Urban Taskforce
AUSTRALIA

20 February 2009

Mr Gerard Jose
General Manager
Greater Taree City Council
P O Box 482
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By e-mail: draft_lep_dcp_2008@gtcc.nsw.gov.au

Dear Mr Jose

Re: Draft Greater Taree Local Environmental Plan 2008

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

The Urban Taskforce has reviewed the *Draft Greater Taree Local Environmental Plan 2008* ("the plan") and identified some issues of concern.

Our concerns are generally outlined below and **a summary of the changes we have requested is included as an attachment to this letter**.

1. The plan's aims are not sufficiently clear

Ecologically sustainable development

The Urban Taskforce is concerned with the language used by Council when articulating the aims of the plan.

Section 25(3) of the *Environmental Planning and Assessment Act* ("the Act") makes it clear that if a provision of a local environment plan is genuinely capable of different interpretations, the interpretation which best meets the aims stated in plan is preferred.[1] For this reason, it's important that the aims of the plan are well written.

The plan includes the following aims:

> (b) to encourage the proper management, development and conservation of natural and human made resources (including natural areas, forests, coastal areas, water, groundwater dependent ecosystems, agricultural land, extractive resources, towns, villages, and cultural amenities) for the purpose of promoting the social and economic welfare of the community, protecting ecological and cultural heritage and achieving a better environment; ...
>
> (e) to encourage the protection of the environment, including the protection and conservation of native animals and plants, threatened species and endangered ecological communities and their habitats; ...

These aims merely describe the elements of "ecologically sustainable development" which is already the first aim of the plan. The phrase, "ecologically sustainable development" is already extensively defined and detailed under the Act itself. The concept of "ecologically sustainable development" already requires:

- environmental protection;
- the integration of economic and environmental decision-making;
- inter-generational equity in decision-making;

[1] See, for example, *Jim Rannard & Associates Pty Ltd v North Sydney Municipal Council* (1992) 75 LGRA 274.

- the application of the precautionary principle; and
- respect for biodiversity.[2]

Section 11 of the *Interpretation Act* makes clear that when the phrase "ecologically sustainable development" is used in a local environment plan, it has the same meaning as in the Act. There is no need for a further reiteration of the elements of ecologically sustainable development in the plan. Repetition of the same point should be avoided in any statutory instrument, because the courts are obliged to assume all words are inserted for a reason. This means the court will endeavour to ascribe a different meaning to a phrase that, at first blush, appears to do no more than repeat some other provision of the plan. This may have perverse and unintended consequences.

The aims of the plan set out in 2(b) and (e) merely replicate the aim set out in 2(a). The aim "to promote the ecologically sustainable development of Greater Taree" is sufficient.

Orderly and economic use and development of land

Clause (2)(b) says the plan aims

> to promote and co-ordinate the orderly and economic use and development of land, and to minimise conflict between adjacent land uses ...

The Act makes it clear that the purpose of an environmental planning instrument, such as this plan, is to achieve any of the Act's objects.[3] The role of the aims is to state how the plan is designed to achieve any of the objects of the Act.[4]

The first part of the aim in clause 2(b) merely restates section 5(a)(ii) of the Act which says it is an object of the Act to encourage

> the promotion and co-ordination of the orderly and economic use and development of land ...

The first part of clause 2(b) does not state how this object is to be achieved, it merely restates this object – so it should be deleted. The second part of clause 2(b) arguably *is* a statement about the plan's attempts to achieve the objects of the Act.

The first part of the aim in clause 2(b):"to promote and co-ordinate the orderly and economic use and development of land" should be deleted as it merely re-states an object of the Act.

Natural hazards and risks

Clause 2(f) says the plan aims

> to *minimise* the *exposure* of development to natural hazards and risks (emphasis added).

This aim raises two issues.

Firstly, "minimise" means

> to reduce to the smallest possible amount or degree[5]

In planning terms, it *is* "possible" to prohibit an activity completely, so to *minimise* the exposure of development to a hazard or risk, means the development is to be prohibited if there is even the small chance of the exposure/risk.

Modern risk management principles accept the idea that complete avoidance of risk is illogical and inappropriate. Banning an activity (i.e. 'minimising its exposure') *may* be an appropriate risk management response, but only if either:

- there are severe adverse consequences from the exposure to a given hazard, even if the chance of actual exposure in given circumstances is small; or

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[2] The *Environmental Planning and Assessment Act 1979* already defines the phrase "ecologically sustainable development" to mean all of the things set out in section 6(2) of the *Protection of the Environment Administration Act 1991*. Section 11 of the *Interpretation Act 1987* makes clear that when the phrase "ecologically sustainable development" is used in a local environment plan, it has the same meaning as in the Act.

[3] s 24.

[4] S 25(2).

[5] Macquarie Concise Dictionary (4th edition).

- there are moderate adverse consequences from the exposure of development to a hazard and the chance of actual exposure is high.

In many circumstances would be more appropriate for the risks arising from development to be mitigated rather than trying the minimise exposure itself.

Secondly, it is not clear whether the aim is intended to refer to "natural hazards" and "natural risks" or "natural hazards" and risks of any kind. The latter interpretation may lead to litigation around the economic viability of a proposed development. In particular, there may be an effort by objectors to a development to have consent refused/invalidated on the grounds of inherent commercial risks. While it has been established in planning law that the planning authority should not exercise a paternalistic view in an attempt to protect a developer from a financial folly, this aim, as currently drafted, may open a back door for this issue to be further argued.[6]

The plan aim in clause 2(f) should be re-worded so that it says that the plan is

> to mitigate the risks to development arising from natural hazards.

Infrastructure

Clause 2(g) says the plan is

> to seek the provision of adequate and appropriate infrastructure to meet the needs of future development ...

As mentioned above, the role of the aims is to state how the plan is designed to achieve any of the objects of the Act.[7] This aim appears to be saying that the plan is designed to "seek" infrastructure development. It is not clear how a plan can "seek" something.

We are concerned that this aim may be used to argue that private developers should build, or fund new public infrastructure - even if the need for that infrastructure is not generated by the development concerned.

Infrastructure contributions should not be dealt with by this local environment plan and instead should be dealt with under the subject of a separate contributions plan and, in some circumstances, a voluntary planning agreement. The Act already expressly tasks the council when making decision on development applications to consider:

- any planning agreement that has been entered into or any draft planning agreement that a developer has offered to enter into;[8] and
- the suitability of the site for the development.[9]

There is no need for a local environment plan to say any more on the subject.

The plan aim in clause 2(g), relating to infrastructure, should be deleted.

Local self-reliance

Clause 2(h) plan aims

> to encourage a strong, growing and diversified economy that promotes *local self-reliance*, and recognises and strengthens the local community and its social capital in ways that safeguard the quality of life of future generations (emphasis added).

We commend the Council for its clear support for "a strong, growing and diversified economy". This is an excellent aim. However, we do not think it appropriate for a plan to seek to promote "local self-reliance". This suggests that Taree is not interested in engaging in commercial activity that extends across the local government boundary. In the modern economy Taree should be prepared, for example, to host a manufacturing business that makes only a component of a larger product assembled elsewhere. The Council should be willing to accommodate, for example, a retail development that brings in its mechanise from Western Sydney. It is not

[6] *J Murphy & Sons Ltd v Secretary of State for the Environment* [1973] 2 All ER 26, 31; qualified in *Hambledon and Chiddingfold Parish Councils v Secretary of State for the Environment* [1976] JPL 502.
[7] s 25(2).
[8] s 79C(1)(a)(iiia).
[9] s 79C(1)(c).

possible or appropriate for Taree to attempt to cut itself off from the rest of NSW through this plan.

In the plan aim contained in clause 2(h) the reference to "local self-reliance" should be deleted.

Social consequences

Clause 2(i) says the plan aims

> to encourage the consideration of social consequences when decisions are made in the implementation of this Plan.

This provision is both unnecessary and undesirable.

It is *unnecessary* because of in a provision of the Act which already requires consideration of

> the likely impacts of ... development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality ...[10]

Clause 2(i) is *undesirable* because social issues should be considered alongside environmental and economic issues in an integrated fashion. Social issues should not be separately singled out, lest they lead to an interpretation that social issues are more or less important than economic/environmental issues.

The plan aim contained in clause 2(i) on social issues should be deleted.

2. <u>Primary production zone is not a conservation zone</u>

Council has inserted a zone objective in relation to the "primary production zone" saying that the zone is

> [t]o protect and enhance the native flora, fauna and biodiversity links

The word "protect" is used rarely by zone objectives in the Standard Instrument contained in the *Standard Instrument (Local Environmental Plans) Order 2006*. Its only use is in relation to the transition zone, the environmental management zone and the environmental conservation zone. Otherwise the Standard Instrument uses verbs like "encourage", "provide", "enable" and "minimise" in zone objectives.

The reason for this drafting approach is clear. To "protect" something is to ensure that either no harm or minimal harm occurs to it. Everyday activities in a primary production zone such as agriculture, motor vehicle use and fencing are likely result in the death of some native flora and fauna.

"Biodiversity links", in particularly, are very hard to protect and are easily damaged by routine human activity. "Biodiversity" is commonly understood to be the variability among living organisms from all sources. "Biodiversity links" are the relationships between diverse species and ecosystems. Biodiversity links can be damaged, for example, if human activity leads to an unnatural preponderance of one species at the expense of another (even if no given species is at risk of disappearing from a locality). For example, the existence of cleared farmland may encourage a larger population of kangaroos than would be found in the natural environment. This may harm biodiversity links because the kangaroos could compete with other native species in disproportionate numbers.

Importantly the objectives don't simply require the 'protection' of native wildlife – it demands its enhancement. Over time, as people seek to modernise buildings on their property, this could lead to a forced reduction in commercial activity in the zone, in order to "enhance" the native flora, etc.

In short, it is impossible to reconcile the objectives for a primary production zone set out in the Standard Instrument with this objective inserted by council.

The zone objective saying the primary production zone is to protect and enhance the native flora, fauna and biodiversity links should be deleted.

[10] s 79C(1)(b).

3. <u>"Small-scale" is too vague to be included in a zone objective</u>

The second last dot point added by Council to the primary production zone says the zone is

> [t]o permit *small scale* rural tourism uses associated with primary production and environmental conservation (emphasis added).

A subjective phrase such as "small-scale" should never appear in a statutory plan.

If there is a desire to prohibit buildings of a particular bulk and scale then development control plan can set out the applicable height or floor space ratio restrictions. Subjective words such as "small" mean different things in the hands of different decision-makers – it is a recipe for confusion, legal disputation and inconsistency.

The reference to "small-scale" in relation to rural tourism uses in the primary production zone objectives should be removed.

4. <u>It is not appropriate to require private developments to enhance the village character</u>

A zone objective inserted by Council for the village zone says that the zone is

> [t]o enhance the village character and amenity.

This objective is inappropriate and unnecessary.

Firstly it is *inappropriate* because the effect of this objective is that every development proposals needs to be assessed for its contribution to the <u>enhancement</u> of village character and amenity.

It's one thing to assess a development proposal for its potential to adversely impact on character and amenity; it is another to ask every development approval to enhance character and amenity.

Many developments *will* enhance the village character and amenity. For example, a new bank branch may bring extra people in the village centre, and contribute to a more active streetscape. However, some developments will merely replace one nondescript building with another. It is inappropriate and unjust, to require those who build new buildings to expend resources on improving the village character, when their development will have no adverse impact on the said village character.

Secondly it is *unnecessary* because the Standard Instrument zone objective for a village already says the zone objective is

> [t]o provide for a range of land uses; services and facilities that are associated with a rural village.

This expressly says that the zone sets out to provide for development that is conventionally understood to be associated with a rural village. The Act separately provides for the consideration of the likely environmental impacts on both the natural and built environments, and social and economic impacts in the locality.[11]

The last Council inserted dot point for the village zone objective requiring the enhancement of village character and amenity should be deleted.

5. <u>Council's low density zone objective simply restate the standard zone objectives.</u>

The standard "R2 Low Density Residential" zone objectives make it very clear that the zone provides for "a low density residential environment". An additional Council objective for the zone says that the zone is

> [t]o provide for low density housing while maintaining environmental or scenic landscape qualities of land which would not be sustainable with higher densities of development.

The requirement to maintain environmental or scenic landscape qualities of land "which would not be sustainable with higher densities" simply appears to be another way of saying – "low

[11] s 79C(1)(b).

density environment". If this is the case it does not add anything to the standard objective, which already provides for a low density environment.

As mentioned above, in interpreting statutory documents (such as this plan) the judiciary will assume that additional words have been inserted for a reason. The courts will prefer an interpretation that gives a phrase a different meaning from an apparently similar provision in the same document. In this case, the judiciary is likely to regard "maintaining environmental or scenic landscape qualities of land which would not be sustainable with higher densities" as meaning something other than "low density".

This additional objective makes it quite possible that development might have to be refused because of colour schemes, architectural styles and building structure even when such development might be otherwise permissible under the local environmental plan and development control plan.

The objectives for low density residential zones should not seek to restate or elaborate on existing standard zone objective. Existing standard zone objectives already provides that the area will be a low density residential environment.

6. <u>Full range of residential development should be permitted in neighbourhood centres and local centres</u>

It is encouraging to note that residential and other uses are permitted in neighbourhood centre and local centre and the mixed use zones.

However, the policy decision to only permit shop top housing may cause the very problem it is trying to avoid. If there is insufficient demand for retail space, developers are forced by these rules to build ground floor retail space that can be empty and underused leading to a ghost town atmosphere in the local streetscape. It's far better that developers be allowed to populate empty land with the vibrancy of a residential neighbourhood than leave it bare because of a lack of demand for retail space. Similarly, forcing developers to build retail space that they know will be vacant (in order for the developer to get the benefit of residential space above) is a waste of resources and will do nothing to create a vibrant streetscape.

The neighbourhood centre and local centre and the mixed use zones should permit residential development, including multi-dwelling housing and residential flats, as well as shop top housing.

7. <u>Residential development should not be banned in the commercial core</u>

The Urban Taskforce strongly opposes the proposal to prohibit residential development in the commercial core zone. If the council is serious about creating a lively, active and safe urban centre, then residential development must be permitted.

Many successful places include a mix of uses, including jobs, retail, entertainment and residential apartments all coexisting. These different uses can work together to make a centre attractive and successful at all times of the day and week. Centres without retail, entertainment <u>and residential</u> uses can be lifeless, cold and uninviting places outside of business hours.

Multi dwelling housing, residential flats and shop top housing should be permissible in the commercial core.

8. <u>Limiting development in neighbourhood and local centres to preserve a centres hierarchy</u>

The plan attempts to introduce and/or maintain a centres hierarchy. As it stands, Council objectives will enable restriction of commerce, limitation of choice and will in all likelihood hamper the evolution of centres.

The plan states an objective for:

- neighbourhood centre as

[t]o strengthen the local community and *support the role of the local centres* (emphasis added).

- local centre as

  [t]o strengthen the local community and *support the role of Taree central business district* (emphasis added).

- commercial core as

  [t]o reinforce the role of Taree central business district as the *major regional centre* (emphasis added).

What this really means is that growth in centres will be limited with the objective of protecting and ensuring greater growth in other centres in the local area. This approach is not responsive to community needs. In particular, it fails to recognise that restricting development in one locality will not necessarily mean the same level of development will occur in the favoured location. Development opportunities are likely to be lost to the community as a whole.

Determining if a development proposal is "supporting" or "reinforcing" the role of centres is unclear. Furthermore, including objectives such as these will introduce more uncertainly to the development determination process. That is, even applications for permitted land uses will be open to challenge by competitors on the grounds that the development does not support the role of a higher order centre.

In the end, preserving a centres hierarchy limits the opportunity for competition, ensuring that the community pays more than they should. Limiting the opportunity for a competitive retail environment by restricting the type of goods sold robs the community of the opportunity to access a wide variety of competitively priced grocery items in their locality.

In August 2008 the Australian Competition and Consumer Commission (ACCC) found that competition in grocery retailing was being limited by town planning laws.[12] It concluded that zoning and planning regimes act as an artificial barrier to new supermarkets. In the same month the Productivity Commission found that planning laws were contributing to the difficulties of small retail tenants negotiating with "oligopolistic" shopping centre landlords.[13]

Consumers will pay much more for groceries at small retail outlets. In his report *Choice Free Zone*, Professor Allan Fels found that larger format stores offer up to 18 per cent less for basic food items and up to 28 per cent less for other household products. The Australian Government's Bureau of Infrastructure, Transport and Regional Economics found that consumers paid 17 per cent more when they did not have ready access to a large format grocery store.

What this prohibition really means is that people need to drive further to satisfy their general grocery and shopping needs. Limiting retail by way of a statutory plan does little more than to protect existing retail landlords.

There should be no references to the reinforcement of the roles of centres or the preservation of a centres hierarchy in the plan.

9. A wide range of retail activity prohibited in neighbourhood centres

Neither "retail premises", nor "shops" are permitted uses in neighbourhood centres. This flies in the face of the zone objective to provide

> ... retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

Neighbourhood shops are permitted, however these are defined to be

> ... retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

[12] Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* (2008).
[13] Productivity Commission, *The Market for Retail Tenancy Leases in Australia* (2008).

This means a shop in a neighbourhood centre:

- must sell "small daily convenience goods";
- the purpose of the goods must be to satisfy day-to-day needs; and
- must be directed to people who live or work locally.

In short, shops of any size are banned in neighbourhood centres, if they sell either: large grocery items, clothing, music, homewares or electrical goods.

A florist who wants to set up shop in a neighbourhood centre will have to argue that flowers are a "small daily convenience good" and "satisfy day-to-day needs" of locals. Good luck. A small shop that sells iPods, mobile phones and person radios will be banned. As will a baby clothes shop. Where is the public interest in prohibiting these low impact uses (via zoning) from areas that are supposed to be about providing retail services?

"Retail premises" should be a permitted use in neighbourhood centres.

10. <u>Restrictions on premises in business development and enterprise corridor zones</u>

"Retail premises" other (other than bulky goods premises, landscape and garden supplies, timber and building supplies and rural supplies) are not a permitted uses in the business development and enterprise corridor zones. "Business premises" are not permitted in the business development zone.

Business development zones and particularly enterprise corridors are intended to be centres of employment. These environments function best when people working in these areas have somewhere to go to shop and socialise before work, at lunch time and after work.

Those working in a business development or enterprise corridor zone should be entitled to have lunch in a restaurant, or visit a local hotel after work. Surely these uses go hand-in-hand with business activity. Those working in a business development zone should be free to get a hair cut without having to travel to the nearest centre.

We support a planning scheme that permits the integration of housing, workplaces, shopping, and recreation areas into compact, pedestrian-friendly, mixed-use neighbourhoods. Pedestrian-oriented amenities such as retail and cafes should not be discouraged or prohibited in any centre of employment. A prohibition on retail premises really means that people need to drive further to satisfy their shopping needs. Planning rules should be encouraging behaviour that reduces vehicle kilometres travelled, not reinforcing old-style separations of land use that force people to drive further.

"Retail premises" should be generally permitted uses in business development and enterprise corridor zones.

"Business premises" should be permitted in the enterprise corridor zone.

11. <u>Prohibition on retail and business premises in industrial zones</u>

Council's industrial zones do not permit retail premises or business premises (other than food and drink premises, landscape and garden supplies, service stations and timber and building supplies).

Although the Sydney Metropolitan Strategy does not apply to Taree, it offers a sensible approach on this issue. The Metropolitan Strategy stated that retailing in industrial areas be permitted when it has operating requirements akin to industrial uses.[14] There was also a promise of a new approach to reinvigorate employment lands, including flexible zonings for industrial and commercial activities.[15]

There is potential to include a wider range of retail activities in industrial areas without jeopardising industrial activities. This could be achieved by including retail as a permitted use in

[14] Metropolitan Strategy – Supporting Information 105, B4.1.2.
[15] Ibid 63, A1.4.2.

industrial zones, with the inclusion of an additional objective to the zone that states the zone is to

> provide for bulky goods retailing and other retail that is either ancillary to an industrial use, has operating requirements akin to industrial uses or demonstrable offsite impacts akin to industrial uses.

Retail premises and business premises should be a permitted use in the industrial zones.

12. <u>A consent authority will have to determine if industry is innovative and sustainable for each development application</u>

In the general and light industrial zones an additional Council zone objective is

> [t]o encourage innovation and sustainability in industry.

This objective could prove problematic as a land use must also be "innovative" and "sustainable" to satisfy the zone objective.

Consent authorities are already required to address social, economic and environmental considerations in their decision-making process.[16] It is unclear why further prescription requiring consideration of the innovation and sustainability is necessary.

A local environmental plan is a legal document prohibiting and permitting activities. It can do nothing to "encourage" a particular class of development, except when it does so by disadvantaging other forms of development. This is well understood by consent authorities that frequently use the word "encourage" to signal that a particular form of development will be swiftly approved, while other forms of development are likely to find approval difficult.

Clause 2.3(2) of the Standard Instrument contained in the Standard Instrument requires that this zone objective be considered when development applications in the zone are considered by consent authorities. If this zone objective stands we anticipate that developments will be refused because a public official has decided that they are not "innovative and sustainable". This will be a loss to the community of Greater Taree because it may prevent industrial zones from reaching their full potential.

The industrial zone objectives "encouraging" innovation and sustainability in industry should be deleted.

13. <u>Increased red tape when there are minor changes in use for shops and commercial premises</u>

There is no reason why a change of use for non-food retail premises to food retail premises cannot be complying development under the plan. The logic behind this is not apparent.

Food premises are already subject to control under the *Australian New Zealand Food Standards Code* that includes minimum construction standards for food premises. Council should include compliance with the Food Standards Code as a requirement of complying development for food premises and hence able to be considered as complying development.

When determining if a food premises should be issued with a complying development certificate, the certifier is able to consider compliance with the Building Code of Australia and the Australian New Zealand Food Standards Code prior to the issue of a certificate. This provides an adequate level of protection against inappropriate methods of construction and should enable the fit-out of food premises to be considered as complying development.

A change of use for non-food retail premises to food retail premises should be complying development.

14. <u>Long list of prohibited uses will have bizarre implications</u>

The plan contains an unusually long list of prohibited uses for most zones in the land use table. This is of serious concern.

[16] See section 79C of the *Environmental Planning and Assessment Act 1979*.

A use does not need to be named in the prohibited use list in order to be banned in a zone. For example, in relation to low density residential zone the precinct plans merely say the prohibited development is

> [a]ny other development not specified in item 2 [Permitted without consent] or 3 [Permitted with consent].

There is no need to expressly prepare a long list banning everything. The latter approach unnecessarily complicates the document. The land uses table is easier to understand if there is not a long list of prohibited uses.

However, the prohibited uses list should also be kept short for another reason. Clause 2.3(3)(b) provides that

> a reference to a type of building or other thing does not include (despite any definition in this plan) a reference to a type of building or other thing referred to separately in the Table in relation to the same zone.

This means a statement that an apparently broadly defined use is permissible (with consent) must be given an artificially narrow meaning that excludes any use that would fall into the prohibited uses list.

Hence, the general residential zone's list of prohibited uses includes "electricity generating works" which are defined as a

> a building or place used for the purpose of making or generating electricity.

This would see housing development which incorporates a "place" for solar panels banned in this zone.

The neighbourhood centre permits "community facilities" as a permitted use but then lists "recreation facility (indoor)" as a prohibited use. A recreation facility (indoor) is defined to mean

> a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain ...

This means community facilities such as scout halls, a gym or a dance studio are prohibited in neighbourhood zones. In fact, any community building which is used by recreational clubs for a majority of its time will be prohibited – even when those clubs' activities are innocuous as bingo, chess or a film night.

The general residential zone lists a "dwelling houses" as permissible with consent, but it lists "office premises" as a prohibited use. Office premises are defined to mean a

> place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the ... place on a direct and regular basis ...

Even though home business run out of an office within a residence would normally be permissible in the general residential zone; the inclusion of an office as a prohibited use, means that a dwelling house in this zone would not be able to have an office.

We could list many more examples of bizarre outcomes that can occur with this long list of prohibited uses. In short, such lists must be avoided.

The long prohibited uses lists contained in the general residential, neighbourhood centre, local centre, commercial core, mixed use, light industrial, general industrial, enterprise corridor, business development and working waterfront should be removed. Instead the drafting approach adopted for the low density zone should be adopted.

15. Special clause on public utility infrastructure duplicates inherent provisions of the Act

Clause 6.2 is titled "Public utility infrastructure". The clause is not necessary. The matters covered by this clause relate to the assessment of development proposals and receive detailed and adequate consideration as part of the development application determination process as per section 79C of the Act. In particular section 79C(1)(c) requires consideration of the suitability

of a site for the development. The objects of the Act highlight the need to give consideration to servicing land.

Additionally, "public utility infrastructure" is not defined. It is open for a consent authority to decide to broadly define "public utility" if they so choose. For instance the *Macquarie Dictionary* includes gas and transport infrastructure as public utilities.

Clause 6.2 should be deleted from the precinct plans.

16. <u>Defacto state infrastructure contributions</u>

Since October 2007 the NSW Government has been progressively introducing a new defacto state infrastructure contribution regime outside of the growth centres.[17] These new local environment plan provisions grant rezonings, but make the rezonings less meaningful because a new arbitrary power is created for the Department of Planning to impose infrastructure charges without even the threadbare safeguards of the existing state infrastructure contribution statutory framework.

An example of this approach is set out in clause 6.1. This clause means that development approval for a rezoned land use cannot be given by the local council unless the Department of Planning signs off on a financial contribution infrastructure normally provided by the state.[18]

By using local environment plans (LEPs) to impose compulsory infrastructure levies, key provisions of the existing scheme are circumvented, in particular:

- The Minister is not obliged to make a determination of the level of development contributions up-front. Instead the Director-General of the Department of Planning makes a decision on compulsory charges specific to each individual development application. This reduces the transparency and certainty. The lack of up-front information acts as a disincentive to invest.
- There is no obligation on the government to publicly exhibit the proposed charges or consult with land owners or other relevant stakeholders. Again this increases the perception that charges are arbitrary.
- There is no obligation for the contribution to be "reasonable".
- There is no obligation to identify a special contributions area or any similar area to which the contributions relate.
- There is no requirement that the funded infrastructure be within a particular area.
- There is no requirement for the decision on the quantum of charges to be made publicly available.

We have asked government to commit to implementing its system of compulsory infrastructure charges through express provisions in the *Environmental Planning and Assessment Act*, rather than local environment plans. This request has not been adopted by the government.

In the absence of government action on this point, **we request that the clause 6.1 be amended to incorporate the Act's safeguards (limited as they are) against arbitrary levies.**

This clause is particularly worrying when read in conjunction with the plan aim in clause 2(g) says the plan is

> to seek the provision of adequate and appropriate infrastructure to meet the needs of future development ...

This aim appears to be suggesting that developers will not only pay for infrastructure related to their own development, but also infrastructure that will be needed future development carried out by others. That cuts across the whole concept of "nexus", which links the payments made by developers to the needs created by their particular development.

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[17] For example see: *Camden Local Environmental Plan No 74—Harrington Park* cl 38; *Hawkesbury Local Environmental Plan 1989* cl 55; *Maitland Local Environmental Plan 1993* cl 55; *Parry Local Environmental Plan 1987* cl 41; *Tamworth Local Environmental Plan 1996* cl 55; *Wyong Local Environmental Plan 1991* cl 42G.

[18] *Parry Local Environmental Plan 1987* cl 41.

These comments are offered to encourage constructive dialogue between local government and the development industry and we ask that you accept these comments as our contribution to the planning reform process. We ask that you carefully consider the contents of this correspondence and make amendments to the plan as appropriate.

We are always able to provide a development industry perspective on planning policy and we would welcome the opportunity to meet and discuss these issues in more detail.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer

Urban Taskforce
AUSTRALIA

Draft Greater Taree Local Environment Plan 2008

Summary of Urban Taskforce's Recommendations

1. The aims of the plan set out in 2(b) and (e) merely replicate the aim set out in 2(a). The aim "to promote the ecologically sustainable development of Greater Taree" is sufficient.
2. The first part of the aim in clause 2(b):"to promote and co-ordinate the orderly and economic use and development of land" should be deleted as it merely re-states an object of the Act.
3. The plan aim in clause 2(f) should be re-worded so that it says that the plan is

   to mitigate the risks to development arising from natural hazards.
4. The plan aim in clause 2(g), relating to infrastructure, should be deleted.
5. In the plan aim contained in clause 2(h) the reference to "local self-reliance" should be deleted.
6. The plan aim contained in clause 2(i) on social issues should be deleted.
7. The zone objective saying the primary production zone is to protect and enhance the native flora, fauna and biodiversity links should be deleted.
8. The reference to "small-scale" in relation to rural tourism uses in the primary production zone objectives should be removed.
9. The last Council inserted dot point for the village zone objective requiring the enhancement of village character and amenity should be deleted.
10. The objectives for low density residential zones should not seek to restate or elaborate on existing standard zone objective.
11. The neighbourhood centre and local centre and the mixed use zones should permit residential development, including multi-dwelling housing and residential flats, as well as shop top housing.
12. Multi dwelling housing, residential flats and shop top housing should be permissible in the commercial core.
13. There should be no references to the reinforcement of the roles of centres or the preservation of a centres hierarchy in the plan.
14. "Retail premises" should be a permitted use in neighbourhood centres.
15. "Retail premises" should be generally permitted uses in business development and enterprise corridor zones.
16. "Business premises" should be permitted in the enterprise corridor zone.
17. Retail premises and business premises should be a permitted use in the industrial zones.
18. The industrial zone objectives "encouraging" innovation and sustainability in industry should be deleted.
19. A change of use for non-food retail premises to food retail premises should be complying development.
20. The long prohibited uses lists contained in the general residential, neighbourhood centre, local centre, commercial core, mixed use, light industrial, general industrial, enterprise corridor, business development and working waterfront should be removed. Instead the drafting approach adopted for the low density zone should be adopted.
21. Clause 6.2 should be deleted from the precinct plans.
22. We request that the clause 6.1 be amended to incorporate the Act's safeguards (limited as they are) against arbitrary levies.

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