

5 September 2011

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

Dear Mr Haddad

## Re: The impact of the Department's review of the Mowbray Road Precinct

I refer to the above issue, which was raised at the Urban Taskforce boardroom lunch on 18 August 2011. As you would recall, you asked me to write to you on this matter so that you could personally review it.

We have been concerned for some time that a group of Lane Cove residents and Lane Cove Council have been actively seeking a downzoning of an area near Mowbray Road from "High Density" R4 to a lower density. The planning proposal supported by Willoughby and Lane Cove councils would downzone the area behind Mowbray Rd, Lane Cove North, south of Mowbray Road, near Batten reserve, from R4 "high density" to a mix of zones - E4 "Environmental Living" and part R3 "Medium Density Housing". Both councils have recently expressed the view that high density residential is not appropriate due to traffic, environmental and bushfire constraints. We note that this land was zoned R4 as a consequence of a modern, standard instrument compliant, LEP.

As a consequence, the Department announced that it will be "working with" Lane Cove Council to prepare a joint strategic review of the Mowbray Road precinct, which is bounded by Mowbray Road, Centennial Ave, Batten Reserve and Willandra Street. According to the Fact Sheet issued by the Department of Planning and Infrastructure in August 2011 the strategic review is to:

- identify the opportunities and constraints to medium or high density development in the precinct;
- examine the existing LEP controls to determine the likely dwelling yield of the precinct; and
- identify any necessary infrastructure works to support the precinct's development.

We are concerned that this announcement is being used by Sydney East Region Joint Regional Planning Panel as an excuse to **refuse all applications** across the Mowbray Road Precinct. At its meeting on 18 May 2011, the panel said that:

**In order to approve development within the Mowbray Road Precinct**, the Panel needs credible independent expert opinion that provides confidence that the roads in the Precinct are adequate to cope with likely evacuation traffic in a bush fire emergency after the Precinct is developed under the current zoning. The second more comprehensive traffic study [to be undertaken by the Department of Planning and Infrastructure] referred to on the council's website may provide the Panel with this confidence (bold added).

It is inappropriate for the panel to make such a sweeping statement. Essentially, **the panel has adopted an informal rule to decline all development proposals that seek to fulfil the zoning objectives set out for this precinct**. The panel is articulating a general policy approach, rather than assessing the application before it. It is not the panel's role to set out new general principles in the course of assessing individual development applications.

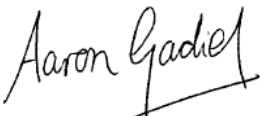
The panel applied its new informal rule to two matters before it at its May meeting. In dealing with one of these matters on appeal, the Land and Environment Court observed that:

Whilst it is obvious council objects to the zoning, nevertheless this is the current zoning under which the application is to be determined. Considering that the LEP has been in existence since early 2010, there is no action that would warrant setting the LEP aside, including the proposed strategic review, which acknowledges that current applications will be determined on the basis of the existing provisions.<sup>1</sup>

The Land and Environment Court clearly appreciates the need to deal with applications appropriately, but the joint regional panel does not seem to have a similar understanding. The panel's thin justification for not dealing with the applications rests on the fact that the Department's review is pending. Without that review, even the panel would have to concede that it cannot ignore the precinct's current zoning.

Surely it is unacceptable to the Department, that the existence of the review is being used inappropriately by joint regional planning panels? We ask that you urgently provide clear advice to the panel as to their obligation in this regard. It is important that the Department's review is not misconstrued as an opportunity to prevent development applications being lodged and dealt with inline with the current zoning. It is also important to industry, that the Department send a clear message that politically-inspired downzonings will not be contemplated.

Yours sincerely  
**Urban Taskforce Australia**



Aaron Gadiel  
Chief Executive Officer

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<sup>1</sup> *Landmark Group Pty Ltd v Lane Cove Council* [2011] NSWLEC 1245 (22 August 2011) [41].