

## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Our ref: planning framework

The Director  
Standing Committee on State Development  
Legislative Council  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Sir

### **Inquiry into the NSW planning framework**

Thank you for the opportunity to make comment to the Inquiry into the NSW Planning Framework. Council's submission has been developed on the basis of the discussion paper issued by the Committee and is presented relative to the Committee's Terms of Reference.

*Term of Reference 1(a) the need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development.*

In recent times there has been substantial change to the NSW planning system which has increased the complexity of both the strategic landuse planning and development assessment processes.

Port Macquarie-Hastings Council's experience in the preparation of local environment plans is that the length of time taken to prepare the majority of LEPs is not due to the process itself, rather the complexity of legislation that is administered through the EP&A Act and the need to consult with multiple single issue state agencies. Notwithstanding the introduction of the proposed gateway system, Council expects that significant issues such as natural resource management issues will continue to require extensive analysis through the LEP process and state agencies responsible for these issues will be no more compelled to work with councils to find balanced solutions to site specific issues than they are at present.

The challenge for the NSW government is to set standard realistic expectations for investigations at the strategy phase and to ensure that state agencies commit to development outcomes that are determined based upon a balanced approach to planning.

Ideally, more emphasis should be placed on the strategic planning phase when the relative significance of constraints can be considered and there is an opportunity for a strategic approach to conservation and development outcomes. Council therefore supports the NSW Governments renewed emphasis on regional planning which will improve the strategic focus of the NSW planning system.

High expectations for development outcomes have driven the complexity of the NSW

development assessment process. While high quality development outcomes are vital, there is an opportunity to streamline the development assessment process to remove complexity for the benefit of applicants and councils. The introduction of exempt and complying development provisions are good example of how to achieve meaningful improvements in the development assessment process. However, there remains significant complexity for other development types that requires further work. Rationalisation of legislation administered through the EP&A Act development assessment process is one area that needs to be addressed. Maintenance of development outcomes through simpler and streamlined legislation should be pursued.

There is considerable concern among councils, particularly in regional areas, about the State taking control of specific types of development assessment under Part 3A of the EP&A Act. This move has taken decisions from local communities and risks inappropriate development decisions that do not take account of local needs. Improvements to the legislation that give local councils principle control over typical development are needed.

There is also concern among councils as to the extent of the NSW government privatisation agenda. While the existing arrangements for the inclusion of the private sector in building certification and minor complying development processes appear to be satisfactory, it is vital that government continue to be solely responsible for all other development assessment so that appropriate accountabilities to the community are maintained.

The following principles are considered important:

- That the future development of the NSW planning legislation recognises the importance of and increase the emphasis on regional strategic planning within the planning framework.
- That regional strategy and local growth management strategy development processes be standardised to provide greater certainty for developers, councils and the community.
- That the NSW planning legislation be rationalised while maintaining community expectations on development outcomes.
- A review of Part 3A of the Act to ensure that local councils are the consent authority for the majority of development. Desirably, a reduction in the types and scale of development caught by Part 3A should be legislated in consultation with local government.
- That further development of the NSW planning legislation result in no expansion of the role of the private sector in the NSW planning system.

*Term of Reference 1(b) the application of the Council of Australian Governments reform agenda for planning NSW*

It is clear that there is a need to move to consistent state development policies and regulations. In general terms, it appears that recent changes to the NSW planning system are moving towards compliance with the six development assessment pathways advocated by the COAG reform agenda. Of particular concern are current moves to limit developer contributions and the role of multiple state agencies in the NSW planning system.

The NSW Government has just released new requirements for capping of s94 developer contributions charged by local government. From a regional perspective, it appears that there is a lack of awareness by the government on the importance of developer charges in funding the infrastructure requirements of regional growth. Councils have become reliant on this funding mechanism as a result of a number of systemic problems facing NSW local government, e.g. rate pegging, lack of mandatory asset management planning systems, increasing responsibilities and subsequent costs, etc. This situation has in-turn impacted upon land development costs and has had flow on effects on housing affordability. Pursuing the COAG reforms relating to minimising development costs will require government to provide additional resources to meet infrastructure demands.

Council supports the reform agenda in its effort to reduce complexity of the planning system and improve statutory referral processes as discussed above.

The administrative processes associated with the development assessment process are a significant cost burden on local government. Port Macquarie-Hastings Council strongly supports the implementation of electronic processing of development applications. It is important that the NSW government lead the development of a standard process for NSW local government that provide consistency, certainty for applicants and minimise costs to individual councils.

*Term of Reference 1(c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW planning, environmental and heritage legislation.*

Port Macquarie-Hastings Council has not had any experience with the assessment processes under NSW and Commonwealth environment legislation for controlled actions. Despite a lack of experience in this respect, it would seem appropriate for the NSW and Federal governments to work cooperatively to reduce duplication of planning processes and this Council would support the ongoing development of the current accreditation process.

*Term of Reference 1(d) Climate change and natural resources issues in planning and development controls.*

Climate change issues need to be addressed clearly in the NSW planning framework. At present, there is a lack of consistency in the way the planning system advocates the consideration of climate change issues. For example, the consideration of sea level rise

associated with floodplain management is dealt with via a guideline addition to the NSW Floodplain Development Manual, there is varying reference to climate change considerations in LEPs and the EP&A Act provides no clear legislative requirements to enable government to adequately deal with climate change in development decisions.

A wholesale review of the way the legislation deals with climate change is required. While it is understood that we are in an 'evolutionary phase' with respect to our understanding of the relevance of climate change and planning processes, sufficient technical information exists to allow the implementation of best practice strategies to manage development in the face of climate change impacts. Recent court decisions relating to how climate change has been considered in planning processes simply highlight the need for the planning framework to implement consistent requirements for considering climate change in planning processes. NSW councils would welcome government leadership on this issue and a clear legislative framework to work within.

Generally speaking, the NSW planning system adequately deals with natural resource management matters. The issue here relates to how it deals with those natural resources matters. As discussed above, the plethora of environmental legislation administered through the EP&A Act make the strategic planning and development assessment processes complex and cumbersome. A streamlining of the process including integration of the legislation is appropriate in this respect.

*Term of Reference 1(e) Appropriateness of considering competition policy issues in landuse planning and development approval processes in NSW*

The supply of zoned land has a strong bearing on competition in land use planning in NSW. Once land is rezoned to permit urban land uses, case law in the NSW Land & Environment Court suggests that there is very little that a Council can do to prevent development based on the impacts of competition on existing development. Conversely, if there is an absence of zoned land or if a council applies policies that restrict development outside established centres, undesirable limitations on development can result.

The key to success for councils is therefore to strike the right balance in strategies and policies regarding the amount and location of development that can be sustained having regard to projected supply and demand. Such strategies should be reviewed regularly and should provide a clear basis for future development applications.

The re-establishment of regional strategies in NSW and standard requirements for local growth management strategies provides the best means to address concerns about competition. The NSW Department of Planning has oversight of the preparation of these strategies and should be in a position to specify requirements for studies to support local growth management strategy recommendations.

In relation to retail development, as specifically mentioned in the discussion paper, councils generally determine strategies and policies for retail growth based on independent, expert retail assessments. This involves an unbiased assessment of supply and demand and generally results in substantial scrutiny by those with vested interests in the outcomes of the process, an indicator of the importance of this aspect of

the planning process and its relevance to competition. The quality of the final strategy is therefore directly related to the professionalism and independence of the consultant.

In conclusion, Council's experience is that the successful consideration of competition issues take place at the strategy stage, with input from quality professionals at that time. If the NSW government is concerned about the issue of competition in the planning system, it is recommended that the planning system recognise the capacity of councils to manage yet another aspect in the planning process and build upon strengthening consideration at the strategy stage rather than increasing the burden on development assessment process.

*Term of Reference 1(f) Regulation of landuse on or adjacent to airports*

Port Macquarie-Hastings Council is the owner and operator of the Port Macquarie Airport and therefore retains the necessary control over airport management and landuse planning to achieve balanced outcomes for the community. However, it is apparent that under circumstances where such an arrangement is not the norm, it is evident that landuse planning conflicts may occur. No doubt the Committee will receive relevant comments from those councils who have privately/Federally operated airports in there local government area.

*Term of Reference 1(g) Inter-relationship of planning and building controls*

Generally speaking, the inter-relationship between planning and building controls is considered appropriate. It make sense to integrate both processes within the one statute to ensure streamlining of processes as discussed above. In practice, the integration of planning and building controls under the EP&A Act has been successful, with more recent changes such as the alignment of 'place of public entertainment' requirements in the Act being a refinement.

It is appropriate for further alignment of planning and building controls to continue. An example is the current location of regulatory controls for water, sewerage and stormwater work under s68 of the Local Government Act, 1993. The integration of these requirements into the EP&A Act would further streamline the processes, reducing costs associated with the administration of separate statutes.

*Term of Reference 1(h) Implications of the planning system on housing affordability*

Affordability is an important consideration in the NSW planning system. However, in Council's experience, it is inherently difficult to require developers to provide affordable housing stock without driving up the cost of housing elsewhere. Whether a council implements developer charges or mandates the provision of a percentage of low cost housing, the cost of this will be passed on to the end purchaser.

Given these limitations, Port Macquarie-Hastings Council has focused on efforts to provide a range of housing sizes in greenfield development sites to improve housing options and has received some support from developers in this regard. Ultimately, it is difficult to mandate the development of smaller allotments as they may prove unmarketable. Council has therefore specified overall lot yields in development control

plans and will rely on the development industry to deliver increased housing densities, subject to market forces.

As discussed under Term of Reference 1(a) above, the complexity of the NSW planning system is largely a factor that is related to the plethora of statutes that form part of the system and are administered by the EP&A Act, rather than the procedural requirements of the Act itself. Councils therefore have limited real control over LEP and DA processing times, which add to the cost of development and impact on housing affordability.

Port Macquarie-Hastings Council has limited capacity to recover the real public cost of new development through s94 charges due to the restrictions attached to this funding. This situation has been improved somewhat through the introduction of voluntary planning agreements. However, Council would strongly contend that there is no excess in the way that these funding mechanisms are being used in the Port Macquarie-Hastings area. It is clear that mandatory reductions in developer charges will only reduce the capacity of this council to properly service development.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact me, or Mr Matt Rogers, on telephone 02 6581 8111 or by email [Matt.Rogers@pmhc.nsw.gov.au](mailto:Matt.Rogers@pmhc.nsw.gov.au)

Yours sincerely



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