

4 May 2012

Mr Sam Haddad
Director General
Policy, Planning Systems and Reform
Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Email: delegationsandplanmaking@planning.nsw.gov.au

Dear Mr Haddad,

Re: Draft policy statement - Plan-making and delegations

The Urban Taskforce represents 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 government and the community.

The Urban Taskforce has reviewed the draft policy statement - Plan-making and delegations ("the draft policy statement") and provides the following comments for your consideration.

It is understood that the draft policy statement proposes that a number of more routine plan making functions will be delegated to councils to make in certain circumstances. These include:

- spot rezonings consistent with an endorsed strategy;
- reclassifications of land supported by an open space study;
- heritage LEPs supported by an endorsed study;
- section 73A matters (amending references to documents/agencies, minor errors and anomalies); and,
- mapping alterations/corrections.

Delegation of these plans to councils would mean the Department of Planning and Infrastructure will generally play no further role in the plan making process following the issuing of a Gateway Determination.

It is also understood that the draft policy statement will introduce a system of independent review of local council and departmental planning decisions. We are advised that the proponent or council will be able to seek a:

- **Pre-Gateway review** where the proponent could seek an independent review by the Joint Regional Planning Panel or Planning Assessment Commission, if a council decides not to agree to send a planning proposal to the department, or where the council fails to make a decision on the proponent's request within 60 days; or,
- **Gateway review** where a council or proponent may seek a review of a Gateway Determination.

The Urban Taskforce is pleased to indicate in principle, support for such initiatives. These reforms to the plan making process are generally consistent with Urban Taskforce policy. We have consistently sought the introduction of reforms that would facilitate more efficient consideration of spot

rezonings and for the inclusion of an appeal process for the review of rezoning proposals. However, while indicating our support for the introduction of the proposed changes to the plan making process we believe the detailed implementation of the changes could be improved as outlined below.

1. Potential for more efficient spot rezoning

The Urban Taskforce is often concerned with the inefficiencies in the current spot rezoning process. Excessive red tape often makes logical and justifiable rezoning slow and costly. However, the introduction of a system that enables the local authority to exhibit and finalise a spot rezoning after a gateway determination that is either:

- consistent with an endorsed strategy; or
- consistent with surrounding zones; or
- in accordance with broader government policy; or
- cover matters that will not have any significant impact on the environment or adjoining land,

will be welcomed by our membership. However, we remain concerned that the efficiency of a rezoning proposal will be greatly influenced by the actions of the local council and Department. That is, the planning proposal will still need to be prepared by a council and the Department will still need to issue a gateway determination. Further streamlining is possible if the proponent is able to prepare the planning proposal in accordance with published guidelines for submission directly to the Council for determination.

Notwithstanding the above, the most efficient means of streamlining the plan making process and reducing the need for spot rezonings would be to make a shift towards the wider uses of flexible land use zone, such as the standard instrument B4 mixed use zone.

The Productivity Commission supports a more flexible approach to zoning which is able to respond to the continually changing market place and accommodates new industries. Unfortunately the manner in which zone objectives and prohibitions are currently being used within the NSW planning system severely limits the ability for new and innovative formats or land uses to locate in many areas. Having very specific permissibility tables and long lists of prohibitions means that new and innovative land use, even if meeting zone objectives, may require a rezoning prior to being considered.

The obvious solution is to move away from specific, tightly defined land use zones with a long list of prohibited uses. Rather, zones should be flexible, permitting a mix of land uses. A flexible mixed use zone would contain clear objectives and a list of permitted uses. Any use that is permitted and complies with the relevant development standards should be entitled to an automatic approval. All other forms of development, not specifically listed as permitted should be considered against the zone objectives and subject to merit based assessment.

Such a system would significantly reduce the need for spot rezonings and also provide a planning system that is responsive to community need.

2. Introduction of reviews is a step in the right direction

The Urban Taskforce seeks the urgent introduction of a means for the independent review of rezoning determinations. Currently, the local authority and Department have the final say on rezoning proposals and the applicant is without any avenue for review or appeal. We argue that rezoning applications should be considered in the same way as a development application that does not strictly comply with local development controls. That is, the applicant should be given the opportunity to demonstrate that a development proposal, even if non-compliant, is worthy of support and be subject to an open and transparent merit assessment with a right of appeal.

The draft policy statement does not introduce such a system, but it is a step in the right direction. The proposed **Pre-Gateway review** process may address circumstances where a landowner's requests for spot rezoning is ignored, arbitrarily rejected or delayed without any good reason. However, we understand that the proposed system is to be introduced without any changes to legislation or over-arching environmental planning instruments and that it is to be based entirely on an administrative protocol, adopted by the Minister. Hence, as the proposal is not law, the review process is significantly watered down.

Furthermore, the request for a review will be given through the Department who will assess all requests against a subjective assessment criteria and only provide them to a joint regional planning panel if the proposed rezoning meets the criteria.

Our initial review of the assessment criteria suggests that it would be difficult to pursue most greenfield development or out-of-centre retail development through this process. The criteria favours infill development, particularly if the LEP change required is a simple adjustment of mapped boundaries, land use controls or permitted land uses.

If the rezoning proposal is successful and passes the screening process it will be referred for review by the JRPP. The JRPP will provide advice to Minister. If the advice is negative, the proposal will go no further. There is no further avenue of appeal.

The proposed **Gateway review** which allows a council or a proponent to seek a review of a gateway determination is also seen as a step in the right direction. However, it is apparent that while the review process will require the preparation of reports and advice, the Minister and Director-General have the final say.

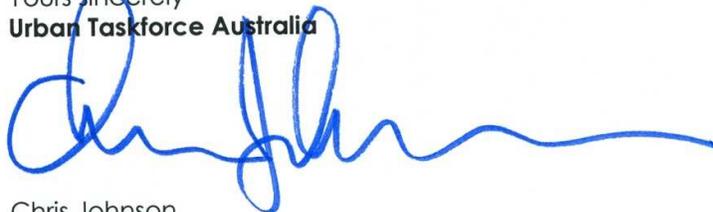
This review process is in no way as robust as the current system of development application appeals in the Land and Environment Court, which in reality will limit the independence of the review process.

We are pleased to see that the Government is making steps to improve the plan making process and the Urban Taskforce considers that the draft policy statement - Plan-making and delegations, with some further refinement and clarification, to be a step in the right direction.

Should you wish to discuss any of the above in more detail, please feel free to contact Gilbert de Chalain on telephone number 9238 3937 or the undersigned on telephone number 9238 3927.

Yours sincerely

Urban Taskforce Australia



Chris Johnson
Chief Executive Officer