NSW Urban Taskforce

30th October 2007

Mr. Sam Haddad
Director General
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Sam

RE: PLANNING REFORMS 2007 - PART 3A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The NSW Urban Taskforce would like to comment on Part 3A, prior to the finalization of your planning reform discussion paper.

We believe the current assessment and approval framework provided by Part 3A of the *Environmental Planning and Assessment Act 1979* ("the EP&A Act") is sound. Generally speaking it results in the timely determination of applications for critical infrastructure and major projects.

The framework provided under Part 3A should remain in place. We do not believe it needs to be subject to a comprehensive review as part of the current planning reform program. The NSW Urban Taskforce would however request that consideration be given to the following issues, which we believe will provide greater clarity and certainty in the process.

Fees

A schedule of fees has been introduced by the Department in relation to applications submitted under Part 3A of the EP&A Act. The fee schedule was introduced without industry consultation.

The fees charged for applications under Part 3A do not seem to relate to the development or the cost of the development. The total fees package for applications is excessive and the fee structure should be reviewed.

The fee structure, when announced, was said to reflect the complexity of issues raised in the assessment of major development proposals and to allow the Department to employ additional resources and technical specialists as required.

When a comparison is made of the fees charged for a project or concept plan against a development application of a similar value then the base fees on applications under Part 3A for a development with a construction cost in the order of $1,000,000 would be $10,000 compared to a base development application fee of $2, 565.

There appears no reasonable justification for such a significant difference in application fees to be paid. Complexity of issues and assessment considerations are likely to be similar for small projects under Part 3A or Part 4 of the EP&A Act.

NSW Urban Taskforce Ltd. ABN: 21102385174 | T 02 9238 3955 | F 02 9222 9122
GPO Box 5396 Sydney NSW 2001 Australia | Level 12, 32 Martin Place Sydney NSW 2000
admin@urbantaskforce.com.au | www.urbantaskforce.com.au

The fee package imposed on more complex applications under Part 3A is also excessive and it would appear without a reasonable justification.

For instance, consider an application for a state significant site investigation (SSSI) combined with a concept application for subdivision of land and erection of dwelling houses where the capital cost of the work would be $60 million.

The following fees would apply:

State significant site investigation request	$20,000
Concept plan application	$66,000
(Additional fee for subdivision not applied)	
Expert panel (maximum fee)	$100,000
Advertising fee	$2,500
Planning reform fee	$38,395
TOTAL FEE	**$226,895**

This fee would represent almost 4 per cent of the construction cost of the development, excluding land cost. If a fee is charged to assess the subdivision component of the project, in addition to the concept plan fee, then a site with an area of 30 hectares would attract a further fee of $14,000.

If an expert panel was convened in the example above then an applicant would in effect be paying $88,500 for the administration of the application including a charge of $2,500 to advertise the application on the Department's website using digital information provided by the proponent. The fees charged are unreasonable. The fees for this hypothetical application would cover the salary of a full time staff member for one year, this excludes the fees for advertising and the expert panel.

The fees when introduced were justified on the basis that they would enable the Department to deliver on its assessment target to assess 95 percent of proposals within six months of their exhibition period. Available government information does not reveal whether this objective was achieved in the 2006-2007 period.

Applications for critical Infrastructure projects are required to pay twice the maximum base fee that would otherwise be required to be paid if the development was considered a concept plan or project application. There appears no logical justification for this arbitrary fee schedule.

When has an application been made under Part 3A of the EP&A Act?

There is much confusion within the development industry and it would seem within the Department as to when an application submitted to the Department under Part 3A of the EP&A Act for either a SSSI or a concept plan has been officially received.

Clarification is required to detail the administrative process and the trigger as to when the Department considers an application has been lodged or formally received. The Minister has set an assessment target of six months for the determination of proposals following the exhibition of the proposal. This is a reasonable period that should be achieved by all proposals and could be considered a very generous period in which to consider and determine minor proposals.

The period from day of submission of documentation by a proponent to receipt of the Director General's requirements for an environmental assessment however appears to have no discernable

target or key performance indicators as to what constitutes a reasonable and timely period in which to:

- confirm that the documentation has been received and that an application has been made;
- advise of the Director-General's requirements for an application; or
- confirm - in the case of a discretionary application - that the nominated project is one to which Part 3A of the EP&A Act applies and that the application has been received.

A reasonable period in which an applicant should be notified that a non-discretionary application has been made would be seven calendar days.

Further, a period of 28 days would appear a reasonable period in which to determine whether or not a discretionary application will be subject to the provisions of Part 3A. In circumstances where a determination is made that Part 3A does not apply then the proponent can then pursue a development application with the relevant consent authority.

Targets should be set for undertaking these administrative steps in the application process to increase certainty and achieve a more efficient, streamlined and application process. The discretionary steps in the application process need clear performance criteria to be adopted.

Satisfaction of conditions of approval

The Part 3A approval process is promoted as the one stop shop for assessment and determination of significant projects drawing together the requirements of several government authorities and instrumentalities involved in the development process.

The technical requirements of these authorities and instrumentalities are often translated into conditions contained within a project approval. The requirements of those conditions are usually required to be carried out to the satisfaction of the individual authority concerned. Increasingly government authorities are denying proponents confirmation that the terms of a condition have been satisfied.

There appears no administrative review process available to obtain confirmation that the terms of a condition have been satisfied in circumstances where this confirmation is being unreasonably withheld or the authority concerned is seeking to impose a higher standard of documentation or compliance than provided for in the condition. These blockages in the development process post approval are causing costly delays and preventing in some cases development commencement and in other cases project completion.

The current reform process should consider ways in which to make the authorities more accountable for their role-played in the development process and to provide an independent review process if a block is reached in the process.

Should you wish to discuss any matter raised in this letter please do not hesitate to contact me.

Yours sincerely
NSW Urban Taskforce

Aaron Gadiel
Chief Executive Officer

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