Planning Institute of Australia (NSW Division)

Submission: Promoting Economic Growth and Competition through the Planning System: issues for consultation

About PIA

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 1,300 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.

INTRODUCTION:

PIA NSW notes that the important role of planning in delivering social, environmental and economic goals is acknowledged in the introduction to the Background in the Discussion Paper. PIA NSW strongly supports this premise as the basis of the review of the impacts of the planning system on competition and investment. It is important that equity remains the key consideration in promoting economic growth. PIA NSW agrees with encouraging competition however not at the expense of fundamental planning policies designed to ensure triple bottom line sustainability. The following provides some comments on specific issues raised in the Paper.

NEED TO MAINTAIN BALANCE BETWEEN ENVIRONMENTAL, ECONOMIC AND SOCIAL FACTORS
While the importance of economic factors is recognised, PIA NSW recommends that equal emphasis should be placed on environmental and social factors in any planning consideration/assessment including promoting economic growth and development. For example, protection of the physical environment and resources is essential to provide a high level of amenity for any tourism, retail and commercial development. A high level of amenity and good quality environmental setting may be the key factor that makes one particular development of a certain type more competitive and successful than another. Similarly, consideration of the potential impact of a new development on the community and its social infrastructure is important to generate and maintain community support for new development that might be critical to its economic success.

The existing planning system allows for these three key factors to be considered equally in any planning matter and this balance must be maintained. In our view it is how the NSW planning system is administered, with a reluctance of some communities to accommodate growth, which has resulted in some cases in an inadequate supply of suitably zoned land for commercial infrastructure such as retail premises. The lack of land supply arising from a failure to grapple with the difficult political issues surrounding expanded or new centres has increased the price of such land and reduced the ability to develop such infrastructure. Accommodating growth in a balanced and well considered manner is fundamental to such planning decision-making.

**EXISTING PLANNING SYSTEM PROVIDES ADEQUATELY FOR PROMOTING ECONOMIC GROWTH AND COMPETITION**

Not withstanding such administrative failures PIA NSW believes that the existing planning system itself provides adequately for promoting economic growth and competition.

**Objects of the Act:**
Section 5(a) of the objects of the Act encourages:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

**Matters for consideration in assessing development applications:**
Section 79C (1) – (Evaluation) of the Act identifies the matters that a consent authority must take into consideration when determining a development application. The matters include:

“(b) the likely impacts of that development, including......economic impacts in the locality”

There is considerable case law deriving from the 1979 High Court case (Kentucky Fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675), including in NSW the case of Fabcot Pty Ltd v Hawkesbury Council (1997) 93 LGERA 375 which confirm the criteria to be applied by a consent authority in assessing the economic impact of a development. It is not whether a proposed retail development will result in direct competition with another retailer but rather whether the proposed development will detrimentally impact upon services or a centre which the community currently enjoys. If that impact is to the extent that those services or the centre as a whole is put in jeopardy, then this becomes a relevant planning
Environmental Impact Statements:
Under the EP & A Act, Environmental Impact Statements (EIS’s) are required for that class of development referred to as designated development, which includes a wide range of industrial, commercial, agricultural and tourism related type developments, many of which contribute towards economic growth and employment and stimulate other developments due to the scale of physical development and investment.

The EP & A Regulation specifies the matters that must be addressed in EIS’s for designated development. The Director-General may establish guidelines for the preparation of environmental impact statements, in relation to development generally or in relation to any specific kind of development. This clause provides scope for the Director-General to require consideration of any matters that might be relevant to the assessment of a designated development including economic impacts and cost benefit analysis. Schedule 2 of the EP & A Regulation lists the matters that must be addressed in all EIS’s and includes matters relevant to the promotion of economic growth and competition, such as clauses 3 & 6.

3 Analysis of alternatives
An analysis of any feasible alternatives to the carrying out of the development or activity, having regard to its objectives, including the consequences of not carrying out the development or activity.

The Discussion Paper suggests that “the merit assessment process at both the zoning and development application stage should not normally take into consideration the likely competition impact of a new entrant on any existing centres of individual developments unless there is a public interest which requires consideration of broader issues”.

With respect to development assessment this proposition is supported by the case law referred to above and in effect by the provisions relating to designated development requiring an analysis of alternatives including the consequences of not proceeding with the development.

With respect to plan making (“the zoning ... stage”) there is a lot less clarity about what is required under the legislation in terms of a thorough consideration of alternatives. Many local authorities undertake comprehensive research and analysis of future scenarios and use well recognised techniques such as options formulation and cost benefit analysis but this is neither prescribed nor consistently applied. In the PIA’s view improved strategic planning, including research and options analysis, along with community engagement, needs to be more robustly applied as the basis for statutory plan making “at the zoning stage”. Improved resources and skills need to be applied to this important area of planning, which for many years has suffered in NSW at the expense of development assessment.

6 Justification of development
(1) The reasons justifying the carrying out of the development or activity in the manner proposed, having regard to biophysical, economic and social considerations, ....”
The Discussion Paper states that "the need for the development should not normally be a consideration as part of the merit assessment...Similarly, the impact on individual businesses ...should also not normally be considered as part of the merit assessment." Again, the existing planning system requires as part of the DA merit assessment consideration of economic issues insofar as they jeopardise the viability of commercial services or facilities offered in a centre as a whole, or otherwise adversely affect the public (as opposed to the private) interest.

As referred to above, the EP & A Act and EP & A regulation requires consideration and assessment of development proposals to take into account economic issues such as economic impacts in the locality, analysis of alternatives and justification based on economic considerations. The system does not impose any requirement to consider competition between traders or individual developments, nor the need per se for a development, unless expressly stated in a planning instrument. With the advent of the standard LEP template such ‘special’ considerations will be removed and this is supported by the PIA.

It is important that these fundamental economic considerations are retained as part of any merit assessment in addition to environmental and social issues. PIA NSW considers that the existing planning system provides an acceptable balance between these three key areas in development assessment.

ZONING SYSTEMS AND LAND USE TABLES

The paper states that “within a particular zone, the system should not favour a particular development over another unless there is a clear public policy case for doing so”.

It is not clear what this statement means. It could be read as suggesting that in zoning provisions, there is no need for separate land use columns, and alternative development processes, within a particular zone as all development that is not prohibited in the zone should generally be treated and assessed in a common process. The statement could also be read to suggest that development controls and standards such as height, density, setbacks etc should generally not vary from one type of development to another. Although the statement acknowledges an exception where there is a “public policy” case to differentiate between development, a fair and robust planning system should, (and indeed the NSW system does, with section 79C of the EP & A Act), recognise that the public interest is a matter that must be considered in any development proposal and assessment. This might mean providing planning controls as part of an expressed public policy that encourage a particular development type or use over another type. For example some development may not require public comment while another type of development might be suitable but may require greater scrutiny because of potential impacts on a local community.

COMPLEX PLANNING PROVISIONS AND REGULATORY BURDENS

The discussion paper states that, “it is essential that the planning system minimises any regulatory burdens that could inadvertently constrain sustainable economic development and competition within the industry”. PIA NSW agrees that it is important that the planning system provides adequate opportunities for any development that has the potential to deliver sustainable economic, social /
community and environmental benefits. It is important that the system maintains a balance between all factors which are important to a sustainable, healthy community. Any concessions or removal of regulatory burdens designed to facilitate economic development should not result in any diminishment in social or environmental conditions.

The paper states that, “complex planning provisions which can lead to costs associated with preparation of assessment reports along with associated time delays need to be reviewed and streamlined...to avoid development approval processes providing a barrier to entry and thereby restricting competition”. PIA NSW believes it is important that “preparation of assessment reports” should not be seen as “complex planning provisions” or part of a process that is responsible for “restricting competition”. Assessment reports are an integral part of the consideration of a development proposal for a consent authority as well as a community. It is not considered necessary to change provisions in the planning system to simplify assessment reports.

Nevertheless the plethora of statutory instruments (and in some cases non-statutory policy documents) have imposed upon a consent authority a burden to consider all those instruments in order to protect themselves from legal challenge. It is important therefore, to simplify planning procedures and controls generally. Over thirty years since the EP & A Act was introduced, numerous changes have been made to the planning system designed to respond to changing economic, environmental and social conditions. These have included major structural and general procedural amendments to the Act and introduction of a vast range of State Policies and Regional policies and strategies that affect local planning. The vast array of legislation, plans and policies that need to be considered in assessing a development or rezoning proposal has contributed towards the complexity of the planning system and is a greater cause of delays, frustration and increased costs of achieving development or rezoning approval than fundamental planning processes such as assessment reports.

**NEED FOR CERTAINTY IN THE PLANNING SYSTEM**

The paper notes that, “a well functioning planning system supports investment by providing certainty in land use zoning, development approval requirements and the provision of infrastructure”. PIA NSW generally supports this statement; however, it is considered that gradual amendments and changes to the planning regime, especially in relation to major commercial and industrial development, has contributed to erosion of that certainty in the NSW planning system. A degree of flexibility and discretionary provisions are an important part of any planning system however it needs to be balanced against provisions that provide certainty. For example, Part 3A provisions that allow Ministerial approval of development prohibited by zoning (effectively an ad-hoc rezoning process) and switching off of other legislation applicable to Part 4 DAs does not provide certainty that investors and communities have come to expect and need to rely upon.

PIA NSW considers that greater confidence and certainty would be generated in the NSW planning system if there was improved clarity in decision making procedures. Local government should be responsible for matters that are of local importance and significance and the State should focus on development proposals that are genuinely of State and regional significance.
It is important to provide certainty for investors and developers but it is equally important for communities to have a degree of certainty about the character of development likely to occur in their locality. At a local level investments in housing, social and community facilities and commercial activities such as shops and professional services, which create and sustain communities, also contribute towards economic growth, employment and productivity. A degree of certainty is needed at the community level to encourage investment in community facilities and activities.

Except as provided for in major projects under Part 3A the suggestion that uncertainty exists in the location of retail developments is questioned. Successive NSW governments have supported the Centres Policy for over forty years and overwhelmingly major retail development has formed the foundation of each strategic multi-activity centre within the Sydney region.

**BROADER POLICY ISSUES**

PIA NSW considers that any discussion on how economic growth and development could be improved through the planning system should look at broader policy issues, such as Centres Policy and Decentralisation.

**Centres Policy**

This policy has been in place since the 1968 Sydney Region Outline Plan which required that major shopping centres be located in nominated activity centres, specifically to be served by rail. This policy, which has been upheld by Planning Ministers for over forty years, has helped structure Sydney as a multi-centred urban region. These strategic activity centres provide a reasonable level of access to a population now approaching 5 million people.

PIA agrees that allowance should be made for each of the nominated centres to continue to expand particularly as its population catchment grows or new businesses activities wish to establish in that centre. The Centres Policy offers substantial community benefits particularly maximising the use of public transport and other public and private infrastructure, and minimising car dependency.

This urban structure has given Sydney the distinction of having the highest use of public transport for the journey to work of any Australian city.

Melbourne in its latest 2030 Metro Strategy is attempting to expand its freestanding shopping centres, developed over the past fifty years, into multi-use activity centres, with little success.

PIA NSW considers it is more important today to strengthen, rather than dissipate, Sydney’s multi-centred format in the light of the State’s sustainability agenda, particularly Global Warming and Peak Oil issues.

PIA NSW suggests that ACCC and Productivity Council recognise the incredible benefits for the community of providing high levels of access to a large number of activities by public transport, a unique
situation for Australian cities and a structure which will increasingly benefit the community as Sydney grows towards 5 million people during the next 20 years.

**Decentralisation**

Consistent with the need to focus on and strengthen the Centres Policy, PIA NSW considers that NSW Government should place more emphasis on decentralisation policies to encourage investment and development in targeted regions outside Sydney, which would provide numerous flow on benefits, such as:

- Alleviating pressure on the natural environment, resources and infrastructure generally in the Sydney region;
- Stimulate population growth in regions which creates a cumulative effect on growth generally;
- Provides greater location options in the State for potential investors;
- Creates potential to develop new industries and activities based on a region’s unique assets;
- Encourages investments and improvements in infrastructure in regions which creates an attractive environment for settlement and investment.

Development and release of regional strategies for each region in the State is acknowledged and strongly supported. PIA NSW considers that as well as the review and production of the “(Draft) Centres Policy: Planning for Retail and Commercial Development”, which applies to the State, priority should be given to the development of a decentralisation program designed to encourage economic growth and investment and competition in targeted regions outside the Sydney region.

**Conclusion**

The paper appears to have an emphasis on retail activities in shopping centres. The review should look at broader economic growth and development issues including:

- activities including commercial, industrial, tourism and major residential developments; and
- areas / locations spanning hierarchies from local shopping centres to district centres as well as regional and sub regional centres.

PIA NSW considers that in order to better support growth and competition in NSW adequate amounts of land in well located centres with good levels of public transport access need to be available to comfortably accommodate current and future needs. State and local government together have a responsibility at the plan making stage to ensure that there is an adequate supply of land zoned for purpose, at appropriate locations. Many local plans need to be updated to reflect current demand of more space as communities grow and needs change or increase. Greater emphasis on getting the plans right needs to occur, with due and balanced consideration to economic, social and environmental considerations.

At the development assessment stage one of the barriers to investment and development is the complexity of the planning system, the plethora of statutory instruments, and the blurring of State and local council responsibilities in development assessment and development decision-making, particularly
with the growth of advisory panels (such as IHAPs, SEPP 65 panels etc) and as more development
determination has become the responsibility of the Minister or State appointed panels (the PAC or
JRPPs).

The development assessment system would better support growth and competition if it was supported
by fewer modern and more simple planning instruments (with adequate zoned land), clear lines of
responsibility, and differing levels of assessment for differing levels of compliance and complexity.

Julie Bindon
NSW President
Planning Institute of Australia