

31 March 2008

Ms Monica Barone
Chief Executive Officer
City of Sydney
PO Box 1591
Sydney NSW 2001

Dear Monica,

Re: Draft Ecologically Sustainable Development DCP 2007

As you are aware the Urban Taskforce is an industry organisation representing Australia's most prominent property developers and equity financiers. Our membership also includes key infrastructure providers, economists, planners, architects and lawyers involved in property development.

We write to you to express our grave concerns with Council's current draft Ecologically Sustainable Development ("ESD") Development Control Plan ("DCP") currently on exhibition.

We, like you, are conscious of the benefits for modern development that reflects the community's environmental aspirations. Thankfully, because of the heightened environmental awareness of property purchasers and tenants, good environmental practice is now often essential to the successful marketing of new property assets.

We find it curious that the City should seek to introduce new "command and control" rules when the market is now so clearly favouring environmentally friendly development. As new building stock consistently out-performs older building stock in environmental terms, any new rules that hinder the development of new building stock will actually have an adverse impact on the overall environmental performance of City of Sydney buildings. Such rules put at risk the capacity for urban environments to evolve and improve in performance.

We have significant concerns that the Draft ESD DCP has the potential to seriously erode the economic viability of new commercial and residential development within the City of Sydney.

Our concerns run to a number of matters including manageability, complexity, efficiency, workability, relevance, competitiveness and affordability and we urge Council to consider these concerns in its review of the draft document.

I will discuss each concern in detail below.

1. Manageability and complexity

At 202 pages, including schedules, the ESD DCP is neither reader nor user friendly. It is unmanageable and intimidating. It imposes excessive documentation burdens and requires the involvement of a NSW state government agency in an apparent concurrence role. It's our belief that this DCP qualifies potentially as one of the, if not the, largest single topic DCPs in NSW. This is not an award to be proud of. Ominously however, it's cumbersome and uninviting nature jeopardises its popular acceptance and adoption by the community and the development industry. The intention to incorporate it into the new City-wide DCP also generates concerns on the potential useability of that document in the future.

Essentially the DCP introduces unnecessary and unwarranted complexities and burdens, particularly in an era when there is widespread support for the planning process to be simplified. Importantly it achieves little more than what can be achieved through other mechanisms and merely reinforces current criticisms with local government planning processes.

We request that Council undertake a comprehensive review of the DCP. If any new DCP is actually to be introduced it should be a document that is simple in structure and obligations, inviting to read, simple to interpret and understand and that encourages, rather than discourages, adoption by applicants.

2. Efficiency and workability

As you are aware the performance of local government in NSW in its management of urban planning is suffering significant criticism. Clearly therefore the adoption of approaches that can facilitate increases in efficiency in the planning process are in every stakeholder's interest. However, the Draft DCP fails in this aim as it introduces excessive and unnecessary assessment processes and documentation burdens.

Excessive Assessment

Part 3 of the DCP requires the applicant for a new or refurbished commercial development greater than 1,000 square metres NLA to enter into a so-called "commitment agreement" with the NSW Department of Environment and Climate Change prior to the issuing of a construction certificate.

This introduces a defacto consent or concurrence role for a State Government department that operates outside of any legislation and the integrated development provisions of Section 90 of the *Environmental Planning and Assessment Act*. This is unsatisfactory and unacceptable from a number of perspectives:

- We question whether it is lawful.
- We question what safeguards are in place to ensure that DECC does not unreasonably withhold agreement.
- We question what recourse is available to an applicant due to poor performance or unsatisfactory responses from DECC.
- We question what statutory provisions are in place to ensure a timely response is received from DECC.
- We question the ability of DECC to efficiently manage and resource this apparent new role.

With regard to the latter point, we note from the *Local Development Performance Monitoring Report 2005–06* (NSW Department of Planning July 2007) that the City of Sydney enjoys the highest reported total development value in NSW of \$2.5 billion.

It also assesses the highest volume of applications (3,389) with the largest Planning Department of any LGA in NSW (66 fulltime staff). Importantly 565 development applications in 2005-2006 exceeded \$1 million in estimated value. We would expect that a good proportion of these 565 applications would be subject to the Draft DCP and the requirement for an agreement from DECC. We have a grave concern with the ability of DECC to efficiently resource and respond to their proposed new concurrence role.

Furthermore, Schedule 3 (Page 24) advises of the introduction of audits for developments to assess their post occupancy performance. No details are provided in the DCP. It is not clear when these will take place, who will conduct them, what party will pay for them, the potential nature of, or repercussions for any breaches. Is it really the intention of Council to devote resources to inspect developments after they have been constructed and check to see if apartment owners have swapped shower heads? And if they have, what penalties will Council invoke?

We request that Council review and clarify the proposed assessment procedures with the aim of reducing the excessive assessment processes it generates.

Documentation burdens

We note, from the review of the Draft DCP, that qualifying development proposals will be required to submit no less than three additional documents comprising:

1. an ESD design statement,
2. an independent energy assessment and
3. a commitment agreement with DECC,

with every development application or construction certificate application.

In addition all residential development on sites greater than 1,000 square metres and all non residential development applicants will need to submit:

4. a "water sensitive urban design report" (cls 3.4.2(1));
5. A stormwater quality assessment (cls 3.4.2 (21));
6. A "water quality device maintenance schedule" including waste recycling strategy (cls 3.4.2 (25));
7. A "local drainage management plan" for specific areas (cls 3.4.2 (28)).

For multi-unit residential development to achieve the required star rating, the schedules at the rear of the DCP will require the submission of a plethora of additional reports including:

8. ESD checklists and design report, meeting minutes, agreed scope of work and correspondence at each stage of a development approval (if staged), construction certificate and occupancy certificate (minimum three sets of documentation at three different times);
9. A summary condition report at occupancy certificate stage;
10. Post occupancy building tuning contract;
11. Building users' guide;
12. Residents' guide (including copies of Council's Transport Access Guide Policy, Travel Demand Management Policy and Cycle Maps);
13. Environmental management plan;
14. Daylight modelling report;
15. Stereographic diagrams for sunlight access;
16. Thermal comfort design report;
17. Internal noise design report
18. Volatile organic compound data sheets;
19. Formaldehyde data sheets;
20. Peak load energy report;
21. Car parking report (in addition to any that may address s79C considerations of the EP&A Act);
22. Local amenities map indicating proximity to minimum of, inter alia, a post box, an ATM, a church (denomination not specified), a restaurant, a pub, a pharmacy and a primary school;
23. Aerial photographs, plans and maps indicating historic use and zoning of the site to confirm that the site has been previously built on (In addition to any that may be part of a heritage impact assessment if required);
24. 'Change in ecology' calculator;
25. Site access and connectivity checklist; and
26. External lighting report.

While not all of these documents will be required to be prepared on every occasion, the DCP does establish a documentation burden that is both excessive and unreasonable. It is also unnecessary in light of the application of BASIX (discussed below). We request that Council review the DCP with the aim of reducing the excessive documentation burden on applicants.

Relevance

The existing Building Sustainability Index (BASIX) already ensures new homes are more water efficient and are responsible for fewer greenhouse gas emission.

We note that Part 3.1.2 (Page 9) of the Draft DCP states that the requirements that it will impose on development are designed to compliment BASIX and do not require development to go beyond the mandated BASIX targets.

In recognition of this, and our concerns above regarding excessive documentation burdens and involvement of other Government Departments, we have to ask, why bother?

BASIX is recognised nationally as an efficient tool for increasing building sustainability performance. It is being copied by Government's elsewhere. It has been accepted by the development industry and is considered a success.

We can find no logic, or purpose, in the Council of the City of Sydney adopting a DCP that places additional documentation and cost burdens on the households and the residential development industry when Council, itself says that the DCP will achieve no more than the current requirements of BASIX.

Competitiveness

We note that Council has been reported in recent media as recognising that Sydney is a major global city that competes for investment on the international stage as well as the national stage (particularly, in terms of the latter, with Melbourne). However as you will be aware, it also competes with locations within the Sydney Greater metropolitan area for residential and commercial investment.

As development controls such as BASIX are applicable across NSW, they impose obligations that apply to residential development equally elsewhere, in effect establishing a level playing field for investment and dwelling purchasers.

We are concerned that the introduction of the Draft DCP will establish an environment that erodes the competitiveness of the City of Sydney LGA to attract investment in new business premises and homes, compared to other regions with the Sydney GMR. Not only is this anti competitive, it also contravenes the objectives of the NSW State Government's Metropolitan Strategy to promote the primacy of the Sydney CBD as the premier centre in Sydney.

We strongly suggest that Council review and reconsider the requirements and obligations of the DCP to ensure that investment opportunities in the City of Sydney LGA remain attractive and competitive compared to other areas within the Greater Metropolitan Region.

Affordability

At the Lord Mayor's briefing in February 2006, concerns were raised regarding the potential cost impacts that the additional burdens imposed by the DCP would place on multi unit housing in the LGA. We note from Central Sydney Planning Committee Report 6 December 2007 that these have been identified to be in the order of \$1,784 to \$4,124 per unit and thus are inconsequential.

We dispute these figures. We note that the case studies cited by Council comprised large developments of 200+ plus dwellings. They also make no mention of the additional consultant and project management professional time costs, which are not 'credit points' per se.

Relevantly, the DCP will also apply to lower scale residential developments of eight dwellings or more. We have canvassed our membership to gain an appreciation of the expected consultant and project management costs to meet the documentation requirements of the DCP alone for a development of this scale.

In our assessment:

- To have the additional documents identified above prepared, involving consultant professional time and project management administration time, anecdotal evidence suggests the cost to a development could be in the order of an additional \$200,000.
- If we include the 'best and worst case scenarios' for the physical works from Council's own investigations (i.e. \$1,784 to \$4,124 per dwelling). For an eight dwelling development this amounts to \$27,000 to \$29,000 per dwelling. For a six dwelling development this amounts to \$35,000 to \$37,000 per dwelling.

This new charge on small developments potentially amounts to an imposition on dwelling purchasers of an additional cost equivalent to the purchase of a new small car. New apartments around Broadway, Kings Cross, Newtown, Erskineville, Pyrmont, Ultimo, Redfern, Waterloo and Surry Hills will be hit hard by the proposed rules.

There is already a real shortage of affordable homes in the City of Sydney. Rents are skyrocketing because not enough new homes have been developed. The most recent NSW Department of Housing *Rent and Sales Report* reveals that rents in the City of Sydney have soared by 13 per cent in the last year. If the Council proceeds with these new rules, inner city apartments will be more expensive, and there will be less of them.

We have major concerns that the Draft DCP will only exacerbate affordability issues.

In conclusion we have grave concerns with the Draft DCP. We find it unreasonably burdensome, unnecessary, unworkable, anticompetitive and inequitable. It will also further erode the affordability of dwellings in the Sydney LGA, particularly for small developments.

We request that Council review the Draft DCP in its entirety and reconsider its approach to enhancing environmental performance in building design.

Yours sincerely

Urban Taskforce Australia



Aaron Gadel
Chief Executive Officer