

# Delivering a better planning system for NSW

## White Paper

Submission to the NSW Government on the *NSW Planning System Review - White paper*

Prepared by *Urban Taskforce Australia*, 28 June 2013

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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 direction of the White Paper and the reform of the planning system for New South Wales. We support the proposal to repeal outdated and/or irrelevant state planning policies and local environmental plans to be replaced with NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Plans.

### 2. Many Urban Taskforce priorities have been met in the White Paper

The Urban Taskforce submission to the Planning Review presented 10 key ideas or actions for a better planning system. We were pleased to note that these had all been responded to in the Green Paper and much has been carried forward into the White Paper. In particular our call for:

- State leadership;
- the Presumption for Growth as the basis for a new planning system;
- involving local communities early;
- Code Assessable Development; and,
- Land zoning reform

continue to be covered by the White Paper.

### 3. Infrastructure

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. This principle has not been properly translated in White Paper. The White Paper merely sets up a system for a broader range of developers to contribute to infrastructure.

### 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, an Interim Planning Policy is needed to kick-start the industry. The Urban Taskforce has already provided Government with an outline of an interim planning policy and urges Government to implement such a policy as this review process goes forward. Refer to Part 6 of this submission for further detail on the Urban Taskforce Interim Planning Policy. Further detail may also be accessed from

<http://www.urbantaskforce.com.au/images/stories/UTF-NSWNo.1-FINAL.pdf>

## 5. Community Participation

Community participation must be structured, responsible and relevant to managing future growth. Many of our concerns raised during the Green Paper consultation have been detailed in the White Paper. The White Paper signals the preparation of community consultation guidelines that will assist planning authorities to meet the requirements of the Community Participation Charter. If this does occur, the Guidelines must ensure that community consultation:

- 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.

## 7. Strategic Planning

The proposed hierarchy of plans and emphasis on strategic planning is supported by the Urban Taskforce. However, the preparation of these plans must be supported by effective subregional planning processes. It is essential that the development industry is involved in strategic planning along with the community.

## 8. Regional Structures

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 White Paper proposes Regional Planning Boards and Joint Regional Planning Panels it would seem sensible to relate these subregions to a cluster of councils within a Regional Organisation of Councils or to at least reflect the results of for the review of local government. This approach has been detailed in the Urban Taskforce submission to the NSW Independent Local Government Review Panel and also outlined in the Urban Taskforce submission on the draft Metropolitan Strategy for Sydney. It is of concern that the subregional structure suggested in the Draft Metropolitan Strategy is not consistent with recent thinking on council clustering nor consistent with State Plan regional boundaries. Some of the subregions suggested in the Draft Metropolitan Strategy are considered illogical and unworkable and will impede the preparation of subregional delivery and growth infrastructure plans. Further information on groupings of councils can be accessed from:

<http://www.urbantaskforce.com.au/images/stories/UTF-REFORMINGLOCALGOV-WEBFINAL.pdf>

## **9. Culture of Planning**

The Urban Taskforce strongly supports the need for cultural reform. However, the suggestions in the White Paper do not go far enough. To rethink the culture of planners within the Local Government system, it is recommended that most planners be allocated to the Shared Service Centre sourced from councils within a subregion. These planners would service individual councils for smaller projects, JRPP's for larger projects and Regional Planning Panels for strategic planning. A culture more focussed on outcomes and delivery is required and would be fostered if such an approach was adopted.

## **10. New zones**

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. While the Urban Taskforce supports the White Paper proposal for less zones (13 zones), we strongly support the continuation of an Enterprise Zone, but we are disappointed that the proposed Future Urban Release Area Zone has not been included, nor has an Urban Growth Zone to balance the Suburban Character Zone been included in the White Paper reforms.

## **11. Streamlined approvals**

All assessment should be by independent panels or council staff without the involvement of politicians. The Green Paper was strong on removing politics from the planning and development assessment process. However, the White Paper does not seem as committed to this approach. The White Paper makes suggestions and encourages councils to establish independent hearing and assessment panels, but does not insist on their establishment.

## **12. Code Assessable**

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**

The continuation of 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. The community must be involved in merit assessment of proposals.

#### **14. Building Certification**

Building certification is a key component of an efficient planning system. However, confidence in certification practices must be preserved through the rigorous regulation of the building certification industry.

#### **15. Reviews and Appeals**

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.

#### **16. Strategic Compatibility Certificates**

The planning system must balance bureaucratic plan making with private sector knowledge and ability to make projects happen. For this reason there must be provision in the planning system for flexibility to respond to market demand. The Urban Taskforce fully supports the use of a Strategic Compatibility Certificate to enable projects that meet higher level strategic plans to be considered. This system should not be a temporary measure as suggested in the White Paper. This system should be a permanent feature of the NSW Planning System.

## 1.0 Summary of Urban Taskforce comments on the White Paper

The White Paper sets out a framework for a new planning system and identifies the “main transformative features and benefits” as:

- delivery culture;
- community participation;
- strategic planning;
- development assessment;
- provision of infrastructure;
- building regulation and certification; and,
- legislation.

The Urban Taskforce has used this framework to structure this submission to Government and our comments are summarised in the following table.

Delivery Culture	Comments/Key Issues
<p>To improve the culture of planning and to make a shift to a culture of delivery the new planning system provides for:</p> <ul style="list-style-type: none"> <li>• the establishment of a culture change action group ;</li> <li>• a series of training sessions;</li> <li>• the restructure of Department of Planning and Infrastructure;</li> <li>• the appointment of a senior executive to enhance relationships between the Department of Planning and Infrastructure and planners within other sectors</li> <li>• monitoring and reporting on the actions for culture change;</li> <li>• the preparation of a Performance Monitoring Guideline.</li> </ul>	<p>The establishment of a cultural change group, provision of training, restructuring of the Department of Planning and Infrastructure and performance monitoring are all worthwhile pursuits.</p> <p>While the Urban Taskforce recognises the urgent need for cultural change in the planning profession we argue that significant improvement and improved delivery will only be achieved by elevating planning to a subregional level. This would be achieved through the creation of subregional centres of excellence for planning.</p> <p>In this way, planners would be removed from local politics, left to focus on the delivery of strategic plans and efficient determination of development proposals.</p> <p>Furthermore, performance monitoring will only go part of the way towards lifting the performance of planning at the local level. Performance monitoring must also include a system that will reward excellent performance and penalise underperformance. There must be clear repercussions for underperforming planning authorities.</p>

Community Participation	Comments/Key Issues
<p>Community involvement in the early stages of planning will be achieved through the White Paper reforms including:</p> <ul style="list-style-type: none"> <li>• the preparation of a Community Participation Charter that will form part of the new planning legislation.</li> <li>• the requirement for planning authorities to prepare a Community Participation Plan</li> <li>• a high level of community participation will be required, in particular for the development of Regional Growth Plans and Subregional Plans,</li> <li>• ePlanning will reshape the planning system</li> </ul>	<p>Effective community involvement is fundamental to a robust planning system. Every effort must be taken to ensure that community consultation, or lack thereof is not used as a reason to challenge the legitimacy of a plan or control, nor used as a reason to challenge a determination of a development proposal.</p> <p>The Urban Taskforce remains supportive of the proposed reforms to community participation and the effort being made to improve community engagement. We support the proposed Community Participation Charter.</p> <p>The more detailed local community participation plans must:</p> <ul style="list-style-type: none"> <li>• acknowledge that growth must be provided for.</li> <li>• clearly state that the community has a responsibility to accept growth and make provision for the growth.</li> <li>• must acknowledge that the landowner has rights to develop land.</li> </ul> <p>Furthermore, the community must be defined to include not only existing residents, but all stakeholders. This includes, but not limited to:</p> <ul style="list-style-type: none"> <li>• Landowners;</li> <li>• Industry;</li> <li>• Developers; and,</li> <li>• Residents.</li> </ul> <p>We support the clarification of community provided in the draft Act.</p> <p>High level community participation in the preparation of strategic plans 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.</p> <p>Furthermore, the decision maker must not only consider the needs of the present community but must also provide for future community needs (growth).</p> <p>The Urban Taskforce supports e-planning measures outlined in the White Paper.</p>



Strategic Focus	Comments/Key Issues
<p>The White Paper says that strategic planning will be improved by:</p> <ul style="list-style-type: none"> <li>• upfront evidence based strategic planning,</li> <li>• integrating infrastructure with land use</li> <li>• promoting a partnership between the state, the community, local councils, agencies and the private sector</li> <li>• whole of government requirements in strategic plans to improve planning outcomes and reduce multi agency concurrence, referral or approval</li> <li>• a shift in focus to subregional planning;</li> <li>• Local Plans focussed on outcomes not development controls in isolation</li> <li>• clearly structured and transparent plans, with all development controls and zones accessible to the community and business in Local Plans</li> <li>• strong performance monitoring</li> <li>• the transition of the relevant aspects of existing strategic plans and planning instruments to the new planning system.</li> </ul>	<p>The Urban Taskforce strongly supports the White Paper initiatives with respect to Strategic Planning. We particularly support:</p> <ul style="list-style-type: none"> <li>• evidence based strategic planning;</li> <li>• hierarchy of plans;</li> <li>• integration of infrastructure planning with land use planning;</li> <li>• whole of government requirements in strategic plans to reduce concurrence and referral; and,</li> <li>• clearer local plans with development guides, not prohibitive controls for the sake of control.</li> </ul> <p>We are cautious with the desire to transfer “relevant aspects” of existing plans to the new planning system. This must not be seen as a reason to simply move outdated planning regulation into a new template.</p> <p>The preparation of one plan that integrates strategic, spatial land use, infrastructure and development guidelines is supported in principle. However, 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</p> <p>The inclusion of the new flexible Enterprise zone is supported.</p> <p>Caution over the over use of the new Suburban Character zone – some local councils may seek to use this to block redevelopment and/or see this as an opportunity to preserve/freeze the locality.</p> <p>There needs to be a balance when applying zones. The use of a suburban character zone needs to be balanced against growth/flexible zones.</p> <p>We are encouraged by the desire to reduce the number of SEPPs and 117 Directions. This is an opportunity to finally repeal outdated and inconsistent SEPPs</p> <p>We continue to remain concerned with prescriptive nature and inappropriate use of SEPP 65 and RFDC and strongly oppose the simple translation of these into state planning policies.</p> <p>Subregional Planning is supported, but the subregions suggested in the Draft Metropolitan Strategy are not considered appropriate, or workable.</p>

Development Assessment	Comments/Key Issues
<p>The White Paper says that development assessment will be improved by</p> <ul style="list-style-type: none"> <li>• eighty per cent of all developments will be complying or code assessment;</li> <li>• an expanded range of residential, commercial, retail and industrial developments will be complying or code assessment</li> <li>• low cost appeal rights</li> <li>• promoting independent expert decision making with the use of the Planning Assessment Commission, Regional Planning Panels and Independent Hearing and Assessment Panels</li> <li>• new merit assessment processes where applications that are consistent with performance outcomes will be subject to less delay and uncertainty.</li> </ul>	<p>The Urban Taskforce strongly supports the code assessment process. However, community input on issues of design after the code has been prepared must not occur. That is, the Urban Taskforce does not support further community involvement in code assessable development.</p> <p>The 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.</p> <p>There is no reason why significant development, say residential apartment development or commercial development not greater than 25 metres in height can't be code assessable.</p> <p>The Green Paper made it very clear that the politics should be removed from planning. It is disappointing that the White Paper does not take this approach further. It seems that there has been a watering down of the use of independent panels in the decision making process.</p> <p>The reduction in referrals and concurrences is strongly supported as is a new approach to merit assessment.</p> <p>The ability to apply for a Strategic Compliance Certificate must be a permanent provision in the new planning system for NSW. There must be ability for a proponent with a strategy consistent proposal to have such proposal considered even if inconsistent with a local plan. This should not be a time limited, temporary provision of the new planning system.</p>

Provision of Infrastructure	Comments/Key Issues
<p>Funding and provision of infrastructure will be improved under the White Paper reforms as there will be:</p> <ul style="list-style-type: none"> <li>• Infrastructure Plans to integrate land use planning and infrastructure provision;</li> <li>• Growth Infrastructure Plans that will include contestability assessments,</li> <li>• Local and regional infrastructure contributions made more simple, certain, and more consistent.</li> </ul>	<p>Review of the funding and planning for infrastructure is needed. However, we are concerned that the introduction of three types of contribution could result in developers paying more than before.</p> <p>We understand that VPAs remain, but in a modified form where a VPA can only be directed towards listed items in an infrastructure plan, affordable housing identified in a strategic plan, or conservation or enhancement of the natural environment. Currently there is no limitation and this provides flexibility which can be beneficial to the proponent and community.</p> <p>The Green Paper talked of the need for infrastructure levies to be competitive with comparable markets in other jurisdictions and that the levy should be spread across the broadest base of beneficiaries. It just seems that this has not been properly translated in the White Paper.</p> <p>A wider range of developers from a broader area is not the broadest base of beneficiaries as all in the community benefit from improved infrastructure and development in general.</p> <p>We understand that the cap on developer levies will be removed and it may be that LIC plus RIC and Biodiversity Contribution will be more than currently paid.</p> <p>Currently the state covers 50% of infrastructure costs in cases of the SIC, nothing has been said about the continuation of this contribution from Government.</p>
Building Regulation and Certification	Comments/Key Issues
<p>The White Paper suggests reforms to Building Regulation and Certification including:</p> <ul style="list-style-type: none"> <li>• accreditation of additional occupations involved in building design and construction;</li> <li>• mandatory certification of specified building aspects critical building systems</li> <li>• increased support for certifiers</li> <li>• strengthened controls on certifiers</li> </ul>	<p>Building certification is key to the efficient delivery of quality building products. The Urban Taskforce supports the proposals to improve building quality through improved regulation and certification, provided such does not simply add further red tape to the development process.</p> <p>The Urban Taskforce has participated in review of home building legislation which is influenced by building certification. Further detail may be accessed from: <a href="http://www.urbantaskforce.com.au/index.php?option=com_phocadownload&amp;view=category&amp;download=1635&amp;id=2&amp;Itemid=652&amp;start=20">http://www.urbantaskforce.com.au/index.php?option=com_phocadownload&amp;view=category&amp;download=1635&amp;id=2&amp;Itemid=652&amp;start=20</a></p> <p>Community confidence and building quality will be improved through the implementation of the reforms suggested in the White Paper.</p>

Legislation	Comments/Key Issues
<p>The first Bill will establish the operational components of the new planning system. The second Bill will establish administrative and compliance arrangements for the new system.</p>	<p>The Urban Taskforce expects that the legislation will be enabling legislation that will facilitate the efficient implementation of the White Paper reforms. We highlight the following for further consideration.</p> <p>We strongly support the objects of the Act. It is clear that the Act is to support economic growth and provide a framework for effective community participation in the plan making process.</p> <p>We welcome the definition of community participation provided in the Act as:</p> <p>...community participation in strategic planning, planning decisions and other planning matters is the process of engaging the community (<b>including industry, businesses, residents, interest groups and organisations</b>) in those planning matters.</p> <p>The standardisation of local plans and the integration of all controls into one document is supported.</p> <p>The introduction of code assessment is strongly supported.</p> <p>Division 4.7 Strategic compatibility certificates - development not permissible under local plan is an essential component of the new planning system.</p> <p>Support of the streamlining of referrals and concurrences and the establishment of one stop referrals.</p> <p>Caution over the introduction of new infrastructure levies and the limitation on the use of VPAs.</p>

## 2.0 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 White Paper and Planning Bill 2013 – Exposure Draft demonstrates Government commitment to the creation of a new Planning Act and system which is less complex and enabling legislation that may facilitate sustainable development for the benefit of the broader community. ***We are encouraged that the Government has introduced 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 a submission to *A New Planning System for NSW - Green Paper July 2012*. We have made previous submissions to Government on the need for planning reform and in this regard the aforementioned submissions and the following 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 White 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 position on the need for planning and considers whether the White Paper adequately responds to the previous Urban Taskforce concerns and/or implements the encouraging reforms noted in the Green Paper. ***Generally, the White Paper acknowledges Urban Taskforce concerns, delivers on many of the Green Paper reforms and provides an encouraging framework for planning.***

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

We are of the view that the White 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.

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.

It is encouraging to note that the White Paper acknowledges many of our key concerns with the existing Act and planning system and seeks the introduction of changes generally consistent with Urban Taskforce suggestions. However, there are areas still requiring clarification as summarised below.

UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>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</p> <p>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.</p>	<p>White Paper clearly recognises that the planning system must encourage economic growth and that the development industry contributes to the economic prosperity of the state of NSW.</p> <p>The Act includes clear objectives to provide for the needs of growth</p>	<p><b>YES</b></p>
<p>Introduce a new Planning Act that includes a clear objective that requires development to strive for the achievement of ecologically sustainable development; and,</p> <p>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.</p>	<p>The objects of the Act include the principles of ESD. However, the words Ecologically Sustainable Development are not used in the objects of the Act.</p> <p>For clarity and to meet community expectation the words Ecologically Sustainable Development should appear in the objects of the Act.</p>	<p><b>MOSTLY</b></p>

UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>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.</p>	<p>White Paper articulates the hierarchy of plans and identifies the lead role of the State Government.</p> <p>However, clarity is required on the composition of Subregional Planning Boards. That is, the State Government must be able to make decisions and must ensure that there is equal representation between state and local government on the planning boards.</p>	<p><b>PARTLY</b></p>
<p>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.</p>	<p>White Paper clarifies the role of community in strategic planning and code assessment.</p> <p>Community involvement at the upfront planning stage and in merit assessment.</p> <p>Community not involved in code assessment determination.</p>	<p><b>YES</b></p>
<p>Introduce a new planning system that makes greater use of independent panels that are appropriately resourced.</p>	<p>Independent Panels encouraged, but not mandated.</p>	<p><b>PARTLY</b></p>
<p>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.</p>	<p>The Enterprise zone and Suburban Character Zone have been proposed. However, we are disappointed that the Future Urban Release Area Zone has not been pursued. We continue to question the need for a Suburban Character Zone unless balanced with a new zone specifically targeted at urban growth</p>	<p><b>PARTLY</b></p>

UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>Articulate Government commitment to e-planning by ensuring funding and resources is allocated to the development and urgent implementation of e-planning.</p>	<p>Commitment to e-planning continues. Allocation of resources not detailed.</p>	<p><b>MOSTLY</b></p>
<p>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</p>	<p>The White Paper includes principles that would support a fairer system to fund infrastructure. However, there is the potential for developers to pay more than before, particularly in the infill locations.</p> <p>Furthermore, we are not convinced that infrastructure contributions will be collected from the broadest base of beneficiaries.</p> <p>It seems that the system will simply collect from a boarder pool of developers.</p>	<p><b>NO</b></p>
<p>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.</p>	<p>The draft legislation is less complex and does focus on "core" planning matters.</p>	<p><b>YES</b></p>



UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>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.</p> <p>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.</p> <p>Acknowledge property rights and the right to develop land.</p> <p>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.</p> <p>Confirm that once a development code has been prepared, with community input, there is no need for community consultation at the code assessment stage.</p>	<p>The White Paper clearly details the importance of effective community consultation. However, guidelines are to be produced on how planning authorities will be able to meet the requirements of the Community Participation Charter.</p> <p>The community has been properly defined in the Act.</p> <p>The right to develop land has been recognised. ie. planning authority cannot refuse an application if it demonstrates compliance with development code.</p> <p>Community to be consulted at strategic planning stages of plan making, represented on planning boards and involved in the formation of codes. However, community not involved in code assessment</p>	<p><b>YES</b></p>
<p>Clearly state that all existing SEPPs are to be reviewed for relevance and consistency;</p> <p>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;</p> <p>Detail how metropolitan/regional/subregional growth targets are to be developed and measured;</p>	<p>All existing SEPPs and s.117 to be reviewed and relevant policies to become the proposed state policies.</p> <p>Details of which SEPPs will remain have not been detailed in the White Paper.</p> <p>A Performance Monitoring Guide will be prepared that will provide the methodology, planning performance indicators and targets for monitoring the implementation of the planning system reforms.</p>	<p><b>MOSTLY</b></p>

UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>Detail how subregional delivery plans are to directly rezone land, facilitate the introduction of code based assessment, consolidate agency requirements;</p> <p>Provide detail on the future of existing local environmental plans;</p> <p>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,</p> <p>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.</p>	<p>Regional Growth Plans and Subregional delivery plans will include targets.</p> <p>Subregional Planning Boards will have the ability to rezone land when preparing plans.</p> <p>Local Environmental Plans will be converted into part of the new local plans.</p> <p>Further detail on how inconsistent environmental plans will be considered has not been provided. Time to move from existing local plans to new is not clear.</p> <p>Significant reform to zoning proposed. Fewer zones and less prescription proposed.</p> <p>Enterprise zone continues, but suburban character zone continues. No future urban and urban growth zone.</p>	<p><b>MOSTLY</b></p>
<p>Remove elected councillors from development application determination processes;</p> <p>Provide for the continued uses of a Strategic Compatibility Certificate in cases where a local plan is inconsistent with state level planning policy;</p> <p>Confirm that all planning decisions/determinations are subject to independent review by the JRPP/PAC and ultimately by the Land and Environment Court.</p>	<p>Use of independent panels and professional planning staff encouraged, but not mandated. Councillors may continue to be part of the development assessment process.</p> <p>Strategic compliance certificates will only be an interim measure.</p> <p>Independent review provided.</p>	<p><b>NO</b></p>

UTA Request - Green Paper	White Paper response	Expectation met Yes/Mostly/Partly /No
<p>Consider the introduction of mandatory performance monitoring against clear indicators with regular public reporting and review; and,</p> <p>Encourage a planning culture that is more outcomes focussed.</p>	<p>Performance monitoring to be introduced.</p> <p>Focus on planning culture included.</p>	<p><b>YES</b></p>

### 3.0 The White Paper acknowledges the need to provide 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.

The White Paper says much about growth and sets the scene well by stating that:

The main purpose of the planning system is to promote economic growth and development in NSW for the benefit of the entire community

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

A key focus of the reforms is about addressing the State's under performance in a number of key areas. In particular, the new planning system will focus on better facilitating housing supply, which has recently been at near record lows in NSW, supporting improvements in economic productivity and growth and putting downward pressure on the cost of living for the community, including prices and rents.

Furthermore, the Green Paper reforms including the introduction of *Subregional Delivery and Regional Growth Plans* have been carried forward to the White Paper and draft legislation which should assist in meeting the needs of growth. However, the most encouraging aspect of the reforms thus far is reading the objects of the draft legislation. The Act includes:

(1) The object of this Act is to promote the following:

- (a) economic growth and environmental and social well-being through sustainable development,
- (c) the co-ordination, planning, delivery and integration of infrastructure and services in strategic planning and growth management,
- (d) the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing),
- (h) efficient and timely development assessment proportionate to the likely impacts of proposed development,

**1. The Urban Taskforce supports the objects of the Act as they are encouraging of economic growth and meeting the needs of a growing population.**

### 3.1 Ecologically sustainable development should be an object of the Act

It is possible to draft planning legislation that accommodates growth and promotes development while balancing environmental, economic and social priorities. We advised Government that the new Planning Act should include a main objective that encourages ecologically sustainable development and 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."

The Green Paper considered sustainable development and argued 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.

However, while the objects of the Act includes:

- (e) the protection of the environment, including:
  - (i) the conservation of threatened species, populations and ecological communities, and their habitats, and
  - (ii) the conservation and sustainable use of built and cultural heritage.
- (2) Sustainable development is achieved by the integration of economic, environmental and social considerations, having regard to present and future needs, in decision-making about planning and development.

the Urban Taskforce suggests the insertion of an objective that states as an object of the Act is the pursuit of ecologically sustainable development.

**2. To ensure that there is clarity and an integration of economic, environmental and social considerations, having regard to present and future generations the pursuit of ecologically sustainable development should appear as an object of the new planning Act.**

## 3.2 Leadership through improved planning

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.

We urged the Government to take a leadership role in lifting the State's economy by introducing planning reforms that would improve the development assessment and strategic planning process. We argue that 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.

It is encouraging that this Government understands that planning and development assessment has been crippled by an overly complex and conflicting set of state planning policies. The new planning system as detailed in the White Paper provides a clear hierarchy of strategic plans and also an avenue to bypass inconsistent local planning instruments. The 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 is strongly supported by the Urban Taskforce.

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.

The Green Paper and White Paper suggest 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.

### ***NSW Planning Policies***

We support the proposal that NSW Planning Policies replace SEPPs and S.117 directions to provide practical high level planning direction. Furthermore, the abolition of outdated and conflicting SEPPs provides Government with the opportunity to remove complexity and duplication in the planning system.

Little detail is provided in the Green Paper or White 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. It is unfortunate that the White Paper was not able to provide detail on the SEPPs to be abolished and the SEPP controls to be retained.

**3. The Urban Taskforce supports the repealing of SEPPs and 117 Directions and their replacement with the proposed hierarchy of plans as detailed in the White Paper**

### ***Metropolitan/Regional Growth Plans***

The review of existing metropolitan plans and preparation of metropolitan/regional growth plan 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. The Urban Taskforce has made a separate submission on the Draft Metropolitan Strategy for Sydney 2031.

## ***Subregional Delivery Plans***

It is apparent that Subregional Delivery Plans will drive development and better align development outcomes with metropolitan/regional plans. These plans may directly rezone land, facilitate the introduction of code based assessment, consolidate agency requirements and link planning with infrastructure delivery. As such these plans are crucial to the delivery of good planning outcomes.

The Subregional Delivery Plan is an important tool that must be implemented as described in the White Paper. Where local plans are inconsistent with state level plans, the Act must maintain the ability to override the inconsistencies within the local environmental plans. The use of strategic compliance certificates is strongly supported.

However, clarification is needed on the formation of subregions. We have made a separate submission on the Metropolitan Strategy where we express our concern with the suggested subregions. Our view is that the subregions must be carefully considered as these will comprise a number of local councils who will form the subregional planning boards, tasked to prepare new subregional delivery and growth infrastructure plans. The subregional planning boards and delivery plans are vital to the success of development and economic growth.

We understand that Subregional Delivery Plans will be developed by local councils in partnership with local communities. This will require that groups of councils, within subregions, work together to plan for the needs of their local communities. Essentially, it will be the job of the subregional planning boards to actually detail and plan where the housing, infrastructure and jobs will actually be located within the subregion. It will rely on these groupings of councils and communities ability to work collaboratively. It is for this reason the subregions must be of appropriate size and composition.

We are concerned that some suggested subregions will be ineffectual. For instance, the central subregion seems illogical and unworkable. There are far too many councils in that subregion and those councils are very different in composition and geography.

Furthermore, the subregions suggested in the Metropolitan Strategy do not reflect the recent thinking on local government reform nor are they consistent with the State Plan regional Action Plan boundaries. There should be consistency within the Government on how the metropolitan region should be divided into (sub)regions.

The success of this important part of the planning process is dependent upon strong State Government leadership. 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 be led by State Government.

**4. The Subregional Planning Boards must be balanced with equal representation from state and local government. The State Government will be held accountable for the preparation of subregional delivery plans and the community and industry must have confidence in the structure and operation of the boards.**

## **Local Plans**

We support the White Paper proposal for a simplification and continued standardisation of local environmental plans. 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 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 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.

**5. Local councils must be directed to review all existing local environmental plans, development control plans and infrastructure contributions plans for consistency with state planning priorities. Local Council must be given a reasonable time to prepare new local plans and development guides, however, if not prepared in the time allocated by the Government, the Government must impose a standard plan upon the local council.**

## **New Land use zones**

The Green Paper suggested the inclusion of three new zones. The Urban Taskforce supported the introduction of an Enterprise zone and pleased that this has been carried forward to the White Paper. However, we are disappointed that the Future Urban Release Area Zone has not been pursued and we continue to question the need for a Suburban Character Zone unless balanced with a new zone specifically targeted at urban growth. 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.

We support the White Paper initiative to reduce the number of standard instrument zones that currently exist. We support the removal of land use zones that are only applicable to specific local government areas and the reduction in zone prescription. A standard set of land use zones that are applicable to all local government areas, whether metropolitan, regional or coastal is the preferred approach.

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.

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 zones, there must be an ability to increase the mixing of uses in and around centres. The application of a mixed use zone to all centres and around all railway stations would be an excellent complementary initiative to the proposed land zoning reforms suggested in the White Paper.

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.

**6. The Urban Taskforce supports the reduction in the number of standard instrument zones and the removal of land use zones that are only applicable to specific local government areas. A flexible approach to zoning that responds to the continually changing market place and accommodates new industries is needed.**

### **Strategic Compliance Certificates**

The Green Paper acknowledged that there must be an avenue 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.

However, the White Paper suggests that the compatibility certificate process will only be available as we transition from the present planning system to the new, or while the new land use plans are being prepared. 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 Urban Taskforce argues that a Strategic Compatibility Certificate should be available in all circumstances, not solely as an interim measure as subregional and local plans are being finalised.

**7. The Urban Taskforces supports the use of a strategic compliance certificate that facilitates to consideration of a development proposal that is consistent with state planning objectives even if inconsistent with a local plan. However, strategic compliance certificates should remain a permanent provision of the new Planning Act**

### 3.3 Up front community involvement is essential

The Urban Taskforce encourages greater community involvement in land use planning. We strongly support the Government's view that communities should be encouraged to participate at the strategic planning stage. Local communities should be engaged in consultation on how their locality is to change and what the likely future character could be whilst meeting the needs of growth.

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. 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.

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'

#### ***Community Participation Charter***

The White Paper and draft legislation includes the provisions for Community Participation Charter. It is understood that guidelines will be prepared to assist planning authorities to meet their obligations under the Charter. This Charter and proposed guidelines are 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. The consultation guidelines must clearly articulate that the community has a responsibility to accept growth and provide development opportunities to meet the needs of growth.

It is important that the consultation guidelines 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.

**8. The Urban Taskforce supports the clarification provided in the draft legislation for community as including industry, business, residents, interest groups and organisations.**

However, we are not convinced that the White Paper properly recognise future members of the community and their needs.

The White Paper suggests that involving the community in the planning process with 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 consultation guidelines 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.

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.

9. **The Urban Taskforce supports community involvement on: State Planning Policies; Regional Growth Plans; Subregional Delivery Plans; Local Plans; and, formulation of development codes.**
10. **The Urban Taskforce supports the clarification that the community will be involved in the development of codes. However, once the code has been developed, there is no further community involvement in the determination of a proposal that complies with the development code.**
11. **Community consultation must always be informed by realistic advice from the private sector on development economics and project viability.**

## 4.0 Streamlined development Assessment

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.




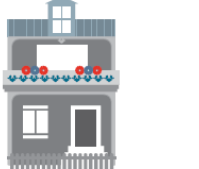





We support the measures suggested in the White Paper to improve development assessment. The key being the introduction of a code based assessment process where a significant proportion of development proposals will be determined and a robust merit assessment process, where a proposal can be considered in cases where the proposal seeks to exceed the controls detailed in the code.

### 4.1 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 development could not be considered as code assessable and removed from the merit assessment stream. We are of the firm belief that most forms of development, can be considered as code assessable development including residential apartment and commercial buildings in appropriate, clearly defined locations.

The Urban Taskforce strongly supports code assessable development and we are encouraged by the approach taken in the White Paper. We were disappointed that the Green Paper argued 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. We argued that this approach completely undermined the purpose and efficiency of code assessable development. We are pleased that the White Paper has addressed this concern and confirmed that development that complies with codes will not be subject to further community input. Furthermore, ***we accept that advice from experts on matters to do with design for more significant development is a reasonable means of preserving the intent of code assessment, while dealing with issues of design.***

The Urban Taskforce strongly supports the approach to code assessment described in the White paper and summarised by the diagram below. However, we emphasise the importance of ensuring that a wide range of development be considered as code assessable, including significant residential flat, commercial and mixed use developments, particularly when located in a town centre zone.

TABLE 9 EXAMPLES OF DEVELOPMENT TYPES FOR CODE ASSESSMENT DEVELOPMENT			
Villas, townhouses or row houses (20 or less) in an appropriate zone	Mixed use development	Child and aged care facilities in planned precincts	
			
Additions to a house in a heritage conservation area	Residential flat building in a town centre in planned precincts	New commercial building in a town centre	
			
Tourist accommodation in tourist precinct	Small bar in a commercial area	Land subdivision	

12. The Urban Taskforce supports the White Paper approach to code assessment including the input of expert advice to address concerns with design for significant projects. For instance sign off by an architect or design review panel for residential flat buildings would be an acceptable solution to performance criteria relating to design. We support the view that if the design has been given a tick by an architect or design review panel, council cannot refuse the application on design issues nor is there a need for further community input.

## 4.2 Merit assessment

The Urban Taskforce accepts that a rigorous merit assessment system must remain for development proposals that are permitted under the Local Plan or may have significant impacts that cannot be fully addressed by the standards in the code.

We are encouraged by statements made in the White Paper which advise that:

new merit assessment processes will benefit from greater certainty about what needs to be considered. This will speed up processes and provide greater predictability for planning and delivery of major projects

Furthermore, we are particularly pleased with statements that

As a developer or investor is best placed to determine whether there is sufficient demand for a development, consent authorities will not be able to refuse developments on grounds of insufficient market demand.

We understand that developments assessed through a full merit assessment are those that:

- are not for core uses within the zone but are still permissible with consent;
- may have significant adverse external impacts which cannot be code assessed (for example, those on some environmentally sensitive land)
- may not fully align with the strategic planning but remain permissible with consent in the zone
- generally do not fit within the performance criteria for development within that zone.

The Urban Taskforce agrees that such proposals should be subject to full merit assessment. However, just because a project is to be merit assessed does not mean that the planning authority has the right to request endless and excessive documentation or permit continued delay in determination due to protracted consultation requirements. There must be a limit on what can be requested to support a merit assessed proposal and there must to a limit on determination times.

We like the suggestion that councils may only stop the clock once, within the first 21 days, for a period of up to 21 days and that the assessment clock restarts when the applicant provides the information, or the 21 days elapses, whichever happens first.

The introduction of the “one stop shop” to better manage timeframes for advising and referrals is a welcomed addition to the merit assessment system. Of particular benefit is the requirement that responses on concurrences will have to be provided within 40 days.

A new and effective merit assessment system relies upon clear and reasonable development guides. It is very important that old and irrelevant SEPPs, and DCPs do not find their way into the new local plans.

We understand that the Department of Planning and Infrastructure will encourage councils to move towards the independent merit decision model to remove the politics from development control. It is unfortunate that this is not a requirement of the new planning system. However, we are encouraged that the

Minister for Planning and Infrastructure will require councils that consistently fail to meet benchmarks to establish a determinative independent hearing and assessment panel to replace councillors in development assessment decision making.

**13. The Urban Taskforce supports the White Paper approach to merit assessment. However, a new and effective merit assessment system relies upon clear and reasonable development guides. Old and irrelevant SEPPs, and DCPs must not find their way into the new local plans.**

### 4.3 Independent assessment and review

The Urban Taskforce is of the view that Regional Planning Panels (RPPs) comprising state appointees and local government representatives should remain the determining authority for significant development. Furthermore, the greater use of Independent Hearing and Assessment Panels should be encouraged to remove the politics from development assessment.

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 existing Joint Regional Planning Panels. Furthermore, if the RPP is to take on a much greater role in the decision making process, then the resources afforded to the RPP should be significantly increased to ensure the efficient consideration and determination of regionally significant development.

The Urban Taskforce supports the ability for an applicant to have determinations of rezoning, development and Site Compatibility Certificates reviewed by the RPP. Furthermore, we argue that the determination of the RPP should also be subject to review by the Land and Environment Court.

- 14. The Urban Taskforce supports the greater use of independent panels that are appropriately resourced.**
- 15. The Urban Taskforce seeks the removal of elected councillors from the development application determination processes;**
- 16. The Urban Taskforce calls for all planning decisions/determinations be subject to independent review by the RPP/PAC and ultimately by the Land and Environment Court.**

### 4.4 Building Certification

It is unfortunate that building certification has been subject to criticism in recent times as certification done right can be a very effective delivery tool. Most of the community concern has come from cases of fire protection system failures, inadequate maintenance and building defects such as waterproofing failure. The cause of these defects seems to have arisen from mistakes made by some accredited certifiers from local council and private sector.

We understand that waterproofing defects in internal wet areas of high rise residential buildings are one of the biggest causes of concern for owners and occupiers. Furthermore, failure of fire safety measures has the potential to cause serious damage and unfortunately loss of life.

Improvements must be made to the certification system to address these concerns and in this regard the Urban Taskforce supports the measures included in the White Paper, particularly the improved rigour proposed for critical stage inspections and documentation to prove compliance with Australian Standards, installation of building products and systems. We fully support the proposal that the critical stage

inspection should relate to the risks and complexity of a building's design and construction and that these will include inspections of elements of building work that are commonly the subject of building defects, including fire safety, structure and sound insulation.

Furthermore we support the suggestion that to ensure compliance with the planning approval, during each critical stage inspection, the building certifier must also ensure the building work is consistent with the development consent and is complying with the conditions of consent.

We are confident that measures to improve certification detailed in the White Paper will raise the quality of inspection services provided and improved community acceptance of building certification in general.



## 5.0 Infrastructure Levies

The provision of critical infrastructure is essential to the creation of healthy liveable places and communities. The right infrastructure is fundamental to supporting growth and provision of an acceptable standard of living. Unfortunately, in the past Government has performed poorly on the delivery of essential infrastructure. Infrastructure was either not provided when required, or due to the inability to provide infrastructure, prevented development from occurring when needed. Hence, even though the private sector was ready to deliver housing, infrastructure backlog limited production.

The Government's answer had been to tax development for the provision of infrastructure. However, in many cases the level of tax imposed on development made housing production unfeasible, hence no housing production and escalation of housing prices.

We have continually argued that the current system of Special Infrastructure Contributions (SIC) and Section 94 contributions was 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.

Thankfully, Government recognises that this situation cannot continue and an alternative has been offered in the White Paper. The White Paper speaks of the need for infrastructure levies to be competitive with comparable markets in other jurisdictions and that ***the levy should be spread across the broadest base of beneficiaries.***

The White Paper suggests a number of options for reform that are encouraging. Of note is 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.

We understand that three types of contributions are proposed:

- Local infrastructure contributions (LIC) which seem to be the same as existing local contributions;
- Regional infrastructure contributions (RIC) which seem to be similar to the SIC levy, but applied to all development; and,
- Biodiversity offset contribution which is a new levy

Local Councils will prepare local infrastructure plans which the Minister will approve. These plans will guide the way that LIC are collected and spent. The Council will be required to apply the funds collected within 3 years or the Minister will be able to

direct that the funds be spent in certain areas. ***We support the requirement that local councils spend contributions within three years of collection.***

We understand that the State will prepare Growth Infrastructure Plans and these will guide how RIC are spent. The RIC will be split into two funds:

- Regional contributions fund – regional or state roads, transport infrastructure, etc
- Planning Growth Fund – land for drainage and regional open space

***Currently the state covers fifty per cent of infrastructure costs in cases of the SIC, however nothing is said about the continuation of this subsidy.***

Furthermore, we are concerned that the cap on developer levies will be removed and it may be that LIC plus RIC and Biodiversity Contribution will in the end cost the developer more than currently paid.

It seems that the principle of spreading the cost of infrastructure across the broadest base of beneficiaries may have been lost from the Green Paper to White Paper. Spreading the cost should not simply mean spreading the cost over a broader base of developers as the developer is not the only beneficiary. ***The entire community benefits from improved infrastructure and hence the entire community should share a proportion of the cost.***

Voluntary Planning Agreements remain, but in a modified form. That is, VPAs can only be directed towards listed items in an infrastructure plan, affordable housing identified in a strategic plan or conservation or enhancement of the natural environment. Currently there is generally no limitation on how VPAs are used and this provides flexibility to the planning authority and the proponent to negotiate quantum and where the funds will be spent. We support the continuation of flexibility in the use of VPAs.

17. **The Urban taskforce supports a fair means for funding infrastructure. A fair system is one that spreads the cost of infrastructure across the broadest base of beneficiaries not just developers. Further detail is required on matters to do with quantum of levy, who will pay and level of government subsidy to demonstrate whether the system proposed is a fair and reasonable system.**

## 6.0 The need for Interim measures

While the Urban Taskforce appreciates that the NSW Government is working on reforming the planning system, we are concerned that we are unlikely to see any real change in the planning system and development outcomes for some time. The planning system review started in July 2011 with the White Paper released in on 16 April 2013, twenty-one months later. Assuming legislation is passed this year, we will be waiting several more years before the NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Plans are in place. Only after these are in place are we likely to see development assessment codes prepared and changes to the development assessment process implemented. Clearly we cannot wait this long to breathe life back into the NSW development industry.

**18. The Government must urgently put in place interim measures that will provide certainty and act as a stimulus to the development industry. Unless something is done now, minimum housing and jobs targets stated in the Government's Metropolitan Strategy will never be achieved in the Government's first term.**

While the new planning system is being finalised the Government has the opportunity over the next few years is to take the corrective action required to increase building activity and to trial a number of the planning reforms. The Urban Taskforce suggests the following actions as a building stimulus program.

### 1. Interim State Environmental Planning Policy

When there is a need, the NSW Government has demonstrated a willingness to use the current planning system to implement policies to encourage development within defined locations. For instance, the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 establishes an area where the Minister is able to co-ordinate planning and provide land use and development controls within a defined location.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is also an example of where the Government has identified a need to provide specialised housing and has introduced a policy to facilitate the provision of housing to meet the need. In particular, this SEPP sets aside local planning controls that would prevent the development of housing for seniors or people with a disability provided the proposal meets the development criteria and standards specified in the Policy.

We suggest that a similar model be applied to areas within walking distances of railway stations, town centres and growth corridors to stimulate the provision of housing and employment opportunities. We argue that the only way that we will be able to achieve the housing and jobs targets set in the Draft Metropolitan Strategy is to send clear signals to industry that development is actively being encouraged by the Government and this is demonstrated by the introduction of a state planning policy that declares land in highly accessible locations as areas suitable for more housing and jobs.

By declaring areas in appropriate locations as UAPs and setting aside controls in local environmental plans that prohibit or otherwise limit development in these key

locations, the development industry will be more likely to acquire sites and progress the provision of housing and job opportunities.

A State Environmental Planning Policy would clearly send the message that New South Wales is open for business and that housing and jobs will be encouraged in the right locations. Such a planning policy would define where housing and jobs are to be encouraged and where suburbs are to be preserved as lower density environments. Such a policy will enable efficient use of valuable developable and serviced land and will enable the Government to prove that it is in fact committed to growing the economy.

## **2. Declaration of Urban Activation Precincts**

The Interim State Environmental Planning Policy would declare Urban Activation Precincts (UAPs) for all areas within 800 metres of railway stations, town centres, along growth corridors and on key urban renewal sites. The current UAP process is a good start but we need more areas identified for urban activation and renewal.

Furthermore, Government must allocate resources to the preparation of plans and community consultation to ensure that this process proceeds in a timely manner.

Notwithstanding the above, to further encourage housing supply and job creation, the State Environmental Planning Policy must allow proponents to lodge concept plans in any UAP, even if precinct plans have not been finalised.

## **3. Building Stimulus Taskforce**

Getting development happening in a timely fashion will require special attention and leadership from the Department of Planning and Infrastructure. It will require a “can do” attitude and an ability to remove blockages to development. There must be capacity to work with local government and community to drive beneficial development outcomes for all. To achieve this aim, a special taskforce within the Department of Planning and Infrastructure must be established. This taskforce would be responsible for the timely delivery of precinct plans, preparation of development codes, the consideration of proponent nominated sites, by way of a gateway process, and the assessment of concept plans.

## **4. Site nomination**

Precinct plans would only be prepared for those Urban Activation Precincts where there is a “critical mass” of developer interest and developable sites. The most appropriate way to establish interest and determine priority UAPs is for the Minister to call expressions of interest from for the nomination of development sites. A process similar to the recent “Review of Potential Housing Sites” where the Minister for Planning and Infrastructure called for expressions of interest from landowners of greenfield sites could be implemented but in this case for suitable infill locations within Urban Activation Precincts.

Adopting such an approach has a number of advantages. Such a process would establish where development sites exist and also ensure that precinct planning proceeds only in those urban areas where there is real potential to deliver housing and jobs in the short term.

## **5. Precinct Planning**

Declaring an area as an Urban Activation Precinct is just the first stage of the development stimulus process. To ensure that appropriate development occurs, in the right location, at the right intensity and form, the Department of Planning and Infrastructure would prepare precinct plans that establish the board planning controls, such as land use zone and building envelop.

The community must be engaged at the precinct planning stage. We would suggest that precinct plans be widely exhibited and the community engaged in the exhibition process. The exhibition process adopted for the Urban Activations Precincts of Epping Town Centre and North Ryde Station are appropriate. Furthermore, community participation should meet the requirements of the proposed Community Participation Charter detailed in the Government's White Paper.

Once the community has been consulted and submissions considered, the Department of Planning could approve the precinct plan. Once a precinct plan has been adopted, the existing local planning controls would be superseded by the precinct plan, paving the way for the lodgement of development applications.

## **6. Code Assessment**

To support an efficient approval process we suggest that precinct plans include sufficient detail to serve as an assessment code for buildings up to 25 metres in height. Because the precinct plan, including details of the assessment code, would have been subject to public scrutiny, development consistent with the precinct plan should be considered code assessable development.

### **7A. Development Applications where there is an approved precinct plan**

Development Applications consistent with the precinct plan would be lodged with the local council for determination. In all probability, the assessment will be made by the council planning staff and then referred to the RPP for final determination.

### **7B. Development Applications where there is not an approved precinct plan**

There may be instances where a worthwhile development proposal is ready for consideration prior to the preparation and adoption of a precinct plan. Where development proposals are able to demonstrate consistency with State planning objectives, proposals could still be accepted and put through a Gateway Process to determine consistency with State objectives. A concept plan for a worthy proposal would be approved by the Department of Planning and Infrastructure and after its approval, development applications would be lodged with the local council and most likely determined by the Joint Regional Planning Panel.

It is essential that the concept plan be a proponent initiated planning process. In the absence of a precinct plan, the concept plan would need to provide planning and urban design justification for the proposal. This concept plan would be subject to an initial review, and would be placed on public exhibition and a community consultation process followed as appropriate.

Once the plan has been subject to review and consultation, the concept plan would be adopted and would then supersede the local planning controls applicable to the subject site. A development application could then be lodged with the local council for determination.

## 7.0 Conclusion

The Urban Taskforce is generally supportive of the reforms to the planning system detailed in the Government's White Paper and Planning Bill. However, there are a number of issues that need further consideration if the new planning system is to gain the support of industry, government and community. In this regard, we highlight the following.

1. To ensure that there is clarity and an integration of economic, environmental and social considerations, having regard to present and future generations the pursuit of ecologically sustainable development should appear as an object of the new planning Act.
2. The Subregional Planning Boards must be balanced with equal representation from state and local government, community and industry. The State Government must be provided with overall control of the Subregional Planning Boards.
3. Local councils must be directed to review all existing local environmental plans, development control plans and infrastructure contributions plans for consistency with state planning priorities. Local Council must be given a reasonable time to prepare new local plans and development guides, however, if not prepared in the time allocated by the Government, the Government must impose a standard plan upon the local council.
4. The Urban Taskforces supports the use of a strategic compliance certificate, however, strategic compliance certificates should remain a permanent provision of the new Planning Act
5. A new and effective merit assessment system relies upon clear and reasonable development guides. Old and irrelevant SEPPs, and DCPs must not find their way into the new local plans.
6. The Urban taskforce supports a fair means for funding infrastructure. A fair system is one that spreads the cost of infrastructure across the broadest base of beneficiaries' not just developers. Further detail is required on matters to do with quantum of levy, who will pay and level of government subsidy to demonstrate whether the system proposed is a fair and reasonable system.
7. The Government must urgently put in place interim measures that will provide certainty and act as a stimulus to the development industry. Unless something is done now, minimum housing and jobs targets stated in the Government's Metropolitan Strategy will never be achieved.

## 8.0 Further information

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