



**SUBMISSION TO THE  
NSW GOVERNMENT'S PLANNING  
REVIEW GREEN PAPER:  
*A NEW PLANNING SYSTEM FOR NSW***

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WSROC Submission to the NSW Government’s Planning Review Green Paper:  
*A New Planning System for NSW*

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## INTRODUCTION

Thank you for the opportunity to make a submission to the NSW Government's Green Paper: *A New Planning System for NSW*.

WSROC believes one of the biggest challenges will be to return a sense of integrity and transparency to the Planning Process – the community is deeply suspicious about the motivation behind development decisions and the sense that developers can buy their way through the system.

Councils, and particularly their staff, often unfairly bear the brunt of criticism from both the developers and the community for perceived problems with the planning system which can lead to inappropriate developments or costly delays.

Restoring confidence and trust in the planning system must be a key priority for the review and that can only be achieved with genuine, inclusive and open dialogue between local councils, the community, Government and stakeholders.

WSROC therefore welcomes the drive to reduce complexity and costs and provide certainty to councils, the community and developers, and the need to streamline what is currently a complex, confusing and frequently contradictory system.

The other key factor for success is that the Planning and Development process must be integrated with higher level strategic planning, including the Metropolitan Strategy, the NSW Infrastructure Plan and the NSW Transport Master Plan. In this regard we welcome the Green paper's shift in thinking from plan-making to strategic context setting.

Finally WSROC welcomes the initiative to revamp the community consultation process, to incorporate local opinions and views in the earliest stages of local plans, as long as the process is genuinely and broadly consultative, garners the opinions of a genuinely representative population, not just the usual "squeaky wheels" and includes feedback mechanisms to enable all members of the community to participate in defining the future for their neighbourhoods.

## KEY ISSUES

- In-principle support is given to the Government's attempt to simplify and streamline the current cumbersome, complicated planning system.
- Community consultation must be detailed comprehensive and genuinely deliberative with the incorporation of community concerns and feedback being demonstrated at both regional and local levels.
- There is a need for greater detail in how the regional and sub-regional plans will be developed and what role councils will play in their development.
- There must be an agreed commitment from all parties – State Government, local councils and developers – to fund essential infrastructure at the time of building, not decades later.
- The decision making process must be open and transparent and all decision-makers must be accountable to the community. Developers should not be involved in the decision-making process.
- While the efficacy of code-compliant development approval processes in many circumstances is recognised, greater clarity and definition are needed in how the system will be applied, and who has overall responsibility for ensuring compliance. The role and responsibilities of private certifiers needs to be clearly defined and enforced.

- Local Land Use Plans need to be fully integrated with other planning instruments and to incorporate social (especially health) and environmental concerns as well as purely economic ones.
- Transitional arrangements need to be implemented in a way to minimise disruption between moving from the existing system to the new one. More detail is needed regarding if and how the Standard Instruments will apply and what role existing LEPs will have in the new process.
- Strategic Government intervention in determining location and types of developments is needed where the market is not working. The Green Paper's assumption that "individuals and markets are best placed to deliver, diverse choices, vibrant communities and strong and sustainable economies" is not always valid. For example, in Western Sydney, despite a willingness of both councils and the community to embrace new development, the developers often aren't willing to invest as they don't see the returns as being high enough. For this reason the market cannot be sole arbitrator of location of new development. The Government should consider incentives – even if not directly in the Planning Act – to encourage development where it is wanted and needed, not where the short term returns are highest.
- WSROC and our member councils stand ready to work with the Government to trial and assess any of the detailed proposals and programs that eventuate as part of the White Paper.

## RESPONSE TO PROPOSED CHANGES

### Chapter 4: Community Participation

#### General

WSROC supports the concept of greater community participation at the beginning of the LLUPs process but would like to see more detail in how it will be carried out, and who will carry responsibility for funding, resourcing and implementing it.

Genuine and meaningful community consultation is expensive, resource intensive and time consuming. WSROC would like to see more detail on the role local councils are expected to play in the Community Participation process and who is going to fund and resource these programs. Incorporating this level of community consultation as a key platform of the new planning system will make a difference to councils' structure and organisational activities, not to mention spending.

The Government needs to recognise this will place additional burden on councils' already limited funds (which are already heavily stretched largely due to rate capping). It is important that the new system does not increase the financial burden on councils in order to comply with State Government requirements – otherwise this will lead to further cost-shifting from State Government to local councils.

#### Specific questions and comments

WSROC would like to see more detail provided regarding the initial and ongoing community consultation obligations. For example:

- What requirements will there be for notifying residents of specific development applications even those that are code compliant?
- What obligations are there (and on whom) to inform residents who move into the area about the LLUPs, and what rights do those residents they have?  
It is essential that residents continue to have a voice in the development of their communities – beyond the initial consultation period. Several councils have noted the difficulty of effectively

engaging residents at the conceptual stage – and the need for those same residents to be informed of specific developments which affect them.

- Will there be opportunities for review of the community-agreed LLUPs and how frequently should they occur?

Planning and development is an evolving process and as such it is important that planners, councils and residents have opportunities to take stock of how the process is progressing. WSROC would suggest that a regular review mechanism must be built into the process, at which time another round of community consultation can be carried out to assess how well the plans are being implemented and any modifications that may be required. These reviews could be carried out every five years and provide a good opportunity to engage with and inform new residents to the area about the long term plans for their neighbourhoods.

- Who should be responsible for “selling” proposed developments to the community?

While WSROC is supportive of greater community consultation, we believe that developers need to carry the bulk of the obligation to inform and educate the public about large scale their proposals. Currently, a developer lodges a DA and leaves it up to council to convince the community of its merits. Developers need to take a greater and more proactive role in community education to promote understanding and acceptance of their proposals. If they have to face the community and argue the merits of their projects they will better understand how their proposal needs to fit into the overall regional vision and it would improve their accountability.

Further, WSROC proposes that developers should share the costs in funding community consultation around specific projects which should be carried out in conjunction with councils to ensure an open and transparent process.

Where proposed developments are designated “state significant”, the onus for community engagement must be on the State Government, not on the local council in whose area the proposed development is to occur.

- What role will the community and local councils have in developing regional and sub-regional plans?

WSROC believes it is important that the community is actively and meaningfully engaged at all stages of the planning review process – from the Metropolitan Strategy down to what is happening in their street - and that should include involvement in developing sub-regional plans. While we understand the development of these plans is already well under way, as yet no real information about any community consultation has been forthcoming. These sub-regional plans provide a good opportunity to show how genuine the Government is to early level community consultation so we would like to see some details in what kinds of standards and benchmarks are under consideration, how this consultation is to be carried out and who has responsibility for it.

## **Strategic community engagement**

WSROC believes that for it to be effective and receive the necessary community support, any form consultation must be a dialogue – not an information session, and that standards and guidelines should be established by the Government to ensure uniform processes of consultation apply in all cases.

WSROC agrees that there must be provision for substantial and clear feedback before the decisions are made so the community is included at all stages of the process.

It is recommended that the consultation process be carried out in line with the standards and practices of the International Association of Public Participation (IAP2) along deliberative methods of engagement, and that community participants are specially selected to ensure a broad cross section which is a true representation of the area's demographic, thereby avoiding the potential for the consultation process to be hijacked by a few community activists.

Engaging the community at the early stages of planning is a challenge as people find it difficult to discuss ideas and concepts which are as yet unrealised. Numerous councils have commented that in most cases, residents are not interested in being involved in the planning process until a DA goes in next door. Getting the necessary engagement from the community in the early stages of planning will require well publicised advertisements and education campaigns to inform them of the process and how they can be involved.

### **Transparency in decision making**

The process must involve community representation at key points along the process, and must include a report-back mechanism on controversial projects and with methods for ongoing consultation (for example, with local residents' committees).

### **Use of information technology and electronic planning**

Many councils already allow residents to track the process and detail of Development Applications under consideration through their websites, and proposals to establish a centralised electronic planning portal are supported, as long as it is complementary to existing systems already in place within councils.

While the use of electronic media can facilitate the engagement and consultation process, it is important to ensure that this doesn't marginalise members of the community who are not computer literate or don't have ready access to the internet. E-planning must be in addition to, not instead of, existing avenues of information on planning issues and development applications already available to the community.

## **Chapter 5: Strategic planning**

### **General comments**

WSROC supports the general thrust of the initiatives laid out under the new approach to Strategic Planning as a promising shift from simple plan-making to strategic context-setting. We welcome the recognition of the need for high levels of integration among plans, backed up by timely delivery of supporting infrastructure. However, the emphasis must be on "timely" and there are concerns that there is very little detail in how major infrastructure projects are to be funded. It is essential that all plans – from the Metro to the sub regional level, must include fully funded infrastructure plans approved by the Treasury before any proposals for large scale developments are agreed.

The rationale behind new zones such as the Enterprise Zone for increasing flexibility and promoting growth is positive. There is a need to remove unnecessary red tape and burdens which obstruct worthwhile development and renewal. However, the Green Paper proposal does raise some serious concerns. It has the potential to sideline councils and local communities from the decision-making process and may allow the interests of the development industry to drive decisions in these zones. The suggestion that development in these zones be exempt from development levies raises the question about the funding of necessary infrastructure. Any expectation that such costs fall on local councils would be totally unacceptable. Clearly much greater detail is needed on how these Enterprise Zones would work, what they are designed to achieve, and how they fit into the overall strategic plan for the region.

Finally, WSROC agrees that the myriad of SEPPs and Directions have made the Planning system unnecessarily complex and confusing and welcomes the proposal to roll them all into one set of NSW Planning Policies as sound in principle. However, it's important that this does not just become a re-branding exercise and that further clarification is needed on what role the current system of Planning Notes and Circulars fits into the process. A clear and timely transition process will also be needed for councils and the community to understand and implement the new system.

## **Regional Planning Boards**

WSROC recognises the potential benefits of Regional Planning Boards to bring a strategic regional focus to planning. However, it is imperative that these Boards include ROCs as key members representing local councils at the higher levels of strategic planning. Consideration should be given to ensuring ROCs are adequately resourced to carry out this function.

## **Regional growth plans**

Regional growth plans must take into account all activities with the potential to impact on land use and the environment – not just flooding and catchment managements but also future activities such as coal seam gas mining. If the Government is considering applications for CSG exploration in a region (such as the Sydney basin) then it should be recorded in detail on the Regional and Sub-regional plans. This should also provide a benchmark with which proposed applications for non-planning activity can be assessed. Regional and sub-regional plans must also explicitly recognise the need to protect and support Sydney's peri-urban agriculture.

WSROC would like to see more detail on the sub-regional delivery plans, which we understand are already underway, and particularly more detail on role of councils in the strategic plan-setting stage. As it appears it is the intention of the Government to retain local councils as the key delivery mechanism for the sub-regional plans and LLUPs, councils should be entitled to have a major stake in deciding the kinds of things in the plan that they will be expected to deliver on.

There is also some uncertainty regarding the sub-regional planning process and the associated Sub-Regional Delivery Plans (SDPs) and their interaction or potential overlap with the current Development Control Plans (DCPs). It is unclear from the green paper whether SDPs are expected to replace DCPs or whether they will simply add another level of complexity and confusion into the system as an alternate way to rezone land, outside of the normal processes.

In addition, the general theme of the Green Paper, which is referred to in this section emphasises "market drivers of investment" as key to informing planning strategies. As noted earlier, successful planning outcomes are achieved by incorporating many aspects, including liveability, environmental and social amenity, access to employment and transport as well as market drivers for investment, in the development of an overall strategy. As Blacktown Council has noted, the assumption that economic growth leads to a high quality of life is unbalanced. Good planning is equally, if not more critical, to determining quality of life. With the average development expected to last around 50 years, due regard must be given to its impact on the existing and future communities in assessing its suitability for approval.

Perhaps most importantly, the role of councils in preparing the Sub-Regional Delivery Plans is not clear. WSROC believes councils should have a reasonable level of representation – not just a token seat at the table but a genuine voice backed up with sufficient numbers to influence the decision making process. We would also note that the additional services councils are expected to provide as part of this process, such as the community consultation, will need to be supported with funding and resources.

## **Local Land Use Plans**

There remains a lot of uncertainty regarding the role of Local land Use Plans, and how they interact with existing planning instruments such as LEPs, DCPs, and current local strategic plans. Well-considered attempts to simplify the process by incorporating all the provisions of these different plans into a single entity is welcomed, however the vague nature of the current proposals outlined in the Green Paper are cause for concern. The idea of merit-based assessment, without any set guidelines as to what constitutes merit, opens the way for developments to be forced through without regard to their overall strategic context or suitability for their environment.

## **Chapter 6: Compliance and decision making powers**

WSROC has a number of concerns regarding the details – and in some cases lack of detail – regarding reforms to the current system of compliance and enforcement.

### **Code Assessable Compliance**

WSROC agrees that greater use of code assessable compliance has merit in principle and should help to streamline the development application process and provide certainty to developers and council staff. However there are a number of concerns resulting from the lack of detail put forward in the Green Paper. This includes how complying developments are to be assessed.

WSROC is concerned that increased use of code assessable provisions may reduce the authority of councils and could possibly lead to approval of unsuitable projects which are otherwise deemed to be compliant. Some of WSROC's member councils have argued that large scale developments such as a 20,000 sqm industrial projects should not be automatically deemed as complying just because the land is zoned industrial.

In addition there is no real detail on how to manage issues of partial compliance of a code assessable application, or who has ultimate authority to define the merit of such a project. This has the potential for partially compliant developments to become more complex with the requirement for tandem assessment processes.

### **The role of JRPPs**

Greater clarity is needed on the type of projects to be referred to a JRPP. WSROC recommends a degree of flexibility in deciding which projects are referred to other decision making entities rather than a flat threshold figure (e.g. \$75 million or number of dwellings as proposed by the Independent Panel.)

Some projects are more likely to require greater community education and understanding than others – e.g. the proposed Moorebank Intermodal Freight Terminal – and the approval process for these projects should have the capability to be tailored to circumstances when required. If council staff are required to provide support services to these panels (as increasingly happened with JRPPs) then that role needs to be recognised and all stakeholders (State Government, developers, experts and agencies), need to share the burden of resourcing those services.

### **The role of private certifiers**

WSROC would like to see an urgent review of the role and accreditation of private certifiers. In fact, it might be timely to consider a major reform of the whole system of private certification. Rightly or wrongly, private certifiers are often seen as being more beholden to the clients who are paying them to approve

their developments than they are to upholding the requirements of the planning system. Under the proposed new system these concerns have the potential to become even more serious, especially if they are now able to approve major projects based on their own interpretation of a regional or local plan.

There needs to be more rigorous regulation of practitioners, including closer monitoring of relationships between particular certifiers and builders. Council staff, as the custodians of the LLUPs and advisors to regional panels, should be able to monitor the activities of private certifiers and confirm whether their assessments are correct. Alternatively it could be a requirement that code assessable applications are approved by those who manage the code – i.e. council staff. WSROC notes that some of our member councils are proposing that the system of using private certifiers should be abolished entirely and this may warrant some consideration.

### **State significant developments**

WSROC supports the aim of expediting the approval of state significant developments, particularly those in the realm of infrastructure. However, if the integrity of this process is to be preserved, it essential that projects so deemed are truly of state significance and that appropriate community consultation still occurs with local councils and communities.

### **The role of Councillors**

WSROC also notes that the proposed hierarchy of decision makers has no role for elected councillors other than in code assessable projects, which effectively means they are denied a voice as elected community representatives on specific projects. This is a significant shift in the role of the elected representatives which, while it will serve to reduce the potential for decision-making ruled by politics and popularism, it does set a potentially dangerous precedent for the ongoing effectiveness of the role of elected community representatives. WSROC would urge the Government to rethink the hierarchy so that the views of elected representatives can be heard when required. This also reinforces the need for the views of councils to be integral in the development of regional and sub-regional plans.

Liverpool council has suggested that major developments could be referred to an independent expert which allows elected councillors to focus on community led strategic planning. WSROC recognises the merit in this approach, especially if the independent panel includes appropriate community representation. This system still allows for councillor input in that they are able to determine which projects are referred. However, we would like to see more detail on who or what constitutes an expert, how these experts are to be appointed, and by whom. It could be argued that local councils are already the best source of expert advice and judgement – representing as they do both their local communities and with detailed local knowledge and experience of the planning system

### **Depoliticising of decision making**

Just as local councillors are to be removed from the decision making process in the name of de-politicisation, it seems contradictory to retain key decision making in the hands of the Minister. As noted earlier, the community is deeply suspicious about the transparency and potential politicisation or backroom influence that they suspect may drive some development decisions. Keeping overriding authority in the hands of the Minister will not assuage these suspicions. Instead all major state significant and infrastructure proposals should go to the Planning Assessment Commission or a specially convened independent, transparent, accountable and publicly appointed body.

## Chapter 7: Infrastructure Planning and Coordination.

The processes for this outlined in the Green Paper are good in theory except that they do not address the subject of how the projects identified as part of the planning strategies are to be funded.

Infrastructure must be timely and installed concurrently with development. It is not acceptable that major new developments in greenfields sites are left waiting decades for adequate transport or that high density infill sites remain for long periods without appropriate road improvements to mitigate the impacts of traffic. But this is not just the responsibility of the Planning Department or councils – these developments require a firm commitment from Treasury to ensure the funds required for infrastructure are available at the time of development, not after.

WSROC has already expressed our disappointment at the Draft of the NSW Long Term Transport Master Plan which is entirely unfunded and seems to imply that the majority of future jobs growth will be in the city. As noted above, all these strategic plans must be fully integrated and the Transport Plan should be adapted to bring it in line with the Metro Strategy, associated regional growth plans and sub-regional plans.

WSROC strongly supports the need to identify and reserve corridors for future development and urges the State Government to consult closely with local councils in determining the optimum location for these corridors as the local councils have the on-the-ground knowledge necessary for effective planning.

### Infrastructure Contributions

Councils cannot carry the burden of infrastructure alone – especially as years of rate-capping means they are already stretched to provide the services they need. This is particularly the case in Western Sydney. As a result, the Government and developers must commit to bearing a significant proportion of these costs if developments are to be viable. In the WSROC region, Blacktown Council is currently facing a shortfall of \$45 million in providing critical infrastructure – roads, guttering, open spaces – in order to support the current land releases in the North West Growth sector, while Liverpool is facing a shortfall of around \$30 million for the South West growth sector.

And it is not just a problem for growth councils. Many urban infill councils face significant costs associated with improved drainage and traffic flow to support major infill developments. However, WSROC agrees not all councils face these issues and we support changes to Section 94 in which councils should be required to spend the money within a certain time period on infrastructure related to the development – to avoid allegations of stockpiling and overcharging which impact on councils with legitimate needs for Section 94 funds.

WSROC support the points outlined as part of the need for simplified and strengthened administrative arrangements (p76) and welcomes the Government's announcement of a Taskforce with local government to develop solutions to the key issues associated with development contributions. However, while WSROC looks forward to working with the Taskforce, we would like to see more detail, and have the opportunity for discussions on these proposed reforms before they are unveiled in the White Paper.

We also note that Government proposes to change the timing of payments – WSROC believes the timing of payments must be determined on the basis of providing timely infrastructure – councils cannot hold off building roads until after the homes are built. The Green Paper notes that developers say by paying up front they are exposed to holding costs which translate to higher house prices and that “the Government recognises the need to limit any unnecessary cost burdens on the development industry”.

WSROC notes there is no obligation on the development to pass on any savings they may achieve as a result of these changes and suggests that, as housing affordability is a two way street, it would be beneficial to see some form of commitment by developers to pass on any savings in full.

WSROC also has serious concerns at the implication in the Green Paper that levies for essential infrastructure must not compromise housing affordability – the Green Paper notes that originally Councils only provided roads and gutters but that developer levies are now being used to provide parks and community centres. These are essential to creating liveable and socially supportive neighbourhoods and define the difference between a community and a housing estate. Suggestions earlier this year from the IPART that these facilities could be dispensed with in order to lower housing costs are short sighted and illogical. The price of a home in a new development is set by the developer, and potentially the buyer – there is no evidence that reducing the amenity of the area by excluding community facilities from developer levies will result in cheaper housing. WSROC welcomes the review of Section 94 levies but urges the Government to ensure that a new system of infrastructure provision and funding takes into account the obligations of both councils and developers to ensure that new housing developments are socially, as well as economically, viable.

The involvement of IPART in attempting to set infrastructure standards and charges has not helped resolve these issues and has merely delayed the process further. Setting development levies and identifying infrastructure needs must be done “on the ground” looking at the specific needs of each development. Under these circumstances Voluntary Planning Agreements (VPAs) can be useful tool for the State Government and councils to work directly with developers to achieve positive outcomes for all sides.

Finally WSROC notes the suggestion that local infrastructure contributions for greenfields sites are to be calculated according to a contribution amount identified in the Local Infrastructure Plans. This is a good idea in principle but does not allow for inflation or other changes in prices and so some flexibility in price setting will still be required. The same issue applies in calculating Regional Infrastructure contributions based on a set amount identified in Growth Infrastructure Plans.

### **Public Priority Infrastructure**

WSROC notes that while the North-West rail link is given as the example of the kind of project which would be subject to the proposed new streamlined system, it wasn't subject to these guidelines and as a result is proceeding without due regard to community feedback on the most efficient and economically viable route or its integration with other major planning strategies and transport needs.

## **Chapter 8 – Delivering a New planning system**

WSROC supports the general governance structures outlined in this section but is concerned that councils have no role in the setting of high level strategic goals. We would recommend that ROCs should be included as key members of Regional Planning Boards.

## **CONCLUSION**

WSROC welcomes the Planning Green paper as a positive step towards a more socially inclusive, effective and streamlined planning system which allows the community to have it say while providing greater certainty and better time frames for essential development. However, it is important that councils continue to play a major role in determining how their neighbourhoods grow and evolve and that they have adequate resources to effectively carry out their role as community representatives as well as the major local service providers. Ensuring the funds are available to facilitate proper community engagement and to guarantee essential infrastructure will be critical to ensuring the viability of future development and hence, the measure of the planning systems success.