

Lake Macquarie City Council Response to Questions Raised at July 2008 House of Representatives' Parliamentary Hearing on Climate Change Impacts on Coastal Communities

1. Why has the coastal management manual been delayed for so long and what are the implications of its delay for councils?

Responsibility for this rests wholly with the NSW Government and it is not clear why it has been delayed, although it is noted that with the extensive restructuring of natural resource management agencies in NSW the focus has been on other things. The main implications of the delay are that there is no consistent approach throughout NSW to coastal management. Some argue that this is not necessarily a problem in itself since the draft manual provides useful guidance, but cannot be relied upon.

Many others however consider that the Coastline Management Manual provides vital guidance to local government on coastal issues. It is the framework for the development of coastline management plans and, in the case of the revised manual, Estuary Management Plans. Council developed both a Coastline Management Plan and Estuary Management Plan nearly 10 years ago. These documents have provided a framework and impetus for changes in State Government and Council policy, expenditure of funding, restoration works, zones/clauses in Council's Local Environmental Plan (LEP) and development decisions. The Lake Macquarie Coastline Management Plan and Estuary Management Plan are now in need of review but there is no framework for this. It is anticipated that any revised Manual would provide important guidance on sea level rise.

2. Council made a submission about the Catherine Hill Bay development to the state government. What was the state government's response to LMCC comments with respect to the planned development and the EPBC Act?

Council has made many submissions in relation to these developments, the substance of which has primarily been ignored by the NSW Government. Issues relating to the EPBC Act 1999 have not been foremost in Council's attention to the proposals, but have been raised.

Currently Council is awaiting a report from the Minister about this development. The developer's reply to Council's concerns are forwarded to the State Department of Planning who then report to Minister; we now await the Minister's response in terms of whether the development will be approved or modified according to recommendations. The Minister has no obligation to directly inform either Council or the community on its decision, however in this case the community is actively awaiting any news from the Minister by checking websites regularly. Owing to the closed communication process involved, Council is unable to determine what individual department's or developer's comments on the development are.

We anticipated the Minister would publicise his report last month before he took leave for approximately 3 weeks. We are unable to comment with certainty upon the release date of his report, however we expect a decision soon after his return. Regarding appeals procedures in the event that the proposal is approved despite recommendations, there is limited opportunity for appeal and the procedure rather than the outcome can only be questioned.

3. The EPBC Act is the only clear mechanism for federal intervention in developments. Where do its powers stop, and why? Explain its limits and applications in Lake Macquarie and whether its thresholds and powers are suitable/appropriate.

While the EPBC Act provides a mechanism for direct Commonwealth intervention in developments, there are many other ways in which the Commonwealth influences developments, primarily through the operation of its powers over the economy, taxation and corporations. The EPBC Act is limited to taking into account impacts on matters of environmental significance, of which there are a significant number in Lake Macquarie LGA. Its application is limited because it often fails to be considered as relevant by developers (i.e. no assessment of significance or no referral to the Commonwealth) and because there is no relationship in its

consideration to land use objectives and provisions under environmental planning instruments (e.g. Lake Macquarie Local Environmental Plan 2004).

It would be beneficial to clarify the relationship between the 'impact assessment' approach taken by the EPBC Act, and the 'planning and objective based' approach taken by state and territory land use and planning legislation. One way of improving the confused way in which this is currently dealt with would be to have a national planning system, with this legislation administered by the states. This could clearly articulate the relationship between the EPBC Act and plans for land use made at the state and local level.

Given that there is now a bilateral agreement with the State Government to assess applications under the EPBC Act there appear to be no checks and balances in the system. The NSW Minister for Planning is dealing with the most controversial applications under Part 3A of the Environmental Planning and Assessment Act. The Minister has signed an MOU to develop certain areas (including Catherine Hill Bay and Nords Wharf) and has included a number of areas for development in the Lower Hunter Regional Strategy that are not based on good planning or sustainability principles. The same Minister's department is conducting assessments under the EPBC Act. Exacerbating this problem of non-independence is the erosion of public consultation in Part 3A and current planning reforms.

Council is not always aware of applications under the EPBC Act in it's Local Government Area as there does not appear to be any direct notification in place, particularly if the application to the Commonwealth does not occur simultaneously with an application to the State Government. Detection via combing web sites is time consuming and difficult. It is also not necessarily easy to access studies that may be submitted to the Commonwealth or to satisfy the EPBC Act that may be of interest to Council (for example additional flora and fauna information). It is not clear what weight the Commonwealth Government would place on local documents such as the *Tetratheca juncea* Conservation Management Plan.

The EPBC Act is impact assessment based and lacks strategic planning. Council would be very interested in a partnership with the Federal Government to update the *Tetratheca juncea* Conservation Management Plan and develop Conservation Management Plans for other species that are Federally listed under the EPBC Act with a special focus to examine and plan for the impacts of climate change on these threatened species.

4. Please critically comment on the LEP template and the ability of LEP to take coastal matters into consideration

The NSW Government Standard Local Environmental Plan (LEP template) has many fundamental flaws which will prevent it achieving its goals of simplifying the planning system. As it is currently conceived it will lead to bad land use outcomes which do not recognise the integration of environmental planning considerations (eg biodiversity and natural resource management) within land use decision making processes. The limited number of zones does not reflect the complexity of rural and peri-urban areas such as Lake Macquarie and the provisions are metrocentric. Many of the proposed provisions (eg tree and vegetation preservation, and assessment of threatened species) are inconsistent with administrative practices that have developed within the City over the last 15 years.

For comments on planning reform, a recent submission and proposals relating to this issue can be viewed at www.calli.com.au/lep; follow the links to publications and planning reform submission.

Council is currently attempting to covert Lake Macquarie LEP 2004 into the standard template. This has proven very difficult because Council currently has a LEP (LMLEP2004) that is relatively sympathetic to environmental issues and the conversion is to a document that does not cater for natural resources issues well. The number of environmental zones in the standard template are less than the current LEP and the standard template is unresponsive to biodiversity, sustainability and natural resource issues. For example: there is no Coastal Zone in the standard template. Such a zone is important for dealing with issues that are specific to the coast. These include issues such as sea level rise, planning for coastal retreat, allowance of surf clubs and limited infrastructure for recreational enjoyment of the coast etc. Consequently, it is extremely difficult to develop objectives, clauses and land uses relevant to the coast. The new LEP only

defines one zone that is appropriate for coastal inclusion, the same that is used to define ecologically significant land. This presents difficulty because although it provides protection of coastal habitats, so allowing dune restoration etc., the coast is used in different ways, most notably there is a big demand for recreational facilities that will only increase with increasing population. The standard template waterways zones are also problematic. Another example is that there is no definition for eco tourism.

Problems with the standard LEP are likely to result in inappropriate and unsustainable development. If Council maintains a high environmental protection standard by refusing development that is permissible because it is inappropriate (e.g. a high impact tourism development when eco tourism is more appropriate, then these decisions will have to be defended in court at a cost to the local ratepayers and community.

5. How do we envisage more specific federal involvement directly with local government to address climate change impacts on coastal communities?

- We prefer the federal clean energy target to be set higher, and defined methods of how this target will be achieved along a set timeline, including identifying and explaining the roles and responsibilities of institutions such as state government, local government, industry and businesses.
- We advocate a recognised place for local government, which is not recognised in the constitution, and encourage *direct* financial arrangements between federal and local government on climate change issues.
- Remove means testing for any measures that mitigate against climate change by federal provision of rebates
- Rebates for climate change mitigation activities applicable to residents in rental properties
- Develop incentives for increased local-scale/individual uptake of climate change mitigation activities, for example a feed-in tariff for individual electricity generators, and set incentives that encourage people to go beyond set targets
- Sustained federal education campaigns on our impacts, consumption, lifestyles and habits, particularly through television media given its high impact
- Remove BASIX legislation restrictions and minimums, allowing higher sustainability standards to be encouraged
- Federal support for training programmes re-skilling workers in coal/'dirty energy' industries as a preparedness measure for new emerging 'green' technologies
- Direct investment and funding to allow and support local development of renewable energy generation
- Removal of economic subsidies for carbon intensive industries and processes, for example fringe benefit taxation that encourages car users to drive more kilometres to reach monthly targets for tax reasons
- Federal taxation of vehicles according to engine capacity
- Federal research should focus on establishing clean energy generation over the next 5-15 years, rather than geo-sequestration and clean coal technologies; this has a knock-on effect of reducing costs of clean energy generation mechanisms making them more affordable for local government
- Federal support for major infrastructure upgrades to both public and freight transport, which would help local government by reducing through-flow of traffic
- Federal subsidies and funding for infrastructure and methods that are essential to achieve long-term sustainability outcomes but in the short term are not immediately beneficial – i.e. investment in delivery systems for new technology. For example, 'plug in posts' for electric vehicles at strategic positions such as

train stations/car parks, and service stations, allowing electric vehicles to be considered feasible as future transport

- Federal incentives to encourage cradle to cradle design and extended producer responsibility for goods
- Environmental education at a federal level about recycled water to normalise/alleviate public unfounded fears
- State and/or commonwealth government consideration and reporting on a predicted level of sea level rise to allow for planning of adaptation responses. Note: this level could be set at a national level with minor variations to be modelled and determined at a local level.
- Commonwealth funding to support for climate change adaptation research and information dissemination continue; for example through the CSIRO Climate Change Adaptation Flagship and the broader research sector
- Further research conducted into local area predictions concerning rainfall, temperature, and natural disasters, in order to assist local area adaptation planning
- State and/or commonwealth legislation be reviewed to include climate change and sea level rise as key threatening processes
- Support for protection of east coast corridors (including Atherton to Alps) to provide protection from development withdrawing from affected areas on the eastern seaboard
- Consideration of an 'adaptation' version of the Garnaut report to learn from international best practice, identify jurisdiction and technical issues, and provide leadership from the commonwealth through COAG. This would facilitate a whole of government approach to adaptation on mitigation programs.
- Review of commonwealth direction on natural disaster and emergency planning and response. Also, funding to be part of the budgeting process – the Natural Disaster Mitigation Program is normally around \$10m, there is no current commitment for funding
- Support to examine funding frameworks for adaptation, include funds, levies, Insurance Council of Australia. Explore funding to help planned retreat as areas become uninsurable.
- Consideration of use of carbon exchange credits for adaptation and mitigation measures
- Audit / analysis of total impact on Australia by region: socially, ecologically, and economically, to allow tailored industry and community adjustment packages for specific regions.
- Direct federal support for community empowerment programs, including local area plans encompassing participative democracy principles. Access to grants to support, expertise and resources for facilitation.
- Policy direction on adaptation measures: eg: working hours, shade policies, heat stress etc.