Urban Taskforce
AUSTRALIA

17 May 2011

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

By email: cityplan@cityofsydney.nsw.gov.au

Dear Ms Barone,

Re: Draft Sydney Local Environmental Plan 2011 and Draft Sydney Development Control Plan 2010

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

The Urban Taskforce has reviewed the draft *Sydney Local Environmental Plan 2011* ("the plan") and draft *Sydney Development Control Plan 2010* ("the DCP") and we have identified some issues of concern. We appreciate the additional time that the City has given us to make this submission.

Speaking broadly, the most striking feature of the City's proposals is their complexity. The City of Sydney has placed on exhibition a massive 915 pages of new planning controls as part of the supposed effort to 'simplify' the urban development process.[1] The highly prescriptive controls will deprive Sydney of innovative solutions to the city's needs. This level of regulation is simply overkill.

There's nothing wrong with rules to protect the public interest, but 915 pages is longer than the state's *Occupational Health and Safety Act* (92 pages), the state's *Food Act* (104 pages) and even the *Stamp Duties Act* (238 pages). In fact, you could pile those three Acts on top of each other, and the City of Sydney's new controls would still be taller. No other NSW local council even comes close to this level of regulation.

This kind of regulation would have two effects. Firstly, we'll see a more monochrome city. The look and feel of the place will display less imagination and less innovation. Secondly, a lot of investment will also be driven elsewhere, to places where buildings aren't designed by public sector regulation.

The City of Sydney should be trying to stimulate housing, retail and commercial development. The City of Sydney belongs to many more people than just its existing residents. For every two local residents, five people work in the City of Sydney. Thousands more visit it every day.

The reality is, in the City of Sydney non-strata home prices average $944,000 each, while strata homes average $624,000. It's not healthy to allow wealthier house owners to use their local council to block more affordable housing - and deny middle income earners the chance to enjoy inner suburban living.

For every home that isn't built because of these new regulations, another household is forced to locate farther away from their workplace. That means more congestion on Sydney's roads and less people using public transport.

Blocking urban development in the City of Sydney by over-regulating may win votes at council elections, but it is not in the interests of the broader Sydney metropolis.

Some of our more specific concerns are outlined below.

[1] The Draft LEP 2011 exhibition material includes 388 pages of text plus 210 maps. The Draft DCP 2011 exhibition material includes 223 pages of text plus 94 maps.

Part A – Draft Sydney Local Environmental Plan 2011

1. Aims and zone objectives should be improved

It is encouraging to note that the plan recognises the importance of the City of Sydney to the local, state and national economies. This sets a strong foundation for effective and balanced local planning. It is important that there is clarity in aims and objectives. In this regard, there is considerable opportunity to refine and simplify the aims of the plan for improved clarity whilst still achieving the same result.

We suggest that Council replaces the plan aim:

> (a) to reinforce the role of the City of Sydney as a primary centre for Metropolitan Sydney and a preferred location for business, educational, cultural and tourist activities both within New South Wales and Australia and internationally,

with the following two aims

(a) to reinforce the role of the City of Sydney as a primary centre for Metropolitan Sydney; and,

(b) to support the City of Sydney as an important location for business, educational, cultural and tourist activities.

These aims are a rewording of the draft aim, however, by dividing the aim into two, clarity is improved. Furthermore, the suggestion that the City of Sydney is "preferred" by the regulatory system, raises the impression that the planning system should be discriminating against businesses that wish to locate outside of the City of Sydney. We trust that this is not the City's preferred outcome.

The plan aim

> (h) to support a range of existing and future mixed-use centres and to ensure that those centres remain viable,

says the plan to guarantee the "viability" of centres. It is difficult for planning bureaucracies to put themselves in the shoes of a 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.

We suggest that the plan aim (i) be reworded to simply state

(i) to provide for a range of existing and future mixed-use centres.

The zone objective for the newly introduced Zone B8 Metropolitan Centre is, unfortunately, in desperate need of redrafting. For instance, the three clumsy zone objectives

> • To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.
>
> • To provide opportunities for an intensity of land uses that are commensurate with its global status.
>
> • To permit a diversity of compatible land uses characteristic with its global status and that serve the workforce, visitors and wider community.

could be reworded to be less verbose and convey objectives clearly and in plain English.

If the objectives seek to convey that Sydney is a special, global centre and that a multitude of land uses must be permitted, then the zone objectives should be worded to say so.

The three objectives should be simplified to state:

- **To recognise that Sydney is a global city;**
- **To provide development opportunities for buildings of a scale and land use intensity that is commensurate with the City's global status; and,**
- **To provide a mix of compatible land uses, including business, office, retail, residential entertainment and tourist uses that serve the workforce, visitors and wider community.**

Plan aims and zone objectives must be clear, concise and be stated in such a way so that the achievement of aim or objective may be readily understood and tested.

2. <u>Residential accommodation should be widely permitted in the Metropolitan Centre and Commercial Core zones</u>

The existing Sydney Local Environmental Plan 2005 identifies and defines the city centre zone. This area includes the areas proposed to be zoned B8 – Metropolitan Centre. The existing city centre zone includes the zone objective:

> (d) to provide for increased residential development with appropriate amenity and to ensure the maintenance of a range of housing choices,[2]

However, the proposed B8 – Metropolitan Centre zone does not include a comparable zone objective and residential accommodation, while not prohibited, has not been specifically included as a land use permitted with consent.

The Urban Taskforce is a strong advocate of mixed use centres. We argue that vibrant, exciting places are those that include a mix of compatible land uses. If the Council of the City of Sydney is serious about creating a lively, active and safe city centre, then residential land use must be actively encouraged.

Limiting the City Centre to only commercial uses is not only unimaginative and restrictive but is also in conflict to contemporary planning philosophy, including key strategic planning documents such as Sustainable Sydney 2030, Metropolitan Plan 2036 and Sydney City Subregional Strategy. These documents all predict significant population growth in the City of Sydney and signal the need for additional dwellings.

For the 2004-2031 period, a subregional housing target of 55,000 additional dwellings was set for Sydney City. This target has been recently revised in the Metropolitan Plan 2036 to 61,000 for the 2006-2036 period. While we understand that these targets are set for the entire Sydney City Local Government Area, limiting the location of where new dwellings may be provided will definitely hinder the delivery of this target.

We are passionate about initiatives that encourage land use mix and believe that successful places include a mix of uses, including jobs, retail, entertainment and residential apartments all coexisting, working together to make a centre attractive and successful at all. Commercial cores without retail, entertainment and residential uses are lifeless, cold and uninviting places outside of business hours.

A vibrant, active global city needs a variety of land use including residential uses. Global cities such as New York, London, Paris and Singapore recognise the value and contribution that residential land use makes to a successful global city and make allowance for appropriate residential opportunities.

Therefore, it is essential that the permissibility of residential uses in the proposed zone B8 be encouraged by inclusion of a zone objective that recognises the importance of residential uses in the metropolitan centre. "Residential accommodation" should also be included as a land use "permitted with consent".

Furthermore, "residential flats" and "shop top housing" should be permissible in the commercial core.

3. <u>The Planning system should not be used to hinder competition</u>

The mandatory zone objectives for zones B4-Mixed use and B7-Business Park are comprehensive, clear and do not require further clarification. However, the Council has inserted an additional objective which says:

- To ensure uses support the viability of centres.

[2] Sydney Local Environmental Plan 2005. Cl. 36(d)

Obviously this objective has been introduced to the plan as an attempt to encourage a centres hierarchy. As it stands, the Council inserted objective will enable restriction of commerce, limitation of choice and will in all likelihood hamper the evolution of centres.

Even if a particular land use is permitted and meets the mandatory zone objectives, this council introduced objective will enable growth in centres to be limited with the objective of protecting and ensuring greater growth in other competing centres. This approach is not responsive to community needs. In particular, it fails to recognise that restricting development in one locality will not necessarily mean the same level of development will occur in the favoured location. Development opportunities are likely to be lost to the community as a whole.

Determining if a development proposal is "supporting" the viability of centres is open to interpretation. Including objectives such as these will introduce more uncertainly to the development determination process. That is, even applications for permitted land uses will be open to challenge by competitors on the grounds that the development does not "support the viability of centres".

In addition, the meaning of "viability of centres" is not clear and meeting the requirements of such an objective will be problematic. That is, how the viability of a centre assessed should be determined and which uses will support a centre's viability is open to speculation. The measure for viability is open to debate. Some would argue that viability should be measured on economic performance while others would seek a broader measure.

The importance of correct and consistent language when drafting local environmental plans, particularly in relation to plan aims and zone objectives led the NSW Department of Planning and Infrastructure to release an LEP practice note. Council will be aware that this practice note gives clear direction when drafting LEP aims and objectives. Specifically the LEP practice note advises that:

- In many instances there will be no need for a council to add any additional objectives;
- Do not repeat matters set out in section 79C—Evaluation of the Environmental Planning and Assessment Act 1979;
- Avoid using subjective language open to different interpretation, e.g. 'well-designed', 'high quality', 'liveable', 'economically sound' or a vague phrase such as 'creating a sense of place'.[3]

The Department of Planning and Infrastructure practice note specifically notes that subjective language open to different interpretation should be avoided.

While we appreciate that Council has only inserted one zone objective, it is worth considering the impact of such an objective and the advice of the Department of Planning. In this regard, we argue that there is not a need to add the additional objective that seeks the consideration of the "viability of centres" because section 79C of the Environmental Planning and Assessment Act 1979 requires the consideration of

> the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.[4]

Notwithstanding any of the above, it is noted that the Zone B4 Mixed Use applies to a large portion of the southern area of the Sydney Local Government Area in the vicinity of Green Square. The above zone objective is clearly one that has been introduced to ensure that new development in a mixed use zone, even if permitted, can be restricted to support the viability of centres. This zone objective is a clear example of how the planning system can be used to protect existing businesses located within existing centres from competition.

This protectionist principle is reinforced when reference is made to the Special Character Areas - Retail Premises Maps attached to the Plan. Sheets CL2_017 and CL2-018 of this series serve as good examples of the planning system being used to further restrict development and

[3] NSW Department of Planning 2009. LEP Practice Note – Local environmental plan zone objectives. PN 09-005. 10 September 2009.

[4] Environmental Planning and Assessment Act, 1979. 79C(b)

competition. These maps show a hatched overlay around an existing local centre. The hatched area sits across a mixed use zone that surrounds the centre. The meaning or impact of this hatched area is determined with reference to clause 7.23 of the Plan. This clause says:

> Large retail development near Green Square Town Centre [local]
>
> (1) This clause applies to land identified as Category 2 on the Retail Premises Map.
>
> (2) The objectives of this clause are as follows:
>
> (a) to promote the economic strength of Green Square Town Centre and planned local centres by limiting large-scale retail development to those centres,
>
> (b) to support the provision of community facilities and infrastructure in the Green Square Urban Renewal Area.
>
> (3) Development consent must not be granted to development on land to which this clause applies for the purposes of retail premises with a gross floor area greater than 1,000 square metres.

The effect of this clause is obvious. Even where retail land uses are permitted, the incentive to invest in retail developments is discouraged by limiting the amount of floor area permitted in a location so that other existing and planned centres are protected from competition.

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

In February 2011 the Productivity Commission found that restrictive zoning can act to constrain competition in a number of ways including:

- reduced number of businesses in an area;
- reduced scope for new entrants; and,
- reduced diversity of products.

Furthermore, restrictive land use zoning results in longer travel times and increased cost of appropriately zoned land.[5]

There should be no references to the "support of the viability of centres" in the plan nor should there be a restriction on retail floor space where retail is permitted in the vicinity of the Green Square town centre.

4. Retail premises are appropriate land uses within a business park zone

"Retail premises" are prohibited uses in the business park zone. Neighbourhood shops are permitted, however these are defined to be

> premises used for the purposes of selling general merchandise 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 the business park zone:

- must sell "general merchandise";
- must satisfy "day-to-day needs"; and
- must be directed to people who live or work locally.

Furthermore, neighbourhood shops are also limited in floor area (80sqm of retail floor area), which makes it impossible for a moderate scale supermarket to be established.

As noted above, 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 items in their locality.

---

[5] Australian Government Productivity Commission Draft Research Report. Feb 2011. *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, pp.238-251.

Business parks and other business zones are intended to be centres of employment. These environments function best when people working in these areas have somewhere to shop before work, at lunch time and 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.

"Retail premises" should be permitted uses in all business zones, including the business park zone.

5. <u>The phrase "degree of equity" is too vague in its current context</u>

Clause 4.4 - Floor space ratio includes objectives should be improved.

Clause 4.4(1)(b) says that the floor space ratio controls are intended

> *to regulate the density of development, built form and land use intensity* and to control the generation of vehicle and pedestrian traffic ... (emphasis added).

It is true that floor space ratio controls "regulate the density of development, built form and land use intensity", but such a regulation is the means to an end, not the end itself. An objectives clause is supposed to be a description of the "ends" not the means (the means are sufficiently explained in the body of the clause). In the case, the objective is simply the second part of clause 4.4(b). **That is, clause 4.4(1)(b) should be revised to say:**

> **to control the generation of vehicle and pedestrian traffic ...**

Objectives 4.4(1)(c) is particularly problematic as it suggests that the objective of floor space control is

> to provide *a degree of equity* in the development potential of sites of different sizes in the same land use zone ... (emphasis added)

The notion of "a degree of equity" conjures up different ideas in different people's minds.

For example, some people may believe that "equity" means the development of one site should be held short of its full potential, merely because earlier sites were similarly held back. In our view, one wrong decision, does not justify another. "Equity" in this sense should not be used as a justification for a floor space ratio control.

However, a *legitimate* objective for a floor space ratio control is the apportionment of development capacity between sites in the same locality, when (say, due to road size) there are over-arching limitations on the development that may be possible in that locality. In that case, the idea of equity may be relevant in ensuring that the available development capacity is distributed reasonably amongst landholders. If this is what is being referred to by clause 4.4(1)(c) it should be more clearly worded. **That is clause 4.4(1)(b) should be revised to say:**

> **to reasonably apportion development capacity amongst sites where the overall development potential in a locality is constrained by the capabilities of local infrastructure ...**

6. <u>Clause 4.6 should be available to depart from development standards for height of buildings and car parking where standards are unreasonable or inappropriate</u>

Clause 4.6 - Exceptions to Development Standards is important and its use should not be limited. As Council would understand, the intention of this clause is to provide flexibility in the application of development standards and to provide better outcomes for and from a development proposal.

By prohibiting the use of clause 4.6, consent authorities are deprived from setting aside rules when their application would be unreasonable and/or there are sound planning grounds to do so. This is all that SEPP 1 or clause 4.6 would permit. There is no public policy reason why consent authorities should not have the ability to set aside development standards that are "unreasonable or inappropriate in the circumstances of the case".

The process for the consideration of an exception to a development standard is rigorous and requires the consent authority and the Director General of the Department of Planning and Infrastructure to be satisfied that the non-compliance with the development standard can be supported on planning grounds and is in the public interest. There is ample opportunity to ensure that a contravention of development standard is properly considered. It is for this reason that excluding standards from the operation of this clause is not warranted and potentially limits good development outcomes. In this regard, excluding parts of clause 4.3 - Height of Buildings, Division 3 of Part 6 - Height of buildings and overshadowing and Division 1 of Part 7 - Car parking ancillary to other development is not logical.

Development standards such as these have the potential to limit good development outcomes, hence **the opportunity to present a well considered environmental planning argument to the consent authority for a contravention of a development standard should be always available. In this regard, clauses 4.6(8)(c1) to (c5) should be removed from the plan.**

7. <u>Limitation placed on "neighbourhood shop" retail floor area is prohibitive</u>

As required, the Council has inserted a "retail floor area" limitation for neighbourhood shops. Council has suggested that an 80 square metre limitation be applied to neighbourhood shops. Apart from the fact that "retail floor area" is not defined, a limitation of 80 square metres is overly restrictive and makes it impossible for the establishment of a good quality convenience store.

As Council would be well aware, there are many zones in the plan that prohibit retail premises. The community working and living in these zones will be forced to rely upon "neighbourhood shops" to meet their basic shopping needs. Restricting retail floor area for these premises to 80 square meters will ensure that only very basic convenience goods will be sold, robbing the local community of easy access to a basic range of necessary goods. If Council is committed to providing easy and convenient access to a wider range of wholesome food and grocery items, then it must ensure that floor space limitations are reasonable and permit the establishment of business that can provide these goods and services to the community.

It is interesting to note that the Lane Cove Local Environmental Plan permits neighbourhood shops with a retail floor area of 300-400 square metres in its R3, R4 and IN2 zones.

If the Council wishes to ensure that local communities have access to local shopping services, it must increase the permitted retail floor area of neighbourhood shops to at least 300 square metres.

8. <u>Floor space ratios should be set at an appropriate level in the first instance</u>

The ability to access additional floor space ratios for certain desired land uses is encouraging, provided base floor areas are set at an appropriate level in the first instance. Our experience with floor space ratio "incentives" is that the base floor space areas are set low ("low-balled") with the hope that the desired land use will be provided in return for floor space concessions. 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.[6]

It is noted that a building in Central Sydney may be eligible for an amount of additional floor space (accommodation floor space) for certain uses. This additional floor space ranges from 150% to 600% in Central Sydney and 25% to 220% outside of Central Sydney (Green Square) above the base FSR. The reality is, however, that the base floor space ratio controls are most definitely set too low in the first instance.

The base floor space ratios set out in the plan are too low and should be revised and increased appropriately.

[6] 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.

9. <u>Expanding the competitive design process to the entire Sydney Local Government area is onerous.</u>

Furthermore, the use of an environmental planning instrument to force proponents into a costly design competition process is of concern.

Clause 6.21(5) of the plan introduces a blanket requirement for a competitive design process for every development equal to or greater than:

- 55 metres in height in Central Sydney; or,
- 25 metres in height on any other land.

Development having a capital value of more than $50 million or development in respect of which a development control plan is required will also require a competitive design process.

These requirements, particularly as they affect development outside of the central business district, are onerous and will act to stifle, rather than stimulate, urban renewal. A building greater than 25 metres is a modest development in the Sydney context. Development with a capital investment value of $55 million may be considered significant, but is by no means unusual for the Sydney Local Government area. To force a design competition upon an applicant for such development simply introduces an additional and costly step in the development process, particularly for proposals outside of the central business district.

If clause 6.21(5) is not onerous enough, when coupled with clause 7.22 (Development requiring preparation of a development control plan) it makes development burdensome and unattractive to the providers of equity capital. These clauses make it possible for a development proposal to be subjected to multiple levels of assessment.

Should a proposal involve a building 25 metres or more in height, on a site greater than 5,000 square metres outside of central Sydney, such a proposal will require the preparation of a site specific development control plan, be subject to a competitive design process, and only then be assessed by the Council. It should be noted that these developments are not subject to this level of control under the current local environmental plans. This added red tape adds unacceptable delay and risk to a development project.

Principle 1 of the NSW Government's *Guide to Better Regulation* says that the need for government action should be established, before a regulation is introduced. There is no evidence that, in the modern context, a design competition is necessary to secure good design. In particular, there is no evidence of market failure. The interests of the proponent, and the planning authority, are already in alignment. Both wish to see good design outcomes. Poorly designed buildings will be penalised by the modern, highly sophisticated, property market operating within the City of Sydney. Regulation merely complicates the process, and will not, generally speaking, lead to better design outcomes. There is much risk of poor design outcomes arising from regulatory failure (i.e. a poor or mistaken regulatory decision) as there is from market failure.

Clauses referring to design competitions, particularly for development outside of the central business district, should be deleted from the plan. If the City of Sydney is to reject our view and still maintain the need for a competitive design process, it should include it in a development control plan, rather than the local environmental plan.

The notion that a "bonus" in FSR and height may be offered only to those who include or are forced into a design competition is also objectionable. This "bonus" is nothing more than the application of an appropriate density and height for the zone. There is no real bonus because the Council is simply setting its base FSR and building height lower with the expectation that the proponent will seek the additional 10% by way of design competition. Essentially, Council is saying that if you accept a more costly, risky and complex application process you may get the appropriate level of development capacity in return. If you do not accept such costs and complexity your site will be denied the full floor space ratio that it should be entitled to (nothing in the objectives for the floor space ratio sanctions this kind of illegitimate and discriminatory practice).

As it stands, Council's draft LEP is little more than a dubious means of "holding back" FSR. Furthermore, not only is this a poor approach to development, it is also a very effective means of discouraging development and hence guaranteeing suboptimal urban renewal.

The Urban Taskforce is not opposed to development incentives including the ability to take up a bonus or enter into an agreement with the Council. The Urban Taskforce is however fervently opposed to "under-zoning" and "holding back" development opportunity in the guise of "design excellence" policies.

The only way that Council is to encourage urban renewal including the redevelopment of infill sites is to set attractive FSR and building height controls for all development proposals. **Should Council wish to encourage excellence in design, it should consider the removal of restrictive FSR limitations and dubious bonus incentives and replace these with flexible building envelopes, formulated in accordance with best practice in urban design.** Designers should be free to work within these general constraints to deliver the most appropriate building for the locality. This approach encourages innovation and more readily delivers "excellent" buildings than prescription.

10. Capping car parking is not the solution to traffic congestion

The decision to place a car parking control in a local environmental plan must not be taken lightly. Placing such a control in a local environmental plan removes flexibility for the applicant and Council.

The most useful location for any car parking control is within a development control plan. If included in the development control plan, Council is able to manage car parking provision and if appropriately drafted, a provision in the DCP can be devised where flexibility to vary the standard could be considered upon provision of a robust argument from the applicant. Equivalent flexibility to vary controls does not exist within the draft plan, particularly as access to clause 4.6 has been removed in the case of this plan.

The Urban Taskforce has consistently expressed concern at any move towards a strategic capping of car parking spaces. Such caps, particularly when set at unrealistically low levels, can effectively sterilise the development potential of land.

Unfortunately, Part 7 of the plan is focused on restricting the provision of car parking. Car parking rates are set as a maximum and as stated above, are not able to be varied by clause 4.6. This means that even if there is a valid reason to exceed car parking limitations (e.g. the limitation would be unreasonable or represent a poor planning outcome), the opportunity does not exist to vary this standard.

Despite the inability to vary this standard, the suggestion that car parking for new development be severely limited will certainly mean that more vehicles will occupy street car parking spaces for longer periods of time and in greater numbers. The impact on local amenity will most certainly give rise to community disapproval.

The Council's desire to restrict car parking seems to be driven by the assumption that restricted car parking will translate into increased usage of public transport and a reduction in traffic congestion.

Ninety per cent of passenger transport in cities takes place with a private motor vehicle and just 10 per cent is by public transport.[7] Public transport systems are generally geared to get people to the area of a city which has the highest concentration of workers. This makes public transport less useful for shopping and social visits. Even when shopping and social visits are excluded and the transport movements are confined to commuting - 84 per cent of passenger transport trips are made with a private motor vehicle.[8]

[7] Bureau of Transport, Infrastructure and Regional Economics, *Urban passenger transport: how people move about in Australian cities* (2009).
[8] Bureau of Transport, Infrastructure and Regional Economics, *Urban passenger transport: how people move about in Australian cities* (2009).

In earlier years the traditional commute was highly structured and predictable.[9] Workers left their home, drove directly to a centralised workplace, and then parked their car for most, if not all, of the day.[10] Now, as work schedules become more flexible and the demands of families with dual income earners become more complex, workers are likely to break up their work day for personal trips and tag on multiple destinations during their commute.[11] This might include dropping off (or collecting up) children at school or childcare, picking up dry cleaning, shopping for groceries, shuttling kids to soccer games, meeting clients for coffee, etc.[12] It's easy to envisage a graphic designer or consultant, for example, leaving home, dropping her kids off at school, meeting a potential client for coffee, setting up a temporary workstation at the coffee shop, and then meeting another client or vendor for lunch, before getting to her office.[13]

We cannot ever assume that workers will always able to use public transport to get to their job - in fact most will never have that choice. The reality is most homes will need access to a car at least some of the time.

Policies that prevent new homes from having car parking places, or fail to allow for both income earners living in (say) a three bedroom apartments to have their own car, are likely to drive certain demographics away from the City of Sydney. Families and older people generally need easy access to a car for their daily needs – apartments without car parking spaces are useless for most home-buyers in this demographic.

We note that the City of Sydney has quoted statistics which suggest that 30 per cent of City residents currently do not have a car. However these figures are largely a product of the current skew in City of Sydney residents to students and singles. If the City were to entrench this skew through new housing, it will introduce profound long-term inflexibilities about the type of people who will be able to live in the City.

If car parking spaces are to be limited, as envisaged by the exhibition material, within ten years the inner suburbs of Sydney will evolve into a monoculture of students and young singles. Families and older persons, who need access to car parking, won't feel welcome as residents. Monocultures don't create vibrant sustainable communities.

The focus of public policy should be to ensure that people who already have a disposition to using public transport are given the opportunity to live and work within walking distance of high quality public transport services. It does not require the prohibition of car parking places. That will simply prevent new apartment developments from getting built, and therefore increase congestion as people have to travel longer distances to get to work.

A recent study carried out by Peter Rickwood, Research Principal at the University of Technology's Institute for Sustainable Futures set out extensive modelling and empirical analysis on the impact of urban form on transport use. The study found that in Australian cities generally the important factors which govern the propensity to use public transport are: distance from the CBD; city-wide factors; and car ownership (which is itself determined by demographic factors).[14]

If public policy-makers want to change land use controls to permit greater use of public transport, they should seek to relax prohibitions on density in areas relatively close to the central business district, i.e. inner suburban locations. Car parking bans or caps are unlikely to boost public transport patronage if it results in reduced urban development in the inner suburbs. A clumsy attempt to use public policy to socially re-engineer households so that they no longer own a car will be doomed to fail.

In any event, where parking is limited, there are major social impacts caused by the lack of off-street parking. The impact of overflow on-street parking in surrounding streets is well known.

[9] S Staley and A Moore, *Mobility First* (2009) 46.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] P Rickwood, *The impact of physical planning policy on household energy use and greenhouse emissions* (2009) 94.

Council's cap on car parking provision for commercial office and retail development is also of concern. While some commercial and retail developments, close to public transport, may still be viable with less car parking, others won't be. **A minimum or maximum standard on car parking should not be imposed – each proposal should be judged on its merits.**

The controls contained in Division 1 of Part 7 of the plan should be removed. If any car parking controls are considered necessary by the City of Sydney they should be placed in a development control plan. If the Council is not prepared to do this, then the application of clause 4.6 (Exceptions to development standards) should be available.

11. Supporting housing development will provide more affordable housing

Division 3 of Part 7 of the plan seeks to formalise affordable housing levies by a local environmental plan. The Urban Taskforce has previously advised Council of the futility and damage that such levies cause for little or no real improvement to housing affordability.

The existing affordable housing levies in the City of Sydney could be extended more generally. The current levies range from between at 0.8 per cent and 3 per cent of residential floor area. These levies make new homes more expensive, so that a small number of rent-controlled homes can be built and operated by local councils or non-profit organisations The levies add around an extra $18,000 to the costs of building a $600,000 new apartment.

How can new housing levies possibly be the key to boosting affordability? These levies see new home buyers subsiding costs of a rent control scheme from which only a tiny few will ever benefit. The local environmental plan taxes young families struggling to buy a home of their own to subsidise those who are renting. Not all renters benefit – only those lucky enough to win a place in one of the small number of rent controlled homes which schemes like this produce. Many will miss out.

It's entirely appropriate that government and local councils take action to help renters – but the last thing they should be doing is introducing new taxes on home buyers. There's no such thing as a free lunch. You can't create new homes with subsidised rental unless someone is paying for them – and the state government is proposing that new home buyers bear this burden. Any subsidies for struggling renters should come from the government, not from other home buyers.

The problem of housing affordability in Sydney is a function of strong demand and limited supply. The affordability problem can be addressed by making more residential sites available for the construction of medium and high density housing.

The Sydney Local Environmental Plan should not include affordable housing levies or the requirements that dwellings be dedicated to the Council for affordable housing purposes.

12. Reducing height and FSR controls will not encourage sustainable development

In some areas of the Sydney Local Government Area, particularly in the Green Square and Waterloo areas FSR has been scaled back. The Urban Taskforce finds this approach to land-use planning very concerning and again urges the Council to reconsider the impact of the introduction of such controls.

The Council of the City of Sydney is responsible for the most complex and important local government area in New South Wales, if not Australia. However, while there is just 166,000 residents in the City of Sydney, in light of significant job growth and the high quality of the City's public transport, the Department of Planning and Infrastructure is expecting the City of Sydney to play a major role in providing the additional new homes, that Sydney desperately needs.

Extra housing, of course, means extra residents. While the 30 year projection of the Sydney metropolitan area assumes a 40 per cent increase by 2036, the job-rich and public transport-rich City of Sydney is expected to house 60 per cent more people. That's an extra 99,200 people living close to public transport and/or able to walk or cycle to work.

These targets are appropriate and fit in well with the State Plan. Furthermore, *Sustainable Sydney 2030* emphasises the need to dramatically increase housing affordability, encourage sustainable development, reduce energy and water usage, reduce the reliance on the private motor vehicle by supporting the use of alternative modes of transport, including public transport and cycling.

Unfortunately the plan seeks to scale back development density and height controls, severely impacting on development potential. This is at odds with housing and sustainability goals.

Reductions in FSR and building height must be abandoned. The plan should not reduce permitted FSR and building heights.

13. <u>Mixed use zones should not be replaced with industrial zones without the consent of land owners</u>

Apparently some existing zones of mixed land-use in the Green Square urban renewal area will be changed to recognise recent residential development, proposed business centres and for the preservation of industrial uses. Furthermore, some mixed-use zonings will be changed to industrial zoning to give emphasis to industrial uses.

Because mixed-use zones provide flexibility to respond to market demands, we have a very strong preference for maintaining and encouraging more mixed-use zones. We are of the view that in areas that are experiencing redevelopment and areas that are likely to experience significant change over the coming years are those that should maintain a fixable mixed-use zoning. In this regard, we are concerned that changing the mixed-use zones in the Green Square and Southern Industrial areas may restrict the potential for innovative urban renewal strategies and development.

No one is able to predict future market needs with any degree of certainty. We should ensure that where the planning system provides flexibility, to respond to changing market forces, that this flexibility not be eroded by the introduction of restrictive planning regulation.

Notwithstanding the above, the Urban Taskforce strongly objects to a planning process that rezones land, significantly altering development potential and land value without the express consent of the property owners most likely affected.

Any attempt to rezone land without owners consent should be abandoned. There should be no reduction in the number and size of mixed-use zones in the Sydney local government area.

14. <u>End of journey facilities is an onerous requirement</u>

Australia is not the Netherlands or Denmark. Our topography, weather and urban density are not conducive to the broad use of cycling as a major form of transport. Whether the Council introduces requirements for the provision of end of journey facilities or not, the rate of bicycle usage for trips to and from work is likely to remain very modest.

Cycling will not become a mainstream form of transport even if developers are forced to provide expensive bicycle storage, lockers and shower facilities.

As we have said many times before, if the Council wants to make a real difference to travel behaviour, planning controls that facilitate urban renewal and increased residential opportunities in close proximity to transport nodes will make the most difference.

Despite the above, if the Council is committed to pursuing a strategy that will impose additional cost on new development, Council must consider the opportunity to offer an incentive in the way of a stronger development bonus in return for end of journey facilities. It is not sufficient to simply exclude the floor area devoted to these facilities from the gross floor space calculations for the building.

Council should not make end of journey facilities mandatory in some developments. The Council should instead offer a stronger incentive, such as a development bonus, for the inclusion of such facilities.

15. Complexity of height and FSR controls paves the way to an "as of right" development approval system

An examination of the complex height, sun access planes and floorspace controls indicates that in some instances, unique site specific controls have been developed and applied. In some instances there is significant variation between sites within the same zone, street or block.

Yet, despite the level of prescription, the City of Sydney still wishes to retain the right to refuse the few development applications that might actually be capable of complying with the multitude of controls imposed. While the level of over-regulation of the LEP is enormous, it seems bizarre to us that, if the LEP proceeds as is, that any development that does not comply with its highly prescriptive standards should still be refused.

Nothing in the LEP invokes the provisions of the *Environmental Planning and Assessment Act 1979* relating to "non-discretionary development standards".[15] 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.[16]

Additionally, no provision of the LEP prevents a consent authority for refusing consent on the grounds of, say, bulk and scale, when all relevant bulk-and-scale-related development standards are satisfied by a proposal.[17]

In any event, such over details and prescriptive development controls will rarely be capable of outright satisfaction. If such controls are to remain in an LEP, not only should they be set as "non-discretionary development standards" (conferring as-of-right status for complying development proposals), but additional provisions allowing a full merit assessment for non-complying proposals is essential (as provided for by the Act).[18] In the context of these very prescriptive controls, the flexibility would need to be more than that offered by clause 4.6. That is, there should be no onus to prove that compliance with the prescriptive standards would be unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify contravening the development standard. Instead, the application should simply be assessed on its merits without regard to the prescriptive standards.

If the current highly prescriptive development controls are to remain in the LEP, then they should be designed as non-discretionary development standards under section 79C(2) of the Act (conferring as-of-right status on complying development proposals). Furthermore, non-complying development proposals should be assessed on their merits, without regard to the non-discretionary development standards (as per section 79C(3) of the Act).

Part B – Draft Development Control Plan 2010

16. Council must not seek to impose its own interpretation of ESD on applicants

As Council would be well aware, the *Environmental Planning and Assessment Act* requires the consideration of the principles of "ecologically sustainable development" in the decision making process. The term, "ecologically sustainable development" is already extensively defined and detailed under the Act. The concept of "ecologically sustainable development" already requires:

- environmental protection;

[15] s 79C(2)-(3).
[16] s 79C(2).
[17] 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*.
[18] s 79C(3).

- the integration of economic and environmental decision-making;
- inter-generational equity in decision-making;
- the application of the precautionary principle; and
- respect for biodiversity.[19]

Therefore, the Council already has the authority and is obliged to consider ESD when making a determination of a development application. There is no need for added prescription as proposed in the draft DCP.

The draft DCP asserts that

> implementing the principles of ESD means that the development will be designed and constructed so that:
>
> (a) Greenhouse gas emissions will be reduced.
>
> (b) The use of cogeneration and tri-generation systems will be increased.
>
> (c) Low carbon and renewable energy use will be increased.
>
> (d) Potable water use will be reduced.
>
> (e) Development can adapt to climate change.
>
> (f) Waste will be reduced.
>
> (g) Recycling of waste and use of products from recycled sources will be increased.
>
> (h) Indoor environmental quality will be improved.
>
> (i) The environmental impact from building materials will be reduced through reduction, reuse and recycling of materials, resources and building components.
>
> (j) The biodiversity value of the land will be improved.

It could be that a contemporary development proposal will in fact reduce greenhouse gas emissions, use of potable water, waste generation and even incorporate the use of recycled materials. However, to suggest that implementing the principles of ESD relies upon the increased use of cogeneration and tri-generation or an improved biodiversity value of the land is simply not true. **The DCP should not seek to insert Council's own unique interpretation of ESD.** Council is grossly exceeding its authority if it tries to use a DCP, made under the *Environmental Planning and Assessment Act*, to re-define a phrase that is already defined by the Act itself.

Technology is rapidly changing and the DCP will most likely remain in place for a considerable amount of time. Prescribing the use of certain technology, that is seen now by the Council as the newest and best, will not necessarily remain "leading edge" technology in a few years time. That's why, prescribing a certain technology is not advisable in the DCP.

For instance, LED lighting may be seen as the best form of energy efficient lighting today, but this technology could easily be superseded. Prescribing this form of technology in the DCP will not only limit the adoption of new and better technology when it becomes available, it will make the environmental controls in the DCP to quickly become outdated and problematic in the very near future.

Seeking to regulate the source of building products used in a building is not only inappropriate, but is in reality unenforceable. The DCP should not try to regulate the source of building products used or means of manufacture.

Council must not try to redefine ESD in its DCP and must not introduce additional prescription to force develop proposals to comply with Council's interpretation of ESD.

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

17. <u>Over prescription will not permit innovation</u>

Development of land in the City of Sydney could at best be described as complex. The existing street pattern, built form and other environmental constraints means that only carefully considered development proposals have any chance of being supported. No serious developer would consider investing in a development project without the benefit of expert architectural, urban design, planning, environmental and engineering design and advice.

Only the most skilful and innovative urban development professionals are able to successfully function in the Sydney City context. The Council of the City of Sydney is fortunate to have highly regarded professionals working on proposals to be submitted for determination. This calibre of professional works best in an environment that provides the opportunity to respond freely to challenging site constraints and market realities while delivering excellent built form outcomes. Overly prescriptive development controls will merely constrain and stifle creativity and innovation.

Furthermore, overly detailed and prescriptive development control plans are little more than lengthy, confusing and tiresome documents that hinder the design process. They contribute little value to the design process, other than providing a "check-list" to conformity.

The *Sydney Local Environmental Plan* provides more than enough in the way of development controls. Extremely complex floorspace, building height, sun plane, heritage and parking controls are provided in the plan. One must question the need for further prescription to the level suggested in the DCP.

The draft Sydney DCP provides information that may be useful advice to some, but the sheer volume of information and detail provided in the DCP clutters and complicates the document and is not necessary.

It is accepted that not all parts of the DCP will be relevant to every development proposal, but there can be no justification for a DCP that is more than 500 pages long.

The DCP should focus on the provision of essential development controls, not the provision of general information or be a vehicle for Council to force its particular development philosophy.

The sheer volume and detail of control must be reviewed to ensure that only the most important and relevant controls are included in the final version of the DCP.

The subject matter of the DCP should be limited to standards that are a <u>necessary</u> 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.

The DCP should <u>not</u> contain:

- height, storeys, bulk, intensity or scale where height and/or floorspace ratio controls are set out in the LEP;
- any other standard where a development standard, addressing the same issue, is set out in the LEP;
- provisions concerning a building's interior, including its internal configuration, structure, materials or design or the mix of dwelling types within an apartment building (the Building Code of Australia and SEPP 65 should be sufficient); and
- energy or water efficiency requirements (BASIX is sufficient).

<u>Secondly</u>, **the DCP should not be proscriptive.** That is, it should set out reasonable standards, but should not include prohibitions.

<u>Thirdly</u>, **the DCP should make it clear that a standard in a development control plan may not be applied or modified if it is shown to be unreasonable or inappropriate in the circumstances of the case**.

<u>Fourthly</u>, **the DCP should be amended to require that, where an applicant elects to provide financial information, a consent authority must take into consideration the financial constraints on the economic viability of a development identified as desirable by the LEP for that zone.** An express requirement to consider the financial feasibility issues should not be triggered unless the applicant has elected to provide information on the subject. Applicants may desire to keep financial information confidential for personal or commercial reasons and they should be entitled to do so.

18. <u>Activity at street level can be achieve through a range of land uses</u>

Council proposes the introduction of controls relating to active street frontages in certain areas. While we acknowledge that street level activity is beneficial in certain locations this does not mean that government regulation can force this to take place when it is not commercially viable.

The DCP attempts to describe, in detail, what must be provided at the street level. Its provisions are limiting and may not properly reflect the context or market realities.

Council's DCP states that active street frontages are achieved by requiring the establishment of uses with direct access to the street such as retailing, customer counter services, cafes and restaurants. These uses will naturally want to locate in the right locations. Planning regulation will add little to encourage business to successful strip retail areas. On the other hand, if the regulation is too prescriptive, it can actually discourage investment in an otherwise attractive location.

Main street exposure is important for the success of retail and commercial businesses. Streets and centres with high levels of pedestrian traffic are obviously prime locations for retail premises and such premises will naturally establish in these locations. There is no need for planning regulation, prescribing retail or other forms of non-residential development at ground level and/or prohibiting residential uses on the ground level. Generally speaking, non-residential uses will naturally want to locate in these areas.

However, requiring retail and business uses at the ground level along secondary streets with little pedestrian traffic will not be attractive to many businesses, regardless of the planning rules. What this will mean is that redevelopment will not occur, or shop fronts will remain vacant, defeating the objectives of the regulation.

If the objective for insisting on retail and business activity at ground level is to also enhance passive surveillance and public safety, forcing retail in non-viable locations will ensure that passive surveillance does not eventuate. That is, businesses will not go where they cannot survive. Therefore, the general requirements in the draft DCP, insisting on active street

frontages, regardless of exposure to clientele, in reality means that streets where retail is not viable remain empty and ghostlike.

It makes more sense to permit viable development at ground level that is designed in such a way to encourage street level articulation and multiple entries where appropriate, regardless of use. For example, a residential lobby with street address, with an attractive facade provides a much better alternative to empty shop fronts.

Furthermore, if designed to be adaptable, a ground floor residence can be converted into a business premises or cafe when there is a market for such business. Some of Sydney's most successful retail strips have been extended through the conversion of residential premises.

Council must acknowledge that there are many ways to achieve street level activation and should ensure that controls are sufficiently flexible to permit all manner of land-use that contributes to local amenity.

In this regard, it is not sufficient for development controls, that relate to uses for street level activation, to be prefaced with the terms "generally" and "preferred" as a means of providing a degree of flexibility. Though these terms suggest flexibility in the application of the control, in reality such terms will simply be read as "required". The intension may have originally been to provide a degree of flexibility, but in practical everyday use, "general" or "preferred" controls will simply become "prescribed" thresholds that must be complied with.

Controls in the DCP that require street level activation and prescribe how this is to be achieved should be removed from the DCP.

19. <u>Building maintenance is a matter for the building owner</u>

It may seem desirable to locate all heating and cooling in one central location. In many instances, particularly in the case of significant non-residential buildings, plant will be located in the most practical and most central location. This makes perfect sense and has been the industry norm for some time. This occurred for practical engineering purposes, not as a result of planning regulation.

However, in some instances, centralised cooling and/or heating is not always desirable. In the case of some residential apartment developments, the preferred option for cooling and heating may be the use of small, individual packaged systems. It could be that in some instances, only a proportion of apartments require air conditioning. Hence the ability to provide individual "split-systems" is the most desirable option, which may also be the most energy efficient option as only those that need or desire air conditioning are provided with it.

The proposed control to require centralised heating and cooling infrastructure, consolidated into a centralised basement location removes all flexibility in providing the most appropriate form of infrastructure.

The most appropriate location for plant and equipment is a matter for the building owner and/or building designer and is not a matter to be included in the DCP.

20. <u>Centres hierarchy is anticompetitive</u>

The draft DCP seeks to reinforce a retail hierarchy in the Green Square area. The requirements of the draft DCP support the provisions of the plan and are clearly devised to ensure that retail floorspace is rationed and only certain forms of retail, considered appropriate at this point in time, will be permitted. This approach to retail planning is not only short sighted but is also risky as it does not properly recognise the change in retail demand, shopping habits and preference that occurs over time.

Furthermore, any strategy that seeks to dictate and predict the retail environment is doomed. Those in the retail industry, who regularly invest in retail development, are not so arrogant to profess an ability to accurately predict the retail environment to such a level of certainty, where it is possible to predict not only the type of retail use, but also the number of each type that will

be required in a locality. For instance, the DCP says that Local Villages of Victoria Park, Danks Street and Ashmore Estate are entitled to

> [a] reduced range of retail uses providing for the local area, including one Full-line Supermarket only, one Discount Supermarket only, specialty stores, homewares, convenience retailers, fresh food, cafes, restaurants and bars.[20]

Regardless of community need, the retail services permitted in this locality have been rationed. Whoever establishes the first supermarket is guaranteed a monopoly, delivered by restrictive, misguided and ill-informed planning controls. A similar level of prescription has also been applied to small villages, and neighbourhood centres.

Local planning controls should not be used to ensure an anticompetitive retail environment. The rules suggested in the DCP will ensure that once established a business will have little incentive to provide increased choice and/or competitively priced goods and services. There is simply no incentive to compete.

Where is the public interest in prohibiting a free retail environment where retailers seek to attract customers by meeting customer need and the provision of competitively priced goods and services?

Council's DCP will limit 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 in their locality.

What a retail hierarchy really does is to force people into their cars to drive further in search of goods and services that are not conveniently located. This goes against the most fundamental principles of environmental protection and sustainability.

Furthermore, by severely limiting the locations for bulky goods retailing means that large format grocery stores, large format business supplies retailers or large format hardware suppliers will often have great difficulty in finding sites. New entrant and independent retail supermarkets also end up being excluded.

As it stands, Council's objectives will enable restriction of commerce, limitation of choice and will in all likelihood hamper the evolution of centres.

It is of great concern that the Council would unashamedly introduce development controls to intentionally limit growth, with the objective of protecting and ensuring greater growth in other centres. This approach fails to recognise that restricting development in one locality will not necessarily mean the same level of development will occur in the favoured location. Development opportunities are likely to be lost to the community as a whole.

It is interesting to note that these restrictive planning controls have been introduced to implement the *Green Square and Southern Areas Retail Study 2008*, prepared by Jones Lang La Salle and Hassell. However, at the same time as this study was being finalised (August 2008), the Australian Competition and Consumer Commission (ACCC) found that competition in grocery retailing was being limited by town planning laws.[21] It concluded that zoning and planning regimes act as an artificial barrier to new supermarkets. In the same month the Productivity Commission found that planning laws were contributing to the difficulties of small retail tenants negotiating with "oligopolistic" shopping centre landlords.[22]

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

---

[20] Draft Sydney DCP 2010. Table 2.5 – Desired character of Centres, p. 44.

[21] Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* (2008).

[22] Productivity Commission, *The Market for Retail Tenancy Leases in Australia* (2008).

Unfortunately, if permitted to stay, the controls contained in the Sydney DCP and LEP will simply act to protect existing retail landlords from competition.

There should be no references to the reinforcement of the roles of centres or the preservation of a centres hierarchy in the DCP. These matters are already dealt with by the zoning decision inherent in the LEP.

21. <u>Arduous transport and parking requirements proposed</u>

Sydney LEP 2011 restricts the provision of onsite car parking. The Urban Taskforce strongly objects to planning controls that limit the ability to provide car parking to appropriately service a development. These concerns are detailed above. However, to make matters even more onerous, in addition to placing a cap in car parking numbers, the DCP introduces further layers of regulation. It seems that complying with the LEP cap is not sufficient. That is, even when car parking is provided at a rate prescribed in the LEP, further reports to justify the access arrangements and manage transport demand will be required.

If the Council is insistent on the management of transport demand and the need for traffic impact studies and green travel plans to support development proposals, then the Council should remove the car parking cap from the LEP and rely upon controls contained in the DCP, including the submission of the aforementioned reports to justify traffic management strategies to be adopted in the development, including car parking provision. This approach is considered more equitable and reasonably balances Council's desire to control car parking and the proponent's need to meet development demands.

The DCP should set out car parking rates and give applicant provided with the opportunity to depart from the numerical controls upon the submission of a traffic management strategy.

22. <u>Bicycle parking and associated facilities requirements are unrealistic</u>

Those that choose to cycle do so not because there are additional bike parking facilities provided, or because there are end of journey facilities provided. They mostly cycle for personal enjoyment, health, or practicality reasons. It is acknowledged that the proposed facilities will benefit those who already cycle, however, we question the practicality and benefit of many controls suggested in the DCP or whether the controls will result in a significant increase in bicycle usage.

Some of the on-site bicycle parking requirements for certain uses are simply unrealistic and will be rarely used, if at all. For instance, the DCP requires customer bicycle parking at bulky goods premises. We would comfortably suggest that it would be very rare for a customer to visit a bulky goods retailer by bicycle, particularly when one considers the nature of goods sold from bulky goods premises and the location of such premises. The LEP makes certain that these premises are few and located in the less accessible areas of the City. Bulky goods premises are not the type of premises that will likely be visited by bicycle, nor the type of premises that justifies the provision of purpose built bicycle parking facilities.

Similarly, while some customers may be more inclined to visit convenience stores, restaurants and pubs by bicycle, the ability to provide bicycle parking facilities onsite will be limited, particularly in the central business district and other town centres. Many of these premises are land-locked and cannot physically provide any parking (car or bicycle) onsite.

The more practical approach to the provision of bicycle parking facilities to service these premises would be for the Council to provide facilities on public land in strategic locations across the city. Furthermore, Council could easily design and provide attractive street furniture and public art with integrated bicycle parking facilities included.

People who cycle to a shop simply want to park their bicycle on the footpath and secure it to a parking rail. The most appropriate and convenient location for such a facility is on publicly owned land, not in the basement car park.

The provision of elaborate bicycle parking, storage and end of journey facilities within private developments, particularly residential and retail developments, should be optional. The

provision of such should be encouraged by the Council by way of development incentive such as a development bonus.

23. <u>Locality statements impose yet another layer of regulation</u>

The LEP provides comprehensive zone objectives. These objectives articulate and describe the intension of the zone. The suitability of development is measured against the zone objectives. Furthermore, the LEP provides a detailed set of standards that must be adhered to. These standards seek to ensure that development meets the objectives of the zone and does not unreasonably interfere with local amenity.

The DCP also includes a mass of additional numerical controls and additional requirements that must be satisfied if a proposal is to gain the support of Council. Furthermore, the *Environmental Planning and Assessment Act* requires careful consideration of development proposals, to ensure that development is appropriate for the locality. There is already adequate controls in place to ensure development outcomes are appropriate to a locality without the need for the imposition of more controls in the form of locality statements.

The locality statements suggested are subjective and open to interpretation and may be used to limit or otherwise prohibit permissible development. Character or locality statements will simply cause confusion and disputation.

A standard instrument local environmental plan which includes appropriate aims and objectives, supported by a development control plan with simple development standards is sufficient. There is no need for additional locality statements.

24. <u>When a maximum height is prescribed, height in storeys is simply over regulation</u>

The standard instrument requires that maximum building heights be prescribed. This form of development control, used in conjunction with FSR controls and if required, site boundary setbacks, establish a building envelope to work within. Working within the building envelope contributes to the preservation of local amenity and if appropriately devised will produce the desired built outcome, even in heritage areas. If a street wall of certain height is desired, such can be controlled by the use of height controls and setback.

Furthermore, the Building Code of Australia sets minimum floor to ceiling heights for all buildings. SEPP 65 and the Residential Flat Design Code further refines floor to ceiling heights. The LEP also establishes a maximum building height; therefore the number of storeys permitted is already adequately controlled.

Having two forms of height measurement and control will only cause confusion and disputation. There is no demonstrable need to include height control in metres within the LEP and height control in storeys in the DCP. Controls referring to height in storeys should be removed from the DCP.

We are keen to see the LEP and the DCP finalised in a timely fashion. On this basis we would be willing to work closely with the City Council to address these concerns as a matter of priority.

Should you require any further clarification of the content of this correspondence, please feel free to contact me.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer