



Delivering a better planning system for NSW Green Paper

Submission to the NSW Government on the *NSW Planning System Review - Green Paper*

Prepared by *Urban Taskforce Australia*, 14 September 2012

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

Urban Taskforce position - at a glance

1. General Support

The Urban Taskforce generally supports the Green Paper in the direction it has taken in proposing reform of the planning system in NSW. While this will lead to a new Act, it is also important that other instruments, structures and cultural change are undertaken.

2. Urban Taskforce priorities met

The Urban Taskforce submission to the Planning Review presented 10 key ideas or actions for a better planning system. We are pleased to see that these are all responded to in the Green Paper. In particular our call for:

- Presumption for Growth (1);
- Involving Local Communities Early (4);
- Code Assessable Development (6); and,
- Mixed Use Zoning (7)

are all covered by the Green Paper.

3. Detail is critical

While supporting the general thrust of the Green Paper, we believe that many areas need strengthening and other important areas for reform could be lost in the detailed resolution of the issues. This submission will focus on areas where we believe the detail is most important.

4. Temporary Planning Policy

As it will take many years to implement the full system of new plans and as New South Wales is still underperforming on housing starts and building construction, a Temporary Planning Policy is needed to kick-start the industry. The Queensland Government has recently gazetted a Temporary Planning Policy which aims to 'speed not impede' development. A NSW Temporary Planning Policy could clarify the relevance of DCPs, increase the opportunities for appeals and utilise the Strategic Compatibility Certificate sooner.

5. Community Participation (Green Paper 1,2,3,)

Community participation must be structured, responsible and relevant to managing future growth. The following issues need to be incorporated in the Public Participation Charter:

- represent the whole community;
- take into account higher level decisions on population growth and infrastructure needs;
- ensure economically viable development;
- be undertaken within reasonable timeframes;
- be fully briefed by experts on criteria, evidence and options;
- agree that decisions are for a 5 year time frame;

- be relevant to the hierarchy of planning structures from state to regional to local; and,
- accept that Code Assessable means no merit (including design) issues are opened to the community.

6. e-planning (Green Paper 4)

The opportunity for e-planning to rethink the Planning Act and the planning system must not be lost through lack of funds or resources. Government needs to ensure an appropriate budget for e-planning goes with the reform package. A dedicated implementation unit needs to be established with industry input.

7. Strategic Planning (Green Paper 5,6,7,8)

The proposed importance of the Subregional Delivery Plans is supported as they will set the picture for growth at a regional level, involving a number of councils. It is important that industry and the market place are involved in strategic planning along with the community.

8. Regional Structures (Green Paper 6,7,21)

Clearly a number of planning decisions need to be made jointly between the State Government and local governments. This includes managing urban growth, large scale infrastructure and economic development. As the Green Paper proposes Regional Planning Boards and Joint Regional Planning Panels it would seem sensible to relate these regions to a cluster of councils within a Regional Organisation of Councils or with a group of 10 or so councils with the same Shared Service Centre. This approach has been detailed in the Urban Taskforce submission to the NSW Independent Local Government Review Panel.

9. Culture of Planning (Green Paper 23)

To rethink the culture of planners within the Local Government system it is recommended that most planners be allocated to the Shared Service Centre across 10 councils. These planners would service individual councils for smaller projects and JRPP's for larger projects and Regional Planning Panels for strategic planning. A culture more focussed on outcomes and delivery is required.

10. New zones (Green Paper 9)

To balance the Suburban Character Zone (that will protect existing housing) there should be an Urban Growth Zone where density is encouraged. Victoria has recently introduced both zones.

11. Streamlined approvals (Green Paper 10,11,12)

All assessment should be by independent panels or council staff without the involvement of politicians. In country/regional areas, council staff may be sufficient without the need for independent panels.

12. Code Assessable (Green Paper 14)

Codes must pass a feasibility test to ensure viable projects can occur. Design issues must be within the code and should not go back to the community for comment. Determining bodies (staff or panels) could obtain design advice if necessary.

13. Merit Assessment (Green Paper 13)

Merit Assessment is supported for projects outside the Code Assessable system and for components of projects outside Code requirements. Merit assessment needs early involvement of assessment bodies to avoid wasted work. Financial viability must be taken into account in assessment and conditions should be clear and cost effective.

14. Reviews and Appeals (Green Paper 15)

While the planning system will set down rules and requirements across the State, there will always be exceptions or changing market place circumstances that will need reviews of the planning rules. Reviews of council decisions should be to the JRPP or PAC and the Land and Environment Court should be available after this. The Urban Taskforce fully supports the use of a Strategic Compatibility Certificate to enable projects that meet higher level strategic parameters to proceed.

15. Infrastructure (Green Paper 16,17,18,19)

The Urban Taskforce supports a simpler and fairer method of funding infrastructure including the use of Growth Infrastructure Plans to set priorities and the proposals to spread levies across the broadest base of beneficiaries.

FURTHER INFORMATION

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1. Summary of Urban Taskforce comments in the Green Paper

The Green Paper sets out a framework for a new planning system. This framework groups twenty-three initiatives and reforms under the key areas of: community participation; strategic focus; streamlined approval; provision of infrastructure and delivery culture. The Urban Taskforce has used this framework to structure its submission to Government and our comments are summarised in the following table.

Community Participation	Comments/Key Issues
1. Public Participation Charter to require the appropriate level of community participation in plan making and development assessment	<ul style="list-style-type: none"> • The Charter should be a plain/simple statement of intent. • It must acknowledge that growth must be provided for. • Must clearly state that the community has a responsibility to accept growth and make provision for the growth. • The Charter must set the ground rules for consultation. • Charter must acknowledge that the landowner has rights to develop land.
2. Strategic community participation to enable effective and early community participation	<ul style="list-style-type: none"> • Community must be defined to include not only existing residents, but all stakeholders. This includes, but not limited to: <ul style="list-style-type: none"> ◦ Landowners; ◦ Industry; ◦ Developers; and, ◦ Residents. • Effort must be placed towards ensuring that we have a true representation of the community, not just the vocal minority. • Clarification is needed as to where/what stage will the community be involved.
3. Transparency in decision making to increase public access to the evidence base for decisions	<ul style="list-style-type: none"> • Transparency does not mean that the community is the decision maker – the Government will need to consider all inputs and make the final decision on planning matters. • There must be recognition that there is a role for expert input into the decision making process. • The decision maker must not only consider the needs of the present community – must also provide for future community needs (growth). • Transparency in decision making is important, but timeliness is also important.
4. Information technology and e-planning to simplify and improve community access to planning information and processes	<ul style="list-style-type: none"> • Support information technology and e-planning. • Funding must be allocated to this matter. • The NSW Government must take a strong leadership role in the development and implementation of this.
Strategic Focus	Comments/Key Issues
5. NSW Planning Policies replace SEPPs and Section 117 Directions and provide practical high level direction	<ul style="list-style-type: none"> • Reduction of SEPPs and 117 Directions supported. • Proposal does establish a hierarchy of policy. • Industry/community must be engaged in the development of these new policies. • Must not be a simple cut and paste/rebranding of the existing SEPPs. • This is an opportunity to finally repeal outdated and inconsistent SEPPs – This is very important.

	<ul style="list-style-type: none"> • We continue to remain concerned with prescriptive nature and inappropriate use of SEPP 65 and RFDC. • What happens to provisions of SEPPs that are to be retained? <ul style="list-style-type: none"> ◦ eg, what happens with say SEPP 65 and RFDC? ◦ Does this become a new NSW Planning Policy, or do the design matters get transferred to Part D of the new LEPs? ◦ More information on these matters is urgently needed.
6. Regional Growth Plans to align strategic planning with infrastructure delivery	<ul style="list-style-type: none"> • Good in theory – support a plan that articulates that growth is to occur and where/how it should occur. • Must ensure that Government inability to deliver infrastructure to the level that the “community”/local council demands is not used as an excuse to stifle growth. • Can’t have councils saying that growth will not be supported until major infrastructure has been delivered.
7. Subregional Delivery Plans that affect immediate changes to zones, are based on evidence in Sectoral Strategies and linked to Growth Infrastructure Plans	<ul style="list-style-type: none"> • Important part of the planning process. • We question whether the government has the ability and resources to obtain “evidence”. • Government needs to engage with the development industry to ensure that there is an element of market reality. <ul style="list-style-type: none"> ◦ The development industry has difficulty predicting growth and future markets – government will experience even greater difficulty if they do not consult with industry. ◦ Project feasibility must be a key consideration • Clarification needed on the subregions – however, the existing subregions are a good starting point. • The Government/Minister must sign-off on the Subregional plans – regional boards are to advise, but the final decision is with the Minister.
8. Local Land Use Plans with strategic context and performance based development guidelines	<ul style="list-style-type: none"> • The continued standardisation process is supported. • The preparation of one plan that integrates strategic, spatial land use, infrastructure and development guidelines is supported in principle. However, caution with the drafting of part A of the plan. This must be a high level, broadly worded part that sets the planning context. It must be word limited and must not include development standards or otherwise seek to introduce overarching controls. • Existing Development Control Plans must be reviewed, modernised and checked for consistency with government policy. A simple “cut and paste” from old DCPs into the new plan format is not acceptable. • We would expect that the bulk of existing DCP will be scrapped
9. New Zones to capture investment opportunities and preserve local character	<ul style="list-style-type: none"> • The inclusion of new flexible zone is supported. However, question how widely this will be used by local councils. • Caution over the over use of the new suburban character zone – some local councils may seek to use this to block

	<p>redevelopment and/or see this as an opportunity to preserve/freeze the locality.</p> <ul style="list-style-type: none"> • There needs to be a balance when applying zones. The use of a suburban character zone needs to be balanced against growth/flexible zones. • Sufficient area needs to be provided for growth. • There is a need for greater reform to current zoning practices. No need for the number of zones. • We should see a reduction in the number of zones.
Streamlined Approval	Comments/Key Issues
10. Depoliticised decision making with development decisions streamed to independent experts	<ul style="list-style-type: none"> • Support the greater use of experts, provided they are: <ul style="list-style-type: none"> ◦ properly resourced; ◦ properly briefed; ◦ understand their role and responsibilities; • Guidelines need to be developed to ensure appropriate function of expert panels. • Clarification on the scale/value of projects to be referred to the independent expert panels (IHAP, JRPP, PAC) • We suggest that any project: <ul style="list-style-type: none"> ◦ \$10 million or above be referred to the JRPP; ◦ \$50 million or above be referred to the PAC. (note project value above \$50 million considered state significant)
11. Strategic compliance to allow development that complies with strategic planning to proceed	<ul style="list-style-type: none"> • Strongly supported. • Immediate introduction of this process is needed. • More detail on this process sought. • Must be a right of appeal to the L&E.
12. Streamlined state significant assessment to deliver major projects sooner	<ul style="list-style-type: none"> • State significant projects should be any project \$50 million or above.
13. Smarter and timely merit assessment with requirements matching the level of risk	<ul style="list-style-type: none"> • Supported. • The new planning system will take a number of years to be implemented. Therefore, transitional provisions of the Act are very important. In this regard, the new Act must include transitional provisions that: <ul style="list-style-type: none"> ◦ Clarify the status of DCPs (only one of the factors to be considered with making a determination); ◦ Extend the application of SEPP1/cl4.6 type objections to include the ability to object to prohibitions; and, ◦ Immediate introduction of strategic compliance and appealable rezoning determinations.
14. Increasing code assessment to reduce transactions costs and speed up approvals for complying development	<ul style="list-style-type: none"> • Strongly supported. However, community input on issues of design after the code has been prepared is not supported and goes against the principle of code assessment. • Community should be involved in the development of the code, but once adopted, there is no further need for community input in code assessment, including matters of design.

15. Extended reviews and appeals to increase the accountability of decision makers	<ul style="list-style-type: none"> Strongly support the right to have rezoning decisions reviewed. Ability to seek review by JRPP and/or PAC is supported. However, all decisions must be subject to review by the L&E. Holding costs should be awarded as a cost.
Provision of Infrastructure	Comments/Key Issues
16. Contestable infrastructure to enable greater private sector participation	<ul style="list-style-type: none"> Supported in principle
17. Growth Infrastructure Plans to link strategic plans with infrastructure provision	<ul style="list-style-type: none"> Supported in principle
18. Affordable infrastructure contributions to provide a fairer and simpler system to support growth	<ul style="list-style-type: none"> Supported in principle
19. Public Priority Infrastructure to streamline assessment for major infrastructure delivery	<ul style="list-style-type: none"> Supported in principle
Delivery Culture	Comments/Key Issues
20. Chief Executive Officers Group to provide a whole of government approach to implementation	<ul style="list-style-type: none"> Supported
21. Regional Planning Boards to oversee regional and subregional strategic plan making	<ul style="list-style-type: none"> Supported, but the final decision rests with the Minister.
22. Mandatory performance monitoring to publicly track performance towards achievement of strategic plans at all levels	<ul style="list-style-type: none"> Supported, but clear and measurable targets must be set to measure performance against.
23. Organisational reform to resource strategic planning and improve the culture of planning at all levels	<ul style="list-style-type: none"> Supported. This is an important issue that will require commitment, strong leadership and structural change.

2. Introduction

The Urban Taskforce strongly supports the Government's review of the *Environmental Planning and Assessment Act 1979*. The Act, along with the entire planning system is in urgent need of a major overhaul. Over its life, this Act has been the subject of numerous amendments which has resulted in a complex, disjointed and confusing piece of legislation. The Act and the planning system have not kept pace with contemporary approaches to planning and development, nor does the Act properly recognise the need for development to meet the needs of growth. The Act does not value the significant contribution made by development to the economic prosperity of this State.

The new Planning Act and system must be less complex and be an enabling piece of legislation that will facilitate sustainable development for the benefit of the broader community. We urge the Government to ensure that this review process results in the introduction of legislation with clear objectives that will facilitate development for the economic prosperity of the State.

The Urban Taskforce completed a comprehensive review of the Issues Paper the *NSW Planning System Review: The way ahead for planning in NSW-December 2011* and provided a submission for the consideration of Government. The Urban Taskforce has also made previous submissions to Government on the need for planning reform and in this regard these previous comments made:

- during our meeting of 12 May 2011 with the Minister for Planning and Infrastructure;
- in correspondence of 23 May 2011 to the Minister for Planning and Infrastructure; and,
- in our Initial submission to the preliminary stage of the Planning Review titled *Making it work: Identifying the problems in and proposing solutions for the NSW planning system, August 2011*

remain relevant to this consultation process and should be considered in conjunction with this submission.

The purpose of this submission is to respond to the Government's Green Paper and contribute further ideas towards the development of a better planning system for NSW. This submission provides a brief review of the Urban Taskforce submission made to the Government's issues paper and considers whether the Green Paper adequately responds to the previous Urban Taskforce concerns. Generally, the Green Paper acknowledges Urban Taskforce concerns and provides an encouraging roadmap for reform.

This submission also highlights policy areas in the Green Paper that continue to be issues of concern and/or require further refinement.

We are of the view that the Green Paper acknowledges that the planning system requires fundamental reform to support progress and development that is in the best interest of the economy and broader community.

While the Green Paper does not provide detail on the content of the draft legislation required to implement the policies outlined, we urge the Government to ensure that the new Planning Act remains a focused piece of legislation and does not include issues that are not "core planning" matters. We also understand that the reform required is much more than the Act itself. This State requires comprehensive reform to the entire planning system.

This review process must continue to consider the context and unfortunate legacy of the existing complex, cumbersome and unwieldy planning system. Simply put, the legacy of past planning systems has impacted NSW resulting in a lack of development and a chronic shortage of land for urban development and housing, particularly in the Sydney region.

3. The Green Paper acknowledges Urban Taskforce concerns

The Urban Taskforce submission to the issues paper of the NSW Planning System Review authored by Mr Tim Moore and Mr Ron Dyer, *The way ahead for planning in NSW?* (December 2011) highlighted matters considered essential to inspire confidence in a new planning system. Government and the Urban Taskforce agree that the Act has not kept pace with contemporary approaches to planning and development, nor does the Act properly recognise the need for development to meet the needs of growth. We strongly supported the Government's review of the *Environmental Planning and Assessment Act 1979*.

The Urban Taskforce urged the Government to introduce legislation with clear objectives that will facilitate development for the economic prosperity of the State. We argued that the new Act must be enabling legislation that drives land use planning to overtly promote development. We say that the new Planning Act and system must include a number of key principles as summarised below.

It is encouraging to note that the Green Paper acknowledges each of our key concerns with the existing Act and planning system and seeks the introduction of changes generally consistent with Urban Taskforce suggestions as highlighted below.

3.1 Presumption for Growth

All predictions strongly suggest that NSW will grow significantly over the next thirty years. This growth will be particularly experienced within the existing urban areas. It is for this reason that our new legislation must be one that accepts that growth is to occur and requires management of growth not its prevention.

What does the Green Paper say about growth?

The Green Paper says much about growth. The Minister sets the scene well by stating that:

The new planning system must support the Government's priority to facilitate NSW being the number one choice for business investment, enable the sustainable growth of our cities and towns.....¹

It is most encouraging to read that Government recognises that the new planning system must facilitate investment and growth. The Green Paper declares that:

The objectives of the Act will emphasise in particular the role of planning in facilitating and managing growth and economic development.²

The new planning system will support the achievement of the NSW Government's priority to drive economic growth.³

Furthermore, the Green Paper introduces a new plan, the *Subregional Delivery Plan*. We are advised that such plan will be

the new transformative delivery tool for high growth areas in NSW by:

- directly rezoning land in key areas, avoiding where possible the need for local plans to be separately and continuously amended;
- providing a framework for code based assessment in key areas for subsequent development;
- consolidating NSW Government agencies requirements for development in the subregion in a timely manner thereby reducing subsequent referral and concurrence requirements;

¹ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 2.

² Ibid. p.3

³ Ibid. p. 17

- linking subregional planning to infrastructure planning and delivery, ensuring that communities that are planned to grow can expect support through infrastructure investment.

Subregional Delivery Plans will also be informed by a consideration of the economic and market drivers of investment.⁴

If a new Planning Act and system is produced that has, as suggested in the Green Paper, the facilitation of growth as a key principle or objective, then NSW has a fighting chance for a development driven economic recovery. The Urban Taskforce wholeheartedly supports the Government's desire to reform the planning system to one that supports growth.

The White Paper must:

1. introduce a new Planning Act that includes a clear objective for the encouragement of development and use of land to meet the demands of growth;
2. introduce a new Planning Act that recognises that development provides for community needs and makes a significant contribution to the economic prosperity of the state of New South Wales.

3.2 Ecologically sustainable development

It is possible to draft planning legislation that accommodates growth and promotes development while balancing environmental, economic and social priorities. The new Planning Act must include a main objective that encourages ecologically sustainable development. This should be based on the definition developed by the World Commission on Development of 1987, which defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

What does the Green Paper say about ecologically sustainable development?

The Green Paper considers sustainable development and argues for development and growth that is consistent with the principle of ecologically sustainable development. For instance the Green Paper states that a successful planning system is one that:

promotes sound economic outcomes, facilitates sustainable growth and effectively connects people and places. It provides adequate and affordable housing and employment, aligns land use with infrastructure provision and protects our greatest natural assets. It facilitates sustainable development by balancing competing outcomes without getting bogged down in red tape.⁵

Furthermore the Green Paper states that:

The achievement of sustainable development will remain the main objective of the Act.⁶

⁴ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 36.

⁵ Ibid. p.9.

⁶ Ibid. p. 17

The White Paper must:

1. introduce a new Planning Act that includes a clear objective that requires development to strive for the achievement of ecologically sustainable development; and,
2. introduce a new Planning Act that recognises ecologically sustainable development as development that provides for the needs of growth, while balancing social, economic and environmental concerns.

3.3 State leadership is essential

Unfortunately, NSW is no longer the leading state of Australia. Compared to other states such as Victoria and Queensland we are being left behind on development performance and investment. The development industry has lost confidence in NSW and is seeking development opportunities in other states particularly Queensland and Victoria.

Clearly this Government must take a leadership role in lifting the State's economy. The Government must lead with a strategic planning system that encourages development, supported by delivery methods that drive growth as well as providing essential infrastructure.

What does the Green Paper say about leadership and strategic planning?

The Government commissioned an International Review of Best Practice in Planning Law as part of this review process. This review noted that

many of the State Environmental Planning Policies have competing priorities and are overly complex. It is also noted that there is a need for the State to provide leadership and policy guidance regarding issues of significance in implementing the planning and development agenda of the NSW Government.⁷

The Urban Taskforce emphatically agrees. For too long planning and development assessment has been crippled by an overly complex and conflicting set of state planning policies. It is satisfying to read that independent planning experts support the Urban Taskforce pleas for a new and much streamlined state planning system. However, the International Review of Best Practice in Planning Law makes the other key recommendation that there is a need for the state to provide leadership and policy guidance in implementing the planning and development agenda. This suggests that the State must intervene in cases where local authorities are not supporting and/or overtly frustrating the implementation of State initiated policy. For instance, we have experience of local councils deliberately maintaining local environmental plans that are inconsistent and prevent development that is being encouraged at the State level. This unfortunate situation must not continue. The new planning system must provide for easily access to an avenue to bypass inconsistent local planning instruments. The speedy introduction of the strategic compatibility certificate so that development, implementing metropolitan or regional strategies can be considered even if inconsistent with outdated local land use plans must be pursued.

The Green Paper says much about strategic planning. In fact the NSW Government's blueprint for change to the planning system is based around four fundamental reforms one of which is a

⁷ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 32

major shift to evidence based strategic planning in terms of planning effort, community and stakeholder engagement and decision making.⁸

The introduction of:

- Regional Growth Plans to align strategic planning with infrastructure delivery;
- Subregional Delivery Plans that affect immediate changes to zones, are based on evidence in Sectoral Strategies and linked to Growth Infrastructure Plans; and,
- Growth Infrastructure Plans to link strategic plans with infrastructure provision

is evidence of the Government's commitment and leadership in the form of strategic planning.

However, while we accept the important role that local government plays in planning and development assessment, it is of great concern that we read in the Green Paper that:

..... involve elected councillors assuming a strong leadership role in engaging with the community and advocating for their policy and planning priorities..... The shift towards engaging the community to think about planning beyond local government boundaries will depend on strong council leadership.⁹

Elected councillors should not be advocating for their policy and planning priorities but for State and local planning priorities in partnership with the State Government. Furthermore, it may be unrealistic to expect elected councillors to convince local communities to think about planning beyond local government boundaries without support from the State Government. This leadership and community engagement role is very important and should be a partnership between State Government and local councils.

The State Department of Planning and Infrastructure must take an active leadership role in local planning as it is the State Government's role to advocate for planning policy that applies beyond local government boundaries."

The White Paper must:

Introduce a new planning system which will require that the State Government take a leadership role while working with local councils to ensure that state level policy is implemented at the local level.

3.4 The place for community involvement is at the strategic planning stage

The Urban Taskforce encourages greater community involvement in land use planning. We argue that communities should be encouraged to participate at the strategic planning stage. Communities should understand that growth will occur and local areas will evolve as larger populations are provided for. In this context, local communities should be engaged in consultation on how their locality is to change and what the likely future character could be. This will result in local plans that are consistent with state policy while respecting local aspirations. However, once a local plan has been made and development standards that define built form adopted, the local community need not be involved on individual development projects that comply with the plan and adopted standards.

⁸, NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 3.

⁹ Ibid. p. 51.

What does the Green Paper say about community involvement?

The Urban Taskforce supports much of what the Green Paper has to say about community involvement. We agree that community participation should be at the centre of the new planning system. We agree that all parts of the community (individuals, organisations and businesses) should be able to participate in the planning process. The Green Paper states that:

To empower communities in the decision making process it is proposed to engage the community early at the strategic planning stages in the setting of the overall planning outcomes for an area.¹⁰

The Green Paper emphasises the role of community and advises that:

- A Public Participation Charter will be an integral part of the planning system;
- Community participation will be key and legislatively provided for in the making of State Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Land Use Plans;
- Community representatives will be invited on Regional Planning Boards; and,
- Community participation will occur for State Significant Development, Merit Assessed Development, Priority Infrastructure Projects and merit-related issues and design matters for Code Assessment Development¹¹

The Urban Taskforce is a strong supporter of community involvement in the strategic planning process and would also support community involvement in the formulating of development controls and codes. The new planning system and its implementation by the planning profession must facilitate community participation in the setting of planning goals and development outcomes for the locality. However, the Urban Taskforce is not supportive of further community involvement on design matters for Code Assessment Development. Further community participation in the code assessment process defeats the purpose of code assessable development.

If the Community Engagement processes are undertaken in an open, transparent and cooperative manner, the development Industry will work with local communities to achieve desirable outcomes'

The White Paper must:

Introduce a new planning system that includes the community in strategic planning and the formulation of the development codes. However, once a development code has been adopted, there will be no further community participation in code assessable development.

3.5 Joint regional planning panels must determine significant projects

The Urban Taskforce is of the view that Joint Regional Planning Panels (JRPPs) comprising state appointees and local government representatives should remain the determining authority for regionally significant development.

What does the Green Paper say about JRPPs?

The Urban Taskforce generally supports what the Government says about JRPPs in the Green Paper.

¹⁰ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 5

¹¹ Ibid. p. 8.

In particular we support the proposal that

State and regional scale development will continue to be assessed by the Planning Assessment Commission and the Joint Regional Planning Panel.¹²

While the Urban Taskforce is a strong supporter of transparent and independent decision making, we have some concerns in relation to inconsistency in operating procedures between JRPPs. In this regard we are particularly pleased to read that the

.....NSW Government's main objective is to strengthen the PAC and Joint Regional Planning Panels This includes strengthening their procedures and codes of practice, how they engage with the community, performance monitoring¹³

Strengthening JRPP procedures and operation is particularly important if the JRPP is to act as an independent reviewer of matters such as the Director General's decisions on strategic compatibility certificates.

If the JRPP is to take on a much greater role in the decision making process, then the resources afforded to the JRPP should be significantly increased to ensure the efficient consideration and determination of regionally significant development. Unfortunately the Green Paper does not provide detail on the resourcing of JRPPs.

The White Paper must:

Introduce a new planning system that makes greater use of independent panels that are appropriately resourced.

3.6 More projects must be considered as Code Assessable development

The Urban Taskforce is a strong supporter of Code Assessable development. We argue that once communities have participated in the strategic planning phase of plan making and have agreed on the key drivers of the character of a precinct, including the setting of development standards such as height, setbacks and floor space controls, there is no reason why more development could not be considered as code assessable and removed from the merit assessment stream. We are of the firm belief that most residential development can be considered as code assessable development including residential apartment buildings below a 25 metre height.

There should also be a separate merit assessment process for development projects that are outside code requirements.

What does the Green Paper say about Code Assessable development?

The Green Paper deals with Code Assessment in a considerable amount of detail. We are advised that

the NSW Government will work with councils, industry and the community to extend the existing codes to new low risk low impact development types. The Government will look at extending the codes to new industrial buildings on industrial land, additions to those buildings, additions to existing commercial buildings, townhouses, terrace housing and villas and housing on smaller lots. In

¹² NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 24.

¹³ , Ibid. p. 52

expanding the codes the Government will work with stakeholders to ensure the codes respond better to local conditions.¹⁴

It is most encouraging to read that:

Code complying development will be maximised and where more detailed assessment is needed, the level of assessment will match the level of impact.¹⁵

The Urban Taskforce welcomes the expansion of code assessment. However, we are of the view that code assessment should be further extended.

Furthermore, it is essential that the community be involved in the formulation of the codes, but once the code has been developed, there is no further need for community consultation. The code should be sufficient to ensure that the development parameters contained in the code results in development that reflects the community expectation.

The White Paper must:

Confirm that Community involvement in the development of codes is essential. However, once the code has been developed, there is no need for further community involvement in code assessable development, even on design matters.

3.7 Wider application of mixed land use zones

The Government has been advised of the Productivity Commission investigation into planning, zoning and development assessment. The Productivity Commission supported a more flexible approach to zoning that responded to the continually changing market place and accommodates new industries. The Productivity Commission supported broad based land uses over prescriptive definitions.

The Urban Taskforce argues that the manner in which zone objectives and prohibitions are currently being used within the NSW planning system severely limits the ability for new and innovative formats or land uses to locate in many areas. Having very specific permissibility tables and long lists of prohibitions mean that new and innovative land use, even if meeting zone objectives, may require a rezoning prior to being considered.

What does the Green Paper say about mixed land use zones?

The Green Paper advises that the

NSW Government will introduce a new land use class called an 'Enterprise Zone'. Enterprise Zones will be characterised by very little, if any, development controls providing they do not result in any significant adverse environmental impacts. Enterprise zones will generally be targeted to attract employment generating development but could provide opportunities for mixed use housing investment. In this regard, Enterprise Zones will constitute a more flexible zone.¹⁶

¹⁴ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 63.

¹⁵ Ibid. p. 47.

¹⁶ Ibid, p. 45

The White Paper must:

Introduce a new planning system which includes a new flexible Enterprise Zone to allow for innovative development proposals, a Future Urban zone to identify Greenfield areas where growth will occur in the future and an Urban Growth Zone to meet existing housing needs.

3.8 Improved and simplified online access to planning information

We advised Government that NSW is in desperate need of a sophisticated, customer friendly, planning portal accessible to all at any time. We are of the view that a person should be able to access all relevant planning regulation affecting a property without having to interrogate multiple and confusing levels of local and state regulation. We believe that more effort must be directed towards providing a simple customer friendly e-planning system.

What does the Green Paper say about e-planning?

The Green Paper says that

- Through 'e-Planning', the community will have access to zonings and other key development controls via 'Google style' viewer;
- The community will have electronic access to planning system requirements, public tracking of decision process and public reporting of timeframes
- All members of the public will have electronic access to annual planning performance reports related to the planning and delivery of the number of dwellings and jobs, the area of environmental land protected and the delivery of major growth infrastructure¹⁷

The Green Paper says that 'e-planning' will allow for the user to view all plans, planning documents and applications that apply to any one development site or piece of land. Users will have access to the planning spatial datasets relating to zoning and the other key development controls, including floor space ratio, height of building, heritage conservation areas and heritage items, minimum lot size, key sites and land reservation acquisition.¹⁸

The White Paper must:

Articulate Government commitment to e-planning by ensuring funding and resources is allocated to the development and urgent implementation of e-planning.

3.9 Simplified and transparent system of infrastructure levies

We have continually argued that the current system of Special Infrastructure Contributions (SIC) and Section 94 contributions is not working. The expectation that a small group of developers be required to make significant contributions to essential infrastructure that will clearly be to the benefit of the broader community, is highly inappropriate. We say that our current system is founded on the flawed principal that all the costs that could possibly be required for future infrastructure be funded by the developer. The problem is that these costs often make a project unviable and homes unaffordable.

¹⁷ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 8

¹⁸ Ibid p. 25.

What does the Green Paper say about infrastructure levies?

The Green Paper says that

The Government will reform the development contribution framework for state and local government infrastructure, providing a fairer, more transparent, and more efficient scheme for the future.¹⁹

We are advised that the Government is considering a number of options for reform to implement the new principles for infrastructure levies and will be engaging with local government and the development industry to further develop these reforms. While the Green Paper does not articulate the reforms, it is encouraging to note that the development contribution framework will be underpinned with principles including:

- levies must be competitive with comparable markets in other jurisdictions;
- levies must not compromise housing affordability or inhibit housing delivery;
- levy contribution should spread costs to the broadest base of beneficiaries—including over time where possible; and,
- there must be a clear, transparent link between levy revenue collection and infrastructure programming and delivery.

A system that is underpinned by principles such as the above will support the funding of infrastructure in a fair and transparent manner.

The White Paper must:

Introduce a new planning system that includes a fair means for funding infrastructure. A fair system is one that spreads the cost of infrastructure across the broadest base of beneficiaries.

3.10 Reduced litigation

The Urban Taskforce supports the NSW Government's review of the planning system for all of the reasons outlined above. However, the review of the planning system is urgently required as the current complex and confusing system causes unnecessary disputes that result in delayed development approvals and litigation. This comes at a great cost. We argue that litigation can be reduced by having clear, uncomplicated planning legislation that is based on a presumption for growth and facilitates development.

What does the Green Paper say about reduced complexity and need for simplification of the planning system?

The Green Paper devotes significant attention to major changes to the planning system. It is heartening to read that

Major structural change is proposed at all levels of the planning system to remove complexity and duplication.²⁰

¹⁹ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 75

²⁰ Ibid. p. 27

If the result of this planning system review is the production of legislation that is clear in objective and clear in language, then the Government will have gone a long way towards solving our planning and development challenges.

Notwithstanding any of the above, the Urban Taskforce strongly supports the principles driving the reform of the NSW planning system. In particular we are please to read that the principles include:

- where a proposal meets agreed requirements there is a presumption in favour of a right to develop time frames for development assessment and referrals must be clear and enforceable and set leading benchmarks amongst Australian planning systems
- planning decisions should be made by the level of governance capable of doing so, taking into account the economic and geographical area influenced by the decision
- individuals and markets are best placed to deliver diverse choices, vibrant communities and strong and sustainable economies.²¹

The White Paper must

Introduce a new Planning Act and system which is clear and easy to use. The new Planning Act and planning system must focus on core planning concerns and promote development to meet the needs of growth and economic prosperity of New South Wales.

²¹ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p. 18.

4. A Blueprint for Change

The Green Paper suggests five key areas of reform to the NSW planning system. These being:

- Community Participation;
- Strategic Focus;
- Streamlined Approval;
- Provision of Infrastructure; and,
- Delivery Culture.

While the Urban Taskforce generally supports the reforms suggested in the Green Paper, further comment on each area of reform is provided below.

4.1 Community Participation

It is clear that the Government places great emphasis on engaging the community in the planning process. The Urban Taskforce agrees that the community has a fundamental and important role in setting the direction and meeting the demands of growth. However, effective and meaningful stakeholder engagement relies upon clear direction and context, set by the Government.

Community participation in the planning process must be informed by the governance context. That is, the federal and state governments' decisions on issues related to planning must be accommodated. For instance, planning policy at the state and local level must acknowledge Commonwealth policy on immigration which will affect local population growth and the need for improved public transport and infrastructure commitments to be provided by state governments.

Community Participation Charter

The Green Paper suggests the drafting of a public participation charter. This Charter is extremely important and must include a clear statement of intent. In this regard, stakeholders engaged in consultation must accept and acknowledge that:

- there are state obligations to provide for growth that must be satisfied;
- participation in consultation is an opportunity to contribute and participate in the planning process to meet growth objectives; and,
- the landowner has a right to develop land.

Population growth, as indicated in regional planning strategies, must be taken as a requirement with clear targets to meet this growth established. The Charter must clearly articulate that the community has a responsibility accept growth and provide development opportunities to meet the needs of growth.

It is important that the Charter must set the ground rules on consultation and in particular acknowledge that the "community" engaged in consultation must be representative and is not simply existing residents or a vocal minority. All stakeholders must be included in consultation including:

- landowners;
- industry;
- developers; and,
- residents.

The Charter must also recognise future members of the community and their needs when planning for the future.

The Green Paper suggests that involving the community in the planning process will improve transparency in decision making. This may be the case, but Government must make it clear that consultation with a view of increased transparency does not mean that Government relinquishes its role as the decision maker. In this regard the Charter must make it clear that the Government will consider all inputs arising from a consultation process, but in the end it will be the Government that will make the final decision on planning matters.

The Charter should state that the Government, as decision maker must not only consider the needs of the present community, but must also provide for future community needs. The Charter must also state that the Government, as decision maker must consider economic feasibility of planning policy or development proposals.

The community should be encouraged to participate in the making of:

- State Planning Policies;
- Regional Growth Plans;
- Subregional Delivery Plans; and,
- Local Land Use Plans.

Community representatives should be invited on Regional Planning Boards and community participation should occur for:

- State Significant Development;
- Merit Assessed Development; and,
- Priority Infrastructure Projects.

The community should be involved in the preparation of development codes that will apply to code assessable development. The community must have a say when determining the appropriate standards for code assessment including: building heights, boundary setbacks, floor space ratios, site coverage and the like. However, once the development standards are agreed to, there is no longer a need for further community involvement in code assessable development. The codes, having been developed in partnership with the community are in place to ensure that code assessable development is consistent with community and Government expectation. Therefore, further community comment is not warranted.

The Green Paper suggests the involvement of the community on design matters for code assessable projects. If this was to occur, it would defeat the purpose of a faster, code assessable approval pathway. The community input on design issues must be at the code formulation stage.

Meaningful community consultation has the potential to add significant value to the planning process. However, consultation must not come at the expense of timely decision making and/or excessive costs to Government or private sector.

The White Paper must:

1. Set a clear purpose and context for community involvement. This requires community consultation on the basis that growth will occur and that the planning is about meeting the needs of growth.
2. Acknowledge that effective community consultation relies on a truly representative cross-section of the population and outline how the engagement of a representative community sample will be ensured.
3. Acknowledge property rights and the right to develop land.
4. Define that the community will be consulted on: State Planning Policies; Regional Growth Plans; Subregional Delivery Plans; Local Land Use Plans; and, formulation of development codes.
5. Confirm that once a development code has been prepared, with community input, there is no need for community consultation at the code assessment stage.

4.2 Strategic Focus

The Green Paper suggests a shift in focus and/or planning effort from development assessment/control to strategic planning. While the Urban Taskforce supports an improved strategic planning system, we must emphasise that this cannot be at the expense of efficient and timely development assessment. We trust that Government will ensure that effort and adequate resources are directed towards the development of an approval system that will deliver timely, yet robust development approvals.

With respect to improved strategic planning, the Green Paper suggests:

- the establish of a new hierarchy of planning policy; and,
- a significant reduction in the number of State Environmental Planning Policies and 117 directions;

NSW Planning Policies

It is understood that NSW Planning Policies will replace SEPPs and S.117 directions to provide practical high level planning direction. It is imperative that the broader community, including the development industry be involved in the preparation of these policies. Furthermore, the abolition of outdated and conflicting SEPPs provides Government with the opportunity to focus on those areas that are deserving State level planning direction, while at the same time providing the opportunity to remove complexity and duplication in the planning system.

Little detail is provided in the Green Paper on exactly how SEPPs will be abolished and what is to happen in cases of SEPPs that include detailed development controls such as SEPP 65 and the Residential Flat Design Code. We hope that this process will involve an honest review of all SEPPs where only the most important and needed controls are translated as NSW Planning Policies. This review process must not be a simple “cut and paste” or rebranding of existing SEPPs.

Furthermore, the Government must not be tempted to simply collapse all or the vast majority of existing development control provisions in the existing SEPPs into the new local land use

plans. If this was to occur, then complexity and conflict in the planning system will simply be moved from the state to the local level.

Metropolitan/Regional Growth Plans

The review of existing metropolitan plans and preparation of metropolitan/regional growth plans is welcomed by the Urban Taskforce provided such plans articulate that growth will occur and the purpose of the plan is to identify where and how growth should be provided for. These plans must include clear, measurable delivery targets for the region.

We support the engagement of the broader community including local councils and development industry. However, the preparation of these plans must not be used as an avenue to stifle development. For instance, Government inability to deliver infrastructure to the level that the community/local council demands must not be used as an excuse to stifle growth. The Government must work with local councils and community to devise implementation strategies that will see development progress with the staged provision of infrastructure.

Subregional Delivery Plans

The Green Paper suggests the introduction of Subregional Delivery Plans. It is apparent that it is these plans that will drive development and better align development outcomes with metropolitan/regional plans. The Green Paper states that:

Subregional Delivery Plans will be the new transformative delivery tool for high growth areas in NSW by:

- directly rezoning land in key areas, avoiding where possible the need for local plans to be separately and continuously amended
- providing a framework for code based assessment in key areas for subsequent development
- consolidating NSW Government agencies requirements for development in the subregion in a timely manner thereby reducing subsequent referral and concurrence requirements
- linking subregional planning to infrastructure planning and delivery, ensuring that communities that are planned to grow can expect support through infrastructure investment.²²

If such plans are drafted that directly rezone land, facilitate the introduction of code based assessment, consolidate agency requirements and link planning with infrastructure delivery, then NSW will be provided with a secure planning framework to build upon.

It is essential that development targets be set in the subregional delivery plans. The target must be measurable and readily accessed by the community. Furthermore, the subregional delivery plans must clearly map the type of development and indicate where such development is to occur.

The Subregional Delivery Plan is an important tool that must be implemented as described in the Green Paper to ensure that where local plans are inconsistent with state level plans, the Government has the ability to override the inconsistencies within the local environmental plans.

Furthermore, clarification is needed on subregions. However, the Urban Taskforce would suggest that the existing subregions are a good starting point for subregional delivery planning.

The success of this important part of the planning process is dependent upon strong State Government leadership. In this regard it is vital that the Regional Boards be instrumental in the

²² NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 36

preparation of the subregional plans and advise the Government on regional needs. However, it is essential that the State Government remain as the driver of the planning process and the Minister be required to approve all Subregional Plans. This is particularly important as the Subregional Delivery Plans will:

- determine the distribution of the targets defined in Regional Growth Plans (e.g. housing affordability and growth, employment, retail, environment protection) taking into account the state of the market and development feasibilities;
- identify the required supporting infrastructure and inform the preparation of a Growth Infrastructure Plan for the subregion;
- identify key growth centres, precincts, and corridors which will be required to support increased growth;
- identify priority growth areas where change is key for delivery of the Regional Growth Plan. For each priority growth area, provide the necessary planning framework to facilitate its delivery;
- rezone key areas and provide for streamlined assessment of development in these areas; and
- provide for integrated approvals in line with development parameters and guidelines.²³

Clearly this plan is a powerful and important transformational tool that must be properly and transparently implemented for the greater good. The making of such a plan must rest with the State Government.

Local Plans

The Green Paper advocates for a simplification and continued standardisation of local environmental plans. The Urban Taskforce supports this process. The preparation of one local plan that integrates strategic, spatial land use, infrastructure and development guidelines is welcomed. However, caution with the drafting of part A of the plan must be taken. Part A of the plan must be a high level, broadly worded part that sets the planning context. It should be word limited and must not include development standards or otherwise seek to introduce overarching controls.

Part D of the Plan must not be seen as repository for existing development control plans and other existing local policies. It should not be used by State or local councils as an opportunity to continue with the use of inconsistent, out of date development controls and/or council policies. Existing development control plans must be reviewed, modernised and checked for consistency with government policy prior to incorporation into the new local plan. A simple “cut and paste” from old DCPs into the new plan format is must not be accepted. In fact, the Urban Taskforce would expect that the bulk of existing DCPs will be scrapped and replaced with a streamlined set of planning controls and codes that are consistent with state planning priorities.

New Land use zones

The Green Paper suggests the inclusion of three new zones. The Urban Taskforce supports the introduction of an enterprise zone and future urban release zone. However, we question the need for a suburban character zone. That is, a new flexible zone that is designed to capture investment opportunities and the inclusion of a zone that identifies areas for future urban release are not provided for in the existing standard instrument. However, there are numerous standard instrument zones that set the objectives and land use to reflect a suburban character. The existing R1 –General Residential Zone and R2-Low Density Residential Zone when applied to a locality will adequately encourage a suburban character.

²³ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 37

Furthermore, we argue that there is a need to introduce a new zone specifically targeted at urban growth. An Urban Growth zone would be used as a balance to a suburban character zone. As was the case in Victoria, the Government must ensure that when limiting urban development in one location, this only occur if a similar alternate location is set aside specifically to encourage urban growth.

While we welcome the introduction of new zones, we urge Government to review the number of standard instrument zones that currently exist. Government should also reconsider the use of land use zones that are only applicable to specific local government areas. The Government should introduce a standard set of land use zones that are applicable to all local government areas, whether metropolitan, regional or coastal.

We question the real need for thirty-five separate zones. Surely there is potential for reduction in the number of zones in the interest of the simplification of the planning system

Government should be seeking the preparation of planning schemes that permit the integration of housing, workplaces, shopping, and recreation areas into compact, pedestrian-friendly, mixed-use neighbourhoods. In an urban renewal context, compact, mixed-used areas, making efficient use of land and infrastructure, make good planning sense. They create more attractive, liveable, economically strong communities. They facilitate a development pattern that supports pedestrian based communities and reduces dependence on motor vehicles. In addition to enterprise and future urban release zones, there will continue to be a need for an industrial, rural and environmental protection zone. However, thirty-five zones is excessive.

Notwithstanding the above, we question how widely the enterprise zone will be used by local councils. We suspect that many local councils will jump at the opportunity to zone the vast majority of their local government area as suburban character and ignore the application of the enterprise zone. Government will need to monitor the application of zones carefully and ensure that there is a balance when applying zones.

The White Paper must:

1. clearly state that all existing SEPPs are to be reviewed for relevance and consistency;
2. clarify what is to happen with existing SEPPs. That is, the white paper must identify the provisions of SEPPs to be retained as NSW Planning Policies;
3. detail how metropolitan/regional/subregional growth targets are to be developed and measured;
4. detail how subregional delivery plans are to directly rezone land, facilitate the introduction of code based assessment, consolidate agency requirements;
5. provide detail on the future of existing local environmental plans;
6. state that provisions within existing local environmental plans that are inconsistent with state level policy will not be considered when making a determination of a development proposal; and,
7. provide for the introduction of new land use zones include a flexible Enterprise Zone to allow for innovative development proposals, a Future Urban zone to identify Greenfield areas where growth will occur in the future and an Urban Growth Zone to meet existing housing needs.

4.3 Streamlined Approval

Getting the strategic planning framework right is vital to the economic recovery of this state. However, we must not forget that the existing development assessment system is gridlocked by antiquated, irrelevant development controls and development approvals systems. The way that our system currently operates the majority of development proposals are forced into a complex merit assessment pathway. This pathway is convoluted, expensive and causes excessive time delay to appropriate development proposals. Even the most simple, permitted development is in danger of being derailed by the merit assessment pathway. This State is in urgent need of an efficient code based assessment process where a significant proportion of development proposals will be determined and a robust merit assessment process, where a proposal can be considered in cases where the proposal seeks to exceed the controls detailed in the code.

Code Assessable Development

The Urban Taskforce strongly supports code assessable development and urges the Government to encourage that codes are developed to facilitate all forms of development across a broad range of zones. For instance, as an absolute minimum:

- two storey development in a suburban character or low density residential zone should be able to be code assessed;
- six storey development in a medium or high density residential zone should be able to be code assessed;
- eight storey development within business or town centre zones should be able to be code assessed;
- development proposals that are approved with a site specific master plan/development control plan should proceed as code assessable; and,
- the bulk of industrial buildings should be able to be code assessed.

The Urban Taskforce is disappointed that the Green Paper argues for the wider use of code assessment for faster development approvals, yet suggests that further community involvement will be required for design related matters for code assessable projects. This approach completely undermines the purpose and efficiency of code assessable development.

The community should be heavily involved in the preparation of these codes which would set parameters including height, floor space ratio, site coverage, setbacks, car parking and the like. The codes could also consider design as the residential flat design code does. However, once the code has been prepared and adopted, development proposals that meet the code must be accepted with the presumption that approval will be granted. Furthermore, because the codes are detailed and prepared with significant community input, there is no need for further exhibition or community comment on a complying development scheme.

While the Urban Taskforce is a strong supporter of wider use of complying development codes, we understand that allowance must be made for proposals that seek to exceed code requirements. In these cases a merit based system must remain. However, the assessment of such proposals must be subject to a robust assessment process that is divorced from political intervention and/or rejection due to vocal minority groups, not representative of true community composition and sentiment. For this reason we support the greater use of independent experts.

Independent Assessment

The Green Paper calls for the greater use of Joint Regional Planning Panels and at the local level there is the suggestion of greater use of independent hearing and assessment panels by local councils. These are considered important reforms, but independent expert panels must be properly resourced; properly briefed and understand their role and responsibilities. Clear guidelines are essential to ensure the appropriate function of expert panels.

Furthermore, careful consideration on the scale/value of projects to be referred to independent expert panels (IHAP, JRPP, PAC) is needed. We suggest that any project:

- \$10 million or above be referred to the JRPP; and,
- \$50 million or above be referred to the PAC.

A local council should have the discretion to use an IHAP. Furthermore, the scale and/or value of a project to be considered by a local IHAP should be left to the discretion of the Council. Council staff may choose to refer a project that draws significant community objection (say more than twenty objections) to IHAP for advice. However, whether an IHAP has been established or not, we would expect that the determination of any development application will be carried out by professional planning staff, not elected councillors. In the end, professional planning staff and/or an independent panel of experts should be free to determine development proposals without political interference.

Strategic Compliance

The Green Paper acknowledges that there must be an avenue provided for the consideration of a state level strategy consistent development proposal even if inconsistent with a local environmental plan. The suggestion that a proponent be provided with the ability to apply for a strategic compatibility certificate to permit the consideration of a development proposal that may be inconsistent with a local environmental plan, but consistent with the subregional delivery plan and/or the metropolitan/regional growth plan is a welcome addition to the planning system. The Green Paper is somewhat unclear when such a process can be accessed. For instance the Green Paper says that

Introducing a strategic compatibility certificate so that good development, implementing metropolitan or regional strategies can be considered straight away, before the local land use plan catches up.²⁴

This suggests that the compatibility certificate process can be accessed while local land use plans are being redrafted. This implies that once a new plan has been made, presumably consistent with state level plans; access to the compatibility certificate will not be available. From then on, any development proposal that inconsistent with the local plan will require a spot rezoning.

The Green Paper says that

...if a strategic plan has been endorsed for an area and has involved meaningful consultation with the community then any development proposal which conforms to the parameters set out in the strategic plan should be allowed to proceed.²⁵

²⁴ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p.48.

²⁵ Ibid, p. 53

This suggests that in all cases, development that is consistent with a strategic plan will be allowed to proceed. This provision is significantly more liberal than the interpretation above and is supported by the Urban Taskforce.

The Green Paper also says that

A proponent with a strategy consistent development proposal that will deliver metropolitan or regional strategic planning outcomes before the subregional planning process is complete will be able to seek a Strategic Compatibility Certificate from the Director General of the Department of Planning and Infrastructure. That certificate will authorise the assessment and consideration of a strategy consistent development proposal where the provisions of the local land use plan prevent the implementation of the strategy.²⁶

This suggests that a Strategic Compatibility Certificate can be sought for proposals that are consistent with the metropolitan plan, prior to the making of subregional and local plans. Clarification is needed as to what extent an applicant will have access to the Strategic Compatibility Certification process.

The Urban Taskforce argues that a Strategic Compatibility Certificate should be available for all of the above circumstances, not solely as an interim measure as subregional and local plans are being finalised.

Review

The Urban Taskforce supports the suggestion that an applicant may seek to have the refusal of the issue of a Site Compatibility Certificate reviewed by the JRPP. Furthermore, we argue that the determination of the JRPP should also be subject to review by the Land and Environment Court.

It is encouraging that the Green Paper suggests an avenue for review by allowing proponents to seek a review by independent bodies like the PAC and Joint Regional Planning Panels. The Green Paper advises that determinations including:

- pre and post gateway for rezoning;
- strategic compliance certificates; and,
- site compatibility certificates.

While it is Governments hope that the new planning system will reduce the need for spot rezoning it is comforting to note that the Green Paper confirms that there may be instances where, individual sites will not be specifically identified for growth or change because the future needs for that site may not have been made known. In these instances a process for rezoning on a site by site basis will remain available. Furthermore, the Joint Regional Planning Panels have a role in undertaking merit reviews of rezoning proposals that are not approved. The Urban Taskforce is supportive of this proposal, but also suggests that the determination of the JRPP in relation to spot rezoning also be subject to review by the Land and Environment Court.

²⁶ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012. p 54.

The White Paper must:

1. clearly state that the extent and type of development that will be code assessable development;
2. clearly articulate that community involvement will be required for the development a codes including design matters. However, once the code has been adopted further community consultation for code assessable development will not be required;
3. remove elected councillors from development application determination processes;
4. provide for the continued uses of a Strategic Compatibility Certificate in cases where a local plan is inconsistent with state level planning policy;
5. confirm that all planning decisions/determinations are subject to independent review by the JRPP/PAC and ultimately by the Land and Environment Court.

4.4 Provision of Infrastructure

The Government acknowledges that the current system of Special Infrastructure Contributions (SIC) and Section 94 contributions is not working. The expectation that a small group of developers be required to make significant contributions to essential infrastructure that will clearly be to the benefit of the broader community, is highly inappropriate.

The Urban Taskforce supports in principle the reforms to infrastructure provision and funding suggested in the Green Paper. While the Green Paper does not detail the reforms to levies, it is encouraging to note that the development contribution framework will be underpinned with principles including:

- levies must be competitive with comparable markets in other jurisdictions;
- levies must not compromise housing affordability or inhibit housing delivery;
- levy contribution should spread costs to the broadest base of beneficiaries—including over time where possible; and,
- there must be a clear, transparent link between levy revenue collection and infrastructure programming and delivery.

A system that is underpinned by principles such as the above will support the funding of infrastructure in a fair and transparent manner.

The Urban Taskforce is supportive of the Government's desire to link infrastructure provision with strategic planning. However, we object to the practice of using infrastructure as a reason for not being able to obtain development approval for development that is permitted under a local plan and is consistent with development controls. The role of infrastructure plans is to ensure that all planning strategies are aligned. However as infrastructure delivery has long lead times, the plans should not be used to prevent strategic complying development. Local and State agencies must not be permitted to blackmail proponents into paying for or providing infrastructure in return for development approvals.

A proponent should still be able to negotiate a voluntary planning agreement that could result in the provision of infrastructure, but the determining authority must not be permitted to compel the proponent to enter into an agreement for the provision of infrastructure.

The White Paper must:

must consider the introduction of a fair system for funding infrastructure that spreads the cost of infrastructure across the broadest base of beneficiaries.

4.5 Delivery Culture

A planning system is only as effective as those that administer it. The Government's efforts to transform our planning system will be wasted if attention to the culture of the planning profession is not also considered. The Urban Taskforce accepts that there are many planning professionals that are focused on the timely delivery of good planning and development outcomes. However, there is also a need to motivate those within the system that are regulation, compliance and bureaucratic in nature, not outcomes focused. This could be the fault of the existing planning system, planning education or the culture of many planning workplaces. The reason for lacklustre performance and poor delivery is less important than solutions. It is for this reason that the Urban Taskforce supports the suggestion that the new planning system include delivery mechanisms that clearly assigns responsibilities and performance measures against measurable planning goals. The community must be able to monitor the performance of the Department of Planning and Infrastructure and local councils against delivery targets.

We welcome the governance initiatives such as:

- the formation of Chief Executive Officer's Group to drive implementation of the new planning system and drive delivery of planning and development outcomes;
- Regional Planning Boards to advise on regional and subregional strategic plan-making, infrastructure and planning issues
- Mandatory performance monitoring against clear indicators with regular public reporting and review

We agree that major organisational reform program is urgently needed to address the structure and culture of planning at all levels and look forward to a planning system and profession focused on the delivery of planning and development outcomes to meet the needs of current and future generations.

The White Paper must:

1. consider the introduction of mandatory performance monitoring against clear indicators with regular public reporting and review; and,
2. encourage a planning culture that is more outcomes focussed.

5. The need for transitional provisions

The new planning system will take a number of years to be implemented. Therefore, it is essential that the new Planning Act include a number of essential transitional provisions to kick start a development lead recovery of the State's economy. It is encouraging to note that the Green Paper says that:

In implementing a new planning system in NSW there will be a need for a number of transitional arrangements while subregional plans are being prepared. In addition, links to related legislation and regulations that cause planning red tape will also need to be reviewed. These transitional arrangements and related legislative reviews will be detailed in the White Paper.²⁷

The Urban Taskforce is keen to review the transitional arrangements to be detailed in the White Paper. However, we urge the Government that the new Planning Act include transitional provisions that:

- Clarify the status of existing council development control plans (DCPs). It is important that the new Act clarify that DCPs are only one of the factors to be considered with making a determination of a development application. This becomes particularly critical as all existing DCPs undergo review for consistency and relevance as part of the new local environmental plan template suggested in the Green Paper.
- Extend the application of SEPP1/cl4.6 type objections to include the ability to object to prohibitions. Until such time as the new planning system that includes the ability for any development proposal that is consistent with state level strategic planning be determined, even if inconsistent with local environmental plans, it is imperative that the new Planning Act make allowance for an objection to be made against a prohibition that may exist in an existing plan.
- Immediately introduce the strategic compliance mechanism and also the ability to have a determination of a rezoning reviewed. This will ensure that development proposals consistent with state level strategy to proceed.

6. Further information

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²⁷ NSW Government (2012) A New Planning System for NSW - Green Paper July 2012, p. 83.