

11 February 2010

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

Dear Mr Haddad

**Re: Draft terms of reference for the strategic assessment
of urban development in the Sydney Region Growth Centres**

Thank you for the opportunity to provide a submission in response to the above document, including the endorsement criteria.

We support the carrying out of the strategic assessment. In 2007 the NSW Government extended biodiversity certification to the growth centres (and therefore exempt development from NSW's *Threatened Species Conservation Act*), but three years later the Commonwealth has not matched the decision. We hope this process will lead the Commonwealth to now exempt development in Sydney's growth centres from further assessment and review under the Commonwealth's *Environment Protection and Biodiversity Act 1999* ("the EPBC Act").

Our comments on the draft terms of reference, including the endorsement criteria, are set out below.

1. The assessment should not consider biodiversity values that fall outside Part 3 of the Environment Protection and Biodiversity Conservation Act

Under the EPBC Act, a strategic assessment normally only relates to a matter protected by a provision of Part 3, that is, a matter of "national environmental significance".¹

While there is a capacity for the state to request to the federal government to include state environmental matters in a strategic assessment, the purpose of such an inclusion is to "ensure that the assessment deal[s] with those other impacts to help the State or Territory... make decisions about the actions".²

Under item 2.1 of the terms of reference, the report will be required to identify environmental matters that may be affected by the development of the growth centres, including those matters that relate to areas of biodiversity values not protected by Commonwealth legislation. Apparently this will extend to species or ecological communities listed as "threatened" under state law.

Additionally the last dot point in the endorsement criteria (attachment C) allows the Minister to consider management measures for matters "potentially" eligible for listing as matters of national environmental significance. Surely a matter is either listed or is not? What is the point of having a formal listing process, if matters that have not been formally listed are included as "potential listings"?

¹ Section 146(1).

² Section 146(1A)(b).

Given that the state government has already issued a biodiversity certification in relation to biodiversity matters within the state's jurisdiction, it is not clear why these matters are also to be included in the federal strategic assessment.

We ask the biodiversity matters within the state government's exclusive jurisdiction be removed from the strategic assessment.

2. The endorsement criteria wrongly omits the need to promote the ecologically sustainable use of natural resources

In attachment C, the endorsement criteria say that the Minister will decide whether or not to approve the development of the growth centres, based on the "extent to which the Program meets the objects of the Act".

The summary of the objects of the Act is incomplete, and the omission is significant. It is an object of the Act "to promote ecologically sustainable development through the... ecologically sustainable use of natural resources".³

In short, this means the Minister should, if he was having regard to all of the relevant objects of the Act, also have regard to the need to promote the ecologically sustainable use of natural resources. In this case, that means the ecologically sustainable development of land. Development of land whose biodiversity values are low, or where remaining vegetation of national environmental significance is degraded and unlikely to be improved would clearly fall into the definition of the "ecologically sustainable use of natural resources". By omitting this consideration, the criteria that are to be used by the Minister to evaluate the development program have been slanted against development. This bias was not contemplated to the actual objects of the Act.

The endorsement criteria should recognise the need to promote the ecologically sustainable use of natural resources, including the development of land.

3. The endorsement criteria do not implement the principles of ecologically sustainable development

"Ecologically sustainable development" requires the effective integration of long-term and short-term economic, environmental, social and equitable considerations.⁴

The endorsement criteria do not adhere to this principle when it says that the development activity should

avoid actions from being taken in any location that have an impact on matters of national environmental significance or of high biodiversity or heritage values where ever *possible* (emphasis added).

The word "possible" means anything that is capable of taking place.⁵ That is, anything that is not "impossible" is "possible". Clearly, it will always be "possible" to avoid an impact if the impact can be avoided by banning development. Banning development is never "impossible".

By seeking to place such a high degree of importance of avoiding any impacts (where such avoidance is "possible") the endorsement criteria stray from the requirements of ecologically sustainable development. The requirement should envisage a process where economic, social and environmental considerations are considered together, without requiring one set of considerations being elevated above the other.

For this principle to be respected, **the word "possible" should be substituted with "practicable" in the endorsement criteria.**

³ Section 3(1)(b).

⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), section 3A(a).

⁵ See for example, the *Macquarie Concise Dictionary* (4th edition).

4. **Matters specially marked out for ministerial consideration do not include social or economic considerations**

It's disappointing that three matters marked out for specific ministerial consideration at the end of the endorsement criteria all relate to factors that suggest the prohibition of development, while no factors which favour development are identified.

That is, the Minister is to consider the precautionary principle, intergenerational equity, but no mention of employment, the benefits of housing development or the proper functioning of global city such as Sydney.

The economic and social benefits for Sydney's urban expansion should also be specifically identified for Ministerial consideration, alongside the reiteration of environmental considerations.

I trust you will find this submission of assistance.

Yours sincerely
Urban Taskforce Australia

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

Aaron Gadiel
Chief Executive Officer