

Submission

No 61

INQUIRY INTO THE UTILISATION OF RAIL CORRIDORS

Name: The Hon Brad Hazzard
Position: Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW
Date Received: 19/03/2012



The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW

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

11/21876

Dear Mr Casuscelli

I refer to your letter concerning the Committee on Transport and Infrastructure's inquiry into the utilisation of rail corridors. I thank you for the opportunity to make a submission on this important issue.

The land above, adjacent to and in the walking catchments of existing and planned railway stations provides opportunities to sustainably accommodate the housing, jobs and services that will be required to support Sydney's growing population into the future. These highly accessible locations are suitable to support the expansion of our city, without needing to encroach further onto valuable agricultural land on the city fringe. They also enable us to maximise the benefits of government investment in infrastructure.

There are however significant physical and operational challenges that are unique to this form of development that can make it more difficult and less attractive to the market, in comparison to other sites which do not face these constraints.

The attached submission provides an overview of the existing planning framework that facilitates this development and outlines some potential opportunities for improvements to identify opportunities for this development to occur throughout the Greater Metropolitan Area.

Should you have any further enquiries about this matter, I have arranged for Mr Giovanni Cirillo, Executive Director – Urban Renewal and Major Sites of the Department of Planning and Infrastructure to assist you. Mr Cirillo can be contacted on telephone number (02) 9228 6299.

Yours sincerely

HON BRAD HAZZARD MP
Minister

16 MAR 2012

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

Department of Planning & Infrastructure Submission

29 February 2012

The Department of Planning and Infrastructure supports the concept of providing opportunities for additional housing and job-related uses within the walking catchment of railway stations, on land adjacent to rail corridors and the use of air space above, as it provides opportunities for progressing a broad range of land use and transport objectives contained in strategic land use plans.

Strategic context

The *Metropolitan Plan for Sydney 2036* is the integrated land use and transport strategy that provides the long-term planning framework to sustainably manage the city's forecast growth by providing for 760,000 more jobs and 770,000 additional homes by 2036.

The *Metropolitan Plan* relies heavily on the intensification of residential and employment land uses around transport facilities, particularly heavy rail which provides the highest land capability. The high level of accessibility provided by rail corridors makes adjacent space and land valuable. It is valuable in monetary terms, but also because of the opportunities it provides to integrate transport and land use activities. Strategic land use planning in the Greater Metropolitan Area of Sydney is now focussed on concentrating activity (in the form of employment, housing, shops and services) in urban centres that are well served by public transport. Under the Metropolitan Plan, 80% of all new homes must be provided within the walking catchments of existing and planned centres with good public transport accessibility. There is also a continued focus on the use of rail to move freight – both between urban areas; and within urban areas, in conjunction with intermodal terminals.

The accessibility of land close to train stations typically makes it an appropriate location for higher density mixed use development. Land which is not close to a train station is less suitable. The Metropolitan Plan makes clear that, along public transport corridors, urban renewal will be focussed within the walking catchments of centres. Centres are typically focused on public transport infrastructure – usually in the form of a train station – or otherwise in the form of bus services. Development in these strategic locations is critical in order to provide sufficient housing and jobs to meet the needs of Sydney's growing population.

The location of mixed use development close to train stations is an integral part of transit oriented development. One of the key challenges in well located existing urban areas is the lack of contiguous landholdings to facilitate larger scale development and provide significant jobs and housing. Land adjacent to rail corridors is attractive from this perspective as they are often large parcels in single ownership. By locating a variety of land uses close to each other, in areas well serviced by public transport, it is more likely that people will be able to undertake a greater number of the things they need to do (such as get to work, go to the shops, visit a doctor, etc) in a single trip. Minimising the number of trips has important implications for reducing congestion of transport systems and lessening reliance on private vehicles.

The concentration of activity in centres well served by public transport is also integral to containing the expansion of urban areas – and instead achieving greater density in existing urban areas. It also maximises the benefits of government investment in infrastructure.

Existing Legislative Framework

Existing planning legislative framework already contains mechanisms to provide for and facilitate development above and adjacent to rail corridors (Appendix A provides further information). There are a range of mechanisms that are already in place to facilitate this development including:

- *Strategic land use plans* - These plans (including the Metropolitan Plan for Sydney 2036, the Central Coast Regional Strategy, the Lower Hunter Regional Strategy, the Illawarra Regional Strategy, subregional strategies for the Sydney Metropolitan area, and local environmental plans prepared by local government) set out the overarching framework for the future development of an area. They identify opportunities for development in strategic locations and can provide direction for redevelopment and infrastructure improvements around suitable railway stations.
- *State Environmental Planning Policy (Infrastructure) 2007* – assists in providing for new rail and other infrastructure by introducing updated planning provisions to improve efficiency, service delivery and infrastructure approval timeframes. It also enables alternative land uses such as commercial and residential development to occur over railway stations, without the need for this land to be rezoned.
- *State Environmental Planning Policy (State and Regional Development) 2011* – provides that the Minister is the consent authority for state significant development, meaning permissible development with a capital investment value of over \$30 million, including significant developments above and adjacent to rail corridors.
- *State Environmental Planning Policy (Urban Renewal) 2010* – enables the state to become involved in precinct planning in accessible strategic locations to facilitate transport oriented urban renewal development.
- *Growth Centre (Development Corporations) 1974* – enables the Growth Centres Commission or the Sydney Metropolitan Development Authority to undertake land use planning and feasibility analysis to deliver precinct plans for suitable urban areas, coordinating infrastructure and transport planning.

The traditional approach to zoning railway corridors and railway stations is to zone the land for rail infrastructure purposes (SP2 Infrastructure Zone) under the relevant environmental planning instrument. Where the potential for this land to be developed for other activities (such as housing and commercial) has been investigated and agreed with RailCorp, the land is sometimes zoned for these activities, although this is not standard practice. The Infrastructure SEPP permits residential, retail or business premises to be carried out by any person in a rail corridor if the development is wholly or partly above a railway station, despite the zoning of the land for infrastructure purposes. This means that the land does not need to be rezoned to enable mixed use development to occur. This is the primary legislative mechanism by which this form of development can occur, as it eliminates the need for rezoning and enables the development assessment process to begin immediately.

Future Legislative Framework

There is currently an independent review of the planning system being undertaken which will lead to the introduction of a new Planning Act. It is unknown how this review will impact the current planning framework provided for infrastructure. It is recommended that the Review Panel be contacted directly.

Challenges of rail-related development

Firstly, it is important that any program to utilise land above, or adjacent to rail corridors, does not unduly compromise the effective functioning of the rail system or future plans to expand the capacity of the rail system and wider transport network. Safe and efficient rail operations (both passenger and freight) are the priorities for activity and development in these locations. Challenges associated with government acquisition of land for new rail corridors, demonstrates the importance of protecting land which has already been set aside for strategic transport purposes.

Appropriately, RailCorp is primarily concerned with maintaining the safety and efficiency of the rail network and is focused on protecting the strategic interests of the transport agency into the future. In the past land around the corridor has generally been developed following Railcorp's identification of surplus land and tender process to the private sector to divest of it. Sometimes this has been combined with station upgrades or commuter car parking. From the department's perspective, selection of the surplus land for divestment does not appear to have been informed by integrated land use and strategic planning investigations, as this has not been Railcorp's key area of focus.

However, Transport for NSW is currently preparing a Transport Masterplan for NSW, which presents a key opportunity for broader strategic planning of development opportunities associated with existing and proposed upgrades to rail infrastructure.

It is essential to recognise that construction practices and techniques are highly complex for land adjacent to, and even more so above, rail corridors. This makes development over and beside railway corridors extraordinarily expensive and complex in comparison to sites that do not possess these physical and operational constraints. In order for this development to be feasible, development must occur at quite high densities to account for these additional construction costs. As the government is not a property developer itself, the private sector has been a delivery partner for these developments, for instance in the case of the Major Centres of Chatswood, St Leonards and Bondi Junction.

In addition, extensive technical analysis is required to demonstrate that these developments will be structurally sound and produce no adverse impacts on the operation of the railway corridor. This can significantly increase the overall development planning and approval timeframes for these developments, and the holding costs for developers who have purchased the land. Where a council is the consent authority, the requirement for the concurrence of the rail authority to be obtained prior to issuing consent for development adjacent to rail corridors can also increase the planning and approval timeframes for these sites.

The preparation and analysis of specialist reports, rather than the development assessment process, contributes to the long planning timeframes for these developments. It is these practical and operational issues which are the primary reason why more development over railway stations has not occurred. There are some cases where significant development

exists over rail corridors overseas, although it has generally been constructed at the same time as the new rail line. This is less complex than retro-fitting around an existing corridor.

Light rail generally offers greater potential for land use and transport integration as there is potential to include new light rail facilities into new and existing developments and the corridors themselves present less physical challenges for development.

Finally, there are also challenges associated with interagency coordination and cooperation in implementing whole of government policies and objectives which are beyond the traditional scope and priorities of the individual agencies. This is necessary however to optimise the benefits of government investment in transport and other infrastructure.

Potential changes to improve the system

There is potential to further explore development opportunities, within, adjacent to and within the walking catchment of existing and planned railway stations, noting that the sites adjacent to railway corridors are the most realistic opportunities for redevelopment in the first instance, as they are less affected by the physical and operational constraints discussed above.

Any exploration of development opportunities will need to be strategic and align transport and land use objectives. The Transport Masterplan for NSW will integrate with strategic planning documents including the Metropolitan Plan, Subregional Strategies and Local Environmental Plans and will provide a strategic basis for identification of appropriate land by Transport for NSW, in liaison with the Department of Planning and Infrastructure.

Following the strategic identification by Transport for NSW, the Department of Planning and Infrastructure could work with local government to proactively zone identified land to provide greater certainty to both the community and the development industry on the potential for redevelopment of areas around railway stations in Major Centres. This would reduce the need to rely on the Infrastructure SEPP to permit alternative land uses to occur over and adjacent to railway stations.

This proactive approach to the zoning of land for alternate uses would also enable the community to comment on the concept much earlier as part of the plan making process. Currently, the primary opportunity for the community to express their views on these developments occurs as part of the statutory consultation process during the assessment of development applications for specific development proposals.

Moving forward, the department will continue to support transport oriented urban renewal for the efficiencies it provides in supporting the sustainable provision of housing and employment opportunities in accessible locations throughout the existing urban areas of Greater Metropolitan Sydney. The focus will be on existing and emerging Major Centres with sufficient development to support this type of development.

Ideally, development associated with existing railway stations should occur in conjunction with improvements to access which are occurring throughout the network to increase capacity of passenger movements, and to provide better access for people with limited mobility (through the installation of lifts). The work required to provide these improvements can be substantial, requiring major construction. There are opportunities to integrate such work with other development – such as mixed use development above or adjacent to train stations, and improved connections to bus interchanges.

The accessibility improvements that result from such works can bring significant benefits to the area around a train station by providing better connections across rail corridors. Train stations often function as places where pedestrians can pass from one side of a train line to the other. Improved station accessibility can provide for a more connected, better functioning urban area beyond the station itself.

APPENDIX - Existing Planning Legislative Framework

The current framework in planning instruments for this type of development can be described as facilitative.

Environmental planning instruments (State environmental planning policies and local environment plans made by councils) under the *Environmental Planning and Assessment Act 1979* provides for development in and adjacent to rail corridors.

The planning system also provides legislative mechanisms for precinct planning which might be used to promote urban renewal opportunities for development in rail corridors.

Summary of relevant facilitative provisions in Environmental Planning Instruments

A. State Environmental Planning Policy (Infrastructure) 2007

The definition of a 'rail corridor' as prescribed in *State Environmental Planning Policy (Infrastructure) 2007* ('the I SEPP') is land:

- a) that is owned, leased, managed or controlled by a public authority for the purpose of a railway or rail infrastructure facilities, or
- b) that is zoned under an environmental planning instrument predominantly or solely for development for the purpose of a railway or rail infrastructure facilities, or
- c) in respect of which the Minister has granted approval under Part 3A or Part 5.1 or (before its repeal) Division 4 of Part 5 of the Act, or consent under Part 4 of the Act, for the carrying out of development (or for a concept plan for a project comprising or including development) for the purpose of a railway or rail infrastructure facilities.¹

The I SEPP provides controls for development involving access via level crossings; development immediately adjacent to rail corridors; excavation in, above or adjacent to rail corridors; impacts of rail noise or vibration on non-rail development in corridors; and interim rail corridors.

Local environment plans made by councils and other environmental planning instruments may make provisions for the zoning of land and development controls however the I SEPP prevails to the extent of any inconsistency over any other environmental planning instrument.²

¹ Clause 78, *State Environmental Planning Policy (Infrastructure) 2007*

² See clause 8 *State Environmental Planning Policy (Infrastructure) 2007* for limited exceptions.

In particular, the I SEPP identifies:

- Residential, retail or business premises in a rail corridor (if the development is wholly or partly above a railway station) as development permissible with consent and may be carried out by any person³ and
- Retail or business premises in a railway station complex, including areas in the complex that commuters use to gain access to station platforms as development permissible with consent and may be carried out by any person, in the following zones:
 - (a) IN1 General Industrial,
 - (b) IN2 Light Industrial,
 - (c) IN3 Heavy Industrial,
 - (d) SP1 Special Activities,
 - (e) SP2 Infrastructure.

Specific controls in the I SEPP include:

- For residential development in or adjacent to a rail corridor, the following LAeq levels are not to be exceeded:
 - a) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am,
 - b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.⁴
- If excavation is proposed, the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates must be obtained, unless that rail authority is ARTC.⁵
- Notification of this type of development to the relevant rail authority for the corridor (ARTC, Sydney Metro or RailCorp) and a requirement for the consent authority to consider and guidelines issued by the Director-General of the Department of Planning and gazetted (currently no guidelines have been gazetted for this purpose).⁶

Another facilitative provision in the I SEPP for State land⁷ (that is not zoned for conservation purposes and not subject to a standard local environmental plan) allows the adoption of the zoning and development controls of neighbouring land, subject to a site compatibility certificate issued by the Director-General of the Department of Planning and Infrastructure.⁸ This clause might be used to permit land adjacent to rail corridor that is not zoned for residential or commercial uses to adopt neighbouring zonings that permit these uses.

³ Clause 81, *State Environmental Planning Policy (Infrastructure) 2007*

⁴ See clause 87 *State Environmental Planning Policy (Infrastructure) 2007*

⁵ See clause 86 *State Environmental Planning Policy (Infrastructure) 2007*

⁶ See clause 87 and 85 *State Environmental Planning Policy (Infrastructure) 2007*

⁷ See clause 5 *State Environmental Planning Policy (Infrastructure) 2007* for the definition of 'State land'.

⁸ See clause 18 *State Environmental Planning Policy (Infrastructure) 2007*

B. State Environmental Planning Policy (State and Regional Development) 2011

The *State Environmental Planning Policy (State and Regional Development) 2011* (The S&RD SEPP), declares as State significant:

development that is permissible with consent within a rail corridor or associated with railway infrastructure that has a capital investment value of more than \$30 million for any of the following purposes:

- (a) commercial premises or residential accommodation,*
- (b) container packing, storage or examination facilities,*
- (c) public transport interchanges.*

A declaration that development is State significant development means the Minister for Planning becomes the consent authority for an application.⁹ State significant development is subject to the assessment regime set out in Division 4.1 of Part 4 of the EP&A Act which disapplies some authorizations and concurrences under other Acts required for Part 4 development consents¹⁰ and the provisions of development control plans.¹¹

C. Growth Centres (Development Corporations) Act 1974 and State Environmental Planning Policy (Urban Renewal) 2010

The *Growth Centres (Development Corporations) Act 1974* (the 'GC Act') provides for development corporations to be constituted with functions that include the planning of the development and use of identified land including proposals for the development and use of land in conjunction with the provision of utility services and public transport facilities.¹²

Development corporations have wide powers including the ability to acquire land and subdivide or consolidate subdivided land vested in the corporation for the purposes of performing their functions.¹³

Urban Renewal SEPP

Studies into potential precincts identified for urban renewal are to consider the suitability of the land for development and appropriate land use and development controls.¹⁴ It would be possible for land uses and development controls in respect of rail corridors within identified potential precincts to be considered in these studies.

⁹ S.89D EP&A Act.

¹⁰ S.89J EP&AA Act

¹¹ See clause 11 *State Environmental Planning Policy (State and Regional Development) 2011*

¹² See Part 3 of the GC Act.

¹³ Section 9 GC Act.

¹⁴ Clause 9 *State Environmental Planning Policy (Urban Renewal) 2010*