

30 June 2011

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Department of Planning and Infrastructure  
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Dear Mr Haddad,

## Re: Draft Centres Design Guidelines

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 *Centres Design Guidelines* ("the guidelines") and we are very concerned with the potential for the introduction of more guidelines that will simply add yet another layer of regulation to an already complex, bloated and broken planning system. This additional layer will further complicate a planning system.

The proposed *Centre Design Guidelines* represent another 90 pages of controls with 396 new principles to further regulate urban development. They will be added to the existing 1,060 Department of Planning and Infrastructure policy documents regulating development in the state.<sup>1</sup>

We have been told verbally by the Department that this document will "merely" be "guidelines" and that we shouldn't talk about them as if they would add to the regulatory burden.

Frankly, the Department's assertion is not supported by the clear words of the document itself, nor by any consideration as to how so-called "guideline documents" are used in the planning system on a day-to-day basis.

The *Centre Design Guidelines* themselves say that:

These Centres Design Guidelines have been prepared by the NSW Department of Planning to **improve** the form and function of existing and identified new centres (bold emphasis added)<sup>2</sup>

They explain that:

These draft Centres Design Guidelines provide design principles to **guide** the urban renewal of existing centres and the design of new centres throughout New South Wales. They were developed to **ensure** centres are well designed, functional and livable and can meet the need to accommodate additional population and activities within walking catchments (bold emphasis added).<sup>3</sup>

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<sup>1</sup> The Department's own document, listing all 1,060 policy documents, is available here: <http://urbantaskforce.com.au/attachment.php?id=4088>.

<sup>2</sup> NSW Department of Planning, *Draft Centre Design Guidelines*, (2011) 9.

<sup>3</sup> NSW Department of Planning, *Draft Centre Design Guidelines*, (2011) 12.

How will the document "guide" development to "improve" things and "ensure" certain outcomes? The document does not hide its intention:

are also intended to **set a benchmark** about what is good design for centres (bold emphasis added).<sup>4</sup>

The guidelines states that they

are **a key implementation tool** [for the *Metropolitan Plan for Sydney 2036 and Regional Strategies*]. **They can help government decision makers in preparing planning controls and act as a resource for development applicants** and local communities (bold emphasis added).

It is clearly intended by the government that planning authorities, such as the Department and local councils, will adjust planning controls to reflect the contents of these "guidelines". What's more, it is expressly stated that development applicants are expected to use the document as a "resource" when preparing development applications. This means it is clear that, even when the guidelines have not yet been incorporated into any applicable planning controls, development applicants can be asked to prepare reports justifying their proposals against the principles articulated in these guidelines.

Even without these express words, any document of this kind published by the Department of Planning and Infrastructure will become a regulatory document. In 2003 the NSW Court of Appeal declared that environmental planning instruments are not the only documents that can be used to block new development, and that a consent authority is able to refuse permissible development by referring to a wide range of material outside the formal planning processes on "public interest" grounds.<sup>5</sup> This decision is now regularly cited by both consent authorities and the courts when relying on a wide range of material to justify saying "no" to an otherwise permissible development. In the current regulatory environment, the *Centres Design Guidelines*, will provide a new additional grounds to refuse development approval.

In the past every similar document of this kind is added to the Department of Planning's policy documents recorded under *Government Information (Public Access) Act 2009*, and its predecessor legislation. A "policy document" is one that is

... used by the agency in connection with the exercise of those functions of the agency that affect or are **likely to affect rights, privileges or other benefits, or obligations**, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject ... [and includes] .... a document containing interpretations, rules, **guidelines**, statements of policy, practices or precedents (bold emphasis added).<sup>6</sup>

As the legislation makes clear "guidelines", like "rules" are likely to impact the rights and obligations of those who they are directed to.

In our view **the Department must accept that, if it proceeds with these "guidelines" it is introducing yet more NSW planning regulation. It must be prepared to justify why the planning regulation is necessary. It must be prepared to admit that the talk of reducing the red-tape burden is merely just talk.**

Our key message is this: **these guidelines should not proceed in any form. They are not necessary. They will not lead to better urban outcomes, and, in fact, they will make things worse.**

The balance of this submission will deal with specific provisions in the document.

## **1. The Centres Design Guideline seek to "encourage" certain developments, but in doing so will make it harder for other appropriate developments to be approved**

The guidelines freely uses the term "encourage" without articulating how meeting the principle is to be "encouraged". For instance the guidelines suggest that the centres principles should "encourage" all of the following:

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<sup>4</sup> NSW Department of Planning, *Draft Centre Design Guidelines*, (2011) 3.

<sup>5</sup> *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) 129 LGERA 195 [81].

<sup>6</sup> *Government Information (Public Access) Act 2009* s 23.

[A] range of dwelling sizes to reduce overall size of detached homes (one of the biggest single factors causing the rising trend in total home energy consumption).<sup>7</sup>

[C]ontinuous active frontages along the main street.<sup>8</sup>

[F]lexible building design for residential flat buildings that allow lower floors to be adapted for commercial spaces, if needed, as the centre expands. This can include higher floor-to-floor dimensions, separate entries and flexibility in the overall design of the structural system.<sup>9</sup>

[C]lear glazing where possible to promote passive surveillance and add to the sense of street activity, particularly for all non-residential ground-floor uses. Consider shopfronts for restaurants, cafes and the like, that open up to the street.<sup>10</sup>

[A] mix of tenancy sizes and different types of uses to provide more retail diversity and attract interesting start-up businesses to these spaces.<sup>11</sup>

Anyone with any familiarity with planning controls understands that the use of the word "encourage" means that development proposals that do not satisfy the nominated feature will face difficulty in being approved, while those developments that do exhibit the feature may be quickly approved.

For example, if a developer is seeking to provide housing with extra space, suitable for large families, they will have difficulty getting approval because these planning principles seek to "reduce overall size of detached homes". If, in a particular market, the needs of large families are not being met, why should developers be precluded from serving their needs?

The document tells us that large detached homes are bad because they cause "the rising trend in total home energy consumption". Is it the homes that cause the increased energy consumption, or the people that live in them and the appliances that they use? Is the NSW Government really telling people that they must give up the large flat screen television, the air-conditioning and the other conveniences of modern life? Governments have not normally asserted that increased energy efficiency must necessarily lead to a drop in living standards, but that's what this planning principle seems to be suggesting. If families with four children are to be crowded into two bedroom dwellings in the name of energy efficiency, the government should be more up-front about its intentions.

## **2. The guideline cut across many other government policy documents**

### ***Climate change***

Responding to climate change is a complex policy area that is undoubtedly beyond the scope of these guidelines. Climate change policy is difficult enough without further confusing this matter with the addition of loosely worded statements within these guidelines. For instance the guidelines say that we should

identify and map areas of sea-level rise risk and avoid intensifying land use in coastal areas at risk, unless the impacts of sea-level rise can be effectively managed. For instance, in high-risk areas, design homes that can be relocated or adapted to sea-level rise over time.<sup>12</sup>

There are already numerous government policies that deal specifically with strategic planning and the complexity of development in coastal areas, starting with the *Coastal Design Guidelines for NSW*, *Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* and the *Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments*. Why are additional principles necessary?

### ***Energy efficiency***

The guidelines also seek to promote energy efficient building and suggest that we should

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<sup>7</sup> *ibid.* p. 35

<sup>8</sup> *ibid.* p. 41

<sup>9</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011). p. 42

<sup>10</sup> *ibid.* p. 51

<sup>11</sup> *ibid.* p. 53

<sup>12</sup> *ibid.* p. 35

support development that does not rely on artificial heating, cooling and lighting systems by controlling building and floor-plate depths, use of passive heating and cooling, solar orientation, shading treatments, and natural lighting and ventilation.<sup>13</sup>

This issue is another example of a policy area that is already extensively dealt with under current planning policy. *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development, Residential Flat Design Code, Residential Flat Design Pattern Book* and *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* provides more than adequate regulation to ensure that buildings are energy efficient. The inclusion of energy efficiency building and design principles in the guidelines is unnecessary as it (at best) duplicates current planning policy and regulation and (at worst) adds to and changes the meaning of these other documents by using different language.

Similar to sustainable building design, there is already a multitude of guidelines available that deal specifically with walkable centres and healthy environments. For instance, the Department of Planning has already published *Planning guidelines for walking and cycling (2004)*, has adopted a *Position Statement on Planning for Active Living* and the NSW Premier's Council for Active Living has only recently released *Development and Active Living: Designing Projects for Active Living (June 2010)*.

The curious way that walkable centres is dealt with in the guidelines confirms our view that these Guidelines are a poorly thought out grab-bag of ideas cobbled together and rebadged as centres design guidelines. These guidelines are simply unnecessary.

If the Department of Planning and Infrastructure wants to make a real difference to human health through increased activity within centres, then it should direct its efforts towards reviewing local environmental plans and coaching local government to ensure that flexible land use zones are applied to centres well serviced by transport infrastructure to ensure that multiple uses, including higher density residential and retail development, are allowed around public transport hubs and routes.

### **Car use**

Furthermore, this guideline must not be used to impose an untested and philosophical position on the use of the private motor car. The guidelines say that we should

Include end-of-trip facilities in buildings ..... Locate secure bicycle storage in well-lit, visible locations close to building entries and/or at ground level in multi-storey buildings.

Manage the location, supply and availability of parking to support walking, cycling and public transport access to major urban centres. Limit car parking in locations that are highly accessible by public transport.<sup>14</sup>

Develop maximum car parking space limits in new developments to ensure traffic can be managed effectively. Ensure under-provision of parking does not result in pressure to build more multi-storey car parks or require too much on-street car parking spilling out into surrounding areas.

Allow developers to provide less than the maximum car spaces needed, if the new development is within or near a mixed-use centre and well serviced with public transport.<sup>15</sup>

Limiting the provision of car parking in centres and/or requiring the provision of expensive "end of trip" facilities within private developments is not widely accepted as a viable solution to traffic management within centres.

Few local authorities have successfully introduced car parking caps as the impact of such would be detrimental to development success. Furthermore, the suggestion that car parking for development be limited will 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.

Car parking controls have a significant impact on development feasibility and this matter is too important to be taken lightly as demonstrated by these guidelines.

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<sup>13</sup> *ibid.* p 35

<sup>14</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 38

<sup>15</sup> *ibid.* p. 88

The Department of Planning and Infrastructure'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.<sup>16</sup> 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.<sup>17</sup>

In earlier years the traditional commute was highly structured and predictable.<sup>18</sup> Workers left their home, drove directly to a centralised workplace, and then parked their car for most, if not all, of the day.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

We cannot ever assume that workers will always be 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 restrict car parking, are likely to drive certain demographic groups away from centres. 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.

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.

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).<sup>23</sup>

**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.**

Placing a 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, informed by robust traffic studies.**

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<sup>16</sup> Bureau of Transport, Infrastructure and Regional Economics, *Urban passenger transport: how people move about in Australian cities* (2009).

<sup>17</sup> *ibid.*

<sup>18</sup> S Staley and A Moore, *Mobility First* (2009) 46.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

<sup>23</sup> P Rickwood, *The impact of physical planning policy on household energy use and greenhouse emissions* (2009) 94.

## **Cycling**

The guidelines say that we should

Encourage convenient and secure bicycle parking within developments and provide public bicycle parking on streets or in a shared facility, at key destinations and public transport nodes.

Encourage the provision of end-of-trip facilities such as showers, changing rooms and lockers.<sup>24</sup>

The suggestion is that the provision of these facilities at the cost of the developer will result in more people choosing the bicycle over other forms of transport. However, those who 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 additional facilities will benefit those who already cycle; however, we question the practicality and benefit of imposing additional requirements in the absence of any evidence that they will meaningfully boost bicycle usage.

The more practical approach to the provision of bicycle parking facilities would be for the council to provide facilities on public land in strategic locations across a centre. 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.**

Sydney is not part of 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 a planning authority 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 new developments are forced to provide expensive bicycle storage, lockers and shower facilities.

As we have said many times before, if the government 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.

## **Architects**

The guideline says that

Design excellence can be achieved by appointing high-calibre architects, through an architectural design competition process or high-level design guidance from an expert panel.<sup>25</sup>

Who are these "high-calibre architects" or "expert panel" and what qualifies a person to be considered to be "high-calibre" or an "expert"? Requirements such as those suggested within these guidelines are not only subjective, but arrogant. It is sufficient to appoint a registered architect to a project without having to argue that they are sufficiently "high-calibre". The landowner or developer should have the right to appoint whoever they choose to a project, provided they hold the required qualifications and government accreditation. There is, after all, a reason that the government regulates the architecture profession and requires them to be registered.

## **Architectural design competitions**

Furthermore, architectural design competitions simply add red tape for questionable improvements to design outcomes. To force a design competition upon an applicant simply introduces an additional and costly step in the development process, particularly for proposals outside of major centres such as the central business district of Sydney.

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

<sup>24</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011). p.84

<sup>25</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011). p. 66

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. 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.

**The guidelines should be abandoned because they duplicate or unnecessarily add to any existing army of government policies.**

### 3. **The guidelines do not acknowledge property rights**

**If we are to see a strong steady flow of investment, the private sector must have confidence that private property rights will be respected by government.**

#### ***Privately owned land at “high points” to be sterilised***

The guidelines suggest that we should

Reserve high points for public space or civic buildings, these places make great landmarks. Traditionally, the highest points have been locations for buildings and spaces that reinforce the highest aspirations of the community, such as places of worship, town halls or statues.<sup>26</sup>

The vast majority of land in centres is privately owned. This is an explicit exhortation for planning authorities to obstruct efforts by private land owners to develop their sites at “high points”. We have seen councils pursue such policies informally in the past in the hope that land values will be depressed enough to permit public acquisition, but we haven’t previously seen such a blatant documentation of this principle.

#### ***Waterfront land***

The guidelines includes principles such as

Maximise public access to waterfront locations in centres. Determine the most appropriate locations for new public spaces and develop connections to, from and between waterfront areas, early in the planning and design process.

Consider carefully the desirable scale and type of public access along the waterfront, taking into consideration nearby land uses, built form, landscape character and desired activity.

Extend existing streets towards the waterfront, where possible, keeping the original alignments and street widths as desired. This integrates the waterfront spaces with the surrounding area, creates a physical relationship with the existing centre and improves legibility.<sup>27</sup>

These principles may make sense where the land concerned is in public ownership. However, in many cases, land along foreshore areas will be in private ownership. If this is the case, the only way that new public spaces, connections and extensions to streets can be achieved is by gaining access across privately owned land. This means that if a local authority wished to provide a new access to the foreshore across private land it would do so by either acquiring the land or requiring that the access be provided as part of a redevelopment proposal. **We strongly oppose the use of the planning system to force private land owners to surrender some of their property rights, just so that they may carry out a permissible development.**

#### ***Tenancy mix***

The guidelines do not recognise the right of the property owner and they do not respect the right of a land owner to control tenancy size and/or use within private shopping arcades or internalised shopping centres. The guidelines say that we should

Encourage a mix of tenancy sizes and different types of uses to provide more retail diversity and attract interesting start-up businesses to these spaces.<sup>28</sup>

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<sup>26</sup> *ibid.* p. 33

<sup>27</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 37

<sup>28</sup> *ibid.* p. 53

The tenancy size and mix within a private arcade will reflect market demand. The planning system should have no role in determining the mix of tenancy within a private arcade. The guidelines also suggest similar controls in relation to shopping centres and say that we should

Encourage a diverse range of tenancy sizes that attract a variety of users and allow different businesses and uses to be located within or close to the shopping centre.<sup>29</sup>

It is absurd to think that these guidelines would suggest that a local council should seek to exert control over the types, size and mix of tenancies within a privately owned shopping centre. Shopping centre owners are the ones that must ensure that they have the most appropriate type, size and mix of tenancy to attract customers. Planning officers and local councils must not be encouraged to dictate what should be offered within a privately owned and operated shopping centre.

### **Arcades**

Of equal concern is the suggestion that a local authority should

Prioritise the activation and improvement of existing or required public lanes before providing new arcades.<sup>30</sup>

Preventing new development in favour of the existing will ensure that monopolies are preserved. New development triggers the upgrading of existing premises as existing premises are forced to compete for and retain business. Preventing new entrants to the market will certainly ensure that there is no incentive to upgrade existing premises. Rundown arcades will simply remain unimproved.

**There is no place for a guideline that disregards property rights or unrealistically seeks to exert control over business practices.**

## **4. The guidelines do not acknowledge the importance of private sector development**

In truth, encouraging a development does not mean drafting new rules or “principles” that development must adhere to. Encouraging development necessitates an understanding of market requirements, development feasibility and at least a general appreciation for development financing and risk. Therefore, **if a guideline was to be developed to assist local councils with the preparation of local plans and development controls to encourage development of a particular kind, such guideline must actually limit the restrictions that local councils and other planning bodies impose on new development.**

Controls that tend to development feasibility are the enemy of renewal and enhancement of our urban centres.

### **Floor-to-floor dimensions**

The guidelines say that we should

Encourage flexible building design for residential flat buildings that allow lower floors to be adapted for commercial spaces, if needed, as the centre expands. This can include higher floor-to-floor dimensions, separate entries and flexibility in the overall design of the structural system.<sup>31</sup>

The introduction of higher floor-to-floor dimensions can have a drastic impact on project feasibility, particularly when the maximum building heights prescribed in local environmental plans are not adjusted upwards to ensure that if the floor to floor height of the lower levels of a building were increased there would be no loss in the number of storeys permitted. The loss of a storey due to an increase of floor-to-floor height would make most development proposals not viable.

The guideline touches on the economics of development. It says that place specific constraints such as economic issues such as the scale and extent of development, and if it is likely to be

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<sup>29</sup> *ibid.* p. 54

<sup>30</sup> *ibid.* p. 53

<sup>31</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 42

feasible, over the life of the plan should be considered.<sup>32</sup> However, the guidelines do not adequately deal with such a complex issue and neglects to properly highlight the fact that project feasibility is a key consideration best determined by the developer and/or investor. Project feasibility is fundamental to centre planning and cannot be adequately addressed in a centres guideline as suggested in this instance.

**These guidelines should be abandoned. If they aren't abandoned, then they should be re-conceived as documents that prevent planning authorities from imposing requirements on proposals that undermines the feasibility of desirable development.**

## 5. The guidelines do not recognise the role of business

There are many examples of local councils who conduct extensive community consultations and engage a plethora of urban design experts to devise elaborate town centre improvement schemes which completely fail due to an absolute lack in understanding of development realities. Furthermore, many town centre plans make unrealistic assumptions regarding privately owned land. Councils assume land swaps, acquisitions, and road realignments etc, which are unlikely, impractical and idealistic.

Even where the local council is able to develop a town centre improvement plan that proposes embellishments to public spaces, owned and managed entirely by the council, progress is often slow. This is mostly due to council's complete reliance upon development contributions to fund centre improvement works. The projected level of income from developer contributions vastly overestimates development potential of sites and does not recognise the dramatic impact that high development contributions have on development activity.

The guidelines imply that the way to activate and support development is to introduce more local controls. The guidelines suggest that the local authority is best placed to determine what should occur within a centre. The guidelines suggest that the local authority would be able to dictate business mix with a centre.

### ***The market is best placed to decide the range of private sector services in a centre***

For instance the guidelines say that we should

Analyse the local context to determine the most suitable range of uses which will create a lively centre that supports the needs of the local community.

Support a 'fine grain' of uses that will allow for greater diversity in activities and add to the character, such as smaller retail spaces, 'hole-in-the-wall' shops/cafes, temporary stands, pop-up retail, performance spaces and other innovative uses of space.

Allow a range of uses that extends activity within centres after hours.<sup>33</sup>

It is not possible for a local council to determine the most suitable range of non-government uses for a centre. Business responds to community demand which changes over time. The right business mix within a centre has little to do with planning controls and everything to do with customer desire. Planning analysis can come up with a magic list of land uses which they think will create a lively centre. It can allow for extended trading hours and support fine grain uses. However, unless there is a market for the identified land uses and a person is prepared to take the risk to invest in a business venture, nothing will happen.

Those that analyse, plan and then develop the list of desirable land uses for a centre are not those that will be called upon to invest in a business venture. Hence the analysis and range of uses identified will always be of marginal value and will be less and less relevant as time goes on.

The government needs to abandon its obsession with 'crystal balling' and prescribing land use for a centre. Planning should simply ensure that all compatible land uses are permitted within a centre and then permit the mix of uses to evolve over time. The market will respond to the needs of the community. This is fundamental to business success.

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<sup>32</sup> *ibid.* p 27

<sup>33</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 47

Furthermore, planning should focus on the provision of local infrastructure to service community and business needs. Planning should focus on the structure of the centre, preservation of local amenity and provision of public spaces, not seek to control the business mix.

### **Residential development is a centre should not be discouraged**

The guidelines suggest that the planning system should be used to

resist pressure for intense residential demand where it will prevent commercial and employment growth by zoning sites best reserved for generating employment uses.<sup>34</sup>

This approach will simply mean that what is most desired and needed by the community will not be provided. In this instance the planning system is being used to ensure that community need is not met and that by using zoning, to reserve sites will simply mean that sites remain vacant or undeveloped. Where is the public benefit of preventing residential development where there is "intense residential demand"? This approach ensures that areas where people want to live become unobtainable to many who are forced to seek housing in less desirable locations.

### **Street-level activity**

Street level activity is also a matter that cannot be achieved through planning controls. It is businesses responding to community needs that creates street level activity. The guidelines fail to appreciate this, and instead expects planning authorities to:

Define areas where active streets are required or desired.

Maximise active street fronts along streets, lanes and through site links within centres.<sup>35</sup>

There is no need to define areas for active street frontages where there is passing trade and business opportunities as business will naturally cluster in these locations.

We agree 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. 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 seek to locate in these areas where consumer behaviour is likely to justify it.

However, requiring retail and business uses at the ground level along streets without sufficient pedestrian traffic (or the right kind of 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.

### **Night life**

The same can be said for the use of planning regulation to encourage night life. The guidelines suggest that we should

extend the trading hours for suitable uses that provide links between existing night trading areas and transport/parking areas. This will promote continued activity along main streets and improve the safety of centres at night.<sup>36</sup>

However, extending hours of trade will not mean a thing to the proprietor of a business that has no trade after usual business hours. Where conflict with residential land uses is unlikely, hours of trade should be generally relaxed to permit business to trade outside of usual business hours if there is a demand.

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<sup>34</sup> *ibid.* p. 47

<sup>35</sup> *ibid.* p. 51

<sup>36</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 52

**The Department of Planning and Infrastructure should explore the ways that a local council can incentives and seed development for the mutual benefit of the land owner and town centre.**

**6. The Centres guideline does not recognise the real impact of a centres hierarchy**

The notion of a planning-control-imposed centres “hierarchy” stifles growth and renewal. There is no doubt that centres will have different physical size and characteristics and will offer different levels of service at a point in time. However, it is a fallacy to suggest that “the hierarchy does not restrict the character of centres from changing.”<sup>37</sup>

The guidelines say that

The key differences between centre types are the amount and type of employment and retail services. Over time, centres may grow and change from one type to another. The centres' hierarchy provides a common language and understanding about centres and their roles. The hierarchy does not restrict the character of centres from changing and is not part of the statutory planning system.<sup>38</sup>

However, local environmental plans enshrine a centres hierarchy in law by assigning differing levels of business zonings. Most local environmental plans adopt three levels of business zone - B1-neighbourhood centre, B2-local centre and B3-commercial core. The zone objectives and permitted land uses dictate how a centre will continue to function. There is no chance of growing beyond the geographical zone boundary, exceeding the height and floor space controls or introducing new uses to the centres without significant variation to the local environmental plan. Local environmental plans - and development control plans - are deliberately used to establish and reinforce a centres hierarchy. They intentionally restrict development to ensure that centres do not change or circumvent an established hierarchy.

The fixation on centres hierarchy and the use of local planning controls to enforce a hierarchy not only stifles growth; it also impacts upon the ability to renew urban areas. Areas that are, or have experienced decline do so due to changes in population, customer need or attraction. If a place is not permitted to offer alternative land uses because of zoning limitations, reflecting a centres hierarchy, redevelopment will not be attractive to an investor. An investor looks for an opportunity to meet an unmet need and will not be attracted to development opportunities that simply replace the existing, especially if the existing has failed or no longer meets community demand. Urban renewal is facilitated in areas provided with mixed use zones.

**The guideline misrepresents centres hierarchy, and in fact supports the continuation of restrictive zonings and unimaginative development controls devised extensively to maintain the centres status-quo.**

**7. The guideline does not demonstrate an understanding of the use of the standard instrument**

The centres guidelines state that the benefits of concentrating population and activities within centres include:

- increasing opportunities for housing choice and more diverse communities;
- making better use of public transport improvements and existing infrastructure;
- promoting sustainable and accessible transport and healthier communities by increasing walking, cycling and public transport options for more people by making more activities available in accessible locations;
- reducing pressure for development to occur in less accessible locations; and
- creating lively places which operate as a focus for community activity and events, and which help to build social inclusion.<sup>39</sup>

We agree wholeheartedly. However, our experience is that recently exhibited comprehensive local environmental plans remain fixated on *separation* of land use or sadly, simple translation of

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<sup>37</sup> *ibid* p. 22

<sup>38</sup> *ibid.* p. 22

<sup>39</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011). p. 12

old outdated local plans into the standard template format (often with a series of down-zonings thrown in for good measure). Local councils and the Department have not taken steps to ensure that local environmental plans are used to permit a wide variety of land use, coexisting and contributing to centre vitality.

Many local councils remain obsessed with prescribing land uses permitted within each level of centre, without consideration of community need or market forces. For instance, even when there is a demonstrable need for higher order shopping services in a “neighbourhood centre” (zone B1), local controls will be strictly applied to prohibit higher order uses (for example, rezoning to zone B2). The same can be said for centres that are no longer viable. Even when an alternative land use is more attractive and viable, because the centre is assigned a business zoning, residential development, other than shop top housing, is prohibited under some misguided idea that such controls are protecting centre viability. In reality such controls guarantee centre failure.

**The Department of Planning and Infrastructure should direct its attention towards the more liberal use of mixed use zonings that permit a wide range of land uses within town centres.**

## **8. The guidelines do not recognise the negative impact of development controls**

### ***Apartment mix and residential dwelling targets***

The guidelines suggest that planning authorities use their ability to draft development controls to encourage housing diversity and affordability. The guidelines say that planning authorities should

Set appropriate apartment mix and residential dwelling targets in DCPs for a centre based on sub-regional planning strategies.<sup>40</sup>

Housing diversity will be provided to respond to a diversity of consumer demand. Developers can only build what is required by the market. Therefore if there is an authority imposed apartment mix which is not representative of the market need, then this will simply mean that development does not occur (or occurs only at a suboptimal level, out of kilter with actual community needs). Regulating for housing diversity is not the answer. Permitting a wide variety of housing types will deliver diversity across a centre.

It is also of unclear why the guidelines suggest that a local development control plan should be used to set residential dwelling targets. This is currently the role of metropolitan planning and subregional strategies and the suggestion that a DCP be used in such a manner is a significant unexplained shift in planning practice.

### ***Rent control housing***

The guidelines say that we should

Promote provision and retention of housing with good access to centres for tenants with low to moderate incomes.<sup>41</sup>

This principle seems to suggest that the regulatory system should effectively impose a form of rent control on existing housing stock, by preventing them from being upgraded or developed into higher value stock.

The Urban Taskforce has previously advised Government of the futility and damage that the inappropriate use of the planning system has on housing supply. If an authority was to lock up development opportunities and prevent urban renewal, a significant reduction in housing supply will be the result. If the intention of such policy is to increase the supply of affordable housing in the right locations, then the policy direction should be focused on increasing supply, not limiting supply to the existing level.

The OECD has developed indicators on regulation of both private and social rental markets capturing the degree of control of rents and tenant-landlord relations.<sup>42</sup> Its review of the

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<sup>40</sup> *ibid.* p. 57

<sup>41</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 57

research lead the OECD to conclude that rent controls tend to generate, on average, *small* benefits for tenants living in regulated dwellings and that such regulations tend to be poorly targeted.<sup>43</sup>

In the 30 developed countries analysed by the OECD, it was concluded that there is no clear evidence that comparative average rent levels (taking into account differences in quality of dwellings) are lower in countries with stricter rent controls.<sup>44</sup> Instead, rent regulations may redistribute from new tenants (or tenants with shorter expected duration) to incumbents (or longer-stay tenants), reflecting the tendency for landlords to initially set higher rents in order to compensate for the erosion of real rents suffered during occupancy.<sup>45</sup> Hence, rent regulations may cause a divide between established households benefiting from rent-controlled, higher secured tenancies and new households who have to access housing primarily through the unregulated market.

A number of studies illustrate the adverse effects of poorly designed rent regulations on various aspects of housing markets.<sup>46</sup> Stringent rent regulations potentially discourage new construction and maintenance by capping the price of rentals, thus lowering the net return on such investments.<sup>47</sup> In line with this, an illustrative correlation shows that across countries, stricter rent control tends to be associated with lower quantity and quality of rental housing, as measured by the share of tenants lacking space and those reporting sub-standard housing, in terms of a leaking roof.<sup>48</sup> Below-market rents may also encourage individuals to spend effort and resources on obtaining cheap housing and this can lead to a misallocation of housing.<sup>49</sup>

Overall, the OECD has concluded that rent regulations appear to achieve little benefits in terms of average rents, while they may possibly, unintentionally, redistribute among different categories of tenants.<sup>50</sup> Stricter rent regulation and tenant protection are associated with an increased incidence of renting (and therefore reduced home ownership).<sup>51</sup> For example, increasing tenure protection from the lowest level observed among the countries in the OECD's sample (the United States) to the average level would raise the probability to be a tenant by 5 percentage points.<sup>52</sup>

Stricter rent controls and tenant-landlord regulations significantly reduce residential mobility by discouraging the supply of rental housing and by locking-in tenants. Econometric estimates suggest that reducing rent control from the strictest to the average level in the OECD would imply roughly the same magnitude of increase in households mobility rate as an increase in the responsiveness of housing supply. Strict regulations also reduce residential mobility by

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<sup>42</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 8.

<sup>43</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 49; B Turner and S Malpezzi, "A Review of Empirical Evidence on the Costs and Benefits of Rent Control" (2003) *Swedish Economic Policy Review*; T Ellingsen and P Englund, "Rent Regulation: An Introduction" (2003) 10 *Swedish Economic Policy Review*.

<sup>44</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 30.

<sup>45</sup> Ibid; Basu, K. and P.M. Emerson, "The Economics of Tenancy Rent Control" (2000) 110 *The Economic Journal*.

<sup>46</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 50; R Arnott, "Time for Revisionism on Rent Control?" (1995) 9 *Journal of Economic Perspectives*; T Ellingsen and P Englund, "Rent Regulation: An Introduction" (2003) 10 *Swedish Economic Policy Review*.

<sup>47</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 50; R Arnott, "Tenancy Rent Control" (2003) 10 *Swedish Economic Policy Review*; D Sims (2007) 1, "Out of Control: What Can We Learn from the End of Massachusetts Rent Control?", *Journal of Urban Economics*.

<sup>48</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 50.

<sup>49</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 50; E Glaeser, E Luttmer "The Misallocation of Housing Under Rent Control" (2003) 93 *American Economic Review*, 1027;

<sup>50</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 52.

<sup>51</sup>Ibid 53.

<sup>52</sup> Ibid.

discouraging the supply of rental housing and decreasing tenants incentives to move.<sup>53</sup> Indeed, the OECD says that if rents in rent-regulated dwellings are set, or vary, differently from those in non-regulated dwellings, rent regulation may limit residential mobility as sitting tenants in rent-controlled dwellings will be reluctant to move and give up their below market rents.<sup>54</sup>

Strict tenant-landlord regulation, resulting in high tenure security, can have adverse mobility outcomes as it lowers the expected returns from residential rental supply, potentially reducing investment and/or encouraging hoarding or alternative uses of the existing stock by households.<sup>55</sup> Difference in tenant security across regulated and unregulated segments of the market can also reduce mobility by curbing residential turnover as tenants may have to give up secure tenancies for less secure ones.<sup>56</sup> Combined, the negative effects of rental regulation on supply and tenants incentives may lead to lower turnover in the rental sector and, thus, lower residential mobility.<sup>57</sup>

The solution to housing affordability is simple. **Increased demand must be met by increased supply if housing is to more affordable for everyone going forward.**

## 9. The guidelines do not consider the need for flexibility in development controls

It is suggested that the purpose of the guidelines is to "guide councils when considering the form and design of new centres and upgrades, revitalisation and expansion of existing centres".<sup>58</sup> The centres guidelines are supposedly particularly aimed at local government planners as a resource to assist in strategic planning and the development of local policies and controls.<sup>59</sup>

When in reality, the majority of what is built and contribute to the centres to the greatest extent is privately owned, maintained and managed. Therefore, local and state authorities can do little to influence the centre improvement unless they are willing to either purchase privately owned premises for redevelopment or work collaboratively with land owners to devise a package of incentives to drive redevelopment. Again, this relies on a local authority's willingness to relax or alter development controls to reflect market realities.

It is not sufficient to simply say that planning authorities should

Support mixed-use development along the main street to ensure the greatest number of people has access to a variety services.<sup>60</sup>

Integrate opportunities for live-work style development in and around centres that can allow residents to establish and operate businesses from home. This may be achieved by generous floor to ceiling heights, generous unit size with flexible layouts and building structure.<sup>61</sup>

To support mixed use the local authority simply needs to apply the appropriate zone and permit a wide range of land uses. The built form will respond to the demands of the land user, hence there is no need to over prescribe floor to ceiling heights or unit layout. Development controls should focus on the preservation of local amenity. Local controls should not try to micromanage land uses within the mixed zone. A natural mix of land uses will develop overtime, reflecting consumer demand.

There is no need to insist that each individual building contain a mix of uses within a mixed use zone. The horizontal mixing of uses will provide centre activity and street level activation as successfully as vertically mixing land uses. Street level activity will occur due to market and

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<sup>53</sup> Ibid 65.

<sup>54</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 65; H Lind, H. "Rent Regulation: A Conceptual and Comparative Analysis" (2001) 1 *International Journal of Housing Policy*; J Nagy, "Do Vacancy Decontrol Provisions Undo Rent Control?" (1997) 42 *Journal of Urban Economics*; RICS, *European Housing Review* (2009).

<sup>55</sup> Andrews, D., A. Caldera Sánchez and Å. Johansson "Housing Markets and Structural Policies in OECD Countries" (2011) 836 *OECD Economics Department Working Papers* 65.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid. p. 14

<sup>59</sup> Ibid p. 15

<sup>60</sup> Ibid. p. 41

<sup>61</sup> Ibid. p. 56

customer desire, not planning regulation. For instance, if the planning regulation seeks to impose retail usage at the ground floor, where retail is not viable, the entire development will simply not proceed or if it does, the non-viable ground floor retail will simply remain vacant actually creating a dead, unattractive centre with no activity.

The guidelines also say that

suitable uses along major roads include small shops, local services, offices, some commercial uses and light industrial, warehousing or showrooms.<sup>62</sup>

However, there are many examples where uses other than small shops, offices, commercial uses are successfully operating along major roads. Significant retail and food orientated uses can be suitable land uses along a major road. Residential development, properly designed and located along a busy road can also be successful.

The guidelines should not be dictating what is considered to be suitable uses along major roads as location and context will be different in every case. **The Department of Planning and Infrastructure should instead focus on ensuring that local environmental plans permit a wide variety of uses along major road corridors to ensure that the advantages of locating development along significant transport infrastructure are not lost.**

#### 10. In many respects, the guidelines simply state the obvious

Qualified urban designers, architects and planners are skilled professionals well versed in the principles of urban design. They understand the built form and the contribution that well designed builds make to urban spaces. They do not need ninety pages of centres guidelines to explain good urban design practices. Unfortunately, many elements of the guidelines simply state obvious, simple urban design issues that are considered in any development proposal.

Skilled urban designers, architects and planners don't need to be told that we should

Concentrate the highest appropriate densities of housing with jobs, services and public facilities in integrated, mixed-use centres within an acceptable walking distance of major public transport nodes, such as rail stations and high-frequency bus routes.<sup>63</sup>

or

Design buildings and spaces that allow for passive surveillance of public areas to reduce the likelihood of crime. Improving an area's safety can promote user confidence, leading to higher pedestrian activity and improved economic viability of a centre.<sup>64</sup>

The entire section on building form and materials is simply stating the obvious. Skilful urban designers, architects and planners understand that they must

Ensure building depth and bulk is appropriate to the environmental setting and landform and allows for view sharing and good internal amenity.<sup>65</sup>

Ensure building separation is adequate to provide amenity, daylight and privacy between adjoining developments.<sup>66</sup>

Furthermore, urban designers and architects recognise the importance of building scale, dimension and separation. There is no need to state that there is a need to define the public domain through consistent building alignments. These matters and others listed above are just examples of urban design principles that simply don't need to be said. They are well established and understood urban design principles that do not need to be repeated in a rather simplistic publication.

**There is harm caused when regulatory documents re-state principles that will be complied with whenever is practicable to do so. It leads to extra requirements for voluminous documentation to demonstrate that the principles has been met, or justify a decision not to meet the principle.**

<sup>62</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 40

<sup>63</sup> *ibid.* p. 38

<sup>64</sup> *ibid.* p.59

<sup>65</sup> *ibid.* p. 66

<sup>66</sup> *ibid.* p. 66

**Where the principle is not practicable, it lead to additional document and protracted discussions for the case to be made.** This is pointless when we're talking about something that every developer and development professional will strive to achieve in any event, wherever it is practicable to do so.

#### **11. The guidelines are not grounded in reality**

The guidelines make many sweeping statements and generalisations regarding desirable outcomes and attributes that should be pursued in the interest of improved town centres. However, these centres outcomes are highly unrealistic and unlikely. For instance the guidelines seek to

Promote access to fresh local and organic produce by supporting community gardens close to centres that could supply produce to local businesses and farmers' markets.<sup>67</sup>

and

Encourage use of appropriate building materials to reduce any environmental impact. Increase the use of sustainable building materials and, if possible, reuse or recycle materials at the end of the building's life.<sup>68</sup>

Access to fresh food is a worthwhile pursuit, but surely access to more supermarkets providing customers with competitively priced produce would be of greater benefit to the local community than community gardens. If a Council wants to set aside land for community gardens, this should be applauded, but this not a matter for inclusion in a centres design guideline.

Encouraging sustainable building materials, reuse or recycle materials at the end of the building's life is little more than a feel-good statement. Seeking to regulate the source and method of manufacture of building materials is near on impossible, let alone the inspecting and verifying the source of a product once installed in a building.

#### **Surely forestry policy should be left to the forestry and environment agencies of the state and federal governments?**

The guidelines also include principles relating to "green cover". While we all recognise the benefit of green spaces and the desire to introduce more green cover to urban areas, the reality and practicality of the green cover principles are highly questionable. For instance, the guidelines say we should

Consider green roofs and walls on car park structures. Green roofs on multi-storey car parks may provide additional public spaces and green walls can screen parked cars from view making the surrounding area look more pleasant and inviting.

Encourage installation of green walls to enliven blank façades on existing buildings. Green walls can also be grown in well-lit foyers, lobbies, offices and shopping arcades.

Screen plant rooms, lift overruns or air-conditioning units with green cover to improve the aesthetic quality.<sup>69</sup>

Greening structures is a highly specialised area and requires careful planning and design for success. It is not appropriate for a guideline to make sweeping statements such as those above that could be used by a planning authority to impose unrealistic requirements upon the developer. Greening roofs and walls and providing screening to plant rooms, lift overruns or air-conditioning units is only possible in optimal conditions. It should be left to the building designer to determine if "green cover" is an appropriate solution and can be cost effectively provided.

#### **The guidelines should be abandoned as they are idealistic, unrealistic and not grounded in reality.**

The Department of Planning and Infrastructure must consider carefully the content of the guidelines and demonstrate if they are truly necessary. If we are to introduce new guidelines the Department

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<sup>67</sup> NSW Department of Planning and Infrastructure, *Draft Centres Design Guidelines*, (2011), p. 60

<sup>68</sup> *ibid.* p. 66

<sup>69</sup> *ibid.* p. 70

of Planning and Infrastructure must consider what other existing documents (and requirements) can be dispensed with, in order to ensure that there is no net increase in the regulatory burden.

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

Yours sincerely,

**Urban Taskforce Australia**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the end.

Aaron Gadiel  
Chief Executive Officer