Submission No 43

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Lake Macquarie City Council

13 February 2009

The Director,
Standing Committee on State Development,
Legislative Council, Parliament House,
Macquarie Street,
Sydney, NSW 2000

Dear Sir, Madam

Subject: Inquiry into the NSW planning framework

In October 2008, the NSW Legislative Council's standing Committee on State Development wrote to Council advising that the Committee was conducting an inquiry into the New South Wales planning framework in the context of national and international trends in planning.

Lake Macquarie City Council supports the NSW Government in identifying ways to improve the NSW Planning System:

- so it is less complex and more efficient;
- to improve clarity and certainty;
- so planning decisions are transparent and accountable to the community; and
- to improve processing times for development that will have no adverse impact on the environment or the community.

This submission is in response to the committee's invitation, and is based on the Terms of Reference provided by the Committee.

Should you require further information, please contact me on 4921 0509.

Yours faithfully

Gabriele Calcagno

Senior Strategic Planner
Integrated Planning Department

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Lake Macquarie City Council

Submission to Legislative Council Standing Committee on State Development – Inquiry into the New South Wales Planning Framework

In August 2008, the NSW Legislative Council's standing Committee on State Development wrote to Council advising that the Committee was conducting an inquiry into the New South Wales planning framework in the context of national and international trends in planning.

Lake Macquarie City Council supports the NSW Government in identifying ways to improve the NSW Planning System:

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This submission is in response to the committee's invitation, and is based on the Terms of Reference provided by the Committee.

Term of Reference 1(a): The need, if any, for future development of the New South Wales planning legislation over the next five years, and the principles that should guide such development.

Submission

- *The Environmental Planning & Assessment Act 1979* was introduced almost 30 years ago. In the past 15 years, it has been amended in a piece-meal fashion. Its interpretation and implementation has been affected by the outcomes of case law, the introduction of parallel natural resource management and environmental protection legislation, Aboriginal and Non-Aboriginal heritage cultural management legislation and licensing and registration requirements. Overall, the NSW planning system has become complex, with too many approval processes and approval authorities, and insufficient strategic context or clear outcomes or goals.
- A new planning Act should be written to reflect modern standards and issues and create a more user-friendly piece of legislation.
- The existing layered approach to development control, with multiple SEPPs, REPs, Regional Strategies, LEPs, and DCPs has made the planning system very complex, mainly due to the absence of a comprehensive management perspective from the state government. The current practice of the state government allows existing planning controls to be 'amended' by new plans without amending the actual words in a multitude of subordinate plans. This means planners and the public are required to interpret how one document affects another, and in the longer term to recall all the documents that may have provisions relevant to a development proposal.
- The process for the development of policy and planning legislation is presently a top down approach. There needs to be avenues for the community and local government to initiate policy review to ensure a dynamic planning system and to participate in development of legislation at

more than a token level. Formalised mechanisms for local government and the community to request reviews or changes to strategic plans, policy directions and legislation are required. Reviews currently occur at the discretion of the state government who, not being as embedded in the community, does not always see issues at an early stage or understand the complexity of an issue, or the ramifications of change to legislation.

- Principles that should guide a planning system:
  - Clear objectives, processes, and products.
  - Future legislation should be guided by sustainability principles and address climate change.
  - Recognition within the legislative framework of the role of other parallel or subordinate legislation and the sequence of approvals.
  - Independent review and appeal against undesired impacts of planning which may include the processes inherent in judicial and administrative review.
  - Minimise the number of approval agencies. There are currently too many approval agencies at the Federal and State levels, which are making the system too complex.
  - Provide for consultation and challenge when the system is not achieving a balance for social, economic, and environmental issues. In this regard, current legislation requires minimal monitoring or feedback on whether development is achieving the outcomes and expectations of legislation or local regional and state strategies.
- Regional Strategies rolled out across NSW have not been accompanied by Regional Conservation Plans (they were exhibited for some regions but have never been adopted) or funded infrastructure plans. As a consequence, land use planning decisions are being delayed and/or frustrated, with resultant but avoidable community angst due to the lack of certainty associated with land use decisions. For example, local communities are uncertain that necessary infrastructure will be provided to accommodate a growth in population. Recent reforms to the development contribution system have further reduced certainty by diluting a potential source of funding with no guaranteed alternative.
- Recent changes to the planning system in NSW have resulted in a proliferation of decision making bodies for both the preparation of new controls and the making of development control decisions.
- Local councils should be retained as the central authority in the management of their local areas, by requiring all applications for development to be lodged with councils in the first instance, and for decisions that are not delegated to staff to be made by councillors after receiving a report and recommendations from an independent hearing panel.
- The operation of Part 3A of the EP&A Act, SEPP (Major Projects) and SEPP No. 71 – Coastal Protection need to be reviewed to return development that is clearly not of State Significance to local government for assessment and determination. The current operation of Part 3A, SEPP (Major Projects) and SEPP No.71 has unnecessarily removed the

assessment responsibility from Council for minor development. For example, applications for residential flat buildings and Housing for Aged and Disabled in town centres, and subdivisions of less that 100 lots have been 'called in', often for no other reason than the sites fall within a numerical distance of the Lake Macquarie shoreline, irrespective of the nature of existing development in the area. Local government is the most appropriate, democratically elected body to make decisions on matters of local significance, in consultation with the local community.

- Council supports the principle of Local Government receiving recognition under the Australian Constitution. Council also believes that inherent within this recognition should be appropriate financial arrangements to provide for the sustainability and growth of local communities through Local Government services, decision making and governance. Potential cost burdens are likely to accrue to councils from changes to the Constitution and structural reform of government financial arrangements need to recognise and address this in conjunction with constitutional reform.
- Implementation of current planning and natural resource management legislation has taken a 'one size fits all' approach. However, councils in NSW have varying characteristics, particularly in respect of scale and access to resources. The implications of a 'one size fits all' approach can be understood if councils are categorised into two simplified types:

  1. Those with good resources, capable of assessing a range of development proposals and dealing with complex legislation. Those councils are generally located in high growth coastal, regional city and metropolitan areas.
  2. Those with few resources and less ability to deal with complex development proposals and legislation. These councils are generally in rural areas, particularly in the western district.

  Rather than implement legislation using a 'lowest common denominator' approach the NSW government should develop systems or procedures to assist less well resourced councils.

Terms of reference 1(b): The implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales.

Submission

- Council is generally supportive of the COAG principles and the ongoing review of state and territory planning systems to fit with these principles.
- Council does not believe there is sufficient opportunity for input from local government or local communities on the creation of legislative change resulting from implementation of the COAG principles. Council also believes legislative change at NSW State level is selective in satisfying COAG principles e.g. legislation is changed with the aim of 'reducing red tape' yet there is little information/analysis provided to support this claim or whether the changes result in an overall reduction in legislation, or that they do not introduce new costs to local government or the community. The recently introduced JRPPs are an example of the addition of a layer of red tape and expense.

- The COAG reform agenda is being implemented inconsistently on a state-by-state basis.
- There is a need for sound sustainability criteria for legislation to be based on, at the federal level, to act as a framework for state and territories' legislation including any subordinate legislation.
- The economics of urban sprawl needs to be addressed at a federal level. Infrastructure provision needs to occur in a manner that facilitates and directs preferred patterns or types of development.
- Developer contributions have become a critical funding mechanism to enable councils to provide local infrastructure to meet the demands created by new development. Recent changes to the *EP & A Act* and *Regulations* will reduce local government's ability to levy contributions. Changes like this should only occur as part of a comprehensive review of infrastructure funding across the three tiers of government and the identification of alternative sources of funding to replace the development contributions. These changes were instigated in the guise of an economic stimulus package and demonstrate that confusing reasonable planning objectives (the adequate servicing of new development) with peripheral policy (averting recession and falling State tax revenues) will undermine planning outcomes to the long term detriment of NSW communities.
- Infrastructure and transport planning must accompany any regional land use strategy as this has a direct bearing on the cost of infrastructure to local governments and may have substantial environmental impacts. The lack of infrastructure adds to the real cost of development and makes housing less affordable in the long run.
- Consideration needs to be given at the Federal and State level to the impact of mining and the associated sterilisation of land and its implications. There are associated and consequential impacts on land which either adjoins, is above or is in close proximity to mining activities due to:
    - the extraction and causal effects of dust, noise, and traffic/truck movements;
    - the impacts on underground aquifers and streams and the potential damage and loss of these most important resources, particularly in times of drought and climate change in general;
    - the impacts of mining on the future development or redevelopment of land at surface level above underground mining or near an open cut mine. For example where underground mining has occurred, the potential to develop these areas is generally reduced and acts to maintain a sprawling urban form. The consequences of mining on development can have severe consequences on the utilisation of scarce natural and man made resources, (a regional example is Charlestown in Lake Macquarie) and restricts the potential building footprint, the building's height/mass and the potential for consolidation of central CBD's. There is a need to fund rehabilitation works required to enable existing urban centres in the Hunter to redevelop in order to achieve the outcomes identified in the Lower Hunter Regional Strategy.

- There is a need to ensure decisions being made now, do not recreate the problems currently being faced in the Hunter.

- Council has already introduced an E-planning system. This required considerable financial resources to be outlaid and continues to require support of specialist staff. The outcome for Council and the local community has been very positive, and the expense has been judged as worthwhile. If a new E-planning system is to be introduced, councils that have already introduced systems, such as Lake Macquarie City Council, should be supported financially in the transition to any new prescribed system.

Terms of reference 1(c): Duplication of processes under the Commonwealth Environment protection and Biodiversity Act 1999 and New South Wales planning, environment and heritage legislation.

Submission

- There is a need for better integration of legislation and a reduction in the number of separate pieces of legislation. In relation to development assessment - put processes in place to acknowledge Federal and State tiers of government in order to have a consistent development approval system and remove duplication.
- Incentives are required for landowners and developers to retain native vegetation. Current tax incentives are having an adverse affect by encouraging the clearing of native vegetation and fauna habitat. An example is clearing for agriculture or plantation timber.
- There is conflict between the legislation related to bushfire protection and maintenance of biodiversity. An example is the need to conserve/retain native vegetation and the removal of vegetation for bushfire asset protection zone requirements.
- Current Bi-lateral agreements need to be supported by processes that remove political influence from the assessment process at State level. In recent times, the NSW Minister for Planning has signed MOUs with development proponents making commitments ahead of any environmental assessment (EA) process. This has the potential to influence the outcomes of a subsequent EA process (i.e. existence of MOU places pressure on assessing staff to approve the proposal) and clearly sets up a perception in the community that the process will be biased and less rigorous.

Terms of reference 1(d): Climate change and natural resources issues in planning and development controls.

Submission

- There is a need for a climate change framework to be developed at a Federal level and reflected at state and territory level. Councils are dealing with climate change as an issue in land use decisions now. Without a clear framework to operate within there will be inconsistencies in approach across the State and uncertainties regarding indemnities for decisions made. In NSW, the Flood Plain Manual and the Coastline Manual need to be reviewed to better address climate change.

- Legislation should encourage development to be located and constructed according to sustainability principles.
- Funding is required to assist those areas where the impact of climate change will have a detrimental affect on buildings, infrastructure and local biodiversity. In the Lake Macquarie LGA, sea level rise has the potential to impact on existing infrastructure and buildings over the next 50 to 100 years with ongoing impacts beyond that timeframe. Planning for, and the funding of, protection and/or adaptation works or retreat is necessary for both private and public infrastructure and buildings in potentially affected areas.
- Natural Resource use and management needs to be integrated into the land use/planning system.
- There is a need for a system that channels some of the profits from use of the environment e.g. native vegetation clearing/development and land use (including mining) back into the environmental management problems that arise from these land uses. For example, ongoing management of conservation land by government authorities, climate change, water quality and threatened species issues, etc.

Terms of reference 1(e): Appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales.

Submission

- The application of competition policy objectives in the approval process have made the planning system in NSW more complex and generated conflict in the community.
- The current planning system is not considered by Council to be an impediment to competition amongst retailers. Case law has and will continue to establish principles that guide councils on the weight given to various types of submissions. Case law could be supported by the provision, in regional strategies, of clear floor space provision targets for different retail activities in different centres. These targets need to reflect the role of the Centre and be flexible. Non-centre based urban forms undermine the efficient delivery of public infrastructure and are less sustainable, particularly in respect of access and transport, than centre based urban forms.
- Land ownership patterns, rather than land zoning practices, have far greater impact on the provision of 'supermarkets', or the ability of urban areas to develop and change over time. In new urban growth areas, the earmarked town centre and surrounding residential land will often be in the ownership of a single/small number of companies who control which retailer purchases land in commercial zones or who leases space within a shopping centre development. In existing urban areas, ownership and lot patterns are highly fragmented, and it is a slow and expensive process for a developer to consolidate sufficient sites for modern retail/commercial development. A change in zone creates an immediate increase in land value (windfall) for the owner but with no consequent responsibility to allow the land to be purchased and utilised for the new intended land use.

- Some developers are overly reliant on the argument of competition to secure approval for poorly designed developments. Retailers who take a professional and consultative approach to planning their development are less likely to encounter substantive objections during the development assessment process.

Terms of reference 1(f): Regulation of land use on or adjacent to airports.

Submission

- Airport Master Plans and Development Plans covered by the Airports Act 1996 should be required to consider and implement strategic plans developed by state and territory governments and local councils.
- The Commonwealth Minister responsible for the Airports Act should not be the determining authority for airport development and works. This role should be shared by state and territory governments and local councils with the Commonwealth providing strategic direction and performance criteria.

Terms of reference 1(g): Inter-relationship of planning and building controls.

Submission

- Pre 1998 the DA/BA processes were separate, each with the ability to place conditions of approval on the DA or BA as required. The DA was able to focus on the appropriateness of the proposed land use for the location, and the impact on the environment. Working drawings and complex detail was left to the BA stage once a decision had been made that the proposed land use was acceptable. This system required less investment by the proponent up front and did not create impediments to negotiation on elements of a proposal. The replacement system of development approval and construction certificate, with private certifier options, has made the approval process more cumbersome and expensive.
- Similar problems are now being encountered as Certifiers are able to take over at the construction stage of subdivisions. For example, in the past, Council officers would approach the construction phase in a collaborative way with the developer, resolving issues as they arose on a site. Now staff must condition the subdivision approval in an exhaustive manner attempting to predict all contingencies in advance of construction commencing.
- The use of private certification in the approval of Construction Certificates has caused angst amongst the community due to lack of regulatory responsibility being placed on the certifier.

Terms of reference 1(h): Implications of the planning system on housing affordability

Submission

- There is an over-reliance on the planning system to deliver affordable housing. The planning system can allow affordable housing but has limited mechanisms to encourage or require the provision of affordable housing. Planning can deliver affordability benefits through land use and transport integration, proximity between land use types, balancing triple bottom line objectives in decision making and so forth. Housing affordability debates

are however, overly reliant on the initial purchase price of housing stock, an issue upon which planning has been repeatedly demonstrated to be a blunt and ineffective tool.

- Investment in public housing is required. This has not been addressed adequately by either the Federal or State Governments in the past.
- Tax incentives/review is seen by Council to be a proactive and important function of housing affordability. Further encouragement is required for non-profit groups to provide affordable housing. Capital gains tax incentives should also be developed to encourage construction of "modest" housing which reflect best practice sustainability principles. Financial incentives for the provision of housing should be linked to criteria regarding house size and location principles – housing in urban centres is more 'affordable' for occupants than housing on the urban fringe due to accessibility to services and infrastructure, and reduced dependence on private motor vehicles.
- The recent Regional and Local Community Infrastructure Programme has provided much needed and a welcomed injection to infrastructure funding which would not be otherwise possible. It is suggested that this model of funding be extended.
- Infrastructure funding sources at both Federal and State level should be joined for specific projects. There needs to be greater cooperation between the three spheres of government e.g. expansion of the Housing Affordability Fund to tackle escalating home purchase cost. This could be achieved via tax breaks or similar to developers that provide housing at below market rates for example. Case in point - the Lower Hunter Regional Strategy (LHRS) provided by the State has no Infrastructure provision for anticipated growth. This in turn does not serve housing affordability well, as it would rely on existing funding models to provide for future infrastructure needs.
- The planning system would benefit from uniform national housing affordability guidelines/principles.
- Land ownership patterns have a substantial impact on provisions of affordable housing by affecting either the base price of raw land on the urban fringe or contributing to difficulties in purchasing and consolidating sites in existing urban areas for redevelopment. A change in zone creates an immediate increase in land value (windfall) for the owner, but with no consequent responsibility to allow the land to be made available for the new land use at a reasonable price.
- Caravan parks are currently acting as an important form of affordable housing for those in the community who cannot afford the cost or time to wait for public housing. There are significant pressures on caravan parks in high amenity locations to be redeveloped for high-cost housing or tourism uses. New caravan parks and manufactured housing estate sites, due to land area requirements, are only possible on the urban fringe, which is not an 'affordable' location for low-income households due to transport cost and limited access to services, facilities and employment. This is an issue that needs consideration in relevant state and territory legislation.