19 October 2015

Executive Director Regions
Department of Planning & Environment
GPO Box 39
Sydney NSW 2001
Via email pregatewayreview@planning.nsw.gov.au

Dear Sir/ Madam

PIA Submission – Pre-Gateway Review

1. Introduction

PIA NSW welcomes the opportunity to provide comments on the exhibition of the Pre-Gateway Review - Findings and Recommendation Report.

PIA NSW welcomes the findings of the review, and in particular its objective to retain the Pre-Gateway Review process. We also in particular support ensuring an efficient and early decision of the strategic merit of a planning proposal.

PIA NSW has examined the proposed amendments and would like to recommend further considerations into the process to ensure the improvements to the planning system.

2. Submission

Purpose and Intent

PIA NSW supports the retention of the Pre-Gateway Review process as it allows for strategic consideration to support jobs, housing and good planning which may not have otherwise happened. As the rezoning process is inherently strategic and may affect the metro wide and State interests, a rezoning proposal often goes beyond the scope, ability and mandate of a Local Council to assess. It is appropriate that there is a mechanism for a third party review of a Local Council decision.

PIA NSW encourages the process to be more transparent and provide certainty, whether positive or negative decisions are made. We agree with the findings that there should not be a threshold or
scale of project, but rather the review of rezoning should be for all and any kind of planning proposal. This approach provides clarity in the process.

The intent of the Pre-Gateway Review is to consider in the early stages the strategic merit or justification of the planning proposal. Experience by many proponents has been that the Department or JRPP require a significant amount of detail, which goes against the intent of the Gateway. It should be ensured that JRPP members (particularly those who do not receive planning proposals often) understand that they are not granting consent to a rezoning, but rather they are considering whether or not the proposal has strategic justification. As highlighted in the findings, this has caused many delays and inhibited the intent of the process. It would be essential for the Department of Planning and Environment to ensure distinction of JRPP role in development applications and assessment of Pre-Gateway applications.

Given the different nature of role of the JRPP in its DA determination responsibilities and Pre-Gateway Review responsibilities, PIA NSW suggests that consideration is given to differently formulated Panels. This would involve Panels comprising members experienced in development assessment for DA determinations and those experienced in strategic planning for Pre-Gateway reviews.

Proponents of large scale planning proposals scale will generally undertake a good consultation programme, whether prior to, during or post gateway and exhibition. This is encouraged, however, some Councils have introduced a standard requirement for public exhibition of planning proposals prior to making a decision on whether to request a Gateway determination. PIA NSW is of the view that community consultation should be focussed post Gateway. The reason is that to do otherwise undermines the function of the Review at such an early step in the process, and may raise expectations or angst of community when it is not necessary.

Recommendations

- The Department of Planning and Environment (DP&E) retain the Pre-Gateway process
- That any or all scale of planning proposals continues to be considered, with no threshold or criteria applied. The Pre Gateway Review is a review of rezoning proposals, not scale of projects
- JRPP members are made aware of the process and their role in the process and the composition of Panels is tailored where possible to reflect the more strategic (rather than statutory) nature of the Pre-Gateway Review role.
- Requirement for community consultation be post Gateway.

Role of JRPP and Department

There has been some confusion about the role of the Department, Council and that of the JRPP in the Pre-Gateway review. In particular, as outlined in the next section, the confusion about the merit assessment prior to the JRPP consideration of the planning proposal.

PIA NSW supports the proposed process whereby the process is efficient and the Department undertakes a more administrative role. However it is concerned that the Department does not provide a strategic comment on the proposal.

PIA NSW supports that JRPP make the final decision, with no rights of appeal, on whether the planning proposal should progress to Gateway. This ensures a clear role and responsibility, with certainty in the process.
The role of Council members on a JRPP when the rezoning has been refused is somewhat contentious, and at times seen as a conflict. PIA NSW recommends that such arrangements are reconsidered, to avoid placing the Council members in an awkward position. In addition, Council should generally not be approached to be the Relevant Planning Authority (RPA) when the Council has previously opposed or refused a planning proposal. Such arrangements will not provide confidence to all stakeholders that the RPA would act objectively and in a timely fashion. PIA NSW proposes that a council that has previously opposed or refused to deal with a planning proposal should not be asked to be the RPA and that the JRPPs should automatically become the RPA following a pre-gateway decision that a proposal should be progressed.

Our members have indicated that varying approaches have been adopted by different JRPPs in the review process. Some JRPPs make the decision with Council planners (including the JRPP Council members) in the hearing. The JRPP then calls the proponent back into the hearing. Some JRPPs make the decision with Council in the hearing, and the proponent contacts the JRPP the next day to ascertain the decision. For clarity, transparency and probity reasons, it is considered by PIA NSW that only the JRPP members make the decision (and one Department of Planning representative is present who may then take the decision to Gateway), and Council planners and the proponents leave the hearing.

Recommendations

- That the Department of Planning and Environment undertakes a more administrative role
- JRPP makes the final Pre-Gateway determination.
- Councils generally not be offered the RPA role when they have refused the planning proposal
- JRPP makes the determination of the Pre-Gateway (and one Department of Planning representative is present who may then take the decision to Gateway), in the absence of Council planners and the proponents.

Efficiency and effectiveness

Currently it has not been unusual for assessments by the Department or determinations by JRPP to be deferred until further consideration or information has been provided with detailed environmental, urban design, economic and infrastructure investigations. PIA NSW therefore supports the proposal that the Pre-Gateway is the early strategic consideration by the JRPP of the planning proposal that does not necessarily require detailed information.

The timeframe of the Pre-Gateway process from the time the proposal is submitted for Pre-Gateway review with DP&E to the time the JRPP determines the matter is unclear. However, it can be assumed that this may occur in 60 days, on the basis that:-

- The Department of Planning has 3 days to submit to the JRPP
- Council has an opportunity to comment within 21 days, and then also has 42 days to indicate whether it would accept the role of RPA if JRPP determines there is merit in the planning proposal.

It is considered that this process should be confirmed and the 60 days timeframe mandated to provide greater certainty in the process.

JRPPs will take on responsibility for ‘assessment’ of planning proposals, however without any assessment report from the Department of Planning and Environment (DP&E). This means that the role of JRPP will be expanded and will place significant pressure on the capacity of the existing JRPPs.
It is not efficient for the JRPP to assess the planning proposal without an assessment report. For this reason, it is necessary for the JRPP Secretariat to be expanded or for professional planners to be engaged to critically evaluate and provide a short assessment report to JRPP.

As it is now proposed that the JRPP will be folded into the proposed Greater Sydney Commission, the role of JRPP and resourcing will become critical.

Recommendations

- That the JRPP make a determination within 60 days of lodgement of the Pre-Gateway application to ensure certainty in the process.
- JRPP Secretariat to be expanded or professional planners to be engaged to critically evaluate and provide a short assessment report to JRPP.

Strategic Review

PIA NSW supports the proposed new strategic merit test, as outlined on page 17 of the report, however would stress the importance of the site specific merit test being included. The reason is that each particular site or area across the site is unique and thus it is important to balance the strategic policy (whether metropolitan, regional or local) with the particular site’s context.

That the strategic focus of reviews includes:

- whether the proposal is consistent with the relevant regional or subregional (district) strategy. This would include all Regional Strategies (when in place) and A Plan for Growing Sydney;
- whether the proposal is consistent with a relevant local council strategy, endorsed by the Department;
- the contemporary nature of the relevant LEP, measured by the time elapsed since the community has been consulted on the zoning of the subject area (including, for example, as part of the introduction of standard instrument LEPs);
- demonstrable reason for the rezoning or change in planning controls to occur, based on changed circumstances since the LEP was made, such as:
  - new infrastructure;
  - a new or updated regional, subregional or local strategy to address inconsistency between strategic planning and/or development standards;
- the public interest
- site-specific merit and compatibility with surrounding land uses, having regard to:
  - the natural environment (including known significant environmental values, resources or hazards)
  - the existing uses, approved uses and likely future uses of land in the vicinity of the proposal
  - the services and infrastructure that are or will be available to meet the demands arising from the proposal; and
  - any proposed financial arrangements for infrastructure provision.
Conclusion

PIA NSW welcomes the opportunity to make this submission and would be pleased to discuss any aspect of the points raised.

PIA NSW believes that the recommendations will improve the efficiency of and confidence in the planning process. It is also of the view that the outcomes could be markedly improved by adopting our suggested amendments.

Please do not hesitate to contact the Institute via the NSW Executive Officer at nswmanager@planning.org.au or phone 02 8904 1011 if you have any questions regarding this submission.

Yours Sincerely

David Ryan MPIA CPP

NSW President