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Greens NSW Submission
NSW Planning White Paper

28 June 2013

Thank you for this opportunity to make a submission on the NSW Planning White Paper. The current review of planning in NSW provides a unique opportunity to create a truly visionary planning system that balances and promotes the needs of this State's people, its economy and environment well into the future.

The Greens believe that good planning protects what is precious, encourages what is good and works on a precautionary principle when it is unsure of the impact. Sadly such a vision is not what is proposed by the White Paper.

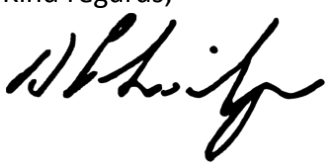
By moving ahead with these planning reforms the government has fundamentally broken its promise in the March 2011 election to return planning powers to the community. If the proposals in the White paper become law they will deliver a planning system that is even more pro-developer and with less community engagement or environmental protections than Labor's broken and discredited scheme.

With plans to shut the community out of 80% of development decisions, to strip Ecologically Sustainable Development from the law and to create a raft of undemocratic State planning bodies to force unpopular rezonings on local communities, together these changes represent the largest single attack on communities and the environment in a generation.

This submission will comment on the reforms proposed broadly following the Chapters within the White Paper, with some additional commentary on the two exposure draft bills in the course of this.

The blind spots in the White Paper are many – the utter failure to consider affordable housing, protection of heritage items in NSW, climate change and carbon emissions or the development of liveable, walkable communities mean that this paper cannot be supported as a plan for the future of NSW.

Kind regards,



David Shoebridge, Greens MP and Planning Spokesperson

Chapter 1 INTRODUCTION

The White paper and its associated exposure planning Bills represents a fundamental downgrading of environmental protection in NSW.

Against the recommendations of the government's own Planning Review, Ecologically Sustainable Development (ESD) is being removed as one of the guiding principles of the Planning Act. Also indicative of this move away from ecological and environmental consideration is the fact that the word "environmental" has been removed from the title of the draft bill.

Any attempt to make a truly forward looking planning system cannot privilege the economy in decision making. It must put the environment, society and the economy on equal footing when it makes planning decisions – from the largest to the smallest. The White Paper, by prioritising economic factors, completely fails on this count.

Of particular note is the fact that the there is no mention in the White Paper of the need to address the challenges of climate change, such as sea-level rise and extreme weather. Addressing climate change must be a part of any new planning law. It must address this challenge both by encouraging and promoting low carbon intensive development and by ensuring that development that is built is adaptable to the likely challenges that will likely come from climate change in the coming decades.

Clearly the timeframe provided to respond to the White Paper has been inadequate. The White Paper proposes radical changes to the NSW planning that are not guided by the Moore and Dyer review of planning but appear on an entirely separate ideological track.

In addition by having the White Paper and Sydney Metropolitan Strategies submissions due on the same date, has meant many community organisations and individuals may not be able to make submissions to both. This was always a foreseeable problem and steps should have been taken by the Department of Planning to address the conflict that this creates.

My office has received a number of complaints from community members that Department run consultation sessions have been poorly organised and advertised and that genuine contributions from the audience were not adequately considered. I also note that the engagement with the online portal is very low, particularly considering the far reaching implications of the proposed reforms. If the Government intended to continue consultation in this same fashion under the new planning system, the people of NSW will rightly feel at risk.

Chapter 2 The New Planning System

Any new planning Act must make clear that short term economic growth that comes at the cost of a degraded environment and a fractured and unhealthy community is unacceptable. The proposed objectives in the White Paper do not address this crucial point.

The details in the White paper are little more than an expansion on the erroneous principles in the Green paper. The manner in which the government has ignored the bulk of submissions on the Green paper that urged greater community involvement, a central role for ecologically sustainable development and a genuinely independent review of planning laws is a very dark pointer to the future of community consultation under any new laws. As we put in our submission on the Green paper:

> *The use of an independent panel in the earlier stages of this review was a positive step. The preparation of the Green Paper saw consultation and plan making move back within the Department. The White Paper and Consultation Draft will be produced from the Department – suggesting that the results of this current phase of consultation will be used to confirm the existing framework proposed in this Green Paper, rather than representing a serious attempt to gather ideas and opinions from the community and stakeholders. In many ways the flaws in this consultation process replicate those within the planning system – though there are opportunities to be heard and make submissions, they are rarely, if ever, taken into consideration when final decisions are made.*

It is with genuine regret that we have seen these predictions eventuate in the White Paper.

Chapter 3 Delivery Culture

Changing the culture in planning in NSW towards a forwards looking, transparent system is a laudable goal – however the bulk of the proposals in the White Paper would substantially hinder the development of such a system.

If anything the change will be towards a system that is developer driven and market friendly regardless of the community or environmental impact. Without a set of guiding principles that include planning for climate change and environmental protection, planning for vibrant and sustainable communities and planning for the long term, the community in NSW is left with a promise that the market will decide how planning is done in NSW.

Allowing money to decide how planning is done is a model of planning that we should be moving away from. As the Greens said in our submission on the Green Paper:

> "One of the biggest changes to planning culture was actually achieved through Greens campaigns to ban donations from property developers to political parties making decisions on their developments. This has had an effect on the development culture in NSW. Sadly much of this positive impact will be unwound if the proposed changes in the Green paper become law."

The principle cultural change that the government is seeking to achieve in its planning law reforms is to turn planning assessment bodies into organisations that have a "delivery culture". When read more closely it is clear that the White paper is in fact seeking an "approval culture". This is a system that is focussed on the fast approval of developments underpinned by loose strategic planning controls to facilitate these approvals.

At the centre of the new scheme is meant to be ground-breaking new strategic planning documents that have strong community buy-in. However if there was one single provision in the new planning Bills that exposes the agenda behind the Government's changes Principle 1 on strategic planning in clause 3.3 of the Planning Bill. This reads:

> "Strategic plans should promote the State's economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations.

In other words the first principle of strategic planning, being the most important real reform on the new planning laws, gives economic growth and development centrality, while placing the environment and society as little more than footnotes in the system that decision makers "have regard to". This is not a "delivery culture"; this is an "approval regardless of the impact" culture. It is a mistake.

Indeed the entire argument that a system should be focused on rapid approvals, whether that is a 10 day turn around for complying development, a 25 day turn around for code-assessable development or a 28 day exhibition period for a state planning policy is flawed. Most residential buildings have a lifespan of 80 to 100 years, commercial buildings have a lifespan of 40 to 60 years and industrial buildings are designed to last for at least half a century, and some much longer.

Given this, we need to make sure that what we are building is appropriate for our current and future needs. Mistakes we make in approvals, even in the few short years such a flawed system could survive the wrath of NSW residents, will be with us for a century or more.

For the Greens and the community groups we speak with, taking one or two months to properly assess a development, consult the community and get the right decision is not excessive or unreasonable. It is appropriate and decent and is the kind of "delivery culture" we support; a culture that delivers democratic and merit-based decisions.

Chapter 4 Community Participation

The Government has claimed that their plan will ensure that a Community Participation Charter is enshrined in the new planning legislation.

The Greens support the concept of strong, binding general principles for community engagement and then allowing for greater detail to be filled in by individual planning bodies to suit their individual needs.

However the draft planning bill, despite its rhetoric, provides almost no legislative guarantees for community participation. The simple existence of a charter, without substantive detail or any enforcement mechanisms, is unlikely to have any impact on how planning in NSW is carried out.

The government's new mandatory minimum community participation requirements are threadbare. 28 days is an embarrassingly short minimum period for public consultation on

state wide or regional planning policies given the complexity of the proposals themselves, and their long term implications.

Worse still there is no promise of even a minimum 28 days of public consultation if the proposal is to make a new local plan or amend, potentially significantly, any planning policy.

Far from strengthening community participation rights, the government is proposing a scheme that will allow less community notice of proposed new State and Regional Planning policies than is currently required for any one state significant planning project (which is currently 30 days)[1].

There is almost no change being proposed for the consultation process to be engaged in by local councils when making new planning instruments. The government has gone as far as "cutting and pasting" most of the existing legislative requirements[2] for how local councils are to go about making new Local Plans.

The most troubling aspect of the proposed laws to apply to Community Participation Charters is hidden at the end of the draft Planning Bill in clause 10.21(2) and (3). It reads:

> (2) The following provisions are not mandatory, and accordingly proceedings for an order under this Division, third-party environmental appeal proceedings or judicial review proceedings cannot be instituted to invalidate an instrument or decision under the planning legislation because of a breach of those provisions (or to prevent any such instrument or decision being made):
>
> (a) the provisions of Part 2 (other than a requirement of Part 1 of Schedule 2),
> (b) any provisions of the planning legislation concerning the conditions precedent to the making, amending or replacing of the provisions of a local plan or of any other strategic plan or of any infrastructure plan (other than a requirement of Part 1 of Schedule 2),
> (c) any provisions of Part 4 relating to development consent for State significant development (other than a requirement of Part 1 of Schedule 2),
> (d) any provisions of Part 5 relating to approval for State infrastructure development (other than a requirement of Part 1 of Schedule 2).
>
> (3) This section applies despite any other provision of this Act or any other Act or law.

These provisions in effect make any Community Participation Charter a discretionary set of general principles that can be ignored by any planning authority. If a Community Participation Charter required detailed community consultation and outreach and the Minister or a local council simply ignored it, then this failure could not be challenged in any court in the land.

1 Environmental Planning and Assessment Regulation 2000, cl 83.
2 Planning Bill 2013 Exposure Draft s3.21 compare with existing EP&A Act ss 56 and 57.

This is not a set of binding principles, it is instead a set of near-meaningless words that give no legal comfort to any resident in this State.

Chapter 5 Strategic Planning Framework

Many claims are made in the White Paper about the high standard of consultation that will occur for strategic planning documents. However this commitment is not reflected in any legislative provisions in the exposure Bills.

The government's commitment is also put into question by the limited consultation that is proposed for the Sydney Metropolitan Strategy. This is despite the fact that the Sydney Metropolitan Strategy is the Regional Growth Plan for Sydney. As noted above, having submissions on this strategy due on the same day as those for the White Paper means that most individuals and community groups risk being overwhelmed by, or will simply give up on, providing considered submissions in time.

Far from being a revolutionary new way of engaging with the community on strategic planning, the majority of the public consultation on the Metropolitan Strategy has been a direct replica of the process, and even the outcome, adopted by Labor in its previous 2010 and 2005 Sydney Metropolitan Strategies. For all the rhetoric on strategic engagement, literally nothing has changed.

In this regard the Greens reiterate the concerns raised in our Green Paper submission:

> "It will likely be complicated to get the community involved in discussing the policy aspects of strategic planning in the absence of clear indications of how these will impact themselves and their neighbourhoods. Residents in most areas are more interested in what will happen to their street, to their community – these are matters that are often difficult to conceive when considering planning at a regional level."

Aside from the concerns as to process, there are a number of matters of substance that should be considered in any growth plans that are not adequately canvassed in the White Paper, these include:

- habitat protection,
- heritage,
- food security,
- affordable housing,
- the maintenance and provision of wildlife corridors; and
- the legitimate community interest in retaining the existing character and charm of their localities.

It is considered likely that any Regional or sub-regional Growth Plans developed under the new planning system will be primarily directed to identifying for developers where more housing, industrial and commercial development can be built, and providing some minimal associated infrastructure planning.

The concern as to the primacy of economic considerations is brought to the fore by the wording of the exposure Planning Bill, especially Principle 1 on strategic planning in clause 3.3 of the Planning Bill, as set out above.

State and regional planning – where the real power lies

There are also very real concerns that the Regional Planning Boards proposed are insufficiently accountable to the community with an excessive weighting in membership in favour of State appointees. It would appear that there is an intent from government, with five members and the chair being state-appointees, to ensure that representatives of the development industry have excessive weight and representation on these key bodies. Given the extraordinary powers these boards have to make plans for broad areas this will have a far reaching, and negative, impact.

The hierarchical manner in which the strategic planning instruments operate means there will be little or no genuine autonomy for local councils and that the main re-zoning determinations will be made by State Planning department and the unrepresentative sub-regional planning boards. This means that there will be little room left for local decision making by elected councils.

These concerns are made clear by Part 3 of the Bill which at 3.5 provides regional growth plans are to determine, inter alia:

- targets for achieving the planning outcomes for the region (including housing, employment and environmental targets),
- actions required to be undertaken by planning authorities to achieve those targets

See also Part 3, clause 3.6 that provides sub-regional growth plans are to determine, inter alia:

- how the housing, employment and environmental targets in the relevant regional growth plan are to be achieved in the subregion,
- proposed growth areas in the subregion and the proposed planning controls that should apply in those growth areas or the strategic planning process that should be undertaken by planning authorities to establish those planning controls,
- proposed exempt or complying development or development proposed for code assessment in the subregion

Lack of democratic oversight and loss of protections in State Planning policies

There are two main concerns in relation to the proposed changes to State planning Polices. The first is the proposal to remove their prescriptive nature and convert them to more general statements of principle. This is in fact a watering down of some of the few clear controls that have protected matters as diverse as:

This loss of specific statutory controls from SEPPs and the failure to replace them in any NSW Planning Polices risks losing significant environmental and social protections contained in the existing SEPPs. These include:

- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Housing for Seniors or People with a Disability) 2004
- SEPP No. 71 - Coastal Protection
- SEPP No. 65 - Design Quality of Residential Flat Development
- SEPP 70 - Affordable Housing (Revised Schemes)
- SEPP No. 62 - Sustainable Aquaculture
- SEPP No. 55 - Remediation of Land
- SEPP No. 58 - Protecting Sydney's Water Supply
- SEPP No. 44 Koala Habitat Protection
- SEPP No. 26 - Littoral Rainforests
- SEPP No. 10 - Retention of Low-Cost Rental Accommodation

Our second concern was initially raised in our submission on the Green Paper concerning the lack of democratic oversight of State planning Policies. As we said in our submission on the Green paper:

> "It is also of concern that rather than ensuring that state Planning Policies are subject to Parliamentary Review that instead they will be primarily conceived and promulgated by those within the planning department with no scope for democratic review or external input."

These concerns have not been addressed in the White paper and should be addressed before any final planning Bill is presented to the Parliament.

Local Plans – no autonomy

By contrast local plans are limited, in Part 3 clause 3.11 of the planning Bill to providing:

- An explanation of how NSW planning policies, regional growth plans and subregional delivery plans are given effect to in the area concerned, and
- Planning and development controls to implement these strategies.

The limited scope for local plans is emphasised in the strategic planning principles in Part 3 clause 3.3 of the planning Bill that provides:

- Local plans should facilitate development that is consistent with agreed strategic planning outcomes and should not contain overly complex or onerous controls that may adversely impact on the financial viability of proposed development.

In other words local plans implement the big rezoning and pro-development decisions made at a regional and sub-regional level and must ensure that any rule they do put in place don't restrain development.

Astoundingly there is no provision at all for local plans to protect residential amenity, preserve the environment or retain heritage. It is a grossly one-sided strategic planning environment in which the community, our history and the environment are given little or no weight.

Zoning simplification reduces protections

Another way the White Paper proposal would remove controls about what kind of development a community wants is by the "simplification" of zoning. The suggestion of the creation of a new and one-size-fits-all "residential" zoning is of substantial concern.

Traditionally residential amenity and character has been mainly protected by differential "zoning" so that low density detached housing suburbs are zoned "low density", areas with townhouses and low rise walk up flats are medium density, and the really large high rise towers of unit blocks are limited to high density areas in our major CBDs. The government intends to replace these with a single residential zoning that does not have specific density controls.

This is a serious mistake and puts at risk the character and amenity of suburbs across this State. Having only a single residential zoning will remove the ability of local communities to limit the density of development and could allow high rise development to occur throughout areas previously reserved for traditional detached development.

If this becomes law it will allow multi-level high rise to be built in the middle of established low rise residential suburbs. This will see many people's homes and local communities bulldozed by profit driven mega developments that will destroy some of the most valued and precious communities in this State. It will also likely have a substantial detrimental impact on property values.

It is not only residential amenity that will be lost by this collapsing of zonings, but key environmental protections will also be removed. The White Paper proposes that all land currently protected by E3 "environmental management" zonings will be downgraded to a general "rural" zoning. This will see some of the most environmentally sensitive land in the state – which is acknowledged to have special ecological, scientific, cultural or aesthetic values – lose most environmental protections.

The Greens urge the government to rethink the loss of finely grained zoning controls and retain and enhance the existing zoning protections for residential amenity and environmental protection.

Loss of DCPs – loss of fine grained planning controls

One way in which local councils are currently able to protect amenity and deliver desired future streetscapes and development is through the use of Development Control Plans. These fine grained planning instruments allow a high level of detail to be developed regarding what kinds of developments are suitable in a particular area.

The Greens propose that there be an avenue for local councils to retain autonomy to insert these finely grained controls within Local Plans without the ability of the Minister to veto such important controls.

Complying Development – community exclusion

The expansion in the use of code complying development suggested in the White Paper is strongly opposed. A developer can seek to have a non-complying development approved by a private certifier as complying development. If the certifier determines that part of the development is non-compliant then the developer must be informed of its right to ask for a "variation certificate" to be granted by the local council to approve that non-compliant element. (s4.9)

If the council does not determine that application in a set period of time (as yet uncertain how long but will be set by the regulations and likely to be as little as 10 or 25 days) then it is deemed to be approved. (s4.8) there is no notification given to neighbours or anyone impacted by the proposed development in this process.

The council will, after speaking only to the developer, grant the variation certificate if it determines the development does not "have any significant adverse impact on development on the surrounding land". The fact that it might have a very significant detrimental impact on the amenity of surrounding land is entirely irrelevant to this.

What this means is that provided a development does not restrict development on neighbouring sites then even grossly non-compliant developments will be approved as "complying development". If such a system is put in place then even the very poor limits in the code for complying development will be unable to restrict inappropriate development and other development not in the character of an area.

Private Certifiers – expanding a problem and misusing experts

The expansion of the use of private certifiers under the scheme is also strongly opposed. The current use of private certifiers in the planning system is a great example of how not to use experts. Not only is the private certification scheme essentially unregulated, meaning that the quality of work and education between certifiers may be vastly different, but as they are directly hired by developers the independence of their decisions is seriously compromised – certifiers that do not approve developments are unlikely to get repeat business from big developers.

We need to start using experts in planning properly – qualified experts to advise on world's best practice, without being placed in positions where they have conflicts of interest towards developers, councils or others. A commitment to evidence based policy making must be present at every stage of the planning process, and be truly used to guide and develop both policy and practice in planning for the future. One of the first steps in rebuilding the planning system should be undertaking a complete analysis of the field of knowledge in planning and appraising the experts needed to properly inform policy – this will include environmental health policy makers and epidemiologists, environmental engineers, threatened species experts and more.

Code Assessable development – lack of community input

As with complying development, Code Assessable development is designed to by-pass the community with no consultation and no notification and only a 25 day turnaround by local council officers. It will not be determined by elected councillors.

Also of concern is the absence of any genuine merit assessment in the codes. Regardless of whether the development is good or bad, regardless of its impact, if it meets the minimum requirements in the code then it must be approved by the council officer. This is a poor cousin of merit assessment and is not supported.

Again as we submitted to the Green Paper:

> *The Greens believe that code complying development should be limited to only minor development applications with minimal environmental impact, given the potentially disastrous impact of the alternative. All other matters should require a merit based assessment by democratically accountable local councils following community consultation.*

State Significant Development

The consideration of State Significant Development proposed in the White Paper is, remarkably, worse than that under Part 3A. Under Labor the Planning Minister had near-total control. Under the Coalition the Minister has total control.

Any development the Minister 'calls in' as State Significant Development (SSD) or State Significant Infrastructure (SSI) is, ipso facto, SSD or SSI. There is no requirement for it to be of a certain size or value, or indeed to be on some objective measure significant.

Once a said by the Minister of the day to be SSI or SSI then some of the key environmental, heritage, or other protections lost. We strongly recommend urgent reconsideration of this process, in particular to avoid the corruption likely to be engendered by the creation of such a wide discretion.

Not only is there an unlimited discretion in what can be classified as discretion, there is also an unlimited discretion, in fact no statutory guidance, on what can be approved for construction as SSD.

If development is prohibited by the planning laws that apply in a local area, then that should be it. The one thing that most discredited Labor's broken planning laws was the ability of developers to go behind local councils, approach the State government, and get prohibited development approved under the notorious Part 3A.

Whilst there is a place for separate consideration of State Significant development this should be:

(a) Undertaken by a genuinely independent State planning Commission (not by a politician);
(b) have clear criteria for entry into that decision making stream;
(c) have clear criteria for assessment; and
(d) not avoid key environmental, heritage or planning laws

The White paper's proposal fails on each of these elements.

As with State Significant Development the provisions that govern Public Priority Infrastructure allow developers to bypass environmental and heritage controls. This will mean that for the biggest and most impacting developments in our state the lowest level of controls will apply – with an almost complete bypass of heritage and environmental protections. As with Labor's Part 3A laws, this approach is in error.

Corruption risk

In its submission on the planning reforms, the Independent Commission Against Corruption (ICAC) raised serious concerns with the lack of clear development standards, saying "the prospect of sizable windfall gains combined with a wide discretion creates a corruption risk and has been associated with many instances of proven corruption."

The ICAC also made it clear that simply taking powers from local councils and handing them to state officials does not fight corruption: "there is no reason to suppose that a minister or state level planning official is any more or less susceptible to corrupt approaches than a local councillor or professional planning officer".

Despite this advice the White Paper has determined to greatly increase the discretion of planning officials, and the Minister, at a State level. If this becomes law, the new planning regime will; be corruption prone from day one.

In relation to mining approvals: the government proposes to make approvals so "streamlined" for coal, coal seam gas and other mines, that once a planning approval has been granted under the state significant route, then the mining companies are automatically entitled to have their
mining or production lease approved.

This is regardless of the fact the applicant for the lease may have provided false or misleading information in that application or a previous application. In light of the present scandal over mining leases being granted as political favours it is outrageous that such a corruption inducing planning regime is being pursued by the O'Farrell government.

Strategic Compatibility Certificates – spot rezoning at the request of developers

The introduction of Strategic Compatibility Certificates ("SCC")[3] will further erode the integrity of strategic planning under the proposed new laws. SCCs allow Director General of Planning to "certify that specific development on specific land is permissible" ... "despite any prohibition on the carrying out of the development" in a local plan.

This means the SCC can override the local planning laws whenever the Department thinks that provisions in a local planning law prohibiting the development have not been amended to "give effect to" a regional or sub-regional growth plan. In effect it gives a free hand for

[3] See Division 4.7 of the Planning Bill

developers to challenge any restrictions in local planning laws by going directly to the State government for site by site rezonings.

In the eyes of the Greens and most of the community these certificates are something that will inevitably be used by developers to challenge local planning laws try to retain residential amenity or retain precious open space at the expense of development.

Whilst the government has said they will be limited to operating only while local planning instruments have not been amended so as to implement regional and sub-regional planning documents this will still give them a pivotal role in the first two to three years following the passage of these new laws. Given the unseemly haste with which the government is pursing adoption of the Sydney Metropolitan Strategy it is clear that the intent is for this document to be in place when the new planning laws are put through and for it to then be (ab)used by developers in seeking SCCs.

The combination of SCCs and the hasty adoption of the Sydney Metropolitan Strategy suggest that there is an agenda behind these planning changes. This means a good deal of talk of strategic planning and community engagement, but a series of exceptions and exclusions so that the usual practice of developer driven approvals remains in place in NSW.

Despite the 2011 election it looks like nothing has changed in the pro-developer world of NSW Governments.

Heritage ignored

The White Paper will also seriously impact on heritage in NSW with decisions about both Aboriginal and non-Aboriginal heritage being taken from the Office of Environment and Heritage and given to the Department of Planning & Infrastructure. This is a significant backward step.

The Government has claimed they are interested in engaging experts to develop a world class planning system, however the recommendations from the Heritage Council of NSW in regards to both Aboriginal and non-Aboriginal Heritage have been largely ignored.

For there to be widespread community acceptance of planning reform, the defects addressed above will require remedy.

Chapter 7 Provision of Infrastructure

The provision of adequate infrastructure to support growth is strongly supported. However there are very real concerns that the proposed models will not ensure much needed community infrastructure and will give inappropriate subsidies to uneconomic, and environmentally damaging, urban sprawl.

As the Greens noted in our submission on the Green Paper:

> "Development contributions should be used to ensure that those who reap substantial financial benefits from development pay the costs of providing this

development with infrastructure. If developers do not pay their fair share then the community is required to pay, through increased rates and through their taxes.

The Greens do not support provisions that allow for levies across existing residents to pay for infrastructure for new residents or industries. The real cost of development should be met by the developers who benefit, or otherwise by state government support where there is a public interest in promoting a specific project."

"The Greens believe that public authorities, primarily local councils, should retain the key decision-making and approval powers for the delivery of local infrastructure.

The proposal to force councils to expend developer contribution levies in a limited time period will greatly reduce the ability of councils to plan for large infrastructure projects, or plan to acquire much needed, and expensive, public open space. This is not supported.

While there is some modest advance in the requirement for planning authorities to adopt infrastructure plans, the limits on developer infrastructure levies and the proposal to levy in-fill development to provide subsidies for infrastructure for urban sprawl are backward steps and should be reconsidered.

Chapter 8 Building Regulation and Certification **179**

The private certification system as introduced by Labor in 1996 has a fundamental flaw at its core – the certifier is selected and paid for by the developer. The community can have no confidence that private certifiers will make objective decisions free of bias when those paying the bills clearly want particular outcomes.

Instead of fixing this inherent corruption risk by ending private certification, or at least ensuring that developers are assigned certifiers from a common pool rather than choosing them directly, the O'Farrell government is expanding their role to making decisions about the vast majority of local developments.

This only expands a corruption risk and is not supported.

The balance of proposed minor amendments to the operation of the corruption prone private certification system are little more than cosmetic. The submission we made to the Green paper remains valid in relation to the nearly unamended proposals in the White Paper:

The Green Paper proposes an expansion of the flawed private certification system, meaning that private certifiers will be directly involved in the approval of the majority of new housing and commercial development. This approval process within 10 days will also lack a right of appeal for affected neighbours and community groups and will not be subject to external review.

These changes will produce ongoing environmental damage and further degrade building certification standards in this State and are not supported.

At a minimum the commercial link must be broken between particular developers and particular private certifiers. This could be done by requiring developers to seek the appointment of a private certifier by way of random allocation from a list of appropriately qualified certifiers maintained by the department or the Building Professionals Board.

The Greens find it impossible to accept that in the course of plans to undertake a root and branch overhaul of the planning system it was not within the Government's capacity to at least break the pay for opinion nexus of developers choosing their own private certifier.

Conclusion

We strongly urge the Government to reject the proposals in the White Paper as misguided, ideologically driven plans that fail to take into account the submissions from the community to date, as well as failing to consider global best practice in planning.

If the Government refuses to seriously rethink the direction of the White Paper and legislates for these reforms then it will not produce certainty, even for the developer lobby that is promoting it. These laws will not gain community acceptance. As they are implemented the opposition will grow and their legitimacy will be increasingly challenged.

In a democracy, no law which has so little community acceptance can long survive. Planning law reform is a matter of genuine urgency and community interest. But not just any reform and not these reforms that take NSW backwards.

The government's promise going into the last election to "return planning powers to the Community" was a good one. This White paper does not deliver it.

Kind regards,

David Shoebridge, Greens MP and Planning Spokesperson