

14 April 2009

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

Email: [assessments@planning.nsw.gov.au](mailto:assessments@planning.nsw.gov.au).

Dear Mr Haddad

**Re: Invitation to comment – Interim guideline: Development near rail corridors and busy roads**

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

The Urban Taskforce has reviewed the *Interim guideline: Development near rail corridors and busy roads* and identified some issues worthy of further investigation. Our concerns are outlined below for your consideration.

**1. The application of the Guidelines must be made absolutely clear**

We understand that the Department of Planning has introduced the *Interim guideline: Development near rail corridors and busy roads* for purposes of clauses 85, 86, 87, 102 and 103 of *State Environmental Planning Policy (Infrastructure) 2007*. That is, these guidelines must be taken into account for development referred to pursuant to these clauses in the SEPP. The SEPP clearly defines the rail and road corridors that need special consideration and also sets standards in respect to safety, excavation, vibration, and noise level. The SEPP is clear and provides certainty to developers and designers when engaged in development in defined locations. In this regard, the Urban Taskforce has no general objection to the introduction of a guideline to assist those concerned with development to meet the requirements of the SEPP.

However, while the SEPP defines the road and rail infrastructure that may require special consideration with carrying out development in their vicinity, the interim guidelines seek to introduce additional definitions and requirements to enable a wider application. The Urban Taskforce has a particular concern with any attempt to introduce regulation above legislative requirements. In this case, the interim guidelines suggest that there may be ability for the consent authority to require additional and specialised design for development not identified in the SEPP. For example, to suggest that these interim guidelines be applicable to development in the vicinity of

any other road with a high level of truck movements or bus traffic<sup>1</sup>

introduces the opportunity for a highly subjective application of the interim guidelines. If a definition such as this was to remain in the final version of the guidelines, a consent authority would be able to inappropriately apply design criteria and assessment processes intended for significantly affected development to residential development in moderately affected urban environments.

Subjective definitions and seeking wider application of government guidelines will do little more than confuse and cloud their application. **The Urban Taskforce recommends that when in their final form, the guidelines be applied only to development defined in the SEPP.**

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<sup>1</sup> Department of Planning 2008. *Development Near Rail Corridors and Busy Roads – Interim Guideline*. p. 3.

## **2. No reference to non-mandatory guidelines currently under review**

It's peculiar that these interim guidelines would refer to other "1997 interim guidelines" and "non-mandatory noise criteria" which themselves are currently under review. The only appropriate way to articulate mandatory criteria is to refer to criteria stated in legislation and/or defined in an Australian Standard. In this instance, the internal residential noise criteria referred to in cl. 87 and 102 of the SEPP are appropriate. Referring to non-mandatory noise criteria or other guidelines that are under review has little or no value. Identifying non-mandatory guidelines and/or those under review will simply confuse and complicate the application of these Guidelines.

**The Urban Taskforce recommends that when in their final form, the guidelines only refer to clear criteria set by legislation and/or Australian Standards.**

## **3. Guidelines should clarify, not complicate**

There exists a myriad of rules, regulations, standards and guidelines that development applicants must consult. The Government should carefully consider the issue of yet another lengthy guideline that must be consulted, particularly if the great majority of the guideline is "advisory". If there must be prescription, developers, designers and regulators seek a clear articulation of a standard to be achieved and/or the opportunity to design to meet a performance outcome. Therefore, a useful guideline is one that is clear and contains only essential information. These interim guidelines are unfortunately cluttered with "useful" but not essential information and in some cases lack clarity. What is really needed to complement the SEPP is a simple guideline that:

1. defines and restricts the applicability of the guideline to meeting the requirements of the SEPP;
2. refers to accepted mandatory criteria;
3. provides suggestions on how these mandatory criteria may be achieved; and,
4. allows for alternative design and construction solutions to achieve mandatory criteria.

**When in their final form, the guidelines not contain "advisory" information. If absolutely necessary, advisory information should be included as an appendix for information purposes only.**

## **4. Guidelines (regulation) must ensure that development in the vicinity of infrastructure remains attractive**

We should not lose sight of the fact that development in the vicinity of key infrastructure makes good sense. Those who choose to reside in these areas make the choice to accept a given urban environment outcome for greater access to public transport and services. At the same time the infrastructure benefits. It is well understood that "land use patterns have a significant influence on how well public transport services can be delivered and utilised."<sup>2</sup> As a society we must permit more residential uses in the vicinity of new and existing transport infrastructure, the infrastructure itself benefits in terms of patronage, and therefore viability.

Research consistently shows that population density has a significant impact on the use of public transport. If we really want to get more people onto public transport, then caution must be exercised when considering the introduction of new regulation that may inadvertently limit residential opportunities or make residential development unattractive.

These comments are offered to encourage constructive dialogue between Government and the development industry and we ask that you accept these comments in the spirit in which they are

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<sup>2</sup> Alford, G., 2006, Integrating Public Transport and Land use Planning – Perspectives from Victoria. *Australian Planner*, Vol. 43, No. 3, pp. 6-7.

intended. We trust that you will carefully consider the contents of this correspondence and make amendments to the interim Guidelines as appropriate.

We are always able to provide a development industry perspective on planning policy and we would welcome the opportunity to meet and discuss these issues in more detail.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Aarón Gadiel  
Chief Executive Officer