Planning Institute of Australia
(NSW Division)

Draft State Environmental Planning Policy [Infrastructure]
2006

Submission to the
NSW Department of Planning

November 2006
SUBMISSION BY

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PURPOSE

This submission is made by the Planning Institute of Australia [PIA] NSW Division to the Department of Planning in relation to the Draft State Environmental Planning Policy [Infrastructure] 2006

INFORMATION

Who is making the submission?

The Planning Institute of Australia [PIA] is a voluntary subscription based member organization with 4500 members.

The New South Wales Division of PIA has 1400 members.

The Planning Institute is the peak body representing professions involved in planning Australian cities, towns and regions.
State Environmental Planning Policy [SEPP] [Infrastructure] 2006

A. Introduction

The Planning Institute of Australia (NSW Division) would like to make the following submission in relation to the draft SEPP.

As a general principle, PIA supports the Government’s initiative of consolidating, modernising and reforming the approvals process for infrastructure projects. The Department is to be congratulated for the significant work involved in bringing the relevant infrastructure provisions into one instrument and improving the processes based on experience with and feedback on the current system.

PIA would like to make suggestions in relation to some aspects of detail and general principle underlying certain provisions of the draft SEPP.

The following submission has been based on feedback and input from PIA members from both the private and public sector including planning consultancies, development managers and local government planners.

B. Submission

1. General Principles

Some sections of the SEPP will make significant changes to the permissible uses and development controls applying to government owned land. In particular, it will enable high density residential and commercial development on land that is currently zoned ‘specials uses’ including public schools, hospitals, utilities infrastructure, roads and railways.

In many instances, the SEPP will remove opportunities for public or local council consultation in the outcomes enabled by those changes. It will most likely lead to an adversarial climate that is not conducive to the partnership approach that the Government has advocated.

The enabling provisions demonstrate the lack of strategic asset management by government agencies to determine the long term “best use” (financial, environmental and community use) of publicly owned land. An inherent outcome of such a situation is that public land will be treated in an ad hoc manner. Such an approach undermines the integrity of the State’s planning system, diminishes public confidence in planning and reduces certainty about how property rights and values are established for land.

The SEPP introduces a new mechanism for land use planning.
PIA’s view is that it is not sufficient to rely on a “compatibility statement” as a basis to fundamentally alter the property rights and values attaching to land and potentially that of adjoining land as will occur through the application of the SEPP (Clause 6).

PIA also considers that expediency to ‘rationalise’ or maximise the economic value of government owned assets is not a legitimate basis to remove proper environmental assessment of projects.

The SEPP deals not only with projects of a minor nature but also projects that are likely to have significant impacts. The SEPP provisions that ‘fast track’ the latter type projects do so apparently to promote the ‘orderly and economic use of land’ but seemingly at the expense of the other just as important objects of the Act.

If the SEPP was merely a consolidation of existing infrastructure instruments then these issues would probably not arise. However, the SEPP introduces provisions that bypass the planning processes adopted under the Act. Whilst this may be appropriate for minor infrastructure works, many provisions of the SEPP such as those dealing with educational establishments (clause 3), hospitals (clause 9) and railways (clause 14) are likely to have significant impacts without prior environmental assessment or consultation with affected stakeholders.

**Recommendations**

1. THAT Clause 6 of the SEPP be deleted;

2. THAT Clauses 3, 9 (1) and 14(5) of Schedule 1 be deleted.

3. THAT if clause 6 remains then any development proposed in accordance with the clause on ‘nominated land’ that involves residential, retail, industrial or office development in excess of $20 million be the subject of a Commission of Inquiry under S.119 of the Act allowing public input to the proposal to assist the Director-General making a decision about “compatibility” or “consistency” with sound planning principles.

2. **Review of the Standard LEP Template**

The draft SEPP highlights many of the problems with the definitions and operation of the Standard LEP template. Several sections of the template are transferred to the SEPP. PIA supports the need for the Standard LEP to be reviewed as a matter of urgency and supports the consolidation of clauses in the new SEPP.
Recommendation

THAT the Government urgently convene a working part of key stakeholders to review the Standard LEP Template.

3. Consultation with Councils

Clause 7 of the SEPP concerns consultation with Councils. Whilst it is understood that the provision only applies to development permitted under Schedule 1, the use of the term “significantly” impact is ambiguous and open to misinterpretation. The clause should apply to all development except that of a minor nature.

More importantly, it is the experience of our local government members that “consultation” is no more than notification without any meaningful engagement about the matters listed in 7(1) 9a) to (f).

Recommendation

1. The term “significantly” in Clause 7 be replaced with another term to clearly indicate what the clause applies to.

2. The clause be amended to provide that proponents must provide a written response to comments made by a council within 7 days of the close of the notification period.

3. The clause include consultation in relation to projects affecting a local heritage item or land within a heritage conservation area.


1. The definition of “educational establishment” should delete the reference to “public” in order to also apply to private schools.

2. The use of the table format under Clause 5 is preferred to the alternative of each activity under Schedule 1 being referenced to the applicable zone.

3. Educational establishments (as defined) should not be a permissible use in RE1 Public Recreation zones. These zones are generally public open space and construction of school buildings on such space is inappropriate.

4. Clause 6 – Additional Uses on Nominated Land

This clause creates a new planning process for government owned land that is not supported.
There is insufficient information to clarify the criteria or content of a “capability statement”, the process does not allow for proper assessment of the impacts of alternative uses, the clause is silent on the meaning of “sound planning principles” and its application is likely to lead to poor examples of ad hoc development.

If the clause is to remain then it is **recommended** that the provision include a requirement for a S119 Commission of Inquiry to investigate appropriate uses, provide advice on the applicable planning principles, assess the likely adverse affects of preferred uses and recommend controls that might apply to development.

5. Savings and transitional provisions should be included in the SEPP.

6. **Schedule 1**

   “3. **Educational Establishments**”

PIA supports the intent that minor additions or improvements to public schools should not need consent. However, the use of the 10% staff or student criteria is unlikely to be workable given the changing student numbers in any year and the difficulty of following how cumulative “10%’s” will be assessed. PIA recommends that an alternative criterion based on scale (single storey) and location (proximity to a boundary) should be used.

Whilst PIA supports community use of public school sites, our members have drawn attention to the particular problems with commercial markets. The Schedule should not apply to such a use and should be excluded or alternatively dealt with by specific provisions.

“9 **Health Services Facilities**”

Introducing a blanket provision making residential or commercial development permissible on hospital sites under Clause 9(1) is not supported. It is contrary to proper planning, is open to abuse and will lead to ad hoc, incremental development. If the clause is to remain then the scale of such permissible development must be limited, for example by a total maximum FSR of 1:1 or less and demonstrate that it will only have a minimal impact in terms of traffic, servicing, streetscape or demand for local facilities.

PIA would support the provision if it was enabling affordable or seniors living housing to be provided or medical related commercial uses.

“10 **Housing and Group Homes**”

The heading should refer to “affordable housing” and apply only to development of multi-dwelling housing for affordable housing.
“14  Railway Infrastructure Facilities”

Clauses 14 (1) (v) and (vii) relating to heritage should be deleted or impose a requirement for consultation with the local council before any decision to carry out work occurs.

Clause 5 allowing generally any purpose on a railway corridor “in the vicinity of” a railway station, is not supported and should be deleted.

Agencies such as Railcorp need to undertake comprehensive strategic planning of their station sites and corridors before such development is allowed.

The financial viability of such projects over or adjacent to railway stations is rarely viable unless it involves major high density projects. The clause makes such uses permissible under the “wing” of Crown development thereby removing refusal, ability to impose conditions and appeal rights without Crown approval.

Moreover, the scale of such projects is likely to substantially transform the character of the locations where they would occur.

“22”  Water Supply Facilities

The clause 1 (iv) allowing desalination plants without consent is not supported without some size limit. Large scale plants may have significant environmental impacts, including their high energy demand and should be subject to detailed environmental assessment and consultation through the normal consent process.
C. CONCLUSION

PIA in general agrees with the aims of the SEPP and supports most of its provisions.

Certain sections of the SEPP as outlined in this Submission are not supported and PIA submits that they be deleted until additional consultation has occurred to consider any amendment.

PIA would welcome the opportunity to discuss any aspect of this submission with the Department.