To: New Planning System, NSW Department of Planning and Infrastructure, GPO Box 39, Sydney NSW 2011

White Paper: A New Planning System for NSW

Submission, June 2013

Introduction

Tomaree Ratepayers and Residents Association Inc. is a voluntary community group which regularly makes submissions to Port Stephens Council and to the State Government on planning matters affecting the Tomaree Peninsular within the Port Stephens LGA.

We are very concerned about the proposed new planning legislation, as outlined in the White Paper *A New Planning System for NSW*. Far from being an advance over the current system, the proposals are fundamentally flawed, building in an unacceptable bias in favour of the development industry and removing essential opportunities for community input at critical stages of planning and development assessment.

We have carefully reviewed the White Paper and we attended the consultation meetings in Newcastle last month. We are also a member of the **Better Planning Network (BPN)** and have been following their analysis of the proposals.

We strongly endorse the submissions from BPN and all their criticisms of the proposals. While there are some suggested improvements which we can support, the overall effect of the proposed changes is overwhelmingly negative.

Submission

We make the following specific points:

1. The definition of sustainable development is completely unacceptable and the proposals clearly favour economic growth and development ahead of environmental and social issues. We support the maintenance of the broader and more balanced definition in existing legislation and also recommended in the Independent Review (Moore and Dyer, 2012).

2. The proposed new 'Regional Growth Plans' are a specific example – the title pre-empts the objective. While at a regional level plans will almost certainly need to cater for some net growth in population and economic activity, this assumption should not be built in to the terminology. Certainly at a sub-regional level there will be many areas where the appropriate objective is either just maintenance/replacement or in some cases even 'shrinkage' – e.g. planned retreat in coastal zones, or increased environmental protection.

3. Many of the proposed ten Strategic Planning Principles betray the pro-development bias. For example the inclusion in Principle 10 of the 'financial viability' criterion is completely unacceptable. Not only is it unclear who would/could be the judge of this other than self –interested parties, but it is not the role of strategic planning to make development viable. Strategic planning sets out the community's objectives, and the market will then determine what commercial projects are put forward and proceed within the resulting framework.

4. A major flaw in in the proposed system is that reliable and consistent data does not exist at a statewide level to support the greater emphasis on strategic planning. In the current system, professional and community input at the development assessment stages, and the requirements for studies and surveys (including statements of environmental effects) at these stages are the only way in which data which has only been modelled for the purposes of strategic planning are 'ground-tested' with local evidence. An essential precursor to any shift of emphasis from development assessment to strategic planning is a major investment in improved evidence base, and in the tools (including GIS systems) needed to support better planning. Resource cutbacks and lack of professional expertise and continuity are, in our experience, responsible for many of the delays and weaknesses in the current system. It is not possible to do good planning on the cheap.

5. The proposed reduction in the number of state planning policies is dangerous – all existing environmental SEPPs would be collapsed into a single environmental policy, with an inevitable loss of detail and protection for important subsets of the environment (ecological diversity, threatened species, soil and water quality, visual amenity etc).

6. Encouraging greater community participation in strategic planning is a worthy objective, and if successful would result in fewer objections at later stages of development assessment, but this cannot be a pre-ordained outcome. Early participation must not be a substitute for appropriate

opportunities for input, and challenges, at all stages of the assessment and approval process.

7. We support the aim of streamlining and speeding up processes – objectors should not expect repeated opportunities to delay approvals if they have been given a fair and impartial hearing – but the system must not cut individuals and community groups out entirely at key stages, as is proposed.

8. Many legitimate grounds for objection will only become apparent at the DA stage – including challenges to whether a DA does in fact conform to strategic and local plans. The proposed system would allow many more consents on the basis of mere assertions of compliance by the proponent/developer, with no opportunity for either the community, or even local planning authorities, to check and confirm that they comply.

9. This shift to 'self regulation' simply can't work in a land use planning and development context because it is too late to remedy non-compliance after the event. Even assuming compliance monitoring and/or opportunities for challenge (both of which are proposed to be reduced), the economic consequences of requiring developments to be removed/demolished mean that in practice there would be little or no retrospective enforcement – and it would in any case be impossible in most cases to restore land to its former state.

10. It is proposed that most DAs would be streamed into either complying or 'code-assessed' tracks, without any opportunities to object - code assessed projects would have to be advertised but only 'for information'.

11. Applications self-assessed as complying would not even be notified, and interested parties may not become aware of proposed developments until they started physical work. Any 'complying development' stream that does not even involve notification must in principle be limited to relatively minor works that a 'reasonable person' (including a reasonable neighbour) is unlikely to object to – and it seems unlikely that this stream could be expected to expand much beyond the current 23% of all DAs without breaching that principle.

12. It therefore remains essential that there are opportunities for interested parties (and not just directly affected neighbours) to become aware of all proposed developments other than very minor ones; to assess for themselves if the proposals meet previously agreed plans and standards, and to challenge assertions about compliance (whether made by the

developer, by a private certifier, or by a supposedly independent arbiter such as Council planning staff).

13. The proposals completely overlook the important role of community consultation and submissions as a vital complement to professional assessment. It is clear that overworked and under-resourced professionals both in local councils and in State government agencies rely on and often highly value the 'second opinion' which community groups bring both to strategic planning and development assessment. Community groups often include professionals in a range of disciplines who in effect provide free additional consulting advice to the planning system.

14. The main change in development assessment is the proposed new 'Code assessment' stream which is proposed to be the main (highest volume) track for DA approvals, albeit that it will involve assessment by a Council planner. It appears that this assessment will be against the new 4 part Local Plan, which will incorporate the main elements of existing LEPs and DCPs (and any area or precinct plans, strategies or principles?), but also against 'Model Development Guides'. All of these remain subject to community consultation, although it is not clear that the same rights and opportunities for input will apply to the 'Guides' as to the higher level Plans.

15. This approach is fundamentally flawed as it appears that the model Development Guides will apply a 'one-size fits all' solution to particular zones, allowing very limited scope for controls to differentiate between different areas based on local conditions and priorities, or on the context of adjoining land uses. The valuable role of precinct plans/strategies or site specific DCPs (used to some good effect in Port Stephens for Anna Bay, Medowie and Nelson Bay centres planning) appears to be lost in the new system. Precinct plans would have to be incorporated into Part 3 of Local Plans which would only be renewed on a long term cycle – realistically only every ten years. It is essential that the flexibility that the current system offers for local plans to be developed by communities and added to the LEP in between major reviews be maintained.

16. The key difference between code assessment and merit assessment streams appears to be that while both involve notification with code assessment there is no opportunity for objections – which means that the community will have to rely on the Council's professional planners to ensure compliance with the Local Plan, which will necessarily involve

subjective value judgements (as is admitted on p.130), which cannot be appealed or challenged.

17. Apart from denying neighbours and other interested parties their legitimate rights, code assessment places an unfair burden and responsibility on Council employees. There is provision for Councils to establish 'Independent Hearing and Assessment Panels' but these will not be mandatory and even if established may not give the community any more confidence that all stakeholder interests will be identified and given appropriate consideration.

18. It is not clear if developments in which a Council has a direct interest, whether as landowner or developer will automatically be streamed for merit assessment (surely a minimum requirement) and/or dealt with by Joint Regional Planning Panels or the Planning Assessment Commission (and if so, what thresholds would trigger such referral).

19. Here in Port Stephens there is a very poor track record in that successive 'developer friendly' councils have repeatedly overridden professional planning advice and approved unsuitable developments or relaxed recommended conditions that would have ensured consistency with sustainable development objectives.

20. There would seem to be even greater potential in the new system for developers to get approval for projects that clearly do not meet standards agreed in advance by the community. This would apply both in the Code Assessed stream (with an 'alternative solution' being accepted by planners with no community input) and in Merits assessment, although there would at least be some consultation in this stream.

21. The formalisation (and encouragement) of an 'exceptions' policy reinforces a weakness in the existing system that allows many DAs that do not comply with DCPs (The example given on page 135 of a 14 storey building in a zone limited in the Local Plan to 9 storeys is particularly alarming – the community would reasonably expect exceptions to be limited to modest variations – and to not allow a more than 50% increase in height!).

22. It is not clear whether applicants (and if so which ones) will be required to submit Statements of Environmental Effects (SEEs) with DAs – apparently a full EIS will only be required for very major projects (p.136). Whether a DA is in the new Code Assessment stream or in Merits Assessment, it is essential that applicants be required to address all relevant criteria in a systematic way – otherwise neither the planners (in both streams) nor the

community (in the merits stream) will be able to readily assess whether the application complies.

23. We are very concerned that the proposals for fewer and more broadly defined zones will be contrary to good planning outcomes. In particular the proposed replacement of current E3 and E4 Environmental protection zones with Rural and Residential respectively is unacceptable. One of the major problems with the current system, particularly evident in Port Stephens, has been routine and repeated abuse of the Rural 1a Zoning, relying on the loophole for 'tourism related' development to permit significant commercial and residential developments wholly out of character with the 'predominantly rural' objective supposedly set for Rural 1a land.

24. The proposed new 'one stop shop' for coordination of input by other government agencies has major risks, if it insists on a 'single view' outcome. Important conflicts could be buried in such a process – it is essential that any tensions and conflicts are publicly visible up to the point of decision, so that all stakeholders can take them into account.

25. Finally, we submit that the removal of checks and balances would significantly increase the risk of corruption and undue influence in planning and development, which is already unacceptable in the current system.

Conclusion

In conclusion, we submit that the proposed new planning system is in most respects worse than the current system (which we agree is broken). The government should revisit the 2012 recommendations of Independent Review and also take into account the many critical submissions on the Green and White Papers, and come up with a new design that strikes a better balance between the competing public and private interests.

If the government persists in enacting legislation to introduce the system outlined in the White Paper, we predict a major backlash from the community once the damaging effect on the environment and amenity of local residents becomes clear.

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