SCENTRE GROUP

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Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

planninglegislativereform@planning.nsw.gov.au

Dear Ms Wythes

Rezoning Reform Discussion Paper

Introduction

I am writing to you in response to the exhibition of the above document.

Scentre Group owns and operates a portfolio of 42 "Living Centres" across Australia and New Zealand. Of these, 15 are positioned within strategic centres across the Greater Sydney, Central Coast and Newcastle region and therefore Scentre Group takes a high level of interest in any significant planning reform, particularly when any reforms have the potential to influence our investment decision making across our portfolio.

We therefore welcome the NSW Government's initiative to review the rezoning process by seeking feedback to its Discussion Paper and submit the following for your consideration.

Context Setting

Within NSW, Scentre Group have several active Planning Proposals that are currently on foot. Our entire NSW portfolio is located within "Strategic Centres" designated under relevant State Government Metropolitan and / or Regional Planning Strategy.

This designation provides a high degree of certainty to our business when choosing to invest and these investment decisions typically result in economic outcomes that lead to the creation of a significant number jobs as well as expanded opportunities for a diversity of uses delivering place making outcomes that bring benefits to the wider community. Such outcomes are completely aligned with the State's own objectives to support its own investment in strategic centres, all of which are typically anchored by significant state and local government infrastructure.

Despite this strategic alignment (and our ability to readily satisfy strategic merit tests) some of the fundamental issues we face when we choose to advance significant investment in our NSW assets include the following:

- the application of inflexible FSR and height controls written into LEPs to the assets in our NSW portfolio.
- The lack of any consistent strategic infrastructure plans at a local level that often leaves the any Planning Proposal process beholden to protracted Planning Agreement negotiations. (This issue can equally apply to Agreements with State Agencies).

- The time lags between policy setting and decision making for Planning Proposals – often resulting in strategic merit considerations being no longer relevant, particularly if policy is informed by an evidence base containing outdated assumptions.

- Unanticipated policy interventions by the State in site specific merit considerations.

- The ad hoc involvement of local political overlays.

- The inconsistent approach to enabling residential development in airspace above our centres currently within B3 zones. (Scentre Group is separately engaged with DPEs Employment Reform team on this issue).

Taking these issues into account, we support the broad objectives of the Rezoning Reform. Many of the issues above are pleasingly reflected in Part A of the Discussion Paper. However, and at a high level we are of a view that there needs to be a strong role for DPIE in the Rezoning Process particularly in those circumstances where the strategic policy alignment is weighted towards State planning policy settings.

We consider that there is opportunity for several improvements or considerations that the Department should take account of as expressed below.

Specific Comments/Recommendations

Part B Comments – The New Approach: Scope and Roles

- Scentre Group support the proposition that private proponents be recognised as being able to submit a Rezoning/LEP Amendment application.

- Scentre Group support the categorisation of Rezoning/LEP Amendment application and associated benchmark timeframes as it should provide for a level of expectation and application detail commensurate with the scope of issues to be resolved.

- However, as mentioned above, even a "Standard" request to vary an FSR or height control can give rise to protracted VPA negotiations that typically need to be resolved before Gateway under the current system. It is unclear from the Discussion Paper how these issues are intended to be resolved.

- Further to the previous point, we would argue that there is a need for a more nuanced approach to the proposed Departmental involvement in Category 2 and 3 proposals because:

    - Category 2 proposals include "altering principal development standards of the LEP", yet Category 3 proposals include "changing the land use zone and/or the principal development standards of the LEP, which would increase demand for infrastructure". From our experiences at Penrith, Eastgardens and Tuggerah where we have active Planning Proposals, any increase in FSR is being met with an expectation that there be a Planning Agreement in place. The ability to enter into such negotiations is partly a function of the Rezoning Authority being satisfied and willing to give a degree of in principle support for the proposal early in the process so that the "value" of the uplift can be quantified and can then inform such negotiations. Based on the Framework Diagram in Figure 3 of the Paper, it is unclear where such negotiation would take place as in practice Councils typically prefer to exhibit the Rezoning Application concurrent with a draft VPA.

    - The proposed Categorisation does not reflect the relative importance of Rezoning/LEP Amendments in Strategic Centres. We are of the view that whilst Council's remain best to receive and assess such, where delays take place it is imperative that DPIE retain a strong

sense of oversight as the types of Planning Proposals submitted by Scentre Group are undoubtedly aligned with the implementation of Metropolitan / Regional Planning Strategy.

Recommendations

- **That clarity be provided on the timing for negotiation of Planning Agreements in the proposed Framework. The Planning Agreement should be explicitly reflected in the Response to Submissions phase and the exhibition / finalisation of the Planning Agreement be permitted to run concurrently with the Rezoning application**

- **That the Categories 2 and 3 Rezoning Applications include explicit reference to consistency with Metropolitan / Regional Strategic Planning Policy**

- **That DPE maintain a clear oversight role for Category 2 and 3 Rezoning Applications which are within Strategic Centres and consistent with Metropolitan / Regional Strategic Planning Policy.**

Part B Comments: Scoping Phase

- A consistent Scoping Phase is supported. Scentre Group has had a positive experience to date with its Planning Proposal lodged last year for our asset at Tuggerah where the intent of the Scoping Phase as outlined in the Discussion Paper appears to have been "road tested". In that case the concurrent early involvement of both DPE and TfNSW along with Central Coast Council has resulted in a number of issues that would have historically been dealt with post Gateway, being brough forward which is a positive.

- Having said that the codification or formalisation of the Scoping Phase must come with some caveats to ensure that it is valuable as follows:

    - The Scoping Phase cannot be used as basis to reject Rezoning Applications. Clear guidance on that point must be given and set out in any legislative reform.

    - The current Gateway stage does provide for a degree of in-principal support for a Planning Proposal as it means that the strategic merit test has been or can be satisfied. This in turn provides for a further degree of comfort for proponents to invest further in the cost of technical studies to address site specific merit considerations.

    - The Proposed approach in the Discussion Paper does not offer this, rather trading off potentially significant up-front cost in return for an appeal right at the end of the process. It is not uncommon for a Category 2-3 Planning Proposal to incur $1.5-$2.5m in cost from start to finish. Currently these costs are spread over the life of the Planning Proposal. The Proposed Approach would not significantly lessen the need for technical work but rather potentially bring forward such cost up front. If the process, then runs through to an appeal, a further circa $0.5m + could be expended.

- As such and in the absence of a Gateway step, we consider that the Scoping Phase must:

    - Contain more than a set of generic requirements, particularly if the proposed reforms are modelled on the SSDA process where generic industry specific SEARs are becoming increasingly common.

    - Rather, the Scoping phase MUST provide a definitive "steer" to applicants on the critical strategic merit considerations that are directly relevant to the proposal at hand. This includes 9.1 Ministerial Directions. The Scoping feedback must embody project specific feedback from Council and DPE for it to be meaningful. For example, Scentre Group have been in discussions with Georges River Council and DPE for a number of years in seeking to reposition its Hurstville asset (again largely seeking to amend FSR and height controls), however the Hurstville Draft Centre Strategy was exhibited 4 years ago is yet to be finalised. If this isn't adopted or accepted as a "strategic plan",

and aside from the LSPS which calls up a need to prepare such a plan, there is no "strategic plan" in place to support a rezoning application from a local strategic merit perspective. In situations such as this, where Hurstville is a designated Strategic Centre, DPE must provide clear guidance on Strategic Merit as part of scoping discussions otherwise there is a risk that the Scoping phase would be used to not accept a Rezoning / LEP Amendment Application at all. This would present significant issues.

- Likewise, there must be a clear statement of site-specific merit issues, including the effect of any SEPPs, that clearly demarcate what SEPPs need to be addressed as part of a Rezoning Application and what needs to be addressed at DA stage. Our experience with our Planning Proposal at Eastgardens, originally submitted to Council in December 2017 and still to achieve Gateway has been in a large part been impacted by a SEPP issue that has historically been dealt with at DA stage. The issue was raised by DPE approximately 2 years after lodgement.

Recommendations

- **That the Scoping Phase:**
  - **Must provide detailed project specific feedback and provide an initial view of strategic merit at both a state and local level including recognition of instances where time lags effect on-going relevance of strategic planning policy.**
  - **Must provide clear guidance on willingness to consider variations to Ministerial Directions where warranted.**
  - **Detail expected infrastructure needs and the intended basis for funding.**
  - **Cannot be used as a basis to reject applications on strategic and site-specific technical merit.**

Part B Comments: Assessment and Appeals

- The ability to appeal a Rezoning Application can only occur at the end of the process (48 weeks after lodgement). Currently, a proponent can lodge a rezoning review after 90 days, which is a more streamlined process (although this is more political). In the absence of a detailed "steer" at the Scoping Phase as recommended above, there remains in our view merit in retaining a form of Gateway review early in the process simply because the Rezoning Process is focussed on policy, not technical merits of compliance with development standards.

- This mere fact means a much broader assessment and appreciation of suitability and potential for wider implications both positive and negative is implicit in a Rezoning / LEP Amendment Application. It also again would assist in offsetting the significant cost of up-front provision information. In our view retention of a 90-day review of provides an opportunity to test strategic merit argument

- Whilst an appeal right is supported in-principle and provides a recourse and sets a level of accountability on Rezoning Authorities that presently doesn't exist, in a practical sense there is already at present a significant backlog within the court system. This could add an additional 6-8 months to the process if an appeal matter proceeded to full hearing.

- Conversely the role of the IPC in our view provides a potentially more pragmatic forum to dealing with appeals however the IPC would need significant resourcing to make a meaningful contribution to the implementation if the reforms. In some ways, consideration should be given to the IPC taking the role of 90-day review where an "in-principle" view can be documented.

- We support the proposed reduction in Council meeting "touchpoints" as the current system can be beholden to political whims and despite technical support for proposals. For example, our Eastgardens Planning Proposal has been the subject of multiple independent urban design reviews which lead to the unanimous support the Local Planning Panel (LPP) that it proceed to Gateway in March 2019 only

for the elected Council to defer the matter for a more fulsome independent review (note this this occurred prior to DPE raising the technical issue mentioned earlier in this submission).

- This example brings into question the role and function of LPPs in the proposed framework, noting that there is no explicit reference to such. There can be approximately 6 weeks lead time required for LPP consideration presently. The internal processes for reporting need to be streamlined with the LPP views being potentially incorporated into the Scoping Phase to avoid unnecessary delays post lodgement by offering alternate views post lodgement.

Recommendations

- **That the role of Council Local Planning Panel be reviewed to ensure consistency and engagement as early in the process as possible.**

- **That a 90 day "in-principle" independent review be retained. This should allow for recommendations to be made to amend an application as necessary.**

Other Comments

- The Discussion Paper makes no reference to infrastructure funding and negotiation which typically forms a key component in all our current Planning Proposals. The process must include explicit guidance on this. As outlined above, we see opportunity for finalisation of a VPA running separate and parallel to any rezoning / LEP Amendment. In this regard, the use of "satisfactory arrangements" clauses as we are currently proposing for our Tuggerah Planning Proposal provides a practical means to ensure that development that benefit from rezoning / LEP amendments cannot proceed at DA stage unless local and state infrastructure requirements are met.

- The on-going role of the PDU is strongly supported. Whilst all current Scentre Group Planning Proposals are before respective local councils for assessment, we are in regular dialogue with the PDU on all proposals. To reiterate our earlier point, the involvement of the PDU is central to supporting our desire to invest in our assets as they are aligned with State Planning Policy, being located with Strategic Centres. The PDU provide an opportunity to ensure co-ordination between ourselves, State Agencies and Councils. It is considered that the role of the PDU could be strengthened by involving them in the Scoping Phase for those proposals that are aligned with/weighted heavily towards achievement of State Planning objectives.

- The proposed Rezoning Application Process fails to provide any insight into the relationship with the draft Design and Place SEPP, the latter calls for significant pre and post lodgement involvement of Design Review Panels, which presumably impacts both the Scoping and Assessment Phases as proposed. Scentre Group is making separate submissions on the Draft Design and Place SEPP.

- A number of our assets have an interface with or rely on Council owned land to support their operation. The ability for Council's to effectively "deal" in such land or by necessity require their consent can act as a major impediment to even lodging a Rezoning / LEP Amendment Application. For example, approximately 30% of Westfield Hurstville occupies a ground lease from Council. Often these situations present political rather than technical challenges at the local level. The Discussion Paper does not explicitly deal with this scenario and presumably would be dealt with via the Scoping Phase. However, worse case there may be situations arise where proposals that have strong technical merit and are aligned to State and local policy would not even be afforded the appeal mechanism as proposed in the Discussion Paper simply because a political position my prevent lodgement.

Recommendations

- **That "Satisfactory Arrangements" clauses be used as a means to ensure delivery of local and state infrastructure required as part of the Rezoning/LEP Amendment Application process.**
- **That the role of the PDU be retained and strengthened with a clear focus on applications aligned to the implementation of State/Regional Planning Policy.**
- **That the relationship of the Drat Design and Place SEPP to the proposed Rezoning Reforms be clarified.**
- **That any legislative reform considers a mechanism to facilitate lodgement and consideration of Rezoning/LEP Amendment Applications when aligned to Strategic Planning Policy**

In Conclusion

The Department is to be commended for initiating this Reform as we can attest to frustrations over the time taken to achieve rezoning/LEP amendments.

That said, we consider that there are several matters that require further thought and this is reflected in our stated recommendations. Most pertinently is in our view a need to maintain strong State oversight and engagement in matters that are directly tied to the implementation of State and Regional Planning significance. Should you require to discussion this submission in further detail we would be happy to meet to do so.

Yours sincerely,

Roy Gruenpeter
General Manager Development
Development & Asset Management

SCENTRE GROUP