

COMPLYING DEVELOPMENT REFORMS

QUALITY CONTROL PANEL REVIEW OF WORKSHOP 4: OPTIONS TESTING

1. BACKGROUND AND INTRODUCTION

The Department of Planning, Industry and Environment (the Department) is undertaking several reform programs to improve the NSW planning system and unlock productivity in NSW. The **Complying Development Reforms Project** (the 'Project') is one element of the **Planning Reform Action Plan**, and at its core is designed to find new ways to:

- Expedite planning approvals pathways, thus making investment in the property sector able to happen faster, bringing development to the market sooner.
- Reduce 'red tape' delays, again as a means of supporting investment by making it easier and quicker to invest, and by reducing risks related to investment.

The overarching mandate of the Project is to support and facilitate economic recovery at a time when COVID-related impacts have substantially reduced economic activity.

The **Quality Control Panel** (the 'Panel') has been introduced to the Project to provide high level, independent, expert advice on and oversight of project inputs and outputs.

2. FOCUS OF THIS REPORT

This report considers the inputs provided for Workshop 4 of the project, the **'Re-imagining Complying Development - Options Testing'**, produced by consultants, Keylan, focusing on:

- a. Emerging issues and opportunities (*big picture, strategic matters*)
- b. Policy considerations and key risks (*policy specific issues*)
- c. Detailed feedback (*detailed commentary on particular items*).

3. EMERGING ISSUES AND OPPORTUNITIES

The Panel notes that the consultants have produced both a written report and a PowerPoint presentation which:

- Further analyses the reform options identified during the ideas generation stage of the project
- Puts forward a refined set of recommendations and associated implementation actions, including consideration of key high-impact reforms that can be implemented in a 6-month timeframe
- Integrates findings from Urbis market sounding and related report.

Overall, the response of the Panel to the report and presentation, noting that these are the final outputs which the Panel will comment on, is that:

- The Keylan paper appears to be comprehensive and thorough. It is robustly researched, and evidence-based.
- The paper has integrated the findings of Urbis' research, and applied these to ensure that the recommendations are prioritised in relation to potential for economic benefit, which is essential to the objectives of the work overall.
- As a result of integrating the Urbis' findings, the views of the sector have been factored into the research outcomes, as Urbis' work included market soundings.
- The ultimate outcome is an achievable set of transformative changes which considers economic impact. While each change may not be substantial, in combination a material improvement of complying development policy and practice should be achieved.

4. POLICY CONSIDERATIONS AND KEY RISKS

The Panel observes that almost all of the policy considerations raised during the course of the project have been addressed in the consultant recommendations. These include:

- Simplification of the Code
- Clarification of definitions in the Code
- Education for both Code users and non-users to encourage uptake and appropriate use of CDC's.

There are however several **policy considerations** which will not be readily addressed and will continue to require attention as the project moves towards implementation, such as:

Standardisation vs Flexibility

The dichotomy of standardisation vs flexibility, noting that the two have opposing goals, is likely to continue to be an issue for users going forward.

Community Acceptance and Perceived or Real Conflicts

The key to wider community and industry acceptance over time will be understanding change, communication and particularly the quality of outcomes.

Real or perceived conflicts of interest in policy change will need to be considered and addressed, especially where sign-off of any subjective matters are involved, paid for by a proponent.

Both of the above matters are important in gaining wider support for change, and thereby longevity.

5. DETAILED FEEDBACK

Certifier feedback

Detailed feedback is provided from a Certifier's perspective in relation to the consultant's report and presentation below:

- The recommendations provided by Keylan are in line with expectations. Opening complying Development to a wider range of business uses in Business and Industrial Zones will be a positive step, but it must be supported by the simplification of the requirements of the Code.

- Certifiers prefer a clearly defined set of rules when they are undertaking an assessment of an application, hence any proposal to make the assessment process more flexible will need rules that are very clear and concise about how that discretion is exercised.
- Regarding conflict of interest concerns that may arise, it is important to note that Certifiers are already tightly controlled under the provisions of the **Certifiers Practice Guide** (attached). All Certifiers are bound by the requirements of Chapters 1 and 2 of this document that relate to their role as a Public Official and Conflict of Interest. Chapters 3 onward relate to obligation on Certifiers for High Rise Apartment buildings (Class 2).
- A couple of matters that do require consideration are;

- **“Disengaging” with the SEPP Codes**

The SEPP is complicated enough as it is and it could become much more complicated by “turning off the SEPP, or parts of the SEPP” in particular zones. Not to say it couldn’t or shouldn’t be done but it needs to be clearly explained to all parties involved in the assessment of the CDC’s.

- **Access to information and E-Planning**

This issue has been raised several times but persists because property history is such an important aspect of every assessment. Access to DA History, Fire Safety Certificates, information on construction aspects of the “base” building (alternate solutions), and even Council Reports, is important and can be of enormous assistance to Certifiers.

Ideally, understanding whether a CDC is able to be issued for a site would be clearest if facilitated by technology (such as the ePlanning Spatial Viewer), recognizing that this may be challenging and would also depend on the ongoing role of this platform.

- **Avoiding unnecessary contention**

Consideration should be given to avoiding types of quasi-residential accommodation in business or industrial zones (such as tourist and visitor accommodation) due to the likely complications, potential to be used for residential development and potential land use conflict with the business and industrial uses being supported.

- **Related approvals**

Approvals under related legislation can take much longer than the time it takes to approve some relatively simple CDC’s. For example, the addition of a “sink” in some Councils may require a Section 68 Approval under the Local Government Act. This can take months in some Councils. Similarly, if works are required in the footpath it may be necessary to get a “Road Opening” approval under the Roads Act. This can take 4 weeks at some Councils (e.g. Blacktown). Delays such as these can very quickly negate the benefits that this program is aiming to achieve.

Quality Control Panel:

Abigail Goldberg
Jason Perica
Craig Hardy

14 December 2020