

Position Paper



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23 March 2006

Efficient Planning & Approvals Bill 2006

UDIA is the voice of development. We represent the developers of new communities and proudly advocate for their interests. We help them to gain access to land on which to build, encourage the creation of a positive regulatory environment, and seek to moderate the burden of taxes and charges on the industry. We believe in affordable, sustainable and superior designed communities for all.

UDIA NSW supports the introduction of the *Environmental Planning and Assessment Bill 2006* and has commended the NSW Government on its efforts to address the present deficiencies and inefficiencies in the planning system. For NSW to recover it needs to encourage investment and create and attract employment opportunities. A healthy property sector can achieve these outcomes.

The ABS employment data concluded that in the twelve months preceding October 2005, 95% of all new full time jobs in Australia were created outside NSW. The Commonwealth Bank confirmed in October 2005 that NSW's performance when compared in terms of growth in spending, employment, population and exports occupied the bottom spot beneath Victoria and Tasmania. Effectively, the nation's largest economy including its only global city has become an anchor on the Australian economy.

The building industry represents approximately 10% of the Gross State Product. The present NSW Government understands this and is working to turn the economy around as outlined in the recent *Economic and Financial Statement* (Feb 2006). Resuscitating the property sector is the first step in that process.

If Sydney is to realise the construction of 640,000 new homes over 25 years then more efficient governance and innovative funding is required. The *Environmental Planning and Assessment Bill 2006* proposes to achieve this by:

- i. providing for contributions for the provision of infrastructure in relation to development within special contributions areas;
- ii. enabling the Minister for Planning to give directions to a Council in respect of contribution plans, development control plans and other matters; and
- iii. providing for the establishment of planning assessment panels and the exercise of Council planning functions by those panels and by planning administrators.



NSW has been suffering from inertia – a disinclination to move or act. This legislation is proof of a willingness to Act. A failure to pass this legislation leaves NSW with merely a bill, a statement of charges: and another bill is something NSW just cannot afford.

1. Levy Certainty

UDIA NSW supports contributions for the provision of regional infrastructure in relation to development within special contributions areas. UDIA NSW has released a position statement that while accepting the need for a development contribution, it is essential that the levy reflect market realities and Sydney's current land and affordability crises.

It is critical that the existing and proposed set of levies be consolidated into one payment. Land being developed today in some release areas in Blacktown, Camden and Liverpool are subject to local government contributions of \$25,000 to \$55,000 per lot, a Sydney Water infrastructure charge of around \$10,000 per lot, and an interim transport levy of at least \$15,000 per lot.

For the North West and South West Growth Centres, the State Government proposed to replace the interim levy with a new infrastructure contribution of \$25,000 to \$65,000 per lot. In other words, the 160,000 new lots so desperately needed in Sydney would potentially have levies of up to \$130,000 per lot imposed before the cost of land is added or a sod of dirt turned.

If a house and land package is to be built and sold for less than \$500,000, and if land values are going to be high enough to persuade landholders to sell their properties for development, a consolidated levy of around \$60,000 is as much as the market and industry will be able to bear.

Out of a \$60,000 total levy, UDIA NSW recommends that \$30,000 is allocated to the Growth Centres Commission for state-based infrastructure (such as main roads and regional parks), \$20,000 is allocated for local infrastructure (such as playgrounds and community centres), and \$10,000 is directed to the water authority for water infrastructure.

Given that the local government and water infrastructure charges proposed by UDIA NSW are less than existing levies, the NSW Government needs the powers to direct local Councils to become less ambitious in their local infrastructure programs and to seek the involvement of developers in providing infrastructure more efficiently. Similarly, while Sydney Water's charges are subject to IPART determination, a move towards contestable provision and greater developer involvement could see such charges dramatically reduced.

Australia's global city needs affordable housing for its residents. We must work together to stop the out-migration of our people to other states. We must be particularly realistic about the charges imposed on new home buyers, and face the fact that everyone is affected by the rising costs imposed on the urban development sector.

For these reasons, UDIA NSW commends the NSW Government and the Growth Centres Commission in assuming a leadership role in getting our new communities under way. The legislation is therefore a vital tool to enable the Minister for Planning to achieve an affordable outcome.

UDIA NSW is however concerned that a special infrastructure contribution created outside of a nominated Growth Centre would have the potential to be squandered without adequate governance structures available to collect, manage and expend the resources in a directed manner and while UDIA NSW acknowledges the rationale for the absence of appeal rights for Special Infrastructure Contributions this can be achieved provided that the levy is exhibited prior to adoption with all items identified and costed.

UDIA NSW contends that based on the s94 Baulkham Hills experience, the Special Infrastructure Contributions Plan (SICP) should be subject to regular indexation by a recognised index (like S94 Plans). It should also be reviewed regularly, perhaps initially every year, then every two or three years, so that it can be adjusted for take up rates, and changes to the Infrastructure list and be subject to a regular audit by an independent body, to comment on the level, standard and timeliness of delivery. It should also be expended primarily on infrastructure not salaries and fees to coordinate the delivery of infrastructure.

It is noted that the Local Government Association's principle objections to the Special Infrastructure Contributions proposal outlined in its media statement dated 7 March 2006 refer to its concerns that the new contributions will '*undermine the capacity of Local Government to fund local infrastructure.*' It is therefore ironic that Councils should begin to call for greater nexus to protect its own revenue base when the Minister cited poor nexus as partial motivation for the bill with reference in Parliament to Councils levying for computer system upgrades, museums and waste education centres.

UDIA NSW believes that greater cooperation is required to manage and expend developers and ultimately homebuyer's contributions. The legislation is a sound attempt to achieve this in an efficient manner with a cap to prevent levies further eroding affordability.

Accordingly, UDIA NSW's position with regard to the Special Infrastructure Contributions Plan is:

Conditional support subject to the Special Infrastructure Contributions being:

- 1. exhibited prior to adoption with all items identified and costed;*
- 2. subject to regular indexation by a recognised index (like S94 Plans). It should also be reviewed regularly, perhaps initially every year, then every two or three years, so that it can be adjusted for take up rates, and changes to the Infrastructure list; and*
- 3. subject to a regular audit by an independent body, to comment on the level, standard and timeliness of delivery.*

It is also our view that, where appropriate, the special contributions should be administered and levied by a Growth Centres Commission or Development Corporation or similar "buffer" organisation to ensure transparency and promote effectiveness.

Nonetheless, we are pleased that one of the proposed amendments to the Bill deals with the first point above, however remain of the view that indexation and audit should also be simply included in a further amendment.

2. Revealing Hidden Costs

UDIA NSW supports those provisions that enable the Minister for Planning to give directions to a Council in respect of contribution plans, development control plans and other matters. UDIA NSW has maintained that Councils have sought to subsidise their consolidated revenue constrained by rate pegging by recourse to s94 contributions. The recent *Wollondilly Council Contributions Plan 2005* is an example of a Council contributions plan which pushes the boundaries of nexus and transparent accountability.

A proposal contained in the works schedule of the contributions plan seeks to expand Picton Road from Prince Street to Menangle Road and the F5 Freeway to four lanes and build a new bridge over the Nepean River. The total budget being sought from developers for these classified main roads is \$25 million. Councils have therefore anticipated the Special Infrastructure Contributions to levy for regional infrastructure. This is contrary to the spirit of s94 which was intended for local infrastructure.

Furthermore, it provides for a new \$8m Council chambers and administration building, \$2.5m works depot, \$9m library and an \$11m cultural and entertainment centre which are not programmed to be constructed for 15 to 20 years. It is estimated that 37% of the funds for these facilities are to be provided from housing developer s94 contributions.

UDIA NSW contends that many of these facilities would have previously been paid for by Councils from their rate base and should continue to be funded through Council borrowings and repaid through consolidated revenue. The Wollondilly demand is based on a trending population growth of 2.1% pa projected forward 20 to 25 years to forecast the construction of 8400 dwellings. This does not reflect existing zonings or approved rezonings which only total about 3500 lots. Accordingly Council's dwelling forecast which it uses to support the contribution is more than double existing zonings and considering the constraints of the region such as agricultural protection it is entirely feasible that the many of the missing 4,900 dwellings would never achieve a residential zoning.

The following are further examples of questionable s94 items from various Council plans:

- Liverpool Regional Museum (included in West Hoxton contributions plan)
- Library books (Camden)
- Public art (Newcastle, 2005)
- Cattery (Wollondilly, 2004)

UDIA NSW therefore believes that greater accountability is needed to ensure that contributions plans are reasonable, do not unfairly burden today's homebuyers for services to be built in 20 years and are consistent across NSW.

Similarly, DCPs have been used by Councils to present planning policy at variance to its approved LEP which has resulted in increased Land and Environment Court challenges. The Department of Local Government's Comparative Information on Local Government Councils 2003/04 reveals that Councils have spent an increasing amount in legal costs. Legal expenditure

by Councils was \$24.17 million in 2001/02, \$26.33 million in 2002/03 and \$33.88 million in 2003/04.

In 2002/003, 11 Councils incurred expenses of more than \$500,000 with the highest being \$2.7 million. In 2003/04, 21 Councils reported legal expenses of more than \$500,000 with the highest being \$2.8 million. These costs are mirrored by those incurred by developers in bringing these matters to court. The proper management of conflicting or poorly constructed policy in DCP's is in the interests of good planning and lower costs for business and ratepayers in NSW.

Accordingly, UDIA NSW's position with regard to the Minister for Planning issuing directions to Councils in respect of contribution plans and development control plans is supported in principle in the interest of consistency, transparency, accountability and affordability.

3. The End of Delays

The final and most controversial aspect of the legislation is in providing for the establishment of planning assessment panels and the exercise of Council's planning functions by those panels and by planning administrators if the Minister is of the opinion that the Council's performance has been unsatisfactory because of the manner in which the Council has dealt with those matters, the time taken or in any other respect.

Again UDIA NSW supports this aspect of the legislation. The Department of Local Government's Comparative Information on Local Government Councils 2003/04 documents a sustained failure of many Councils to determine development applications within the 40 days.

The report records that 40% of Councils do not on average determine DA's within 40 days. The highest recorded mean time elapsed for a determination was 160 days.

UDIA NSW acknowledges that extenuating circumstances such as shortage of planning staff, incomplete applications, concurrences and complex proposals may affect compliance. Nevertheless, these are extraordinary events and fail to adequately address mean processing times by Ku-ring-gai and Parramatta with 134.42 and 159.89 days respectively. UDIA NSW does not expect such powers would be used frequently but there needs to be an incentive for Councils to meet the prescribed benchmarks.

UDIA NSW's position is that a separation of powers should be pursued in local government whereby elected Councillors are responsible for determining strategic planning (e.g. LEP's and DCP's) and that development applications are delegated to officers or to Independent Hearing and Assessment Panels (IHAPs) where such as applications are non-complying.

The Local Government Association states in its media release that "*approval of DA's...should not be delegated.*" It is UDIA NSW's understanding that all planning powers vested in local government are in fact delegated from the Minister for Planning. Is the industry to understand that the LGSA supports the revocation of Council powers as delegated by the Minister?

Furthermore, it is indicative that the Local Government Association of NSW's position on this matter is to further consult, obtain concurrences and observe process. This is precisely why the bill should pass Parliament.

Accordingly, with regard to establishment of planning assessment panels and the exercise of Council planning functions by those panels and by planning administrators if the Minister is of the opinion that the Council's performance has been unsatisfactory because of the manner in which the Council has dealt with those matters, the time taken or in any other respect UDIA NSW's position is support in principle to address unreasonable delays and avoidable onerous costs in the planning process.

In conclusion, UDIA NSW recommends that Parliament adopt the *Environmental Planning and Assessment Bill 2006* in the interests of reviving the state economy and delivering affordable new communities in NSW. As the Emeritus Professor Maurice Daley noted in the Second Report into Tweed Shire Council, the NSW planning system is in drastic need of improvement. UDIA NSW believes that this legislation will assist in the evolution of such improvement,

As the levels of complexity rise so too do the levels of opaqueness, and the less transparent a system becomes the less likely it is that public trust will be forthcoming, and the more likely it is that corrupt practices will emerge. Such complexity indicates a fundamental weakness in the planning system. The New South Wales system is vastly more complicated, and opaque, than the systems in countries that have similar social, economic, and political fabrics.

(Daly, 2005, p.958)



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