



*Environmental Planning and Assessment
Amendment Bill 2008*

Submission of the Urban Development
Institute of Australia NSW to the
NSW Department of Planning

April 2008

Introduction

The Urban Development Institute of Australia NSW (UDIA NSW) has reviewed the *Environmental Planning and Assessment Bill 2008* (the Bill) and appreciates the opportunity to comment. The Bill presents the most comprehensive amendments to the *Environmental Planning and Assessment Act 1979* since its promulgation and substantially reflects the intent of the NSW Government to provide a more transparent, rigorous and accessible planning system.

Last year fewer than one in five homes built nationally were built in NSW, despite the state needing to accommodate roughly one third of the population. The need for reform is acute. The figures revealed in the Department of Planning's *Local Government Performance Monitoring: 2006-2007* are testament to a system that discourages investment.

UDIA NSW has been advocating for significant and specific reform to the NSW Planning System since December 2006 and is pleased that many of the key principles for providing greater certainty, transparency, and efficiency are reflected in this offering. There are however a number of concerns with aspects of the Bill, and matters that have not been included in these reforms that UDIA NSW believes require the urgent attention of the NSW Government. These concerns are not insignificant, and if not addressed, may limit the success of the reforms in achieving their desired objectives.

UDIA NSW congratulates the NSW Government on its progress of reform to the NSW Planning System and takes this opportunity to recommend a number of further improvements that will assist in genuinely bringing the *1979 Act* closer to the needs of the people of NSW.

SCHEDULE 1 Amendments relating to environmental planning

UDIA NSW supports the principle of the proposed Gateway Determination process and believes it has the potential to generate genuine efficiencies in plan making. The prescription of needs-based timeframes for various aspects of the plan making process is supported provided they are reinforced with implications for both the relevant planning authority and/or the government agency consulted in the assessment of the proposal.

UDIA NSW recommends that the Minister formally prescribe binding timing conditions and implications when reviewing the planning proposal. These may include the referral of the draft plan to a Joint Regional Planning Panel or the Planning Assessment Commission for assessment.

UDIA NSW contends that the Gateway Process must also provide access for proponents to discuss the merits of an application with the Minister or delegate. The current shortcomings of the LEP Panel process are manifested in the lack of access for proponents, those willing to assume the risk of developing, to the Panel to present and advocate the respective merits of a case.

If a developer is willing to invest a significant amount in a state that is experiencing a 50 year low in dwelling production, they should be provided with access to the Minister or delegate, rather than having to rely on representation from the respective local council. UDIA NSW recommends that Section 56 of the Bill provide opportunity for development proponents to appear before the Minister to present a case for the making of the Plan.

RECOMMENDATION 1

UDIA NSW recommends that the Minister formally prescribe binding timing conditions and implications when reviewing the planning proposal. These may include the referral of the draft plan to a Joint Regional Planning Panel or the Planning Assessment Commission for assessment.

RECOMMENDATION 2

UDIA NSW recommends that Section 56 of the Bill provide opportunity for development proponents to appear before the Minister to present a case for the making of the Plan.

SCHEDULE 2 Amendments relating to development assessment

Planning and Assessment Commission

UDIA NSW strongly supports the creation of the Planning and Assessment Commission (PAC) in providing the separation of powers for the assessment of state significant development applications. The Commission will effectively be charged with the majority of the assessment functions the Minister now undertakes pursuant to Part 3A yet is provided with indemnity from appeal in the case as below listed. Proposed Section 23F (2) provides that:

“An appeal or application for a review under this Act may not be made in respect of a decision of the Commission in exercising a function conferred on the Commission by or under this Act (including a function delegated to it under this Act) if the decision was made by the Commission after a public hearing.”

The proposed provisions deny proponents the opportunity for a merit appeal of the decision made by the PAC if a public hearing has been held during the assessment, and therefore fail to provide the accountability in decision making that must be one of the fundamental principals of the reforms to the Planning System. The Bill potentially provides greater appeal rights for applicants who are seeking to invest \$100,000 than those who want to invest \$100 million.

The success of the PAC in providing a superior alternative to the current assessment framework will largely be determined by its constitution. UDIA NSW recommends that at least one of the members on the Commission for every determination have expertise and experience in the commercial aspects of development. It is critically important, given the need for NSW to attract significant investment to regain competitiveness, that

the PAC have an appreciation of the inherent risk of development, as well as the technical aspects of environmental assessment.

RECOMMENDATION 3

UDIA NSW recommends that Section 23F of the Bill be removed and merit appeal rights be provided for development proponents, consistent with lower tiers of investment and assessment.

RECOMMENDATION 4

UDIA NSW recommends that the constitution of the Planning Assessment Commission include members with expertise and experience in the commercial aspects of development.

Joint Regional Planning Panels

UDIA NSW supports the establishment of Joint Regional Planning Panels (JRPPs) to assess applications of regional significance but is concerned that the proposed thresholds for assessment are too high. UDIA NSW understands that the definition of Regionally Significant Development will be contained within the *SEPP Major Projects* and refers to:

- Designated development
- Crown projects, private infrastructure and council projects >\$5M
- Residential, commercial, retail >\$50M
- Coastal subdivisions & other coastal development (current Part 3A)

UDIA NSW contends that the threshold of a capital investment value of \$50 million is too high for the identification of regionally significant development applications. The Department of Planning's *Local Government Performance Monitoring: 2006-2007* revealed that only 24 applications were assessed last year that exceeded this threshold. It is disingenuous for the NSW Government to create another layer of development assessment to handle 24 applications per year, half of which will likely be in the Sydney central business district.

UDIA NSW recommends that the threshold for regionally significant applications be lowered to \$10 million for private capital investment. This would provide a genuine and constructive role for the JRPPs, clear demarcation between local, regional, and state significant applications, and provide greater transparency in decision making through the separation of powers in decision making.

The separation of powers in decision making at Local Government level through the use of Joint Regional Planning Panels ensures clear roles for elected officials, minimises conflicts of interest and matches skills and responsibilities. Furthermore, separation of

powers has the advantage of diffusing adverse perceptions regarding political donations and their alleged impact on the decision making process.

RECOMMENDATION 5

UDIA NSW recommends that the threshold be lowered to \$10 million for non-Government agency development applications to be determined by the Joint Regional Planning Panels.

Concurrence Reviews

A notable omission from the Amendment Bill is the matter of rationalising agency concurrences in the development assessment process. The Department has explicitly acknowledged the constraints on the efficiency and effectiveness of the NSW Planning System that many concurrence requirements create, yet has failed to use this opportunity to propose comprehensive improvements.

The current legislative provisions implicitly provide opportunity for government agencies to act as de facto consent authorities, with veto control over development applications. As a result, development applications are increasingly being determined on the basis of single issue agendas, such as the preservation of native vegetation or perceived bush fire risk. Development applications must be considered in the context of a range of externalities and the potential benefits to be created for the community, not simply on one factor.

The Department of Planning's *Local Government Performance Monitoring: 2006-2007* revealed that the mean agency referral time for development applications was 48 days. However, for any application over \$20 million, the referral period is contributing an average of 185 days to assessment timeframes. The Bill has failed to address one of the most significant constraints on the efficiency of the Planning System and delays from concurrences will continue to impede the timely assessment of development applications.

UDIA NSW recommends that integrated development assessment and concurrence requirements be amended and the authority to provide development consent for all development applications be given to the Minister for Planning and delegated accordingly. The current framework is at variance to the range of proposed reforms to the planning process and is contrary to best-practice governance.

The Department has also indicated that referral periods to Government Agencies would be rationalised to 21 days yet this has not been reflected in the Bill. UDIA NSW recommends that this commitment be upheld.

Further to rationalising referral periods, UDIA NSW recommends that referral periods be reinforced with 'deemed to comply' provisions and indemnification from prosecution for Councils to make determinations when advice has not been received from an agency in within the prescribed referral period.

UDIA NSW is mindful of the need for Councils to maintain good relationships with Government agencies and this may lead to hesitation by Councils making determinations in the absence of agency advice, despite guarantees of indemnity. UDIA NSW therefore proposes that Councils be required to write to applicants advising that a referral had not been received within the 21 day period and that assessment would continue on the basis of deemed approval from the agency. A formal recognition of this process would provide an applicant and the Court with an appreciation of the process and extent of assessment if an application were to proceed to the Land and Environment Court.

RECOMMENDATION 6

The need for dual consents under the Integrated Development Application process be removed and replaced with a referral system that is reinforced by deemed to comply provisions once prescribed consultation timeframes have not been met.

RECOMMENDATION 7

UDIA NSW recommends that referral periods to Government Agencies be rationalised to 21 days and local Councils be indemnified from prosecution when development applications are determined in good faith in the absence of timely agency advice where referrals have been formally initiated.

Lapsing of a development consent

The Bill introduces a new provision that seeks to ensure that development consents are ‘*substantially commenced*’ within two years of the original consent period lapsing, provided the proponent has physically commenced the development within that original consent period. UDIA NSW is not opposed to the principle of the proposed provisions as they relate to the timing of consents but believes that transitional provisions must accompany any such amendments to the Act.

The new provisions as proposed will retrospectively apply to consents granted prior to this Bill. In effect a new condition will be applied to development applications after a proponent has committed to the risk of investment. This is highly undesirable, particularly given current market conditions. UDIA NSW recommends that transitional provisions be applied in the Bill to provide that the requirement for a development application to be ‘*substantially commenced*’ not apply to consents granted prior to the amendment of the Act.

UDIA NSW seeks a standard 5 years commencement clause on development consents. When added to the proposed requirement for substantial development within the following 2 years this provides 7 years and sufficient time for a developer to weather market cycles and credit crunches.

Presently Councils can reduce the period in which a development may lapse. Such decisions are inconsistent and unresponsive to the market. Urban development is about timing. The real estate market is cyclical and not governed by the wants of planners. A standard consent period across NSW improves certainty and investor confidence.

RECOMMENDATION 8

UDIA NSW recommends that transitional provisions be applied in the Bill to provide that the requirement for a development application to be 'substantially commenced' not apply to consents granted prior to the amendment of the Act with regard to this Section.

RECOMMENDATION 9

UDIA NSW recommends that the NSW Government provide a standard development consent period of five years by repealing Section 95A (2)-(3) of the Environmental Planning and Assessment Act 1979.

Section 96E Applications for review – objectors

This Bill proposes to make provision for a right of review to be available to objectors in respect of classes of development specified in the principal Regulation. The Community Guide provides that objector reviews will allow objectors adversely affected by what is to be classed in the Regulation as 'public interest development' to seek a review of development consent granted by the Council.

The Bill does not explicitly specify what will be considered 'public interest development' but suggests that it will include, inter alia, certain classes of development which would result in specified development standards in an environmental planning instrument being exceeded by more than, say 25 percent. The Bill also does not specify how objectors can be determined to have been adversely affected by this new class of development.

UDIA NSW is concerned that these provisions appear to have been hastily designed, given the scope for abuse in the absence of explicit controls that will govern this process. As such, the breadth of this provision will not be known until the accompanying Regulation has been prepared.

There has been no expressed justification for the proposed threshold of 25 percent, and given the disparity of development controls within environmental planning instruments, including those prepared under the Standard LEP Template, it is difficult to ascertain why an ambit figure has been proposed. For example, Part 4 of the LEP Template provides that Councils have the option of whether they choose to include the following development standards in their LEP;

- Minimum lot size
- Height of buildings
- Floor space ratio

If sufficient rigour, certainty and consistency can be provided within the Regulations to provide for these provisions, UDIA NSW contends that there must be implications for objectors who request a review that is subsequently dismissed by the JRPP or PAC. This may include the payment of costs to the affected parties, including the cost of resourcing the review. If an adversely affected objector's review is upheld by the review body, be it the JRPP or the PAC, UDIA NSW recommends that applicants be afforded the right to appeal the decision.

RECOMMENDATION 10

UDIA NSW recommends that the Regulations provide explicit direction as to what will be considered 'public interest development and explicit direction as to who may be considered 'adversely affected' by public interest development.

RECOMMENDATION 11

UDIA NSW recommends that the Bill detail implications for objector reviews of public interest development, including the payment of costs if the review is dismissed.

Section 97 Appeal by an applicant – development applications

The Bill proposes to rationalise the time within which an applicant who is dissatisfied with the determination of a consent authority, with respect to the applicant's development application, can appeal to the Court from twelve months to three. This provision also applies to applications which are deemed to be refused, pursuant to Section 82(1). UDIA NSW contends that this period is not sufficient given the inherent complexities of lodging an appeal.

UDIA NSW is aware that development proponents are often accused of rushing to Court once the deemed refusal period has passed. To overcome this charge, proponents often wait a number of months even after their right of appeal on a deemed refusal arises to see if they can negotiate an outcome with the consent authority without the need to go to Court. An applicant's ability to exercise this function will be significantly curtailed by the proposed provision. If an applicant attempts to negotiate an outcome beyond the date of deemed refusal, it may lose its right of appeal against the deemed refusal and will have to wait until the application is actually refused before its right to appeal would arise again.

RECOMMENDATION 12

UDIA NSW recommends that the proposed Section 97 (1) be omitted from the Amendment Bill and development proponents be provided 12 months with which to appeal a determination, as is currently the case.

Section 97C Costs payable if significant change to development application

The Bill provides that in the case of an appeal of a determination before the Land and Environment Court, if the Court

- a) upholds the applicant's appeal; and
- b) approves a development application that is 'significantly different from the applications of the subject of the appeal'; and
- c) the changes were made at the request of the applicant (whether or not the Council objected to the amendment),

the Court must make an order that the applicant to pay the whole of the costs of any parties to the proceedings.

UDIA NSW is concerned that this provision removes the Court's discretion as to costs, where the Court is the body best able to determine what is fair and reasonable in the circumstances of the case to require an applicant to pay the Council's costs of the proceedings, even where the applicant has been successful in obtaining development consent. UDIA NSW recommends that Section 97C of the Bill be omitted and the Court's discretion as to costs of proceedings be retained.

RECOMMENDATION 13

UDIA NSW recommends that Section 95A of the Amendment Bill be omitted and the Land and Environment Court's discretion with regard to costs for proceedings be retained.

SCHEDULE 3 Amendments relating to development contributions

Division 2 Community Infrastructure Contributions

UDIA NSW is concerned that there is inconsistency between the proposed changes in the Bill relating to infrastructure funded by community infrastructure contributions and the Planning Circular issued by the Department of Planning in November 2007. The Planning Circular provided advised the following in relation to local contributions;

Councils will still prepare their own section 94 or section 94A plans in accordance with the guidelines however these will need to be endorsed by a delegate of the Minister for Planning.

This advice has not been reflected in the provisions in the Bill, and therefore Councils will have delegation to prepare and implement their Contributions Plans without external review.

The proposed Clause 31A of the Regulations details the infrastructure that is considered key community infrastructure and may be included in a Contributions Plan without the consent of the Minister for Planning. Key Community Infrastructure includes:

- a) Local roads
- b) Local bus infrastructure
- c) Local parks
- d) Local sporting, recreational, cultural, civic and services facilities
- e) Drainage and stormwater management works
- f) Land for any community infrastructure, except land for riparian corridors
- g) District infrastructure of the kind referred to in (a)-(d) but only if there is a direct connection with the development to which the contribution relates.

This is despite the fact that the November 2007 Planning Circular explicitly advised that:

All other costs, such as facilities benefiting existing communities (including council or district-wide community and recreation facilities), can no longer be recovered through local contributions.

The Department of Planning's *Community Guide* to the draft Legislation lists a number of infrastructure items found in current or past Contributions Plans that are presumably considered beyond the reasonable scope of what can be levied for. These include dog and cat pound facilities, lookouts, administration buildings etc. There is nothing in the Bill nor the range of key community infrastructure items that would prevent Councils for levying for any of these items pursuant to the proposed provisions.

Section 902 of the Bill provides that Council's can include as public infrastructure in a contributions plan, *"the funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure"*. These provisions provide opportunity for Councils to levy a charge to maintain public infrastructure in perpetuity, which is highly objectionable.

UDIA NSW is deeply concerned that the commitment given by the NSW Government with regard to development contributions, to assist in providing a more attractive economic environment to stimulate investment in urban development in a market that is at 50 year lows, has been rescinded. The revoking of this commitment may in fact provide scope for community infrastructure contributions to increase.

UDIA NSW is aware that some Councils over-scope and over-value the range and extent of infrastructure required to be funded through development contributions and this is unnecessarily compromising development feasibilities. UDIA NSW is conscious of the need for Councils to limit their exposure to additional costs if development does not yield the level of revenue required to meet the cost of provision of infrastructure, however, it is recommended that there be opportunity for third party review of the charges. This would provide more accountability and will provide Council with the opportunity to utilise the expertise of the private industry to determine the most efficient means of provision.

RECOMMENDATION 14

UDIA NSW recommends that the provisions relating to community infrastructure be amended to reflect the commitment given the urban development in Planning Circular PS 07-018. This includes:

- a) Ministerial sign off on development contributions plans;
- b) No levying of costs for facilities benefiting existing communities (including council or district-wide community facilities).

RECOMMENDATION 15

UDIA NSW recommends that opportunity be provided for third party review of community infrastructure contributions plans to assist Council in providing an accountable and equitable method of contribution collection and potentially more efficient method of delivering infrastructure.

Division 3 State Infrastructure Contributions

UDIA NSW reiterates that it opposed to State Infrastructure Contributions in principle and that funding of such infrastructure is a broader community responsibility to be funded from the general taxation base, specifically through the hypothecation of the GST. The application of any additional charges beyond such a system must pass the crucial test of maintaining the cost base of development (including the developer's margin) within the limit imposed by the market price - (the market's capacity to pay).

UDIA NSW does not seek to stall these reforms over this issue. However the NSW Government is on notice – NSW cannot afford another year of record low dwelling production. UDIA NSW will continue to advocate a fairer, market conscious system of cost sharing for infrastructure provision through the whole community so that housing affordability can be realised.

The existing and proposed provisions of the Act relating to State Infrastructure Contributions do not require the Department of Planning or other Government Agencies to demonstrate a nexus between the alleged need for infrastructure and the level and nature of contribution. The Community Guide refers to current provisions of the Act with regard to how the current contributions scheme is being applied:

The Environmental Planning and Assessment Act has traditionally provided little guidance as to what can be funded by developer contributions – other than to simply say that there must be a “nexus” between the funded infrastructure and the development. This has allowed the contributions system to become a backdoor and uncontrolled form of taxation.

It could be rationally reasoned that the complete absence of requirement for nexus and apportionment in calculation in the State Infrastructure Contribution could be the form of taxation referred to in the Community Guide. There is also no opportunity to appeal a State Infrastructure Contribution, as is the case with Community Contributions, putting a system that has no requirement to demonstrate the need for an infrastructure charge beyond challenge in the Land and Environment Court. It is difficult to see how the provisions relating to State Infrastructure Contributions satisfy the objective of 'a more accountable developer contribution system'.

UDIA NSW recommends that a State Infrastructure Contributions Plan be required to demonstrate a nexus between the charge levied and the additional demand for infrastructure created by a development. This would improve the accountability of the State Infrastructure Contributions Scheme and would assist in negating stakeholders concerns

UDIA NSW acknowledges that the provisions relating to State Infrastructure Contribution should have regard to the key considerations for development contributions, yet as is the case with Community Infrastructure Contributions, the absence of any specific detail on the Regulations to support Section 903 provides little comfort that the provisions will be satisfied. Once the Regulations are in place, there is no explicit provision for an external or independent review of whether a State Infrastructure Contribution can satisfy the key considerations listed in Section 903. UDIA NSW contends that the reasonableness of these contributions has a direct bearing on the attractiveness of NSW for investment, and must be viewed as part of the Government's mantra of NSW being 'open for business'.

UDIA NSW proposes that the preparation of a State Infrastructure Contribution Plan be reviewed by an Independent Body or Tribunal to provide greater accountability for investors and to ensure that the proposed plan satisfies the Key Considerations for Development Contributions prescribed under Section 903 of the Amendment Bill. The independent review would also consider the implementation and delivery of infrastructure for which a contribution has been levied. UDIA NSW is concerned that contributions paid to the Treasury administered fund will not be delivered in a timely manner to support development. The independent panel would audit the process of collection and delivery to ensure that money invested by new homebuyers is being used to provide real infrastructure.

Further to the role of the independent review panel, UDIA NSW contends that an applicant have an opportunity to appeal a State Infrastructure Contribution in the Land and Environment Court. State Infrastructure charges should contain the same accountability mechanisms as section 94 contributions. Their current and proposed application does not satisfy the Department's objective of '*a more accountable developer contribution system*'.

RECOMMENDATION 16

UDIA NSW recommends that a State Infrastructure Contributions Plan be required to demonstrate a nexus between the charge levied and the additional demand for infrastructure created by a development.

RECOMMENDATION 17

UDIA NSW recommends that the preparation of a State Infrastructure Contributions Plan be reviewed by an Independent Body or Tribunal to ensure that the proposed plan satisfies the Key Considerations for Development Contributions prescribed under Section 903 of the Amendment Bill. The independent panel would audit the process of

collection and delivery to ensure that money invested by new homebuyers is being used by Government Agencies to provide real infrastructure.

SCHEDULE 4 Amendments relating to certification of development

Section 80A Imposition of conditions

The Bill introduces a new provision to Section 80A 6(d) which provides that a consent authority may require payment of security as a condition of consent, or by agreement with an applicant, for the purposes of ensuring compliance with the development consent during the construction phase of development. UDIA NSW is concerned that this provision fails to take into account the commercial realities of urban development.

Councils may not be aware of the financial burden placed upon developers by the need for security. For a financial institution to issue a bank guarantee, the developer must have the equivalent money on deposit or provide adequate alternative security to the financial institution. As developers generally operate on borrowings, there is often limited ability to post multiple securities to multiple agencies.

In the case of subdivision works, the purpose of development is to release saleable lots, and these rely on the release of the Subdivision Certificate (Linen Plan) by Council. Council will not issue the Linen Plan until satisfied that all conditions are complied with. The Linen Plan is therefore the principal form of security required.

The presumption of wrongdoing by the industry and subsequent regulatory and financial burden created by this provision will increase risk for developers and discourage investment. Anecdotal advice from UDIA NSW members suggests that many Councils have not discharged the existing functions provided under Section 80A (6) with a level of maturity that could reasonably justify additional security from an industry that is at historically low levels of production.

UDIA NSW is aware that some Councils have over-scoped and over-priced development works to artificially inflate the quantum of security bonds. Other Councils have bonded the full cost of improvement works rather than the cost of rectification works that will restore sites to their pre-development condition. Both scenarios result in capital tied up in bonds rather than available for investment in projects.

RECOMMENDATION 18

UDIA NSW recommends that the proposed Section 80A (6)(d) be omitted from the Amendment Bill or that these provisions be confined to development of a capital investment value of no more than \$1 million.

SCHEDULE 5 Acquisition of land in connection with urban renewal proposals or urban land releases

The Bill introduces new provisions that give the Minister or a designated authority the power to acquire land for the purposes of, or in connection with, an urban renewal proposal or an urban land release, if of the opinion that the proposal or release will result in a net public benefit. The application of these provisions will be critical to the delivery of new housing in both metropolitan Sydney and regional areas.

The City of Cities report estimated dwelling production over 25 years necessary to accommodate the Sydney's growing population and changing household formations. The Plan requires 360,000 to 420,000 dwellings to be built in the in the existing urban area over 25 years.

Sydney is now reliant on increasingly fragmented, less predictable land parcels to account for its urban renewal production in addition to the redevelopment of apartment buildings that have reached the end of their life cycle. The proposed provisions will allow for the unlocking of strategically important sites that will be needed to supply the city's housing needs.

The provisions will also have significant value in their application for urban land releases, where fragmented ownership may impede the consolidation and subdivision of large land holdings. The provisions will promote a more efficient process of developing land from englobo to individual lots, providing a suitable mechanism to negotiate with vendors who are seeking to impede the development process to maximise returns on the sale of their land. The need to provide housing at an affordable level is in the greatest public interest, these provisions will assist in that process.

UDIA NSW is conscious however that these provisions can be abused and there must be controls and appropriate care taken in their application. Appeal rights and a legal process for the determination of adequate compensation beyond the *Land Acquisition (Just Terms Compensation) Act 1991* must be available. The *Just Terms* legislation only deals with the value of the land but there may be cases of hardship which warrant further arbitration. UDIA NSW suggests that dissenting vendors be afforded the opportunity to be heard in an independently convened arbitration panel that can consider issues of hardship by making a determination on conditions of development or providing a recommendation on appropriate levels of compensation.

CONCLUSION

The Urban Development Institute of Australia NSW has reviewed the *Environmental Planning and Assessment Bill 2008* and congratulates the NSW Government on its progress of reform to the NSW Planning System. This Bill presents the most comprehensive amendments to the *Act* and will assist in providing NSW with a more effective, efficient and transparent planning system.

UDIA NSW believes the Bill is not without shortcomings, and these have been detailed in this submission. UDIA NSW believes the opportunity presented by this round of reform should not be missed and has made recommendations, that if adopted, it believes can assist in providing a planning system that reflects the NSW Government's mantra of "*Open for Business*".

1. UDIA NSW recommends that the Minister formally prescribe binding timing conditions and implications when reviewing the planning proposal. These may include the referral of the draft plan to a Joint Regional Planning Panel or the Planning Assessment Commission for assessment.
2. UDIA NSW recommends that Section 56 of the Bill provide opportunity for development proponents to appear before the Minister to present a case for the making of the Plan.
3. UDIA NSW recommends that Section 23F of the Bill be removed and merit appeal rights be provided for development proponents, consistent with lower tiers of investment and assessment.
4. UDIA NSW recommends that the constitution of the Planning Assessment Commission include members with expertise and experience in the commercial aspects of development.
5. UDIA NSW recommends that the threshold be lowered to \$10 million for non-Government agency development applications to be determined by the Joint Regional Planning Panels.
6. The need for dual consents under the Integrated Development Application process be removed and replaced with a referral system that is reinforced by deemed to comply provisions once prescribed consultation timeframes have not been met.
7. UDIA NSW recommends that referral periods to Government Agencies be rationalised to 21 days and local Councils be indemnified from prosecution when development applications are determined in good faith in the absence of timely agency advice where referrals have been formally initiated.
8. UDIA NSW recommends that transitional provisions be applied in the Bill to provide that the requirement for a development application to be 'substantially commenced' not apply to consents granted prior to the amendment of the Act with regard to this Section.

9. UDIA NSW recommends that the NSW Government provide a standard development consent period of five years by repealing Section 95A (2)-(3) of the Environmental Planning and Assessment Act 1979.
10. UDIA NSW recommends that the Regulations provide explicit direction as to what will be considered 'public interest development and explicit direction as to who may be considered 'adversely affected' by public interest development.
11. UDIA NSW recommends that the Bill detail implications for objector reviews of public interest development, including the payment of costs if the review is dismissed.
12. UDIA NSW recommends that the proposed Section 97 (1) be omitted from the Amendment Bill and development proponents be provided 12 months with which to appeal a determination, as is currently the case.
13. UDIA NSW recommends that Section 95A of the Amendment Bill be omitted and the Land and Environment Court's discretion with regard to costs for proceedings be retained
14. UDIA NSW recommends that the provisions relating to community infrastructure be amended to reflect the commitment given the urban development in Planning Circular PS 07-018. This includes:
 - c) Ministerial sign off on development contributions plans;
 - d) No levying of costs for facilities benefiting existing communities (including council or district-wide community facilities).
15. UDIA NSW recommends that opportunity be provided for third party review of community infrastructure contributions plans to assist Council in providing an accountable and equitable method of contribution collection and potentially more efficient method of delivering infrastructure.
16. UDIA NSW recommends that a State Infrastructure Contributions Plan be required to demonstrate a nexus between the charge levied and the additional demand for infrastructure created by a development.
17. UDIA NSW recommends that the preparation of a State Infrastructure Contributions Plan be reviewed by an Independent Body or Tribunal to ensure that the proposed plan satisfies the Key Considerations for Development Contributions prescribed under Section 903 of the Amendment Bill. The independent panel would audit the process of collection and delivery to ensure that money invested by new homebuyers is being used by Government Agencies to provide real infrastructure.
18. UDIA NSW recommends that the proposed Section 80A (6)(d) be omitted from the Amendment Bill or that these provisions be confined to development of a capital investment value of no more than \$1 million.