

18 July 2018

Ms Carolyn McNally  
Secretary  
Department of Planning and Environment  
320 Pitt Street  
SYDNEY NSW 2001

Dear Ms McNally,



## **Re: Draft Design Competition Guidelines**

Thank you for the opportunity to comment on the *Draft Government Architect's Design Excellence Competition Guidelines*. We note these guidelines are intended to revise and update the Director General's Design Excellence Guidelines produced in 2011. Please find our comments below for your consideration.

### **Overview**

The Urban Taskforce supports design excellence as an outcome of the development of new buildings and communities in New South Wales. We believe there are a number of ways to achieve this and that the additional cost for a project to achieve design excellence must be proportional to the significance of the project. Our members have raised concerns that some design competitions can add up to \$1 million to the cost of a residential project, and these costs are passed onto the buyers. Sydney is currently experiencing a housing affordability crisis, and it is important that the design excellence processes does not have excessive costs. This is particularly when the SEPP 65 Apartment Design Guidelines set out many design excellence requirements.

We believe that a Design Excellence Competition should only occur where there is bonus floor space provided to offset the cost of the process. This is how the City of Sydney Council runs its design excellence competition process.

Design Review Panels can add value to a project but the experience of our members is that they often change membership and therefore do not give consistent advice. This is also a growing tendency for panel members to redesign projects which is a misuse of their role.

Where a Design Excellence Competition occurs, it is essential that the proponent, who is taking the financial risk on the project, is fully involved in the process. This includes the selection of architects, jury members, observing the deliberations and ongoing detailed resolution of a winning design.

While proponents will intend to engage the winning architect for full services this may not occur due to excessive fee proposals or with a Design Construct contract. In these circumstances we recommend that the winning architect is engaged to provide a design overview role.

The Urban Taskforce is concerned about the concept of a Design Integrity Panel as the role of ensuring an approved Development Application or Planning Proposal carries through to construction is already covered through council officers or the certifier. We are also concerned about a panel being involved over what could be a 3-year period.

We have provided additional comments below.

### **General comments**

- **Proponent plays a vital role in the development of the project**

The Urban Taskforce believes that the Proponent should have a key role in all aspects of the design excellence process. The project will be financed, developed and constructed by the Proponent and it is only fair that they play a guiding role in how design excellence is achieved. We strongly support the involvement of the Proponent in the process and oppose any attempt to minimise their role and influence in this regard.

- **Impacts upon housing affordability**

The process outlined in this document is very detailed and bureaucratic compared to the *Director General's Design Excellence Guidelines*. It could add hundreds of thousands of dollars of up front cost to a project – which simply result in the end cost of the project being higher and in the case of residential projects, more expensive for end purchasers.

- **Alternatives to competitions**

The Government Architect NSW has a list of prequalified 'Design Excellence' architects. There should be an alternative to the Design Excellence Competition process where engaging a prequalified 'Design Excellence' architect should be sufficient in lieu of holding a competition, which can be a costly and lengthy process.

- **Timeliness is critical**

To ensure the competition does not unreasonably extend the assessment process, and to ensure there is accountability and to provide clarity for proponents to program their development timeframes must be built into all stages of the Design Excellence Competition process. In particular, timeframes are essential for local

authorities and the GANSW to approve certain stages, for example, Design Excellence Competition Strategy and Competition Brief, issuing the report (draft and final). We have heard from members that significant delays are experienced in the City of Sydney Design Competition process at the strategy and brief stages and there is no clear understanding of when these decisions are made and stages completed.

- **Consistency is essential**

A consistent Design Excellence Competition process applicable to all local government areas throughout NSW would be welcomed by the property industry.

Our members have also raised concerns that the councils and GANSW will change Jury members throughout the competition process. We recommend that this practice is not permitted.

- **Where possible, the costs to the proponent should be minimised**

There are a significant number of costs which the Proponent is required to fund, for example, payment of Jury member, entrants etc. An 'upper limit' to fees or predetermined hourly rates to ensure costs can be reasonably anticipated and managed would assist the proponent.

Proponents with projects which include a component of social or affordable housing should have their fees payable to government agencies involved in the competition process discounted.

- **Full Design Excellence Competition only with floor space uplift**

We believe that a Design Excellence Competition should only occur where there is bonus floor space provided to offset the cost of the process. This is how the City of Sydney Council runs its design excellence competition process.

### **Specific comments**

- **Role of Government Architect NSW**

Page 3, Section 3.1. Government Architect NSW, states:

*'The Government Architect NSW plays a different role depending on whether the project is state significant or a local council project.'*

Comment: A representative of the Government Architect NSW (GANSW) should always chair the jury for both state significant projects and the local council projects to ensure unbiased decision making. The NSW Government should also ensure the GANSW is sufficiently resourced with appropriately qualified staff to take on this

important role and ensure a backlog of projects is not created due to a lack of resources.

- **Requirement for a 'Reference design'**

Page 3, Section 3.2 The Proponent states:

*'The Proponent is advised to engage the services of a Competition Adviser who will manage these tasks on their behalf:*

- *Engaging a suitably qualified architect, urban design or landscape architect to prepare a 'Reference Design'.*

Comment: A 'reference design' is irrelevant and costly, and merely serves to stifle innovation. The development controls are clear and can be interpreted appropriately by each entrant.

- **Local council representation on the Jury and selection of Chair**

Page 4, Section 3.4 The Jury states:

*'Jury members must: not be a staff member or councillor with an approval role in council's or the department's development assessment process.'*

Comment: The Urban Taskforce believes that to ensure transparency and integrity of process, no staff member from the relevant council should be permitted to be on the jury. This aligns with the restrictions imposed upon the Proponent.

Page 4, Section 3.4 The Jury also states:

*'The GANSW nominee will chair.'*

The Urban Taskforce supports the GANSW nominee appointing the chair of the Jury to ensure fairness.

Page 4, The proponent representation on the jury. It is essential that the proponent has fair representation on the jury.

- **Selection of Design Excellence Competition type**

Page 6, Section 4.2 Design Excellence Competition types states:

*'Depending on the project type and other considerations, the Proponent may select of the three recommended formats (of competition) in these Guidelines'.*

Comment: The Urban Taskforce strongly supports the Proponent selecting one of the three recommended formats in the guideline.

Page 6, Section 4.2 Design Excellence Competition types also states:

*'Type A: Invited Single-Stage Design Excellence competition... This is a single stage competition with a minimum of three and maximum of five designers or design teams invited to participate.'*

Comment: The teams invited to participate should be selected by the Proponent, and the wording be revised to read: 'This is a single stage competition with a minimum of three and maximum of five designers or design teams invited to participate, selected by the Proponent.'

Page 7, Type B: Invited by EOI Design Excellence Competition states:

*'A shortlist of 3-5 Entrants is selected by the Proponent to proceed to Stage Two in accordance with the process and assessment criteria outlined in the EOI and Design Excellence Competition Strategy'*

Comment: The Urban Taskforce supports the Proponent's role in selecting the shortlist of Entrants to proceed to Stage Two. It is vitally important that the Proponent is comfortable with all of the entrants in the final stages of the competition.

Page 7, Type C: Open Design Excellence Competition, states:

*'A shortlist of Stage One Entrants is selected by the Jury, in accordance with the process and assessment criteria outlined in the Competition Brief.'*

Comment: There should be three entrants selected for the shortlist, and these should be chosen by the Proponent, as outlined in Type B – Invited by EOI Design Excellence Competition.

As outlined below, as the competition rules require the Proponent to engage the winning architect (if they wish to proceed with the development) it is vitally important that the proponent is comfortable with all of the entrants in the final stage of the competition. If the winning architect is for some reason not engaged for full services then they should be engaged for a design overview role.

- **The Design Excellence Competition Process**

Page 8, Step 01: Developing the Design Excellence Competition Strategy states:

*'The Design Excellence Competition Strategy must include a Reference Design.'*

As stated previously, the requirement to include a 'Reference Design' is irrelevant, stifles innovation and individuality. Each entrant should be free to interpret the

development controls as it wishes and should be free of any influence of a reference design.

Page 8, Step 01: Developing the Design Excellence Competition Strategy also states:

*'For Design Excellence Competition schemes that seek additional height, floor space or any other bonus incentive that may be available under an EPI, the potential impacts of those incentives must be modelled prior to undertaking the competition, either by the consent authority or the Proponent, through the Reference Design or Concept DA.'*

Comment: This requirement seems irrelevant. The best design should emerge from the free-thinking of the entrants.

Page 9, Step 02: Writing the Competition Brief states:

*'The Competition Brief must include the following:*

- *Details of the capital investment value (CIV) for the project'*

Comment: The Urban Taskforce believes this information should be provided at the discretion of the Proponent.

- *'Where a site includes a heritage item, is located within a conservation area or near a heritage item, include a Heritage Impact Assessment and advise competitors to consider any conservation guidelines set out in the document.'*

Comment: This should be a 'high-level' Heritage Impact Assessment only at this stage. A more detailed Heritage Impact Assessment can be provided later as part of the assessment process.

- *'A statement that the copyright of any entry to the competition remains with the originator of the work'.*

Comment: The Urban Taskforce would like to add: 'until the payment of the competition fee to the entrant by the proponent, following which the copyright rests with the proponent.'

Page 9, Note: Designing to a budget states:

*'To assist Entrant teams to meet budget requirements, Proponents may provide the services of a cost consultant to provide advice to entrants during the preparation of their submissions. Any fees for cost consultancy must be covered by the Proponent and may not be included in the fees paid to the Entrant teams'.*



Comment: The Urban Taskforce strongly supports the need for Entrant teams to create a scheme that has the potential to be delivered within a specified budget. We believe this section should state:

*'At the discretion of the Proponent, each Entrant may be required to provide a feasibility to prove the viability of their design. The Proponent will pay for the preparation of the feasibility and may nominate who is to prepare it.'*

Page 10, Step 03: Competition Review and Judging state:

*'A representative of the assessment team of the relevant consent authority must be invited to attend the competition jury session as an observer.'*

Comment: The Urban Taskforce believes one representative of the Proponent should also be invited to attend the session, as an observer, to ensure fairness and transparency of process.

- **Post competition – Maintaining design integrity**

Page 12 under 5.1. Purpose, states:

*'To ensure design quality continues through design development.... As a minimum this will require the designer of the winning submission to be nominated as the Design Architect for the duration of the project.'*

Comment: The Urban Taskforce is concerned that this requirement could leave the Proponent in a difficult situation if the Design Architect fails to perform satisfactorily, or the Design Architect leaves the firm, or asks for an unfairly high fee for undertaking the work. The Proponent must have the right to pay for the design (i.e. the competition fee) and, if any of the above (or similar) occurs, to appoint another Design Architect to deliver the winning design. The Design Integrity Panel has many opportunities to review the design and construction to ensure, if a Design Architect is replaced for any of the reasons outlined above, the design is still delivered to the highest quality. The winning architect can be engaged for a design overview role.

Page 12, 5.1. Purpose also states:

*'The DIP would typically review the design at the following stages:*

- *Prior to lodgement of any Section 96 which modifies the design.*

Comment: The nature of the planning system frequently requires small modifications to be made to development applications and it would be costly and inefficient for the DIP to review insignificant changes which have little impact upon design. We believe this should be changed to read *'prior to lodgement of any Section 96 which materially modifies the design'*.

Page 12, 5.2 Design Integrity phase states:

*The DIP would review the design at the following stages:*

- *Prior to issue of the Occupation Certificate (or equivalent post approval process for Crown projects).*

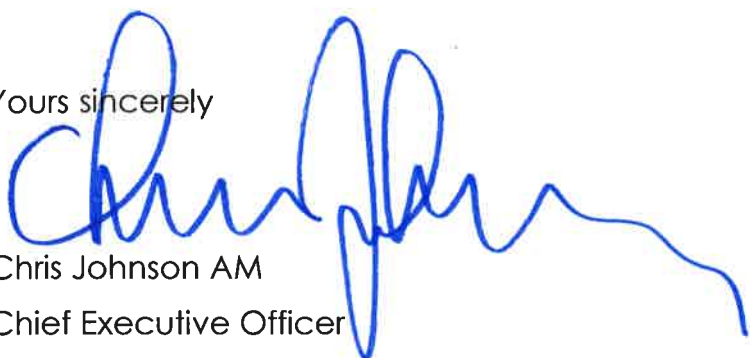
Comment: This requirement seems irrelevant, as at this stage the building has already been constructed.

The DIP has opportunities to ensure design excellence at earlier stages, such as the review required during the Development Application stage and the review prior to issue of the Construction Certificate.

The NSW planning process also has extensive checks and balances to ensure that the final buildings are in keeping with the approved design and additional checks would be duplicating an existing process.

The Urban Taskforce is always willing to work closely with the Government to provide a development industry perspective on these issues. Please feel free to contact me on telephone number 9238 3927 to discuss this further.

Yours sincerely



Chris Johnson AM

Chief Executive Officer

**Urban Taskforce Australia**