Submission No 92

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Submission to:

NSW Legislative Council

Standing Committee On State Development

Inquiry into the New South Wales Planning Framework

Executive Summary

This submission is in 3 parts.

Part 1 looks at the problems with the present NSW planning system. The debate about the purpose of the planning system is briefly discussed followed by a focus on specific issues including community involvement, the development approval process, the implications of climate change and a substantial discussion of the corrosive impact of political donations on the planning system.

Part 2 provides a statement of principles that the Greens propose should form the basis for reform of the planning framework. The principles focus on making our cities and regions sustainable, emphasising how to put in place effective and reliable public transport, and walking and cycling facilities, how to provide sustainable jobs close to where people live, how to ensure that there is affordable housing throughout the state and the cities and how to ensure that as little damage as possible is done to our natural and urban environments.

Part 3 focuses on the specific issue of affordable housing. It outlines the current situation and provides recommendations for how the issue of affordable housing should be addressed within the planning framework.

Part 1 Problems with the Present System

A great deal of the debate about the NSW planning system revolves around the purpose of the planning system. To some the sole role of the planning system should be to facilitate economic growth. To others the role of the planning system should be to make NSW a better place to live and work.

The Greens believe that the latter view is more appropriate. While the building of homes, infrastructure and businesses are important elements of creating and sustaining strong communities economic growth for its own sake should not be the overriding purpose of the state's planning system. The planning system should focus not just on economics but also on the social, environmental and heritage factors that make for strong, vibrant and diverse communities.

In the Greens view, changes to the state's planning laws over the last decade have focussed too much on economic objectives and too little on social and environmental objectives.

The state's natural and urban environment and its heritage is being degraded under the current planning regime, particularly since the introduction of Part 3A of the Environmental Planning and Assessment Act in July 2005. We have experienced, and are still experiencing, constant turmoil in planning laws, as well as the drawing together, in the hands of the Planning Minister, of unprecedented powers to override both community concerns and common sense.

Planning in NSW is failing to meet the needs of the population. NSW planning is largely reactive – responding to immediate problems such as road congestion and poor housing accessibility, with short-term band-aid 'solutions' such as new freeways and land releases up and down the coast. Promised improvements in public transport and urban amenity are rarely delivered. The result is that urban and coastal

areas are becoming less liveable, less affordable, less ecologically sustainable and more polluted.

Planning policies are driven by the property development industry that pours millions of dollars into the major parties' election campaign coffers. As a result the imperatives of private capital are dictating planning decisions and distorting the nature, location and timing of infrastructure provision (eg, motorways rather than heavy and light rail have been offered as solutions to traffic congestion, because roads are more 'profitable' to build than rail).

1.1 Lack of Community Involvement in and Support for Planning Decisions

The 1970s saw significant political upheaval and reform in NSW. The area that saw probably the greatest upheaval and reform was planning and development. Community protests by the residents of Kelly's Bush, the Rocks and Woolloomooloo in Sydney, supported by the green bans campaign initiated by Jack Mundey and the BLF saw the first large scale community campaign against the development free-for-all that was destroying our heritage and plundering our natural environment.

In response to this community campaign the Wran Labor Government in 1979, made a major commitment to public participation in the planning process and transparency. In 1979 a Labor Government was committed to making the planning laws work for the community, not only for developers. The government was committed to giving the public a say in the development of the city. The Environmental Planning and Assessment Act emerged from overwhelming public concern about the way developers were ignoring planning rules and causing significant damage to the state's urban and natural environment and its heritage.

In the second reading speech the government declared that the legislative framework for environmental planning at that time was unsatisfactory because of *"its failure to give members of the public any meaningful opportunity to participate in planning decision making."* References to the desirability of including the public in the planning process recur throughout that 1979 speech. The Minister was explicit about what the Government was intent on achieving and summed it up in the following statement:

"The bills will confer equal opportunity on all members of the community to participate in decision-making under the new legislation concerning the contents of environmental studies; the aims and objectives to be adopted by draft planning instruments; the contents of draft planning instruments; … development applications for designated developments…"

Over recent years a series of major reforms to the Environmental Planning and Assessment Act has gutted those groundbreaking 1979 reforms. These recent reforms have drastically diminished the role of the public in the planning process.

Most decision-making has been removed from elected local councils and placed in the hands of the State Planning Minister, his/her department or planning panels appointed by the Minister. Community consultation has become more removed and tokenistic. Local planning rules and guidelines, developed by elected local councils following community consultation, are routinely ignored by the Planning Minister of Planning Department in approving developments under the new Part 3A of the Act, introduced in 2005.

1.2 Undermining of Environmental and Heritage protections

Part 3A powers are routinely used to ignore or override both local and state environmental and heritage protections. Developments that would not have been approved under part 4 of the Act because they breach local or state environmental or heritage protections are approved under part 3A. The proposed residential and commercial development at Sandon Point provides a good example of Part 3A being used to override environmental protections, aboriginal heritage protections and local community and council opposition.

The use of part 3A and SEPP 1 to override local environmental and heritage protections has encouraged developers to submit development applications that are ambit claims rather than ones that comply with development guidelines. DAs often exceed height limits or maximum floor space ratios, or propose developments that will result in damage to environmentally protected areas or heritage-protected items. Simultaneous with or soon after submitting a DA many developers either threaten

the Council with expensive litigation in the Land and Environment Court or write to the Planning Minister asking for the development to be “called in” and approved under Part 3A (or both).

This has encouraged a culture within the development industry of making little or no attempt to meet the requirements of local DCPs and LEPs. Rather developers have been encouraged to seek maximum financial return by “working the system” to override planning guidelines. The potential profit for developers has made them much more willing and able to fund expensive court cases or make donations to political parties and elected representatives than community members who may object to their DA despite having no financial incentive for doing so.

1.3 The Effect of Developer Donations on the NSW Planning System

Since the introduction of the EP&A Act in 1979 and particularly in the last ten years the state’s planning laws have swung radically in favour of developers. The role of political donations in this reversal of government priorities has given rise to significant community concern and has seriously undermined public confidence in the integrity of the planning system.

There is a very widespread view that the current Labor government is influenced by donations from property developers. Many community members believe that the biggest problem with the planning process in this state is not where the decisions are made or how long they take. It is that developers are paying millions of dollars to the major political parties and those donations are influencing both planning policy and individual planning decisions.

The corrosive effect of this process has been expressed by many community leaders and commentators in recent times.

Former Labor Prime Minister Paul Keating at a Local Government Association conference in 2006 referred to former Planning Minister Frank Sartor as “*The Mayor for Triguboff*” and called for donations from property developers to be outlawed.

Michael Duffy, in an opinion piece in the Sydney Morning Herald on 23 May 2007 labeled developer donations *"an unofficial tax imposed by the NSW political class on the development industry."*

An editorial in the Sydney Morning Herald on 10 May 2007 made the following point:

"political donations raise suspicions of favouritism and undermine faith in the fairness of government; they warrant serious investigation and reform. Businesses, individuals and interest groups do not throw around money for the good of democracy. Property developers, clubs, hotels and trade unions are among Australia's most generous political donors. Just what advantage they may be buying is impossible for the public to know. Did a tender win because it was the best on the table, or because it had friends in high places?"

The Australian Shareholders Association has called for political donating to end, arguing that the donations are a gift and a form of bribery.

(The Age, 23 May 2006)

The Property Industry itself has recognised there is a problem. Terry Barnes, the former chief executive of NSW Urban Taskforce:

"We make the donations reluctantly because the system's there and that's how things are done'. He acknowledged the widespread perception in the community that *"developers are getting preference in exchange for money."*

John Menadue, a senior public servant in the Whitlam and Fraser governments, and later head of Qantas:

"Corporate donations are a major threat to our political and democratic system, whether it be state governments fawning before property developers, the Prime Minister providing ethanol subsidies to a party donor, or the immigration minister using his visa clientele to tap into ethnic money."
(The Age, 8 February 2004)

The role of developer donations was shown in detail in the ABC 4 Corners program on 14 April 2008 as the following extracts demonstrate:

JOHN MANT, ACTING ICAC COMMISSIONER 1993-94:

In order to play the game in NSW be it planning or other contracts and so on, in order to play the game you have to be seen to be contributing.

SARAH FERGUSON(4 Corners): As it happens the $100,000 Marbal donation was three months after the Minister's decision to rezone their Hunter Valley land.

MATT SOMERS (Hardie Holdings): It's just part of the business environment at the moment, is that people pay donations not for approvals, they don't pay for approvals but they pay to get access.

SARAH FERGUSON: Would you like to be able stop paying them?

MATT SOMERS: Well, I guess no one wants to pay them if you don't have to. We happily support good candidates as I've said. We've felt we've paid the money to ensure we have access when we required it. If the rules change the rules will change.

SARAH FERGUSON: Do you ever get frustrated with being asked in a sense for a tariff from the Labor Party? Do you ever think that's enough, they're getting greedy now?

MATT SOMERS: Oh look. I haven't turned my mind to that. We've just dealt it with as a factor of business and we just deal with it.

SARAH FERGUSON: Part of the cost of doing business in NSW?

MATT SOMERS: Yeah.

In the period leading up to the last two state elections the property development industry has poured millions of dollars into the coffers of the major political parties.

Those funds are used to buy saturation television advertising during the election campaign. That advertising makes no mention of what the party intends to do to the planning laws should it be elected.

In the twelve months after the last two state elections, the re-elected Labor government has presented a set of so-called “reforms to the planning laws” based on a wish list from the property development industry.

The property industry poured over $5 million into the NSW ALP’s coffers in the lead up to the 2004 election. The Labor Party did not announce that it intended to gut the planning laws if re-elected. But soon after the election it initiated major changes to the planning laws. Many consider that the 2005 amendments to EP&A Act that introduced the notorious Part3A of the Act were a pay off to the property industry for its massive pre-election donations.

The 2005 amendments, most notably the introduction of the new Part 3A of the Act, dramatically undermined environmental and heritage protections and allowed the Planning Minister to override community objections to any development that he chose to call in. It delivered enormous power into the hands of the Planning Minister while removing appeal rights and proper scrutiny of how those powers were used.

Property developers donated even more money to the Labor Party as the Planning Minister called in hundreds of developments and proceeded to approve developments that previously would have been refused.

Research by the NSW Greens, based on information from the Australian Electoral Commission, the NSW Election Funding Authority and the NSW Department of Planning shows that since the 2005 amendments over $3 billion worth of developments by 13 corporations who are political donors have been approved under Part 3A of the EP&A Act. In that period those same developers gave over $2 million to the NSW ALP.

In the period 2005-06, 28 projects were refused under Part 3A. None of the companies that had their projects refused were political donors.

The Department of Planning's Major Development Monitor 2007-08 shows that last year the government approved 295 of the 296 applications it considered under its Part 3A planning powers, a developer success rate of 99.66%.

The amazingly high success rate comes despite over 14,000 public submissions being received, most opposing projects on environmental and/or heritage grounds.

Public submissions increased by 27% yet the government has ignored the public's opposition in approving projects like the massive residential overdevelopment of Catherine Hill Bay.

Many of the successful Part 3A developers like Rosecorp, Johnson Property Group and Meriton are major donors to the NSW ALP. The NSW ALP has taken millions of dollars in donations from developers who have had projects approved by the government under these part 3A powers. With a success rate of 99.6% it is not surprising that Part 3A is considered by many to be little more than a fund-raising program for the NSW ALP.

The 2007 election saw the pattern repeated. Once again there were huge donations from property developers to the ALP before the election, no mention of changes to the planning laws during the election campaign, and major amendments to the planning laws, based on a development industry wish list after the election.

In the lead-up to the 2007 state election, property developers donated well in excess of $6 million to the NSW ALP.

Government claims that there is no link between the amount of money donated to the Labor Party for the election campaign and the re-elected Labor government changing the planning laws to meet a developers' wish list have little credibility with the public.

We know the latest changes were a property developers' wish list because the property developers told us so.

During the parliamentary debate on the most recent round of so-called reforms of the planning laws the Coalition for NSW Planning Reform, led by the property industry's cashed-up lobby groups, distributed what it called a Planning Reform Score Card. In this scorecard the developers' lobbyists compared the government's reforms with their own wish list. It claimed that the government had delivered twelve of the fourteen changes that the developers had requested.

It is little wonder therefore that the NSW planning system is held in such disrepute. Many members of the public view the system as designed to channel enormous amounts of developer money into the campaign funds of the party in government in return for favourable DA outcomes and the most pro-developer legislation seen in the last thirty years.

The community has every right to suspect that the 2008 amendments to the EP&A Act represents the pay off to the development industry for the nearly $10 million in donations the industry has given to the NSW ALP in the past 5 years. The NSW ALP continues to accept and indeed encourages political donations from the property development industry even as the ALP government pushed these pro-developer reforms through the parliament.

The role of developer donations in undermining public faith in the planning system has received widespread media coverage and public comment, focussing predominantly on the Wollongong Council scandal and revelations of ALP donors getting favourable treatment of their development applications.

In early 2008 the NSW Government committed itself to political donations reform because of the strong public perception that developer donations were affecting planning decisions:

Then Premier Morris Iemma:

"It's now got to the point the mere fact of giving a donation creates the perception that something has been done wrong. The time has come to test the viability of a full public system." (SMH 22 March 2008)

ALP State Secretary Karl Bittar:

"This supplementary submission by NSW Labor advocates a ban on all private donations to political parties in favour of a system of full public funding. This overhaul of the existing system of funding and disclosure would help restore the public's faith in political decision making."

(SMH 22 March 2008)

The NSW Opposition also committed itself to donations reform:

NSW Opposition Leader Barry O'Farrell

"This is a Government that wheels and deals; this is a Government where many people are of the view donations buy influence and decisions. That's why we need to take action to clean up the system."

(SMH 28/1/08)

Despite these public commitments, the donations issue was completely ignored in both the government's 2008 discussion paper and the 2008 "reform" Bill. Indeed the issue of a ban on developer donations was omitted from the Submissions Report on the Discussion Paper despite calls for such a ban featuring in a number of the public submissions.

Despite a parliamentary inquiry recommendation for a ban on political donations being supported by all political parties, no legislation has to date been brought forward by either the Government or the Opposition to ban donations from property developers to those making decisions about their development applications. When the Government and the Opposition had opportunities to support a Greens private members Bill and a Greens amendment to the EP&A Amendment Bill 2008 to ban donations by developers, they voted against the Bill and the amendment.

Subsequent to the 2008 EP&A Amendment Act being passed there have been some changes initiated by the government about how donations are to be disclosed and restrictions placed on Councillors as to their involvement in decisions where proponents or objectors have donated to their campaigns. These restrictions do not

however apply to the Minister for Planning when making decisions under Part 3A. They are instead contained in a new model code of conduct for councillors released in June 2008.
Sections 7.13 to 7.25 of the code outline how councillors are to deal with potential conflicts of interest.

Essentially the changes require proponents and objectors to identify any donations they have made in the two years prior to the application. If a councillor has received a donation the councillor must declare a conflict of interest and not vote on the matter. There is some ambiguity in the guidelines for when donations have been made to the councillor's party rather than to the councillor's personal campaign funds.

While the disclosure rules are an improvement on the previous situation the Greens do not believe that they will solve the problem or restore public faith in the planning system. The only way to do this is to ensure that those people or companies who submit development applications, or have a financial stake in the outcome of a development application, are not allowed to make donations, either directly or indirectly, to those who will be determining the application.

1.4 The Development Approval Process

The property development industry has a standard and unending complaint that development approval processes are too complex and take too long. This is not surprising. The ideal situation for developers is to be able to build whatever they want, wherever they want, because this will maximise their profits. Complaints by developers about complexity and time lines must be considered in this context.

While it is important that the development approval process not be unnecessarily complex or lengthy it is imperative that the process retain as its prime objective the welfare of the community. Landowners have a reasonable expectation that they will be able to develop on their land, but only where such development is not damaging to the community. There is no automatic "right to develop" in law.

Complaints about lengthy delays in approval processes have been used by both developers and the state government to justify removing consent powers from local councils. While castigating local councils the government rarely mentions the amount of time taken up with referrals to government instrumentalities and with gaining required information from proponents. Many development applications provide inadequate information for a proper assessment to take place. Many delays in approval processes come about from proponents taking an extended period of time to provide the necessary information that should have been provided when the application was lodged. The Greens have supported pre-DA processes to clarify for proponents what information is needed in order to speed up the approval process.

A second significant issue that should be examined when looking at claims of complexity and excessive delay is the number of “ambit claims” put in by developers which are clearly inconsistent with Environmental Planning Instruments but which proponents use as starting point to negotiate approvals that do not meet EPI requirements. Greens Councillors have reported that the small number of DAs that are referred to full councils for consideration are dominated by applications that significantly exceed EPI requirements. Councils are often intimidated into approving excessive developments because of threats of expensive legal actions in the land and environment Court. Given the potential financial windfall to be gained from concessions on height, density or floor space ratios, legal action appears to be considered by many proponents of large-scale developments to be a worthwhile gamble.

The role of the development approval process is to balance the desire of the proponent with the welfare of the general community. The expanding use of private certifiers, paid for by the proponent, to determine the balance of these rights introduces a conflict of interest into the heart of the development approval process.

1.5 Climate Change and the Planning Process

The Government has committed in its State Plan to slowing and reversing the projected growth of greenhouse gas emissions. With residential and commercial buildings and coal mines being major contributors to greenhouse gas emissions the

planning laws must encompass this objective. The objective of reducing greenhouse gas emissions should be required to be addressed in all planning processes.

The process of climate change is underway and the effects are becoming apparent. Scientific advice is that NSW will be subject to effects including rising sea levels and increased severe weather events. Adapting to the effects of climate change must also be a key objective of the planning process. At the strategic planning level through to the development application level adaptation to the effects of climate change should be a key consideration.

Part 2 Principles for Future Planning Law Reform

In the wider context of growing concern about climate change, the increasing degradation of the environment, a lack of appropriate infrastructure, and inadequate services, particularly in health and transport there is a need for a planning system that steps back and looks at the way our cities and regions will develop.

The focus however needs to be on making our cities and regions sustainable. It needs to look at how to put in place effective and reliable public transport, and walking and cycling facilities, how to provide sustainable jobs close to where people live, how to ensure that there is affordable housing throughout the state and the cities and how to ensure that we do as little damage as possible to our natural and urban environments.

These objectives will not be achieved until the community is returned to a central place in the planning system. It will only be when the community controls the planning process that development decisions will be made in the interests of the broader community rather than in the narrow interests of the development industry.

The NSW planning system is discredited and corrupt.

There is evidence of corruption at all levels of the planning system and the public views it with enormous suspicion.

The planning system is marked by institutionalised conflicts of interest.

The ICAC report into Wollongong Council showed how that corruption works but it merely scratched the surface of a much wider problem.

The Greens have been calling for some time for a Royal Commission into this state's planning system, including a review of decisions made under Part 3A of the EP&A Act.

Then there needs to be a fundamental rewrite of the planning law. That rewrite should start with two things. First political donations from developers should be banned altogether. Secondly Part 3A should be repealed.

The laws must be rewritten to genuinely reflect the objects of the original Act. The focus must be on community involvement, sustainability, transparency and corruption resistance. Mitigation of and adaptation to the effects of climate change must become a key object of the state's planning laws.

2.1 Statement of Principles for the Planning System

The NSW planning system should:

1. seek to achieve a balance in the planning process to protect the human habitat and residual natural environment within this built environment,

2. pay regard to the legitimate desires and best interests of the community,

3. avoid conflicts of interest,

4. ban political parties and candidates accepting political donations from proponents

5. aim to create for all people built environments that:
    a. Protect and nurture the natural environment, while providing for the daily and lifetime needs of residents;
    b. Are planned for the benefit of all;
    c. Are based upon the provision of publicly owned services (such as transport and health) and spaces (such as parkland and waterways);
    d. Provide key infrastructure and services to all residents in an equitable and timely manner; and
    e. Minimise the use of water, energy and materials, and encourage sustainable methods of producing, using and disposing of all goods and services;

f. Have equitable access to employment and service centres, public transport, educational, health and recreation facilities, and natural open space;
g. Allow the safe and enjoyable use of public spaces, including parks, waterways and streets; and
h. Are safe and secure, encouraging social interaction and a sense of community, promoting community ownership and involvement and providing space for young people to recreate and socialise including intergenerational social interaction opportunities and extended families.

6. support an approach to planning based on:
   a) identifying appropriate sites for increased urban density based on criteria that protect existing urban communities, protect quality food producing lands and ecological values, and constrain urban sprawl;
   b) imposing development constraints that ensure high quality public and private spaces within the development and in the surrounding communities, that protect the site's ecological values, that realise the transport benefits of increased densities and that ensure that the development enhances affordability;
   c) ensuring that existing infrastructure capacity supports the increased density and, in cases where it would not, additional capacity is supplied at the expense of the developer;
   d) retaining diverse employment opportunities within easy access of residential centres;
   e) ensuring that built form integrates well with open space and parks;
   f) providing and maintaining essential infrastructure to support and sustain successful communities;
   g) ensuring that private services such as shops and publicly provided services such as transport are within easy reach of all new residential units; and
   h) using public buildings and open spaces to modulate high density built forms.

7. support integrated transport and urban planning that:

a) focuses on the provision of high quality public transport, cycling and pedestrian options;
b) strictly limits the provision of private parking in new developments in order to not damage the viability of surface based public transport such as buses; and
c) maintains high quality corridors for cycling and pedestrian access and for public transport, including light rail where appropriate.

8. set clear boundaries for metropolitan areas taking account of;
   a) urban infrastructure - particularly public transport
   b) sustainability of social support systems and quality of life
   c) the unique topography of the Sydney Basin and its effect on pollution of the atmosphere and waterways,
   d) the need to retain agricultural land and resist redevelopment of this land
   e) the natural boundary of the Nepean Hawkesbury River systems
   f) the importance of localised food production around urban centres, and especially the Sydney Basin.

9. ensure that land that is best used for agricultural purposes is not sacrificed to urban sprawl,

10. ensure planning decisions are made through a transparent and consultative process. Decisions should not be made behind closed doors, under the cloud of donations, with public consultation merely a tokenistic public relations exercise.

11. draw on the ability of community members to make valuable and constructive suggestions at project formulation stage,

12. include a low cost appeals system,

13. ensure the protection of remnant urban lands of high ecological, amenity and heritage values including woodlands, the waterfront, wetlands and other areas of ecological and social significance,

14. implement urban consolidation in a way that curtails urban sprawl, results in high quality developments and delivers substantial environmental, economic and social benefits. A key objective of urban consolidation must be an end to the unsustainable sprawl of cities and the development of lands that are not supported by public transport or are currently used for agriculture. The focus of urban consolidation should be on converting disused industrial land into high quality housing,

15. permit only those urban consolidation projects that:
    a) do not result in further degradation of the natural environment,
    b) are not excessively high or dense compared to existing surrounding housing forms,
    c) maintain or expand open space available and convenient to the community,
    d) protect heritage items and values,
    e) are supported by an adequate and timely upgrade of social infrastructure including public transport,
    f) consist of high-quality and sustainable housing design,
    g) will deliver positive health and amenity outcomes.

16. cease to favour the private motor vehicle at the expense of other modes of transport such as public transport, cycles and walking. The transportation needs of youth, the elderly and the disabled should be explicitly addressed in the planning process,

17. provide for a combination of developer levies and public investment to ensure that vital infrastructure necessary for successful communities, including public transport, community centres, youth & aged care facilities, schools, hospitals and childcare centres, sports and entertainment venues, and public open space, are adequate and provided in a timely manner.

Developer contributions, including section 94 levies, are fundamental in allowing councils to plan for and fund infrastructure needs,

18. reinforce the Precautionary Principle, in which any reasonable level of uncertainty about adverse impacts of a development application would translate into a rejection or delay of approval until the uncertainty is resolved;

19. Increase the knowledge and application of environmentally sustainable design principles, such as passive solar design, for urban and rural settlements, and individual buildings;

20. establish an Independent Planning Commission to conduct arms length assessment of major developments, and to monitor and report annually on the implementation of long term planning strategies.

21. ensure proposals to alter zoning to allow more intensive development are not approved without comprehensive community consultation and support;

22. ensure rezonings do not impact adversely on biodiversity, energy or transport efficiency, view corridors from public open space, built heritage, or water quality for wetlands, estuaries, creeks and other watercourses;

23. ensure prescriptive controls contained in all Environmental Planning Instruments (“EPIs”), i.e. Local Environment Plans (“LEPs”), Development Control Plans (“DCPs”), State Environmental Planning Policies (SEPPs) and Regional Environment Plans (“REPs”), including maximum height, maximum building floor space, minimum setbacks to site boundaries, minimum allocations of open space but excluding minimum car parking provision are applied and complied with.

24. ensure access to quality open space for all residents, for example by prohibiting medium or high density development in regions where access to public space falls below threshold levels, as measured by hectare open space per thousand people;

25. ensure developer levies are not used on motorways and major arterial roads;

26. support a "betterment" tax, payable on sale or disposal, to be levied on windfall gains that accrue to a landholder as a result of a rezoning that increases the development potential of land;

27. ensure that Ecologically Sustainable Development is the guiding principle that is expressed in the planning process including the preparation of planning instruments;

28. ensure major planning decisions are required to explicitly include measures to reduce greenhouse gas emissions.

29. ensure development proposals explicitly include measures necessary for adaptation to the effects of climate change, particularly relating to predicted sea-level rise and increases in severe weather events.

30. limit the discretionary powers of the Minister for Planning and make Ministerial planning decisions open to judicial review on both their legality and their merits.

31. recognise that public land is held in trust by governments and councils on behalf of the people of NSW who own it and should oppose transferring publicly owned land to private ownership or control,

32. seek to link public open spaces by biodiversity corridors to form a non-motorised transport network with native vegetation at their edges; and fund this extension of parklands by a combination of contributions from developers and public investment with expenditure co-ordinated according to a long-term comprehensive plan.

33. resist development pressures on coastal zones, based on their irreplaceable ecological, cultural and recreational values by:

    a) protecting high quality food producing lands along the coastal strip through Regional Planning Strategies;
    b) containing new settlements and developments to village patterns with generous allocations for non-urban usages between urban forms;
    c) strictly enforcing Regional Planning Strategies and LEPs designed to limit intensity of development and land use along the coast;
    d) implementing state wide planning to alleviate pressure from concentrated development/population hotspots;
    e) creation of a coastal buffer zone protecting the coastal environment

34. ensure all new developments, and alterations and additions to existing buildings, are designed in accordance with sustainable building principles, with regard to consumption and production of energy and water, sourcing of materials, and the minimisation and treatment of wastewater and other products, and with mandatory guidelines set where appropriate.

Part 3 Affordable Housing

NSW faces a significant problem with the provision of housing that is affordable for low and moderate income earners and available across Sydney and regional cities, rather than just on the urban fringe.

Affordable housing, in this context, is housing, usually rental, which is subsidised and thus cheaper than the private market, and available to means-tested applicants on low to average incomes. It differs from public housing in that a wider range of income groups is targeted, and it can create a financial surplus due to the mix of tenants.

Affordable housing is offered to those on low to median incomes. It is usually subsidised by some mechanism or combination of mechanisms – up-front grants from Government, developer contributions, and/or ongoing income subsidies to tenants (such as Rent Assistance). Affordable housing should be targeted at those workers on low to moderate incomes who are not eligible for public housing, but cannot afford the housing costs in the private market.

As urban consolidation has occurred many local councils have attempted to use planning controls to increase the availability of affordable housing in their area. Unfortunately the state government has stifled local councils in this endeavour.

In Sydney and in NSW, there are no official targets for affordable housing provision, despite statistics showing how many people are living in housing stress, and a recommendation in the State Plan.

In development areas, the Government's affordable housing requirements have been modest – around 1-1.5%, in a handful of areas. It is clearly insufficient, and the percentages chosen have has no basis in research or statistics showing housing need.

Affordability problems are increasing in coastal areas of NSW as well, in particular in Northern NSW. Affordable housing policies should apply throughout NSW.

The Greens believe that Councils should be allowed to require a developer to contribute in the form of a percentage of housing units or equivalent value, for affordable housing purposes (up to 25% maximum). The title to the units or monetary equivalent has to be used for affordable housing purposes. This is often called 'inclusionary zoning'.

Affordable housing, because of the ability to house people on low to moderate incomes, can produce a financial surplus (positive rental returns). Two-thirds of tenants of NSW's City West Housing Company, for example, are in the workforce. The City West affordable housing scheme was kick-started by combining State and Federal grants, and developer contributions in the Pyrmont-Ultimo (and now Green Square) areas.

Once a scheme is set up, rental income from affordable housing can produce a surplus over time, allowing the scheme to expand. Like public housing, rents are still linked to income (30%) until a certain amount is earned, whereupon rents are capped at 'market'.

Developers could be required by a council to contribute up to 25% for affordable housing. The council will have to specify the details of the levy and the areas to which it applies in a contributions plan. This will provide certainty to developers.

Landcom, as a Government development agency, could provide a much higher proportion of affordable housing for sale or rent in its new greenfield areas. This could be targeted at key workers or a means test used along with a ballot. It is possible to put caveats on any resale to prevent profiteering in the short-term.

Where there is a new development and contributions are sought, the council can then use the contributions (in the form of money or actual housing units) for an affordable housing purpose, or transfer the contributions to an organisation that will operate the scheme.

3.1 Current approaches

The NSW State Government facilitates the provision of new housing by releasing areas of development or developing new housing areas itself via Landcom or through Housing NSW.

The State Government also imposes levies on private development to affray costs associated with new infrastructure to go with new housing. Given the zoning decisions improve land value, which benefits developers, the imposition of a levy or betterment tax is not unreasonable.

The State government has not developed any significant amount of affordable or new social housing in response to higher housing costs. Instead t has relied on the private market ad developers to provide housing to people in NSW> However, there is a major deficit of affordable housing which is unsurprising since the private sector has little incentive to house those who can afford to pay less.

While the State Government has chosen to ignore the problem, due to the recession the Rudd Government has announced a federal fiscal stimulus package which will give $2b to NSW for new social and defence housing. This may result in 90000 new homes housing 17,500 people over the next three years, according to the NSW Housing Minister, David Borger. The Greens welcome this but note this new spending comes after a long period of neglect. There is also a risk that adverse economic conditions may add to the numbers of persons requiring housing assistance in the short term, before new housing can be built.

The State Government has small ‘inclusionary zoning’ schemes operating in designated areas in inner Sydney (Pyrmont-Ultimo, Green Square) and Redfern-Waterloo. These have been facilitated through State Environment Planning Policy no. 70 and the Redfern Waterloo Authority Act. There is currently no generalised power for Councils to levy new developments for affordable housing purposes. The Greens intend to introduce a private members Bill to NSW State Parliament to do this.

In short, the current approach is ad hoc and inadequate. The social housing system is residualised, and no assistance is offered to median income earners such as key workers, who can be forced to commute long distances. Some of the regions too have major housing affordability problems. Without government intervention, NGOs and councils cannot afford to rectify the problem, as they do not have the resources or planning powers to do so.

There is no comprehensive affordable housing strategy for NSW. We have had a succession of Planning and Housing Ministers, but none have really innovated and there has been no advance on the limited affordable housing schemes operating in NSW. There are no targets for affordable housing by area, and even if targets were to be set, there is no legislative basis to ensure targets are met.

The National Rental Affordability Scheme is already in place and will create some incentive through tax for new supply.

After the first round of the NRAS concluded, NSW's share of new NRAS units is disappointing. Only approximately 200 people a year over 5 years are likely to be assisted through this scheme.

3.2 Greens recommendations on Affordable Housing

1. The Greens support new social housing managed by Housing NSW or community housing organisations.

2. The Greens support changes to the planning system to allow councils to levy for affordable housing purposes in private developments of a certain size[1]. It has the advantage of working best in high housing cost, growth areas.

3. The Greens support a 'housing first' plus services approach for the chronically homeless.

4. The Greens support the upgrading of housing in rural and remote NSW, especially Aboriginal housing

5. The Greens support a long-term growth plan for limited-equity housing co-operatives as an affordable alternative to home ownership and private rental.