David Shoebridge MLC
Member of the NSW Legislative Council

www.davidshoebridge.org.au
twitter @ShoebridgeMLC
facebook/David Shoebridge MLC

ph (02) 9230 3030
fax (02) 9230 2159
email david.shoebridge@parliament.nsw.gov.au

Parliament House
Macquarie St
Sydney NSW 2000

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1. This submission is in addition to, not in place of, the submissions made in the two face to face meetings held to date with the Planning Review Panel ("the Panel").

2. It is important in the first instance to acknowledge the genuine efforts made by the Panel to consult with a broad cross spectrum of the community in regards this review. Planning laws can be fundamental in terms of delivering economic activity, positive social and urban structures together with environmental protection in this State.

3. Ensuring that the planning laws adequately protect and enhance communities and the environment, while facilitating appropriate development and economic activity, is a task of real importance.

SUBMISSION TO THE PLANNING REVIEW ISSUES PAPER

4. The following submissions for the Planning Review Issues Paper are grouped according to the themes identified by the Planning Review Panel as the key areas of consideration.

A. Objectives & Philosophy

5. The current objects of the Environmental Planning and Assessment Act 1979, as found in section 5, are a valuable starting point. If actually delivered in the substantive parts of the Act they would provide a comprehensive set of principles. The read as follows:

> *The objects of this Act are:*
> *(a) to encourage:*
> *(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
> *(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

(iii) the protection, provision and co-ordination of communication and utility services,

(iv) the provision of land for public purposes,

(v) the provision and co-ordination of community services and facilities, and

(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and

(vii) ecologically sustainable development, and

(viii) the provision and maintenance of affordable housing, and

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

6. It is unfortunate that this quite comprehensive set of objectives is not delivered in the substance of the present Act. An Act that delivers on these objectives, together with recognition of the need for strategic regional planning in co-operation between State and local government, would be a step forward.

Public Consultation

7. When the 1979 Act was brought in it had ground breaking provisions for community consultation in both plan making and development decision making. These must be retained in any fresh Act. In fact, community consultation must be a cornerstone of the planning system. The right to be heard is fundamental, though it should not always be determinative. Local Councils have a strong history as places where local issues are raised and heard and ought be retained as the principle plan making and decision making bodies under any reformed Act.

8. Consultation must be more than simply informing the public and/or persons impacted by a development proposal. Consultation must include bringing the community into the planning process to help draft planning instruments, as well as informing them once a proposal has been formulated. It must also allow those impacted by a specific development proposal to be heard, including in most cases, the ability to stand before the decision maker to make a personal submission.

Local Autonomy

9. A respect for local autonomy in decision making should be a core principle. This includes a recognition of councillors as community representatives. Local

Government is best placed to understand and reflect the wishes of communities with regard to developments that will impact on them. Local autonomy facilitates decisions that are able to protect the existing character of communities and provide insight into local needs.

10. Local autonomy must of course be tempered by well developed and comprehensive regional and state planning instruments that require environmentally sustainable, and respectful, development.

Sustainability

11. The Planning System as a whole, and individual planning instruments in particular, must give primacy to Ecologically Sustainable Development principles, which place environmental and social considerations at the centre of the decision-making process.

12. This will ensure that planning delivers outcomes that improve the health and wellbeing of communities and eco-systems. The planning system should work together with environmental protection policies to ensure mechanisms are created to protect, conserve and enhance the habitat of endangered and threatened species of native animals and plants.

BASIX

13. The existing BASIX certification system in NSW provides a useful starting point for programs to reduce energy use in buildings. To be effective in the future it will be necessary to reform BASIX to allow individual local governments to move beyond BASIX minimum requirements.

14. BASIX, to be truly effective, must apply to all building forms – particularly high rise apartments and other high density living formats.

15. Whatever its title, a mandatory, state wide sustainability tool such as BASIX, which operates as a legislative minimum for all significant development, is essential.

Affordable housing

16. The creation of public and affordable housing should be a priority of the planning system and must be considered as a core principle.

17. The most direct and desirable way to achieve this is to include a minimum percentage of affordable housing at all urban renewal sites. This could be determined in line with local government targets such as the City of Sydney 7.5%

affordable housing target in its 2030 plan. Again, allowing local governments to move beyond mandated minimum statewide standards should be included in any such affordable housing provisions.

Heritage

18. In general the planning system should recognise and protect items and sites of heritage, both tangible and intangible heritage, and Aboriginal, natural and post contact heritage.

19. To protect local heritage, the planning system should include a capacity for local listing of heritage items by councils without requiring Ministerial approval. Likewise, in cases where local councils are unable or unwilling to act to list items there should also be a capacity for the community to approach the Minister directly seeking a listing of heritage items.

20. Steps should be taken to facilitate the extension of Interim Heritage Protection Orders to items not yet on the State Heritage Register. In addition the Government should further provide adequate resources to permit an increase in the rate of assessment of items for inclusion on the State Heritage Register

21. Any delisting from the State Heritage Register should also be approved by the Heritage Council to ensure appropriate checks and balances with demolition of heritage buildings or structures only being considered if the applicant can demonstrate why alternatives such as adaption of existing structures are not feasible.

Urban Consolidation

22. The planning system should adopt as a core principle the limitation of urban development into greenfield and agricultural areas.

23. Primacy for urban development must be given to in-fill and urban renewal sites where they are close to existing transport infrastructure and do not destroy heritage or conservation areas. Urban consolidation must also be balanced against the protection of localities.

24. It is appropriate for there to be regional housing targets with statutory force which require local council areas to accommodate additional housing units. However such targets must be set in consultation with local communities and councils and properly reflect the existing constraints in localities. This has not been the case in targets to date.

B. Plan Making

Integrated planning - State and Regional strategic planning roles

25. Under the present planning system, regional planning strategies are not statutory instruments and are not legally enforceable. The key focus of Regional Strategies is presently on population and economic growth. This is not a sustainable position.

26. There are serious concerns that regional planning strategies under the former government came under the influence of development and mining lobbyists, for example the Lower Hunter Regional Strategy and the influence of Hardie Holdings and Rosecorp. Some strategy development processes can also be seriously lacking, for example past consultations for the Sydney Metropolitan Regional Strategy was by invitation only at a cost of $250 a place. This could not be considered democratic or transparent consultation.

27. Regional strategies should require the cumulative impact of planning decisions to be taken into account in the decision-making process. They should be developed in consultation with local communities and local councils and, if done well, would provide an important perspective for local planning decisions.

Joint Regional Planning Panels (JRPPs)

28. JRPPs with their mixture of state and local representatives are both dysfunctional and lacking transparency. Such panels would not be needed if local councils are given the appropriate autonomy and resources in a well designed planning regime with quality regional and state planning instruments.

29. JRPPs often result in Government appointees dominating the decision making because they are the majority. There is no clear link of accountability between these panels and local communities who are required to resource and advise the bodies. Equally JRPP's do not have the capacity to defend their decisions when challenged in the Land and environment Court, which is a structural deficiency which cannot readily be remedied.

Private certification

30. The private certification system in NSW has proven to be a failure. Private certifiers are chosen and paid for by the developer thus are not truly independent. In many cases a perception is created that a certifier's professional obligations are secondary to the desires of the developer who pays them. They undermine confidence in the integrity of the planning system.

31. When construction certificates are provided for developments that clearly contravene the terms of the original DA, there is little if any power in Councils to remedy the matter. Private certification should be abolished as a failed experiment in market based policing of development.

Standardised LEP

32. The objective of consistent provisions in LEPs across the State is laudable and would allow for more ready understanding of local planning instruments across the state.

33. However, this cannot be a goal in and of itself and must allow for sufficient flexibility for local provisions to be crafted to meet local needs. It is ridiculous to think that the very same planning provisions can apply for planning decisions in localities as varied as Byron Bay, Orange, Bondi, Bega and Wagga Wagga. The current Standard LEP assumes they can and does not provide sufficient diversity for planning decisions.

34. Furthermore directions such as the removal of special purpose zones – including Education and Hospital zones - from all LEPs will seriously jeopardise community assets well into the future. Special purpose zones should remain and be protected as special purpose zones where the local council and community determines this is appropriate. They should not be rezoned to match adjoining residential or commercial uses.

Problems with the "Gateway" process

35. The extent to which the community is consulted in relation to a planning proposal depends currently entirely on the opinion and discretion of the Planning Minister.

36. Where the Minister believes a plan may have no adverse impacts he can currently determine that there will be no environmental assessment at all. There are no specific criteria upon which the Minister makes a determination, meaning decision-making discretion is effectively unfettered. This is despite the fact that it is often not possible to determine whether a proposed LEP is complex or significant prior to an environmental assessment being done.

37. While some flexibility may be appropriate, wherever possible such unguided discretions should not be a part of the planning system.

Developer Contributions

38. Developer levies that allow for communities (usually through local councils) to ensure that they have the resources to provide essential community facilities to new developments (such as parks, libraries and community centres) must be retained and, hopefully, simplified in any reformed planning system.

39. There is currently substantial pressure from developers to abolish, or minimize, developer levies to allow for more rapid expansion of new housing developments. Such a proposal would be short sighted in the extreme, and if accepted will lead to poorly serviced ghettos being built on urban fringes.

Zonings

40. Land use zonings should be determined in a way that community interest is considered as central. As the public interest is paramount there should not be provision for developers to lodge appeals on zoning matters.

C. State Decision Making

41. Some centralized state planning decisions are necessary. However when a development application is determined at a State level this should ensure that the highest possible environmental protections are applied.

42. Unfortunately under both the repealed part 3A and the newly instituted Part 4, crucial environmental and heritage controls are bypassed to more readily allow approval of damaging developments. This is poor practice and should not form a part of any future planning regime.

43. State planning matters should be determined by an independent State planning Commission where the members hold tenure of office to ensure independence.

44. Public hearings with on line exhibition of submissions and planning proposals must form a part of any genuine state planning body.

Concurrence

45. Much of the delay that hampers the ready determination of significant development applications arise from delays in obtaining concurrence from various state statutory bodies. This delay could be resolved by the creation of a NSW State government concurrence office.

46. A concurrence office would reduce the burden on local councils who are often hampered in promptly determining development applications by delays in state agencies. A concurrence office would give strict statutory timeframes for concurrence and be a single point of contact for all parties. This would be a practical and sensible way of speeding up determination times without any reduction in the quality of the assessment.

SEPPs

47. State Environmental Planning Policies are presently gazette without public consultation and without any parliamentary oversight. This produces documents with little legitimacy and which provide sub optimal planning outcomes. Any fresh planning regime should address these deficiencies. Both SEPP 1 and the Exempt and Complying Development Codes SEPP are examples of such defective state planning instruments.

48. As with regional planning instruments, there is a place for State Environmental Planning Policies, however they must be produced through a genuine consultative process and be made subject to democratic oversight through, at a minimum, becoming disallowable instruments.

D. DEVELOPMENT APPLICATIONS

49. As a matter of general principle, development applications should be assessed by local councils. Local councils understand better than any other body the unique conditions of their LGA.

50. As noted above, there must be an active and meaningful role for community members and local resident groups in the process of assessing development applications that have significant impacts on their immediate locality.

51. There may be some scope to consider reducing the costs and expense of the initial phase of a development assessment by allowing for an indicative approval or refusal to be given to a specific building envelope prior to the more detailed consideration of engineering and other specific technical requirements. This is a matter on which broader consultation would be appropriate in the review.

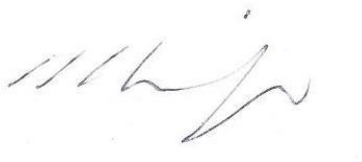
E. CONCILIATION, MEDIATION, NEUTRAL EVALUATION, REVIEW OR APPEAL

Third party appeal rights

52. Third party appeal rights on designated developments are effective and do not produce unacceptable numbers of merit appeals to the Court.

53. Processes should ensure that merit appeal rights are available to objectors and community groups. A significant interest may be necessary to grant standing for third party merit appeals of development decisions.

54. Clear statutory protections should be considered against the award of costs against parties who bring cases to the court on legitimate public interest grounds.



David Shoebridge
NSW Greens MP