9 September 2013

The Hon Barry O’Farrell MP
Premier of NSW
Level 40
Governor Macquarie Tower
SYDNEY NSW 2000

Dear Mr O’Farrell

Request for urgent changes to the proposed planning Bill

We write to express our grave concerns about several aspects of the proposed new planning system for NSW and to urge you to make a number of key amendments to the draft legislation. These key amendments are spelt out in more detail below. LGNSW considers these changes necessary to provide balance between the interests of the community and the imperatives of development.

In line with our submission on the White Paper and the Draft Exposure Bills, as well as other representations including those below, we urge you to delay the passage of the legislation in Parliament to enable these amendments to be made.

We are seeking your response within 14 days. The planning issue and member council concerns are high on the agenda for our forthcoming Annual Conference, and, given the mood of member councils, it is likely that some form of direct action campaign against the legislation with significant community support will be proposed unless the Government is prepared to make the changes sought.

Local Government warns that many of the proposed provisions will have dire consequences for the NSW planning system and the wellbeing of the State as a whole. It is in everyone’s interest to have a balanced planning system.

Councils do not accept the argument that your government has a mandate to introduce the new planning system as currently proposed. The Coalition’s election Contract with NSW promised the return of planning powers to the community. The Minister for Planning and Infrastructure, the Hon Brad Hazzard MP, has repeated this promise on many occasions referring to the return of planning powers to councils and communities. Councils and the broader community do not accept that the proposed new system as embodied in the Bill is delivering on this promise. Many believe that it is doing quite the opposite.

This perception has been confirmed in the numerous submissions from Local Government, various professional peak bodies and the broader community. It has also been reinforced by independent surveys of planning professionals and the general public.

The major concerns settle around a number of key fundamentals. Confidence in the implementation of a new planning system would be enhanced by making a number of key
amendments to the proposed system, including some amendments to the draft Planning Bill 2013.

LGNSW proposes:

1. Retaining councils’ local plan making powers

LGNSW seeks to strengthen local plan making powers in line with the Government’s undertakings to return local planning powers to councils.

LGNSW is concerned that Development Guides will be watered down and we oppose specific provisions that intend to do this. This would be partially addressed by deletion of Subclause (2) of Clause 3.27.

2. Rebalancing the triple bottom line

LGNSW believe that “all three bottom lines” – economic, social and environmental – should play equal part in planning decisions and principles of intergenerational equity be reflected in the objects of the legislation (see LGNSW Submission to White Paper p14).

This would be achieved by amending Strategic Planning Principles 1, 9 and 10 under section 3.3 to provide a balanced triple bottom line.

3. Retaining rights of councils and communities to be involved in local high impact and contentious development

This can be partially achieved through:

- introducing a definition on code assessable development.
- allowing more development to be advertised in that category.
- restricting variations to simple complying applications.

LGNSW opposes the level of reduction of community engagement at the assessment level. This reduction risks reducing transparency.

LGNSW calls for the following amendments:

On code assessable development:

- Redefining code assessable development to restrict it to low risk and low impact development.
- Certain classes of code assessable development should be able to be advertised.

On complying development:

- Variations to complying development (approved by the certifier) need to be restricted to a narrow range, after which council consent would be required.

Transitioning to code assessable development:

- A code assessable development code should be inapplicable unless the regional or subregional plan has approved the code, so that appropriate public scrutiny of the code is achieved.
4. Providing greater certainty and public confidence in the strategic planning system

LGNSW supports:

- Capturing in the Bill greater flexibility for councils to adopt relevant local zones by amending clause 3.19.
- Restrict applicants’ rights to appeal to the regional planning panels to support an application for re-zoning, by adding criteria for such appeals.
- Strategic compatibility certificates only being an interim measure until Local Plans have been made.
- Strategic compatibility certificates requiring concurrence of the relevant council.

5. Retaining council primacy within the subregional delivery model with a say in defining the subregional delivery plan.

This would be reinforced by specifying that the Chair of the subregional planning boards should be elected by the members of the board, not appointed by the Minister.

6. Enabling grassroots community engagement to be delivered into higher order plans.

Legislating to provide mechanisms that require early consultation with councils to ensure there is input of evidence based local planning information during the development of higher level plans (i.e. Regional Growth Plans, Strategic Regional Land Use Plans etc.).

7. Removing the proposed three year limit on holding infrastructure contributions.

As has been clearly demonstrated the proposed three year limit on holding infrastructure contributions is unworkable and unwarranted. This requires deletion of Clause 7.9(5).

8. Sub-regional model in regional NSW

Transitional arrangements need to be spelt out to provide for a realistic cost benefit based implementation roll out to regional NSW and to ensure that “non-growth” areas are not disadvantaged in the provision of infrastructure because of the absence or delay of development of a regional and/or subregional plan.

We can provide more technical detail on each of these proposed changes if you wish to see them in advance or if you would like to meet to discuss them.

We believe that the proposed changes are more than reasonable, allowing the core improvements to the planning system to proceed while addressing the imbalance inherent in the current proposals.

Your response in fourteen days of receipt of this letter is requested.

Yours sincerely,

Cr Keith Rhoades AFSM
Joint President

Cr Ray Donald
Joint President

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