Urban Taskforce
AUSTRALIA

5 September 2011

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

Dear Mr Haddad

Re: Draft *State Environmental Planning Policy (State and Regional Development) 2011*

Thank you for the opportunity to comment on the above document, via a public exhibition process.

Our specific concerns are set out below.

1. **There needs to be an anti-NIMBY provision**

When residential development proposals are opposed by local politicians and council officers, they often discount the costs that will largely be borne by others, outside their local government area. These costs include:

- increased housing pressures across the region, reduced housing choice, higher rents and greater overcrowding in the existing housing stock;
- reduced competition amongst land owners looking to sell development sites (reducing the level of development overall and increasing the cost of development which is passed onto purchasers of developed properties); and
- a greater public infrastructure burden (for the state and other councils) as more households are forced to locate themselves in suboptimal locations, relative to their jobs, social networks and existing public infrastructure.

For example a $13 million 60 home apartment development would typically house people from across a region, not just the existing residents of a local government area. In Sydney's inner suburbs house prices average $1.3 million each, while apartments average $650,000. It's not healthy to allow wealthier house owners to use their local council to block more affordable housing and deny middle income earners the chance to enjoy inner suburban living. Every home that can't be built in the inner suburbs adds to Sydney's congestion pressures by forcing people to live further away from their work, friends and family.

A $15 million greenfield lot subdivision for 270 homes in one local council area in Western Sydney would help meet the city's need for a supply of houses with private backyards. Like it or not, geography dictates that any person desiring a new release house will need to look to a handful of Western Sydney councils to satisfy their needs. This may not always accord with the wishes of local voters, but new houses satisfy an important social need for the city as a whole.

When new commercial or retail development is opposed by local politicians or council officers, costs borne largely outside the local government area can include:

- increased motor vehicle use;
- increased congestion;
- reduced competition in the retail sector with higher prices for consumers; and

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- higher retail and commercial rents.

Again, these costs will not be as important to a local council, as the (political) costs that will be borne directly by the council if approval is given.

For example a new $16 million large format supermarket will meet the needs of people resident in a large catchment extending well beyond the boundaries of most NSW councils. A single council who blocks such a development reduces the access of many people to competitively priced, low-cost, groceries (The Australian Competition and Consumer Commission has concluded that the level of price and non-price competition in the grocery market might be enhanced if there is an expansion in the number of large format supermarkets.) Similar issues are raised in relation to a $19 million large format retailer selling hardware, nursery products and building supplies.

A new $13 million four level office building with 4,700 square metres of space will normally serve as a workplace for people across a region, and provide an opportunity to host businesses whose customer base extends well outside the boundaries of the local council.

The "state significant development" stream should provide an opportunity for projects of regional significance to be assessed at arm's-length from parochial local politics.

We would suggest that an additional clause be added to schedule 1 of the SEPP, which identifies categories of state significant development. We regard this as an anti-NIMBY (not-in-my-backyard clause). This new clause would be written as follows:

Development providing for the needs of persons who are not presently residents

Development in relation to which the Planning Assessment Commission determines:

(a) it is likely that a substantial proportion of the persons whose needs are to be provided for by the development are not presently resident in the local government area in which the development is to be located; and

(b) there is a risk that, without determination under this clause, a development application:

(i) may not be determined expeditiously; or

(ii) may be determined by refusing consent to the application;

for reasons that that include strong objection by existing residents or businesses; and

(c) that the Commission is satisfied the development's contribution to regional planning objectives would not be insignificant.

2. Narrowing of state significant development categories is not appropriate

We do not support the narrowing of the existing categories of "state significant development". In particular, we are concerned that:

- warehouse or distribution centres that were previously Part 3A projects when they exceed $30 million in capital investment value, will now be subject to a $50 million threshold for state significant development status;
- some manufacturing--related developments (e.g. research or development) that were previously able to be regarded as Part 3A because they employed more than 100 people may not be "state significant development";
- the Part 3A threshold for tourism development in sensitive areas is to be increased (for the new state significant development stream) from $5 million to $10 million and the ability to secure major project status on the strength of employing 100 or more people will be done away with.

These changes should not proceed.

3. "Rail corridor" should be defined

We note that commercial and residential premises within a rail corridor or associated with railway infrastructure, will still receive major project status if it has a capital investment value of more than $30 million.

However, we note that "rail corridor" is not defined. We recommend that, for the purposes of this clause, "rail corridor" be defined as any location that is within, or is contiguous with land that is within, 800 metres walking distance of a train station.

Ideally this provision would also be extended to similarly cover high frequency bus corridors.

4. Absence of transitional provisions for existing applications before the joint regional planning panels

As you would be aware, one consequence of the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* is that development with a capital investment value between $10 million and $20 million will no longer routinely be under the authority of joint regional planning panels.

Irrespective of the merits of this policy change, it should not have retrospective effect. That is, where matters are already the subject of a development application they should not be transferred out of the joint regional planning panels authority mid-stream. This will be particularly relevant, where the matters have already been presented to the panels and they have asked for further work (e.g. the preparation of draft conditions of approvals, etc).

A head of power exists for savings and transitional regulations to be made, and we urge the government to make such a provision to ensure that existing development applications are still dealt with appropriately.

5. Problems with the provision related to staged development and joint regional planning panels

We support the intent behind the proposed clause 22.

This clause seeks to clarify that development which is subject to a staged development application is valued based on the whole project's value, rather than the value of separate development application that forms part of the staged development application.

However, it seems that section 23G(2A) (to be inserted by the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*) may prevent this provision from operating as intended. That subsection says that an environmental planning instrument may only confer a council's functions as consent authority on a regional panel if the development is of a class or description is set out in Schedule 4A to the amended Act. If the intent of clause 22 adds to Schedule 4A, it is likely to run afoul of section 23G(2A). If it doesn't add the Schedule 4A, it's hard to see how it serves a purpose, given that clause 20 applies Schedule 4A in full.

We think clause 22 is an important provision, and recommend that the amending act be amended via the statute law revision process (to give greater certainty) before the amending Act is commenced.

Thank you for the opportunity to comment on this matter.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer