

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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Inquiry into the NSW Planning Framework

Submission of the
Urban Development Institute
of Australia

The Director,
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Legislative Council, Parliament House
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Introduction

Recent policy initiatives by the NSW and Commonwealth Government have both highlighted and been in response to the severe housing affordability crisis affecting NSW. The global economic crisis has only compounded the already existing stresses on the NSW property market as well as the state and federal budget revenues.

The Urban Development Institute of Australia NSW (UDIA NSW) is the peak industry body representing the interests of all sectors involved in the urban development industry in NSW. Our extensive Committee and Regional Chapter structure directly involves more than 150 of the development industry's key stakeholders in policy formulation.

UDIA NSW has over 550 member companies, a quarter of these are based in regional NSW. The residential sector of the industry alone contributes more than \$15 billion worth of activity to the NSW economy annually and the property industry in general accounts for around 20 per cent of state government revenue through stamp duty.

UDIA NSW has continually advocated for reform to the NSW Planning System. UDIA NSW advocacy was a major catalyst for the 2008 reforms which once implemented will likely yield benefits for the industry and NSW economy.

The NSW Planning System however remains complex, legalistic, and lacks a consistent narrative for the delivery of strategic policy initiatives such as the Metropolitan and Regional Strategies. The process of incremental change over the last thirty years has resulted in a departure from the original intent of the *Environmental Planning and Assessment Act 1979* (the EPA Act) and has served only to compound the need for complete reform.

UDIA NSW in its 2009 Policy Agenda advocates that a comprehensive reform of the NSW Planning System is required. The reform needs to rationalise the dependence on legal planning instruments and focus on the use of policy and strategic guidance for planning. UDIA NSW supports the Legislative Council Inquiry (the Inquiry) into the NSW Planning System as a platform for a broader review and reform process.

Complexity

UDIA NSW contends the NSW Planning System is the most expensive, legalistic and complicated planning system in Australia. Complexity in the planning system is derived from layered regulation and multiple planning instruments which combine to make the assessment process long and onerous. A new planning Act is required, as distinct from further reforms of the existing Act, to prevent further layers of complexity being introduced.

Since the introduction of the EPA Act thirty years ago, the concepts of sustainability and sustainable development have evolved to incorporate environmental considerations in the planning system. Conservation outcomes have traditionally been incorporated into the planning system through peripheral legislation or retrofitted into planning policy.

This complexity has substantial impact on development feasibility, development costs and housing affordability. Single purpose legislation, generally conservation focused, increases complexity and cost as individual Acts do not necessarily complement either each other or the EPA Act. Attempts to streamline the planning system previously have tended to add additional layers of complexity

Uncertainty

Adding to the complexity, which affects certainty in land use, are delays in the rezoning process. Such delays arise from sections of the EPA Act which require consultation and decision making processes at various stages in the making of a plan. Such processes are inefficient and result in excessive assessment timeframes that directly impact on project costs and ultimately, on housing affordability.

It is yet to be seen whether delays associated with Part 3A will be addressed by recent reforms to the existing system and the Minister for Planning's commitment to reduce rezoning timeframes. However the reformed system remains more time consuming and costly than other states within Australia.

Development assessment is often prolonged and those involved including applicants, assessment officers, decision makers and the community struggle to effectively navigate a complex, process driven planning system. With such a process driven and legalistic system, those responsible for the assessment of development proposals are often unable to be proactive and resolve issues in a timely manner to achieve outcomes. The commercial realities of development and the economic benefits which can flow from development are often not understood and therefore diminished by the process and time scale.

UDIA NSW advocates a simplified planning system in NSW is required that is adaptable and capable of efficiently integrating natural resources issues, the commercial realities of development proposals and social issues such as housing affordability.

Strategic policy initiatives such as metropolitan and regional planning are not sufficiently robust across government and its agencies to provide for a sufficiently effective tool within the broader planning framework. Strategic planning must have authority within government and the wider community and must be able to drive outcomes in budgetary processes and general agency decision making.

This is likely to ensure consistency across government in facilitating development and the delivery of economic growth. Integration of strategic planning with the budgetary process will contribute to ensuring the delivery of core infrastructure in realistic timeframes. In addition, removing dependence on the cyclical nature of stamp duty to fund infrastructure will remove the need for regular reviews, postponing or cancellation of key infrastructure commitments.

UDIA NSW supports the provision of increased resources to the Department of Planning and local councils to effectively assess development proposals in clear and consistent timeframes. The resources however, must be experienced practitioners who are outcome focused.

UDIA NSW contends the amalgamation of smaller local government areas is essential if metropolitan planning and state planning frameworks are to be effectively translated into local level planning frameworks. This would support more consistent planning practice at different scales of government. Amalgamation would also support the expenditure of unspent Section 94 contributions and provide smaller councils with a broader ratepayer base from which to finance community infrastructure.

Need for Reform

The planning framework in NSW is focused on process and not the facilitation of development or delivery of outcomes. A cultural shift within government that aligns with strategic planning objectives is required. It is necessary for the Government to assume a leadership role in collecting and disseminating key planning data, and responding to trends and implications of that data, to facilitate and encourage development and economic growth.

A comprehensive reform of the NSW Planning System must be expedited consistent with recognition of the key failings of the existing planning framework and key principles that should form the strategic basis of a new planning system. Immediate priorities for reform, as

outlined above, are required to ensure investment certainty in the short term prior to the development of a less complex, more efficient planning system.

This submission is necessarily succinct with a view that UDIA NSW would like to engage with the Standing Committee on State Development (the "Standing Committee") further and in a more comprehensive fashion. The size and complexity of the NSW Planning System requires detailed analysis and investigation of appropriate solutions that will enable effective and robust reform of the system. Additionally, reforms must be pursued through to fruition without amendments arising from politicisation of the reform process.

This requires a consistent approach and commitment to reform amongst stakeholders with the most financially and commercially at stake from reforms to the planning system. In this regard, UDIA NSW has initiated dialogue with other key industry stakeholders including the Property Council, Planning Institute of Australia, Architect Institute and Sydney Chamber of Commerce to advocate for comprehensive reform.

UDIA NSW seeks to engage with the Standing Committee and as a first step has identified what it believes should be some of the headline initial considerations for the Inquiry. These have been identified and articulated in a necessarily brief fashion to stimulate debate and discussion, rather than present comprehensive arguments.

In this regard, UDIA NSW has provided:

- a summary of ten key areas where the current planning system needs to be reformed;
- an identification of key policy principles that should be the basis for measuring a successful planning system; and
- an identification and recommendation of five immediate priorities for reform.

Ten Key Reform Areas for the NSW Planning System

1. The consent authority must be empowered with responsibility for development assessment outcomes. Too many government departments and agencies are involved in the assessment process. These departments and agencies are not accountable and regularly raise issues and impediments that the consent authority fails to resolve. A simplified decision making process is required.
2. An inefficient planning system is supported by an inefficient and uncompetitive economic framework of property taxes and levies comparable to other states. There are underlying constraints with the existing tax and levy framework at Commonwealth, State and Local Government level that must be addressed to improve affordability in NSW.
3. The EPA Act is designed to assess specific development applications and projects. Consideration of the benefits for the larger scale context of those projects, such as at the neighbourhood scale or regional scale, needs to be accommodated into the assessment framework. This would be best addressed by greater strategic planning underpinning and creating certainty at the assessment stage of a development.
4. The primacy of the EPA Act is compromised by competing legislative agendas, particularly in regard to conservation legislation which has emerged since the EPA Act's introduction. One singular legislative Act governing planning, and related conservation issues arising out of the planning process, must be developed to simplify the planning system.

5. The planning system does not adequately account for new and evolving issues, which are as a result, subject to disparate and inconsistent responses. Climate change is an example of an emerging issue that affects development and is subject to a range of regulatory responses from various agencies, departments and scales of government. A new system must be able to effectively integrate such issues into the planning process without restricting assessment times.
6. There is insufficient integration between strategic planning undertaken under the auspices of the EPA Act and budget processes. Strategic planning and strategic land use decisions must be linked with the Treasury Budget process to deliver capital investment in infrastructure. The planning system must also impose a culture within other government agencies that aligns with strategic growth objectives reflected in the State Plan, Metropolitan Strategy and sub-regional strategies.
7. The planning system fails to account for the concept of affordability within the wider range of influences that impact on affordability. Improving affordability must be done in the context of increasing land supply, strata reform to enable urban renewal and reducing taxes and charges. The planning system must support affordability through increased efficiency in regulation by instituting a new simplified and less complex Act. Planning policies, instruments and development controls must account for the costs imposed on development and their impacts on affordability
8. There is a lack of commitment from Government to key long term planning policy initiatives. The Metropolitan and Regional Strategies require sufficient robustness to be imposed and effected on all government agencies to holistically deliver the outcomes of the strategies. Further, the planning system in NSW must provide a framework supportive to the effective implementation of the Metropolitan and Regional Strategies.
9. There is a lack of accountability at all levels within government agencies and at different scales of government for decision making processes, the impact of those decisions or the necessity to balance perspectives to achieve outcomes.
10. Local Government Reform – Efficient local government operations are fundamental to the viability of the urban development industry and the provision of housing affordability. Local government reform must accompany planning reform.

Identification of Key Policy Principles That Should be the Strategic Basis for Measuring a Successful Planning System.

1. A legislative framework that supports the integration of strategic policy initiatives is required.
2. Clear integration of strategic planning with budget capital expenditure priorities to provide greater alignment of land use with access and amenity.
3. Agency accountability to strategic policy initiatives – cultural consistency within government towards delivering growth and facilitating development.
4. Certainty in land use and the development potential of that land as guided by metropolitan and regional strategies.
5. Flexibility in development control. Regulation should be performance and outcome focused, not overly prescriptive or focused on process.

Identification and Recommendation of Five Immediate Priorities for Reform

It is recognised that comprehensive planning reform will take time. There are however, five areas that require immediate reform to help deliver in the recovery of the NSW economy. They include:

1. Removal of duplication with the *Environmental Protection Biodiversity Conservation Act* (EPBC Act). Existing duplication of processes identified in a recent UDIA National submission to the Department of the Environment, Water, Heritage and the Arts (DEWHA) between the EPBC Act and state legislation significantly delay and add cost to the development process.
2. Introduction of performance-based incentives for key project managers within the Department of Planning to incentivise greater efficiency in assessment and decision making processes is required. Performance incentives should ultimately extend to all assessment officers in an open and transparent manner.
3. Target dates and timeframes for rezoning and assessment decisions as recently specified by the Minister for Planning must be mandated and imposed for all applications.
4. The immediate removal of the application of GST on stamp duty paid during the development process.
5. The NSW Planning System must remove community consultation processes that are inefficient and duplicated in the existing system. Consultation at the strategic planning stage with the community negates the need for further community consultation at the development application stage. This is an inefficient, onerous process and should be removed from the existing planning system to ensure investment certainty in land use.

UDIA NSW would welcome the opportunity to further engage with the Standing Committee and provide a positive, proactive contribution to the planning reform agenda. UDIA NSW would also welcome the opportunity to appear before the Standing Committee at its hearings to further elaborate and detail our position on planning reform.

Yours Sincerely,



Nick Duncan
Chief Executive Officer