

3 March 2010

The Hon. Tony Kelly, MLC
Minister for Planning, Minister for Infrastructure, Minister for Lands
Level 34 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Re: Proposed compulsory acquisition for the new Sydney Metropolitan Development Authority

We are writing to you to offer some policy perspectives on the above subject.

In your *Metropolitan Transport Plan: Connecting the City of Cities* the government says that it will change the law to enable "compulsory acquisition of property covered by an adopted urban renewal precinct plan in situations where achieving an urban renewal outcome is at risk - even where the property may be on sold for private development".¹

Almost any significant new urban renewal project is likely to involve some private land. Governments and councils should have a crucial role in consolidating fragmented land parcels into single sites to enable major urban renewal by the private sector. Without the power to acquire land on just terms, many derelict parts of our urban centres may never be re-built.

We would support legislation to enable urban renewal through compulsory acquisition of fragmented land parcels, if, and only if, the government pursues a model which gives land owners full compensation.

In the case of the Civic Place development (and in relation to the powers of the Sydney Metro Authority) the government has pursued the wrong model. We hope that it does not do so again.

Property rights form the basis of our economic system. Investment cannot and will not take place unless there is clear unambiguous title to property. This kind of clarity necessarily means a landholder must be able to exclusively profit from the use and the development of their land.

NSW has had difficulty in attracting investment in recent years, in part, because of the enormous discretion wielded by planning authorities. The planning system, with its arbitrary decision making and unpredictable levies, has weakened the link between land ownership and the ability to create value by developing land.

It's crucial that any powers given to the Sydney Metropolitan Development Authority do not make this situation worse by creating incentives for the authority to nationalise land in order to rezone, make profits, and sell the land back to the private sector. Any legislative regime which facilitates this kind of conduct damages the NSW economy.

¹ Page 26.

We support an alternative approach, based on the United Kingdom model for urban renewal. Our proposal is as follows:

- Landholders must be entitled to just terms of compensation.
- Landholder compensation must be valued based on the rezoned value of the land, following the granting of the final development approval, in connection with the urban renewal project. That is, any consequent land value uplift must flow to the landholder, rather than the acquiring state government authority.
- The actual transfer of title from the original landholder should not take place until the rezoning is completed and the development application is approved. This will permit a proper basis for striking a just terms land value. In the event that the landholder wishes to exit ownership early in the process, before these matters are finalised, they should be entitled to compensation based on what is known at the time and a subsequent additional payment based on the final increase in land value, arising from the additional permitted development potential.
- The industry, including the Urban Taskforce, must be consulted on the detail of any proposed laws.

In the United Kingdom where planning approval is granted for additional development on acquired land within ten years after a valuation date, the land owner is entitled to the difference between the amount actually received and the amount the landowner would have received if the approval had been in force when:

- the notice to compulsorily acquire was issued; or
- (in the case of a sale by agreement under the threat of compulsory acquisition) at the date of the sale contract.²

Urban renewal projects are clearly in the public interest. However, property rights must be respected if private sector development investment in NSW is to resume.

We urge your administration to consult industry, including the Urban Taskforce, on the detail of any proposals prior to their introduction into Parliament.

We would welcome an opportunity to discuss these issues further.

Yours sincerely

Urban Taskforce Australia



Aaron Gadiel
Chief Executive Officer

² Office of the Deputy Prime Minister, *Compulsory Purchase and Compensation: Compensation to Business Owners and Occupiers* (2004).