Planning Institute Response to Planning Bill

The NSW Division of the Planning Institute of Australia (PIA NSW) has considered the current NSW EPA Draft Bill and the earlier Exposure Draft. We write to advise you of our current position and to seek your support in addressing those matters which are still of concern to the Institute.

The Planning Institute of Australia is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 4500 members nationally and 1300 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.

The Institute supports the need for reform of the NSW planning system and endorses many of the provisions of the planning reform ‘package’ under the Bill including:

1. Creation of the PAC and delegation of Ministerial consent powers to that Panel.
2. Establishment of panels with designated functions and powers of delegation for decision making including creation of IHAPs to be generally discretionary for Councils.
3. The ability of the JRPP to delegate powers back to Councils.
4. LEP gateway screening, including specification of the planning proposal as well as study and consultation requirements for LEP types.
5. Establishment of a Planning Arbitrator system in order to reduce the cost and delays involved in appeal procedures for small applications.
7. Reduction and streamlining of concurrences involving State agencies.
8. Extension of powers to Councils relating to unauthorised work.

The Institute had a number of concerns with the Exposure Draft Bill, both in terms of the short time frame for review and consultation in addition to the implementation implications of several sections of the Bill. We submitted a response to the Exposure Draft, met with the Minister and his advisors and the Opposition and the Greens. PIA has also made representations as part of the Coalition for Planning Reform.
A number of the Institute’s issues have been addressed in the Draft Bill and the Policy Statements as tabled in Parliament on 15 May and through the Regulations and Model Codes released to date.

Although the reforms do not adequately resolve all our concerns, the Institute has decided to withdraw our call for an Upper House Inquiry on the basis that:

- PIA generally supports the reforms on the grounds that they are an improvement to the current system.
- The Government continues to work with PIA to ensure the reforms as finalised are in the public interest.
- A considerable amount of new detail has recently been provided on how the new system will work, and this is generally acceptable or could be reasonably improved with further consultation.
- PIA’s roles are to be formally provided for in the nomination and review of shortlisted Panel PAC and JRPP Members and Arbitrators.
- PIA is actively involved in the formal processes and committees to advise on the subordinate legislation, codes and other implementation measures, including as a member of the Implementation Advisory Group.
- The new Implementation Advisory Group is to be independent and autonomous and preferably a formally constituted committee under the Act. It needs to be transparently run with regular and real input and needs to sign off on its own brief.

Whilst the current package of reforms is, on balance, likely to improve the current NSW planning system, they are considered a short term remedial solution. The Institute reaffirms its position that the Act should be replaced with a new Act. We acknowledge this will take some time to thoroughly research and refine in consultation with industry professional groups and the wider community. PIA will actively engage in this longer term project to develop some first principles, as the basis for new legislation. In the meantime the current reforms need to proceed.

The Institute provides a number of comments regarding the draft legislation and respectfully seeks your support to ensure these areas are addressed, either through amendments to the draft Bill or in subsidiary regulations, codes or policies.

The attached document provides a summary of:
- amendments and additions to the Exposure Bill, which we support,
- schedule of items which we seek to be addressed, either through amendments or by referral to the Implementation Advisory Group

We would welcome the opportunity to expand on any of the issues we have raised. Our State Manager Robyn Vincin, would be happy to assist in this process and can be contacted on nswmanager@planning.org.au or phone 02 9409 4954.

Yours sincerely

Julie Bindon
NSW President
Amendments and Additions to the Exposure Bill, supported by PIA

The Planning Institute of Australia NSW Division (PIA NSW) notes that the Bill now contains several amendments and additions to the Exposure Bill.

Many of the amendments provide the clarifications that were requested by the Institute in its Submission and those new provisions are welcomed.

In particular, the Institute notes that amendments have been made and further details in the Bill and draft Regulations have now been provided in relation to:

1. Applications for Objector Reviews (s. 96C – J).
2. Procedures for Planning Arbitrators (s.97 and Reg 268).
3. Deletion of non-complying / complying development certification (s. 85A(7A-7C)).
4. New provisions to streamline and expedite state government agency concurrences (s.79BA EP&A Act, s.37B and 42 of the Coastal Protection Act 1979, cl.5A Coastal Protection Regulation 2004, s.90 Local Government Act 1993).
5. Removal of the retrospective provisions for lapsing of consents approved prior to the Bill (s.126).
6. Clarification of consultation procedures for threatened species before making an LEP(s. 34A).
7. Deletion of the provisions for land acquisition in urban land release or urban renewal areas (s. 9A).
8. Clarification that key community infrastructure can include car parking facilities, libraries and community centres as well as emergency/ volunteer services (cl.31 EP&A Regulations 2000).
9. Special provision for the Sydney Water Catchment. Further guidelines will be necessary through the SEPP to clarify the particular classes of application to be caught by the new provisions to avoid the consequence of catching unintended applications (s. 34B).
10. Power for the JRPP to delegate its functions to a Council (s. 23(1B)).
11. Ability for Councils to seek a fixed levy above 1% (s116L).
12. Provision for reviews of determination to also go to Councils (retaining the old s82A provision) if requested by an applicant rather than planning arbitrators or JRPP (s.96D).
Schedule of items to be addressed

There remain a number of matters that the Institute considers need to be addressed to ensure the reforms can be implemented effectively. These matters may require amendment to the draft legislation or the supporting Regulations, codes and guidelines, and may be matters which can be considered by the Implementation Advisory Group (IAG). The IAG’s brief needs to be confirmed by that Group at its inception. PIA also requests that the IAG be specifically constituted under the Act and that it continue to operate on a regular basis until it is satisfied that the implementation of all the reforms, including regulations, codes and guidelines, are completed.

The matters requiring further action are:

1. Preparation of Regulations relating to procedures for IHAPs and Planning Arbitrators and the circumstances allowing legal or other representation (S.23J; s.23L).
2. Circumstances under which physical and substantial commencement is taken to have occurred (s. 86A (5); s. 95(6))
3. Regulations in respect to Deemed Refusals (s.96 (6))
4. The classes of determination to be excluded from the definition of reviewable determination (s. 96 B).
5. Introduction of a uniform ePlanning software system for Councils to assist DA tracking, monitoring, DA lodgement and processing.
6. Review of the categories of development and criteria for which objectors can request a review (Reg 285).
7. Regulations for how certifying authorities may apply to a Council for advice as to whether a certificate is consistent (s. 109 PA).
8. Regulations relating to the lapsing of consents for staged development projects and subdivision of land as against consents for other development where owners may have obtained finance for the staged project or subdivision but are undertaking a work in phases or by a staged land release. (This also relates to clarification of physical commencement).
9. Regulations for submission of Statements of Environmental Effects in order to simplify the content and scope of SEEs according to the complexity of the DA.
10. The types of development to be dealt with by Regional Panels to be specified in a SEPP.
11. Review the cost implications for Councils and other bodies to implement the new legislation and propose measures to offset those additional costs.
12. Regulations governing the submission to and assessment by the PAC of Part 3A applications and concept plans.
13. Regulations to set out the requirements for notification of reviewable development applications including the form and content of the notice, the extent of notification (to replace the unworkable proposed s88 (1A) for a one kilometre notification) and who may lodge an objection for review of a decision.
14. We reiterate our call for Joint Regional Planning Panels to serve as a consent authority only if Councils delegate the role, otherwise they would be advisory only.
15. Establish a process to link a council’s LEP with the integrated strategic planning process under the NSW Local Government Act.

16. Provide adequate explanation to all stakeholders in the new system about how it operates, through clear and concise communication. Any communication needs to outline the advantages that the legislation provides and needs to be adequately resourced.

17. PIA reiterates that these reforms should not diminish a commitment to the longer term need to replace the Environmental Planning and Assessment Act with a new Act based on best planning practice.