

Submission
No 28

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: City of Botany Bay
Name: Mr Peter Fitzgerald
Position: General Manager
Telephone: (02) 9366 3520
Date received: 9/02/2009

Our ref: TP/3(1)

09 February 2009

The Director
Standing Committee on State Development
Legislative Council
State.development@parliament.nsw.gov.au

Dear Sir/Madam

**City of Botany Bay Submission
To the Inquiry into the NSW Planning Framework**

I refer to the Inquiry into the NSW Planning Framework and enclose Council's submission.

Council welcomes the Inquiry into the NSW Planning Framework and requests that the Inquiry consider the content's of the attached submission.

Should you have any queries please contact either myself or Team Leader – Strategic Planning Ms Catherine McMahon on (02) 9366 3520.

Yours faithfully


PETER FITZGERALD
GENERAL MANAGER

G:\Archive Files\Arch_2009\Strategic Planning\Planning Inquiry\TP3(1)_let.doc



Submission to:

**Inquiry into the New South Wales planning
framework**

To:

The Director

Standing Committee on State Development

Legislative Council

Parliament House

Macquarie Street

Sydney NSW 2000

Table of Contents

| | |
|---|-----------|
| Executive Summary | 3 |
| (a) The need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide development..... | 6 |
| (b) The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW..... | 12 |
| (c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW Planning, Environmental and Heritage legislation..... | 16 |
| (d) Climate change and natural resources issues in planning and development control. | 20 |
| (e) Appropriateness of considering competition policy issues in landuse planning and development approval processes in NSW. | 22 |
| (f) Regulation of land use on or adjacent to Airports..... | 24 |
| (g) Inter-relationship of planning and building controls. | 33 |
| (h) Implications of the planning system on housing affordability..... | 34 |

Executive Summary

This paper contains the City of Botany Bay's submissions to the Inquiry into the NSW Planning framework with the terms of reference being:

That the Standing Committee on State Development inquire into and report on national and international trends in planning, and in particular:

- (a) the need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development,*
- (b) the implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales,*
- (c) duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation,*
- (d) climate change and natural resources issues in planning and development controls,*
- (e) appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales,*
- (f) regulation of land use on or adjacent to airports,*
- (g) inter-relationship of planning and building controls, and*
- (h) implications of the planning system on housing affordability.*

Council's submissions are as follows:

- The current planning system within NSW is complex and adhoc. The solution is the development of a new Planning Act that is approached from a new and

comprehensive perspective rather than proceeding with piecemeal and ad-hoc amendments to the existing Act.

- Council of Australian Government national reform agenda covers infrastructure planning, climate change, housing affordability and reducing regulatory burden, which are all important for the future development of the NSW planning framework, and therefore is applicable for planning in NSW.
- There is no direct relationship between the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW planning, environmental and heritage legislation - their approval processes are completely separate in a legal sense. Any duplication between these two systems needs to be removed.
- There needs to be a coordinated approach to tackling the issue of climate change starting with the Federal Government, which needs to undertake national modelling of near shore topography, and then for state government to produce guidelines to assist councils in setting benchmarks for strategic planning in relation to coastal hazards.
- Council believes that competition should only become part of local planning decisions if the original basis of the zoning of land under a Council's Local Environmental Plan (LEP) is not underpinned by a regional planning strategy or a comprehensive strategic planning study. Such planning strategies identify a hierarchy of centres within a LGA, which are then zoned appropriately under the Standard LEP Template. This would minimise any potential competition issues, as it will be clear as to what is and where it is permissible within an LGA.

- Council's experience to date is that the current arrangement for regulating land use on airports is not working. The 2009 Preliminary Draft Master Plan that was exhibited late 2008 is an example. The planning process approach adopted in the Draft Master Plan is primarily driven by forecasting and capacity planning and by considerations of commercial return, and does not reflect best practice in terms of master planning methodology and stakeholder consultation.
- Council's position is that the current inter-relationship between the planning system and the regulation of building works is not appropriate.
- The planning system can influence the supply of suitable land through locational requirements and residential densities of Strategies and zoning maps. In addition planning policies can be put in place to minimise the loss of existing low cost housing – an example being State Environmental Planning Policy No. 10 – Retention of Low Cost Accommodation. Planning policies to reduce the cost of housing over time and therefore improve housing affordability would involve co-operation and partnerships with various levels of government, non-government providers and the private sector. Such policies would also need to be supported by legislation in order to reprimand those who do not follow them. It requires commitment from all stakeholders, a change of the mind-set of everyday Australians and change also in how the property industry operates. Such policies should be also implemented as an integrated program (as part of a financial package) if they are to be fully effective.

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

Is there a need for further development of planning legislation in NSW?

Council has in the past supported the reform of the NSW planning system as it believed that there was (and still is) a need for simplification of the planning system to improve clarity, certainty and transparency. However the current planning system has become extremely complex through the long-standing approach of making amendments to the Environmental Planning & Assessment Act 1979 (EP&A Act 1979) which add layers of detail and further complicate the process, particularly for “non-developers” and small-scale development.

The Discussion Paper *Improving the NSW Planning System* provided a number of recommendations as to how the planning system could be improved. Since this time, the State Government has proceeded to introduce and implement a number of the recommendations put forward in the Discussion Paper with little regard to the submissions made in response to the Discussion Paper, particularly those from Local Government. As a result it is now Council’s position that the current planning reforms will further intensify the complexity of planning in NSW.

Council believes that the solution to the current problems within the planning framework in NSW is the development of a new Planning Act that is approached from a new and comprehensive perspective rather than proceeding with piecemeal and ad-hoc amendments to the existing Act. This new Planning Act should be developed following extensive public consultation processes and should focus on the

simplification of the system, removal of any inconsistencies and contradictions, and be written in a plain English format. Local Government's role should be reinforced in the new Planning Act in the determination of development applications and there should be a recognition of the local community's role in decision making process as well as include provisions addressing current global issues such as climate change.

What further changes to the planning legislation are needed?

Notwithstanding the comments above if the existing planning legislation is retained but amended to address the outstanding issues, the following changes are still required:

- Local Government's role is to be retained and reinforced as the approval body for its Local Government Area.
- There needs to be greater flexibility in the Standard LEP template to recognise local issues and areas that do not fit into the state-wide template.
- Councils should be given the power to adequately levy developments at the local and regional level to provide for local facilities and services, with State and Commonwealth Governments being equally accountable for the adequate provision of relevant infrastructure in areas experiencing substantial growth.
- There needs to be the fast tracking of the assessment of minor development.
- Council's position with respect to Part 3A applications (with respect to non-critical State infrastructure) is that they should be considered and determined by the Council and not the State Government. Furthermore, a Part 3A DA should be considered under the same planning rules that Council considers a DA under. This includes public participation (involving notification in accordance with the Council's requirements), the right of the public to address the decision-maker, assessment of all impacts, and all third party appeal rights.

- The Act should be amended so that the Minister can only intervene in a council's planning functions where a council is found to be performing unsatisfactorily, by independent inquiries or has, without good reason, consistently failed to meet key planning performance benchmarks over a two year period. Councils should be provided with a formal warning and reasons for ministerial intervention and be given an opportunity to respond.
- The system of certification should be reviewed, particularly; improvements are required in the area of accountability of accredited certifiers. The system of certification should be strengthened so that accredited certifiers are accountable to the local council. This will eliminate the potential for conflicts of interest to occur and will strengthen the system of private certification by resolving many problems associated with the poor performance of certifiers.
- It should also be written into the legislation that if the private PCA or other approval body certifies that a development is either exempt or complying and that decision is subsequently found to be incorrect then demolition of the works should be automatic, without resort to Council and to a building certificate application, as well as automatic notification to the Building Professionals Board who takes action against the private PCA. Such action should be enforced by a significant financial penalty written into the planning legislation.
- Council also believes that if an approval to carry out work is issued by a body other than Council then Council should have no further role in the process in terms of record keeping and compliance checks. This should be the role and responsibility of the body that issued the approval, and all records lodged and

maintained by a State repository centre such as the State Land Property Information Department.

- ePlanning initiatives should be progressed by the State Government in partnership with Local Government, as well as supported by adequate funding and resourced by the State Government with assistance from the Commonwealth Government.

What principles should guide any future development of planning legislation in NSW?

Council supports the principles that are contained in the Local Government & Shires Association document - "*Principles for Planning Reform – A Policy Platform*"¹ to guide future development of planning legislation in NSW.

In summary these principles are as follows:

- *Strategic Planning:* To recognise Local Government as a partner with the State Government in planning a sustainable future for communities throughout NSW; to clarify the roles and responsibilities of each level of government in progressing the objectives and targets contained in the Metro Strategy, sub-regional and regional strategies across all areas of NSW; and to provide an appropriate framework for funding all necessary infrastructure required to support development at the local level.

¹ Principles for Planning Reform – A Policy Platform from <http://www.lgsa.org.au/www/html/305-key-policies-and-information.asp>

- *Plan making:* Plan making should be streamlined by focusing the efforts of the State Government at the strategic level, removing unnecessary procedures and ensuring local development decisions are made locally.

- *Planning and funding infrastructure:* Revenue sources must be available to Local Government to enable it to fulfil its responsibilities to the community, including the provision and maintenance of infrastructure. Local Government:
 - Must be given the power to adequately levy developments at the local and regional level that create or increase the demand for infrastructure.
 - Must play a central role, in partnership with Regional Organisations of Councils, State and Federal governments, in the planning and development of regional infrastructure strategies.
 - Must be able to provide input to major infrastructure planning and development, which may affect their area or region.

- *Development assessment process:* Planning reforms should aim to improve the efficiency of the DA assessment and decision making process without compromising local accountability and public participation.

- *Part 3A projects:* Planning reforms should aim to improve transparency and accountability in the assessment of state significant sites and major projects (Part 3A projects). The lack of transparency and the wide ranging powers conferred on the Minister for Planning by Part 3A is not best planning practice; promotes a perception of, and increases the potential for, undue influence and corruption in the development process; and has served to

frustrate and alienate many local councils and their communities in their efforts to achieve good planning outcomes for their areas.

- *Exempt and Complying Development:* The development of best practice guidelines on exempt and complying development that simplify the DA process while recognising and protecting the diversity of local government areas and the unique characteristics of local communities is supported by Local Government. However the Council opposes the mandating of statewide targets and standard categories of complying development and the imposition of a standard residential code. Such measures have the potential to: lower planning performance standards by overriding local amenity and heritage issues; expand the role of private certifiers without adequate accountability; and limit legitimate public participation in the development process.
- *E-Planning:* The development of a 5-year e-Planning Roadmap for NSW agreed between State and Local Government. The Roadmap should be supported by an MOU that provides a timetable and funding for e-planning initiatives at the Local Government level.

(b) The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW.

As indicated by the Discussion Paper dated November 2008 on the *Inquiry into the NSW Planning Framework* both the Council of Australian Government (COAG) and Local Government and Planning Ministers Council have been increasingly active participants in the land use planning policy sphere. In 1998 the Development Assessment Forum was formed which developed the *Leading Practice Model for Development Assessment*, which provides a blueprint for jurisdictions for a simpler approach to development assessment. According to the Model, development applications should be assessed by one of the following six pathways:

1. Exempt development
2. Prohibited development
3. Self assess
4. Code access
5. Merit assess
6. Impact assess

COAG at its Meeting on 10 February 2006 took up the issue of development assessment with the following outcome:

COAG will request the Local Government and Planning Ministers' Council to:

- (a) recommend and implement strategies to encourage each jurisdiction to:-*
 - (i) systematically review its local government development assessment legislation, policies and objectives to ensure that they remain*

relevant, effective, efficiently administered, and consistent across the jurisdiction, and

(ii) ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times;

(b) facilitate trials of electronic processing of development applications and adoption through Electronic Development Assessment.²

Since February 2006 COAG have:

- In December 2007 made reference to a \$500 million Housing Affordability Fund with the goal of streamlining development approvals and reducing infrastructure charges and developer costs; and
- In August 2008 agreed to the Development Assessment Forum developed protocol to support electronic processing of planning and development applications.

The Australian Government has committed \$30 million from the Housing Affordability Fund to develop IT infrastructure and software needed to implement electronic development assessment (eDA) systems nationally.

Are the reforms and discussion at COAG level important for future development of NSW planning framework?

² Pages 5-6 of the Discussion Paper dated November 2008 Standing Committee on State Development Inquiry into the NSW Planning Framework

It should be noted that there is no clearly defined or determined list of items pertaining to the NSW planning system contained within COAG's national reform agenda as it is constantly evolving. However as the Agenda covers infrastructure planning, climate change, housing affordability and reducing regulatory burden, which are all important for the future development of the NSW planning framework, it is applicable for planning in NSW.

What are specific implications of the work of COAG on planning in NSW?

As stated above there is no clearly defined or determined list of items pertaining to the NSW planning system contained within COAG's national reform agenda. It is of interest however that the NSW Coalition for Planning Reform³ which comprises organisations that represent non-government stakeholders in the NSW development assessment (DA) system, has extracted the relevant issues identified in the reform agenda and has recommended the following for planning in NSW:

- A. Facilitate well managed and sustainable urban growth.
- B. Better built outcomes through the facilitation of innovation and sustainable development.
- C. A 30% reduction in statewide processing times within three years.
- D. Better decision making processes with less politicisation, more transparency, less corruption risk and greater accountability.
- E. A more attractive profession to work in which is better able to retain skills and talent.

³ Coalition for NSW Planning Reform Communiqué dated 6 August 2007

Council is generally in support of the above outcomes, though the way the outcomes will be achieved has to be agreed with by Local Government and not be driven by private developer's interests.

(c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and NSW Planning, Environmental and Heritage legislation.

What are your experiences involving assessment processes under the NSW and Commonwealth environment legislation for controlled actions?

The Commonwealth Department of the Environment, Water, Heritage and the Arts has recently advised Council of the matters of national environmental significance that may occur in, or may relate to, the Botany Bay Local Government Area. These are:

| | |
|---|------|
| World Heritage Properties | None |
| National Heritage Places: | None |
| Wetlands of International Significance: (Ramsar Sites) | 1 |
| Commonwealth Marine Areas: | None |
| Threatened Ecological Communities: | 1 |
| Threatened Species: | 33 |
| Migratory Species: | 33 |

Of particular relevance is the Eastern Suburbs Banksia Scrub (ESBS) of the Sydney Region. It is listed under the EPBC Act as an endangered ecological community as it is restricted to 1% of its original extent and only exists as a number of remnants – some of which occur in the Botany Bay Local Government Area. Additionally many migratory and threatened species occur in the Botany Bay area, in part due to its close proximity to Towra Point Nature Reserve, which contains wetlands of international significance.

The Department has advised Council that it supports consideration of the environmental impacts of proposed actions early in the planning process, particularly where this results in impacts being avoided or minimised and could reduce the need for referral and approvals under the EPBC Act.

Council's experiences to date have been through a formal referral process to the Department of the Environment, Water, Heritage and the Arts when determining development applications for works adjacent to areas of ESBS. These experiences have been satisfactory to date.

Did the bilateral agreements reduce duplication of approval procedures for the controlled action?

It is noted that in January 2007 an Assessments Bilateral Agreement was entered into with the NSW Government⁴. This agreement allows the Federal Minister for the Environment to rely on environmental impact assessment processes specified by NSW in assessing controlled actions under the EPBC Act.

In Council's limited experience the bilateral agreement has reduced the duplication of approval procedures in respect of the assessment of the environmental impact from development; though it still has to formally inform the Department of the Environment, Water, Heritage and the Arts when determining development applications for works adjacent to areas of ESBS.

⁴ Page 7 of the Discussion Paper dated November 2008 Standing Committee on State Development Inquiry into the NSW Planning Framework

It is noted that the EPBC Act 1999 is currently undergoing an independent review as per the requirements of the legislation to review every ten years. This is welcomed, as a review of the legislation has not taken place since its commencement eight years ago.

Are there areas of duplication that need to be addressed?

There is no direct relationship between the EPBC Act and the EP&A Act - their approval processes are completely separate in a legal sense. Whilst most developments require consent under the EP&A Act, not all developments will be required to obtain an approval under the EPBC Act, therefore leading to the duplication in approval in some instances.

There is also the potential issue of conflict between conditions in a development consent issued under the EP&A Act and conditions in an approval issued under the EPBC Act. Whilst there are no directions on which approval with conditions prevails, it can be assumed that the Commonwealth legislation overrides the State legislation. A Section 96 Application would need to be lodged under the EP&A Act to amend the consent to take into account the Commonwealth's requirements which would lead to increased costs on applicants and timeframes on developments. Accordingly, any duplication between these two systems needs to be removed.

The Urban Development Institute of Australia (UDIA) in December 2008⁵ made a submission to the independent review of the EPBC Act, which in part identified the following key issues for environmental assessment:

- *Environmental assessment to occur at strategic level, prior to urban zoning, to provide a cohesive plan for human habitation whilst recognising the need for preservation. While s.146 of the EPBC Act provides for 'strategic assessments', the capacity for strategic assessment is poorly utilised;*
- *Government agencies to have an integrated policy framework which, through bilateral agreements, enables single assessment to take place rather than a multi-layer approach involving the Federal, State and local governments;*
- *A clear focus on matters of national environmental significance, with scientific and logical trigger thresholds from a national perspective;*
- *Development of policies which can be applied to all matters of national environmental significance, and which integrate the triple bottom line into the decision making process;*
- *Industry and departmental officers' professional development regarding ongoing scientific research outcomes;*
- *A whole of government approach to sustainability which balances economic, social and environmental sustainability;*
- *The need for due process and a clear and transparent appeals process.*

Council supports these issues.

⁵ *Submission to the Independent review of the Environment Protection and Biodiversity Conservation Act 1999 dated 19 December 2008 prepared by Urban Development Institute of Australia*

(d) Climate change and natural resources issues in planning and development control.

How should climate change be addressed in the planning framework?

The responsibility of addressing the national problem of sea-level rise has fallen to local government, which currently does not have the relevant information and skills to tackle it such a huge issue and nor should it.⁶

There needs to be a coordinated approach to tackling the issue of climate change starting with the Federal Government, which needs to undertake national modelling of near shore topography, and then for state government to produce guidelines to assist councils in setting benchmarks for strategic planning in relation to coastal hazards. This would also provide guidance on when and how to conduct adaptive activities that address climate change risks in coastal zones⁷.

The major issue for local government is that failing to address climate change may expose councils to potential legal liability. "Best Practice" guidance from Federal and State Governments to address climate change issues is needed as well as the introduction indemnity for local government subject to compliance with those best practices.

Whilst Council can contribute to reduction of climate change impacts by proposing new residential development within centres with access to public transport thereby reducing the need for residents to travel by car; requiring water-sensitive urban design

⁶ *Deadly Seachange*, Fiona West, Government News September 2008, pp28 to 31

⁷ *Deadly Seachange*, Fiona West, Government News September 2008, pp28 to 31

for new development and irrigation of open space areas; and etc, there are matters beyond Council's control (for example the presence of the Airport and Port Botany within the Botany Bay LGA and their associated environmental impacts) that require intervention from Federal and State Governments.

Is the current framework adequate to consider the potential effects of climate change?

Council believes that the current framework to consider the potential effects of climate control to be inadequate. The NSW Government has yet to provide adequate guidance to Councils on factoring in sea level rise into local environmental plans. Such guidelines would remove much of the uncertainty for Councils as well as ensure a consistent and coordinated approach to sea-level rise.

How should natural resources issues be taken into account in the planning and development approval framework?

The NSW Government in March 2008 announced that NSW would develop a Climate Action Plan (CCAP) to replace the 2005 NSW Greenhouse Plan. Forums were held in October 2008 to explain the changed context for climate changed policy arising from the Federal Government's proposed Carbon Pollution Reduction Scheme; what future role of sub-governments will be; and what the NSW Government is doing to address climate change. This is a positive step forward in taking into account natural resource issues in the planning and development framework. However it needs to be written into legislation (SEPPs, LEPs & DCPs) to be legitimately considered by applicants and developers.

(e) Appropriateness of considering competition policy issues in landuse planning and development approval processes in NSW.

Should competition analysis be a part of local planning decisions?

According to Australian Competition and Consumer Commission (ACCC) shoppers are paying far too much for their groceries because of restrictive out-of-date planning laws, and recommend that an overhaul of the NSW Government's Centres Policy would allow greater competition, leading to consumers paying up to 18 per cent less for food staples and up to 28 per cent less for other household products.⁸ The ACCC also argue against present planning laws, which effectively restrict supermarkets to established centres, resulting in traffic congestion and restrictive trade.

Consideration of competition within a local economy is a difficult one for both Council and the community to understand. There are two sides to the argument of whether or not competition analysis should be part of local planning decisions. It is apparent that the local community considers the impact on existing businesses a legitimate consideration in the development assessment process, whilst in other circumstances business that do not progress and change over time in response to outside forces, should not be protected by overly restrictive planning controls.

It is also believed that restrictions on competition or business are justified because the benefits of the restrictions to the community at large in terms of maintenance of resources for future generations⁹. The first is the trend toward greater community

⁸ Australian Competition and Consumer Commission, Inquiry into the Competitiveness of Retail Prices for Standard Groceries, July 2008

⁹ Response to Issues Paper – *National Competition Policy Review of Land use Planning & Approvals Act 1993* – Environmental Defenders Office, dated October 1999

participation in decision-making, including in the policy, planning and management stages. The second is the growing importance and recognition of the precautionary principle in decision-making. This principle states that uncertainty regarding the effects of a particular action or activity should act as a constraint against the action or activity in order to avoid potential environmental harm. The precautionary principle is widely recognised internationally and nationally as a key factor in achieving ecologically sustainable development and as a key component of successful environmental management and planning.

How should competition be factored into the planning system, if at all?

Council believes that competition should only become part of local planning decisions if the original basis of the zoning of land under a Council's Local Environmental Plan (LEP) is not underpinned by a regional planning strategy or a comprehensive strategic planning study. Such planning strategies identify a hierarchy of centres within a LGA, which are then zoned appropriately under the Standard LEP Template. This would minimise any potential competition issues, as it will be clear as to what is and where it is permissible within an LGA.

(f) Regulation of land use on or adjacent to Airports.

Is the current arrangement for regulating land use on or near airports appropriate?

Council's experience to date is that the current arrangement for regulating land use on airports is not working. The 2009 Preliminary Draft Master Plan that was exhibited late 2008 is an example. The planning process approach adopted in the Draft Master Plan is primarily driven by forecasting and capacity planning and by considerations of commercial return, and does not reflect best practice in terms of master planning methodology and stakeholder consultation.

Council does not object to Airport sites being managed by the Commonwealth. However, based on Council's past experience with Sydney Airport Corporation Limited (SACL) in respect of the Sydney Kingsford Smith Airport, and issues with the draft Masterplan, the current system where airport sites have landuses and developments which operate in isolation from the local and state planning policies directly surrounding them is not equitable and does not create the best planning outcomes for the airport and the surrounding community.

Under Regulation 5.02 of the Airports Regulations 1997 an airport masterplan must, *in relation to the landside part of the airport, where possible, describe proposals for land use and related planning, zoning or development in an amount of detail equivalent to that required by, and using terminology (including definitions) consistent with that applying in, land use planning, zoning and development legislation in force in the State or Territory in which the airport is located.*¹⁰

¹⁰ Extract from the Airports Regulations 1997 – REG 5.02

Council provided comment on the 2009 Preliminary Draft Master Plan that was exhibited late 2008, and the following statements are from that submission.

Section 4 of the Preliminary Draft Master Plan deals with the economic, social and strategic significance of the Airport. Council agrees that Sydney Airport is a major employment generator and wealth creator in the NSW economy as well as being a significant hub for airport related business activity within the Airport and its surrounds. Its position as major employment generator and wealth creator in the NSW economy has been reinforced in both the NSW Department of Planning's Metro Strategy and the Draft East Subregional Strategy and their associated actions and recommendations. It has also been reinforced in the City of Botany Bay's Draft Planning Strategy that was on exhibition until 12 December 2008.

Whilst its role is recognised by the City of Botany Bay Council, neither the Draft Master Plan nor its writers fully recognise the impact that the Airport has on the residents of the Botany Bay LGA. The Preliminary Draft Master Plan notes that URS in their 2008 economic impact analysis of the Airport (prepared for SACL) have estimated that an additional 100,000 jobs will be generated by Sydney Airport over the next 10 years, and that the majority of these jobs will be generated locally in the areas around the Airport particularly in Botany Bay LGA, as well as Marrickville and Rockdale LGAs.

Further in briefly mentioning the Draft East Subregional Strategy the Preliminary Draft Master Plan limits its discussion to those actions and recommendations about

the protection of strategic lands around the Airport, etc but does not discuss the Action EA A1.2.1 which states:

State Government to work with Sydney Airport Corporation on managing growth of aviation and non-aviation activities at Sydney Airport.

The use of Airport land for airport purposes has always been an issue for Council. Given the growth expected in passenger and freight over the next 20 years as outlined in the Airport Masterplan, Council's position is that Airport land should only be developed for airport related activities and not for non-airport related activities. Action EA A1.2.1 should not have been ignored but addressed by the Draft Master Plan.

The Preliminary Draft Master Plan also notes that there is a trend that will continue of non-essential aircraft interface activities being performed on land beyond the Airport boundaries as demand increases for aircraft parking areas on the airfield. Again this will impact on the Botany Bay LGA, but the Preliminary Draft Master Plan does not address this impact. At the same time SACL in Section 11 of the Draft Plan expects to increase markedly the commercial businesses on their property – in accordance with the principle of *highest and best use*.

The City of Botany Bay Council in 2007 engaged consultants to undertake a planning strategy to provide the framework for growth and development for the LGA over the next 25 years and to assist the development of the new principal local environmental plan (LEP). The draft Strategy was on exhibition until Friday 12 December 2008.

It was noted by the Study Team (SGS Economics and Planning and Strategic Design + Development) that there is a shortage of developable land surrounding the Airport and there will be continued pressure on this land as the Airport grows.

The Draft Botany Bay Planning Strategy 2031 states on page 69:

The Airport generates a significant amount of off site land demand within the Botany Bay LGA, mainly through transport, freight and logistics activities requiring industrial zoned sites. The Airport has five freight terminals onsite, processing around 550,000 tonnes of freight per annum (Sydney Airport Master Plan 2003/04). To assess the amount of future offsite land demand, SGS developed an Airport land demand model. The model set out existing land take under current freight throughput, identified the increase in throughput expected to 2025, and calculated the likely offsite land demand generated by the increased throughput. Land suitable for Airport-related freight activity was identified to see whether additional zoned land for these uses would be required within the Botany Bay LGA. Sites were selected based on consultation with logistics experts and airfreight operators, and an understanding of airfreight logistics chains. The analysis found that Airport-related freight operations prefer a location on the Airport site or within one kilometre of the Airport site. The Airport land demand model showed a land demand undersupply of 14 hectares once all suitable offsite land had been considered.

This reinforces the Council's position that Airport land should be used for airport related activities only and should not be used for non-airport related activities.

It is noted that Sydney Airport is currently engaged in discussion with the NSW Government on external road planning issues. The City of Botany Bay has for some time been pushing for a regional review of the road planning issues within its area given that the LGA contains the two specialised centres of the Airport and Port Botany. The Local Councils surrounding the Airport should be involved in the discussions on the external road planning issues. It is also of concern that the modal shift to public transport is still targeted at 5% by 2024 – the same as indicated in the 2004 Master Plan. It is also noted by Council that whilst the Preliminary Draft Master Plan proposes provision of improved access to the public transport facilities at the Airport it also proposes the construction of additional car parks. Council believes that providing more car parking will encourage increased private car usage rather than increased public transport usage. Building more car parks does not make sense.

The landuse planning for the Airport is still based on forecasting and capacity planning as well as consideration of commercial return. This is reinforced by the statement on page 103 of the Draft Master Plan in respect of the AR1- Aviation Reservation Zone:

“Until such time as the land is required for aviation activities this Master Plan will facilitate the highest and best use of the land during the intervening period”.

This specific “zoning” has replaced very large sections of the Airport, which were previously “zoned” for business purposes. The “highest and best use” is inconsistent

with every zoning type in the Botany Local Environmental Plan 1995 (Botany LEP), which specifies permitted uses and prohibits all other uses. The previous Master Plan of 2003/2004 included at page 91 the following statement – “Development uses which are not specified in a particular zone may be permitted on a case by case basis, following consideration by SACL as to whether that use is consistent with the Master Plan as a whole, as well as the other uses permitted with that particular zone”. This statement, effectively, allowed SACL to approve any use anywhere on the Airport on any basis they choose. While such an explicit statement is not included in the 2009 Draft Master Plan there is nothing in the plan, which would prevent SACL from continuing to approve any use on any part of the Airport.

There is also a fundamental problem with the structure of the Master Plan when dealing with the question of Land Use Planning because the zonings adopted by SACL are based upon the definitions included in the draft standard LEP template issued by the NSW Department of Planning. Using those definitions SACL has selected various uses as a basis for the new zonings in the Master Plan. It is, therefore, impossible to compare those zonings and determine if they are consistent with the existing Botany LEP or any other Council LEP.

Under the Botany LEP, the Airport is zoned as 5(a) Special Uses. Page 185 of the Draft Master Plan includes the assertion – “The business, industrial and commercial land uses that are permissible with consent under the Master Plan are consistent with the 5(a) Special Uses – Airport zoning provisions under the Botany LEP *if a more broad and contemporary view is taken of what the purpose of an ‘airport’ is and the land uses it can support.*” (The emphasis has been added.) The essential element of

the Botany LEP zoning is that development within such zoning should be “ordinarily incidental or ancillary” to the use of the land as an airport. The AR1 – Aviation Reservation zone of the Draft Master Plan goes further than just allowing “ordinarily incidental or ancillary” airport related uses, the zone allows any use anywhere on the Airport. The zones proposed in the Draft Master Plan are not consistent with the Botany Local Environmental Plan 1995. Under “good master planning” practice the proposed zoning should have been compared with the Botany LEP zonings of “4(c1) Industrial Special Airport Related” or 4(c2) Industrial Special Airport Related Restricted” but the basic thrust of the Draft Master Plan zoning is to make provision of a broader range of uses without being restricted to airport related uses.

Under the Botany LEP if a use is not permissible it’s prohibited. No such prohibition applies in the zoning tables in the Draft Master Plan. There is, therefore, nothing in the Draft Master Plan, which would prohibit any development at the Airport. That is not consistent with the relevant Planning legislation and does not reflect the role of the Airport as a specialised centre. In addition, the actual uses are also inconsistent between the zonings and an explanation of the inconsistency is not addressed in the Master Plan. The list of permissible uses in the zonings in the Master Plan have been selected by SACL and they bear almost no relationship to the uses contained in the current zonings of the Botany LEP. It is, therefore, unrealistic and incorrect for the Draft Master Plan to claim in Appendix C, and in other parts of the plan that it is compatible and/or consistent with the Botany Local Environmental Plan 1995.

The Draft Master Plan asserts on page 182 that Sydney Airport have a comprehensive development assessment process pursuant to the aims and objectives of the Airports

Act 1996. Unfortunately this process is not a public process. The Land Use Planning section of the Draft Master Plan continues the previous practice of SACL of not including any basis for assessment of development in the Draft Master Plan; instead, all developments will be subject to SACL's own internal assessment process.

All of the City of Botany Bay's planning legislation – both the Botany Local Environmental Plan 1995 and all the Development Control Plans - are available on the Council's website, including details of DA lodgement and what will be considered by Council in determining a development application lodged with it. Furthermore, in order to have a Development Application considered by the City of Botany Bay there are a number of reports and documents, which must accompany the application. The detail required is extensive but the following are some of the reports required for consideration –

Quantity Surveyor's report of assessed value.

Soil and Water Management Plan

Stormwater Drainage Plan

Landscape Plan

Statement of Environmental Effect

Acid Sulphate Preliminary Assessment

Waste Management Plan

Traffic and Parking Plan

Acoustic assessment

Energy Efficiency Study

In comparison there is no indication of what reports or documents are required to be submitted for the development assessment process conducted by SACL, nor is the SACL's assessment process publicly available and subject to public scrutiny.

Council's experience to date is that the current arrangement for regulating land use on airports is not appropriate.

Is there sufficient involvement of the community within which the airport is located under the current system?

Given the issues raised above there is not sufficient involvement by the community within which the airport is located under the current system.

Botany Bay City Council's experience with SACL is as an advocacy role for the community surrounding Sydney Airport and also in enforcing mitigation measures for impacts caused by airport operations in developments around the LGA.

Council's advocacy role is in taking part in the public consultation processes required by the planning system for example in responding to the draft Masterplan. Council responds to exhibitions by submissions that consider the impacts on the community by any proposed SACL development.

Other avenues of community involvement and public consultation with the airport would be welcomed by Council and presumably supported by other nearby councils eg. Rockdale and Marrickville.

(g) Inter-relationship of planning and building controls.

Is the current inter-relationship between the planning system and the regulation of building works appropriate?

The current inter-relationship between the planning system and the regulation of building works is overly complicated and contentious. This complex and contentious relationship has evolved as a result of the planning reforms since private certification inception in 1998. Issues with private certification need further investigation and resolution prior to considering any further expansion. It is therefore Council's position is that the current inter-relationship between the planning system and the regulation of building works is not appropriate.

(h) Implications of the planning system on housing affordability.

What is the impact of the planning system on housing affordability?

Currently the State and Federal governments have different agendas and policies with respect to housing that have a huge impact on housing affordability. A wide range of factors, many of which are not related to the planning system, drives housing affordability.

Notwithstanding the above comment, the planning system can influence the supply of suitable land through locational requirements and residential densities of Strategies and zoning maps. In addition planning policies can be put in place to minimise the loss of existing low cost housing – an example being State Environmental Planning Policy No. 10 – Retention of Low Cost Accommodation.

The following planning issues impact on housing affordability:

- The long DA processing times results in higher costs, with labourers and contractors awaiting approval to start work, investors waiting longer and having to provide more capital before they see any yield, and home owners wasting money renting whilst awaiting new home etc.
- The lack of skilled professionals in the planning system ie. inadequate information lodged with development applications, and unclear understanding/lack experience with complex planning system.
- The complex system with three (3) tiers of government each with its policies and controls that must be complied with/considered/assessed by applicant and consent authority.

What changes, if any, need to be made to the planning system to improve housing affordability?

Planning policies to reduce the cost of housing over time and therefore improve housing affordability would involve co-operation and partnerships with various levels of government, non-government providers and the private sector. Such policies would also need to be supported by legislation in order to reprimand those who do not follow them. It requires commitment from all stakeholders, a change of the mind-set of everyday Australians and change also in how the property industry operates. Such policies should be also implemented as an integrated program (as part of a financial package) if they are to be fully effective.

One way to address demand is to allow large-scale land releases to occur. At a base level this policy could provide many much needed homes. Large land releases would need to be -coordinated by State Governments to ensure a broad strategy is developed. Integrated land release would be most effective, with residential and employment lands in close proximity as well as the provision of infrastructure and essential services. This would reduce urban sprawl and pressure on established major cities, create more sustainable communities and a better work/life balance for residents.

The property development industry and non-profit housing providers would have to work in partnership with local and state government bodies to achieve these recommendations. Developers could be offered incentives e.g. tax benefits to provide infrastructure in a rates system so up front costs for those purchasing property is

reduced. Land would not be subdivided and sold until fully serviced and developers would be encouraged to undertake major works¹¹.

A policy to develop and enhance existing regional centres would also address demand and affordability. Australia's capital cities, particularly Sydney and Melbourne are hubs for employment and residential urban land. They are also the most expensive in terms of property and rental prices, which, among other factors, can be equated to the fact that 55% of the urban population of Australia live in either Sydney or Melbourne¹².

A policy that focuses on the growth of regional centres can take the pressure off these major cities by offering equal opportunities with a reduced cost of living. State Government would develop this policy and the associated benchmarks with the co-operation of local councils. Developers would receive incentives to ensure that new housing was coordinated with links to existing services and facilities through public transport, walkways and roads as well as planning for some of these services in close proximity to new homes.

Incentives that encourage the construction of smaller, more sustainable and self-sufficient homes would also reduce demand on land as each lot would be smaller and the overall land capacity would be increased. It would reduce the cost of homes and would be targeted to low and middle-income earners. The Federal first homeowner's scheme (FHOS) would be better targeted to this income bracket and

¹¹ Australian Institute of Urban Studies (1971), *First Report of the Task Force on the Price of Land*, Commonwealth of Australia, Canberra, pp.229

¹² Reserve Bank of Australia (2003), *Productivity Commission Inquiry on First Home Ownership: Submission by the Reserve Bank of Australia*, p25

to smaller homes. The FHOS should be means-tested and tailored towards those in 'housing stress'; and/or be tailored to a specific type of housing, e.g. high density or small scale, sustainable dwellings. Non-profit groups could be involved in the implementation.

G:\Archive Files\Arch_2009\Strategic Planning\Planning Inquiry\Council Submisison_Inquiry into NSW planning framework.doc