

Getting Sydney back on track

How to re-boot the Sydney Metropolitan Strategy

A submission to the NSW Department of Planning's Metropolitan Strategy Review and a response to the discussion paper *Sydney Towards 2036*.

June 2010

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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.

Executive Summary

The Metropolitan Strategy sought to deliver 245,500 extra homes for Sydney between 2004 and 2013. According to the *Going Nowhere* report which forms part of this submission, the actual number of additional homes for Sydney is likely to be between 160,000 and 180,000 – falling short of the 2005 targets by more than 27 per cent. The 2005 Sydney Metropolitan Strategy has not delivered. The dearth of new homes in Sydney is having a profound social impact.

However, the failure in implementing the Metropolitan Strategy stretches far beyond the simple number of new homes built. The Metropolitan Strategy envisaged concentrated commercial, retail and residential development across the centres and corridors of Sydney. Somewhere along the line, the Department of Planning appears to have informally abandoned its commitment to the development of the corridors of Sydney, and has decided to pursue a 'centres-only' approach. Numerous corridor development initiatives contained in the Metropolitan Strategy have not been implemented – or worse still – are now not possible to implement because of changes to the *Standard Instrument (Local Environmental Plans) Order 2006* ("the Standard Instrument") made by the former Minister for Planning in December 2007.

The development of serviced residential lots – promised to be an average of 6,000 to 7,000 a year – simply has not eventuated. The Metropolitan Strategy itself warns that such an outcome "would put great pressure in Sydney's existing suburbs and character and would potentially further reduce housing affordability".¹

While the 2005 Metropolitan Strategy was not perfect, it was a reasonable document. Most of the problems with urban planning in Sydney do not lie in the text of the Metropolitan Strategy, but in the failure of the Department of Planning and local councils to properly implement it. Given this, we are concerned that the bulk of the *Metropolitan Strategy Review: Sydney Towards 2036*² ("the discussion paper") is focused on re-writing the Metropolitan Strategy rather than identifying and responding to the failure in implementation.

Planning for a growing population

Governments cannot tell people where they should live. People will not be moved around NSW like pieces on a chessboard. Previous attempts to limit growth by decree have been disastrous

In the 1990s, then Premier Bob Carr announced that "Sydney was full". The 'Sydney-is-full' policies saw a spike in residential property prices from 1999 to 2003 leading to the rapid slowing in NSW population growth. So while population growth was slowed (but not stopped) the costs were great.

Going Nowhere examined the economic costs in some detail. While population growth in NSW was very weak from 2002 to 2006, it was solid in Victoria, averaging 1.3 per cent compared to just 0.7 per cent in NSW. From 2003 to 2009, Victoria's economy substantially outperformed NSW with average annual economic growth at 3.3 per cent in Victoria, compared to 1.7 per cent in NSW. Average annual job growth was 2.1 per cent in Victoria, compared to 1.4 per cent in NSW. Of all the states, NSW

¹ NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 133.

² NSW Department of Planning, *Metropolitan Strategy Review: Sydney Towards 2036: Discussion Paper* (2010).

economic growth per capita was slowest at just 0.8 per cent a year. Population growth tends to encourage per capita economic growth itself.

The social costs of Sydney's artificial constraints in the housing supply were highlighted by the COAG Reform Council in its recent report *National Affordable Housing Agreement: Baseline performance report for 2008-09*.

The report found that, nationally, 37 per cent of low-income renter households were in rental stress—that is, were paying more than 30 per cent of their gross household income in rent. The proportion in NSW was significantly higher, with almost half of all low-income renter households—46 per cent—in rental stress.

According to the report, 28 per cent of homes sold were affordable to moderate-income households. Melbourne had the highest proportion of homes affordable to moderate-income households (39.1 per cent), however in Sydney just 26.4 per cent of homes sold were affordable to moderate-income households.

The *Going Nowhere* report finds that, at the very least, we must get housing supply back to the performance levels of the 1990s to meet the new targets of set out as part of the review of the Metropolitan Strategy.

This means we need a minimum annual average supply of about 25,000 extra homes.³ While this scenario – which requires a doubling of the current rate of housing construction - will alleviate housing shortages somewhat, it is a second best outcome.

Going Nowhere finds that NSW might recover the share of national overseas migration that has been taken by Queensland by boosting its annual construction of extra homes to 31,000 each year beyond 2015. This is two-and-a-half times the 2009 level of housing construction. The NSW Government targets fall short of this goal.

Making Sydney climate change ready

The science published by the United Nations' Intergovernmental Panel on Climate Change (IPCC) cannot be ignored. Climate change is clearly a real concern. It is appropriate to consider how climate change will impact on land use and development patterns in the long term. However, consideration of the impacts of climate change, and the subsequent adaptation and/or mitigation strategies, must be founded upon the principles of ecological sustainable development. This means steps taken to adapt to climate change must be appropriate, justifiable and measured; taking into consideration the social, environmental and economic costs to the community.

The willingness of individuals and the private sector to bear some risk when acquiring and dealing with property assets is greater than the public sector. The public sector should not attempt to impose its risk preferences on the community-at-large when human safety is not an issue and the assets at risk are predominantly privately funded.

Serious equity and economic efficiency issues arise when present day property rights and legitimate expectations are quashed in order to reduce costs that the community may face in the future. The quashing of private rights now imposes costs both on individuals and the community now. Nothing is gained by bringing forward the pain of future climate change impacts to the present day, and then asking some members of the present-day community to bear the disproportionate share of the burden. The perception of increased sovereign risk and the social and economic costs of lost development opportunities will magnify the costs (if they are brought forward), rather than reduce them.

³ This is a net figure, after an allowance has been made for demolitions.

Any response to climate change issues needs to recognise the need to provide investment certainty by respecting property rights and legitimate expectations of development, subject to the paramount consideration that human safety must always be protected.

Integrating land use with transport

If we have any hope of meeting expected housing demand within established inner and middle ring suburbs, Government must show leadership by ensuring that land use controls in all local areas serviced by high quality transport infrastructure permit additional new compact, pedestrian friendly residential communities.

In infill locations, the Department of Planning has worked toward short-term targets hidden from the public and the development industry. The Metropolitan Strategy promised 460,000 extra homes within the existing footprint of Sydney by 2031, but the secret targets only allowed for rezoning for 103,000 extra homes in existing areas by 2013. These targets were obtained by the Urban Taskforce through freedom of information laws.

If these secret targets had been met a third of the way into the strategy, we would have only 22 per cent of the promised new homes. The really hard rezoning decisions were secretly deferred into the never-never. The internal targets were set so low that there was never going to be enough housing available to keep up with demand. This mistake must not be repeated.

The development of new compact, pedestrian-friendly, mixed-use neighbourhoods in inner and middle ring suburbs should be permitted in any area that is within:

- 400 metres of a transport corridor serviced by high quality public transport (e.g. buses, light rail); or
- 400 metres of a jetty service by a commuter ferry service; or
- 800 metres of a train station.

We would support a gazettal of a state environmental planning policy that immediately achieved this outcome, concurrently with the finalisation of the revised Metropolitan Strategy. This would bring together new apartments, workplaces, shopping, and recreation areas within walking distance of public transport infrastructure and in the vicinity of major transport corridors.

In the most basic terms, if we want people to use new public transport, then we need to provide more than just the physical infrastructure. What occurs in the vicinity of new services will have a measurable impact on usage. Conversely, the new services should influence development activity in its vicinity. Research consistently shows that density has a significant impact on the use of public transport. For instance, every 10 percent increase in population density has been associated with a 6 per cent increase in passenger movements at transit stations.⁴ Furthermore, most urban services cannot be provided unless there are a certain number of people that can make them viable.⁵ Extensive research on this issue is available and the general consensus is that along with an increase in residential and employment density, mixed land uses around station areas have become accepted practice as a means of increasing usage rates.⁶

It's crucial that state environmental planning policies and local environment plans be amended to ensure that, in the vicinity of all public transport services all the land uses that are necessary for a viable, attractive and desirable community centre are permissible.

⁴ Parsons, Brinckerhoff, Quade and Douglas et al. 1995 in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁵ Newman, P., 2005., Transit Oriented Development: An Australian Overview. Paper presented at the Transit Oriented Development Conference. Fremantle, Western Australia 5-8 July 2005. [http://www.patrec.org/conferences/TODJuly2005/papers/Newman%20paper%20REV.pdf, accessed 7 April, 2008].

⁶ Joshi, H., Guhathakurta, S., Konjevod, G., Crittenden, J. & Li, K., 2006, Simulating the Effects of Light Rail on Urban Growth in Phoenix: An application of the UrbanSim Modelling Environment. *Journal of Urban Technology*, Vol. 13, No. 2, pp. 1-21.

The NSW planning system is inherently reluctant to zone for a mix of uses. This is now out-of-keeping with international best practice. The original 2006 Standard Instrument sought to break-down the rigid rules that reinforced single-use zoning by restricting such zones, and instead favouring a series of multiple-use zones. This would have delivered more vibrant urban communities and reduced the pressure on Sydney's road system by reducing car travel and providing greater opportunities to locate services close to where people live, work and to where they already travel. We need to see a return to multiple-use zoning if we want reduce the need for Sydneysiders to use their car.

More jobs in the Sydney Region

Jobs in Western Sydney

Without the North West heavy rail it is even more important than ever before that Western Sydney becomes the jobs centre of NSW. If we can't bring residents of Western Sydney to the jobs in the inner and middle ring suburbs, then we must bring the jobs to Western Sydney. By creating tens of thousands of new local jobs in Western Sydney, locals will enjoy the benefits of less time spent travelling and more time with their friends and family. Everyone in Sydney will win – with reduced pressure on the existing congested public transport and roads.

Regretfully, our experience is that it is extremely difficult to secure a large site with a capacity for a 30,000 square metre plus building in the 18 month timeframe anticipated by the market. This relates to insufficient supply of serviced sites capable of accommodating this kind of footprint. New land releases alone tend to prompt moves and expansions, and the release of pent-up demand.⁷ Land release, in itself, can act as a catalyst for economic activity.

In relation to office premises BIS Shrapnel has predicted that, with only moderate amounts of new office supply coming on stream during the early part of next decade, some office tenants will look to business parks with high technology industrial space to satisfy their demand.⁸ If permitted, business parks are likely to play a prominent role in the future planning for employment lands. The flexible land use controls that come with business parks, the close proximity of the residential growth centres and new communications infrastructure such as fibre-optic cable can attract technology intensive businesses which require high office content accommodation.

The 2005 Metropolitan Strategy only specified broad plans for an additional 3,200 hectares of new employment land, well short of the overall target of 4,000 to 7,500 hectares.⁹ The shortfall will need to be met through land releases that are *additional* to those flagged in the 2005 Metropolitan Strategy itself. In any event the government has only rezoned 2,323 hectares of land towards a Sydney-wide goal of 7,500 hectares of employment land. Even though the Metropolitan Strategy promised 237,000 extra jobs in Western Sydney, only an extra 40,600 jobs have been created in Western Sydney in the four years since the strategy was produced.¹⁰

The best place for new industrial land is the outer Sydney region. While there is a substantial amount of developable land in the outer region, there is virtually no supply of lots in excess of 10 hectares in established locations around Blacktown, Wetherill Park and Smithfield.¹¹ While the recent rezonings have ensured medium term supply, the apparently large size of the zoned reserves is misleading.¹² The overwhelming majority of the rezoned land is not serviced and the yield is restricted by topography,

⁷ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 39.

⁸ Ibid 32.

⁹ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information 64: An additional 1,000 hectares from the Western Sydney Employment Hub; a further 2,200 hectares were flagged in the M7 corridor.*

¹⁰ From the June quarter 2005 to the June quarter 2009: Australian Government - Department of Employment and Workplace Relations, *Australian Regional Labour Markets March Quarter 2006* (2006); Australian Government - Department of Education, Employment and Workplace Relations, *Australian Regional Labour Markets March Quarter 2010* (2010).

¹¹ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 50.

¹² Ibid 50.

environmental sensitivities and overhead electricity lines. Servicing may take as long as four years and state infrastructure charges have been increasing.¹³

NSW Government articulated its agenda for new Sydney industrial lands in the outer region when it released *Employment Lands for Sydney: Action Plan* ("the Action Plan") in March 2007. The document said the Department of Planning will consider the designation of a Western Sydney Employment Lands Investigation Area in the area between the Western Sydney Employment Hub and Badgerys Creek to the north of Elizabeth Drive. A map setting out (in broad terms) the boundaries of the investigation area was also published. In June 2008, in the State Budget the NSW Government announced that it had commenced a new initiative to support the rapid release of 11,000 hectares of employment land known as the Western Sydney Employment Lands Investigation Area that has the potential for \$2 billion in employment land development.¹⁴ These plans have not been significantly progressed – they should be.

Industrial sites in the inner suburbs

It should not be a public policy objective to "maintain" older industrial sites in established areas. Nor should it be an objective to "revitalise" them if that means retaining them as solely for industrial uses. Modern industrial development requires large lots. The lot size of older industrial sites in the inner and middle ring suburbs of Sydney is generally inadequate for re-development of industrial sites (there is virtually no supply of lots in excess of 10 hectares in such locations) and this would generally not represent the highest and best use of such land. Additionally, an industrial workforce is more likely to be living in Western Sydney than the more expensive inner and middle ring suburbs of Sydney. The public policy objective here should be boost employment and ensure that there are sufficient supplies of land to available to meet Sydney's needs. On this point we note that the retail sector is Australia's largest single source of employment, closely followed by the largely office-based property and business service sector.¹⁵

Business parks

We advocate greater use of the business park zone for land rezoned in the Western Sydney Employment Land Investigation Area and other employment lands throughout NSW. High technology industrial space has a significantly higher proportion of office space.¹⁶ In a conventional industrial zone "office premises" are not permitted, other than as a minor ancillary use to, say, a factory or warehouse. So many developments built for high technology businesses, particularly those with more than 50 per cent office space, are not going to be permissible in an industrial zone. In areas such as North Ryde, the business park zone has been used to accommodate such developments.

Restrictions on shopfront premises

The current Standard Instrument permits local council to allow only a narrow range of retail and business uses in so-called "lower-order" centres. The Land Use Table in the Standard Instrument should be amended so that "retail premises" and "business premises" are permitted uses in Zone B1 Neighbourhood Centre, Zone R4 High Density Residential and Zone RU5 Village.

Many statutory plans do not permit "retail premises" and/or "business premises" (other than bulky goods premises, landscape and garden supplies, timber and building supplies) in business development and enterprise corridor zones.¹⁷ 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.

¹³ On the 12 August 2009 the NSW Government announced an \$180,000 state infrastructure charge for each hectare of developable land in the Western Sydney Employment Lands. The current state levy for industrial land in the nearby north west and south west growth centres is \$68,000 per hectare. A levy set at almost three times the nearest comparable charge will impact on the commercial feasibility of development in the area.

¹⁴ NSW Treasury, *Budget Paper No. 3 – Budget Estimates 2008-2009*, 17-5.

¹⁵ Australian Bureau of Statistics, *Australian Labour Market Statistics: 6105.0* (2008) 68.

¹⁶ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 31.

¹⁷ For example, the *Draft Greater Taree Local Environment Plan 2008*.

Those working in a business development, business park or enterprise corridor zone should be entitled to have lunch in a restaurant, get a haircut or visit a local hotel after work.

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.

The Land Use Table in the Standard Instrument should be amended so that “retail premises” and “business premises” are mandatory permitted uses in Zone B5 Business Development, Zone B6 Enterprise Corridor and Zone B7 Business Park. “Retail premises” and “business premises” should not be banned in any statutory plan in zones intended for use for employment purposes.

Many industrial zones recently published statutory plans to not permit retail premises or business premises in light industrial zones.¹⁸ Sometimes food and drink premises, landscape and garden supplies, service stations, timber and building supplies are permitted, and occasionally bulky good premises are allowed, but almost always retail premises generally are prohibited.

This means large format grocery stores, such as Costco, are prohibited in light industrial areas. Large format business supplies retailers, such as Officeworks, or large format hardware suppliers, such as Bunnings, will often have great difficulty in finding sites.

At the very least, “bulky goods premises” should be added as a permitted use in Zone IN1 General Industrial and Zone IN2 Light Industrial. Costco-style development should also be permitted by permitting “retail premises” as a permitted use, with an appropriate supporting zone objective.

The use of multi-use zones should be required, to avoid sterilising land in the event that the market does not seek to develop some or all of the land made available and maximise the opportunities for new retail development.

Even if a given development is permissible under the land use table in a statutory plan, it can easily be refused if it is inconsistent with the zone objectives. The Standard Instrument creates areas where businesses are unable to be established if they would provide competition to businesses in established centres. The anti-competitive provisions of the NSW Government's Standard Instrument should be removed. Namely:

- in a “Business Development Zone” retail, office premises and other uses should be permitted, even if it would provide competition to businesses located in established centres; and
- in “Enterprise Corridor” ; “Business Park”; “General Industrial”; and “Light Industrial” zones retail and other uses should be permitted even if it would provide competition to businesses located in established centres.

In the Standard Instrument's “Zone B1 Neighbourhood Centre” the zone objective is

[t]o provide a range of *small-scale* retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood (emphasis added).

A subjective phrase such as “small-scale” should never have appeared in a statutory plan. In the Standard Instrument's “Zone B1 Neighbourhood Centre” the zone objective should be amended to omit the words “small scale”. Height and/or FSR controls are sufficient to control the bulk and scale of development; a subjective prohibition imposed through use of the words “small-scale” is inappropriate.

Economic development incentives

Environmental planning instruments are legal documents prohibiting and permitting activities. They 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 who

¹⁸ For example, see *Draft Greater Taree Local Environment Plan 2008*.

frequently use the word “encourage” to signal that a particular form of development might be approved, while other forms of development are likely to find approval difficult.

Environmental planning instruments should permit development and indicate the purpose of the zone in the zone objective. However, zone objectives should not be used as a means for favouring certain industries over others, unless it is clearly justified based on amenity issues or infrastructure requirements.

Proposals to introduce different floor space ratio and height requirements for land uses of a similar intensity in the same zone are usually inappropriate. It is difficult to comprehend why development types of a similarly high intensity should be given different floor space ratios in the same locality.

The bulk and scale of a building is the same, whether its internal use is residential, commercial, retail or mixed-use. If a planning authority is concerned about the external building form, this can be dealt with by a development control plan, and does not need to regulate the internal use of a building. For example, a residential building can be built in the appearance of a commercial building (see the Regent Place development for example). Similarly, a supermarket can be in a mixed-use development underground, and have no external visual impact.

Density-bonus schemes generally involve local councils “low-balling” development controls for less favoured uses, to ensure that development is steered to the favoured use. The low-balled development control is typically, in substance (taking into market factors and the feasibility of development) a prohibition. If the development of the favoured use is not viable, the site will typically remain undeveloped.

We don't have to go far to find examples of this approach.

In a report by council officers on the future North Sydney local environmental plan, they said the introduction of a council floor space bonus scheme

may require artificially scaling back controls for the North Sydney Centre to provide the “space” for bonuses.¹⁹

Environmental planning instruments should not accord different land uses of a similar intensity with different floor space or height entitlements within the same zone.

Growing Sydney's value

Centres and corridors

While you wouldn't know it from reading the *Sydney Towards 2036* discussion paper, the Metropolitan Strategy envisaged concentrated commercial, retail and residential development across the centres and corridors of Sydney. It was the clear intent of the Metropolitan Strategy that retail and commercial activity be capable of being located in broad renewal corridors.

There are good reasons why the Metropolitan Strategy envisaged commercial and retail activity being spread across centres, enterprise corridors, economic corridors, renewal corridors and – in certain cases – industrial areas. By ignoring the potential of corridors with excellent transport infrastructure to support commercial and retail development, the Department of Planning is depriving the economy of the benefits of the efficient use of this infrastructure.

Additionally, there is simply not enough land, and there will never be enough land, to provide for Sydney's needs if a centres-only approach is taken. If the NSW Government walks away from the idea of supporting retail and commercial development *across centres and corridors* it will be handing massive and disproportionate economic power to landowners located in the few centres that are cleared for such development.

¹⁹ North Sydney Council Item PD06 Planning & Development 28/06/10, *Report to General Manager Planning & Development Committee*, authored by Brad Stafford, Senior Strategic Planner & Alex Williams, Strategic Planner.

Strangely, as the NSW Government moves towards abandoning its commitment to renewal and enterprise corridors Melbourne is simultaneously moving in the opposite direction.

The Centres and Corridors approach of the Metropolitan Strategy should be retained and actually implemented.

Getting Western Sydney its fair share of jobs

If Western Sydney is to secure its share of Sydney's jobs growth, it is crucial that planning policies should not discriminate against the region because of its dearth of quality public transport. Expressly linking job-rich development opportunities exclusively the quality of local public transport denies regional communities the chance to respond to the rare, but nonetheless, ground-breaking opportunities for significant job-creating office development that might arise from time-to-time.

The presence of public transport should not be a pre-requisite for new business parks, retail development or other services.

Sydney's role as a Global City

We have attached the Urban Taskforce/BIS Shrapnel report *Going Nowhere* to this submission. In summary, *Going Nowhere* sets out a twelve point plan for reform to:

1. introduce new statutory objectives for the planning system, based around the principles of:
 - supporting the state's economy;
 - promoting ecologically sustainable development;
 - promoting liveable communities;
 - managing impacts on public infrastructure; and
 - promoting private investment by respecting property rights;
2. impose new rules to limit bureaucratic and political games by ensuring that development meeting pre-determined standards is entitled to approval;
3. force consent authorities to deal with matters promptly, within a deemed-to-comply timetable;
4. reduce uncertainty by clearly defining the matters that can be considered in the development assessment process;
5. ensure that a private property owner is properly compensated for removal of land use rights by the government;
6. reduce and reform the highest local council development levies in Australia;
7. redesign state infrastructure contribution levies so that economic distortions are reduced and there is greater transparency;
8. emulate Victoria by introducing stamp duty concessions for off-the-plan home purchases;
9. reform the template being used in the preparation of new local environmental plans - so it genuinely promotes good urban outcomes and reduces over-regulation;
10. progress the rezoning of land for development as promised in numerous strategies and give proponents Queensland-style appeal rights when rezoning proposals are unreasonably refused or delayed;
11. improve the handling of state and regionally significant projects by improving the expertise of those assessing the applications; and
12. remove the ability of bureaucrats and politicians to second guess the market and/or take into account the loss of trade, that might be suffered by existing businesses, as a result of new development.

We also urge the government to closely study the related report *Deny Everything* which sets out the necessary reforms to the planning system in detail.²⁰

Strengthening a City of Cities

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, including business development zones, neighbourhood centres, business parks and light industrial zones.

Compact, mixed-used areas, making efficient use of land and infrastructure, make good planning sense. They create more attractive, liveable and economically strong communities. They facilitate a development pattern that supports pedestrian based communities and reduces dependence on motor vehicles, by putting employees' daily needs within a short walk of work.

The centres typology

The existing Metropolitan Strategy does not explain the reason for creating a detailed typology of centres. Nor does the strategy adequately explain the use to which the typology will be put.

We suggest there are two possible mutually exclusive reasons you might want to have a typology of centres. You may want a typology to describe the current condition of centres. This means the typology has no relevance for the future planning controls or infrastructure requirements of a centre.

Alternatively, you may want a typology to describe the future development potential of a location. This would be based on the quality of local infrastructure (relative to other areas that are candidates for higher density zoning), with regard to possible infrastructure improvements in the future. However, it appears that neither of these approaches has been clearly adopted by the strategy.

With respect, we submit that the Department must admit that any classification of centres in a strategy that relates to the future use of centres will be used to guide, both infrastructure planning and zoning for that locality.²¹ Otherwise the whole existence of the typology is pointless. The purpose of the typology of centres needs to be clearly spelt out.

The Urban Taskforce has consistently criticised the decision to create a sub-species of strategic centres as "specialised centres". For example, St Leonards is a specialised centre because it has the Royal North Shore Hospital. Do developers need the Department of Planning to tell them that health related developments might be a good idea in St Leonards given that the hospital is there? Of course not! Were government officials aware of the presence of the hospital prior to the designation of St Leonards as a specialised centre? We trust they were. Will development that is not health related be discouraged in St Leonards? We hope not, but no-one can be sure, because that would appear to be the only purpose in designating "specialised" centres.

The "specialised centre" category should be abolished, and existing "specialised centres" should be designated as either major centres or regional cities.

We have consistently argued for a simpler local centres hierarchy. The existing elaborate hierarchy has been used by planning authorities as an excuse to artificially limit the range of uses and scale of

²⁰ The report is available online: < <http://www.urbantaskforce.com.au/attachment.php?id=3195>>.

²¹ This is certainly how centres hierarchies have been used by planning authorities in the recent past. For example, the draft *Taree Local Environmental Plan 2008* contains zone objectives limiting development in each level of centre, so as to ensure that centre does not have development inconsistent with its place in the hierarchy. The draft *Lane Cove Local Environmental Plan 2008* seeks to preserve the Lane Cove town centre's relative position in the North Shore centres hierarchy. The draft *Ryde Local Environmental Plan 2008* attempts to give statutory effect Macquarie Park's status as a specialised centre, by erecting barriers to commercial development that is not in-keeping with the specialisation identified for the area by the Metropolitan Strategy and the subsequent draft subregional strategy.

development in so-called 'lower-order' centres. The town centre, the neighbourhood centre and villages should be one and the same category of centre, perhaps titled simply "local centre".

Investment and jobs in new and existing centres

The simultaneous use of both height controls and floorspace ratio controls is not necessary. When combined, these controls can destroy opportunities to secure good design.

The current directive of the NSW Department of Planning which states height and FSR must be set for centres should be rescinded and instead planning authorities should be discouraged from simultaneously setting both height and floorspace ratios in any location.

As-of-right development for centre and corridor development

Though local environmental plans may state the type of development permitted within certain zones and development control plans further articulate standards, compliance with the requirements of the local environmental plan and development control plan is not any assurance of development approval. The answer to this problem lies in greater use of the "non-discretionary" development standard provisions already in the *Environmental Planning and Assessment Act 1979*.

Whilst we see wide potential for "non-discretionary" development standards to be used to remove regulatory risk from the developing in Sydney, as a starting point, we suggest the following measures be adopted:

- any development proposal that meets the height controls and floorspace ratios set out in a local environmental plan should not be capable of being refused or conditioned on the grounds of height, density or scale;²² and
- any development proposal that meets any development standards set out in, or under, the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* should not be capable of being refused or conditioned in relation to the issues intended to be addressed by those development standards.²³

These provisions can be modelled on Part 7 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, but should also invoke section 79C(2) of the Act.

Reforming development control plans

Council instituted development control plans (DCPs) present a grave risk to the success of the comprehensive local environmental plan process. We foresee development proposals that are clearly envisaged by, and consistent with a Standard Instrument compliant local environmental plan being refused on the basis of a development control plan.

Traditionally, development control plans were merely one factor for consideration in a complex decision-making process. It was customary, and expected, that many developments would be approved even when they did not comply to the letter, or even spirit, of a development control plan.

This was common practice, in part, because it recognised that development control plans were not particularly robust documents. They had often been prepared without the involvement of developers and therefore often ignored the needs and requirements of the end-users of developed property assets. Consent authorities traditionally felt comfortable in approving development contrary to the provisions of a development control plan when they felt a good case could be made out.

²² See clause 29(1) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* for an example of a similar provision.

²³ See clause 30A(1) of the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* for an example of a more narrowly phrased provision.

However, court decision now require that a development control plan should be the "fundamental element" in, or a "focal point" of decision-making. In fact, as the law stands, if development standards in a DCP are not inconsistent with a local environmental plan, they can effectively prohibit a development - even when the local environmental plan allows an application to be made for the development.²⁴

It's worth contrasting the differing approaches between NSW and Queensland. In Queensland, the presence of a code creates a legally enforceable right for a development applicant to insist on the approval of their proposal, provided it satisfies the code (and the applicant is still entitled to a merit assessment in the event that the code is not complied with). In NSW, it is unlikely that any proposal inconsistent with a DCP will get serious consideration, while there is no legal certainty that even proposals that are consistent with a plan will be approved.

The scope of development control plans should be limited to standards that are a necessary response to limited range of matters.

Secondly, development control plans should not be proscriptive.

Thirdly, development control plans should only be one factor for consideration in development assessment and that it should be given no special weight above other factors of consideration.

Finally, a development applicant should be entitled to argue, that the requirements of a development control plan will adversely impact on the feasibility of a development envisaged by the local environmental plan. If established, the consent authority should be obliged to modify or set aside the requirements of the development control plan. We note that other jurisdictions allow such arguments to be made.²⁵

We also note there is a special need to create a state environmental planning policy to reduce the discretion of local councils to effectively block development envisaged by local environmental plans by arbitrarily reducing car parking entitlements.

Such a policy should set minimum car parking entitlements for different categories of permitted uses and only permit councils to impose lower car parking entitlements when it is justified by an objective expert traffic study. Of course, such a policy should not preclude an applicant for putting forward a proposal with little or no car parking, where the applicant can demonstrate that such parking is not required (e.g. where public transport is plentiful and the development is unlikely to require or generate \

Meeting changing housing needs

Sydney's congestion speaks volumes about the lack of pedestrian friendly apartment development around train lines, high frequency bus services, ferries services, light rail and other transport corridors. We also need to see many more suburban homes with their own backyard.

In the inner and middle ring suburbs we are unlikely to see significant new terraced or townhouse development because the fixed supply of detached houses in that region has driven up land prices for that land use type. As a consequence townhouse or terrace development will now rarely be the highest and best use for land already developed as detached housing in the inner and middle ring suburbs. For similar reasons, low rise apartment development (less than six to eight storeys) will often be unviable if there is a need to consolidate fragmented lots current occupied by low density housing.

As the demand for higher density housing is largely confined to the inner and middle ring suburbs, is likely that higher density housing will need to take the form of apartment development and much of this apartment development ultimately need to be six stories or more.

²⁴ *North Sydney Council v Ligon 302 Pty Ltd [No. 2] (1996) LGREA 23.*

²⁵ "If the board (of variance) can reasonably conclude that a zoning regulation practically destroys or greatly decreases the value of a piece of property, it may vary the terms of the ordinance ...": *Culinary Institute of America v Board of Zoning Appeals of City of New Haven et al*, 143 Conn 257, 262 (1956) 121 A 2nd 637 (1956).

Of course, the development of apartments will not address the needs of all home buyers and (as the most recent Department of Planning Metropolitan Development Program report observes) there continues to be a very strong unmet demand for detached housing in the new suburbs on the edge of Sydney.²⁶ Significant must also be given to supporting the development of greenfield detached housing.

A good description of the areas that require apartment development come from a recently finalised government state environmental planning policy: the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. In this document the following areas are identified for higher density:

- 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates; or
- 400 metres walking distance of a public entrance to a light rail station or in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station;
- 400 metres walking distance of a bus stop used by a regular bus service that has at least one bus per hour servicing the bus stop between 06.00 and 18.00 each day from Monday to Friday (both days inclusive).²⁷

Balancing land uses on the city fringe

Location of greenfield development

Despite the government published goal for 60 to 70 per cent of Sydney's growth to be met through infill development, in 2007/08 (the most recent Metropolitan Development Program figures) 84 per cent of dwelling production was in existing urban areas.²⁸ This meant that greenfield development accounted for just 16 per cent of Sydney's new housing supply.²⁹ These figures have occurred despite that fact and the planning authorities proudly boast that there are record levels of land supply.

Planning authorities have "released" areas for new urban development but the planned development has not taken place. The areas selected for land release, such as Edmondson Park, have not been possible to commercially (i.e. profitably) develop. In the case of Edmondson Park the big cost item is the expensive process of unifying a large number of fragmented five acre sites into a single development site. Other nearby (but slightly further out) precincts, which do not have that cost burden, have not been released, because that would not have been "orderly".

Should land owners, within or outside the growth centres, present proposals to government for land release/rezoning we would favour assessment of the proposal on its merits. It should not matter whether the land is formally inside or outside the growth centre boundaries.

8.2 Food production in the Sydney Basin

Increased 'protection' for agriculture in the revised Metropolitan Strategy may come at a cost of a dignified retirement for Sydney basin farmers.

Sydney vegetable farms are struggling because it is hard for them to compete with larger, more efficient operations. Sydney's farms are small - an average of two hectares - compared with the national average of 33 hectares.

The Australian Bureau of Agricultural and Resource Economics says that for every dollar invested, a large farm gives five times the financial return of a small farm. That's why food production on the urban fringe is less important for NSW, than any other state, bar Western Australia."

²⁶ NSW Department of Planning, *Metropolitan Development Program Report 2008-2009*, 73.

²⁷ *State Environmental Planning Policy (Affordable Rental Housing) 2009* cl 10(2).

²⁸ *Ibid* 134,C1.3.1.

²⁹ NSW Department of Planning, *Metropolitan Development Program 2007/08 Report* (2009) 28.

More than 93 per cent of Sydney's fruit needs and 85 per cent of Sydney's vegetable consumption is supplied from outside the Sydney region. Most vegetables produced in NSW come from the Murray and the Murrumbidgee regions, not Sydney,

If Sydney farmers are denied the opportunity to sell their land for urban re-development, they may not be able to exit from an unviable business. They may lose the chance to have a dignified retirement. New town planning controls cannot turn an unviable business into a viable one.

We do not support new land use controls which will have "a greater focus on the protection of agriculture" in a revised Metropolitan Strategy. We also do not support designating areas for agriculture within the Sydney Basin.

Protection of land on the city fringe

In 2007 the Growth Centres Conservation Plan was prepared. This defines and reinforces conservation values and also provides a suite of tools, including funds to achieve positive conservation outcomes.

This investigative and mapping work has more than adequately identified areas suitable for development and quarantined land for conservation purposes. In fact, we would suggest that this process has resulted in a generous allocation of land and funds for conservation purposes.

It is of utmost importance that this very good work not be wasted in this process. In particular, Government must bear in mind that the community has relied on this work, has consulted maps published by the Growth Centres Commission and has made investment decisions based on this published material. It would be inappropriate to suggest an alteration or otherwise reduction of land set aside for development purposes.

The process of Greenfield land release

The existing process, by which the government must declare certain growth centre precincts to be "released for urban development" before a "development code" can be prepared should be abolished.³⁰

Proponents should be able to approach councils and the Department of Planning with proposals for land release at any time and precinct planning should commence once a reasonable basis to proceed has been established.

Where will renewal happen and what will it look and feel like?

Any location which is able to broadly satisfy the suitability criteria (with the exception of the last point) on pages 11-12 of the *Draft Centres Policy* released in April 2009, should be accepted as a new centre or renewal or economic corridor if a proponent emerges, who is willing to fund the necessary works.

The criteria to be considered would be:

- access to public transport, or the infrastructure capacity to support future public transport;
- good pedestrian access;
- good road access for employees, customers and suppliers and, where necessary, capacity to provide new road infrastructure;
- close proximity to local labour markets with the skills required by business;
- urban design opportunities that create the potential to integrate with surrounding land uses;
- potential to increase the amenity of the local area;
- capacity to contribute to environmental outcomes; and/or

³⁰ *Environmental Planning and Assessment Regulation 2000* cl 275 and cl 276.

- environmental constraints, such as flooding.

It is not possible to comprehensively identify all possible centres in any strategic planning exercise and nor should the Metropolitan Strategy or any subregional strategy attempt to do so.

Implementation

Sydney Metropolitan Development Authority

In the *Metropolitan Transport Plan: Connecting the City of Cities* the government says that it will change the law to enable “compulsory acquisition of property covered by an adopted urban renewal precinct plan in situations where achieving an urban renewal outcome is at risk – even where the property may be on sold for private development”.³¹

Almost any significant new urban renewal project is likely to involve some private land.

Governments and councils should have a crucial role in consolidating fragmented land parcels into single sites to enable major urban renewal by the private sector. Without the power to acquire land on just terms, many derelict parts of our urban centres may never be re-built.

We would support legislation to enable urban renewal through compulsorily acquisition of fragmented land parcels, if, and only if, the government pursues a model which gives land owners full compensation.

In the case of the Civic Place development (and in relation to the powers of the Sydney Metro Authority) the government has pursued the wrong model. We hope that it does not do so again. Property rights form the basis of our economic system. Investment cannot and will not take place unless there is clear unambiguous title to property. This kind of clarity necessarily means a landholder must be able to exclusively profit from the use and the development of their land.

We support an alternative approach, based on the United Kingdom model for urban renewal. Our proposal is as follows:

- Landholders must be entitled to just terms of compensation.
- Landholder compensation must be valued based on the rezoned value of the land, following the granting of the final development approval, in connection with the urban renewal project. That is, any consequent land value uplift must flow to the landholder, rather than the acquiring state government authority.
- The actual transfer of title from the original landholder should not take place until the rezoning is completed and the development application is approved. This will permit a proper basis for striking a just terms land value. In the event that the landholder wishes to exit ownership early in the process, before these matters are finalised, they should be entitled to compensation based on what is known at the time and a subsequent additional payment based on the final increase in land value, arising from the additional permitted development potential.
- The industry, including the Urban Taskforce, must be consulted on the detail of any proposed laws.

In the United Kingdom where planning approval is granted for additional development on acquired land within ten years after a valuation date, the land owner is entitled to the difference between the amount actually received and the amount the landowner would have received, if the approval had been in force when:

- the notice to compulsorily acquire was issued; or

³¹ NSW Government, *Metropolitan Transport Plan: Connecting the City of Cities*, 26.

- (in the case of a sale by agreement under the threat of compulsory acquisition) at the date of the sale contract.³²

Urban renewal projects are clearly in the public interest. However, property rights must be respected if private sector development investment in NSW is to resume.

Another role we suggest for the proposed Sydney Metropolitan Development Authority relates to regionally significant development proposals. The staff of the Authority should prepare development assessment reports and liaise with state government agencies for matters before joint regional planning panels in Sydney, in lieu of local council staff.

Additionally, in any potential development area or precinct specially placed under the Sydney Metropolitan Development Authority's jurisdiction, the Authority should assume all statutory powers exercisable by any state government agency or corporations in relation to development proposals. This would include the powers of the Roads and Traffic Authority, Sydney Water, Energy Australia/Integral Energy (in their capacity as distributors), the Department of Environment, Climate Change and Water, the Department of Planning, etc. The Authority would be free to consult other agencies as it sees fit, but ultimately it would be vested with the authority to make the final decision. Anything short of this would see the Authority merely acting as a post box for other government agencies.

Performance indicators

It is important that the NSW Government measure its performance based on actual outcomes on the ground, not on procedural requirements.

That means the measure of the strategy's success or failure is not how many statutory plans have been gazetted, nor their notional development capacity (which usually every wrong). Similarly, notional greenfield land "releases" or "rezoning" are no measure of success if the actually homes have not been built.

The Department of Planning should be tracking independently audited figures on actual (not just approved):

- net additions to the housing stock (i.e. excluding new homes that merely replaced demolished stock);
- net additional shopfront floor space;
- net additional commercial office floor space;
- net additional to entertainment facilities floor space;
- net additional industrial and light industrial floor space.

³² Office of the Deputy Prime Minister, *Compulsory Purchase and Compensation: Compensation to Business Owners and Occupiers* (2004).

Introduction

The Metropolitan Strategy sought to deliver 245,500 extra homes for Sydney between 2004 and 2013. According to the *Going Nowhere* report which forms part of this submission, the actual number of additional homes for Sydney is likely to be between 160,000 and 180,000 – falling short of the 2005 targets by more than 27 per cent. The 2005 Sydney Metropolitan Strategy has not delivered.

The dearth of new homes in Sydney is having a profound social impact. Only 64 per cent of Sydney households own their own home – down from 70 per cent at the beginning of the decade. Sydney's level of home ownership is now lower than every Australian capital city, bar Darwin. In contrast, Brisbane's level of home ownership has increased from 63 per cent to 68 per cent.

That's an extra 45,000 Sydney households renting, instead of owning. It adds up to an extra 70,000 households renting state-wide. This report shows that, with an extra 10,000 new homes a year, it might have been possible to give NSW residents the same access to home ownership they enjoyed in 2001/2002.

However, the failure in implementing the Metropolitan Strategy stretches far beyond the simple number of new homes built.

The Metropolitan Strategy envisaged concentrated commercial, retail and residential development across the centres and corridors of Sydney. Somewhere along the line, the Department of Planning appears to have informally abandoned its commitment to the development of the corridors of Sydney, and has decided to pursue a 'centres-only' approach. Numerous corridor development initiatives contained in the Metropolitan Strategy have not been implemented – or worse still – are now not possible to implement because of changes to the *Standard Instrument (Local Environmental Plans) Order 2006* ("the Standard Instrument") made by the former Minister for Planning in December 2007.

Development has not been encouraged across all centres in the way the Metropolitan Strategy envisaged. There are well over 500 centres – but less than 30 strategic centres have been cleared for the full range of development possibilities. Other centres are being prevented from significant growth in the coming years; not because of any identified inadequacy in their infrastructure, but because of their current relationship with other centres. That is, once a 'neighbourhood centre' always a 'neighbourhood centre', never, say, a 'town centre'.

The development of serviced residential lots – promised to be an average of 6,000 to 7,000 a year – simply has not eventuated. The Metropolitan Strategy itself warns that such an outcome "would put great pressure in Sydney's existing suburbs and character and would potentially further reduce housing affordability".³³

The Strategy said that "the supply of land available for development should always exceed market demand to ensure that land values are not unreasonably raised and lower the intended level of development (emphasis added)".³⁴

However, the supply of land for detached housing (in outer suburban Sydney) and for medium and high density housing (in the inner ring suburbs of Sydney) has fallen well short of demand and has contributed to very high land acquisition costs. This has helped turn otherwise profitable development projects into loss-making proposals. The shortfall is acute not only in residential, but also in retail development. In the "economic corridor" - stretching from the airport through the CBD to North Sydney - there is a shortfall in the supply of zoned land for office use.

³³ NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 133.

³⁴ *Ibid* 123.

The Strategy promises to “address economic competitiveness with a focus on private enterprise as the main economic driver in a competitive economy”, but ministerial orders made in July 2007 and changes to the Standard Instrument made in December 2007 undermine the operation of a free-market economy.

Our concerns are backed up with hard facts, spelled out in detail, in the body of this submission. However, the following points highlight some of the major failures in implementing the Metropolitan Strategy.

The commitments of the Metropolitan Strategy that have not been delivered include:

- Housing targets for centres were to be based on sound analysis of housing capacity and housing needs ... there are now upper limits placed on the residential density of each centre which are not based on objective information.³⁵
- The range of smaller centres across Sydney, the town, villages and neighbourhood centres were primarily to be planned locally ... instead the number of centres has been locked in at a subregional level and there are prescriptive rules that discourage necessary development in these localities.³⁶
- There was to be a detailed Centres Reinvigoration Report by 2006 ... no report was released.³⁷
- There was to be business improvement districts declared to make physical improvements to streetscapes ... none declared.³⁸
- There was to be increased connectivity, particularly rail transport, to specialised centres ... no major new firm transport plans – for rail or anything else - have commenced for the specialised centres.³⁹
- There was supposed to be a review of the *Strata Scheme Management Act* to facilitate the redevelopment of strata titled properties ... no review released.⁴⁰
- Retail activity was to be concentrated in centres, business development zones and enterprise corridors ... there were abrupt changes to the Standard Instrument made just before Christmas in December 2007 – the new rules discourage and limit retailing in business development zones, enterprise corridors and local centres.⁴¹
- Some types of retail development, such as “bulky goods premises”, were still going to be permitted in industrial areas ... those same abrupt changes to the Standard Instrument in December 2007 now prevent any new retail in these areas.⁴²
- There was going to be a Stronger Corridors Initiative covering the North Sydney to Macquarie Park and City to Airport corridors ... no such initiative has eventuated.⁴³
- There was going to be a land use and development plan for the M5 corridor ... no such plan released.⁴⁴
- There was a promise to implement a Parramatta to City corridor plan ... not implemented.⁴⁵
- Subregional strategies were to designate future renewal corridors through subregional planning ... no corridors designated.⁴⁶
- Housing development was to be concentrated around centres corridors... but the planned program of updating local environment plans is behind schedule and shows no sign of delivering the

³⁵ Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy – Supporting Information* (2005) 96 [B2.1.], [B2.1.1].

³⁶ Ibid 93 [B1.1.1].

³⁷ Ibid 98, [B3.1.3].

³⁸ Ibid 99, [B3.2].

³⁹ Ibid 102, [B3.4].

⁴⁰ Ibid 103, [B3.4.2].

⁴¹ Ibid 104, [B4.1].

⁴² Ibid 105, [B4.1.2].

⁴³ Ibid 109, [B5.1.1].

⁴⁴ Ibid 110, [B5.2.2].

⁴⁵ Ibid 112, [B6.].

⁴⁶ Ibid 114, [B6.2.1].

necessary development potential.⁴⁷ In 2006, the government promised that 155 new plans would be in place by 2011, but it has now revised that commitment with a new, less ambitious, timeline for the finalisation of just 67 plans. Of the 12 comprehensive LEPs originally promised for completion by March 2008, only two (Liverpool and Muswellbrook) were finalised. Of the 54 comprehensive LEPs that were originally to be in place by March 2009, only three were finalised (Canada Bay, Gosford and Goulburn Mulwaree). None of the LEPs finalised for Sydney delivers on the strategic intent or the specifics of the Metropolitan Strategy, and based on the current Standard Instrument it is highly unlikely that they will do so.

- Subregional strategies were supposed to designate one kilometre wide "renewal corridors" for higher density housing and commercial development following major transport... not one renewal corridor is designated. It's impossible to see how the Metropolitan Strategy will now deliver on its target for over 30 per cent of new housing in existing areas to be in the three most significant corridors covering Parramatta to City, the City to Airport and North Sydney to Macquarie Park.⁴⁸ The Department of Planning appears to have walked away from the idea of increased development in corridors and have informally replaced it with a 'centres only' approach.⁴⁹
- Extra development will be allowed in new or existing areas with "good services and infrastructure" ... development is heavily constrained by the existing urban form, rather than the capacity of local infrastructure.⁵⁰
- There is supposed to be an average of 7,000 to 8,000 lots per year developed in the North West and South West growth centres over the next 25 years ... only a handful of new homes have been built as a result of the creation of these two growth centres.⁵¹
- 60 to 70 per cent of new housing is supposed to be in existing urban areas.⁵² With negligible house production in the outer suburbs of Sydney in 2007/08 (the most recent Metropolitan Development Program figures), 84 per cent of dwelling production was in existing urban areas.⁵³ The Metropolitan Strategy itself warns that providing 90 per cent of Sydney's housing needs in existing areas "would put great pressure in Sydney's existing suburbs and character and would potentially further reduce housing affordability".⁵⁴
- The supply of land available for development is always supposed to exceed market demand "to ensure that land values are not unreasonably raised and lower the intended level of development"⁵⁵ ... but the supply of land for detached housing in outer suburban Sydney and for medium and high density housing in the inner ring suburbs of Sydney has fallen well short of demand and has contributed to very high land acquisition costs that make new development unviable. The shortfall is acute not only in residential, but also in retail development. In "economic corridors" stretching from the airport through the CBD to North Sydney there is a shortfall in the supply of zoned land for office use.
- There was supposed to be "fairness" by planning for housing to be concentrated near to, or accessible to, shopping, jobs and services at prices that match the capability of Sydney's residents to pay ... Sydney has become one of the world's least affordable places to live and the planning system is not providing the opportunity for enough new homes to put a downward pressure on prices.⁵⁶
- The NSW government was supposed to identify centres for renewal where underutilised infrastructure will be renewed as a priority ... the government has not designated any areas in any of its 10 draft subregional strategies.⁵⁷

⁴⁷ NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005)120.

⁴⁸ Ibid 114 [B6.2].

⁴⁹ Ibid 114, [B6.2.1].

⁵⁰ Ibid 120

⁵¹ Ibid 133 [C1.1.].

⁵² Ibid 134,[C1.3.1].

⁵³ NSW Department of Planning, *MDP Report 2008/2009*, 79.

⁵⁴ Ibid 133.

⁵⁵ Ibid 123.

⁵⁶ Ibid 120.

⁵⁷ Ibid 143 [C3.1].

- There was a promise to assess and evaluate Government sites for redevelopment ... a large number of government sites lie idle and underutilised, particularly the airspace of rail corridors.⁵⁸
- There was a promise to “address economic competitiveness with a focus on private enterprise as the main economic driver in a competitive economy” ... but ministerial orders were issued in July 2007 which undermine the operation of a competitive free-market economy in the provision of retail services to the public.⁵⁹
- There was a promise that new employment lands will be strategically located close to the labour force and linked into the transport network ... yet the overwhelming bulk of the 11,000 hectare Western Sydney Employment Lands Investigation Area, with its potential for \$2 billion in employment land development, still lies idle.⁶⁰
- There was a promise that white collar jobs would be permitted to help renew old industrial areas ... but the December 2007 changes to the Standard Instrument prevent office development in light industrial areas.⁶¹

While the 2005 Metropolitan Strategy was not perfect, it was a reasonable document. **Most of the problems with urban planning in Sydney do not lie in the text of the Metropolitan Strategy, but in the failure of the Department of Planning and local councils to properly implement it.** Given this, we are concerned that the bulk of the *Metropolitan Strategy Review: Sydney Towards 2036*⁶² (“the discussion paper”) is focused on re-writing the Metropolitan Strategy rather than identifying and responding to the failure in implementation.

Our specific comments and concerns are set out below. The structure of this submission is based on the headings and questions posed in the discussion paper.

⁵⁸ Ibid 144, [C3.1.4].

⁵⁹ Ibid 40.

⁶⁰ Ibid 40.

⁶¹ Ibid 67, [A1.9.1].

⁶² NSW Department of Planning, *Metropolitan Strategy Review: Sydney Towards 2036: Discussion Paper* (2010).

1. Planning for a growing population

1.1 Where growth takes place within NSW

1A) *Should Sydney continue to accommodate the majority of population growth in NSW? What are the alternatives?*

1.1.1 Decentralised forced through planning controls does not work

Governments cannot tell people where they should live. People will not be moved around NSW like pieces on a chessboard. Previous attempts to limit growth by decree have been disastrous. In the 1970s, the Whitlam Government embarked on an ambitious, expensive and spectacularly unsuccessful scheme to direct population growth to Albury-Wodonga and Bathurst-Orange. Neither became the great inland metropolises envisaged by Whitlam.

In 2005, the Metropolitan Strategy declared that Sydney's future would be limited to just an extra 980,000 people by 2031. Three years later the government was forced to admit that the population growth would be much greater - at least an extra 1.4 million people. Most people want a home near jobs that suit them with good access to their friends and family. That's what Sydney provides.

New economic development policies for regional NSW may increase job opportunities in some regional areas. This may increase employment prospects and therefore population growth. However the types of industry, and therefore jobs, suitable for regional NSW will continue to be limited, irrespective of the economic development priorities of the NSW Government. Our expectation, under any economic scenario, is that main industries in regional NSW will continue to be:

- primary industries such as mining, agriculture, forestry, etc (which are clearly not suitable for Sydney);
- tourism (which again is location specific);
- manufacturing (a sector in which Australia does not hold a strong competitive position by world stands);
- services to service the resident population (such a retail, hospitality); and
- engineering and construction (to support the above industries and the housing needs of the local population).

This contrasts very differently with the Sydney's economy which is built around our status as Australia's only global city. Governments can only stop or slow Sydney's population growth by imposing artificial limits on the city's housing supply. Such constraints impose huge social and economic costs on Sydney households and will place Sydney's global city status at risk.

In the 1990s, Bob Carr announced that "Sydney was full". The 'Sydney-is-full' policies saw a spike in residential property prices from 1999 to 2003 leading to the rapid slowing in NSW population growth. So while population growth was slowed (but not stopped) the costs were great.

Going Nowhere examined the economic costs in some detail. While population growth in NSW was very weak from 2002 to 2006, it was solid in Victoria, averaging 1.3 per cent compared to just 0.7 per cent in NSW. From 2003 to 2009, Victoria's economy substantially outperformed NSW with average annual economic growth at 3.3 per cent in Victoria, compared to 1.7 per cent in NSW. Average annual job growth was 2.1 per cent in Victoria, compared to 1.4 per cent in NSW. Of all the states, NSW economic growth per capita was slowest at just 0.8 per cent a year. Population growth tends to encourage per capita economic growth itself.

The social costs of Sydney's artificial constraints in the housing supply were highlighted by the COAG Reform Council in its recent report *National Affordable Housing Agreement: Baseline performance report for 2008-09*.

The report found that, nationally, 37 per cent of low-income renter households were in rental stress—that is, were paying more than 30 per cent of their gross household income in rent. The proportion in NSW was significantly higher, with almost half of all low-income renter households—46 per cent—in rental stress.

According to the report, 28 per cent of homes sold were affordable to moderate-income households. Melbourne had the highest proportion of homes affordable to moderate-income households (39.1 per cent), however in Sydney just 26.4 per cent of homes sold were affordable to moderate-income households.

The COAG Reform Council itself made it clear that the

common thread running through ... is that housing affordability is to be addressed not just through the traditional forms of housing assistance, but by improving the operation and effectiveness of the mainstream markets for renters and home buyers.⁶³

The use of regulatory controls to defeat the operation of the housing market, in order to shift growth destined for Sydney elsewhere will run against this finding by the COAG Reform Council. The social costs of such an approach will be very high.

The bottom line is this: the only way to stop Sydney growing is to make the city so unattractive that no-one wants to live here. Even if people are forced out of Sydney through high rents and intolerable congestion, they are more likely to end up in Melbourne or Brisbane than in the likes of Bathurst, Orange or Albury.

The last thing our city needs is for planning authorities to once again bury their head in the sand and hope that Sydney's growth can somehow be wished away. We must accept that Sydney's a great place and will grow as a consequence. What we need is more housing development and better transport infrastructure.

1.1.2 If anything Sydney requires more housing than currently projected

The *Going Nowhere* report finds that, at the very least, we must get housing supply back to the performance levels of the 1990s to meet the new targets of set out as part of the review of the Metropolitan Strategy.

This means we need a minimum annual average supply of about 25,000 extra homes.⁶⁴ While this scenario – which requires a doubling of the current rate of housing construction - will alleviate housing shortages somewhat, it is a second best outcome.

Going Nowhere finds that NSW might recover the share of national overseas migration that has been taken by Queensland by boosting its annual construction of extra homes to 31,000 each year beyond 2015. This is two-and-a-half times the 2009 level of housing construction. The NSW Government targets fall short of this goal.

⁶³ COAG Reform Council, *National Affordable Housing Agreement: Baseline performance report for 2008-09*, xii.

⁶⁴ This is a net figure, after an allowance has been made for demolitions.

2. Making Sydney climate change ready

2.1 Land use rules in response to climate change

2A) *What land use responses will help Sydney mitigate, and adapt to climate change?*

2B) *How can the planning system help Sydney adapt to the impacts of climate change?*

The science published by the United Nations' Intergovernmental Panel on Climate Change (IPCC) cannot be ignored. Climate change is clearly a real concern. It is appropriate to consider how climate change will impact on land use and development patterns in the long term. However, consideration of the impacts of climate change, and the subsequent adaptation and/or mitigation strategies, must be founded upon the principles of ecological sustainable development. This means steps taken to adapt to climate change must be appropriate, justifiable and measured; taking into consideration the social, environmental and economic costs to the community. In particular any response must recognise

the need for ensuring that measures adopted should be cost-effective and not be disproportionate to the significance of the environmental problems being addressed.⁶⁵

Strong credible property rights are crucial to securing sustained and ongoing investment. "Sovereign risk" arises when property rights are weak and subject to unpredictable and unnecessary impositions by the state. In property development terms, "NSW" is now synonymous for "sovereign risk"- more so than any other jurisdiction in Australia.

When a property right and/or a legitimate expectation of development is quashed in pursuit of the "public interest" private individuals bear significant costs. Additionally, the perceived increased sovereign risk reduces investment generally in NSW, thus imposing wider costs on the community as a whole. These costs must be factored into any policy approach. Put simply, the costs of taking action to prevent or reduce anticipated levels of development must be considered, as well as the costs and impacts of climate change.

In some instances, it will be appropriate for individuals and the community to bear the costs of preventing or reducing anticipated development activity. As a matter of principle, human safety concerns must be always paramount. Genuine and substantial concerns for the safety of people who may occupy future buildings on developed land should always override all other considerations. Human safety concerns might arise, for example, if abrupt climate change induced flood events can be expected during a building's lifespan and no safe evacuation route can be engineered. However, in most instances, climate change impacts on buildings will not raise serious human safety issues of this kind.

Firstly, where there are concerns about human safety, these can often be addressed through good engineering. For example, as part of a development, topography can often be altered to ensure that there will always be safe accessible routes for evacuation in the event of a sudden climate-change induced flood event. In coastal areas, sea walls can frequently be constructed and other reinforcement works undertaken, to ensure that a foreshore area will remain stable.

Secondly, many issues raised by climate change impacts (in an urban development context) relate to the likely effect on property, rather than human safety.

For example, if the government may contemplate prohibiting or restricting development in order to mitigate the risk that private property assets (such as houses) will become unusable before they reach the end of their normal life (typically 30 to 40 years). If the prohibition or restriction quashes an existing

⁶⁵ *Intergovernmental Agreement on the Environment* (1992) available at <<http://www.environment.gov.au/esd/national/igae/index.html>>.

property right, or a legitimate expectation of development, then the economic damage caused by climate change is not eliminated. The costs are merely brought forward, imposed on the current land owners, and – in all likelihood - magnified.

A more economically efficient approach would be to ensure, through the normal mechanisms (a section 149 planning certificate) that a future purchaser was aware of any robust assessment of the risks of climate change related-impacts, and allow them to factor that risk into the price they agree for the property asset concerned. If the risks are judged to be high, this will be reflected in the purchase price for the developed asset. If the risks are high enough, the price of the developed asset will be driven down, and the development may not take place. This outcome would be achieved without any need for a “command and control” intervention by the planning system.

The willingness of individuals and the private sector to bear some risk when acquiring and dealing with property assets is greater than the public sector. The public sector should not attempt to impose its risk preferences on the community-at-large when human safety is not an issue and the assets at risk are predominantly privately funded.

The ability to understand and work with risk is essential for the successful implementation of the guideline and for sustainable coastal development. The *NSW Sea Level Rise Policy Statement* addresses this matter well when it states that:

Planning and investment decisions should therefore consider sea level rise projections of timeframes that are consistent with the intended timeframes of the decision....these decisions should consider likely sea level over the expected life of an asset in order to decide on how the asset is to be located or designed...⁶⁶

A further reason for development prohibitions and restrictions advanced by planning officials related to the management of beach erosion and the risks that public foreshore areas may no longer be accessible. Serious equity and economic efficiency issues arise when present day property rights and legitimate expectations are quashed in order to reduce costs that the community may face in the future. The quashing of private rights now imposes costs both on individuals and the community now. Nothing is gained by bringing forward the pain of future climate change impacts to the present day, and then asking some members of the present-day community to bear the disproportionate share of the burden. The perception of increased sovereign risk and the social and economic costs of lost development opportunities will magnify the costs (if they are brought forward), rather than reduce them.

Any response to climate change issues needs to recognise the need to provide investment certainty by respecting property rights and legitimate expectations of development, subject to the paramount consideration that human safety must always be protected.

It also must be recognised that while there is a strong scientific consensus supporting the existence of human-induced climate change, no such consensus exists in relation to the degree of sea level rise we are likely to see.

The NSW Government's sea level rise projections are based on the most extreme climate change impact scenario produced by the Intergovernmental Panel on Climate Change (IPCC) in 2007.⁶⁷ The IPCC does not recommend the adoption of the most extreme scenario or most conservative sea level rise projection.

Depending on which IPCC global warming scenario is adopted, the degree of warming expected is considerably different. Furthermore, there is considerable variation within each scenario.⁶⁸ Emissions scenarios depend upon assumptions made concerning global economic growth and technological

⁶⁶ NSW Department of the Environment, Climate Change and Water *NSW Sea Level Rise Policy Statement* (2009) 3.

⁶⁷ NSW Department of the Environment, Climate Change and Water *NSW Sea Level Rise Policy Statement* (2009) 3.

⁶⁸ IPCC, 2007. *Climate Change 2007: The Physical Science Basis*, contribution of working group 1 to the fourth assessment report of the Intergovernmental Panel on Climate Change.

change. Therefore a range of sea level rise projections can be made depending on assumptions regarding the future concentration of greenhouse gases.⁶⁹

Please understand, this is not a radical proposition. Every credible scientific paper recognises the inherent uncertainty at making future projections and, in particular, no scientist is able to predict the success or otherwise of social and economic efforts that might be taken to reduce carbon emissions in a timely way. Put simply, the degree of global warming and sea level rise will depend on how we respond to the climate change challenge. That is, how we, as a global community, alter our carbon-dependant lifestyles.

Given the inherent uncertainties, policy makers should be cautious when imposing a certain cost on the community today, in order to avoid a possible, but uncertain, cost in the future. This is not an argument for emitting carbon. We recognise and support firm international action for reducing carbon emissions. This is about what action we should take, and when we should take it, in response to the consequences of climate change.

If the possible costs are very high (for example, there is a serious threat to human life) then action will be warranted. However, where the uncertain future costs are less severe (for example, the costs relate to loss of replaceable private property) reluctance should be demonstrated before government acts to burden today's community.

Where there is an existing legitimate expectation of development, the Metropolitan Strategy should clearly favour the development proceeding and encourage engineering solutions to manage the risks presented by climate change. A development applicant must be given the opportunity to demonstrate that orderly and safe development can proceed on land within coastal areas.

Outright prohibition of development is a blunt, unsophisticated policy response to a complex environmental and planning challenge. Outright prohibition or the "winding back" of development potential gives no regard to property rights and values. Furthermore, outright prohibition is inconsistent with the *NSW Sea Level Rise Policy Statement* which states that

...benchmarks are not intended to be used to preclude development of land that is projected to be affected by sea level rise. The goal is to ensure that such development recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.....

Landowners affected by current and future coastal hazards may seek approval from their local council to construct works on their land to protect their property.⁷⁰

An applicant should always be given the opportunity to demonstrate that land is suitable for the purpose identified in the application and has merit.

The strategy should make it clear that industry should be accorded flexibility in how it responds to anticipated sea level rises. For instance, it is not satisfactory for there to be a blanket ban on land filling in low lying areas, nor should there be strong restrictions on the construction of levy banks and flood channels when these could be used to help adapt to climate change. In some instances this may be an appropriate means of protecting residential development from flood and/or removing developable land from the 1 in 100 year flood level. By prohibiting land filling planning authorities may sterilise land that is zoned for urban development or already identified for future urban development.

The Strategy should seek to liberalise rules preventing land filling in low lying areas and the construction of levy banks and flood channels where it is desirable to help adapt to the impacts of climate change. Consent authorities should be required to authorise structural protection works, such as seawalls and gabion walls, where they are necessary as part of a climate change adaptation approach.

⁶⁹ Walsh, K.J.E.; Betts, H.; Church, J.; Pittock, A.B.; McInnes, K.L.; Jacket, D.R. and McDougall, T.J., 2004. Using sea level rise projections for urban planning in Australia. *Journal of Coastal Research*. 20(2). pp. 586.

⁷⁰ DECCW 2009, NSW Sea Level Rise Policy Statement. p.5-6

Outright prohibition of development on any land should be avoided. Provided human safety concerns can be addressed, the opportunity to consider the merits of development and possible solutions, even within coastal hazard planning areas, is the preferred approach.

We support the identification of coastal risk areas, based on properly resourced studies and detailed mapping (not on broad-brush analysis or assumptions). The existence of a coastal risk area, whose existence is established through robust expert study, would be a legitimate matter for consideration in any new strategic planning process commenced after the area has been identified.

We do not support further council prescription via development control plans (DCPs). Consistency across local government areas is desirable. There is already sufficient guidance material with state wide applicability such as the *Coastal Design Guideline for NSW 2003* that can be readily applied to coastal areas without the need for each council to prepare further individual plans.

New and innovative solutions and adaptation strategies will arise as we learn more about climate change and the impacts of sea level rise in coastal areas. DCPs and other forms of mapping that have the effect of sterilising portions of land without giving the opportunity for innovative design solutions are undesirable. In essence, the guideline must never suggest an outright ban on development but should always allow for innovative design solutions to coastal hazards to be devised. In short, prescriptive DCPs that purport to be the definitive design solutions for coastal areas should be prohibited.

It is encouraging to find that the Commonwealth position on this matter is entirely consistent with our position. For instance, the Australian Government Position Paper *Adapting to Climate Change in Australia* says

Individuals and businesses are often best placed to manage the risks associated with their assets. The private benefits individuals and households can gain from adapting to climate change provides an incentive for them to take reasonable steps to manage their exposure to those risks, and so reduce the potential costs to them of climate change. Most of the assets and activities at risk from climate change are owned or managed by businesses and the community. It is therefore reasonable to expect that much of the national effort to adapt to the impacts of climate change will be actions taken by businesses and communities. ... It would also be inefficient for governments to make decisions about how to adapt to climate change impacts on behalf of individuals and businesses that are better placed to manage their own risks.⁷¹

The NSW Government must recognise that in many cases, individuals and business are best placed to manage risks associated with their assets.

Furthermore, the Australian Government makes the point that

Policy instruments, such as land-use planning, codes and standards or environmental or public health legislation, can play an important role where *market mechanisms are ineffective* (emphasis added).⁷²

Again the Commonwealth supports a fundamental principle of the Urban Taskforce's position on regulation, particularly with respect to sea level rise policy. That is, there is only a need for land-use planning to become involved where it is established that market mechanisms will be ineffective. Unfortunately the draft guideline does not consider market failure and the need for regulatory intervention to prevent such failure.

2.2 Fuel, energy and waste efficiency and green and open space

2C) *How can planning in Sydney be improved to boost water, fuel, energy and waste efficiency?*

2D) *How can we bring more green and open spaces into our communities?*

⁷¹ Commonwealth of Australia, *Adapting to Climate Change in Australia: An Australian Government Position Paper*. Department of Climate Change (2010), <http://www.climatechange.gov.au/government/~/_media/publications/adaptation/190210-dcc-positionpaper.ashx> at 28 May 2010.

⁷² *ibid*

These questions invite submitters to argue for or against increased regulation, but no problem is identified and no case for regulation is made out. Before such a sweeping proposition is put, the Department should address the first four of the NSW Government's seven better regulation principles:

- Principle 1: The need for government action should be established.
- Principle 2: The objective of government action should be clear.
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
- Principle 4: Government action should be effective and proportional.

3. Integrating land use with transport

3.1 Use of land within walking distance of public transport

3A) *What is the best use of land within walking distance of stations and bus stops?*

3B) *How can we make our city better for pedestrians, cyclists and public transport users?*

3.1.1 Not enough has been done to facilitate infill development

The revised population forecasts reported in the Metropolitan Strategy review document predict that our population will reach 6 million by 2036. This represents an increase of 1.7 million since 2006. To have any hope of meeting housing needs, Sydney will need 770,000 additional homes by 2036.

Government is now planning for 70 per cent of Sydney's housing needs to be met through medium-to-high density homes within the existing urban footprint ("infill development").

If we have any hope of meeting expected housing demand within established inner and middle ring suburbs, Government must show leadership by ensuring that land use controls in all local areas serviced by high quality transport infrastructure permit additional new compact, pedestrian friendly residential communities.

In infill locations, the Department of Planning has worked toward short-term targets hidden from the public and the development industry. The Metropolitan Strategy promised 460,000 extra homes within the existing footprint of Sydney by 2031, but the secret targets only allowed for rezoning for 103,000 extra homes in existing areas by 2013. These targets were obtained by the Urban Taskforce through freedom of information laws.

If these secret targets had been met a third of the way into the strategy, we would have only 22 per cent of the promised new homes. The really hard rezoning decisions were secretly deferred into the never-never. The internal targets were set so low that there was never going to be enough housing available to keep up with demand.

On a regional basis the secret targets for the first third of the 2005 strategy were stark:

- in the Northern Beaches, only 2,100 extra homes were to be provided by 2013, a mere 12 per cent of the 2031 goal of 17,300 homes;
- in the Lower North Shore, a meagre 5,800 extra homes were to be provided by 2013, only 19 per cent of the 2031 goal of 30,000 homes;
- in the Inner West, just 7,700 extra homes were to be provided by 2013, merely 26 per cent of the 2031 goal of 30,000 homes;
- in the Eastern Suburbs, a paltry 5,700 extra homes were to be provided by 2013, just 28 per cent of the 2031 goal of 20,000 homes;
- in the Central Western suburbs around Parramatta, only 17,500 extra homes were to be provided by 2013, just 18 per cent of the 2031 goal of 95,800 homes;
- in Hornsby, only 3,100 extra homes were to be provided by 2013, 28 per cent of the 2031 goal of 11,000 homes;
- in the North-West, just 7,300 extra homes were to be provided by 2013, a derisory 9 per cent of the 2031 goal of 80,000 homes; and
- in the South West, only 6,400 extra homes were to be provided by 2013, a mere 12 per cent of the 2031 goal of 53,000 homes.

The development of new compact, pedestrian-friendly, mixed-use neighbourhoods in inner and middle ring suburbs should be permitted in any area that is within:

- 400 metres of a transport corridor serviced by high quality public transport (e.g. buses, light rail); or
- 400 metres of a jetty service by a commuter ferry service; or
- 800 metres of a train station.

We would support a gazettal of a state environmental planning policy that immediately achieved this outcome, concurrently with the finalisation of the revised Metropolitan Strategy.

This would bring together new apartments, workplaces, shopping, and recreation areas within walking distance of public transport infrastructure and in the vicinity of major transport corridors.

3.1.2 People need to live and work near public transport if they are to use it

In the most basic terms, if we want people to use new public transport, then we need to provide more than just the physical infrastructure. What occurs in the vicinity of new services will have a measurable impact on usage. Conversely, the new services should influence development activity in its vicinity.

It is now well understood that “land use patterns have a significant influence on how well public transport services can be delivered and utilised”.⁷³ By introducing more land use flexibility in the vicinity of new transport infrastructure, the infrastructure itself benefits in terms of patronage, and therefore viability.

If densities are not sufficiently high, transit stations will not attract enough passengers.⁷⁴ Moreover, without an appropriate mix of complementary land uses, people will be less inclined to use the public transport, as their ability to access a variety of destinations will be limited.⁷⁵

Research consistently shows that density has a significant impact on the use of public transport. For instance, every 10 percent increase in population density has been associated with a 6 per cent increase in passenger movements at transit stations.⁷⁶ Furthermore, most urban services cannot be provided unless there are a certain number of people that can make them viable.⁷⁷

The significance of population and employment densities as predictors of travel behaviour is undisputable. Studies reaffirm residential density as being the most important built environment element which influences travel choices.⁷⁸ It is clear that the elements of the built environment that exert a strong influence on travel behaviour are population and employment density.

Extensive research on this issue is available and the general consensus is that along with an increase in residential and employment density, mixed land uses around station areas have become accepted practice as a means of increasing usage rates.⁷⁹

⁷³ Alford, G., 2006, Integrating Public Transport and Land use Planning – Perspectives from Victoria. *Australian Planner*, Vol. 43, No. 3, pp. 6-7.

⁷⁴ Pushkarev and Zupan 1977, in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁷⁵ Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁷⁶ Parsons, Brinckerhoff, Quade and Douglas et al. 1995 in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁷⁷ Newman, P., 2005., Transit Oriented Development: An Australian Overview. Paper presented at the Transit Oriented Development Conference. Fremantle, Western Australia 5-8 July 2005. [http://www.patrec.org/conferences/TODJuly2005/papers/Newman%20paper%20REV.pdf, accessed 7 April, 2008].

⁷⁸ Leck, E., 2006, The Impact of Urban Form on Travel Behaviour: A meta-Analysis. *Berkeley Planning Journal*, Vol. 19, pp. 37-58.

⁷⁹ Joshi, H., Guhathakurta, S., Konjevod, G., Crittenden, J. & Li, K., 2006, Simulating the Effects of Light Rail on Urban Growth in Phoenix: An application of the UrbanSim Modelling Environment. *Journal of Urban Technology*, Vol. 13, No. 2, pp. 1-21.

Simply having supermarkets and other services within easy walking distance from homes tends to encourage public transport use. It is widely agreed that urban centres supported by mass transit should be diverse in their land-use compositions. Furthermore, mixed use can be an effective revitalisation tool. For example, a plan that provides the opportunity to build medium rise apartment buildings with ability to include non-residential uses at ground level, in the right location, supported by good quality mass transit is an attractive development proposition.

3.1.3 Allowing a mix of uses

It's crucial that state environmental planning policies and local environment plans be amended to ensure that, in the vicinity of all public transport services all the land uses that are necessary for a viable, attractive and desirable community centre are permissible. Fundamentally, plans need to be developed that reflect diversity. The benefits of mixed-use zoning are articulated in the report *Liveable Centres*.⁸⁰

Such a plan should include elements and/or policies that:

- promote diversity of use;
- emphasise compactness;
- foster intensity;
- provide for accessibility; and,
- create functional linkages.⁸¹

Diversity is encouraged by density, but successful places incorporate a mix of uses, including jobs, retail and hospitality services, apartments and other attractions all coexisting within a definable location working together to make a centre attractive and successful.⁸²

3.2 Reducing vehicle kilometres travelled

3C) *How can we reduce the need for people to travel as far or as often by car?*

Planning authorities in NSW perceive themselves as protecting the community from the market. They often fall prey to the pitfall of seeking to stop the market from doing what it does, without asking why the market is acting in a particular way and whether the public interest is served by preventing the market from working.

In particular, the NSW planning system is inherently reluctant to zone for a mix of uses. This is now out-of-keeping with international best practice. The original 2006 Standard Instrument sought to break-down the rigid rules that reinforced single-use zoning by restricting such zones, and instead favouring a series of multiple-use zones. **This would have delivered more vibrant urban communities and reduced the pressure on Sydney's road system by reducing car travel** and providing greater opportunities to locate services close to where people live, work and to where they already travel.

The December 2007 shock amendments to the Standard Instrument represented a roll-back of the reform push. Town planning traditionalists successfully sought to re-instate the primacy of single-use zoning in NSW. The NSW Department of Planning paper *Potential Amendments to the Standard Instrument – March 2010* largely represents a further step to dispose of the last vestiges of the visionary multiple-use zoning system, pioneered in 2006, but which has never been implemented.

⁸⁰ The report is available on the internet: <<http://www.urbantaskforce.com.au/attachment.php?id=2375>>.

⁸¹ Glass, G., 2005, Honey I sunk the railway line. Do you want me to tidy up the rest of the town?. Paper presented at the Transit Oriented Development Conference. Fremantle, Western Australia 5-8 July 2005. [<http://www.patrec.org/conferences/TODJuly2005/papers/Glass.G.pdf>, accessed 7 April, 2008].

⁸² Newman, P., 2004, *Metropolitan Strategy*. Paper presented at the Sydney Futures Forum. Sydney 19 May, 2004.

These issues were canvassed in the *Liveable Centres*⁸³ report by urban design experts, Roberts Day. The report highlights how recent zoning plans prevent new homes being built in the areas that need it most. The report's author, Stephen Moore, is a well credentialed expert in urban design and town planning. Mr Moore concluded that:

- There is an endemic bias against residential development in the heart of centres.
- NSW is being denied the benefit of many genuine mixed-use centres.
- Mixing uses around public transport is the most effective way to reduce unnecessary traffic congestion.
- Reducing car dependence also boosts household disposable income. The average yearly cost of car ownership is the equivalent of servicing a \$90,000 mortgage debt.
- Physical form is a place's most intrinsic and enduring characteristic. Regulation should be concerned with the physical form of buildings, rather than the use of a building.

Tragically, the Standard Instrument, as originally conceived, did not have many of these problems. For example, offices were to be permissible in every business development zone, apartments were to be allowed in every medium density zone and retail premises were to be permitted in every enterprise corridor zone. All this changed when the government gazetted surprise amendments to the Standard Instrument, just before Christmas in December 2007.

Also in December 2007, an amendment was gazetted to the Standard Instrument which changed the definition of "shop-top housing". The effect of this amendment was to ensure that only convenience type shops could go in on the ground floor of a mixed-use development (rather than, say, a supermarket) in:

- Zone R1 General Residential;
- Zone R3 Medium Density Residential;
- Zone R4 High Density Residential; and
- Zone B1 Neighbourhood Centre.

A zone like the Standard Instrument's mixed-use zone (as originally conceived) offers a market friendly means of accommodating high intensity employment and residential uses in single zone. That is, once the decision has been made that the infrastructure of an area is suitable for high intensity uses, it does not matter what mix of uses ultimately emerges. This can be managed through market processes. A mixed-use zone, properly implemented, allows this to happen.⁸⁴ Other zones that could offer a more flexible approach are the enterprise corridor zones (if modified) where office, retail, residential and light industrial uses could be flexibly mixed, and the business park zone (where retail, office and light industrial uses should be able to be mixed, if the Standard Instrument were appropriately amended).

The ability of multiple-use zoning to reduce motor vehicle dependence, well articulated in the report *Liveable Centres*, are often not realised because of planning criteria that requires authorities to be 'certain' that they can deliver sector based targets for commercial office, residential, etc. When land is able to be used flexibly for different uses, planning authorities do lose control as to the precise use of the land. This is ultimately in the public interest because it allows the market to do what it does best – deliver the product that delivers the greatest value to the economy and community.

In the greater scheme of things, there is little risk that, for example, housing will displace commercial development across a region; or conversely, that retail will displace housing. All will ultimately find their relative need to the community (as expressed through their economic value).

⁸³ S Moore, *Liveable Centres* (2009). The report is available on the internet: <<http://www.urbantaskforce.com.au/attachment.php?id=2375>>.

⁸⁴ By "properly implemented" we are referring to a mixed-use zone that does not contain backdoor means of discrimination against different high intensity uses. An example of such discrimination is offered by the *Burwood Town Centre Local Environmental Plan 2008*, which zones for mixed uses, but then has discriminatory floor space ratios based on whether the use is retail, commercial or residential.

Too many planning authorities view zoning as an exercise in dividing up a fixed amount of development across different geographic areas. They frequently fail to appreciate that by instating restrictive zoning, the economic and social value of development, and the overall level of development activity, is reduced.

If there is a concern that by rezoning land for a mix of uses, there will be less land available for high density residential uses, just rezone some more land for high density residential. There is no actual shortage of land in NSW – just a shortage of land zoned for some key uses (such as retail, high density residential and greenfield development).

The use of multi-use zones should be required, to avoid sterilising land in the event that the market does not seek to develop some or all of the land made available.

It's important to understand that while we advocate for mixed-use development to be permissible, we do not suggest that it should be mandated.

That is, the Standard Instrument should allow (but not require) a mix of commercial, residential and retail development in a single zone, and even in a single building.

Unfortunately, rules that require a mix of uses within a building can cause serious problems.

For example, if retail is required on the ground floor of a residential building and there is insufficient demand for retail space, developers are still forced, by such rules, to build ground floor retail space that can be empty and underused. This will lead to a ghost town atmosphere in the local streetscape. It is 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.

Liveable Centres found that, since 2007, NSW local councils, with the approval of the Department of Planning, had released 13 new local environmental plans in-line with the government's new standardised format. This report showed that eleven of the plans prohibit purely-residential buildings in centres, forcing a mix of residential and non-residential uses in every building within a centre.

4. More jobs in the Sydney Region

4.1 Reservation of employment land

4A) Where should we reserve future employment land?

In response to the clear need for more housing supply, the NSW Government established "growth centres" areas in Sydney's North West and South West. In total, the government estimates that these areas will provide around 181,000 new dwellings.

The North West Growth Centre consists of land located in Baulkham Hills, Blacktown and Hawkesbury council areas. The North West Growth Centre consists of sixteen precincts and is approximately 10,000 hectares. The government estimates it will contain about 66,000 new homes – a city the size of Wollongong.

The South West Growth Centre consists of land located in Liverpool, Camden and Campbelltown council areas. The South West Growth Centre consists of eighteen precincts and is approximately 17,000 hectares. The government estimates it will contain around 115,000 new homes – a city the size of Canberra.

Without the North West heavy rail it is even more important than ever before that Western Sydney becomes the jobs centre of NSW. **If we can't bring residents of Western Sydney to the jobs in the inner and middle ring suburbs, then we must bring the jobs to Western Sydney.** By creating tens of thousands of new local jobs in Western Sydney, locals will enjoy the benefits of less time spent travelling and more time with their friends and family. Everyone in Sydney will win – with reduced pressure on the existing congested public transport and roads.

Traditionally, planning authorities have favoured the release of industrial land in Western Sydney and resisted the release of land for business parks, offices and retail development. However, there has, in recent years, been an increasing recognition that white collar jobs have a strong role to play in Western Sydney.

The expression "industrial land" refers to land and premises used primarily to manufacture goods (a factory) or store goods (a warehouse).

In Sydney, the main sectors stocking warehouses are the manufacturing, wholesale trade and retail sectors.⁸⁵ Key drivers of stock levels are domestic demand, manufacturing production, construction activity and business restocking and de-stocking. Sydney is also a major national port for imports - some of which are going interstate - which boosts wholesaling and distribution.⁸⁶

However, renovations and new home construction also have significant multiplier effects for domestic demand.⁸⁷ Home construction is labour intensive, draws heavily on locally-produced inputs and includes significant spending on fit-out items such as furnishings, floor-coverings and appliances.⁸⁸ Consequently, it has a considerable flow-on effect for the rest of the economy.⁸⁹ The outlook for this sector of the economy is positive, with BIS Shrapnel predicting that a significant pent-up demand and rapidly rising rents are expected to drive the next upturn in dwelling construction from the second half of 2009.⁹⁰

⁸⁵ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 8.

⁸⁶ Ibid.

⁸⁷ Ibid 10.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid 12.

The nature of warehouse development has changed in recent years. The rise of contract warehousing and the arrival of new players has required new warehouses to accommodate the latest technologies, while also needing to be located in close proximity to strategic transport nodes and networks.⁹¹

With firms that have kept warehousing in-house, there has been a push for greater consolidation of warehousing and distribution (and even office) functions onto one site.⁹² This has led to stronger demand for large purpose-built industrial buildings now common to new market developments in Sydney.⁹³ Historically, wholesalers and large retailers had one (or more) warehouses or distribution centres in each state. The national distribution system that allows facility rationalisation on a state or national basis and considerable economies of scale are now more common.⁹⁴

Warehouse location for consolidation purposes is primarily influenced by the availability of large areas of reasonably priced land and high quality transport links.⁹⁵ Logistics and distribution companies have indicated that for every dollar saved in on-road costs from transport infrastructure improvements there will be direct off-road savings.⁹⁶ Such savings can be between 5 and 10 per cent on on-road savings and relate to reduced stock and inventory sizes and other distribution management efficiencies.⁹⁷ The M7, M5 and M4 play a crucial role in linking excising Western Sydney employment lands to the rest of Sydney, and would do so for new lands released in the region. Regardless of economic conditions, manufacturers and retailers will continue to seek efficiencies by outsourcing (part of) their logistics/supply chains.⁹⁸

The consolidation into larger sites also allows the user to adopt the latest technologies. In the warehousing/distribution sector, the adoption of 'cross-docking' has greatly increased the efficiency of distribution.⁹⁹ Trucks deliver goods in one building end, they are bar coded, sorted, and then dispatched to trucks at the other building end for distribution.¹⁰⁰ This process can now be accomplished within as little as two to three hours.¹⁰¹ The receivable and dispatch docks also mean more hardstand areas are required outside the building, necessitating larger sites, with enough space for manoeuvring.¹⁰²

The consolidation process has been adding to demand for large sites. However, as tenants or owner-occupiers consolidate their operations, the process creates backfill space amongst smaller, often secondary, industrial buildings.¹⁰³ BIS Shrapnel predicts that the consolidation and centralisation of distribution into fewer (and larger) warehouses will continue for the foreseeable future, although they tend to come in the form of waves.¹⁰⁴

Generally speaking, the construction of new warehouses does not consistently represent new additional demand for industrial land.¹⁰⁵ In many cases, demand is transferred from one operator or location to another, with the vacated space left vacant because it does not fulfil modern requirements.¹⁰⁶ Much of the latest round of construction in Sydney fell into this category.¹⁰⁷

⁹¹ Ibid 16.

⁹² Ibid 19.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid 31.

⁹⁹ Ibid 19.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid 31.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

BIS Shrapnel anticipates that underlying demand for industrial space is expected to start exceeding its mid 2005 peak from 2011 onwards, building to a new high in 2013–14.¹⁰⁸ The state's strong population growth will continue to underpin demand for housing and infrastructure, and hence for materials, equipment and fit-out goods.¹⁰⁹ They predict that a forecast upswing in residential construction from 2010 will underpin high demand for construction materials, offsetting the negative impact of a downturn in non-residential building.¹¹⁰

Industrial building is traditionally characterised by relatively short construction times, usually less than one year.¹¹¹ This compares with the long lead times of up to two years and over for construction of offices and hotels. In theory, the short construction time for industrial buildings means that undersupplies can be met reasonably quickly by new construction.¹¹² As a result the market (i.e. tenants) expect to be able to procure new purpose built industrial premises in much shorter frames than other types of developed property assets. However, all of this assumes a sufficient supply of serviced suitable land.

Regrettably, our experience is that **it is extremely difficult to secure a large site with a capacity for a 30,000 square metre plus building in the 18 month timeframe anticipated by the market**. This relates to insufficient supply of serviced sites capable of accommodating this kind of footprint.

New land releases alone tend to prompt moves and expansions, and the release of pent-up demand.¹¹³ Land release, in itself, can act as a catalyst for economic activity.

In relation to office premises BIS Shrapnel has predicted that, with only moderate amounts of new office supply coming on stream during the early part of next decade, some office tenants will look to business parks with high technology industrial space to satisfy their demand.¹¹⁴ If permitted, business parks are likely to play a prominent role in the future planning for employment lands. The flexible land use controls that come with business parks, the close proximity of the residential growth centres and new communications infrastructure such as fibre-optic cable can attract technology intensive businesses which require high office content accommodation.

4.1.1 Past strategies

The 2005 Metropolitan Strategy set out a goal, by 2031, to:

- increase the number of jobs in Western Sydney by 237,000 – close to half of all new jobs in Sydney – “with a strong emphasis and more skilled jobs and stronger links to the global economy”;¹¹⁵
- identify, zone and develop between 4,000 to 7,500 hectares of new employment lands;¹¹⁶
- accommodate 575,000 jobs in employment lands “with the largest concentrations located close to the orbital motorway network”;¹¹⁷
- reduce the average journey to work times in Western Sydney by “transforming Sydney into a multi-centred city”.¹¹⁸

The strategy included in objective to

plan and develop new greenfield sites to meet demand in new growth areas and growth that cannot be accommodated in established areas. ... In some cases [employment capacity targets will be met by] the zoning and servicing of new land for employment.¹¹⁹

¹⁰⁸ Ibid 16.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid 26.

¹¹² Ibid.

¹¹³ Ibid 39.

¹¹⁴ Ibid 32.

¹¹⁵ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 58.

¹¹⁶ Ibid 58.

¹¹⁷ Ibid 58.

¹¹⁸ Ibid.

The *Employment Lands for Sydney: Action Plan* (released in March 2007) required the

[r]elease [of] more Greenfield land to overcome a shortage of supply. The [Employment Land Development Program] will inform subsequent release and servicing of more greenfield employment lands in Sydney to provide for a range of additional jobs, matching residential and workforce growth, and improve Sydney's employment lands competitiveness.¹²⁰

The Metropolitan Strategy only specified broad plans for an additional 3,200 hectares of new employment land, well short of the overall target of 4,000 to 7,500 hectares.¹²¹ The shortfall will need to be met through land releases that are *additional* to those flagged in the 2005 Metropolitan Strategy itself.

4.1.2 The benefits of competition

The planning system traditionally restricts competition amongst property owners willing to sell their land for development by limiting the supply of appropriately zoned land. It is well understood in the urban development industry that, in Sydney, there can also be shortfalls in land zoned for high intensity employment uses, particularly business parks where office, retail and bulky goods premises are permitted.

Planning authorities often fail to realise how limited the supply of land is – even without their zoning and strategic policy restrictions. For example, employment land in South Sydney will not suit the requirements of developers of modern industrial premises because lot sizes are often too small.

Conservative zoning restrictions reduce competition amongst property owners, and therefore increase the price of land available for large development projects. The higher the price, the greater the likelihood that developers will either be forced to pay more than they should for a site or that the transaction will simply not proceed because the project would not be viable.

The common refrain from planning authorities whenever this issue is raised is that the developer simply needs to 'cop a haircut' and get on with development at a lower margin. This perspective is deeply flawed. Modern capital is very mobile. It flows to wherever it gets the best return. A local developer will not be able to secure capital for a NSW development if he/she cannot offer the rate of return that is available for investments of a similar risk profile in other states or countries. In order to ensure that a market rate of return is still achieved, a developer will need to increase the price paid by the ultimate purchaser of the developed land.

One reason that NSW has missed out on so much development in recent years is that **the ultimate purchaser of developed land is often not able to afford to cover the cost of land price inflation induced by a lack of zoned land.**

4.1.3 The best place for new industrial land is the outer Sydney region

Outer Sydney region

The "outer Sydney" region, for the purposes of reporting on industrial lands, is made up of the local government areas of Blacktown, Camden, Campbelltown, Hawkesbury, The Hills, Liverpool, Penrith, and Wollondilly. This region has been home to the strongest levels of both demand for and supply of new industrial lands since the 1960s.¹²²

¹¹⁹ Ibid 61.

¹²⁰ NSW Department of Planning, *Employment Lands for Sydney: Action Plan* (2007) 2.

¹²¹ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information 64: An additional 1,000 hectares from the Western Sydney Employment Hub; a further 2,200 hectares were flagged in the M7 corridor.*

¹²² BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 48.

A 2008 BIS Shrapnel report suggests that over 550,000 square metres worth of new industrial space was under construction in the outer region at that time, **representing around 75 per cent of total industrial building across metropolitan Sydney**.¹²³

For over 20 years outer Sydney's share of metropolitan warehouse construction activity has grown steadily with more rapid development in recent years.¹²⁴ With the exception of a brief period spell in the early 1990s, outer Sydney has also been the dominant location for new factory construction for several decades.¹²⁵ Since late 2003, the outer region's share of metropolitan warehouse and factory construction has averaged around 60 per cent.¹²⁶ This has been made possible by two key developments:

- the M7 turned the region into the most sought after location in NSW for large distribution-related industrial businesses;¹²⁷ and
- *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area* rezoned land at Eastern Creek and Greystanes, followed by Erskine Park and the expansion of other existing estates along the M3 and M7.¹²⁸

The outer region's share of metropolitan factory construction averaged almost 50 per cent during the 1980s and 1990s, and closer to 60 per cent since 1993–94.¹²⁹

Outer Sydney has been commercially attractive to the factory operators because of the ready supply of land at relatively low costs and less burdensome operational requirements.¹³⁰ The movement of factories to the outer region has freed up infill sites for redevelopment within the existing urban footprint. However, it's still worth noting that overall factory activity within Sydney has been in decline.¹³¹

In the mid 1980s industrial land values in the central western region were approximately triple those in the outer west.¹³² The position of outer Sydney has gradually strengthened, to the extent that the ratio between the central west and outer west is between 1.3:1 and 1.8:1 (subject to location and information source).¹³³ The improvement in relative values tracks the better integration of the region into the metropolitan and interstate road network, as well as increased recognition of the region by larger space users and investors.¹³⁴ The inherent strengths of Western Sydney as a source of new ongoing employment was formally recognised in the Metropolitan Strategy when it acknowledged that

the completion of the Orbital Motorway Network; investment in freight terminal infrastructure, manufacturing and warehousing ... will also be key factors drawing jobs to Western Sydney ...¹³⁵

The outer region is home to the greatest reserves of both existing and future potential land within Sydney, even though it will require considerable investment in infrastructure to realise its full potential.¹³⁶

By way of comparison, in the last comprehensive survey by the State Government of Sydney's industrial land (July 2003):

- the northern region's share of Sydney's total undeveloped industrial land was less than 3 per cent;¹³⁷
- the central western region contained only 3 per cent of all vacant land (since then, some of the vacant land has been taken up, particularly in the Auburn and Parramatta council areas);¹³⁸ and

¹²³ Ibid 35.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid 49.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information 59*.

¹³⁶ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 35.

¹³⁷ Ibid 45.

- there were virtually no greenfield sites left in southern Sydney that could accommodate new industrial development.¹³⁹

BIS Shrapnel estimates that the outer Sydney industrial region - excluding the Central Coast, Blue Mountains and Sutherland - contains over 90 per cent of the remaining vacant zoned land in Sydney.¹⁴⁰ They conclude that the region will continue to be virtually the only provider of vacant industrial land.¹⁴¹ In the Metropolitan Strategy, the government agreed

[t]he employment lands in the inner, established parts of Sydney are highly constrained ... In these areas there is unlikely to be any additional employment land.¹⁴²

While there is a substantial amount of developable land in the outer region, there is virtually no supply of lots in excess of 10 hectares in established locations around Blacktown, Wetherill Park and Smithfield.¹⁴³ While the recent rezonings have ensured medium term supply, the apparently large size of the zoned reserves is misleading.¹⁴⁴ **The overwhelming majority of the rezoned land is not serviced and the yield is restricted by topography, environmental sensitivities and overhead electricity lines.** Servicing may take as long as four years and state infrastructure charges have been increasing.¹⁴⁵

While there is no shortage of land, as such, the central question is how soon can land be **made available** (given the time it takes to bring in services, secure rezoning and obtain development approval) and whether it can be made available at a financeable cost. BIS Shrapnel has noted that the stock of land ready for construction is small compared with the amount of land zoned for industrial uses.¹⁴⁶

Figures provided to the Urban Taskforce by BIS Shrapnel indicate that **only 15 per cent of zoned industrial land in the outer Sydney region is currently serviced.**¹⁴⁷ The challenge of providing the necessary infrastructure to service the remaining 85 per cent of zoned land is significant. The land requires water and electricity, but also roads and some rail would be desirable (but is not essential). If there are continued constraints on the construction of the necessary roads, the notional supply of land in outer suburban Sydney may not be fully accessed.

Hunter, Newcastle and Goulburn

The Hunter, Newcastle and Goulburn regions are not yet easy substitutes for industrial space uses focused on accessing Sydney. These regions require capacity increases in the main transport corridors, particularly rail, before they are fully fledged alternatives.¹⁴⁸ The marginal cost of infrastructure in Western Sydney is likely to be lower than the marginal cost of expanding rail and road capacity to fully integrate the Hunter and Goulburn into the Sydney market.

Warehouse operations, in particular, are dependent on moving goods to and from the Sydney marketplace and require a degree of access for their customers that is not currently possible (in general terms) from the Hunter, Newcastle or Goulburn. However, we are already seeing the Hunter attracting more factory operations from Sydney, as they can be less dependent upon swift access to Sydney.

¹³⁸ Ibid 47.

¹³⁹ Ibid 43.

¹⁴⁰ Ibid 49.

¹⁴¹ Ibid 50.

¹⁴² NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information 61*.

¹⁴³ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 50.

¹⁴⁴ Ibid 50.

¹⁴⁵ On the 12 August 2009 the NSW Government announced an \$180,000 state infrastructure charge for each hectare of developable land in the Western Sydney Employment Lands. The current state levy for industrial land in the nearby north west and south west growth centres is \$68,000 per hectare. A levy set at almost three times the nearest comparable charge will impact on the commercial feasibility of development in the area.

¹⁴⁶ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 50.

¹⁴⁷ 400 hectares are zoned, serviced and vacant, while 2,246 hectares are zoned and serviced. A further 10,000 hectares (the Western Sydney Employment Lands Investigation Area) is both unzoned (i.e. still rural) and unserviced (i.e. serviced to a rural standard only).

¹⁴⁸ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), xi.

Given the difficulties of moving containers in and out of Port Botany, as well as getting around in general, there is a real question as to whether Sydney will lose business to other locations.¹⁴⁹ However, **any loss of business due to infrastructure constraints is more likely to flow to other states with strong containerised port operations, rather than the Hunter, Newcastle or Goulburn.**

4.1.4 The Western Sydney Employment Investigation Area

NSW Government articulated its agenda for new Sydney industrial lands in the outer region when it released *Employment Lands for Sydney: Action Plan* ("the Action Plan") in March 2007. The document described itself as

a key component of the NSW Government's 'Open for Business' strategy.¹⁵⁰

Crucially, the action plan said that:

As part of the [Employment Lands Development Program] the Department of Planning will also consider the designation of a Western Sydney Employment Lands Investigation Area in the area between the Western Sydney Employment Hub and Badgers Creek to the north of Elizabeth Drive ...

The aim is to investigate medium-long term needs and integrate this into the development of both the Western Sydney Employment Hub and the South West growth centres. The investigation process will assess the potential of this area for employment lands based on principles of ecologically sustainable development and taking into consideration the staged release of employment lands in surrounding areas. It will identify up front constraints and access issues to be resolved prior to rezoning including cost and feasibility of servicing the site.¹⁵¹

A map setting out (in broad terms) the boundaries of the investigation area was also published. In June 2008, in the State Budget the NSW Government announced that it had

commenced a new initiative to support the rapid release of 11,000 hectares of employment land known as the Western Sydney Employment Lands Investigation Area that has the potential for \$2 billion in employment land development.¹⁵²

4.1.5 Release of industrial land

Since the Metropolitan Strategy in the outer Sydney region:

- in 2006, 929 hectares has been rezoned in the vicinity of Eastern Creek;
- in 2007, a further 201 hectares was rezoned, including 61 hectares at Huntingwood West in Blacktown and 140 hectares at Prestons in Liverpool;
- in 2008, 143 hectares was rezoned, comprising 47 hectares of industrial land within the Greystanes Southern Employment Lands area and 96 hectares of employment lands at Turner Road (bordering Smeaton Grange); and
- in 2009 1,050 hectares was rezoned – a further 800 hectares at the intersection of the M4 and M7 and 250 hectares has been rezoned at Riverstone West.

That is 2,323 hectares of land towards a Sydney-wide goal of 7,500 hectares of employment land.

Even though the Metropolitan Strategy promised 237,000 extra jobs in Western Sydney, only an extra 40,600 jobs have been created in Western Sydney in the four years since the strategy was produced.¹⁵³

¹⁴⁹ Ibid, 69.

¹⁵⁰ NSW Department of Planning, *Employment Lands for Sydney: Action Plan* (2007) 2.

¹⁵¹ Ibid 8.

¹⁵² NSW Treasury, *Budget Paper No. 3 – Budget Estimates 2008-2009*, 17-5.

¹⁵³ From the June quarter 2005 to the June quarter 2009: Australian Government - Department of Employment and Workplace Relations, *Australian Regional Labour Markets March Quarter 2006* (2006); Australian Government - Department of Education, Employment and Workplace Relations, *Australian Regional Labour Markets March Quarter 2010* (2010).

There is a clear need to plan for the release of significant additional employment lands if the Metropolitan Strategy's goals are to be met.

The Action Plan identified the existing stock of zoned employment lands as 20,592 hectares – made up of 5,800 hectares of land zoned for business use (i.e. including commercial office) and 14,793 for industrial use (excluding commercial office).¹⁵⁴

4.2 Maintenance and revitalisation of older industrial sites in established areas

4B) *How can we maintain and revitalise older industrial sites in established areas?*

The discussion paper asks the wrong question.

It should not be a public policy objective to "maintain" older industrial sites in established areas. Nor should it be an objective to "revitalise" them if that means retaining them as solely for industrial uses.

The legitimate public policy question is, what should be done to secure the best possible employment outcomes? What do we need to do to ensure that Sydney has the industry that it needs? If the questions is re-framed in this way it is more likely to lead to a rational answer.

Modern industrial development requires large lots. The lot size of older industrial sites in the inner and middle ring suburbs of Sydney is generally inadequate for re-development of industrial sites (there is virtually no supply of lots in excess of 10 hectares in such locations) and this would generally not represent the highest and best use of such land. Additionally, an industrial workforce is more likely to be living in Western Sydney than the more expensive inner and middle ring suburbs of Sydney.

The planning system is restricting competition, amongst property owners willing to sell their land for development, by limiting the supply of appropriately zoned land. As a result, there is a very clear shortage of land zoned for high density residential uses (in the inner and middle ring suburbs). There are also shortfalls in land zoned for high intensity employment uses, particularly business parks where office, retail and bulky goods premises are permitted. This constraint in supply makes homes and retail premises more expensive than they need to be, and this burden is ultimately borne by ordinary Sydney households (through more expensive housing caused by supply shortages or more expensive consumer purchases through the higher rents paid by retail tenants).

Why should it be a public policy objective to preserve industrial sites, as such? The public policy objective here should be boost employment and ensure that there are sufficient supplies of land to available to meet Sydney's needs. On this point we note that the retail sector is Australia's largest single source of employment, closely followed by the largely office-based property and business service sector.¹⁵⁵

The enterprise corridor zone, the business development zone and business park zone, as originally conceived in the 2006 version of the Standard Instrument provided a basis which multiple-use zones were made available that permitted either light industrial, office, retail and (in the case of enterprise corridors) residential development to be developed in a single area. This provided the opportunity for new light industrial premises to be built when there is sufficient market demand and economic value to the community, but does not sterilise land where this was not the case.

If the economy places a greater value on land for non-industrial uses, then the land should be free to be re-allocated to such uses, provided that the infrastructure, amenity and environmental issues can be satisfied in relation to the new use.

¹⁵⁴ NSW Department of Planning, *Employment Lands for Sydney: Action Plan* (2007) 24.

¹⁵⁵ Australian Bureau of Statistics, *Australian Labour Market Statistics: 6105.0* (2008) 68.

4.3 Future employment lands

4C) What initiatives can boost the success of future employment lands?

Zoning decisions are handled at two levels. Often, a non-statutory strategy, policy or plan will set out in broad terms a vision for an area including some indication of the development types that might be permitted. In itself, this strategy has no legal effect. In order for the vision to be realised, at some later point, an actual rezoning must occur. This involved the publication of either a state environmental planning policy (SEPP) or a local environmental plan (LEP).

Modern SEPPs and LEPs are prepared in accordance with the Standard Instrument.

There are a number of zones identified in the Standard Instrument for job generating activities. These include: B7 "Business Park"; IN1 "General Industrial"; IN2 "Light Industrial"; and IN3 "Heavy Industrial". An objective of each of these zones is to "encourage employment opportunities".

The retail sector is Australia's largest single source of employment, closely followed by property and business services.¹⁵⁶ Retail can be accommodated within a zone if "retail premises" or (for some types of retail) "bulky goods premises" are permitted in a zone. Generally, workers involved in business services required "office premises" and/or "business premises" to be permitted. These days, retail premises, business premises, office premises and bulky goods premises are not normally permitted in industrial zones.

Business park zones do permit office premises while generally prohibiting retail premises and business premises. The prohibition on retail is curious, given that business parks create concentrations of people engaged in employment. Workers are prevented from accessing retail premises on site and instead they are forced to travel somewhere else for supermarket and related shopping.

In the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* which rezoned 800 hectares of the Western Sydney Employment Lands Investigation Area, the main zone used is the "general industrial" or "IN1" zone. The following uses are permitted with consent:

- depots;
- freight transport facilities;
- industrial retail outlets;
- industries (other than offensive or hazardous industries);
- neighbourhood shops;
- food and drink premises;
- service stations;
- roads;
- transport depots;
- truck depots; and
- warehouse or distribution centres.

Strangely, the zone has an objective that says it will

provide for small-scale local services such as commercial, retail and community facilities (including child care facilities) that service or support the needs of employment-generating uses in the zone.

However, childcare centres, community facilities, business premises, bulky goods premises and food and drink premises are not listed as permitted uses. This is of concern.

¹⁵⁶ Australian Bureau of Statistics, *Australian Labour Market Statistics: 6105.0* (2008) 68.

It's cause for further concern if this approach is any indication of the kind of statutory zoning that might occur more generally in the Western Sydney Employment Land Investigation Area and other newly zoned "employment lands" in Sydney.

In the Metropolitan Strategy "employment lands" were defined to be areas outside centres, and were said to include:

the traditional industrial areas hosting light industry, manufacturing wholesaling and transport and storage activities *but also technology and business parks for higher order employment ...* and areas containing a mix of activity. The enterprises located in these areas are engaged in manufacturing, wholesaling transport and storage activities and other special industrial activities, including an increasing component of *office employment* (emphasis added).¹⁵⁷

The Action Plan explained that

Employment lands are commonly defined as industrial areas, which predominantly accommodate manufacturing, distribution and non-centre urban services such as panel beating and concrete batching plants. The emergence of business parks and technology parks, which may contain a mixture of research, manufacturing, distribution and office activities also fall under this classification.¹⁵⁸

The role of a strong supply of serviced employment lands in attracting new investment to the State was recognised:

A focus of the NSW Government's attention is on growing and attracting higher wage, higher skilled, internationally active industries that have the greatest potential to thrive in the future in NSW. This includes attracting investment from high value-added manufacturing industries, which demands well-located and well-serviced employment lands.¹⁵⁹

The Action Plan said that

[t]he nature of industry in Sydney is shifting towards knowledge-based activities in industries such as pharmaceuticals, information and communications, and advanced manufacturing. There is a trend towards cleaner industries and changing work and business practices.

High technology industrial space has a significantly higher proportion of office space.¹⁶⁰ In a conventional industrial zone "office premises" are not permitted, other than as a minor ancillary use to, say, a factory or warehouse. So **many developments built for high technology businesses, particularly those with more than 50 per cent office space, are not going to be permissible in an industrial zone.** In areas such as North Ryde, the business park zone has been used to accommodate such developments. **We advocate greater use of the business park zone for land rezoned in the Western Sydney Employment Land Investigation Area and other employment lands throughout NSW.**

4.4 Ensuring that there is sufficient retail and commercial space

4D) *How can we ensure sufficient retail and commercial space to support economic growth?*

4.4.1 Narrow range of retail and business uses in lower-order centres

The current Standard Instrument permits local council to allow only a narrow range of retail and business uses in so-called "lower-order" centres. An example of this problem appears in the *Draft Penrith Local Environmental Plan 2008*.¹⁶¹ In this plan, neither "retail premises" nor "shops" are generally permitted uses in a village zone. Only neighbourhood shops are permitted.

¹⁵⁷ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* 60.

¹⁵⁸ NSW Department of Planning, *Employment Lands for Sydney: Action Plan* (2007) 2.

¹⁵⁹ *Ibid* 3.

¹⁶⁰ BIS Shrapnel, *Sydney Industrial Property Market Forecasts and Strategies 2008 – 2018* (2008), 31.

¹⁶¹ See also the *Draft Greater Taree Local Environmental Plan 2008*.

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.

This means a shop in a village zone (other than on those specifically listed sites) must:

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

In short, shops of any size are banned in neighbourhood centres if their purpose is to sell large grocery items, clothing, music, home-wares 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. A small shop that sells iPods, mobile phones and personal radios will be banned. As will a baby clothes shop.

Additionally, “business premises” will also be banned in the village zone. This means that locals will be unable to set up a shopfront to engage in a profession or trade that provides services directly to members of the public. This means local communities will be deprived of internet access facilities, hairdressers, video libraries and dedicated banks, post offices and dry cleaners. Why is it okay to have banking services provided as an ancillary service in a neighbourhood shop, but unlawful to open a bank branch as a standalone service?

Where is the public interest in prohibiting these low impact uses? None of these retail and business types are inconsistent with the character of a centre.

Furthermore, the Standard Instrument limits the floor area of all neighbourhood shops, which makes it impossible for even a moderate scale supermarket to be established.¹⁶² This 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 and/or limiting floor area) robs the community of the opportunity to access a wide variety of competitively priced grocery items in their locality.

What this prohibition really means is that people need to drive further to satisfy their general grocery and shopping needs. The argument that limiting floor area and seeking to control the type of goods sold from retail premises, by way of plan, does not stand up to scrutiny. Local amenity can be properly and appropriately considered at the development application stage. Limiting retail by way of a statutory plan does little more than protect existing retail landlords.

The Land Use Table in the Standard Instrument should be amended so that “retail premises” and “business premises” are permitted uses in Zone B1 Neighbourhood Centre, Zone R4 High Density Residential and Zone RU5 Village. Retail and business premises should be permitted (with consent) in such zones. The merits of individual proposals can be considered at the development assessment phase.

4.4.2 Lack of retail and business uses in employment zones

Many statutory plans do not permit “retail premises” and/or “business premises” (other than bulky goods premises, landscape and garden supplies, timber and building supplies) in business development and enterprise corridor zones.¹⁶³ For example, *Ryde Local Environmental Plan 2010* does not even allow “business premises” in the business park zone.

¹⁶² cl 5.4(7).

¹⁶³ For example, the *Draft Greater Taree Local Environment Plan 2008*.

Business development zones, business parks and 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, business park or enterprise corridor zone should be entitled to have lunch in a restaurant, get a haircut or visit a local hotel after work. Surely these uses go hand-in-hand with business activity?

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.

The Land Use Table in the Standard Instrument should be amended so that “retail premises” and “business premises” are permitted uses in Zone B5 Business Development, Zone B6 Enterprise Corridor and Zone B7 Business Park. “Retail premises” and “business premises” should not be banned in any statutory plan in zones intended for use for employment purposes.

4.4.3 Large format retail unwelcome in industrial zones

Many industrial zones recently published statutory plans to not permit retail premises or business premises in light industrial zones.¹⁶⁴ Sometimes food and drink premises, landscape and garden supplies, service stations, timber and building supplies are permitted, and occasionally bulky good premises are allowed, but almost always retail premises generally are prohibited.

This means large format grocery stores, such as Costco, are prohibited in light industrial areas. Large format business supplies retailers, such as Officeworks, or large format hardware suppliers, such as Bunnings, will often have great difficulty in finding sites. Smaller retail supermarkets, such as Aldi, also end up being excluded.

The 2005 Metropolitan Strategy offered a sensible approach to this issue. The Metropolitan Strategy stated that, for example, retailing for bulky goods might be permitted in industrial areas.¹⁶⁵ There was also a promise of a new approach to reinvigorate employment lands, including flexible zonings for industrial and commercial activities.¹⁶⁶

However, the statutory plans that have been exhibited since the 2005 Metropolitan Strategy have not implemented this provision. There is potential to include a wider range of retail activities in industrial areas without jeopardising industrial activities

At the very least, “bulky goods premises” should be added as a permitted use in Zone IN1 General Industrial and Zone IN2 Light Industrial. Costco-style development should also be permitted by permitting “retail premises” as a permitted use, with an appropriate supporting zone objective.

4.4.4 Promote multiple-use zoning

The NSW planning system is inherently reluctant to zone for a mix of uses. This is now out-of-keeping with international best practice. The NSW system favours single use zoning evidenced by the proliferation (in the new standard-instrument compliant plans/draft plans), for example:

- business development zones that do not permit retail premises;¹⁶⁷
- light industrial zones that do not permit retail premises or bulky goods premises;¹⁶⁸
- business parks that do not permit retail premises or bulky goods premises;¹⁶⁹

¹⁶⁴ For example, see *Draft Greater Taree Local Environment Plan 2008*.

¹⁶⁵ NSW Department of Planning, *City of Cities: Sydney's Metropolitan Strategy – Supporting Information* (2005) 105, B4.1.2.

¹⁶⁶ *Ibid* 63, A1.4.2.

¹⁶⁷ See for example the land use table the *Liverpool Local Environmental Plan 2008*.

¹⁶⁸ See for example the land use table the *Draft Ryde Local Environmental Plan 2008*.

- neighbourhood centres zones without retail premises;¹⁷⁰
- village zones without retail or business premises; and¹⁷¹
- high density residential zones without retail premises;¹⁷²

Tragically, the Standard Instrument, as originally conceived, did not have many of these problems. For example, offices were to be permissible in every business development zone, apartments were to be allowed in every medium density zone and retail premises were to be permitted in every enterprise corridor zone. All this changed when the government gazetted surprise amendments to the Standard Instrument, just before Christmas in December 2007.

Also in December 2007 an amendment was gazetted to the Standard Instrument which changed the definition of shop-top housing. The effect of this amendment was to ensure that only convenience type shops could go in on the ground floor of a mixed-use development (rather than, say, a supermarket) in:

- Zone R1 General Residential;
- Zone R3 Medium Density Residential;
- Zone R4 High Density Residential; and
- Zone B1 Neighbourhood Centre.

The use of multi-use zones should be required, to avoid sterilising land in the event that the market does not seek to develop some or all of the land made available and maximise the opportunities for new retail development.

4.4.5 Zone objectives that stop permissible development

Even if a given development is permissible under the land use table in a statutory plan, it can easily be refused if it is inconsistent with the zone objectives

Plans prepared in-line with the Standard Instrument¹⁷³ require a consent authority to have regard to the objectives for development in a zone.¹⁷⁴ This makes a zone objective an incredibly important factor in the development assessment process.

The key Land and Environment Court case, which deals with the operation and effect of zone objectives clauses that frustrate new retail and commercial premises development, is *Almona Pty Ltd v Newcastle City Council*.¹⁷⁵

In this matter, Justice Pearlman, of the NSW Land and Environment Court, heard a merits appeal from a decision by Newcastle City Council to refuse an application for the "establishment of bulky goods retail, hardware and retail plant nursery" in Kotara, about seven kilometres from the Newcastle central business district.

The site was zoned as light industrial 4(a) under the *Newcastle Local Environmental Plan 1987*. The site was directly opposite a large shopping complex known as Garden City.

A key issue related to the LEP. One of the applicable zone objectives was to allow commercial, retail or other development only where it is

... unlikely to prejudice the viability of existing commercial centres; ...

¹⁶⁹ See for example the land use table the *Draft Ryde Local Environmental Plan 2008*.

¹⁷⁰ See for example the land use table the *Draft Lane Cove Local Environmental Plan 2008*.

¹⁷¹ See for example the land use table the *Draft Penrith Cove Local Environmental Plan 2008*.

¹⁷² See for example the land use table the *Draft Lane Cove Local Environmental Plan 2008*.

¹⁷³ That is the Standard Instrument contained in the *Standard Instrument (Local Environmental Plans) Order 2006*.

¹⁷⁴ Cl 12 of the Standard Instrument, the *Standard Instrument (Local Environmental Plans) Order 2006*.

¹⁷⁵ [1995] NSWLEC 55.

The permissibility of a proposed development depended upon it being consistent with that objective.¹⁷⁶ The council argued that the development could not satisfy the zone objective and therefore should be refused.

Justice Pearlman rejected the developers' argument that the carrying out of the development would only be inconsistent with the zone objective if there was a real chance or possibility that the proposed development will bring into question the existence of the Newcastle CBD.

Instead Justice Pearlman ruled that the zone objective permitted

only those developments which do not negatively affect the maintenance and reinforcement of the life or existence of existing commercial centres, of which the Newcastle CBD is, in the terms of the relevant planning instruments, of a higher order or paramount.

[A] proposed development is permissible *if there is no real chance or possibility* that it will disadvantage or detrimentally affect the life or existence of existing commercial centres. In this case, the existing commercial centre in question is the Newcastle CBD which itself enjoys some paramouncy over other centres (italics added).

The proposed development would have placed other businesses in the region under competitive pressure, including those in the Newcastle CBD. That means, the project did not comply with the zone objective, and the Court refused the development application. On this occasion it did not matter, but analogous provisions existed in the regional environmental plan and the development control plan – and these too would have stopped the development dead in its tracks.

This case shows how zone objectives, that seek to support the viability of centres, operate to exclude the entry of new businesses that offer any “real chance” of competition with incumbent centre-located businesses. It's worth noting that the decision of Justice Pearlman made it clear that a “centre” is defined by reference to business and commercial zones, not the presence of any particular infrastructure. That is, it is lines on paper that drive the process, rather than the fundamentals of good planning.

Regretfully there are numerous examples of expressly anti-competitive provisions of this kind, in both the statutory plans and in the small number of more recent plans, prepared in compliance with the Standard Instrument.

The zonings under the plan set out to prevent competition businesses located in certain zones from competing with businesses in “centres”. Centres are not defined in the Standard Instrument, so it is presumably the intention to protect the business located in the “centres” identified in regional and subregional strategies from competition.

Business development zone

In the Standard Instrument the zone B5 “Business Development Zone” permits retail, but its objective is to

enable a mix of specialised retail uses that require a large floor area and warehouse uses in locations which are close to, and which support the viability of, centres.

So developments that do not support the viability of centres, such as those with the potential to attract customers away from centres, will not satisfy the objectives of the zone.

The Department of Planning says this about the intended use of business development zones:

This zone is generally intended for land where employment generating uses such as offices, warehouses, retail premises (including those with large floor areas) are to be encouraged. The zone supports the initiatives set out

¹⁷⁶ That follows from cl 12(3) of the LEP which obliged the council not to grant consent to the carrying out of development unless the council is of the opinion that the development is consistent with the objectives of the relevant zone. It also follows from the specific wording contained in zone 4(a), cl 3 of which provides that the only development which is permissible with consent is development for a purpose “... which, in the opinion of the Council, is consistent with the objectives of this zone ...”.

in the Metropolitan Strategy *City of Cities: A Plan for Sydney's future* (NSW Government 2005) but might also be suitable for application in urban areas in regional NSW.

The zone may be applied to locations that are located close to existing or proposed centres, and which will support (and not detract from) the viability of those centres.¹⁷⁷

So, even though the government's strategic policies envisage the use of these zones in areas with infrastructure sufficiently robust to support offices and retail, businesses that may compete with centres cannot be established in these areas.

Incidentally, the Zone B5 Business Development was, until recently, marginally broader. Since December 2007 the zone objective has now limited retail to "specialised retail" – a limitation of this kind was not previously considered necessary. It reduces the flexibility that was previously available.

Enterprise corridor

Zone B6 "Enterprise Corridor" exists to promote businesses along main roads and to encourage a mix of compatible uses. It is also intended to enable a mix of employment (including business, office, retail and light industrial uses) and residential uses. However, it is also an objective of the zone to

Maintain the economic strength of centres by limiting retailing.

So, developments concerned with retail are discouraged in zone B6.

Enterprise corridor zones benefit from passing traffic (over 50,000 vehicles per day).¹⁷⁸ The Department of Planning says that

[t]he zone is generally intended to be applied to land where commercial or industrial development is to be encouraged along main roads such as those identified by the Metropolitan Strategy *City of Cities: a plan for Sydney's future* (NSW Government 2005).¹⁷⁹

Enterprise corridor zones have been proposed for Victoria Road, Parramatta Road, the Pacific Highway, Anzac Parade, Pittwater Rd, Canterbury Rd and Gardeners Rd.¹⁸⁰ These areas all have excellent infrastructure which can fully support high intensity uses such as offices and retail development – yet retail development which may put businesses in centres under pressure is to be "limited".

Light industrial

In December 2007 the objectives for Zone IN2 Light Industrial were amended so that development in these areas must now "support the viability of centres". This means retail developments, such as bulky goods facilities, will be much harder to locate in light industrial areas, even if "retail premises" or "bulky goods premises" are included in the list of permitted uses for a particular local environmental plan. We are in possession of internal Department of Planning documentation (obtained through a freedom of information request) which says that this change was made at the instigation of the Shopping Centre Council and the Property Council – organisations that represent the interests of major incumbent retail landlords.

The above discussion shows how the Standard Instrument creates areas where businesses are unable to be established if they would provide competition to businesses in established centres.

¹⁷⁷ Department of Planning, Practice Note PN06-022, 12 April 2006, "Preparing LEPs using the Standard Instrument: standard zones" 4.

¹⁷⁸ Department of Planning- NSW, *East Subregion: Draft Subregional Strategy* (2007) 41; Department of Planning- NSW, *Inner North Subregion: Draft Subregional Strategy* (2007) 41; Department of Planning- NSW, *North-East Subregion: Draft Subregional Strategy* (2007) 35.

¹⁷⁹ Ibid.

¹⁸⁰ Department of Planning, *A City of Cities: A Plan for Sydney's Future – Metropolitan Strategy* (2005) 31; Department of Planning- NSW, *East Subregion: Draft Subregional Strategy* (2007) 40; Department of Planning- NSW, *Inner North Subregion: Draft Subregional Strategy* (2007) 40; Department of Planning- NSW, *North-East Subregion: Draft Subregional Strategy* (2007) 34.

The anti-competitive provisions of the NSW Government's Standard Instrument should be removed.

Namely:

- in a "Business Development Zone" retail, office premises and other uses should be permitted, even if it would provide competition to businesses located in established centres; and
- in "Enterprise Corridor" ; "Business Park"; "General Industrial"; and "Light Industrial" zones retail and other uses should be permitted even if it would provide competition to businesses located in established centres.

This means, in the Standard Instrument's Land Use Table:

- in a "Business Development Zone" the existing zone objective ("[t]o enable a mix of business and warehouse uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres") should be deleted and the following instead inserted: ("[t]o enable a mix of retail, business and warehouse uses");
- in an "Enterprise Corridor Zone" the existing zone objective ("[t]o maintain the economic strength of centres by limiting retailing activity") should be deleted;
- in a "Business Park" the existing zone objective ("[t]o enable other land uses that provide facilities or services to meet the day to day needs of workers in the area") should be amended to omit the words "to meet the day to day needs of workers in the area"; and
- in a "Light Industrial" the existing zone objective ("[t]o encourage employment opportunities and to support the viability of centres") should be amended to omit the words "support the viability of centres" and the existing zone objective ("[t]o enable other land uses that provide facilities or services to meet the day to day needs of workers in the area") should be amended to omit the words "to meet the day to day needs of workers in the area".

A direction should be inserted into the Standard Instrument ensuring that additional zone objectives are not inserted by councils to have the same effect as the above deleted provisions.

4.4.6 Prohibition on medium sized and large retail and business uses

In the Standard Instrument's "Zone B1 Neighbourhood Centre" the zone objective is

[t]o provide a range of *small-scale* retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood (emphasis added).

A subjective phrase such as "small-scale" should never have appeared in a statutory plan. The term "small-scale" is vague and undefined. True supermarkets or large format stores range from 1,500 square metres (six checkouts) for a typical Aldi or IGA Supa store to 2,500 to 3,500 square metres (12 to 16 checkouts) for a full-line Woolworths, Coles, Franklins or Superbarn. So, in industry terms, a small scale supermarket will have a floor area of 1,500 square metres. However, some government and local council planners have been known to argue that a store of 700 square metres is a larger retail establishment – an idea that is rejected by both industry and consumers.

The *Liverpool Local Environmental Plan 2008* takes the extra step of banning shops with a gross floor area of more than 1,500 square metres.¹⁸¹ So clearly, a supermarket of 2,000 square metres – which would still be small by industry standards – will be prohibited in Liverpool's neighbourhood centres. However, the fact is, even a "supermarket" of 1,000 square metres may be deprived of development consent, because of the objective that supermarket retailing must be "small". There is nothing in the *Liverpool Local Environmental Plan 2008* which says that a supermarket of 1,500 square metres satisfies the "smallness" criteria set out in the neighbourhood zone objectives.

The reference to "small scale" in the zone objective should be removed. By depriving local consumers from full-line supermarkets, locals will be forced to drive further to access lower cost groceries and those

¹⁸¹ Clause 7.25.

that are unable to drive will be deprived of the full-range of groceries that are only available at full-sized supermarkets.

In the Standard Instrument's "Zone B1 Neighbourhood Centre" the zone objective should be amended to omit the words "small scale". Height and/or FSR controls are sufficient to control the bulk and scale of development; a subjective prohibition imposed through use of the words "small-scale" is inappropriate.

4.5 Economic development incentives

4E) *What economic development incentives might attract businesses and increase jobs?*

4.5.1 Provisions in environmental planning instruments to "encourage" development

Environmental planning instruments are legal documents prohibiting and permitting activities. They 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 who frequently use the word "encourage" to signal that a particular form of development might be approved, while other forms of development are likely to find approval difficult.

For example, the *Ryde Local Environmental Plan 2010* includes an objective for its commercial core and business park zone:

To encourage industries involved in scientific research and development.

The Standard Instrument requires that this zone objective be considered when development applications in the commercial core zone are considered by consent authorities.¹⁸² This zone objective obliges and empowers a consent authority to consider refusing a development because it does not involve scientific research and development. Such a refusal would be a loss to the community of Ryde, the broader Sydney community and the state as a whole, because it may prevent Macquarie Park from reaching its full potential. It may undermine the substantial investment the state has made in this locality as a transport hub. The reality is that Macquarie Park is best developed by allowing the market to determine the kinds of businesses that are located there – with appropriate controls over building form.

Zone objectives that "encourage" certain types of development, implicitly "discourage" other forms of development, even if those other forms of development are permitted uses in a zone. Through the use of "encourage" objectives, state government set strategic planning objectives can be undermined by local councils.

Environmental planning instruments should permit development and indicate the purpose of the zone in the zone objective. However, **zone objectives should not be used as a means for favouring certain industries over others, unless it is clearly justified based on amenity issues or infrastructure requirements.**

4.5.2. Bonuses for certain types of development

Proposals to introduce different floor space ratio and height requirements for land uses of a similar intensity in the same zone are usually inappropriate.

A common defence of floor space ratios is to state that they are:

- to provide an appropriate correlation between the size of a site and the extent of any development on that site;
- to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic; and

¹⁸² Clause 2.3(2).

- to ensure buildings are compatible with the bulk and scale of the existing and future character of the locality.¹⁸³

If the above statements are a legitimate justification for the imposition of maximum floor space ratios on a site, then it is difficult to comprehend why development types of a similarly high intensity should be given different floor space ratios in the same locality.

For example, while the *Burwood Local Environmental Plan (Burwood Town Centre) 2010* does permit residential development within the town centre, it imposes a significant floor space penalty on such development. For example, a maximum floor space ratio (FSR) of 6.0:1 is permitted in the town centre, but residential FSR in the same location is restricted to 2:1. This will severely impact the feasibility of residential development in this location and will potentially stall investment and urban renewal.

In high density residential zones, the *Ryde Local Environmental Plan 2010* sensibly excludes residential flat development and multi-dwelling housing from the floor space ratio requirements but applies it to shop top housing. In this case the rule penalises retail development and confers disproportionate market power on the owner(s) of nearby retail land that is not so burdened.

This level of regulation and prescription of uses is unnecessary and must be avoided. For instance, if market conditions mean that non-residential development is not viable at a particular point in time, floor space ratio penalties may prevent any urban renewal in a given area from proceeding.

On the other hand, if residential and non-residential uses are treated equally, residential development can contribute to urban renewal when commercial or retail development is not viable.

The bulk and scale of a building is the same, whether its internal use is residential, commercial, retail or mixed-use. If a planning authority is concerned about the external building form, this can be dealt with by a development control plan, and does not need to regulate the internal use of a building. For example, a residential building can be built in the appearance of a commercial building (see the Regent Place development for example). Similarly, a supermarket can be in a mixed-use development underground, and have no external visual impact.

Density-bonus schemes generally involve local councils "low-balling" development controls for less favoured uses, to ensure that development is steered to the favoured use. The low-balled development control is typically, in substance (taking into market factors and the feasibility of development) a prohibition. If the development of the favoured use is not viable, the site will typically remain undeveloped.

We don't have to go far to find examples of this approach. Byron Shire Council has been consulting publicly on an "affordable housing" policy. This policy offers a "bonus" in return for a financial payment to fund "affordable housing". However, there is no real bonus because the council is setting its floor space ratio a low 0.4:1 and then offering a "bonus" of 0.1. This gives a total density of 0.5:1 - a very modest density for medium density development. In fact, the existing residential dwelling floor space ratio in Byron Shire is currently 0.5:1. The proposed total floor space ratio is equivalent to that existing under the current local environment plan.

North Sydney Council offers a more blatant example of this poor behaviour. In a report by council officers on the future North Sydney local environmental plan, they said the introduction of a council floor space bonus scheme

may require artificially scaling back controls for the North Sydney Centre to provide the "space" for bonuses.¹⁸⁴

¹⁸³ *Wollongong Local Environmental Plan 2009* cl 4.4.

¹⁸⁴ North Sydney Council Item PD06 Planning & Development 28/06/10, *Report to General Manager Planning & Development Committee*, authored by Brad Stafford, Senior Strategic Planner & Alex Williams, Strategic Planner.

Environmental planning instruments should not accord different land uses of a similar intensity with different floor space or height entitlements within the same zone.

5. Growing Sydney's value

5.1 Diverse employment and supporting jobs in centres

5A) What are the ways of facilitating diverse employment and supporting jobs in new and existing centres?

This question should be asking about securing employment and supporting jobs across centres *and corridors*. While you wouldn't know it from reading the *Sydney Towards 2036* discussion paper, **the Metropolitan Strategy envisaged concentrated commercial, retail and residential development across the centres and corridors of Sydney.**

In case there is any doubt it is worth recapping some key elements of the Metropolitan.

Part B of the full Metropolitan Strategy is actually titled the *Centres and Corridors Strategy for Sydney*.¹⁸⁵ The Metropolitan Strategy's *Centres and Corridors Strategy for Sydney* articulates a "vision for centres", but immediately alongside this vision, with equal prominence, is a "vision for corridors". *Sydney Towards 2036* clearly relegates *corridors* to an afterthought, even though they enjoy equal prominence with *centres* in the Metropolitan Strategy.¹⁸⁶

The Metropolitan Strategy's "vision for corridors" states that

Economic corridors will play a key role in the metropolitan and national economy, renewal corridors will be the focus for *diverse and liveable communities* and enterprise corridors will provide locations for important *local employment and services*. ... Existing and new infrastructure investment in these corridors will be used more efficiently by *concentrating new development* in these areas to support their role (emphasis added).¹⁸⁷

Item B4.1 of the Metropolitan Strategy seeks to:

Concentrate retail activity in centres, business development zones and enterprise corridors.

Item B4.1.2 of the Metropolitan Strategy contemplates retailing in industrial areas being permitted in certain circumstances.¹⁸⁸

is ancillary to the industrial use or has operating requirements or demonstrative offsite impacts akin to industrial uses.

Item B6 of the Metropolitan Strategy seeks to:

Focus development in renewal corridors to maximise infrastructure use ...¹⁸⁹

Renewal corridors are defined in this way:

Renewal Corridors generally follow transport and may join significant nodes or centres. The area of interest may be extended up to *one kilometre across*. They are usually a focus for commercial development and contain concentrations of employment, surrounded by or with the potential for complementary, higher density residential development (emphasis added).¹⁹⁰

It was the clear intent of the Metropolitan Strategy that retail and commercial activity be capable of being located in broad renewal corridors.

¹⁸⁵ NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 79 -117.

¹⁸⁶ *Ibid* 80-81; NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy* (2005) 20-21.

¹⁸⁷ NSW Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 81; Government, *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy* (2005) 2.

¹⁸⁸ *Ibid*.

¹⁸⁹ *Ibid* 111.

¹⁹⁰ *Ibid* 300.

There are good reasons why the Metropolitan Strategy envisaged commercial and retail activity being spread across centres, enterprise corridors, economic corridors, renewal corridors and – in certain cases – industrial areas. By ignoring the potential of corridors with excellent transport infrastructure to support commercial and retail development, the Department of Planning is depriving the economy of the benefits of the efficient use of this infrastructure.

Additionally, there is simply not enough land, and there will never be enough land, to provide for Sydney's needs if a centres-only approach is taken. If the NSW Government walks away from the idea of supporting retail and commercial development *across centres and corridors* it will be handing massive and disproportionate economic power to landowners located in the few centres that are cleared for such development.

Strangely, as the NSW Government moves towards abandoning its commitment to renewal and enterprise corridors Melbourne is simultaneously moving in the opposite direction.

The Victorian Government published its metropolitan strategy for Melbourne in 2002 (*Melbourne 2030*). It carried out a review and released an update in 2008: *Melbourne @ 5 million*. The latter document revises *Melbourne 2030* and sets out the Victorian Government's long-term planning framework for managing Melbourne's growth.

Melbourne @ 5 million supports the creation of five "employment corridors" by linking activity centres, universities, research and technology precincts, medical precincts, and areas with high employment.¹⁹¹

The objective of the employment corridors is to:

- provide for substantial increases in employment, housing, education and other opportunities along each corridor and better link them through improved transport connectivity;
- link the growing outer areas to a greater choice of jobs, services and goods in the corridors; and
- provide transport networks that allow circumferential, in addition to radial movements.¹⁹²

Unlike NSW, the Victorian government has moved to implement its commitment to corridor development in its statutory planning regime. The State Planning Framework is to be amended so it now

... supports the objectives of economic development by encouraging the concentration of major retail, commercial, administrative, entertainment and cultural developments into activity centres *and employment corridors*. (emphasis added)¹⁹³

The Melbourne strategy is very similar to the Sydney Metropolitan approach. However, the NSW Government will end up abandoning this approach if it adopts the Activity Centres Policy in its current form.

The Centres and Corridors approach of the Metropolitan Strategy should be retained and actually implemented.

¹⁹¹ The employment corridors are: Avalon Airport to Werribee, Melton, Melbourne Airport and Donnybrook (Hume-Mitchell); Caulfield to Dandenong; Melton to Sunshine and North Melbourne; Monash University/Chadstone to Box Hill, Austin Hospital and Bell Street; and Ringwood to Box Hill and Hawthorn: Victorian Department of Planning and Community Development, *Planning and Environment Act 1987: Victoria Planning Provisions: Amendment VC67: Explanatory Report* (2010).

¹⁹² Victorian Department of Planning and Community Development, *Planning and Environment Act 1987: Victoria Planning Provisions: Amendment VC67: Explanatory Report* (2010).

¹⁹³ Victorian Department of Planning and Community Development, *Planning and Environment Act 1987: Victoria Planning Provisions: Amendment VC67: Explanatory Report* (2010) [Amendment to clause 17 – Economic Development].

5.2 Diverse employment and supporting jobs in Western Sydney

5B) *How can we attract diverse employment and new jobs in Western Sydney?*

In much of Sydney public transport services are inadequate or non-existent – particularly in Western Sydney. Western Sydney is therefore more car dependant than other parts of the community. Many local commuters have no choice but drive to get to work.

It is unclear to us when (or even if) we will see major investment in public transport in Western Sydney. Whilst we have made a submission in response to the Metropolitan Transport Plan arguing for such an investment it is clear to us that urban development and job creation in Western Sydney cannot wait until such an investment arrives.¹⁹⁴

If Western Sydney is to secure its share of Sydney's jobs growth, it is crucial that planning policies should not discriminate against the region because of its dearth of quality public transport. Surely it is commonsense to allow local jobs in these regions, to reduce the distance that must be travelled by the residents of these areas? Yet existing planning approaches discriminate against these communities by restricting opportunities for local business parks and retail services.

Expressly linking job-rich development opportunities exclusively the quality of local public transport denies regional communities the chance to respond to the rare, but nonetheless, ground-breaking opportunities for significant job-creating office development that might arise from time-to-time.

The presence of public transport should not be a pre-requisite for new business parks, retail development or other services.

5.3 Affordable places for small and creative businesses

5C) *How do we encourage affordable places for small and creative businesses?*

The Metropolitan Strategy envisaged that the enterprise corridor zone would be available as a flexible and readily available zone for small business starts-ups.

However, councils have proven reluctant to use this zone and the shock amendments to the Standard Instrument in December 2007 gutted this zone from much of its effectiveness. Under the original Standard Instrument the enterprise corridor zone required office premises and retail premises to be permitted in this zone (with consent). Many small and creative businesses would fall into these categorisations, and being excluded from the enterprise corridor zone denies them access to a ready supply of relatively affordable land.

Similarly, the original business development zone, as its name suggests, was partly about accommodating small businesses that could not afford the expensive land costs in the Department of Planning's chosen centres. However, again, the Standard Instrument does not require business premises, office premises or retail premises to be permitted in this zone (but did originally require office premises and business premises to be permitted prior to the shock amendments to the Standard Instrument in 2007).

As a general rule business premises, office premises and retail premises should be permitted in as many zones as possible (including the enterprise corridor zone, business development zone, neighbourhood zone in order for there to be opportunities for small business and start-up businesses to get an opportunity to access affordable premises.

¹⁹⁴ <<http://www.urbantaskforce.com.au/attachment.php?id=3250>>.

5.4 Sydney's role as a Global City

5D) How do we enhance Sydney's role as a Global City?

We have attached the Urban Taskforce/BIS Shrapnel report *Going Nowhere* to this submission. *Going Nowhere* forms part of this submission and answers this question in great depth. In summary, however, *Going Nowhere* sets out a twelve point plan for reform to:

- 13.introduce new statutory objectives for the planning system, based around the principles of:
 - supporting the state's economy;
 - promoting ecologically sustainable development;
 - promoting liveable communities;
 - managing impacts on public infrastructure; and
 - promoting private investment by respecting property rights;
- 14.impose new rules to limit bureaucratic and political games by ensuring that development meeting pre-determined standards is entitled to approval;
- 15.force consent authorities to deal with matters promptly, within a deemed-to-comply timetable;
- 16.reduce uncertainty by clearly defining the matters that can be considered in the development assessment process;
- 17.ensure that a private property owner is properly compensated for removal of land use rights by the government;
- 18.reduce and reform the highest local council development levies in Australia;
- 19.redesign state infrastructure contribution levies so that economic distortions are reduced and there is greater transparency;
- 20.emulate Victoria by introducing stamp duty concessions for off-the-plan home purchases;
- 21.reform the template being used in the preparation of new local environmental plans - so it genuinely promotes good urban outcomes and reduces over-regulation;
- 22.progress the rezoning of land for development as promised in numerous strategies and give proponents Queensland-style appeal rights when rezoning proposals are unreasonably refused or delayed;
- 23.improve the handling of state and regionally significant projects by improving the expertise of those assessing the applications; and
- 24.remove the ability of bureaucrats and politicians to second guess the market and/or take into account the loss of trade, that might be suffered by existing businesses, as a result of new development.

We also urge you to closely study the related report *Deny Everything* which sets out the necessary reforms to the planning system in detail.¹⁹⁵

¹⁹⁵ The report is available online: < <http://www.urbantaskforce.com.au/attachment.php?id=3195>>.

6. Strengthening a City of Cities

6.1 Growth in centres and areas within walking distance to public transport

6A) *What is the best way to unlock the potential for growth in centres and areas, within walking distance to stations and bus stops?*

The answer to this question is simple. The existing statutory prohibitions on development should be lifted.

6.1.1 The typology of centres

The existing Metropolitan Strategy does not explain the reason for creating a detailed typology of centres. Nor does the strategy adequately explain the use to which the typology will be put.

We suggest there are two possible mutually exclusive reasons you might want to have a typology of centres. You may want a typology to describe the current condition of centres. This means the typology has no relevance for the future planning controls or infrastructure requirements of a centre.

Alternatively, you may want a typology to describe the future development potential of a location. This would be based on the quality of local infrastructure (relative to other areas that are candidates for higher density zoning), with regard to possible infrastructure improvements in the future. However, it appears that neither of these approaches has been clearly adopted by the strategy.

With respect, we submit that the Department must admit that any classification of centres in a strategy that relates to the future use of centres will be used to guide, both infrastructure planning and zoning for that locality.¹⁹⁶ Otherwise the whole existence of the typology is pointless.

The purpose of the typology of centres needs to be clearly spelt out.

EITHER

A typology must describe the current condition of centres. This means policy must make it absolutely clear that the typology has no relevance for the future planning controls or infrastructure requirements of a centre.

OR

A typology must describe the future development potential of a location. This would be based on the a robust study of the quality and capacity of local infrastructure (relative to other areas that are candidates for higher intensity uses) and have regard to possible infrastructure improvements in the future. In this case the typology will be used to inform future strategic and infrastructure planning.

6.1.2 There is no need for a specialised centre category

The Urban Taskforce has consistently criticised the decision to create a sub-species of strategic centres as "specialised centres".

¹⁹⁶ This is certainly how centres hierarchies have been used by planning authorities in the recent past. For example, the draft *Taree Local Environmental Plan 2008* contains zone objectives limiting development in each level of centre, so as to ensure that centre does not have development inconsistent with its place in the hierarchy. The draft *Lane Cove Local Environmental Plan 2008* seeks to preserve the Lane Cove town centre's relative position in the North Shore centres hierarchy. The draft *Ryde Local Environmental Plan 2008* attempts to give statutory effect Macquarie Park's status as a specialised centre, by erecting barriers to commercial development that is not in-keeping with the specialisation identified for the area by the Metropolitan Strategy and the subsequent draft subregional strategy.

For example, St Leonards is a specialised centre because it has the Royal North Shore Hospital. Do developers need the Department of Planning to tell them that health related developments might be a good idea in St Leonards given that the hospital is there? Of course not! Were government officials aware of the presence of the hospital prior to the designation of St Leonards as a specialised centre? We trust they were. Will development that is not health related be discouraged in St Leonards? We hope not, but no-one can be sure, because that would appear to be the only purpose in designating “specialised” centres.

In another example, the draft Inner North Subregional Strategy has described Macquarie Park as a specialised centre due to the presence of Macquarie University. Planning authorities have now sought to translate the specialisation of a centre into a statutory form.

In the *Ryde Local Environmental Plan 2010*, Ryde Council includes an additional objective in the commercial core and business park zones in Macquarie Park:

To encourage industries involved in scientific research and development.

The business park zone includes an additional provision which says it is a zone objective:

[t]o provide a zone with strong links with Macquarie University and research institutions and an enhanced sense of identity.

A local environment 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 planning authorities who 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.

The Standard Instrument requires that this zone objective be considered when development applications in the commercial core zone are considered by consent authorities.¹⁹⁷ If this zone objective stands we anticipate that developments will be refused because they do not involve scientific research and development. In the business park zone each development will also need to be assessed for its “strong links” with the university and research institutions. It would be possible for a consent authority to refuse development approval on the basis that such links are not sufficiently strong.

Refusing businesses development consent because they aren’t scientific enough would be a loss to the community of Ryde, the broader Sydney community and the state as a whole, because it may prevent Macquarie Park from reaching its full potential. It may undermine the substantial investment the state has made in this locality as transport hub. The reality is that Macquarie Park is best developed by allowing the market to determine the kinds of businesses that are located there – with appropriate controls over building form.

There are no benefits from identifying specialised centres separately from major centres, in fact there are very real risks that development in specialised centres will be restricted in-line for the strategic vision articulated for the centre.

The “specialised centre” category should be abolished, and existing “specialised centres” should be designated as either major centres or regional cities.

6.1.3 Neighbourhood centres, villages and town centres

We have consistently argued for a simpler local centres hierarchy. The existing elaborate hierarchy has been used by planning authorities as an excuse to artificially limit the range of uses and scale of development in so-called ‘lower-order’ centres.

¹⁹⁷ Clause 2.3(2).

Another example is offered by the *Liverpool Local Environmental Plan 2008* where neighbourhood centre zone a “neighbourhood shop” or “shop” are permitted, but “retail premises” are not permitted, even though the zone objective seeks to encourage retail uses. This appears to prohibit a range of retail uses such as a jewellery retailer or a pet shop. We cannot see any public policy reason why, in any zone, a “shop” would be permitted, but the broader “retail premises” prohibited.

In a further example, the *Draft Penrith Local Environmental Plan 2008* bans both retail premises and shops from its village zone. Only neighbourhood shops (convenience stores) are permitted. Additionally “business premises” are also banned. This means that locals will be unable to set up a shopfront to engage in a profession or trade that provides services directly to members of the public. Local communities are deprived of internet access facilities, hairdressers, video libraries and dedicated banks, post offices and dry cleaners. Why is it okay to have banking services provided as an ancillary service, in a neighbourhood shop, but unlawful to open a bank branch as a standalone service?

The standard instrument permits (and in some cases requires) a maximum floor area to be pre-set for different types of development, regardless of the merit of individual proposals, regardless of the capabilities of local infrastructure or the nature of local suburbs.

For example, the *Lane Cove Local Environmental Plan 2009* sets a maximum floorspace for neighbourhood shops at 300-400 square metres (depending on whether the shop fronts a local or regional road). In the *Draft Penrith Local Environmental Plan 2008* the limit is 200 metres. In the *Liverpool Local Environmental Plan 2008* it is 100 square metres and in the neighbourhood centre zone there is a ban on shops with a gross floor area of more than 1,500 square metres.¹⁹⁸

Surely what matters to the community are the bulk and scale of developments and off-site noise and traffic impacts? Bulk and scale issues can be dealt with by height or floorspace ratio restrictions. Noise and traffic impacts can be objectively addressed as part of the development assessment process. Restrictions of this kind may be regarded by some planning authorities as allowing a “wide range” of retail, but it certainly does not permit the “full range” of retail.

We still do not understand why there needs to be a separate categorisation for town centres, villages and neighbourhood centres. **The town centre, the neighbourhood centre and villages should be one and the same category of centre, perhaps titled simply “local centre”.**

6.2 Investment and jobs in new and existing centres

6B) *How can the planning system support investment and jobs in new and existing centres?*

6.2.1 When height limits are imposed no FSR should be set

In April 2009 the Urban Taskforce released the *Liveable Centres* report, prepared by leading urban design firm, Roberts Day. The report’s author, Stephen Moore, is a well credentialed expert in urban design and town planning.

The report found that the simultaneous use of both height controls and floorspace ratio controls is not necessary. When combined, these controls can destroy opportunities to secure good design.

Amenity issues are more appropriately dealt with by impact-driven height controls rather than floorspace ratio restrictions. The only other justification for floorspace ratio restrictions is the need to control the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic. However, as the land under discussion would be zoned as centres or economic/enterprise/renewal corridors, high intensity

¹⁹⁸ Clause 7.25.

land uses are already planned for and expected. Therefore there would be no further benefit in imposing floorspace ratio controls.

The current directive of the NSW Department of Planning which states height and FSR must be set for centres should be rescinded and instead **planning authorities should be discouraged from simultaneously setting both height and floorspace ratios in any location.**

6.2.2 Introduction of as-of-right development for centre and corridor development

Though local environmental plans may state the type of development permitted within certain zones and development control plans further articulate standards, compliance with the requirements of the local environmental plan and development control plan is not any assurance of development approval.

For instance, a developer may prepare a development proposal for a residential flat building within a high density residential zone. The proposal might be designed to comply with development standards contained in the local environmental plan and/or development control plan. Despite this, the planning authority is not obliged to grant consent. The consent authority is provided with discretion as to the application of these standards.

A local environmental plan may state a maximum height or floorspace ratio (FSR), but a developer cannot use these standards with certainty when preparing a development feasibility assessment or making a decision to purchase land.

Unfortunately, under current planning regulation in Sydney, the situation exists that even if a development proposal complied with, say height and FSR controls, the consent authority is still able to "scale back" the development and apply a lesser height or FSR under the guise of improved design or amenity outcomes. A development standard, stated in a local environmental plan or development control plan, is therefore little more than a statement of development potential and not a guaranteed minimum development potential for that land.

What this really means is that, yet again, the current planning system in NSW does not provide any certainty for an investor. Land acquisition decisions, development potential of land and land value cannot be determined with confidence.

To encourage investment in land development, the developer needs to be provided with a "bankable" statement of development potential. While NSW does not currently provide for such certainty an alternative system can be devised.

The Queensland planning legislation provides a good model. The *Sustainable Planning Act 2009 (Qld)* includes a number of provisions that would encourage investment. For instance the Act refers to "code assessable" development.

The Act provides for the preparation and adoption of development "codes" that articulate the development standards that apply to land. Development proposals can be assessed for compliance against these codes. These development proposals are considered to be "code assessable applications" and the consent authority must determine a development application with regard to the applicable codes. If the development complies when assessed against the code, the authority is obliged to approve the application, whether or not conditions are required to achieve compliance. The development application can only be refused if the proposal does not comply with the code and conditions cannot overcome this deficiency. Code assessable development does not require public notification.

Should the applicant wish to seek approval for development that is outside of the development standards in the development codes an alternative assessment pathway remains available. The applicant is able to demonstrate the merit of the proposal and argue that there is a case to approve

the development application. This form of development is known as "impact-assessable development". Impact-assessable development is more complex.

Western Australia has also adopted a similar approach to residential development. Detailed development codes have been adopted for most forms of residential development and a local government should not refuse an application that meets the requirements of the code.¹⁹⁹ The residential codes have been the basis of the residential development assessment process of Western Australia since 1991. Their use is strongly supported by the community as the "codes ensure that buyers, builders and neighbours know what they are getting"²⁰⁰.

The *Environmental Planning and Assessment Act 1979* already provides for something similar to code assessable development, although the concept is described as "non-discretionary development standards".²⁰¹ If an environmental planning instrument contains non-discretionary development standards and a development proposal complies with those standards, the consent authority:

- is not entitled to take those standards into further consideration; and
- must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards.²⁰²

While the Act, does not expressly prevent a consent authority from refusing a development application outright, when it complies with a non-discretionary development standard, such provisions can be inserted into an environmental planning instrument.²⁰³

An environmental planning instrument may also allow flexibility in the application of a non-discretionary development standard, in the same way that the Queensland system allows for non-complying "impact-assessable" development.²⁰⁴

Whilst **we see wide potential for "non-discretionary" development standards to be used to remove regulatory risk from the developing in Sydney**, as a starting point, we suggest the following measures be adopted:

- any development proposal that meets the height controls and floorspace ratios set out in a local environmental plan should not be capable of being refused or conditioned on the grounds of height, density or scale;²⁰⁵ and
- any development proposal that meets any development standards set out in, or under, the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* should not be capable of being refused or conditioned in relation to the issues intended to be addressed by those development standards.²⁰⁶

These provisions can be modelled on Part 7 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, but should also invoke section 79C(2) of the Act.

6.3.3 Development control plans will undermine the new LEPs

Council instituted development control plans (DCPs) present a grave risk to the success of the comprehensive local environmental plan process. We foresee development proposals that are clearly

¹⁹⁹ Western Australian Planning Commission 2002 Planning Bulletin # 55

²⁰⁰ Western Australia Planning Commission <http://www.planning.wa.gov.au/WAPC+statements/769.aspx> [Accessed 30 June 2009]

²⁰¹ s 79C(2)-(3).

²⁰² s 79C(2).

²⁰³ For example, see: clause 30A of the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*; clause 29 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*; and Part 7 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

²⁰⁴ s 79C(3).

²⁰⁵ See clause 29(1) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* for an example of a similar provision.

²⁰⁶ See clause 30A(1) of the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* for an example of a more narrowly phrased provision.

envisaged by, and consistent with a Standard Instrument compliant local environmental plan being refused on the basis of a development control plan.

Traditionally, development control plans were merely one factor for consideration in a complex decision-making process. It was customary, and expected, that many developments would be approved even when they did not comply to the letter, or even spirit, of a development control plan.

This was common practice, in part, because it recognised that development control plans were not particularly robust documents. They had often been prepared without the involvement of developers and therefore often ignored the needs and requirements of the end-users of developed property assets. Consent authorities traditionally felt comfortable in approving development contrary to the provisions of a development control plan when they felt a good case could be made out.

However, in *Zhang v Canterbury City Council*²⁰⁷ the NSW Court of Appeal held that

The consent authority has a wide ranging discretion - one of the matters required to be taken into account is "the public interest" - but the discretion is not at large and is not unfettered. [The DCP] had to be considered as a "fundamental element" in or a "focal point" of the decision-making process.²⁰⁸

In that matter, a consent authority dealt with a proposal for a brothel, on the basis that the impact on land affected by the presence of a brothel had to be demonstrated.²⁰⁹ However, it taking what might be regarded to a lay person as a common-sense approach, the consent authority ran afoul of pre-determined DCP 'standards' which required no such evidence. The Court concluded that this approach could only be supported if there were no "standards" which the decision-maker had to take into account.²¹⁰ It was said that

evidence, or rather the absence thereof, about actual effects [of development], was not entitled to determinative weight, without regard to the presumptive "standard"²¹¹

While *Zhang* was about a brothel, this approach is now routine and has been applied for developments as varied as multi-unit residential development;²¹² late night trading of entertainment venues;²¹³ alterations to individual dwellings²¹⁴ and industrial premises.²¹⁵

The Court of Appeal recently re-affirmed the *Zhang* approach and said the case had "authoritatively considered" this issue.²¹⁶ In this recent case the Court of Appeal made it very clear a decision-maker was

not entitled to take the view that the standards set by the DCP were inappropriate for reasons of general policy.²¹⁷

It seems odd to us, that a development control plan should be the "fundamental element" in, or a "focal point" of decision-making, when it is merely one of nine specific heads of consideration, nominated by section 79C(1), and each of these considerations is likely to conflict with each other and require a significant balancing act. We don't presume to disagree with the Court of Appeal as the

²⁰⁷ [2001] 115 LGERA 373

²⁰⁸ *Zhang v Canterbury City Council* (2001) 115 LGERA 373 at 386-7 (Spigelman CJ); Meagher and Beazley JJA concurred.

I agree with Spigelman CJ.

²⁰⁹ *Zhang v Canterbury City Council* [2001] NSWCA 167 [76]; (Spigelman CJ); Meagher and Beazley JJA concurred.

²¹⁰ *Ibid.*

²¹¹ *Zhang v Canterbury City Council* (2001) 115 LGERA 373 at 387 (Spigelman CJ); Meagher and Beazley JJA concurred.

²¹² For example, see *Longhill Projects Pty Ltd v Parramatta City Council* [2010] NSWLEC 1040 [19]; *Planit Consulting v Tweed Shire Council* [2009] NSWLEC 1383 [57]; *Moore v Kiama Council* [2009] NSWLEC 1362 [51]; *Skyton Developments Pty Ltd v the Hills Shire Council* [2009] NSWLEC 1299 [39].

²¹³ For example, see *Moonlight City Pty Ltd v Council of the City of Sydney* [2010] NSWLEC 1004 [23].

²¹⁴ For example, see *Pietranski v Waverley Council* [2009] NSWLEC 1278 [17].

²¹⁵ For example, see *Botany Bay City Council v Premier Customs Services Pty Ltd* [2009] NSWCA 226 [5] (Macfarlan JA).

²¹⁶ For example, see *Botany Bay City Council v Premier Customs Services Pty Ltd* [2009] NSWCA 226 [24] (Macfarlan JA).

²¹⁷ *Botany Bay City Council v Premier Customs Services Pty Ltd* [2009] NSWCA 226 [27] (Macfarlan JA); Ipp JA and Hoeben J concurred.

interpretation of the existing law, but we do take issue with appropriateness of the law. We think it needs to be changed.

In fact, as the law stands, if development standards in a DCP are not inconsistent with a local environmental plan, they can effectively prohibit a development - even when the local environmental plan allows an application to be made for the development.²¹⁸

It's worth contrasting the differing approaches between NSW and Queensland. In Queensland, the presence of a code creates a legally enforceable right for a development applicant to insist on the approval of their proposal, provided it satisfies the code (and the applicant is still entitled to a merit assessment in the event that the code is not complied with). In NSW, it is unlikely that any proposal inconsistent with a DCP will get serious consideration, while there is no legal certainty that even proposals that are consistent with a plan will be approved.

Leslie A Stein, a barrister and former Chairman of the Western Australian Town Planning and Appeal Tribunal and former Chief Counsel to the Sydney Metropolitan Strategy, commented on the subject of 'standards' in his work: *Principles of Planning Law*, published by Oxford University Press.²¹⁹ Stein observed that

[i]t is always the case that a discretion to vary creates an exception that is applied in limited circumstances; there is a tendency to gravitate to the rule. The origin of the development standard and questions of whether it is based on a sound town planning principle, or whether better standards could be found, are no longer considered in the application of the standard; the standard is free of any philosophy or principle. ... [T]he reason behind the rules should require examination in particular cases.

The tendency towards rigid enforcement of rules expressed as development standards is perhaps the most frustrating and destructive aspect of planning.²²⁰

No lessor authority than the House of Lords (in its capacity as the highest court in the United Kingdom), in another context, has challenged the kind of rigid thinking that now dominates development assessment in NSW:

[H]ard and fast rules should have no place when deciding questions of practical convenience. There is a place for guidelines, and for prima facie rules, or residual rules. But circumstances in individual cases vary infinitely. If convenience is the governing factor, then at some point in the system there should be space for a discretionary power, to be exercised having regard to all the circumstances.²²¹

In NSW the fact that a development control plan can both effectively prevent the goals of a local environmental plan being achieved and considerably devalue land should be a cause for public concern.

The solution is straightforward.

Firstly, the government should use its powers to immediately limit the scope of matters that can be covered by a development control plan (DCP). This means that some existing provisions in such plans should automatically become 'dead letter'. This process should not be dependent on a review of individual plans – that will take far too long to be of any practical value. The approach we are suggesting is not unprecedented; it's effectively what the government did in 2008 when it created new state environmental planning provisions restricting council discretion on apartment sizes and ceiling heights.²²² The effect of these changes was to render ineffective provisions in DCPs that prescribed more restrictive apartment sizes and ceiling heights than those required by the *Residential Flat Design*

²¹⁸ *North Sydney Council v Ligon 302 Pty Ltd [No. 2] (1996) LGREA 23.*

²¹⁹ L Stein, *Principles of Planning Law* (2008).

²²⁰ L Stein, *Principles of Planning Law* (2008) 76-77.

²²¹ *Reg v Wicks [1998] AC 92.*

²²² *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 2)* which inserted clause 30A into the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

Code. Such DCP provisions immediately ceased to have any status, despite the fact they were still technically part of the text of a council-approved DCP.

The scope of development control plans should be limited to standards that are a necessary response to any of the following issues:

- flooding and stormwater;
- erosion, sedimentation, acid sulphate and soils salinity;
- the preservation of heritage streetscapes in heritage conservation areas;
- public open space;
- the external built form (by use of building setbacks and controls for bulk, roofs, glare and reflection, walls and front fence);
- views, access to sunlight private open space, privacy;
- utility services;
- safety and security;
- signs;
- traffic access and safety, parking, loading and unloading;
- noise, odour, hazardous uses;
- waste management landfill;
- construction activity;
- outdoor dining; and
- road and pavement design.

Development controls plans should not be capable of containing:

- height, bulk or scale when height and/or floorspace ratio controls are set out in an applicable environmental planning instrument;
- any other standard where a development standard, addressing the same issue, is set out in an applicable environmental planning instrument;
- provisions concerning a building's interior, including its internal configuration, structure, materials or design, the mix retail establishments, the apportionment between retail, commercial or residential floor space in a mixed use development or the mix of dwelling types within an apartment buildings (the Building Code of Australia and SEPP 65 should be sufficient); and
- energy or water efficient requirements (BASIX is sufficient).

Secondly, **development control plans should not be proscriptive.**

Thirdly, **development control plans should only be one factor for consideration in development assessment and that it should be given no special weight above other factors of consideration.**

Finally, **a development applicant should be entitled to argue, that the requirements of a development control plan will adversely impact on the feasibility of a development envisaged by the local environmental plan.** If established, the consent authority should be obliged to modify or set aside the requirements of the development control plan. We note that other jurisdictions allow such arguments to be made.²²³

²²³ "If the board (of variance) can reasonably conclude that a zoning regulation practically destroys or greatly decreases the value of a price of property, it may vary the terms of the ordinance ...": *Culinary Institute of America v Board of Zoning Appeals of City of New Haven et al*, 143 Conn 257, 262 (1956) 121 A 2nd 637 (1956).

6.3.4 Car parking

We also note there is a special need to create a state environmental planning policy to reduce the discretion of local councils to effectively block development envisaged by local environmental plans by arbitrarily reducing car parking entitlements.

Such a policy **should set minimum car parking entitlements for different categories of permitted uses and only permit councils to impose lower car parking entitlements when it is justified by an objective expert traffic study.** Of course, such a policy should not preclude an applicant for putting forward a proposal with little or no car parking, where the applicant can demonstrate that such parking is not required (e.g. where public transport is plentiful and the development is unlikely to require or generate car related transport).

6.3 Elements are considered essential to a vibrant centre

6C) *What elements are considered essential to a vibrant 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, including business development zones, neighbourhood centres, business parks and light industrial zones.

Compact, mixed-used areas, making efficient use of land and infrastructure, make good planning sense. They create more attractive, liveable and economically strong communities. They facilitate a development pattern that supports pedestrian based communities and reduces dependence on motor vehicles, by putting employees' daily needs within a short walk of work.

6D) *How do we ensure these features are incorporated into our planning?*

The strategic direction and planning controls should be adjusted accordingly.

7. Meeting changing housing needs

7.1 Future housing types

7A) *What housing types will we need in our local areas in the future? E.g. stand-alone or terraced houses, townhouses, tall apartment buildings, small blocks of apartments with shared gardens or big houses divided into two homes?*

Sydney's congestion speaks volumes about the lack of pedestrian friendly apartment development around train lines, high frequency bus services, ferries services, light rail and other transport corridors. We also need to see many more suburban homes with their own backyard.

In the inner and middle ring suburbs we are unlikely to see significant new terraced or townhouse development because the fixed supply of detached houses in that region has driven up land prices for that land use type. As a consequence townhouse or terrace development will now rarely be the highest and best use for land already developed as detached housing in the inner and middle ring suburbs. For similar reasons, low rise apartment development (less than six to eight storeys) will often be unviable if there is a need to consolidate fragmented lots current occupied by low density housing.

As the demand for higher density housing is largely confined to the inner and middle ring suburbs, is likely that higher density housing will need to take the form of apartment development and much of this apartment development ultimately need to be six stories or more.

Of course, the development of apartments will not address the needs of all home buyers and (as the most recent Department of Planning Metropolitan Development Program report observes) there continues to be a very strong unmet demand for detached housing in the new suburbs on the edge of Sydney.²²⁴

7.2 Higher density housing

7B) *Which areas are appropriate for higher density housing – such as apartments?*

As we mentioned above, there is a need for much more apartment development around train lines, high frequency bus services, ferries services, light rail and other transport corridors. We also need to see many more suburban homes with their own backyard.

A good description of the areas that require apartment development come from a recently finalised government state environmental planning policy: the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. In this document the following areas are identified for higher density:

- 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates; or
- 400 metres walking distance of a public entrance to a light rail station or in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station;
- 400 metres walking distance of a bus stop used by a regular bus service that has at least one bus per hour servicing the bus stop between 06.00 and 18.00 each day from Monday to Friday (both days inclusive).²²⁵

The SEPP defines "walking distance" as the

shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.

²²⁴ NSW Department of Planning, *Metropolitan Development Program Report 2008-2009*, 73.

²²⁵ *State Environmental Planning Policy (Affordable Rental Housing) 2009* cl 10(2).

At this time, the above criteria is only used to facilitate the development of public housing and rent control housing run by non-profits. It is not used to facilitate new apartments for owner occupiers or renters from private landlords.

In short, the development of new compact, pedestrian-friendly, mixed-use neighbourhoods in inner and middle ring suburbs should be permitted in any area that is within:

- 400 metres of a transport corridor serviced by high quality public transport (e.g. buses, light rail); or
- 800 metres of a jetty service by a commuter ferry service; or
- 800 metres of a train station.

We would support a gazettal of a state environmental planning policy that immediately achieved this outcome, concurrently with the finalisation of the revised Metropolitan Strategy.

8. Balancing land uses on the city fringe

8.1 Concentration of greenfield development in the Growth Centres

8A) *Should we continue to concentrate greenfields development in the Growth Centres?*

Despite the government published goal for 60 to 70 per cent of Sydney's growth to be met through infill development, in 2007/08 (the most recent Metropolitan Development Program figures) 84 per cent of dwelling production was in existing urban areas.²²⁶ This meant that greenfield development accounted for just 16 per cent of Sydney's new housing supply.²²⁷ These figures have occurred despite that fact and the planning authorities proudly boast that there are record levels of land supply.

Planning authorities have "released" areas for new urban development but the planned development has not taken place. The areas selected for land release, such as Edmondson Park, have not been possible to commercially (i.e. profitably) develop. In the case of Edmondson Park the big cost item is the expensive process of unifying a large number of fragmented five acre sites into a single development site. Other nearby (but slightly further out) precincts, which do not have that cost burden, have not been released, because that would not have been "orderly".

Planning authorities have been left mystified as to why their efforts to restrict the supply of land for greenfield development to "orderly" locations has not led to development in those locations. This problem is not unique to NSW; international research suggests that there is little connection between planning strategies and the actual locations where housing is built.²²⁸

From an equity investors' point of view the answer is simple – plans and strategies are predicated on the assumption that equity investors have no choice as to what they should do with their money. They are mistaken. There are more profitable development opportunities elsewhere.²²⁹

Aside from lost economic activity, the pursuit of "orderly" development, rather than economically-efficient development has significant social costs. To quote the Department of Planning:

The main effect of supply of land in greenfield areas will be to free up housing and sites in existing urban areas to help satisfy the total annual demand for additional housing ...²³⁰

Prophetically, the NSW Government's 2005 Metropolitan Strategy warned that

[i]f no new land was to be released for urban development, the proportion of new dwellings to be built in existing areas of the city would increase to 90 per cent in the next 20 years. This would put great pressure in Sydney's existing suburbs and character and would potentially further reduce housing affordability.²³¹

Forget 20 years – within 18 months of the Metropolitan Strategy's release 85 per cent of new dwellings were being built within the existing footprint of Sydney.

It is difficult for planning bureaucracies to put themselves in the shoes of private enterprise and it is usually not possible for them to reliably assess what developments will be viable and what developments will not be attractive.

²²⁶ Ibid 134,C1.3.1.

²²⁷ NSW Department of Planning, *Metropolitan Development Program 2007/08 Report* (2009) 28.

²²⁸ B Needham and R Lie (1994) "The public regulation of property supply and its effects on private prices, risks and returns", *Journal of Property Research*, 11:3, 199 – 213, 211; JRUE (1977) *Planning and land availability*, Joint Unit for Research on the Urban Environment, University of Aston in Birmingham; G. Bramley (1993) Land use planning and the housing market in Britain: the impact on house building and house prices, *Environment and Planning A*, 25, 1021-51.

²²⁹ Home buyers won't pay more because they can find cheaper home elsewhere – whether it be an apartment or townhouse in an infill location, older housing stock in an established suburb near the urban fringe or a new free standing house in suburban Queensland or Melbourne.

²³⁰ NSW Department of Planning, *City of Cities: A Plan for Sydney's Future* (2005) 126..

²³¹ Ibid 133.

The Metropolitan Strategy says that

[t]he supply of land available for development should always exceed market demand to ensure that land values are not unreasonably raised and lower the intended level of development.²³²

This is a very sound principle and we strongly urge its retention in any revised Metropolitan Strategy. Unfortunately it is rarely followed in practice by decision-makers operating within the NSW planning system:

- when non-statutory strategies are prepared;
- when changes to statutory plans (environmental planning instruments) are considered; and
- in relation to development applications.

Planning authorities will frequently require for proponents to demonstrate whether there is a “shortfall” in land supply in a particular market or sub-market. Often a proponent will be required to commission a detailed supply and demand analysis/justification to show the existence of a “shortfall”.

This requirement is inconsistent with the Metropolitan Strategy and the market-base nature of the Australian economy. The presence of excess supply of zoned land is important to provide competition and choice for business and consumers. For example, a land owner who is sitting on undeveloped land, waiting for a better price, is given disproportionate market power by a regulatory system, that prevents other land owners from offering their land for sale in competition.

One reason, that planning authorities are often reluctant to rezone land, is a concern that an excess supply of land will lead to a collapse in land value. However, this concern is misplaced. Prices in the property market are determined by prices in the second-hand market because, at any given point in time, the overwhelming number of properties on the market are existing stock.²³³ A change in the public regulation of the supply of property will therefore affect prices only marginally at first, and that effect will continue and increase only if regulation is maintained for an extended period of time (i.e. many years).²³⁴

The main legitimate justification for the prohibitions imposed by planning laws relate to the adequacy or inadequacy of publicly provided infrastructure for a particular form of development. Regretfully, planning authorities generally think that the main reason for a ban is that a particular kind of development is “not required” or “already oversupplied”. Whether they are right or wrong in a particular case (and they’re often wrong) is irrelevant. The issue is, or should be, whether the infrastructure exists or will exist to support the proposed development.

For this reason a demand and supply analysis should have no relevance in the development assessment process if the appropriate zoning is already in place. In a strategic planning exercise, it should have no relevance if the infrastructure is already in place (as is often the case in infill/brownfield locations). It may be necessary in strategic planning, when the government needs to make a decision about investing limited public funds in new infrastructure, to facilitate urban development – this is most likely to arise in relation to greenfield development.

Should land owners, within or outside the growth centres, present proposals to government for land release/rezoning we would favour assessment of the proposal on its merits. It should not matter whether the land is formally inside or outside the growth centre boundaries.

²³² Department of Planning, *City of Cities: A plan for Sydney's Future: Metropolitan Strategy Supporting Information* (2005) 123.

²³³ B Needham and R Lie (1994) “The public regulation of property supply and its effects on private prices, risks and returns”, *Journal of Property Research*, 11:3, 199 – 213, 202.

²³⁴ *Ibid.*,

8.2 Food production in the Sydney Basin

8B) *Should more be done to encourage food production in the Sydney Basin?*

Increased 'protection' for agriculture in the revised Metropolitan Strategy may come at a cost of a dignified retirement for Sydney basin farmers.

The NSW Minister for Primary Industries, Steven Whan, has said that he wanted to see "a greater focus on the protection of agriculture" in a revised Metropolitan Strategy for Sydney. On 17 May 2010 Mr Whan said that a team of government officials working with Wollondilly, Penrith and Hawkesbury councils are considering designating areas for agriculture within the Sydney Basin. This might involve "a new mix of planning tools such as agri-business parks or farming clusters".

Sydney vegetable farms are struggling because it is hard for them to compete with larger, more efficient operations. Sydney's farms are small - an average of two hectares - compared with the national average of 33 hectares.

The Australian Bureau of Agricultural and Resource Economics says that for every dollar invested, a large farm gives five times the financial return of a small farm. That's why food production on the urban fringe is less important for NSW, than any other state, bar Western Australia."

More than 93 per cent of Sydney's fruit needs and 85 per cent of Sydney's vegetable consumption is supplied from outside the Sydney region. Most vegetables produced in NSW come from the Murray and the Murrumbidgee regions, not Sydney,

If Sydney farmers are denied the opportunity to sell their land for urban re-development, they may not be able to exit from an unviable business. They may lose the chance to have a dignified retirement. New town planning controls cannot turn an unviable business into a viable one.

We do not support new land use controls which will have "a greater focus on the protection of agriculture" in a revised Metropolitan Strategy. We also do not support designating areas for agriculture within the Sydney Basin.

8.3 Protection of land on the city fringe

8C) *To what extent should land on the city fringe be identified and protected for open space and conservation?*

Median rents for three bedroom homes in outer suburban Sydney have increased by \$110 a week – 46 per cent – in the last five years. Rents are skyrocketing because there simply isn't enough suburban homes with their own backyard. The supply of commercially developable land on the edge of our city has dried up to a trickle.

Much of the land that has been released is burdened with many small owners who aren't willing to sell. The NSW government needs to get large sites stuck in the planning pipeline released for development and rezoned.

NSW Department of Planning data indicates that Sydney lot production averaged 2,250 from 2004/05 to 2008/09. This rate of lot production is well below the objective level for new housing supply in greenfield areas of 7,000 to 8,000 per annum.

The Growth Centres Commission provided land use layouts for the North West and South West Growth Centres showing the locations of land to be development and land to be protected.

These lands are generally shown in Figures 5 and 8 of the recently exhibited Growth Centres Program Report.²³⁵ The development areas provide for residential and employment lands and related infrastructure, and also include areas of open space.

The protected areas under the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) are comprised of flood prone lands and conservation areas.

The vegetation on flood prone lands is protected through the vegetation clearing development controls in the Growth Centres SEPP. Limited development may occur in these areas, and any loss of vegetation is required to be offset, in accordance with the Growth Centres Biodiversity Certification.

Furthermore, the three types of conservation areas that have been zoned through the SEPP will be brought into public ownership over time and be managed for conservation or recreation. Development in these areas is restricted and native vegetation on these lands is to be retained and protected.

In 2007 the Growth Centres Conservation Plan was prepared. This further defines and reinforces conservation values and also provides a suite of tools, including funds to achieve positive conservation outcomes.

This investigative and mapping work has more than adequately identified areas suitable for development and quarantined land for conservation purposes. In fact, we would suggest that this process has resulted in a generous allocation of land and funds for conservation purposes.

It is of utmost importance that this very good work not be wasted in this process. In particular, Government must bear in mind that the community has relied on this work, has consulted maps published by the Growth Centres Commission and has made investment decisions based on this published material. **It would be inappropriate to suggest an alteration or otherwise reduction of land set aside for development purposes.**

8.4 The process of Greenfield land release

8D) *How can the process of Greenfield land release be improved?*

The existing process, by which the government must declare certain growth centre precincts to be "released for urban development" before a "development code" can be prepared should be abolished.²³⁶

Proponents should be able to approach councils and the Department of Planning with proposals for land release at any time and precinct planning should commence once a reasonable basis to proceed has been established.

²³⁵ DECCW & DoP, 2010. *Sydney Growth Centres Strategic Assessment - Draft Program Report*, May 2010, pp. 18-26.

²³⁶ *Environmental Planning and Assessment Regulation 2000* cl 275 and cl 276.

9. Where will renewal happen and what will it look and feel like?

9.1 New centres

9A) Which parts of Sydney would benefit from a new centre with shops, small businesses and public transport?

Any location which is able to broadly satisfy the suitability criteria (with the exception of the last point) on pages 11-12 of the **Draft Centres Policy released in April 2009, should be accepted as a new centre or renewal or economic corridor** if a proponent emerges, who is willing to fund the necessary works.

The criteria to be considered would be:

- access to public transport, or the infrastructure capacity to support future public transport;
- good pedestrian access;
- good road access for employees, customers and suppliers and, where necessary, capacity to provide new road infrastructure;
- close proximity to local labour markets with the skills required by business;
- urban design opportunities that create the potential to integrate with surrounding land uses;
- potential to increase the amenity of the local area;
- capacity to contribute to environmental outcomes; and/or
- environmental constraints, such as flooding.

It is not possible to comprehensively identify all possible centres in any strategic planning exercise and nor should the Metropolitan Strategy or any subregional strategy attempt to do so.

9.2 Improvement in design

9B) How can we improve the design of public spaces and new buildings in existing areas?

This question invites submitters to argue for or against increased regulation, but no problem is clearly identified and no case for regulation is made out. Before such a sweeping proposition is put, the Department should address the first four of the NSW Government's seven better regulation principles:

- Principle 1: The need for government action should be established.
- Principle 2: The objective of government action should be clear.
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
- Principle 4: Government action should be effective and proportional.

Further government regulation is unlikely to lead to better design. In fact, in our experience, government regulation tends to stifle innovation and creative flair and foster cookie cutter design efforts.

9.3 Barriers to accessing key services

9C) What are the barriers to accessing key services in your local area?

9D) What future uses, activities and services should be grouped in and around centres?

We are concerned at the Department's apparent abandonment of the reformist move to multiple-use zoning embodied in the original 2006 Standard Instrument. In order to put our concerns properly in context, it is necessary to briefly discuss the policy issue of multiple-use zoning versus single-use zoning.

The NSW planning system is inherently reluctant to zone for a mix of uses. This is now out-of-keeping with international best practice. The original 2006 Standard Instrument sought to break-down the rigid rules that re-inforced single-use zoning by restricting such zones, and instead favouring a series of multiple-use zones. This would have delivered more vibrant urban communities and reduced the pressure on Sydney's road system by reducing car travel and providing greater opportunities to locate services close to where people live, work and to where they already travel.

The December 2007 shock amendments to the Standard Instrument represented a roll-back of the reform push. Town planning traditionalists successfully sought to re-instate the primacy of single-use zoning in NSW. The NSW Department of Planning paper *Potential Amendments to the Standard Instrument – March 2010* largely represents a further step to dispose of the last vestiges of the visionary multiple-use zoning system, pioneered in 2006, but which has never been implemented.

These issues were canvassed in the *Liveable Centres*²³⁷ report by urban design experts, Roberts Day. The report highlights how recent zoning plans prevent new homes being built in the areas that need it most. The report's author, Stephen Moore, is a well credentialed expert in urban design and town planning. Mr Moore concluded that:

- There is an endemic bias against residential development in the heart of centres.
- NSW is being denied the benefit of many genuine mixed-use centres.
- Mixing uses around public transport is the most effective way to reduce unnecessary traffic congestion.
- Reducing car dependence also boosts household disposable income. The average yearly cost of car ownership is the equivalent of servicing a \$90,000 mortgage debt.
- Physical form is a place's most intrinsic and enduring characteristic. Regulation should be concerned with the physical form of buildings, rather than the use of a building.

Tragically, the Standard Instrument, as originally conceived, did not have many of these problems. For example, offices were to be permissible in every business development zone, apartments were to be allowed in every medium density zone and retail premises were to be permitted in every enterprise corridor zone. All this changed when the government gazetted surprise amendments to the Standard Instrument, just before Christmas in December 2007.

Also in December 2007, an amendment was gazetted to the Standard Instrument which changed the definition of "shop-top housing". The effect of this amendment was to ensure that only convenience type shops could go in on the ground floor of a mixed-use development (rather than, say, a supermarket) in:

- Zone R1 General Residential;
- Zone R3 Medium Density Residential;
- Zone R4 High Density Residential; and
- Zone B1 Neighbourhood Centre.

²³⁷ S Moore, *Liveable Centres* (2009). The report is available on the internet: <<http://www.urbantaskforce.com.au/attachment.php?id=2375>>.

A zone like the Standard Instrument's mixed-use zone (as originally conceived) offers a market friendly means of accommodating high intensity employment and residential uses in single zone. That is, once the decision has been made that the infrastructure of an area is suitable for high intensity uses, it does not matter what mix of uses ultimately emerges. This can be managed through market processes. A mixed-use zone, properly implemented, allows this to happen.²³⁸ Other zones that could offer a more flexible approach are the enterprise corridor zones (if modified) where office, retail, residential and light industrial uses could be flexibly mixed, and the business park zone (where retail, office and light industrial uses should be able to be mixed, if the Standard Instrument were appropriately amended).

The benefits of mixed-use zoning, well articulated in the report *Liveable Centres*, are often not realised because of planning criteria that requires authorities to be 'certain' that they can deliver sector based targets for commercial office, residential, etc. When land is able to be used flexibly for different uses, planning authorities do lose control as to the precise use of the land. This is ultimately in the public interest because it allows the market to do what it does best – deliver the product that delivers the greatest value to the economy and community.

In the greater scheme of things, there is little risk that, for example, housing will displace commercial development across a region; or conversely, that retail will displace housing. Ultimately, all will find their relative need to the community (as expressed through their economic value).

Too many planning authorities view zoning as an exercise in dividing up a fixed amount of development across different geographic areas. They frequently fail to appreciate that by instating restrictive zoning, the economic and social value of development, and the overall level of development activity, is reduced.

If there is a concern that by rezoning land for a mix of uses, there will be less land available for high density residential uses, just rezone some more land for high density residential. There is no actual shortage of land in NSW – just a shortage of land zoned for some key uses (such as retail, high density residential and greenfield development).

The use of multi-use zones should be encouraged; to avoid sterilising land in the event that the market does not seek to develop some or all of the land made available.

It's important to understand that while we advocate for mixed-use development to be permissible, we do not suggest that it should be mandated.

That is, the Standard Instrument should allow (but not require) a mix of commercial, residential and retail development in a single zone, and even in a single building.

²³⁸ By "properly implemented" we are referring to a mixed-use zone that does not contain backdoor means of discrimination against different high intensity uses. An example of such discrimination is offered by the *Burwood Town Centre Local Environmental Plan 2008*, which zones for mixed uses, but then has discriminatory floor space ratios based on whether the use is retail;/commercial or residential.

10. Implementation

10.1 Key characteristics of an urban renewal authority

10A) What should be the key characteristics of an urban renewal authority (e.g. Sydney Metropolitan Development Authority)?

10B) What legislative and planning tools should be available to such an authority?

10.1.1 Compulsory acquisition powers

In the *Metropolitan Transport Plan: Connecting the City of Cities* the government says that it will change the law to enable "compulsory acquisition of property covered by an adopted urban renewal precinct plan in situations where achieving an urban renewal outcome is at risk – even where the property may be on sold for private development".²³⁹

Almost any significant new urban renewal project is likely to involve some private land.

Governments and councils should have a crucial role in consolidating fragmented land parcels into single sites to enable major urban renewal by the private sector. Without the power to acquire land on just terms, many derelict parts of our urban centres may never be re-built.

We would support legislation to enable urban renewal through compulsory acquisition of fragmented land parcels, if, and only if, the government pursues a model which gives land owners full compensation.

In the case of the Civic Place development (and in relation to the powers of the Sydney Metro Authority) the government has pursued the wrong model. We hope that it does not do so again. Property rights form the basis of our economic system. Investment cannot and will not take place unless there is clear unambiguous title to property. This kind of clarity necessarily means a landholder must be able to exclusively profit from the use and the development of their land.

NSW has had difficulty in attracting investment in recent years, in part, because of the enormous discretion wielded by planning authorities. The planning system, with its arbitrary decision making and unpredictable levies, has weakened the link between land ownership and the ability to create value by developing land.

It's crucial that any powers given to the Sydney Metropolitan Development Authority do not make this situation worse by creating incentives for the authority to nationalise land in order to rezone, make profits, and sell the land back to the private sector. Any legislative regime which facilitates this kind of conduct damages the NSW economy.

We support an alternative approach, based on the United Kingdom model for urban renewal. Our proposal is as follows:

- Landholders must be entitled to just terms of compensation.
- Landholder compensation must be valued based on the rezoned value of the land, following the granting of the final development approval, in connection with the urban renewal project. That is, any consequent land value uplift must flow to the landholder, rather than the acquiring state government authority.
- The actual transfer of title from the original landholder should not take place until the rezoning is completed and the development application is approved. This will permit a proper basis for striking a

²³⁹ NSW Government, *Metropolitan Transport Plan: Connecting the City of Cities*, 26.

just terms land value. In the event that the landholder wishes to exit ownership early in the process, before these matters are finalised, they should be entitled to compensation based on what is known at the time and a subsequent additional payment based on the final increase in land value, arising from the additional permitted development potential.

- The industry, including the Urban Taskforce, must be consulted on the detail of any proposed laws.

In the United Kingdom where planning approval is granted for additional development on acquired land within ten years after a valuation date, the land owner is entitled to the difference between the amount actually received and the amount the landowner would have received, if the approval had been in force when:

- the notice to compulsorily acquire was issued; or
- (in the case of a sale by agreement under the threat of compulsory acquisition) at the date of the sale contract.²⁴⁰

Urban renewal projects are clearly in the public interest. However, property rights must be respected if private sector development investment in NSW is to resume.

The government should consult industry, including the Urban Taskforce, on the detail of any proposals prior to their introduction into Parliament.

10.1.2 Improved handling of regionally significant projects

The staff of the proposed Sydney Metropolitan Development Authority should prepare development assessment reports and liaise with state government agencies for matters before joint regional planning panels in Sydney, in lieu of local council staff.

10.1.3 Assuming all state powers within development areas subject to the Authority's jurisdiction

In any potential development area or precinct specially placed under the Sydney Metropolitan Development Authority's jurisdiction, the Authority should assume all statutory powers exercisable by any state government agency or corporations in relation to development proposals. This would include the powers of the Roads and Traffic Authority, Sydney Water, Energy Australia/Integral Energy (in their capacity as distributors), the Department of Environment, Climate Change and Water, the Department of Planning, etc. The Authority would be free to consult other agencies as it sees fit, but ultimately it would be vested with the authority to make the final decision.

Anything short of this would see the Authority merely acting as a post box for other government agencies.

10.2 Performance indicators

10C) *What indicators should we use to measure the success of our Metropolitan Plan?*

It is important that the NSW Government measure its performance based on actual outcomes on the ground, not on procedural requirements.

That means the measure of the strategy's success or failure is not how many statutory plans have been gazetted, nor their notional development capacity (which usually every wrong). Similarly, notional greenfield land "releases" or "rezoning" are no measure of success if the actually homes have not been built.

²⁴⁰ Office of the Deputy Prime Minister, *Compulsory Purchase and Compensation: Compensation to Business Owners and Occupiers* (2004).

The Department of Planning should be tracking independently audited figures on actual (not just approved):

- net additions to the housing stock (i.e. excluding new homes that merely replaced demolished stock);
- net additional shopfront floor space;
- net additional commercial office floor space;
- net additional to entertainment facilities floor space;
- net additional industrial and light industrial floor space.

11. Further information

The Urban Taskforce is available to further discuss the issues outlined in this submission.

Please contact:

Aaron Gadiel
Chief Executive Officer
GPO Box 5396
SYDNEY NSW 2001

www.urbantaskforce.com.au

Ph: (02) 9238 3955

E-mail: admin@urbantaskforce.com.au