

Tuesday 27 May 2014

The Hon. Pru Goward MP  
Minister for Planning  
Level 34, Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister Goward,

### **Making local plans that work**

NSW deserves a contemporary planning system that is modern, efficient and responsive. And, a root to branch overhaul of local planning is critical to boosting jobs and homes on the ground.

In 2006, the State Government established a standard template for the development of Local Environmental Plans (LEPs).

The aim was to deliver a consistent framework for councils to give effect to strategic planning; and to reinforce the role of development control plans (DCPs) as guiding principles to LEPs for DAs.

However, the full desired effect to better deliver growth has not been realised.

A hereditary culture within local planning persists where DCPs are prescribed above and beyond their 'rule of thumb' purpose. This has resulted in the unintended consequences of increasing over-regulation and cruelled housing supply.

### **2013 Botany Bay Development Control Plan (Draft Amendment No.1)**

A clear case exemplifying these concerns is the recently exhibited Botany Bay Development Control Plan Draft Amendment No. 1.

The amending DCP package inherently undermines the prevailing LEP's first two operating principles:

- (a)** to recognise the importance of Botany Bay as a gateway to Sydney, given its proximity to Sydney (Kingsford Smith) Airport and Port Botany, and
- (b)** to encourage sustainable economic growth and development.

The amending DCP seeks to introduce prescriptive compliance measures that conflict with Australian standard building codes, duplicate SEPP65, and stifle contemporary building design.

Overall, the proposed measures would result in:

- exorbitant costs for the preparation of DAs – due to the duplication of standards that are pre-set by State planning policies
- proposing design requirements that will not be complied with – as they are constrained by local urban context
- rendering growth economically unfeasible – as a result of the above constraining market demand.

For example,

<p><b>4C.5.8 – Solar access, amend control: C3</b></p> <p>Proposes instead of new developments maintaining light to 50% of adjoining property living room windows, they require 100%.</p>	<p>Requiring that new developments need to maintain 100% solar access for adjoining property living room windows is a design measure that cannot be met.</p> <p>Botany Bay is an inner urban area where higher densities and smaller lot sizes experience restricted solar access by default.</p> <p>Botany is gateway for Sydney and it is zoned for housing delivery. But, this amendment would be challenging to achieve and deter development from occurring.</p> <p>Also, this design measure overlaps with SEPP65 which already addresses solar access.</p>
<p><b>4B.5.1, dwelling mix, room size and layout, add new control: C3</b></p> <p>Proposes that one bed and studio apartments combined cannot exceed 25% of the mix of dwellings within a single site in residential zones.</p>	<p>This amendment directly interferes with market demand.</p> <p>Determining minimum dwelling mix that one bed and studio apartments combined cannot exceed 25% of a site removes all flexibility to accommodate changing evolving demographic demands and lifestyle choices.</p> <p>This amendment will ultimately reduce the attractiveness of Botany Bay as a place for investment.</p> <p>The amendment's premise is 'to address the Council Design Review Panel's issue with this control – to apply it to residential zones'. Yet, the purpose of the Review Panel is to assess DAs on a case by case basis prior to lodgment.</p> <p>This amendment would unnecessarily constrain building design that already undergoes extensive DA review.</p>
<p><b>4B.5.9 – Site facilities, add new control: C9</b></p> <p>Proposes substations and similar utilities to be located away from the front set back.</p>	<p>It is standard practice for utilities and service agencies to place substations in the front setback for sufficient access.</p> <p>This amendment contradicts overriding State agency standards by requiring substations and utilities to be located away from the front set back.</p> <p>DAs are required to comply with concurring agency requirements first and foremost.</p>
<p><b>4C.5.2 – Internal circulation, add new control: C3</b></p> <p>Proposes that buildings of more than four storeys must require more than one elevator.</p>	<p>This amendment would dictate that apartment buildings more than four storeys would need to include two elevators.</p> <p>Apartment buildings that have smaller footprints or narrow cores would be unable to meet this measure.</p> <p>Furthermore, this amendment would be a cost imposition that would render medium density unfeasible to develop. Or, it would add burdensome cost to unit prices.</p>

**Part 6.2.2 – Mascot (West)  
Business Park Precinct,  
amend control – C5**

Proposes that a risk management plan must be prepared by a qualified consultant to address projected sea level rise concerns and in accordance with current Council policy and NSW coastal planning guidelines.

This amendment duplicates strategic planning in the (re)zoning process and would add significant red-tape to the preparation of DAs

This amendment requires that a risk management plan to address sea level rise would need to be conducted by a proponent.

However, the LEP already manages sea level rise concerns by limiting development on the foreshore area. And, zoning identifies where development is appropriate based on higher order policies.

The proposed amendment package raises a number of governance concerns more broadly.

The role of the LEP is to act as the overarching tool that determines land-use planning at the local level, with DCPs to act as detailed guidance for its interpretation. Yet, as highlighted above, local planning is not articulated clearly and consistently as imagined by the 1979 EP&A Act.

Additionally, the amending DCP package primarily seeks to address concerns expressed by the Council's Design Review Panel.

However, the role of the Panel is to review development applications for new multi-unit housing and residential flat buildings to resolve any design concerns before a submission is made. The cost is incurred by the applicant (up to \$4000.00) and projects of this scale must undergo pre-lodgment assessment.

Given the Panel's mandate, we argue that the pre-lodgment service should sufficiently address any design concerns and that the DCP should not be used as a prescribed tool in lieu of decision-making.

I also enclose a copy of our publication — *Planning Gone Mad* — to further illustrate the pervasiveness of this counter-intuitive culture.

**Recommendations**

It is safe to conclude that 2013 Botany Bay Development Control Plan (Draft Amendment No.1) does not meet the economic objectives of its LEP.

And, we strongly request that the amending DCP package is rejected and the original Botany Bay DCP undergoes stringent review.

More broadly, we recommend the following:

- **Invoke sections 118 and 74F of the Act** to impose a review of DCPs by Planning Panels and enforce model guidelines as standard conditions of consent until DCPs are stripped of red tape.
- **Establish a review framework** where all DCPs are held to account by the Department of Planning and Environment prior to public exhibition.
- **Employ the Urban Feasibility Model aggressively** to ensure LEPs – particularly those in areas identified for high growth – are market-responsive and contain modern provisions from the outset. And, update LEPs and accompanying DCPs where they are not meeting minimum targets.
- **Finalise pending State policies and plans** that will give clear direction for growth and mitigate local planning from issuing prohibitive measures i.e. the Metropolitan Strategy for Sydney and the reformed SEPP65.

Over the years, the Property Council has worked closely with the Government to seek modern local planning that works.

As the nation's peak representative of the property industry, our 2,200 members are Australia's major investors, developers and owners of commercial, residential, retail, industrial, retirement living and hotel assets worth over \$320 billion.

We would be more than happy to facilitate further engagement with the Government to lend best practice insight for reform.

To discuss this further, please don't hesitate to contact me on (02) 9033 1906 or [gbyres@propertyoz.com.au](mailto:gbyres@propertyoz.com.au), or Amelia Jalland (Senior Policy Advisor) on (02) 9033 1951 or [ajalland@propertyoz.com.au](mailto:ajalland@propertyoz.com.au).

Yours sincerely,



**Glenn Byres**  
NSW Executive Director  
Property Council of Australia