

16 August 2010

Ms Lisa Corbyn
Director General
Department of Environment, Climate Change and Water
PO Box A290
Sydney South NSW 1232

Attention: Noise Policy Section

email: road.noisepolicy@environment.nsw.gov.au

Dear Ms Corbyn,

Re: Draft NSW Road Noise Policy

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.

Planning for urban development in New South Wales has been a dismal failure. Housing is not being produced anywhere near the rate required to meet population growth. Unless we see significant changes in the planning system, we face many more years of drastic undersupply of housing.

Recently released ABS trend data absolutely supports our concerns. NSW remains the stand out poor performer, with only 28,000 private sector homes approved for development in 2008/09, compared with 54,000 in Victoria and 30,000 in Queensland. No Australian capital city approves less new homes per head of population than Sydney. In raw numbers, Melbourne home approvals are soaring, while the number of homes approved in Sydney is almost the same as Brisbane and Perth, despite their smaller population bases.

The Federal Government flagged the need to reform the planning system at the April meeting of the Council of Australian Governments. In particular, archaic and complex planning laws have been singled out as in need of urgent reform.

It is in this context that the introduction of any new government policy must not introduce more complexity, confusion or uncertainty to an already crippled planning system. Unfortunately, the Department of Environment, Climate Change and Water (DECCW) draft NSW Road Noise Policy ("the draft policy") has the potential to further complicate an already confused set of planning regulations.

This submission seeks to highlight our concerns with DECCW's approach to the management of road noise and records the Urban Taskforce objection to the proposal to include land use planning matters within the final version of this policy.

1. The policy must not duplicate nor add to existing guidelines

As you would know, there are already a number of guidelines that seek to deal with urban development in the vicinity of road infrastructure. The Department of Planning has only recently released their guideline *Development near rail corridors and busy roads*. This guideline was yet a further addition to a myriad of rules, regulations, standards and guidelines that development applicants must consult. We argue that while in no way perfect, these guidelines do grapple with urban development affected by road noise. While we have raised some concern of this guideline, we accept that if there must be a guideline dealing with urban development and road noise, then the Department of Planning is probably the most appropriate agency to prepare and administer such policy.

Government must carefully consider the need for yet another lengthy policy document, particularly if the great majority of the policy is “non-mandatory”.

A useful policy is one that is clear and contains only essential information. This draft policy is unfortunately cluttered with non-essential information and in many cases lack clarity.

For instance, the draft policy seems to deal with noise criteria and mitigation strategies for road projects, while at the same time commenting broadly on controls for urban development projects. The comments relating to urban development are so vague that they are open to interpretation, misuse and are generally not useful.

If DECCW is of a mind to consider noise policy and regulation, then it must look carefully at the activities/infrastructure that give rise to environmental noise that may be readily managed or regulated by DECCW.

Put simply, DECCW's policy should deal specifically with noise from the roads and what could be implemented to reduce noise at the source to improve residential amenity. **There are already comprehensive guidelines and standards that must be consulted by building designers and planners that already consider the adoption of noise mitigation in building design.**

Therefore the scope and application of the final version of the policy should be absolutely clear. We suggest it includes an application statement that says something like:

the scope and application of this policy relates only to noise from road related activities ranging from construction of new freeways, to the noise from heavy vehicles, to the noise from individual vehicles fitted with modified exhaust systems. The purpose of this document is to provide assessment criteria for road traffic noise based on protecting amenity and wellbeing. This policy does not consider noise mitigation through building design and/or land use planning. These matters are considered in the Department of Planning's guideline *Development near rail corridors and busy roads*.

Subjective terminology, inconsistency with other guidelines and government policy will do little more than confuse and cloud application. **The Urban Taskforce recommends that when in its final form, the draft policy only be applied to clearly defined road projects, not new and existing urban development.**

Furthermore, having several policies and/or guidelines in place, administered by different government departments, but dealing with the same issue introduces the potential for inconsistency and confusion for consent authorities and applicants alike.

2. Government policy must ensure that development in the vicinity of infrastructure remains attractive

Revised population forecasts reported in the Metropolitan Strategy review predict that our population will reach 6 million by 2036. This represents an increase of 1.7 million since 2006. To come close to meeting housing needs, Sydney will need 770,000 additional homes by 2036.

Government is planning for a significant proportion of Sydney's housing needs to be met through medium-to-high density homes within the existing urban footprint (“infill development”). Furthermore, the Government says 70 per cent of Sydney's new housing is to be supplied through infill development, although in the last five years infill production averaged 84 per cent of new dwelling and greenfield averaged 16 per cent.¹

Unfortunately there is already a deficiency of housing stock and the shortages are getting worse every year. The answer to our problem is obvious; if policy of any type is to be introduced, it must provide the framework that will enable more homes to be built in the inner and middle ring suburbs of Sydney.

If we have any hope of meeting expected housing demand within established inner and middle ring suburbs, Government must ensure that any policy or guideline it introduces encourages additional residential development in the right locations in a timely fashion.

Surely DECCW is aware of the importance of increasing residential densities in established areas, particularly if we are really prepared to take action to reduce dependence on the private

¹ NSW Department of Planning, *Metropolitan Development Program 2008/09 Report* (2010) 74.

motor vehicle. If densities are not sufficiently high, transit stations will not attract enough passengers.² Moreover, without an appropriate mix of complementary land uses, people will be less inclined to use the public transport, as their ability to access a variety of destinations will be limited.³

Research consistently shows that density has a significant impact on the use of public transport. For instance, it was found that every 10 percent increase in population density was associated with about a 6 per cent increase in boardings at transit stations.⁴ Furthermore, most urban services cannot be provided unless there are a certain number of people that can make them viable.⁵

The significance of population and employment densities as predictors of travel behaviour is undisputable. Studies reaffirm residential density as being the most important built environment element which influences travel choices. It should be noted that the doubling of density will reduce the number of cars and vehicle miles travelled per household by 25 per cent.⁶

DECCW should be focusing on ways to encourage increases in urban density within the established areas of the metropolitan region, not on policy that introduces complexity and places added burden on development.

We should not lose sight of the fact that development in the vicinity of key infrastructure, including roads makes good sense and those who choose to reside in these areas make the choice to accept a given urban environment for greater access to public transport and services. 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.

In the most basic terms, if we want development to occur in areas where there is good access to transport and services, residential development in these locations must be supported, encouraged and nurtured. Local planning regulation already makes infill development difficult. The imposition of an unnecessary environmental noise policy that adds little value to land use planning and urban design will simply make matters worse.

In this regard the final version of the policy must not include superficial discussion relating to the determination of land use proposals. It is not appropriate that a DECCW policy makes sweeping statements regarding the assessment of development consents. **In this regard the following sections have no place in this policy:**

- 3.5 "Cumulative impacts from land use developments that generate additional traffic";
- 4.3 "Strategies for land use developments that generate additional traffic on existing roads"; and
- 5.7 "Urban planning".

These matters are already properly considered by consent authorities pursuant to section 79C of the *Environmental Planning and Assessment Act 1979*.

Furthermore, there is already a labyrinth of planning policy, building design and construction guidelines that seek to provide guidance on these matters. We don't need another. DECCW

² Pushkarev and Zupan 1977, in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

³ Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁴ Parsons, Brinckerhoff, Quade and Douglas et al. 1995 in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008].

⁵ Newman, P., 2005., Transit Oriented Development: An Australian Overview. Paper presented at the Transit Oriented Development Conference. Fremantle, Western Australia 5-8 July 2005.

[http://www.patrec.org/conferences/TODJuly2005/papers/Newman%20paper%20REV.pdf, accessed 7 April, 2008].

⁶ Leck, E., 2006, The Impact of Urban Form on Travel Behaviour: A meta-Analysis. *Berkeley Planning Journal*, Vol. 19, pp. 37-58.

should focus on its core business and leave land use planning and urban design to the planners and designers.

3. **Proposed approach to cumulative impacts recommends unlawful action**

Section 3.5 of the draft policy purports to give guidance to planning authorities on how they should deal with the issue of cumulative impacts.

In order for cumulative impacts to be considered in the planning jurisdiction, the impacts must be relevant and there must be some clear statutory basis for their consideration.

It is legitimate to reject a development application when:

- it is objectionable on its own merits; and
- there is “more than just a possibility” of later development applications of the same type.⁷

However, a development proposal cannot be refused when:

- it is unobjectionable in its own right; or
- there is only a “mere chance” that similar development applications may be made in the future.

Cumulative impacts can be important when dealing with the principle of “intergenerational equity”.⁸ When this occurs there is a need to consider cumulative effects if:

- no single event could be said to have such a significant impact that it would irretrievably harm a particular environment; and
- cumulatively, activities *would* harm the environment.⁹

There may also be specific provisions in environmental planning instruments that may compel consideration of cumulative impacts.¹⁰

Most development applications will not be covered by *any* of the above scenarios. In particular, the scenarios set out in section 3.5 make no reference to the (appropriate) existing limitations on the powers of decision-makers in the planning system.

For example, the draft policy says:

Where several separate developments are proposed in an area, and each is expected to contribute to an overall cumulative noise impact, as far as possible these developments should be considered both individually and as a group for the purposes of assessing impacts and selecting mitigation measures. In this way, consent and regulatory authorities can identify the most effective and efficient mitigation strategies for the group as a whole, and the cost of implementing them can be spread more equitably.¹¹

This text is utterly at odds with the existing body of planning law. It purports to authorise cumulative impacts to be considered even when:

- the individual development application is not objectionable; and
- the ultimate cumulative impact will not irretrievably harm a particular environment.

To illustrate how these added specific considerations will impact on planning practice we will offer a hypothetical case study.

A new apartment development is proposed which will involve a minor increase in traffic and not carry an unacceptable noise impact. However, when other local developments that have occurred and are anticipated are considered, there may be a more significant noise impact.

⁷ *Emmott v Ku-ring-gai Municipal Council* (1954) 3 LGRA 177, 182 (Sugerman JJ); *Goldin and Another v Minister for Transport* [2002] NSWLEC 75 [34].

⁸ *Gray v Minister for Planning and Others* [2006] NSWLEC 720; *Minister for Planning v Walker and Others* [2008] NSWCA 224 [56]-[63] (Hodgson JJ).

⁹ *Ibid.*

¹⁰ See for example *Tweed Local Environmental Plan*, cl 8(1)(c), *Hastings Point Progress Association Inc v Tweed Shire Council and Anor*; *Hastings Point Progress Association Inc v Tweed Shire Council and Ors* [2008] NSWLEC 219 [4].

¹¹ DECCW, *NSW Road Noise Policy: draft for consultation* (2010), 26- 27.

While there may be a reduction in the quality of the urban environment as a result of the overall increase in traffic noise, the increase in traffic from that individual proposal is minor and unobjectionable. The additional traffic noise from all of the potential development will not irretrievably harm the local environment. The current law holds that it is irrelevant that previous developments have added to the traffic noise and that subsequent developments may do so. The individual proposal therefore cannot be refused on traffic noise grounds.

However, under the draft policy, the proposal could be refused because even though the traffic impact on the individual development is minor and is separate from other applications, they are supposed to be considered as a group. In a development assessment context, **this approach will be unlawful**. DECCW should not seek to tamper with current planning practice on cumulative impacts.

4. Strategies to minimise noise from traffic associated with development not practicable

Section 4.3 of the draft policy (correctly) observes that:

New industrial, commercial or residential developments that generate additional traffic on existing roads are likely to provide limited potential for noise control, because such developments are not usually linked to road improvements.¹²

But then the draft policy goes on to say that

... strategies to minimise noise from traffic associated with the development should be applied. Mitigation that is implemented should be applied to **the location along the public road** from the land use development up to the location where road traffic noise levels from the development are contained within the existing road traffic noise levels.

Examples of applicable strategies include the appropriate location of private access roads, regulating times of use, **clustering vehicle movements, using 'quiet' vehicles and using barriers and acoustic treatments**. (bold added).¹³

We question the practicality of measures of this kind for a wide range of traffic generating developments, particularly residential, retail and commercial developments. For example, the vehicles of residents or customers cannot be regulated via a planning approval, and clustering vehicle movements is not possible for residential development and impracticable for retail or commercial development. The use of barriers and acoustic treatments along the public road away from a development site will usually not be practicable if such treatments impact on private property outside of the development site.

5. Section 5.7 is a poor cousin to existing DoP guidelines

Section 5.7 of the draft policy seems to be an overly-simplified version of section 3.8 ("Avoiding adverse airborne noise by good design") in the Department of Planning's *Development Near Rail Corridors and Busy Roads – Interim Guideline*.¹⁴ These matters are dealt with in a far more considered way in that guideline.

These comments are offered to encourage constructive dialogue between Government and the development industry and we ask that you accept these comments as our contribution to the policy development process.

Yours sincerely
Urban Taskforce Australia



Aaron Gadiel
Chief Executive Officer

¹² DECCW, *NSW Road Noise Policy: draft for consultation* (2010), 31.

¹³ DECCW, *NSW Road Noise Policy: draft for consultation* (2010), 31.

¹⁴ < http://www.planning.nsw.gov.au/planningsystem/pdf/guide_infra_devtrailroadcorridors_interim.pdf >