11 December 2018

The Secretary
Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000

The Secretary,

PIA SUBMISSION – DARKINJUNG DELIVERY FRAMEWORK CONSULTATION PAPER

The Planning Institute of Australia (PIA) appreciate the opportunity to offer a submission on behalf of planning professionals.

PIA commends the Delivery Framework as an important reform to further the objects of both the Aboriginal Land Rights and Environmental Planning and Assessment Acts.

PIA promotes the principles of good planning for aboriginal communities and are of the view that this initial strategic and delivery framework needs to be practical and workable as it will set the precedent for future planning. For this reason, PIA recommends the Framework to be positively modified and made suitable for roll out across NSW, wherever relevant.

Planning Policy Reform for a LALC Delivery Framework should operate across NSW

PIA regards elements of the Darkinjung Delivery Framework as having more general application towards the achievement of the economic potential of Aboriginal Lands throughout NSW in accordance with the purpose of the Aboriginal Land Rights Act.

PIA submits that any planning policy reform (ie Guidelines, SEPP or Ministerial Direction) relevant to achieving the economic potential of a Land Council’s estate be able to be automatically applied wherever ‘criteria’ are met – and not only in relation to the Darkinjung Local Aboriginal Land Council (LALC).

There should not be a stand-alone Darkinjung SEPP or Ministerial Direction. Measures specific to Darkinjung or any other LALC should be able to be a ‘schedule’ to an enabling planning instrument - to have effect where / when it is activated by certain criteria being fulfilled or alternatively, the SEPP may outline which areas fall within or apply to LALC land.

Potential Criteria for broader application of ‘Delivery Framework’

Criteria for where and when the Delivery Framework (and associated planning instruments) apply to other LALCs and LGAs across NSW should be developed through the Department of Planning and Environment.

PIA is of the view that only relying on a signed MOU is not necessarily a transparent or clear process, and thus participating in the strategic planning process is critical.
These criteria should be investigated with Aboriginal stakeholders and re-exhibited - but could include:

- That the LALC has participated in the development of a Local Strategic Planning Statement which sets out shared place outcomes relevant to an LGA (and translates the intent of the Region or District Plan). This is critical in order that the strategic planning basis is laid for the LGA.
- That the LALC has participated in (or signed) a Memorandum of Understanding (MOU) setting out a process described in the Consultation Paper and have embarked on:
  - An Audit and Strategic Assessment of LALC land
  - Preparation of a Development Delivery Plan
  - Preparation of a Community Land and Business Plan (required under ALRA) - including demonstration of the broad Aboriginal community benefits of the CL&B Plan in relation to earnings from any land development.
- That the MOU and Delivery Framework has been exhibited in order to demonstrate the intention for the land.
- Criteria that demonstrates a certain scale threshold – eg number of jobs or dollar value for investment for the community.

PIA notes the resourcing implications for LALC, Councils and partner agencies in participating in a delivery Framework process. This should be recognised in a reform package.

**The role for a new planning instrument and Ministerial Direction**

PIA supports the proposal for the assessment and determination of significant planning proposals and development applications by an independent Regional Planning Panel where the proponent is the LALC and the criteria for inclusion in the Delivery Framework are met.

The Consultation Paper outlines reasonable thresholds for an independent panel assessment of an application in relation to Darkinjung LALC– but the planning mechanism should be able to adopt different thresholds based on the circumstances in other regions.

PIA understands that a new State Environmental Planning Policy is an appropriate planning instrument for the purpose of channelling certain DAs and planning proposals for panel assessment. The SEPP could identify certain LGAs or LALCs areas or sites for inclusion, like for example the Urban Renewal SEPP. It could also draw attention to the adoption of the MoU/Development Delivery Plan as considerations in the development assessment. It could also serve to expand notification and engagement requirements to other owners and stakeholders – and vice versa in relation to development applications or planning proposals from others which impact or coalesce with LALC interests.

A new Ministerial Direction to guide appraisal of planning proposals for rezoning / change of use could have a comparable role to the SEPP and set out considerations in assessing a planning proposal including the Development Delivery Plan. Importantly it could set out the circumstances where a LALC should be notified of proposals by others and potentially included.

PIA stress that a new SEPP or Ministerial Direction should be drafted to be generally applicable to any LALC and region. Location or LALC specific measures could be included in a Schedule.

**A possible development pathway for LALC land**

A potential mechanisms/process could be:
• Undertake the MOU and Delivery Framework (assuming satisfactory progress on LSPS and Strategic Audit and Community Land and Business Plan)
• Exhibition of this documentation and assessment by DPE
• Either amend the SEPP to include that site/s or area as outlined in the Delivery Framework – or automatically include the site within the SEPP subject to ‘criteria’ being met
• Application/rezoning is submitted to a council
• Assessment and exhibition
• Assessment and determination by a Panel.

PIA would also be happy to explore this potential pathway as well as alternative planning mechanisms with the Department.

Additional Comments on Native Title and improving Planning Capacity

Significant changes in land use may also, depending on the circumstances, potentially be a ‘future act’ under the Native Title Act (Cth) and that in such circumstances the appropriate provisions for an Indigenous Land Use Agreement (ILUA) or other ‘future act’ procedures under the NTA should not be overlooked.

Another issue that arises from the Darkinjung Delivery Framework Consultation Paper is the relative lack of access to planning skills both within the Aboriginal community and via resources needed to engage specialists. PIA and the University of Sydney are interested in contributing to strengthening Aboriginal capacity to engage with the planning industry.

Conclusion

PIA NSW is excited about the innovations put forward in the Darkinjung Delivery Framework Consultation Paper and would be pleased to contribute to the broader state-wide application of the reforms proposed.

Should you wish to discuss our response please contact myself or our National Policy Manager, John Brockhoff on 0400 953 025 or john.brockhoff@planning.org.au.

Yours sincerely,

Jenny Rudolph
Past President, PIA NSW