The Planning Institute of Australia (PIA) is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 4,500 members nationally and around 1,200 members in New South Wales. PIA NSW plays key roles in promoting and supporting the planning profession within NSW and advocating key planning and public policy issues. This submission has been prepared on behalf of PIA NSW by Members of the Institute.

The Planning Institute of Australia (PIA NSW) welcomes the opportunity to provide comments to the Department of Planning and Infrastructure on the Draft Policy Statement – ‘Plan Making and Delegations’.

Whilst PIA NSW is supportive of changes to streamline the processes to rezone land, the Institute is concerned that this initiative comes at a time when the entire planning system is soon to be replaced. The preference for PIA NSW is that the draft Policy be considered in conjunction with the Planning System Review. That said, there are some comments that PIA NSW would like to make relating to the Draft Policy Statement as follows:

- Even with the new procedure, some key ‘slow areas’ in the rezoning process may remain. In particular, a planning proposal will still need to be prepared and adopted by a Council, the Department will still need to consider it, issue a gateway determination, and Parliamentary Counsel will continue to draft all LEP changes. Another potential area of delay may be in obtaining Government endorsement of a Strategy adopted by a local Council. The new process does not address these areas.

- The delegation of certain powers to Councils is supported. An assessment may need to be made as to the skills and capacity of some Councils to be able to effectively exercise the delegations and therefore the grant of the new powers might be on a case by case basis rather than across all Councils. PIA NSW also recommends that those Councils not yet considered ready for these powers should be supported with training by the Department and additional resources.

- The 60 day ‘deemed refusal’ provision for spot rezoning applications made may also raise some concern for Councils. Under this policy Council planners would need to review, refer and report the matter to Council within 4 weeks of receiving the application in order to meet the monthly reporting cycle. This includes reviewing the information provided and considering views of other staff regarding flooding, infrastructure, traffic, environment etc and assessing the proposal against a raft of local and State planning policies and legislation. This timeframe is not realistic given the resources available and could lead to deficient reports being prepared for Council which are then subject of review upon request by other State government instrumentalities.
• No appeals on spot rezoning applications should be allowed until a local Council, having been elected to represent the views of its community, has had sufficient time to evaluate and determine the matter as it deems appropriate. The Minister must remain solely responsible and accountable for overriding the views of a local Council directing a review to be undertaken only after a Gateway determination has been made.

• The process outlined in the Draft Policy Statement appears to represent a “backdoor” approach to replace Part 3A by enabling proponents to override the strategic and statutory planning framework applying to land. The policy could apply to everything from a new mine to a residential flat building.

• The Institute supported the repeal of Part 3A primarily due to its ability to override the strategic planning framework and has opposed the introduction of an appeal right for prohibited development. The Draft Policy Statement would implement a system opening the door, effectively, for Part 3A style applications and for prohibited development with appeal rights. The Institute’s position is that Councils have a responsibility to adopt a strategic planning framework for their area. The criteria for supporting a spot rezoning that is, “in accordance with broader government policy,” is open to too wide interpretation.

• The Institute does not support the process for review of a Council’s decision on a Planning Proposal by the JRPP with the power to bypass the Council and report directly to the Minister or Department for gateway determination.

• The Department’s criteria (refer Department ‘Plan Making’ document page 2) for assessing whether to refer a Proposal to the JRPP are proposed to be:
  1. The development will either utilise existing capacity in infrastructure networks (subject to the agreement of service providers) or the necessary essential infrastructure can be provided out of sequence subject to cost recovery and the agreement of essential service providers.
  2. The development will be adequately integrated with existing public transport networks in a timely manner to ensure that there is not an undue reliance on private vehicle trips.
  3. The development is likely to be supported by agreement from key environmental agencies, that appropriate environmental management outcomes can be achieved.
  4. The development will not detrimentally impact on the viability of identified centres in endorsed regional and/or sub-regional strategies.
  5. The development is consistent with, or supports, the outcomes and actions of, one or more of the following:
     - An endorsed local strategy;
     - The relevant regional strategy;
     - Other relevant regional or state strategic plans or polices.

The PIA NSW ‘underlining’ emphasises the terms that pose problems for interpretation or subjectivity.

• The criteria to be used by the Department for assessing whether a Planning Proposal should be referred to the JRPP (the pre-gateway process) lacks certainty and involves a subjective opinion by Department Officers. The terms “adequately”, “timely”, “likely”, “appropriate” and “consistent” are difficult to define with any certainty.
The Institute would propose, if the new process is implemented, that there be an obligation for the Department to meet with and confer directly with the Senior Planning Officer of the Council in regard to assessing the criteria and whether the Proposal can satisfy all criteria. The Senior Planner may decline to confer with the Department, however the opportunity to jointly explore the proposal should be provided.

The withdrawal of the Department’s involvement after the gateway determination may increase the potential for LEP changes to be made by Councils that reduce the development capacity of land. This could be resolved if the delegation to Councils is only extended for rezonings that involve an increase to development potential, or where all impacted land owners have given written consent in support of the planning proposal.

The proposed changes will introduce a ‘pre-gateway’ review. The request for the review will be determined by the Department of Planning and Infrastructure, before the proposal is given to a Joint Regional Planning Panel for consideration. If the draft Policy is to proceed then the Institute does not support any appeal process to the Land and Environment Court or other body. The disadvantage of such a new appeal step would likely be an additional complication to the process, thereby potentially defeating the streamlining goal. More importantly it would effectively introduce an appeal procedure for prohibited development.

The second gateway step is for a Council or proponent to request a review of the gateway determination that rejects or amends a Planning Proposal. The review is managed by the Department and requires a report to the Minister or Director-General who may then seek the advice of the PAC. The Minister or Director-General are not required to obtain the advice of the PAC and may simply determine the matter themselves. This exposes the Director-General and the Minister to the possible and undue criticism of not acting transparently or even politicising the decision. These were the problems found to occur with the Part 3A process and which brought about its repeal. If this aspect of the draft Policy is to proceed then all gateway review requests should be referred to the Planning Assessment Commission for advice (this would still allow the Director-General or the Minister to make the final decision).

The definition of ‘proponent’ is an issue. Unlike development applications, there is no requirement for a landowner’s consent. If this is not addressed, objectors may pursue proposals to downzone other people’s land under these rules.

Based upon the information presented within this submission, PIA NSW would argue that the proposed changes to the processes to rezone land may add further uncertainty and additional complications to planning procedures within NSW. These potential difficulties would come at a time when improved confidence in the planning system is imperative and more simplicity is being sought, and this calls into question whether the proposed policy changes should progress.

The Institute welcomes the opportunity to make this submission and would be pleased to discuss any aspect of the points raised or alternative interim mechanisms. Please contact Robyn Vincin, PIA NSW Executive Officer on 8904 1011, should you require any further information.