



Mr Charles Casuscelli MP
Committee Chair
Committee on Transport and Infrastructure
Parliament House
SYDNEY NSW 2000

Dear Mr Casuscelli

I refer to your letter dated 13 April 2012 requesting a response to further questions from the Committee on Transport and Infrastructure relating to its inquiry into the utilisation of rail corridors.

In responding to these questions, I'd also like to take the opportunity to re-iterate the departments in principle support for the concept of development around railway stations, recognising the significant physical and operational challenges associated with this form of development.

I trust that this response provides you with the information that you are seeking.

Yours sincerely


Giovanni Cirillo
Executive Director, Urban Renewal & Major Sites

Legislative Assembly Committee on Transport and Infrastructure: Inquiry into the utilisation of rail corridors

Department of Planning and Infrastructure response to additional questions from the Committee

Question 1

What is the most common approvals path a rail corridor development proponent would go through? What are the general timeframes around the various approvals processes? What scope is there for approvals processes to be shortened or simplified?

The assessment path that residential and/or commercial development in or adjacent to a rail corridor takes depends on the nature of the proposal, including consideration of size, nature and complexity. In general, development that requires consent is classed as either local, regional or state development. For local development, the relevant council is the consent authority, for regional development the relevant Joint Regional Planning Panel (JRPP) is the consent authority and the Minister for Planning and Infrastructure is the consent authority for state significant development. In addition to these broad types of development, proposals can also require additional assessment processes. For example, development may also be classed as designated development, integrated development or require concurrence from an agency.

Local and regional development follows the assessment process outlined in the Environmental Planning and Assessment Act 1979, which comprises the following key stages under part 4:

- Application
- Public participation
- Evaluation
- Determination.

Generally, the assessment timeframes for local and regional development is 40 days, or 60 days for designated development, integrated development or development that requires concurrence.

State significant development is identified in State Environmental Planning Policy (State and Regional Development) 2011 and generally follows the process for local and regional development, however is to be determined within 90 days.

Specific other timeframes within the approvals process that can impact upon overall length include:

- for state significant development, the department must issue Director General Requirements to an applicant within 28 days of receiving a request for them. Following this the applicant prepares the DA for lodgement
- public exhibition for local and regional development that is also designated development and state significant development must occur for 30 days.

- the applicant has 25 days to respond to a request for further information from the consent authority, concurrence agency or approval authority
- the concurrence authority generally has 40 days in which to notify their decision whether to grant concurrence.

Opportunities to shorten or simplify the development application (DA) process may occur through the current review of the NSW planning system. Other opportunities to shorten the process include:

- streamlining consultation with RailCorp
- reducing timeframes for concurrence as part of the local and regional planning process
- proactive identification and zoning of rail corridor land for development strategically ahead of the DA process. This can engage local communities, raise awareness and allow issues to be worked through, potentially avoiding a high number of objections and consequential delays as part of the subsequent DA process.

Question 2

The Committee has heard that a social impact analysis should be undertaken as part of the approval process for rail corridor developments. Does this already occur? Who is responsible for doing such an analysis?

Social impact assessments are often required for significant development in or adjacent to rail corridors. For example, the department issued Director General Requirements (DGRs) for the State Significant Site at North Ryde Station that expressly required the submission of a social impact assessment. Proposals for other significant development related to rail corridors, including at Wollie Creek and North Penrith, also included the address of social impacts. Social impact assessment usually involves the undertaking of a community profile and the subsequent assessment of the needs of the community, in particular the provision of social infrastructure such as schools, community facilities and open space.

The development proponent is responsible for preparing the social impact assessment. Due to the technical nature of assessments, preparation is usually undertaken by suitably qualified and experienced specialist consultants.

Question 3

The Department's submission mentions (page 3) that the approvals process is often delayed because of the need for specialist reports. What kinds of specialist reports are needed that other major developments don't require? Why wouldn't a proponent have completed all the necessary reports before applying?

Development in or near rail corridors is within a more challenged environment than other locations. This can be due to the complex construction practices and techniques

required for the development to be structurally sound and produce no adverse impacts on the operation of the railway corridor both during construction and afterwards.

It is also a potentially more challenged environment for future building occupants in terms of noise and vibration. For example, the 'Development near rail corridors and busy roads – interim guideline' identifies that specialist acoustic reports may be required for development in rail corridors. These are not required for all residential and commercial development located elsewhere.

In addition to noise, other reports that may be required on matters that most other types of development do not need to address include:

- geotechnical
- safety
- vibration; and
- electrolysis (electricity used to power trains corroding metal structures).

Delay can be due to the time it takes for complex and highly specialised reports to be prepared. This usually occurs after the purchase of the site but before the lodgement of a DA, which leads to increased length and cost of the project, for example through greater holding costs. The complexities involved in development in or near rail corridors are known, and these challenges represent a practical risk that needs to be accounted for before making a decision to purchase during due diligence investigations.

Question 4

In their submission Transport for NSW states (page 14) that there are a number of uses that are incompatible with rail corridor developments, such as health services using electro-magnetic frequencies. What other uses would be considered incompatible? Are any uses prohibited in the conditions for approval?

Due to the effect of electro-magnetic frequencies, 'defence communication facilities' are considered incompatible with rail corridors.

Whilst other uses are not identified as being incompatible, legislation requires that some uses achieve appropriate acoustic amenity in order to be suitable for their intended occupants.

Under State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP), a consent authority must take into consideration *Development near rail corridors and busy roads – interim guideline* 2008 (the interim guideline) before determining a development application for the following uses on land in or adjacent to a rail corridor that the consent authority considers is likely to be adversely affected by rail noise or vibration:

- a building for a residential use
- a place of public worship
- a hospital
- an educational establishment or childcare centre.

The Infrastructure SEPP specifies that the consent authority must not grant consent to a building for a residential use unless certain noise standards are satisfied. These standards are included as an attachment to this response for information purposes.

The interim guideline also refers to specific recommended noise standards for a place of worship, a hospital, an educational establishment or a childcare centre.

Question 5

In cases where the Minister is not the consent authority, how does the Department provide strategic land use planning input into the approvals process?

In cases where the Minister is not the consent authority, currently the Department has limited ability to provide strategic land use planning input into the approvals process. Apart from through a rezoning process, the only situation where the Department is able to have direct involvement is where it is an affected landowner. Apart from this, there is no requirement for the Department to be notified of development in a rail corridor. It should be noted that the provisions of State Environmental Planning Policy (State and Regional Development) 2011, which provides that the Minister is the consent authority for development over \$30million, is likely to capture many types of development in rail corridors due to their increased complexity and cost.

The Minister and the Department do provide strategic land use planning input for railway corridors through the gateway determination process for the preparation of environmental planning instruments. This is undertaken in a strategic manner, and occurs in advance of DAs being prepared and lodged.

Question 6

The Department's submission suggests (page 4) that following the development of the NSW Long Term Transport Master Plan there could be a proactive and collaborative process to identify potential sites for rail corridor developments. Is this something that is planned to happen or just a suggestion? Who would lead such a process? How would this process reduce the reliance on the Infrastructure SEPP?

As part of the New South Wales Long Term Transport Master Plan, Transport for New South Wales (TNSW) will have an opportunity to strategically identify potential sites for future rail corridor development. This will require subsequent more detailed investigation. The department envisages that this investigation will be led by TNSW, and that they will consult with other relevant agencies.

This proactive and strategic identification of potential sites would reduce reliance on the Infrastructure SEPP.

Question 7

The Committee has heard concerns about the approvals process for the Chatswood rail corridor development. What involvement did the Department have in this project? To what extent was the Council included in the approvals process?

Given that the Chatswood Transport Precinct Project was state significant development under the then State Environmental Planning Policy (State Significant Development) 2005, the Minister was the consent authority for determining this DA. Approval from the local government authority, the Willoughby City Council (Council), was also required under the Roads Act 1993.

The DA was referred to Council in accordance with clause 88(1)(b) of the Environmental Planning and Assessment Regulation. Council provided a submission on the DA, which was considered by the department when assessing the DA, along with compliance with Council's planning controls. Conditions of the DA required that the proponent undertake further work with Council, including:

- the development of a heritage interpretation strategy and public art strategy
- the establishment of a public domain working group
- obtaining the approval of Council for a number of further plans, including a detailed design and landscape plan for the nearby Garden of Remembrance.

Question 8

The Department's submission mentions (page 2) that the Infrastructure SEPP improves 'efficiency, service delivery and infrastructure approval timeframes.' Could you explain further how it does this?

The Infrastructure SEPP has improved efficiency by:

- consolidating 20 existing SEPPs into a single environmental planning instrument
- providing specific planning and approval processes throughout New South Wales for 25 types of infrastructure such as railways, avoiding reliance on individual local government EPIs that may vary.

Infrastructure approval timeframes have been improved by:

- avoiding the requirement for land to be rezoned to permit residential, retail or business premises in a rail corridor if the development is wholly or partly above a rail station, even if the land is included in an infrastructure zone
- identifying work that is of minimal environmental impact, such as maintenance and minor upgrade purposes, as exempt or complying development, which avoids the need to make a development application
- providing a consistent and efficient planning regime throughout NSW so that public infrastructure providers do not need to rely on individual local council LEPs which may vary. The Government can therefore ensure increased investment in and maintenance of infrastructure resulting in better service delivery outcomes

- providing greater flexibility than LEPs in the location of infrastructure and services by identifying a broad range of zones where types of infrastructure are permitted
- allowing for the efficient development, redevelopment or disposal of Government-owned land. This is achieved by permitting additional uses on State land allowing adjacent land uses to be undertaken on State land (except conservation lands) if the uses are compatible with surrounding land uses

These improvements in efficiency and timeframes encourage increased investment and maintenance of infrastructure, which enhances service delivery.

Question 9

Is it likely that a rail corridor development would always be considered a project of state significance and therefore fall under the State and Regional Development SEPP?

Development within a rail corridor or associated with railway infrastructure for commercial premises or residential accommodation is state significant development where it has a capital investment value of more than \$30M. The increased complexity and cost of development in railway corridors increases the likelihood that it may reach the State Environmental Planning Policy (State and Regional Development) 2011 (the SEPP) criteria. For example, a recent development proposal for a commercial and retail development above Wynyard Station was estimated to have a capital investment value of \$416M and a mixed commercial, retail and residential development adjacent to West Ryde Station had an estimated capital investment value of \$66M. However, project costs are entirely dependant upon the unique characteristics of each development, with the cost linked to the size of the land and the size of the development. Some types of development, such as that adjacent to rail corridors, are less likely to be state significant. On this basis, it can not be generalised that rail corridor development would always be considered a project of state significance, and each project must satisfy the criteria within the SEPP.

Attachment 1: Noise Standards

Although clause 87 of State Environmental Planning Policy (Infrastructure) 2007 does not state that the uses are incompatible, if the development is for the purpose of a building for residential use, the consent authority must be satisfied that appropriate measures will be taken to ensure that the following LA levels are not exceeded:

- in any bedroom in the building: 35dB(A) at any time 10pm-7am
- anywhere else in the building (other than a garage, kitchen, bathroom or hallway): 40dB(A) at any time.