

# **ATTACHMENT 1**



## STRATHFIELD COUNCIL SUBMISSION

### **White Paper – A New Planning System for NSW**

#### **INTRODUCTION**

This submission has been prepared by Strathfield Council in response to the invitation for comment on the NSW Government's Planning White Paper and Draft Exposure Bills. Council welcomes the opportunity to provide feedback on the comprehensive changes proposed to the planning system. Council is concerned however with the relatively short time frame provided (i.e 10 weeks) for both Council and the community to review, understand, fully comprehend and provide comment on a large body of information which represents a major overhaul of the planning system.

Council is supportive of some of the objectives of the White Paper including community engagement in the strategic planning phase, attempting to streamline the approval process and the provision of infrastructure in conjunction with land use planning which is important in improving NSW economic performance.

Whilst Council supports those aspects of the reforms to make the planning system in NSW more efficient it is important to ensure that a balance is achieved between economic, as well as social and environmental outcomes and the community's interests. Council's role is to ensure that the social, environmental and economic wellbeing of its residents is maintained and protected. Council is concerned that its role in protecting the community's interests, built form character, lifestyle and wellbeing is under threat with the proposed changes.

The proposed changes potentially reduce the role of Council and the community in the development assessment process. This includes: the increased role of code assessable development (i.e 80% targets), the reduced ability of the community to have a say or object to development that affects them, the types of development that Council can approve, the increased role of private certifiers, planning panels and the rights of Council and the community to appeal decisions made by planning panels.

Concerns are also raised in relation to: the need for genuine community engagement at all stages of the planning process not just the strategic planning stage; the potential conflicts of using a general grouping of land uses in the proposed new zones; the reduced quality of development due to the increased reliance on the 'fit the box' code based approach; the Ministers delegation to remove, amend or make any provisions of a Local Plan even after it has undergone an extensive community consultation process; the Metropolitan Strategy which could mandate housing targets for each subregion

within short time frames forcing Council to comply even if lack of suitable locations; lack of detail on transitional arrangements; lack of right of review regarding rezoning process or the determination of a complying development certificate; Regional Infrastructure Contributions being levied in addition to Local Infrastructure Contributions and the need for adequate resourcing and funding to ensure the new strategic framework can be implemented.

Council's concerns have been structured under the following headings:

### **Community Engagement**

Council supports the State Government's intention to give the community an upfront role in deciding what types of development can be built in their area.

The White Paper proposes a Community Participation Charter which sets out seven principles that apply to the different planning actions. These include: partnership; accessibility; early involvement; right to be informed; proportionate; inclusiveness and transparency.

The White Paper and the Department's approach implies that councils are not currently doing a good job at community consultation which is not the case. This is evident from the preparation of Council's new comprehensive Local Environmental Plan (based on the standard template) which involved extensive consultation with the community.

Council also holds concerns that community 'engagement' only occurs at the early strategic planning stages of the process and there is less opportunity for 'engagement' particularly in the assessment of development applications. Residents will be provided with less opportunity to have a say on any projects that directly impact their community. Council does not support any system that unreasonably limits the community's involvement. Council supports genuine and effective community engagement.

Further information also needs to be provided in relation to the level of resourcing available to councils to implement the new strategic planning framework outlined in the White Paper, the appropriate level of participation that is required and how community participation plans will be reviewed and updated.

Regulations to "ensure that the additional community participation is proportionate to impacts" when considering development that departs from the vision and outcomes of the strategic plan, are yet to be released and therefore cannot be commented on by Council.

### **Potential Impacts on Council Resources**

The White Paper focuses on strategic planning and the principle of evidence based strategic planning at the regional and subregional planning level which Council supports. This potentially could improve biodiversity, environmental, economic, social and built outcomes.

Council is concerned however, that these objectives cannot be achieved without a significant level of resourcing and funding that is required by Councils to undertake a

function that code development is so reliant upon. With such a high focus on economic growth and development there is a great risk that the objective of creating communities which are liveable and sustainable should also not be overlooked.

### **Subregional Planning**

The White Paper proposes that Subregional Planning Boards will be responsible for developing the Subregional Delivery Plan and to provide partnership with State and Local Government. The boards will decide on development alternatives and preferred solutions. This process should be clearly documented and transparent.

This includes the use of strategic impact assessment process as a tool to evaluate economic, social and environmental impacts for different options. It is also important to ensure that 3D models give an accurate depiction of options for the community. The guidelines for the preparation of subregional delivery plans have not yet been released by the Department so full comment cannot be provided.

Council is concerned that if the NSW Government is seeking to facilitate more development in the Metropolitan Strategy (particularly housing) when it is adopted, it is also likely to mandate that certain housing targets must be achieved in each subregion within a limited timeframe. Councils may be forced to comply with these targets even without suitable sites being first located.

The threat of administrators being used to take over Council's functions based on not meeting housing and infrastructure targets is not an effective way to achieve development outcomes. This could potentially result in mass approval of poorly designed development near the end of a development timeframe to meet targets set by the Department of Planning and Infrastructure.

Further details are also required for Council to comment on how housing and employment targets are set across local government areas. More detail is also required in relation to the underlying methodologies as to how the targets are calculated and how growth targets can potentially be traded with other councils.

The Draft Exposure Planning Bill also indicates that the Minister has the discretion to amend a strategic plan which includes a subregional plan after it has been adopted, which conflicts with the objective of engaging the community to assist preparing the strategic plan.

### **Local Plans**

The White Paper proposes to replace Local Environmental Plans (LEPs) and Development Control Plans (DCPs) with Local Plans and development guides.

Council is concerned that the new proposed Local Plans may not enable many of the DCP control provisions to be included and that these controls will be further 'watered down' with the use of development guides. This will limit Council's ability to protect local built form character and may result in uniform housing types across the Strathfield local government area.

Spot rezoning, new developer review rights, and 'strategic compatibility certificates' will also affect Local Plans' effectiveness, and have the potential to undermine strategic planning processes.

### **Concurrences**

The White Paper proposes a four-month internal government review of concurrences to remove or replace unnecessary or straightforward referrals, concurrences, approvals and establish a 'one stop shop' within the Department of Planning and Infrastructure for remaining referrals.

Council holds concerns in relation to the transparency of inter-agency decisions, adequacy of environmental assessment and approval conditions and how more localised issues will be considered where a government department is involved which are too small to be resolved at the subregional level.

### **New Zones**

The White Paper indicates that Local Plans will contain "fewer, broader and more open" zones. Council holds concerns that the introduction of broader land use zones (reduction from 31 to 13 zones) has serious potential for land use conflicts within each zone.

Council holds concerns that the flexibility of new broader zoning framework provides for a broader range of uses and some of these uses may be incompatible for certain precincts.

The suburban character zone will allow Council to nominate areas that it and the community believes should be preserved. However, councils will be required to demonstrate what characteristics are significant. No additional detail is provided as to how this mechanism will work or the implications for local communities. Further clarification is also required in relation to the relationship between 'Suburban Character Areas' and existing heritage conservation areas.

There is also a lack of planning controls in the Enterprise Zone to control development and protect the community. Council requests the need to ensure that areas are protected from inappropriate development. There should be opportunities for the community to determine what specific zonings are appropriate for each specific area.

### **E-Planning**

The White Paper proposes that E-Planning will be a new option available for people to access information about the planning system. Council is generally supportive of the use of E-Planning to improve community participation in planning and use of a planning portal but has concern over the cost implications.

## **Strategic Planning**

Council supports a strong focus on community engagement in strategic planning. However, it needs to be recognized that local government already has a strong history of community consultation in strategic planning such as in the preparation of LEPs and DCPs.

Council questions whether this new state government emphasis on consultation at the strategic planning stages may unnecessarily replace the well-established rights of neighbours to be involved with local development assessment decisions. Council does not support any system that unreasonably limits community involvement.

It is also important to ensure a consistent approach and methodology is adopted in relation to the selection of housing and employment targets across the subregion.

Council has also devoted considerable time and resources in undertaking strategic planning work in preparing a new LEP in accordance with the standard LEP template and is concerned that this work may be duplicated with the focus on preparing a new Local Plan.

## **Code Assessment**

Council has concern that the White Paper proposes an expanded range of residential, commercial, retail and industrial developments to be complying or code assessable which involves limited community consultation.

In addition, Council has concern that where there are non compliances previously it is determined that consultation with neighbours is necessary, the consent authority can only consider submissions or parts of them that deal directly with the non compliance.

Furthermore, if a development proposal does not comply with a performance outcome by proposing an alternative solution, Council cannot refuse to grant development consent on grounds relating to that aspect of the development. This makes it more difficult for Council to refuse a development application based on design inadequacies.

The White Paper also proposes that floor space ratios will no longer be used and that site density will instead be controlled by building envelopes which will be included in development guides. Council raises concerns that this may result in speculative overdevelopment and poor built outcomes.

## **Development Assessment**

Council is concerned that 80% of all developments will be complying or code assessed within the next 5 years with reduced timeframes and documentation. Council is concerned that the local community and Council will have no say if development complies with the codes, even if the development fails to fit the local context. There are also the associated issues and concerns with the greater number of private certifiers involved in code assessment and complying development.

Council also holds concerns in relation to the proposal in the White Paper for applicants to be able to apply for a 'variation certificate' which can be provided by an accredited private certifier for a minor non compliance with development guide provisions of the Local Plan. The deemed approval timeframe for the variation is 14 days. This is a fast turnaround and may not be realistic without significant resources allocated to only dealing with this referral process.

The removal of the Council's ability to request any additional information over and above what is prescribed may make it more difficult to adequately determine complex DAs.

### **Depoliticized Decision Making**

The White Paper proposes to retain the role of elected Councillors in the development assessment process which is a policy shift from the position of the Green Paper and one which Council supports.

Council holds concerns however, that the increased role of planning panels and Code Assessable Development potentially reduces both Council's and the community's role in development decisions which may affect them.

Council is also concerned that the Minister can also require councils that fail to meet benchmarks to establish an independent hearing and assessment panel to replace Councillors.

### **Regional and State Significant Development**

The White Paper notes that local councils and Regional Planning Boards are central to consulting on and developing Subregional Delivery Plans.

The role of different decision making bodies (e.g the Minister, Planning Assessment Commission, Joint Regional Planning Panels) needs to be further clarified and it is important to ensure that local communities are adequately represented on the new Regional Planning Boards rather than tokenistic (single) representation. The planning approval process for State significant development should also be transparent and accountable.

### **Planning Assessment Commission/Joint Regional Planning Panel**

The White Paper proposes that State and regional scale development will be assessed by Planning Assessment Commission (PAC) and Joint Regional Planning Panel (JRPP).

The proposal for a PAC to determine major State projects and regional scale development is agreed to in principle, subject to consideration being given to including Council, community and industry consultation to provide for greater accountability and transparency in decision making.

This includes the need for more timely and accurate information to be made available for consideration by affected stakeholders to fully evaluate the potential impacts of a

proposal prior to decisions being made and the ability for councils, community or industry to veto/appeal decisions (e.g. need for appeal rights within the process).

It is difficult for Council to comment on the proposal for JRPPs without further details being provided in relation to their operations, selection of panel members, appeal rights, the types of projects which are likely to be referred to them and Council's involvement in assessments.

### **Independent Planning Panels**

The White Paper encourages Councils to adopt independent panels (Independent Hearing & Assessment Panels (IHAP)) to determine development applications. Council does however, express concern that the JRPP is developing a reputation for ignoring and overriding local planning controls.

Council generally agrees in principle with the proposal for the operation of IHAP Panels where they can assist councils in offering impartial advice in relation to more controversial Development Applications and add value to the quality of decision making (i.e. architectural expertise). However, this depends on Council having adequate representation and appeal rights and discretion of when to use the panel.

The community should retain the right to make adequate representation on planning matters particularly where variations are proposed. There needs to be certainty that decisions which are made are transparent and accountable.

### **Right of Review for Rezonings and Merit Appeals**

Council does not support the proposal that Council's decisions on rezonings can be reviewed. If the NSW Government proceeds with allowing reviews of decisions on rezonings, council's should also be able to seek a review of the Department's decisions to issue a strategic compatibility certificate or site compatibility certificate. The use of these certificates also potentially undermines local strategic planning and should first be endorsed by the community, particularly if community engagement is an objective of the Department.

There is no right of appeal in respect to a decision of a consent authority following a public hearing by the PAC, the determination of (or failure to determine) a complying development certificate, or a decision of a Council to issue, or not to issue, a variation certificate for complying development. The community's rights to challenge decisions has therefore been limited.

A new, "very fast track" appeal system is proposed, for appeals on single residential dwellings and dual occupancies. This system seems to be designed so that such appeals are determined with a minimum of expert and legal involvement which threatens the community's ability to strongly object where necessary. The Court's existing mandatory conciliation-arbitration system (or "fast track") is proposed to have expanded application to other types of development.

## **Standard Consent Conditions**

Council supports standard conditions which are clear, reasonable and cost effective in addressing assessment issues. Further detail is required before more comment can be provided.

## **Strategic Compliance**

Council holds concerns that no provision is made to refuse a development that may fit a predetermined building envelope but has unanticipated adverse impacts on surrounding properties.

Council also holds concerns in relation to the proposed process for developers to submit non-complying development proposals after the community consultation process to establish these controls and zonings.

## **Transitional Arrangements**

The White Paper provides for planning and assessment processes that began before the new legislation commences to be dealt with under existing statutory procedures and planning instruments. There is a lack of detail in the Planning Bill about how these transitional arrangements work.

## **Developer Contributions**

### Local Infrastructure Contributions

Council is concerned by the proposed ability of the Minister to judge whether councils are expending local contributions in a timely manner and subsequently directing council in regard to applying funds for infrastructure outlined in the subregional plans.

Council has concern that the use of a more broad test of 'benefit' for the recoupment of past expenditure rather than 'nexus' has the potential to result in inequity and a widening of the base and class of development for which contributions can be collected.

### Regional Infrastructure contributions

Council is concerned that the proposed Regional Infrastructure Contributions do not require demonstration of a nexus. Adding Regional Infrastructure Contributions in addition to existing Local Infrastructure Contributions could also increase developer levies affecting the viability of developments.

Alternatively, increased Regional Infrastructure Contributions may result in decreased Local Infrastructure Contributions. This is of concern as local contributions are necessary to provide local facilities to meet the demands of the anticipated future populations.

Council also holds concerns that Regional Infrastructure Contributions can go towards the provision of infrastructure anywhere in the subregion with a lack of input and control by each contributory council.

### Biodiversity Offset Contributions

There is insufficient detail in relation to how this scheme works for Council to provide comments.

### Reporting Requirements

Council holds concerns in relation to potential resource and staffing implications with the proposed mandatory performance measuring being undertaken on a quarterly and annual basis, including how the Local Plan is achieving key performance indicators.

### **Building Regulation & Certification**

Council supports measures that introduce stronger disciplinary controls for certifiers and additional critical stage inspections in relation to aspects of building work such as fire safety, structure and sound insulation.

This is particularly important considering the proposed expansion of the development types that will be approved as complying and code based development. These types of development are already causing a lot of concern to councils in relation to private certifiers which include a large number of compliance issues and complaints. The potential increase in the types of development to be approved as complying development will only add to this problem without increased strict regulation and accountability of private certifiers.

### **Environmental Protection**

Council holds concerns that the White Paper's focus is on economic growth with less emphasis on environmental considerations. The White Paper waters down environmental protection by removing reference to Ecologically Sustainable Development (ESD). The new definition of sustainable development only briefly refers to two ESD principles, (i.e the intergenerational principle of economic, environmental and social considerations and intergenerational equity, considering present and future needs).

The new planning bill removes reference to the precautionary principles currently in the EP&A Act to deal with risk and uncertainty. This includes removing reference to biodiversity and ecological integrity as a fundamental consideration and improved valuation, pricing and incentive mechanisms. The strategic planning principles fail to make reference to climate change.