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Planning under-empowerment and urban over-development in inner Sydney

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This paper looks at how urban over-development can occur even when planning controls to limit development to levels acceptable to the community are in place. This can occur in discretionary development approval systems such as those in Australian cities, where approval can be gained for development exceeding limits under planning controls, under various circumstances. The paper explores the way in which the exercise of power by developers, stemming from superior money-based resources, distorts this process to produce development at scales well beyond those intended by the planning controls. In this, the paper argues that contemporary neoliberal state ideology has exacerbated the relative power held by developers. Inner and middle Sydney residential development is used to provide case studies to support the paper's arguments.

Central to these arguments is the proposition that the extent to which a planning system balances property rights with the common good is ultimately determined by state ideology. The incorporation of standards constraining the scale of development purports to set limits to the extent to which individual rights can prevail over the common good, reflecting an ideology which desires due consideration of the common good in development (c.f. March 2003). The imposition of a discretionary process within which such standards can be overruled in favour of less transparent considerations shifts the balance back towards developers for the kinds of reasons discussed in this paper. It can, as is shown here, result in outcomes which are very much at variance with those intended by the community in the public process of setting standards as the strongest means of achieving its vision of local place.

DEVELOPMENT CONTROL STANDARDS

The imposition of development controls in Australian cities is a fundamental tool for controlling the negative community and environmental impacts of development. In this, they define property rights relating to development. This in turn gives land owners and investors certainty about permissible development on potential sites and on surrounding sites.

The list of controls needed for this task can be long and complex. The increased importance of good urban design outcomes in recent years has added to this complexity. It has become more and more difficult to design larger developments so

they comply with every control. As a result, developers have sought – and planners have recognised – flexibility in the application of controls. For developers, this increased flexibility also potentially gives them the opportunity to design around the controls for increased profit (Harris, Thompson and Williams 2000).

The central issues here are twofold. The first is that greater flexibility in applying controls reduces the certainty of outcomes (Harris, Thompson and Williams 2000). If there is high development flexibility, land owners face a greater risk of reductions in property values arising from unpredictable development nearby. Related to this is the second issue concerning flexible controls: fixed numerical development standards delimiting the basic scale of development. Such standards are used in cities like Sydney to set limits on flexibility and provide certainty about the issue of most concern to other property owners – the size of new development. Other aspects of development are controlled in a flexible manner elsewhere in the plan. Even architects, with their apparent maxim of design freedom, agree with this division. The NSW President of the Royal Australian Institute of Architects has stated that councils should be regulating volume, size and setbacks so that individual developments ‘don’t dominate over a community’s sense of wellbeing’ while allowing aesthetic freedoms to architects on other aspects (Pidcock, quoted in Perinotto 2003).

DEVELOPMENT LEGALLY EXCEEDING DEVELOPMENT CONTROL STANDARDS

The strict application of development control standards such as maximum heights and floor space ratios may not always be appropriate, however. Strict compliance may mean that developments which otherwise meet the objectives of a plan are forbidden because they exceed standards by a minor amount. Amendments to the plan, usually involving a lengthy and costly process, are then required to allow the development to proceed. In other cases, better design solutions may be possible if standards are not met. The Renzo Piano office and apartment buildings in Macquarie Street, Sydney, are a notable exemplar of this situation.

The development industry itself has a vested interest in the flexible application of standards. As Harris, Thompson and Williams (2000, p.14) put it:

‘...once a site has been acquired, a developer...wishes to obtain a maximum return on the investment in the site. Development standards may frequently inhibit what the developer sees as the properly achievable return from the site. Hence there will be a desire to vary some or all standards to reduce such inhibiting factors.’

To address the desirability of not having to make a new plan in cases where proposed development only slightly exceeds numerical standards, the NSW government enacted a State Environmental Planning Policy (SEPP) in 1980. This Policy, SEPP 1, allows variations from a development standard in plans where compliance with the standard is considered unreasonable or unnecessary. Variations are not allowed unless the objective of the standard is met by the development. Variations under SEPP 1 can be given by the consent authority for the plan (local councils in the case of local plans). Developers have the right to appeal to the Land and Environment Court for approval under SEPP 1 if the council or other consent authority has rejected the application because it would breach a development standard.

Other states have analogous provisions in their planning systems. In Western Australia, statewide residential development standards for basic aspects like densities, car parking and floor space ratios are binding, although second order standards like setbacks and wall heights can be varied by councils. In South Australia, variations to the performance criteria of the Building Rules are permissible where the council considers the Building Rules are inappropriate or where it considers variation would achieve the objectives of the Development Plan more effectively. In Victoria, variations from development standards can be made but only if it is considered that any owner affected by the development will suffer no kind of loss (Harris, Thompson and Williams 2000, pp. 12-13).

In NSW, SEPP 1 was originally intended to avoid the need to prepare new plans for development involving variations of up to 10 per cent of the standard (Smyth 2003). However this was never legally specified. Consequently the application of SEPP 1 to developments has left it to the judgements of local councils and the court as to whether the imposition of the standard is unreasonable or unnecessary and the objective of the standard is being met. Thus the application of development standards becomes a ‘merit’ decision, with unpredictable outcomes on the scale of

urban development. Either the development is required to comply with the standards, or it is allowed to exceed them by an often large degree. In *Legal and General Life of Australia Ltd vs North Sydney Municipal Council* (1990), the court allowed approval for a building that was four times the maximum floor space ratio and three times the maximum height specified in the local plan (Harris, Thompson and Williams 2000, p. 35). The upshot is that areas in Sydney zoned for higher density residential development in particular have generated building scales and densities often significantly greater than those allowed by standards in local plans. This has added a layer of development with little or no community participation to the maximum development specified under local plans approved with extensive community participation. In NSW there are generally no third party (community) appeal rights to development approved under SEPP 1.

Nevertheless the landscape of SEPP 1 approvals is uneven within Sydney. The nature of local communities and their local councils is a critical determinant of this unevenness. The remainder of this section explores the application of SEPP 1 to medium and high density residential development in Sydney with particular reference to local councils and their empowerment in relation to developers. Local SEPP 1 decisions are considered first, and then those of the Land and Environment Court.

Local council SEPP 1 decisions

Whether local councils in Sydney use SEPP 1 to approve developments exceeding standards. depends on several factors. These can be summarised as a lack of resources, local politics, and rent seeking/corruption.

Lack of resources.

Councils can feel pressured to approve SEPP 1 development variations because they lack the planning staff to update and clarify plans to reflect current planning thinking within the council. They also frequently lack the financial resources necessary to fight developer appeals to the court under SEPP 1 against council refusal of development applications (on the latter, see Harris, Thompson and Williams 2000, p. 27).

Local plans require significant council resources, especially in terms of planning staff, if they are to be updated to reflect changes in council and community views or to take

account of court decisions and state government directives. In NSW a process of council resolution, draft plan preparation, state government certification, public exhibition, response to public comment and possible draft plan modification, and state government approval, is required. This procedure has to be carried out in a context frequently marked by shortages of planning staff. These shortages are driven by restrictions on council income arising from state government caps on increases in property rates levied by councils; and by shortages of qualified local planners. These shortages are felt most acutely in development control activity, where the backlog is growing (Hamnett and Norman 2003). Thus, yielding to developers under SEPP 1 becomes a way out for councils lacking resources to change plans (Harris, Thompson and Williams 2003, p. 27) so that development refusals are more defensible (or, alternatively, less necessary), or lacking staff to negotiate with developers for amended applications. The shortage of planners means that the capacity within councils to properly evaluate whether development applications exceeding a standard still meet the standard's objective is often lacking or is occupied with clearing backlogs of other applications. In regard to the former, the evaluation of compliance with goals required under SEPP 1 becomes equivalent to planning by objectives, which as Harris, Thompson and Williams (2003, p. 11) note '...relies on a highly skilled and well-resourced planning department for its administration'.

Council resources were a possible factor in Sutherland council's dependence on SEPP 1 to approve a large number of residential flats in the late 90s. In 1997, 75 per cent of flats approved in Sutherland had been subject to SEPP 1, and 60 per cent in 1998 (Trembath 1999, citing government report by G Fielding). The use of SEPP 1 allowed the council to approve flat developments with floor space exceeding the standard at the expense of landscaping requirements in the plan (Planner A 2003). The mayor stated that the use of SEPP 1 to approve non-compliant flat development had saved the council up to \$30,000 per case in defence costs in court (Trembath 1999, p. 2), although the then control of the council by a pro-development group also suggests that such a statement could have been an attempt to legitimise the councils approvals. At the time a shortage of planning staff was also emerging (Planner A 2003).

The significance of council resources suggests that areas with more stable and higher income populations will have greater ability to prepare plans with standards that are less easily appealed by developers, or to fight developer appeals in court. Sydney City Council is an example here. It is the wealthiest council in Sydney, with strong rate income from central Sydney properties comprising Australia's prime commercial area. Preparation of its 1996 Central Sydney plan included commissioning of reports by a number of consultants critiquing the council's existing development controls. The final plan included a detailed series of tightly written development standards and other controls intended to effect a multifaceted urban design vision, including a version of New York's famous 'wedding cake' skyscraper controls. The plan and its standards have set firm parameters for subsequent developments which have reduced the scope for SEPP 1 appeals. For example, of the eleven SEPP 1 judgments in the Land and Environment Court between January 2002 and October 2003, only one involved Sydney Council and that was a special case involving non-compliance of a development started under, and complying with, a previous plan (NSW Land and Environment Court 2003). The thoroughness of the plan standards, and the council's willingness and ability to fund a defence in court of any developer challenge to the controls, have ensured that new development has been in keeping with the urban vision of the council. A notable exception has been the Renzo Piano buildings on Macquarie Street, where a widely lauded design by a famous international architect was allowed to transgress setback controls.

Similarly, council financial resources are critical in whether developer appeals under SEPP 1 are fought in court. Table 1 shows Sydney councils with the highest legal planning expenses in 1997-98.

Table 1. Sydney Councils with Highest Legal Expenses 1997-98.

Council	Legal expenses (\$)	Per cent of planning & regulatory budget
North Sydney	1,460,000	32
Woollahra	1,000,000	28
South Sydney	759,362	17
Hornsby	749,205	14

Leichhardt	708,590	21.7
Baulkham Hills	590,155	11.3
Sydney City	563,130	8.5
Warringah	522,986	15.2
Manly	418,672	17.4
Willoughby	414,000	14

Source: Department of Local Government (1998)

The three councils spending over 20 per cent of their planning budget on legal expenses – mainly defending developer appeals in court – are high income inner areas with strong pressures for new flat construction, allied with powerful, articulate anti-development communities. Fighting a large and complex development application can be costly. Councils have estimated that the cost of a two day appeal ranges from \$20,000 to \$50,000 (Morris 2001). Councils may have to hire a range of expert consultants, such as contamination, traffic and urban design and landscape consultants in the case of the Wondakiah apartment development in North Sydney (Nangle 2003). Such development pressures are as strong, or stronger, in South Sydney but the area’s somewhat lower average income and property values, its more mixed population, and its greater number of development applications help to explain a lesser though still high proportion of budget spent on court cases. The nature of South Sydney’s planning controls (discussed below) is also a critical determinant of this lower percentage.

Local politics.

Councils controlled by councillors elected on a community independent platform in which local ‘over-development’ is central, will be more likely to refuse SEPP 1 approvals and fight resulting developer appeals. This is more likely in areas with high property values, such as North Sydney, Woollahra and Leichhardt, which are controlled by such groups. Facing this situation, one group of developers resorted to hiring a public relations firm ‘to convince pro-development ratepayers to overthrow North Sydney Council’ (Morris 1999a). The control of Sydney City Council by the ‘Living City’ community team of Mayor Sartor during the 90s was crucial in the gestation of a new urban design vision and its implementation inter alia via stricter planning controls.

Conversely, the excessive use by Sutherland council of SEPP 1 to approve most flat development applications in 1997 and 1998 was associated with a pro-apartment grouping which controlled the council (Planner A 2003). However the increasing level of flat construction was unpopular. The exhibition of a new draft plan with standards permitting the higher floor space ratios being approved via SEPP 1 might have provided a catalyst to intensify community opposition. The pro-apartment group subsequently lost control in the council election of 1999.

A similar situation existed in Burwood in the late 90s. A group of three pro-development councillors (including one local developer) controlled the council with the usual support of a fourth councillor (Furneaux-Cook 2003). It approved several apartment developments under SEPP 1, contrary to council planning department recommendations (Planner B 2003). They were mainly located in the town centre area, and involved developments up to three times the maximum size permitted by the standards. One development approved under SEPP 1 had a floor space ratio (FSR) of 5.5:1 where the standard was 1.8:1, resulting in nine storey apartments behind single storey dwellings (Furneaux-Cook 2003; Planner B 2003). Another had an FSR of 3.5:1 where the standard was 2:1, producing a seven storey block of flats where the plan maximum was four storeys, while a third had an FSR of 2.7:1 where the standard was 1:1 (Furneaux-Cook 2003). As in Sutherland, an articulate middle class population generated strong community opposition to these and other SEPP1 approvals. Representations made to the Minister by the Friends of Burwood group resulted in the council's authority to approve developments in the town centre under SEPP 1 being revoked in 1999 (Furneaux-Cook 2003). At the local government elections later in 1999, all sitting councillors were defeated. No pro-development councillors were elected to the new council. Nevertheless, like Sutherland, a short pro-development interregnum produced a significant increase in the scale of residential development through the use of SEPP 1.

Rent-seeking/corruption.

Councils' ability to confer increases in land values and profits by approving developments in excess of standards provides opportunities for rent-seeking behaviour by councillors, and by planning staff making recommendations. The clearest expression of this is corruption, which recurs sporadically in the NSW planning system. As Mant (2003) puts it:

‘... SEPP 1 has been a source of corruption and undue influence. The main causes are the vagueness of the objectives of the generalised land use zones and development standards and the lack of a fair and open process for making decisions.’

A notorious recent example concerns Rockdale council. An Independent Commission Against Corruption inquiry found that two councillors had accepted bribes in return for supporting development applications (Davies and O'Rourke 2002). In evidence before the Commission, one councillor admitted to receiving \$50,000 from a developer in exchange for support for a proposed eight storey apartment development, well above the four storey standard. The deputy mayor admitted to seeking a \$70,000 donation to the ALP to secure party support within the council for the same development (O'Rourke and Wainwright 2002). In Burwood, a developer paid \$10,000 to the ALP to 'get his developments up' in the 1995-1999 council, according to a reputable source spoken to in the preparation of this paper.

Court SEPP1 decisions

Developer appeals to the Land and Environment Court under SEPP 1 have also produced developments which are well in excess of community expectations about the scale of future suburban built environments, as expressed in development standards. The court, like councils, can allow excess development under SEPP 1 provided the objective of the standard concerned is met. This requires a subjective interpretation of objectives by judges and assessors. The resulting potential for court judgments to misconstrue community intentions is heightened by the vagueness of the objectives as written in plans. The ability of developers to hire expert witnesses to testify against councils increases the potential to misconstrue these intentions.

The outcomes of SEPP 1 court judgments have consequently often been excessive in terms of the standard(s) involved. Sydney City Council, led by Mayor Frank Sartor, led a fight by local government to reform the Land and Environment Court to prevent council policies, especially relating to development standards, from being overturned (Morris 1999b, City of Sydney 2001). Sydney City Council put out a publication which described 'unwanted legacies' of court decisions (City Of Sydney 2001). Court approvals under SEPP 1 described in the publication included:

- 39 New Beach Road, Darling Point: Apartment development approved with FSR 2.11:1 (allowable FSR 0.75:1) and height 14.0 metres (allowable height 9.5m).

- 2 Weston Street, Balmain: Apartment development approved with half of the required open space of 468 square metres.

- 1137 Pittwater Road, Collaroy: Apartment development approved with four storeys in three storey zone, and 23 dwellings compared to allowable maximum of 8.5 dwellings.

- 42 Queenscliff Road and 1 Greycliff Street, Queenscliff: Apartment developments approved, each with five storeys in area with three storey limit.

- 2 Dixon Street, Sydney: Apartment building of 16 levels approved which was 50 per cent above maximum allowed density (court decision of 1993, prior to gazettal of new Central Sydney planning controls in 1996).

The court's judgment in support of the Collaroy application highlighted the problem of interpreting council standards and their objectives. The judgment said: 'I ... cannot see how this standard can be used to manage the size and scale of new developments. Beyond this I do not understand what the standard is trying to achieve. I therefore find no problem with the non-compliance ...' (City of Sydney 2001, p. 49).

By 2001, the state government acknowledged local government lobbying about the poor quality of much urban development resulting from SEPP 1 judgements and their perceived 'pro-development' nature (Jamal 2001). This bias arose from superimposition of 'personal values' of judges and commissioners over planning standards set by elected bodies (councils) which 'more transparently and accountably represent the public interest', according to Sydney City Council (Fielding 2000). A working party was accordingly set up by the government to review the Land and Environment Court, including its power to vary council decisions on development applications. The review recommended the retention of developer's legal rights in the court, finding it would be a 'retrograde step' to abandon appeals on their merits

(Petty 2001). The review said that abolition of such appeals would cause 'loss of entitlement' of small developers representing the vast bulk of court appeals.

The state government accepted this position (Petty 2001), proposing only to strengthen the need for applications being appealed to meet the aims and objectives of the plan (Department of Urban Affairs and Planning 2001). The Property Council of Australia saw it as a 'win for big developers' (Petty 2001), having previously stated that the court's role was one of 'fundamental natural justice' (Chandler 1999). In effect the government kept the power of developers to transgress standards, with court approval, because it wanted the existing balance between individual property rights and the public interest to be unchanged. There would continue to be no absolute right for communities to specify the urban scale of places through local development standards, even where regional and state concerns were not at issue. The higher density urban consolidation development at the centre of most SEPP 1 appeals was such a state concern, but keeping the status quo allowed the government to devolve responsibility here for an unpopular policy by continuing to limit council impediments to such development.

Non SEPP 1 council decisions

In NSW, councils can set standards for development in two levels of local plans. The first is Local Environmental Plans (LEPs), prepared with community input and which require state government approval and are legally enforceable. In particular, development in excess of standards in LEPs can only be approved via the use of SEPP 1. The second is Development Control Plans (DCPs), containing more detailed lesser order controls. These are also prepared with community input but are not legally enforceable, though they are used by councils to assess development applications under the Environmental Planning and Assessment Act. Developer appeals to the court against council refusal because of DCP conditions do not require the use of SEPP 1.

Development standards can be included in DCPs rather than LEPs to give more flexibility in development assessment. In recent years there has been a shift of standards and other controls from LEPs to DCPs (Kelly 2001). This has been supported by the state government (Harris, Thompson and Williams 2000, p. 23), to reduce planning restrictions on new development, especially on higher density

residential (urban consolidation) development for the same reasons as retention of SEPP 1 appeals. Because of the lesser legal status of DCPs, it is easier for developers to win appeals to the court against council refusals based on standards in DCPs. In addition, numerical 'standards' have tended to be replaced in DCPs by qualitative, performance or objective based controls. This has given flexibility not only to councils but also to the court, whose decisions are thus 'essentially subjective' (Kelly 2001). The scope for development to greatly exceed community intentions as expressed in the overall objectives of local plans is accordingly heightened.

Recent high density developments in South Sydney illustrate some of the potential problems here. In 1997 the council adopted a South Sydney-wide LEP and DCP in which key standards such as FSRs were placed in the DCP, and subsequently followed this approach in an LEP and DCP for the major Green Square redevelopment area. Moreover, the Green Square DCP contained floor space bonuses on development sites in return for community benefits beyond those mandated by council under section 94 of the planning act. The first major development under the Green Square LEP/DCP was Meriton's proposal for 2,300 flats on the 11.25ha ACI glassworks site. As allowed in the DCP, the developer was given a floor space bonus of 1:1, or a density 67 per cent above the 1.5:1 standard in the DCP, in return for extra open space, 80 affordable housing units, public roads and other benefits (Harrison 2000). Meriton eventually decided to contribute \$16.6 million instead of building the affordable housing (Chandler 2000), but at then land values of around \$1,500 per square metre (Harrison 2000) the remaining benefits provided for the bonus were worth around \$136 million to the developer. These benefits included public roads already shown in the DCP, and which are a standard inclusion in section 94 plans of outer suburban councils. The floor space bonus in this case had been based on a judgment by the council and its planners about the worth of the benefits, which merely seemed to reflect good design principles in the DCP. But it was also a situation in which the council was negotiating with Australia's largest apartment developer. The council subsequently engaged consultants to develop a policy formula for estimating the worth of floor space bonuses in each area to provide a firmer basis for negotiating benefits in return (Harrison 2003).

The potential of floor space limits in DCPs to be varied in negotiations with developers is illustrated in another recent South Sydney case, the St Margarets Hospital site redevelopment. A site-specific DCP was developed by the hospital's consultants with community consultation which set the maximum height at 20 metres (7 storeys) and maximum FSR of 2.1:1 (Lawson 2003). On this basis, the site was sold to developers. Planners accepted the developer's argument that the maximum height should be increased to reflect the previous situation where one of the demolished buildings was around 14 storeys. In addition, the council agreed to a FSR bonus of 0.25:1 in return for community benefits principally comprising a basement area of 900 sm for a new community library, public art worth \$200,000, and a public plaza (Harrison 2003; Lawson 2003). The bonus was necessary for community facilities because the council had not included these in its section 94 plan or in other budgeting (Moore 2003). In the end, however, the council approved a development in which the tallest block would be 51 metre high (19 storeys), and with an overall FSR of 3.25:1 (Lawson 2003). The leadup to the final approval is understood to have involved networking with senior interstate and national identities within the ALP, which was the main bloc within the council, according to one experienced consultant (Anon. 2003).

The South Sydney experience with standards in DCPs has several implications here. One is that making standards more flexible, such as by offering bonuses, requires extra council resources and guidelines in order to properly evaluate the financial value of the trade-offs involved. A second is that plans which have flexible standards may result in excessive development in order to gain community benefits that could or should otherwise have been specified and required. In South Sydney, unexceptional community and public domain benefits have had to be 'bought' by intensive urban consolidation beyond levels set in consultation with the community. The local MP, Clover Moore, has summarised the general concern with the development process under DCPs: 'By a process of attrition, community endorsed Development Control Plans or Master Plans are amended again and again until developers get the building heights they want' (Moore 2002).

EXCESS DEVELOPMENT BY THE STATE GOVERNMENT

The NSW state government, through its ownership or planning control of major sites in inner and middle Sydney, has consistently sought to increase development beyond planning norms in order to generate revenue or obtain regional benefits it does not wish to finance itself. The redevelopment of the Pyrmont-Ultimo peninsula over the last ten years by the state's City West Development Corporation and its successor is a notable example. There, initial plans for mainly European-scale redevelopment of five to seven storeys were changed to allow for much more high rise development as the Corporation sought to maximise revenue from the sale of large holdings of government land and to achieve ambitious urban consolidation targets (Searle and Byrne 2002). In this process, development in excess of revised regional plan floor space standards was allowed.

The government-owned Woolloomooloo Finger Wharf illustrates the development trade-offs made by the government to gain heritage benefits it is not prepared to fund itself. By 1991 the government was on the verge of demolishing the historic and distinctive wharf. It decided to put redevelopment of the wharf to private tender to achieve restoration at no cost to the government (Bureaucrat A 2003). The government succeeded in letting a tender which required a hotel on half the wharf and apartments on the remainder as well as restoration of the wharf structure. The developers then claimed that the government's specifications would not be profitable. To help the developers meet the costs of restoration in particular, the government agreed to the construction of 32 exclusive terraces on the government-owned western shore of the bay where car parking for wharf activities was to be located, and which had been public open space up to then. The government also agreed to a reduction in the hotel size from 150 rooms to 110 and expansion of the apartments to cover two-thirds of the wharf (Bureaucrat A 2003).

On Rhodes peninsula on the Parramatta River a different kind of public benefit was 'bought' by allowing more intensive residential development. The former chemical plant sites there had been identified by the government as a focus of urban consolidation (Department of Planning 1995). One of the sites was owned by the government's Waterways Authority, and required major remediation at a cost of \$100 million to deal with on-site contaminants generated by previous chemical production of Union Carbide (Bureaucrat A 2003). To allow the developer of the site to achieve

this and thereby reduce public health risks, development was allowed to proceed at a significantly higher density than on the other sites. But the developer led the trade-off process. As an official on the government side put it: 'The government hasn't got the experience to know how to deal with developers, how far it should push' (Bureaucrat A 2003).

CONCLUSION

In its desire to maximise urban consolidation in Sydney, the state government has used its planning powers to require councils to prepare local plans for significantly increased consolidation. Determination of controls and standards in each such plan has remained with councils. However developers have retained their rights to appeal against standards which define the maximum scale of development in each locality. This has resulted in unforeseen extra development which has drawn strong community criticism in much of inner and middle Sydney.

At issue here is competition between different property rights, and the means by which the planning system reconciles clashes in rights. The basic issue is one of balancing individual rights and the public interest (March 2003, p. 276). Australian planning systems have traditionally been based on principles influenced by natural rights and utilitarianism ('progress') rationales (March 2002, p. 277). The application of these means that non-utilitarian public interest constraints on development set by communities, such as local scale, should be able to be challenged.

In contemporary Sydney, such a presumption in favour of developers is exacerbated by prevailing neo-liberal ideology at the State level. This is driving the government to produce budget surpluses and reduce State debt, with an intended principal outcome being maintenance of its AAA credit rating, which sends the right signal to outside investors (Searle and Cardew 2000). As part of this, urban consolidation is seen to reduce infrastructure costs, lessen air pollution and protect the natural environment, thus increasing Sydney's economic attractiveness as well as reducing government spending (Department of Planning 1995). Thus there is considerable state reluctance to downscale developer proposals for new higher density residential construction, such as by restricting the ambit of SEPP 1.

This neoliberal view is also partly responsible for limits set by the State on increases in local rates, the main source of council income. There has also been an increasing number and range of planning controls and policies required of councils by the government. In total, this has meant often inadequate council planning and financial resources to write better and updated plans which are less easily appealed, to negotiate better developments, and to fight developer appeals in court. Less wealthy councils are inevitably worse placed in this. Constraints on council resources may also mean that unexceptional community benefits have to be 'bought' by allowing excessive residential development.

The State's neoliberal ideology has also caused it to gain public benefits such as health and heritage conservation at no financial cost to itself, or else gain increased revenue from its land, by allowing arguably excessive residential development in return. Thus a lack of resources at local and state government levels arising to a large extent from a neoliberal ideology has altered the long term planning balance between individual rights and the public interest to the detriment of the public. The result is an inner and middle suburban landscape with too many instances of apartment blocks built to a scale never envisaged by communities which had participated in the making of the plans for those localities.

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