepare civil engineering designs for Construction Certificate (CC)	Civil Engineer	8
16.	Prepare civil engineering documentation for other authorities such as Office of Water and make applications	Project Manager	1
17.	Lodge CC application with Council or Accredited Certifier	Project Manager	1
18.	Review of CC (If Council as Certifier this can take much longer – up to 6 weeks sometimes)	Certifier	2
19.	Amend CC drawings following Certifier's review	Civil Engineer	2

ID	Activity	By Whom	Approx Timing - weeks
20.	Re-lodge for certification	Certifier	1
21.	Receive CC approval	Certifier	1
22.	Sydney Water sewer and water design and approval process	Water Servicing Coordinator	8
23.	Endeavour Energy electrical design and approval process	Endeavour Energy	22
24.	Telecomms design	Telecomms designer	4
25.	Gas design	Jemena	2
26.	Tender works	Project Manager	6
27.	Construction	Principal Contractor and accredited constructors for sewer, water, electrical and telecoms work	20
28.	Gathering of information for Subdivision Certificate	Project Manager	4
29.	Preparation of Subdivision Certificate for lodgement	Project Manager / Registered Surveyor	2
30.	Lodge Subdivision Certificate and consideration by Principal Certifying Authority (the Council)	Principal Certifying Authority	4
31.	Preparation of certified Plan of Subdivision for lodgement at Land & Property Information	Registered Surveyor / Developer	6
32.	Registration process at LPI	LPI	4
33.	Plan registered	LPI	0
34.	Titles available for settlement of sales	Developer	3
35.	Transfer of title to new land owner	Solicitor	4
36.	Total approximate time	ALL	167
37.	Total approximate time		3 years (approx.)