NSW Urban Taskforce

25 September 2007

Mr Sam Haddad
Director-General
Department of Planning
GPO Box 39
Sydney NSW 2001

Dear Mr Haddad

Our priorities for the current round of planning law reform

Thank you for the opportunity to participate in the first meeting of the Ministerial Reference Group on Planning Reform last week.

The NSW Urban Taskforce wrote to Minister Sartor on 11 May 2007 explaining how we believe the NSW planning system can be reformed. A copy of the letter is attached. That letter continues to reflect the Taskforce's views. Nevertheless, we've decided to accept your invitation to give you some further thoughts on what kind of reforms are needed. Generally these thoughts are an amplification of the suggestions we have previously made.

E-planning

The NSW Urban Taskforce backs the universal and mandatory introduction of e-planning – with the involvement of all councils and all State Government agencies involved in the NSW planning system. In particular, we believe that the e-planning system should provide applicants real time data on outstanding consultations/concurrences, and immediate on-line access to all incoming and outgoing correspondence between the consent authority and the referral/concurrence agencies.

Exempt and complying

The NSW Government should mandate a state wide comprehensive list of exempt development. A comprehensive list of complying development should also be mandated, although councils should be free to designate some or all of the matters on the complying list as "exempt development".

We also believe a 14 day deemed approval period for complying development certificates should be seriously considered.

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Development assessment

There should be meaningful timelines for the determination of development applications by consent authorities. The only way to make timelines 'real' is to replace the system of 'deemed refusals' with a system of 'deemed approvals'. That is, unless a consent authority determines the matter in a set timeframe, the matter is considered approved.

If such a regime were to be introduced, the Taskforce would support a layered system of timelines, linked to the complexity of a development application. This would mean:

- Local development ($20 million) – 40 days
- Local Development ($20 million ++) – 90 days
- Integrated Development – 90 days including authority referrals.

Such a system could not work unless there were also 'deemed concurrences' where a government agency fails to give a positive or negative answer within a set time period. In this instance a 'deemed concurrence' means that the consent authority is obliged to act as if the government agency had no objections to the matter. Only by giving government agencies clear and legislated timeframes will reasonably prompt replies be ensured.

Key performance indicators

Statutory timeframes for development applications and deemed approvals should be backed up with strong and documented key performance indicators for consent authorities in regard to their handling of development applications and plan-making. The *Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007* provides an excellent starting point in the development of indicators. The Department needs to follow up by setting numerical standards for each indicator that represent an acceptable level of performance and then establishing a clear framework by which consent authorities must publically report on and justify their performance against the indicators.

If a council fails to meet a predetermined portion of the key performance standards, it should be publically served with a "show cause" notice as matter of routine process. If the council, in the next reporting period, fails to achieve a pre-determined level of improvement, it should lose its planning powers.

This way the council and the communities concerned will receive fair warning that they are at risk of losing their powers and have the opportunity to remedy the situation. Ultimately, if a council loses its powers, it would be because of its failure to meet objective pre-determined numerical standards that are being met by other consent authorities. Such an approach will reduce the perception that the process of stripping councils of their planning powers is politically motivated.

Contract planners

Councils should be encouraged to use contract planners to process bulk minor development applications and so free up council planning resources.

We also believe that councils should be encouraged to use contract planners, at the request of the applicant, to project manage major development sites/assess major development proposals. The contract planner would be appointed from a council panel by the council with the fees paid for by the applicant. The fees would be determined through a competitive process when a panel is established.

Appeals for re-zoning decisions and a possible Planning Commission

Even with reform of the statutory scheme of infrastructure charges, sensible safeguards also need to be introduced to prevent a defacto re-introduction of the current unsustainable levels of charges.

One way an unscrupulous planning authority can seek to impose excessive charges is by holding up a rezoning, pending a developer's agreement to a 'voluntary' planning agreement.
Such agreements have an important and useful role to play, where the developer is able to negotiate with a planning authority for a more tailored financing of an infrastructure program than that provided by the generic statutory charges. However, there is potential for a planning authority to hold-up a sensible and necessary re-zoning unless a developer agrees to a planning agreement that dramatically extends a developer's obligations – well beyond the legislative provisions.

This kind of situation can be avoided if there must be a credible right of appeal for proponents who are refused a rezoning. This could possibly involve the proposed Planning Commission recently flagged by the NSW Minister for Planning, the Hon. Frank Sartor MP.

A right of appeal when a rezoning is not approved by a planning authority would enable an independent review of claims that a rezoning is consistent with a published strategy and is otherwise sound. This would greatly reduce the potential for a planning authority to abuse their powers by holding up rezoning pending developer consent to over-the-top planning agreements.

If the proposed Planning Commission is created and given this role, we are of the view that the members of the Commission should be part-time with a range of expertise suited to different industries (heavy industry, light industrial, housing, retail, etc) and different regions (metropolitan, rural, etc). This would enable the Minister to call upon part-time commissioners with the most expertise to handle a given matter.

Independent hearing and assessment panels

We support the establishment of regional independent hearing and assessment panels which may be used by consent authorities to conduct public hearing and advice on individual development applications.

We do not support the South Australian model for the determination of development applications. In our view, the South Australian model, which involves council appointed panels, consisting of an equal number of councillors and so-called

"independents" appointed by councils will *reduce* the effectiveness of the NSW planning system.

Firstly, we do not have confidence that councils will select appropriately credible independents to serve on these panels. There is a real risk that the "independents" selected will be subject to local political influences.

Secondly, half the panels are still made up of councillors, so the claimed benefit of removing councillors from the decision-making process is not achieved. Again the councillors are appointed by the council itself, so the political problems of the council will also influence the deliberations of the panel.

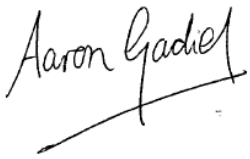
Thirdly, there is an insufficient pool of qualified talented planners, free of conflicts, to staff panels covering every council in the state.

Finally, councils that are performing well and determining development applications in a timely fashion, in accordance with approved policies and strategies, should not lose their planning powers against their will.

The NSW Urban Taskforce thanks you for the opportunity to participate in the consultation process in the run-up to the release of the discussion paper.

As always, we are available to meet in discuss any aspect of our submission.

Yours sincerely
NSW Urban Taskforce



Aaron Gadiel
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