

2 March 2009

The Hon. Kristina Kenedy, MP
Minister for Planning, Minister for Redfern-Waterloo
L35 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

**Re: State Environmental Planning Policy (Infrastructure)
Amendment (Schools, Affordable Housing and Metro Rail) 2009, published 20 February 2009**

We are writing to you to express our serious concern with elements of the above statutory document that discriminates against private sector investment in NSW.

On 18 February 2009 the NSW Government announced that it will streamline town planning rules for "social housing" projects. However rule change the published two days later is much broader than the government's original announcement suggested. Today the NSW Government also released a planning circular (PS 09-007) which now says the changes are about "affordable housing". The concept of "affordable housing" is much wider than "social housing".

In any event we have reviewed the legal text of these new rules ourselves. The new rules waive local environment plan requirements in relation to the development of residential flats and multi dwelling housing. They say that development may take place, despite any provision of the local environment plan, although development consent is still required. The new rules also waive any requirement for car parking. They also state consent must not be granted without a compatibility certificate from the Director-General of the Department of Planning.

We would welcome a reform of this kind, without reservation, if it applied equally to all developers.

This kind of reform is exactly the sort of change we have been seeking for some time (although we query the need for a site compatibility certificate).

However, the rules will only apply to homes developed by or on behalf of public authorities, non-profit housing providers or by a joint venture partner with Housing NSW. A wide range of government agencies could potentially use these new provisions - including Landcom, the Redfern-Waterloo Authority, Sydney Harbour Foreshores Authority, the State Property Authority, the new Sydney Metro Authority, local councils, any government department, as well as not-for-profit organisations such as City West Housing. There is no requirement for land to be in existing government ownership. **These organisations will be free to bid for sites with zoning problems in direct competition with the private sector.**

The new provisions do not require that any of the development be limited to social housing or rental or affordable housing. **It is possible that some or all of any homes developed under these streamlined rules will be sold to the public at market rates.**

We support making housing more affordable and the best way to do this is to increase the available supply. These reforms will overcome rezoning difficulties and will help boost the development of new homes. In particular, it is good policy allow higher density developments within 800 metres of all Sydney transit stations, regardless of the zoning of the land. After all this merely implements the Government's 2005 Metropolitan Strategy. However, there is no case for these rules to be limited to non-profit developers or government developers such as Landcom or the new Sydney Metro Authority.

These special rules are an admission that the existing system is not working for government and non-profit developers. However, the same could be said for private sector projects. We believe **the state government should give both public and private housing developments the same support.**

These are permanent changes to the planning law and seek to give non-profit and government developers preferential access to sites with zoning problems in the vicinity of transit stations. While it's true, right now, that private sector developers have less access to capital than government developers, this situation will not last forever. It's a mistake to respond to a transitory economic situation by making permanent changes to the law that discriminate against the private sector.

State governments should be doing everything possible to encourage private sector development activity. The NSW Government should be telling the investment community that the private sector is welcome in these important urban renewal sites near transit stations. There is no reason why approvals for housing developed by the government for private rental and sale should be fast tracked, while private sector projects wallow in red tape.

The amendments also violate the *NSW Government Policy Statement on the Application of Competitive Neutrality*, released in 2001.¹ This policy statement has been implemented under the *National Competition Policy and Related Reforms Agreement* – an intergovernmental agreement between the federal government and each state government.

The competitive neutrality policy means that government businesses must operate without net competitive advantages over other businesses as a result of their public ownership. If a public authority is developing regular housing for sale on the open market it is, unquestionably, operating a "business" within the meaning of the policy.

This policy was designed to stamp out the competitive advantages government business enjoyed from immunity from regulatory requirements. As the policy itself states

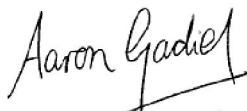
The benefits of adopting competitive neutrality reside in developing fairer and more cost reflective pricing policies and production in line with market requirements. These in turn should provide a basis for better resource allocation decisions throughout the economy and higher Gross Domestic Product growth than would otherwise occur.

The NSW government policy also requires government business activities to be subject to "corporatisation principles". Among other things these principles affirm the business must "operate within the same regulatory framework as other businesses".

The same rules should apply to the public and private sectors when they develop housing.

Yours sincerely

Urban Taskforce Australia



Aaron Gadiel
Chief Executive Officer

¹ See http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0007/3868/tpp02-1.pdf.