PLANNERS NORTH

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Our reference: 1315.1307

Director Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir,

RE: Submission to State Environmental Planning Policy (Infrastructure), Amendment (Review) 2016.

PLANNERS NORTH has been engaged by Byron Bay Railroad Company to prepare a submission in relation to the Draft State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016. We have reviewed the explanation of intended effect and Draft Amendment and provide the following comments for your consideration.

Division 15 of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) applies to railways. Clause 79 of the Infrastructure SEPP presently provides as follows (our yellow highlighting):

79 Development permitted without consent—rail infrastructure facilities generally

(1) Development for the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out without consent on land reserved under the National Parks and Wildlife Act 1974 only if the development:

(a) is authorised by or under that Act, or

(b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or

(c) is on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.

(2) In this clause, a reference to development for the purpose of a railway or rail infrastructure facilities includes a reference to operation of a railway and to development for any of the following purposes if the development is in connection with a railway or rail infrastructure facilities:

(a) construction works (whether or not in a heritage conservation area), including:

(i) temporary crushing plants or concrete batching plants, if they are used solely in connection with railway construction and in or adjacent to a rail corridor, and

(ii) track support earthworks, and

(iii) alteration, demolition or relocation of a local heritage item, and

(iv) alteration or relocation of a State heritage item, and

(v) temporary buildings, or facilities for the management of railway construction, that are in or adjacent to a rail corridor,

(b) emergency works, or routine maintenance works, carried out in the rail corridor of an existing railway or on land that is adjacent to such a corridor (including on land to which State Environmental Planning Policy No. 14 Coastal Wetlands or State Environmental Planning Policy No. 26 Littoral Rainforests applies but, if they are on such land, only if any adverse effect on the land is restricted to the minimum possible to allow the works to be carried out),

(c) maintenance or repair of an existing rail infrastructure facility,

(d) environmental management works.

As is evident from the above, the provisions of Clause 79 specifically nominate works undertaken on behalf of a public authority. Our clients have made previous submissions to the Department requesting that these provisions be amended to refer to rail infrastructure managers (RIM) that operate on a publicly owned railway under a lease or license agreement with Transport for New South Wales (TfNSW). Most rail heritage organisations and many major railway operators and maintainers have a lease or license agreements with TfNSW and/or ARTC to use or otherwise occupy sidings and rail lines within the NSW Government owned rail corridor. However, they are not public authorities.

A requirement of these leases and licence agreements is: that the railway infrastructure remains the property of the NSW Government and any new or repaired rail infrastructure becomes the property of TfNSW; and that it must be maintained to certain specified standards in accordance with the RIM's accreditation with the Office of the National Rail Safety Regulator (ONRSR). The construction of any new rail infrastructure or facilities must be approved in writing by TfNSW and at the termination of the lease or licence agreement, if not removed, becomes the property of TfNSW.

There are also numerous other requirements to maintain fences, level crossings, bridges, culverts, waterways, drainage, firebreaks, control noxious weeds and animals, keep clean and tidy, control vegetation etc. Some of these requirements are also mandated under other legislation. Many of these tasks are ongoing maintenance tasks that have been performed for over a Century. For many organisations these regular maintenance activities and operations that were carried on a daily basis by the former Government owned rail entities for over 100 years, now could be argued to require development consent which can be a costly and time consuming requirement for many heritage rail operators and of doubtful benefit to the community. Experience indicates that councils dealing with development approvals for works in the rail corridor or railway operations lack the knowledge and expertise to properly administer this specialist area. The ONRSR already accredits organisations to maintain and operate railways and ensures the operations are safe for the whole community. There are numerous conflicts with local council developmental approvals when it comes to rail infrastructure, for instance, the requirement for multiple exits every 20m along a passenger platform, rather than a single entry exit point to control fare evasion and prevent unauthorised access to the rail corridor and the obvious safety implications.

This is further complicated in the case of railway lines which are located within environmental zones under local environmental plans. These zones limit permissible development and in some circumstances councils could not therefore approve repairs or maintenance to railway infrastructure even in circumstances where there is a considerable public safety risk. They would also not be able to approve a safety walkway which is mandated by TfNSW, ONRSR and Safework NSW.

The modification of clause 79 (1) to include RIM's using or occupying publicly owned rail infrastructure facilities under a lease or licence agreement with TfNSW would be of enormous benefit to the rail heritage organisations and other rail operators covered by this provision. In particular, the ability to utilise the provisions of clause 79 (2b) and (2c) would be of the greatest benefit.

Given the relatively limited number of rail infrastructure managers, operating on publicly owned railway under a lease or licensing agreement, it is submitted that amending the provisions to this effect is not considered likely to result in significant ramifications in terms of the number of operators utilising these provisions. It will merely enable the maintenance work to be undertaken without the need for a further layer of approval.

It is requested that the provisions be modified to refer to works undertaken by or on behalf of a rail infrastructure manager that operates on a publicly owned railway under a lease or license arrangement. Alternatively, the definition of a *rail infrastructure manager* provided by Clause 78 could be amended to include rail infrastructure managers that operate on a publicly owned railway under a lease or license

arrangement. As detailed in this submission, the intent of the proposed amendment is to provide clarity in circumstances where corridors are leased or managed by entities other than a public authority.

We request that the provisions of the Draft Infrastructure SEPP be amended accordingly and appreciate your consideration of this matter.

Yours faithfully,

PLANNERS NORTH

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