SD09|264.

Urban Taskforce
AUSTRALIA

27 April 2009

Mr John Young
Principal Council Officer
Standing Committee on State Development
Parliament House
Macquarie Street
SYDNEY NSW 2000

E-mail: statedevelopment@parliament.nsw.gov.au

Dear Mr Young

Re: Inquiry into the NSW planning framework

Thank you for the opportunity to appear before the State Development Committee on 30 March 2009. Set out below are answers to the eight additional questions asked by members of the committee. A copy of the questions is attached for ease of reference.

1. **Predictability versus flexibility**

We strongly believe that the predictability of decision-making in the planning system needs to be improved. In part, this can be achieved by dramatically reducing the number and breadth of strategies, policies and guidelines which are considered in zoning and in development assessment. Decision-makers should only be allowed to consider final policies either approved by the state government or expressly provided for by an environmental planning instrument in relation to a specific area (e.g. a master plan).

Legislation, statutory instruments and policies should be designed so that **the vast bulk of development envisaged is capable of being approved without the need for a subjective judgment by a consent authority**. Unfortunately, it's often this case that statutory instruments are written in such a way that amendments are inevitable. The need for these amendments is often predictable, even at the time the instrument was put in place.

For example, the Metropolitan Strategy stated that retailing in industrial areas should be permitted when it has operating requirements or offsite impacts akin to industrial uses.[1] When we raised concerns that this provision had not been incorporated into the *Liverpool Local Environmental Plan 2008,* the Department of Planning responded to us saying that

> [o]nce it can be demonstrated that certain uses meet this criteria the Department will examine how they can be facilitated in [an] appropriate industrial zone.[2]

That is, the Department favours implementation of this strategic planning objective on a case-by-case basis, through ad-hoc amendments to individual statutory plans. This is just one example of development, clearly envisaged by the government, which is not authorised by a new statutory plan. Instead developers must go through the cumbersome decision-making procedure of seeking a change to the statutory plan. This requires an arbitrary, subjective, lengthy and bureaucratic process before the envisaged development can proceed (if it ever can).

---

[1] Metropolitan Strategy – Supporting Information 105, B4.1.2.
[2] Letter to the Urban Taskforce from Richard Person, Acting Director-General – NSW Department of Planning, 11 January 2009.

Urban Taskforce Australia Ltd. ABN: 21 102 685 174 | GPO Box 5396 Sydney NSW 2001
T 612 9238 3955 | F 612 9222 9122 | Level 12, 32 Martin Place Sydney NSW | Level 6, 39 London Circuit, Canberra ACT
admin@urbantaskforce.com.au | www.urbantaskforce.com.au

We have submitted (in the case of Liverpool *and* a large number of other plans) that this objective should be incorporated directly into each statutory plan, so that no amendment to a plan is required for its implementation.

The point about predictability relates to the development that is envisaged, or should have been envisaged, at the time planning documents are prepared. If something is clearly contemplated, then it should be possible for a framework to be put in place to allow for its swift approval against objective criteria.

However, we are the first to acknowledge that no-one has a crystal ball. No-one, including the government and its planners, is blessed with perfect information. There is always potential for innovative development proposals to arise that fall outside the parameters of a given planning document.

Innovative and non-standard development should not be prohibited merely because it wasn't envisaged at the time a plan is prepared. Such development should still be capable of being approved without the need for changes to statutory plans.

In such cases there *is* room for some degree of subjective decision-making, although rights to a just, quick and inexpensive review/appeal should remain. Examples of this approach exist in the current planning system in a limited form. For example clause 4.6 in the Standard Instrument is contained in the *Standard Instrument (Local Environmental Plans) Order 2006*.[3] It permits a consent authority, with the concurrence of the Director-General of the Department of Planning, to give an approval that departs from development standards – such as height controls or floor space ratio restrictions. This provision is designed to apply in circumstances where:

- compliance with the development standard is unreasonable or unnecessary; and
- there are sufficient environmental planning grounds to justify contravening the development standards.

However the flexibility of these provisions is limited. They cannot permit a development if the relevant "use" has been prohibited in a land use table in a statutory plan – even if a particular prohibition can be demonstrated to be unreasonable or contrary to the public interest. From time-to-time the courts have found that a wide range of other blanket rules imposed by statutory plans are not "development standards", and therefore incapable of being waived, irrespective of their unreasonableness.[4]

Additionally the process used to invoke the existing limited flexibility provisions is cumbersome. The consent of the Director-General of the Department of Planning must be obtained and the government is introducing an unwieldy objector appeals process which will act as a disincentive for developers to pursue innovative proposals.[5]

In the United Kingdom there is a much greater freedom for consent authorities to evaluate development proposals on their merits, without being bound by arbitrary rules set in isolation at earlier points in time.

In summary, statutory plans should be documents which contain:

- objective standards to signal a range of development which will receive swift and certain approvals when the standards are met; and
- (for other development proposals) broad principles which may inform the development consent process but do not pre-determine the outcome – allowing the consent authority to make the decision based on the merits of the proposal before it.

---

[3] It is in turn based on the much older provisions contained in the *State Environmental Planning Policy No 1— Development Standards*.

[4] See for example *Agostino & Anor v Penrith City Council* [2002] NSWLEC 222.

[5] This proposed new process will take place under the new secion79AA to be inserted by the *Environmental Planning and Assessment Amendment Act 2008*.

2. **Interstate systems permitting applications outside of the statutory plans**

Ashfield Council supports a more flexible system because of the cumbersome nature of the spot rezoning process. The logic is sound. However, there is another, even more important reason for support a system which is more flexible.

Property rights form the basis of our economic system. Investment cannot and will not take place unless there is clear unambiguous title to property. This kind of clarity necessarily requires the ability for a landholder to exclusively profit from the use and the development of their land. NSW has difficulty in attracting investment in recent years, in part because of the enormous discretion wielded by planning authorities. The planning system, with its arbitrary decision making and unpredictable levies, has weakened the link between land ownership and the ability to create value by developing land.

One of the most arbitrary elements of the planning system relates to the rezoning process. There is no formal application process for landholders. There is a timeline which councils must adhere to – delays by councils are not even measured in the local government performance reports. Most significantly there is no independent merits appeal of decisions. Planning authorities are free to arbitrarily refuse rezonings – even those that are clearly consistent with published strategies – without any right of appeal to the aggrieved landholder. This means that any person looking to acquire land in NSW for redevelopment will need to factor in huge regulatory uncertainty if any kind of rezoning is required.

Ashfield Council is correct to observe that some interstate jurisdictions are more flexible about approving development outside of an existing statutory plan. For example, the Queensland's *Integrated Planning Act 1997* has historically included the option for consent authorities to issue "preliminary approvals" which may override planning schemes.

The inherent limitations and inflexibilities from rigid statutory plan in NSW must be overcome. An applicant should be entitled to formally apply for either:

- a preliminary approval – which only needs to briefly outline the proposed development; or
- a development approval,

even if the development is prohibited or discouraged by a statutory plan.

The consent authority should have the power to approve, conditionally approve or reject the application. A conditional approval, refusal or deemed refusal should be capable of being appealed to a joint planning review panel (however the council representatives should not be permitted to sit on the panel when the appeal is being made against a council decision). Principles and directions articulated in approved strategic documents would inform any appeal of this kind.

NSW has accepted the need for greater flexibility to permit uses of land outside of the formal zoning contained in a statutory plan. Projects approved under Part 3A are not subject to local environmental plans.[6] A recently introduced system of "site compatibility certificates" permits a limited range of development to proceed, despite the zoning of the land.[7] However these limited reforms do not apply to the great bulk of potential job-creating development. Additionally there is no right to a merits appeal when an application for a site compatibility certificate is denied by a decision-maker, or when a Part 3A application has been made subject to a review by the Planning Assessment Commission.

It is important to note that, irrespective of other reforms, spot rezoning cannot be done away with as long as there is any form of zoning system in place.

Most development transactions raise debt finance by using the land concerned as collateral. The rezoning increases the value of the property, which makes it possible to raise the necessary debt and the development may then proceed.

---

[6] *Environmental Planning and Assessment Act 1979*, s75R(3).

[7] *State Environmental Planning Policy (Infrastructure) 2007* cl 18, cl 57 and cl 63C; *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* cl 24.

Land will only be able to be used as collateral at the higher value if the debt financier can be certain that the land can be re-sold at that value in the event that the developer defaults on the loan agreement. Such a forced sale process inevitably adds time, delay and other complications to a development process. New owners who purchase land after a forced sale by a debt financer may need to pursue different development plans than those originally contemplated by the first developer.[8]

While a forced sale may be unlikely in any given case, the debt financier will always have that possibility foremost in mind when extending a loan and determining the loan amount. If the underlying zone is limited in its use (for example, it is zoned as industrial land) and there is some sort of time limited approval to proceed with a higher order use (say high density residential development), the bank may not be willing to value the land on the basis of the higher value. That's because there may uncertainty whether an approval that lies on top of an inconsistent zoning will be able to be used by another developer. This could be because of harsh conditions on the approval, requirements that certain steps be taken in particular time frames or uncommercial aspects of the original development proposal. During a forced sale process, the debt financier may insist on the land being valued on its underlying zoning (e.g. industrial, instead of high density residential). This will prevent a developer from raising the necessary debt and sterilise the development potential of the land.

An additional flexible process for deciding matters quickly without a formal rezoning (with appeal rights) would be welcome, however such a process will reduce the need for spot rezoning, but not eliminate it.

3. The unreliability of long-term strategic plans

We do have concerns that long-term strategic plans are treated as if they have emanated from some oracle. Many planning authorities seem to believe that if only the (given) "strategy" is implemented all will be well.

The truth is much harsher. No-one can reliably predict the future – not even the authors of strategic planning documents. Regrettably, the public sector, as an institution, is not particularly well-suited to identifying the commercial needs of a metropolitan area in the present, let alone the future.

As we highlight in our submission; the *City of Cities: A Plan for Sydney's Future: Metropolitan Strategy* ("the Metropolitan Strategy) said that Sydney will need an extra 640,000 new homes between 2004 and 2031. This was based on the assumption that there would only be 980,000 extra residents added to the city between 2006 and 2031. However, revised population figures issued in October 2008 said that at least an extra 1.4 million residents will now be added in the same period.[9] This figure is almost 50 per cent higher than the 2005 plan.[10]

The dramatic escalation in Sydney's population forecasts illustrates the unreliability of strategic plans that stretch out more than a year or two into the future. However, these long-term plans, as wrong as they invariably are, have a profound impact on cities because there is a tendency to prohibit anything not required by the strategy. If the strategy underestimates the required housing - and housing growth in excess of the strategy has prohibited by a statutory instrument – a shortfall in supply arises and housing becomes less accessible and less affordable.

Effective demand for housing by home-buyers is determined by a whole range of variables, including employment, the availability and cost of finance, and expectations of the rate of return from alternative investments. [11] These issues also affect the supply side. Forecasts on the supply side are also impacted by the lack of consistent and complete data on land supply in

[8] In fact, it may well be the case that insolvency was triggered because the plans advanced by the failed developer were not marketable or feasible. In which case, any subsequent purchaser of the land will almost certainly pursue a different type of development.

[9] NSW Department of Planning, *New South Wales State and Regional Population Projections, 2006-2036: 2008 release* (2008).

[10] The Urban Taskforce estimates that more than 930,000 new homes will now be required by 2031, although we note that the NSW Government has retained its policy goal for only 640,000 new homes, despite the increased population pressure.

[11] National Housing Supply Council, State of Supply Report: Report 2008 (2009) 9.

the pipeline (particularly infill land), uncertainty about the rate of conversion from raw land to serviced lots and actual dwellings and the production capacity of the construction industry.[12]

It is not possible for the government to dictate population growth and distribution in defiance of the above factors.[13] It is not possible for government to produce strategies which can accurately anticipate these inputs more than one or two years in advance (and even then the projections are unreliable due to the variability of market conditions). It's certainly not possible to anticipate these factors five, ten or twenty years in advance. Yet the current planning system has a tendency to prohibit, by statutory instrument, all that is outside the strategy which suggests a naive belief in the accuracy of the crystal ball used to prepare such strategies.

To its credit, the Metropolitan Strategy says that

> [t]he supply of land available for development should always exceed market demand to ensure that land values are not unreasonably raised and lower the intended level of development.[14]

While this principle appears in the Metropolitan Strategy in practice it is often not adhered to – particularly in relation to land for residential and retail development. Nonetheless the principle is a sound one. It reflects the market-base nature of the Australian economy. The presence of an excess supply of zoned land (including appropriately zoned land in infill areas) is important to provide competition and choice for business and consumers. A landowner, who is sitting on undeveloped land, waiting for a better price, is given disproportionate market power by a regulatory system that prevents other land owners from offering their land for sale in competition. For example, consumers benefit when retailers in one area keep their prices low, to ensure that new competing retail developments are not built to undercut them. Even if zoned land is not actually developed, the threat of competition is often enough to foster efficient economic outcomes and lower prices.

The Australian Institute of Architects submission to the inquiry is not currently available on the Parliament House website. However, based on your question it appears that the Institute is suggesting that strategies be prepared for our city (which could limit the development potential of land) without any regard to possible population movements, labour force participation and the need to increase our community's standard of living. With respect to the Institute, such a course of action would be disastrous.

The best approach would be to develop strategies, but only when they will add value to the status-quo. Too often it is assumed that having a strategy is intrinsically a good thing. When decisions are taken to prepare new strategies key questions are often ignored, i.e.:

- Is a full-blown strategy required, or would a more targeted policy decision do the job (and do it more quickly and inexpensively)?
- While havening a new strategy is politically attractive, is the old strategy actually in need of replacement?
- Does the level of government preparing the strategy actually have the power and political will to implement it?
- Will the strategy take so long to implement that it will be outdated before it can be out into practice?
- Will strategy deny the government flexibility to respond to unanticipated changes in demographics, markets or community needs?
- Will any vision articulated by the strategy be commercial and, if not, does the level of government preparing the strategy want to fully fund its implementation and vision?
- Should the statutory plans simply be changed directly, without the time and expense associated with strategy preparation?

We would suggest that, generally speaking, too many strategies have been prepared, and many have over-reached and not been possible to implement. Strategies have become

[12] Ibid.
[13] As is envisaged by the existing section 7(d) of the Act.
[14] Metropolitan Strategy Supporting Information 123.

effective tools to stop things from happening, but are not particularly effective at realising any positive vision.

Our view is the strategies should not be prepared unless they are designed to either:

- remove artificial regulatory barriers/prohibitions which are hindering the ability of the private sector to meet the needs of the community; and/or
- promote the co-ordination of the provision of public utility and public sector community services and facilities.

Any strategy must be flexible so that it accommodates a wide range of potential changes in population and economic activity within the State. For example, planning that is predicated on only one population scenario will typically be very wrong. Population and household projections are highly sensitive to factors such as immigration rates, birth rates, household size – all of which can vary in unpredictable ways over time. Planning must anticipate a wide range of scenarios. The planning system must zone land (including infill land) so there is sufficient supply in excess of the requirements of the scenario with the greatest projections of economic activity/population/household growth.

4. The number of zones

In our submission we recommended that the 34 zones in the Standard Instrument contained in the *Standard Instrument (Local Environmental Plans) Order 2006* should be dramatically reduced. We said that a planning system with just seven zones would be appropriate for NSW:

- Natural - consists of lands permanently set aside for conservation in an essentially natural state.
- Rural - consists of lands in open or cultivated state or sparsely settled. These include woodland, grassland and agricultural land.
- Suburban - consists of low density areas, primarily comprised of building forms consistent with detached housing and secondary dwellings.
- Urban General - consists of a mixed-use residential urban fabric with a range of building types including townhouses, terraces and low-rise apartment buildings.
- Urban Centre/Corridor – a mixed-use use environment consisting of higher density building types that accommodate retail and office uses, townhouses and apartments.
- Employment zone - consists of building types commonly associated with commercial, light industrial and retail uses.
- Industry zone – primarily for heavy industry, but also capable of including building types associated with commercial, light industrial and retail development.

The question posed to us by the committee was: can we expand on why we think this necessary?

Firstly, we should point out that the onus should be on those people who want to ban things, to justify why the ban is necessary. Zoning is a system of prohibition. It stops people from building things that they think necessary. It is a phenomenon unique to planning law that the onus is on anyone advocating a particular kind of development to prove that it *should* be lawful. Surely it should be the other way around?

To take one example, out of thousands, in the recently finalised *Liverpool Local Environmental Plan 2008*, jewellery retailers and pet shops are banned in neighbourhood centres, while mini-supermarkets, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise are permitted.[15] What is the grave public interest threat presented by a puppy dog in a shop window? In all likelihood potential jewellery retailers and

[15] The permissible uses permits a "neighbourhood shop" or "shop", but "retail premises" are not permitted in this zone even though a zone objective seeks to encourage a range of small scale retail uses. This appears to prohibit a range of retail uses which could well be small in size or number – such as a jewellery retailer or a pet shop. We can not see any public policy reason why a "shop" would be permitted, but the broader "retail premises" prohibited.

pet shop operators were not present in the discussions that led to this plan being gazetted. As a result they weren't able to argue for the inclusion of their particular kinds of businesses, and they have been shut out. The onus is all wrong. If someone wants to ban pet shops from an area, they should be required to demonstrate to the whole community that this is necessary.

Secondly (and following on from our first point) the rationale of zoning within an urban area is to separate incompatible uses (activities). The modern day relevance of this rationale is discussed in the report *Liveable Centres* prepared by urban design experts, Roberts Day. A copy of the report has been separately sent to committee members. The report's author, Stephen Moore, is a well credentialed expert in urban design and town planning. Mr Moore says that:

> Conventional single-use zoning originated during the industrial revolution with the aim of separating industry and residential areas to protect public health. Compounding the problem planners adopted standardised numeric requirements focused on accommodating vehicles at the exclusion of pedestrians, and over the last 80 years these requirements have been photocopied, exported globally and adopted by various levels of government.
>
> The resulting placelessness caused by separating land uses and forcing vehicle dependency should have been expected. But what caught many by surprise was that a system founded on the goal of protecting public health ended up directly contributing to a reduction in people walking and in turn systemic health problems attributable to poor urban outcomes ... It is unfortunate that the conventional single-use zoning regulations introduced in the past 50 years have made it technically unlawful for the development industry to deliver mixed-use centres.[16]

It seems to us that the seven zones outlined above are sufficient to permit regulation to separate genuinely incompatible land uses (residential and heavy industry, for example), but would otherwise permit a mix of activities that are not actually incompatible (retail and commercial office, for example).

Crucially, a streamlined zoning of this kind does not remove the need for merit assessment of individual development applications. Developments would still be able to be refused because, say, there is an unacceptable impact in a heritage conversation area, or, the traffic generated by a particular proposal would exceed the capabilities of the local infrastructure. There also remains sufficient flexibility to limit align the footprint of the urban area to correspond to infrastructure.

5. Development of retail and business premises

In our proposal retail and business premises would be permitted in the industry zone, employment zone and urban centre/corridor zone. They would also be permissible at a scale that is in keeping with the residential built environment of the suburban and urban general zones.

6. Demand and supply analysis

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

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

[16] S Moore, *Liveable Centres* (2009) 9-11.

7. **The need for spot rezonings and the new local environmental plans prepared in accordance with the Standard Instrument**

We agree with the views that many spot rezonings are made necessary by the outdated nature of the existing statutory plans. However the need for spot rezonings will continue to remain strong. There are three reasons for this.

Firstly, progress on the implementation of the comprehensive plans are tortuous and already massively behind schedule. We are not confident that these plans will be completed in a reasonable timeframe. It would be mistake to rely solely on the new comprehensive plans as a mechanism to reform the planning system, because frankly, we do not think many of these plans will ever be finalised.

Secondly, even when plans are finalised they don't necessarily deliver what was promised at the beginning of the process. For example, Ryde Council has been allowed to exhibit a draft local environmental plan to replace the embarrassingly out-of-date *Ryde Planning Scheme Ordinance*.[17] Instead of a 1979 planning ordinance, Ryde will soon a have shiny modern looking plan, probably titled *Ryde Local Environmental Plan 2009*. However, in truth, there will be very little actual modernisation going on. The process has been divided into three stages. The apparently contemporary plan is merely stage one, the real reform required to update the plan won't happen until stage three. We are not convinced that stage three will happen quickly, if it all. Stage three will require Ryde Council to make politically tough decisions and we're not sure that they will be prepared to do that. Ryde council will free themselves of the ignominy of having a 1979 planning ordinance, but will not have the tough planning decisions.

In another example, in Liverpool's recent finalised local environmental plan, years after the Liverpool to Parramatta Bus Transitway was finalised, we still see that much of the adjacent land is still zoned for low density residential development. The principles of the much promised transit orientated development have not been fully implemented.

Thirdly, the statutory plans are not truly looking forward 10 or 20 years. We are told that each plan, once finalised, will be updated every five years, so only the next five years' needs to be addressed. Given that many existing statutory plans have gone for decades without being reviewed, and the current reviews are taking many years to complete, we are sceptical that their promised subsequent five year reviews will happen. It seems likely that whatever statutory plans come out of the current process will, generally speaking, be there for another decade or two. Hence they will soon be out-of-date, given the time taken to prepare them (and the rapidly evolving market conditions) many will be out-of-date by the time that they are finalised.

8. **Discrimination against the private sector**

The planning system has traditionally been blind to the identity of the applicant. That is, characteristics which are personal to the applicant have not normally influenced a decision as to approval or approval conditions. There is no question that the new rules *do* discriminate against the private sector, because they allow non-profit organisations and the government to build bigger and bulkier buildings than the private sector.

With respect, this is a misuse of our planning system. We think, and the evidence supports this, that the private sector is just as good (and sometimes better) as the government and non-profits at designing attractive new buildings. There is no logic to preventing the private sector from building to a certain size and scale but allowing others to do it in the same location.

The approach is contrary to the public interest for several reasons.

Firstly, lack of housing affordability is not caused by the "for-profit" nature of developers. In fact, in NSW, developers have not been making money; particularly in comparison to other states. The profit made by developers is a relatively modest margin on costs. Developers tend to be price takers as, at any given point in time, new housing stock forms only a very small percentage of the overall number of homes available for sale. A developer who prices new housing product in excess of the prevailing price for similar products in the area will not be able

[17] This ordinance is so old it pre-dates the Environmental Planning and Assessment Act which commenced in 1980.

to attract home buyers. When an insufficient margin is present to justify a developer's involvement the development simply does not take place. The shortfall in new supply is the central housing affordability issue, not the fact that development is undertaken on a for-profit basis.

It's worth noting that NSW has been a relatively unprofitable place to develop for some time. The number of construction starts on new homes in NSW has been in serious decline since 2002. In that year work started on 48,000 homes, by 2008 this figure has almost been halved - with work starting on only 26,900 homes. This is the lowest number of new homes starts ever recorded for NSW by Australian Bureau of Statistics.

We have not keeping up with our nearest comparable neighbour - Victoria. In 1998 for every ten detached houses built in NSW, ten such houses were built in Victoria. Ten years later, in 2008, for every ten houses built in NSW, 21 houses were built in Victoria. Despite Victoria's smaller population base that state has been building detached houses at more than twice the rate of NSW. The global financial crisis is not hitting every state equally. Property development NSW is reeling, while Victoria appears to be suffering only relatively minor blows. So much so that based on the last six months of approval data we can soon expect that for every 10 detached houses built in NSW 23 such houses will be built in Victoria.

NSW has performed better in apartment and town house development, but I'll invite you to consider if it's good enough. In 1998 for every 10 apartments and town houses built in NSW 4 were built in Victoria, but 10 years later in 2008 that number doubled to 8 Victorian apartments and town houses for every 10 in NSW. Based on the last six months of approval figures we can anticipate this number climbing to match NSW's rate of construction in the near future. This means, in this climate of financial crisis, Victoria will be outstripping our rate of house construction by more than 2:1 and they will be matching our rate of apartment and town house construction 1:1.

Non-profit organisations can no more afford to develop housing at a loss than for-profit organisations. Even if they could, discriminatory rules would not be necessary because for-profit companies will not seek to be involved in unprofitable developments in any event. If the goal of non-profit is to develop unprofitable projects, there are plenty in NSW to choose from.

The difficulty for NSW is that non-profits and government will never have enough cash to solve the housing supply problem themselves. And private businesses will be scared from investing in NSW (as they have been in the past) if they think the planning rules are irrational. Height and bulk controls that vary, based on the corporate structure of the applicant, are irrational and are not based on any logic regarding urban amenity.

In any event community amenity may be adversely impacted if the only form of residential flat development in an area is development pursued by public authorities and non-profit organisations.

Planning authorities should permit a mix of housing type and ownership. There may be a skewed social outcome if residential flat development by the private sector is not permitted wherever public authorities or social housing providers have the ability to carry out apartment development. A concentration of public and social housing in certain areas, without the balancing presence of owner occupiers and private sector renters, is likely to distort the demographic profile of an area. A healthy social mix is good for neighbourhoods.

Without a diverse social mix, existing residents may resent change caused by increases of public and social housing in their neighbourhood, while those public and social housing tenants, new to the neighbourhood, may feel unwelcomed and alienated.

Thank you for the opportunity to answer the committee's questions. Should you have any further questions or require any additional information or research material, please feel free to contact me.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer

Encl.

Urban Taskforce Australia (Submission 91)

Additional questions from Members

1. On page 6 of your submission you argue for predictability of decision making through clearly defining and designing the documents that control development - with an aim to negate the need for a subjective judgement by a consent authority. At the same time you argue for subjective decision making to approve non-complying development without the need to amend a statutory instrument.

   How do you reconcile this apparent contradiction?

2. The submission from Ashfield Council notes that many other States have a non-complying development category which allows a similar process of approval without the need to amend a planning instrument such as an LEP. In this system the development of the site is then tied to a specific redevelopment proposal rather than having the site rezoned to a new generic classification.

   Do you see any merit in such a system?

3. On page 29 you say that the long-term planning strategic plans are unreliable, and that this has a negative effect because there is a tendency to prohibit anything not required by these strategies.

   You note that they are unreliable because they are based on population estimates and targets. The Australian Institute of Architects were also critical of what they described as an "estimate and provide" strategy.

   They suggest a strategic planning process that comes up with a vision of what sort of city Sydney should be and what size it should be.

   Do you think that the overriding planning strategies should be based, in part, on a desired population density rather than on forecast growth?

4. You recommend that the 34 zones in the Standard Instrument LEP template be replaced with just seven zones, based on those used by the City of Miami. Can you expand on why you believe this is necessary?

5. In your submission you also argue for greater allowance for the development of retail and business premises in a number of zones. Can you just confirm in the seven zones that you propose should be adopted - in which of these would retail and business premises be permitted?

6. Page 39 of your submission provides the argument leading to the recommendation that it be unlawful for planning and consent authorities to require a demand and supply analysis of a proponent who is seeking to develop a particular parcel of land.

   Can you confirm - are you referring to applications for rezoning of land or to applications for developments that ~e already permissible uses?

7. You propose that the Joint Regional Planning Panels should be given the task of determining requests for spot rezonings when a council refuses the application of fails to deal with the request within a set statutory timeframe.

   The need for spot rezonings would generally arise from outdated or restrictively zoned LEPs. Given councils are preparing new LEPs in line with the Standard Instrument - should not time be given to see if the need for spot rezonings diminish?

8. Your recommendation 18 is that the planning system should not discriminate between development proponents who are government, non-profit organisations or commercial businesses. The development applications put forward should be judged on their merits without discrimination against private businesses. Is this really a case of discrimination against private businesses? Would the removal of special considerations for non-profit organisation realise a net benefit for the community?