

15 October 2015

Department of Planning and Environment

Executive Director – Regions

GPO Box 39

SYDNEY NSW 2001

## **Pre-Gateway Review – Findings and Recommendations Report**

Thank you for the opportunity to review the *Pre-Gateway Review – Findings and Recommendations Report*.

The Urban Taskforce is supportive of the pre-gateway process and the Department's aim of improving this process, increasing transparency and reducing timeframes through this review. Our major concern is that there is a fundamental flaw to the pre-gateway process, where the stated objective of allowing for a review of a proposed rezoning 'considered by an independent third party' is not achieved.

In order to ensure a fair and transparent review of a decision by an individual council, it is essential that an independent third party is appointed to undertake this review. The membership of the Joint Regional Planning Panel (or the equivalent panel within the Greater Sydney Commission) includes two (almost half of the entire panel) representatives of the council which refused the rezoning proposal in the first instance. The report on the proposed rezoning for review by this panel is prepared by this same council. This report could not be considered truly objective or independent. It is essential that the Planning Assessment Commission or a similar body made of truly independent representatives undertakes the review rather than the JRPP (or equivalent panel within the Greater Sydney Commission). Our detailed submission outlines this important issue and makes comments on the overall report.

We are always willing to provide a development industry perspective on planning and property development issues and we would welcome the opportunity to meet and discuss these issues in more detail. Please feel free to contact me on telephone number 9238 3927 to discuss this further.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in blue ink, appearing to read 'Chris Johnson', with a long horizontal flourish extending to the right.

Chris Johnson AM

Chief Executive Officer

## **General comments**

Note:

Since this report was released, the Department of Planning & Environment has announced that the Joint Regional Planning Panels (JRPPs) within the Sydney metropolitan area will be disbanded. The role of the JRPPs with regard to assessment and plan making would be included in the functions of the Greater Sydney Commission, including pre-gateway reviews, apart from the Central Sydney Planning Committee for the City of Sydney. For the purposes of this submission, we have referred to the 'planning panel within the GSC' where previously this would have been the JRPP. For areas outside of the Sydney Metropolitan Area we understand JRPPs remain in place.

### ***Retention of the pre-gateway process is essential***

- The Urban Taskforce strongly supports the retention of the pre-gateway process and believes some of the proposals suggested below will improve the process, although there is significant room for improvement. It is essential that a mechanism is available to review council's decisions. At times council's decision making processes could be unduly influenced, or appear to be influenced, by local politics and it is essential that an alternative process is available to seek review of their decisions.

### ***Stronger strategic planning by the state government is needed***

- Stronger, expedient strategic planning is also needed to prevent the ever-increasing reliance on re-zonings. Strategic plans should be reviewed and updated frequently, and be implemented swiftly through revised Local Environmental Plans (LEPs). State government has not provided strong leadership in strategic planning in recent years and this is resulting in a proliferation of rezoning applications as zones and development controls are often outdated or inappropriate.
- Recent planning initiatives introduced by the state government are leading to a disconnect between local and state planning strategies and out of date and inconsistent local environmental plans. Examples of these include Priority Growth Precincts, the Draft Parramatta Road Urban Transformation Strategy, the Sydenham to Bankstown Urban Renewal Corridor Strategy and the draft North West Rail Corridor Strategy. These state government planning strategies will often propose much more robust development than is currently permitted under existing local environmental plans. It takes several years to bring local environmental plans in line with state planning strategies and during this lag in

time, the only way for development to proceed and take advantage of the additional densities or height proposed in the state level planning strategy is through a planning proposal. The pre-gateway process is the only mechanism the proponent (often a member of the Urban Taskforce) can appeal council's decision if they refuse the rezoning.

### ***The pre-gateway review process must be an undertaken by an independent panel***

- The pre-Gateway review process was introduced to ensure that rezoning proposal which demonstrated strategic merit could be supported after being 'independently' considered. Under the policy for pre-Gateway reviews all eligible requests seeking a review are considered by an independent third party, being the Joint Regional Planning Panel (JRPP) or the Planning Assessment Commission (PAC).
- However, the Urban Taskforce believes that the JRPP could not be considered an independent third party. Two of the members are representatives of the Council which refused the rezoning when initially presented to council for review and assessment. The report for the JRPP to review when assessing the pre-gateway proposal is prepared by the council which refused the rezoning proposal. The independence and objectivity of this report is questionable. The only truly independent third panel is the PAC.
- The Urban Taskforce recommends that the Greater Sydney Commission should assemble a panel of experts that are independent from council and select a PAC from this group to undertake pre-gateway assessments. In areas of NSW outside the Sydney Metropolitan Area, the PAC should undertake the assessment.

### ***Clear performance indicators are crucial***

- The timely assessment of planning proposal should be a key performance indicator for the Planning Assessment Commission and the Planning Panel within the Greater Sydney Commission. The time taken to undertake each stage of the planning proposal process to the eventual rezoning of the subject site should be reported and publicised on a regular basis, in a clear and transparent manner.

### ***A review of post-gateway processes is required***

- A review of post-gateway processes is also needed. It is significant that rezonings are often still delayed after Gateway, when delegated back to Council for public exhibition and finalisation of the LEP amendment. Our members cite many requests by councils to extend the plan making deadline and this major inefficiency in the planning process has

yet to be addressed. We can provide examples where the LEP amendment has not been made several years after the initial gateway decision. The developer has often invested hundreds of thousands of dollars on planning and investigative studies at this stage and is 'left hanging' waiting for an outcome from Council.

### ***Opportunity to amend planning proposals must be included***

- The Report does not appear to provide the opportunity to proponents to amend their planning proposals to address issues raised during the assessment process. The proponent must be given the opportunity to take into consideration proposed changes and make amendments to their proposal if required.

### **Key proposals for change**

- 1. The Department will no longer undertake an initial assessment***
- 2. All review requests should be automatically referred to the relevant JRPP / PAC within 3 days of receipt***
- 3. The Council will be notified upon receipt of an application and requested to provide comments, additional information and confirmation that the proposal is consistent with that considered by Council to the JRPP.***

### ***Comment:***

- The removal of the Department from the initial assessment process may potentially to decrease reporting times and prevent ongoing delays between the Department and the former JRPP, now the Planning Panel of the Greater Sydney Commission (GSC) or the Planning Assessment Commission (PAC).
  - However, under the current resourcing arrangements, there appears to be limited capacity for the GSC and PAC to meet timely responses, particularly for the assessment of planning proposals which are not subject to statutory time frames. Details outlining the resourcing and skill set of the employees of the GSC will assist in alleviating these concerns.
- 4. A revised strategic merit test will be applied by the JRPP / PAC to clarify in more detail the basis upon which a review can be considered, including taking into account the time that has elapsed since the last zoning of the land took place.***
  - 5. Proposals that do not meet the strategic merit test will not be able to proceed to Gateway.***

**6. Those that do meet the new strategic merit test will also have to meet the existing site-specific merit test before they can be recommended for a Gateway by the JRPP / PAC.**

**Comment:**

- There revised strategic merit does not give consideration to changes that have occurred since the last LEP was completed. For example, the provision of additional infrastructure, shifts in the demographic composition of the community or large scale financial changes such as the Global Financial Crisis. The strategic merit test must be amended to include consideration of evidence of any changes that affect assumptions upon which the existing LEP are based.
- A new element of the strategic merit test is the consideration of the time elapsed since the community has been consulted in the last LEP. This approach overlooks the fact that many standard instrument LEPs have been introduced relatively recently without an adequate review of planning controls for key areas. For example, when the *Ashfield Local Environmental Plan 1985* was converted to the standard instrument LEP (the *Ashfield Local Environmental Plan 2013*), the height of buildings within Ashfield town centre was retained at 6-8 storeys. This development control was nearly 30 years old and clearly inappropriate for the social and economic environment of Ashfield in 2013. The measure of time between that has elapsed since a site was rezoned is not an accurate guide to the strategic merit of development controls.
- Even if an LEP has been recent and there have been no changes in circumstances, and the LEP is not a 'conversion' of an old instrument into the standard instrument template, it should be open to a proponent to put forward a change in planning controls if:
  - The proponent can show that significant additional analysis has now be carried out in relation to the site, and its context, beyond the work that was used to justify the existing planning controls were introduced, and / or
  - The existing planning controls for the site were not the subject of detailed consideration / debate by the council or the community when they were introduced.
- There is also no clarity regarding what is considered to be 'recent' consultation. The Department must clearly clarify what is meant by 'recent' consultation'
- The strategic merit test requires consistency with relevant regional and subregional and local strategies. The Minister is yet to provide updated subregional strategies / district plans and as a result there may be delays in assessing pre-Gateway reviews until these

are finalised. The Department must draft and release the subregional strategies / district plans as soon as possible to ensure they do not delay the use of the revised pre-gateway process.

- 7. The power to appoint an alternative relevant planning authority will be delegated to the JRPP or the PAC (in the case of the City of Sydney)**
- 8. Plan-making powers will be delegated to the JRPPs and the PAC. This is consistent with the delegations to councils, as relevant planning authorities, to make plans.**
- 9. Requests for review will be uploaded to the JRPP or the PAC public application tracking system within five working days of receipt**
- 10. If the JRPP / PAC recommends that a proposal should proceed to gateway, it will concurrently notify the relevant council and ask if it will accept the role of relevant planning authority to take the proposal to the Gateway and then finalise the proposal.**

**Comment:**

- A council which has previously rejected a planning proposal should not be invited to be the relevant planning authority. This role should be given to the GSC or the PAC, and the requirement for the GSC or PAC to take on this role should be included in the legislation setting out the role and function of the GSC.
- Some of the longest delays have been experienced at this stage of the process. In many cases, the council will reluctantly take back the RPA role, only to refuse to support the Planning Proposal after exhibition.

- 11. Councils will have 42 days to accept the relevant planning authority role; otherwise the relevant JRPP/ PAC will appoint itself as the relevant planning authority**

**Comment:**

- The proposed changes suggest that once a decision has been made to refer an item to the gateway, Councils are invited to be the relevant planning authority and have 42 days to respond. Councils which have previously rejected the planning proposal may use this as an opportunity to further delay to process. The Urban Taskforce does not support the 42 day time period and suggests that this is removed.

- 12. The Department's Guide to Preparing Planning Proposals and the Guide to Preparing LEPs will be amended to note that in specified circumstances councils consider the benefit of**

***community participation at an early stage prior to making a decision on the merits of a spot rezoning or LEP amendment.***

**Comment:**

- The proposal to enable a council to undertake early community consultation under 'specified circumstances' may result in a planning proposal being subjected to review by the community without all relevant information, such as technical reports being available for review. There is no clear indication as to what the 'specified circumstances' are. This step in the system will add delays, costs and complexity to the process. The timing of the existing consultation process allows for the community to be better informed about the proposal and its implications and should be retained as the only consultation.