

NSW PLANNING ASSESSMENT COMMISSION UDIA NSW RECOMMENDATIONS

UDIA NSW strongly supported the creation of the Planning Assessment Commission (PAC) to determine projects of state significance. UDIA NSW understands that the Department of Planning is currently developing the structural and operational guidelines for the Commission and seeks the perspective of UDIA NSW.

UDIA NSW advocated the creation of the PAC or a similar structure on the basis that the assessment body would provide the separation of powers, diffusing any adverse perceptions regarding political donations and their alleged impact on the decision making process. The separation of powers is consistent with other forms of law. The politicians enact the laws and the bureaucracy and courts make decisions based on those laws.

The recommendations provided below are based on the key principles which UDIA NSW believes should guide the PAC:

- transparency;
- accountability;
- timeliness; and
- cost minimisation.

These principles ensure consistency with the strategic objective of fostering the recovery of the NSW economy. The PAC must generate confidence of investment certainty within the development industry if it is to provide any value to the NSW Planning System.

1. Delegation

UDIA NSW believes that the majority of assessment functions prescribed under the Major Projects SEPP should be delegated to the PAC. It has been suggested previously that this would constitute approximately eighty percent of applications, not including those classified as public infrastructure. There is obviously a need for some clarity with regard to precisely which applications will be determined by the PAC and those for which the Minister retains the consent role.

UDIA NSW provides the following recommendation on the projects that it believes should be delegated to the PAC and those that the Minister should retain:

Part 3A Project	Minister for Planning	Planning Assessment Commission
Schedule 1 classes of development	Groups 7-8	Groups 1-6 and 9.
Schedule 2 specified sites	<ul style="list-style-type: none"> ▪ Chatswood Railway Interchange ▪ Port and Related Employment Lands ▪ Fox Studios, Moore Park Showgrounds and Sydney Cricket Grounds ▪ Taronga Zoo ▪ Australian Museum ▪ Sydney Olympic 	<ul style="list-style-type: none"> ▪ Coastal Areas ▪ Kurnell ▪ Honeysuckle ▪ Penrith Lakes ▪ Housing in Ku-ring-gai ▪ Sydney Harbour Foreshore Sites
Schedule 3 state significant sites	Consent role	No consent role unless specifically delegated
Schedule 5 critical infrastructure projects	Consent role	No consent role unless specifically delegated

This delineation of projects provides that the Minister maintain a consent role for major public and private infrastructure projects and the PAC assess and determine major projects involving private investment. UDIA NSW recommends that this rationale would be applied for any future projects on specified and state significant sites.

UDIA NSW recommends that the Minister would retain the capacity to 'call-in' any Part 3A applications at the Government's discretion. UDIA NSW believes this balance will ensure that the creation of the PAC makes a significant and valuable contribution to the development assessment framework while still retaining a role for the Minister to assess proposals for significant public and private infrastructure. UDIA NSW also recommends that the current delegations to the Director General for dealing with amendments and other minor matters are retained.

2. Membership

UDIA NSW contended during the reform exhibition process that the success of the PAC in providing a superior alternative to the current assessment framework would largely be determined by its constitution. To this end UDIA NSW recommended that at least one of the members of the Commission for every determination have experience and expertise in the commercial aspects of development.

UDIA NSW recognises that the membership of the PAC has been determined. We maintain the view that it is critically important, given the need for NSW to attract significant investment to regain competitiveness, that the PAC have an appreciation of the inherent risk of development, as well as the technical aspects of environmental assessment.

3. Meetings and access

Meetings of the PAC should generally be open to the public. UDIA NSW contends however, that meetings should not provide opportunity for consultation with a myriad of purportedly affected stakeholders.

Development proponents whose applications are to be determined by the PAC must be provided with access to address the Commission. It is critical that the PAC conduct transparent and open assessments and applicants are afforded the opportunity to advocate their projects.

4. Reports and consent conditions

The current Part 3A assessment framework informally provides opportunity for collaboration between the consent authority and proponents at the final stages of determination, ensuring that the future conditions of approval are environmentally and commercially appropriate for the site. Providing opportunity for proponents to review and provide feedback on draft conditions of approval is common practice for most levels of assessment and is a process that must remain with the implementation of the PAC.

5. Assessment time frames

One of the fundamental platforms of the reforms is the need to provide greater efficiencies in the assessment process. Reforms to Part 4 provisions have sought to reinforce that need by rationalising prescribed assessment timeframes. UDIA NSW contends these principles must also be reflected in Part 3A applications.

UDIA NSW contends that the timeframes for Part 3A assessments and referrals to the PAC must reflect the need for greater efficiency to attract investment. UDIA NSW recommends

that any PAC guidelines include binding time frames and efficiency targets for Part 3A assessments.

6. Appeals

The provisions in the *EP&A Amendment Act 2008* deny proponents the opportunity for a merit appeal of a decision made by the PAC if a public hearing has been held during the assessment. This compromises the intent of providing accountability in decision making, one of the fundamental principles of the reforms to the Planning System.

UDIA NSW contends that there must be the opportunity for a merit appeal of the decision made by the PAC even if a public hearing has been held during the assessment. The Act provides greater appeal rights for applicants who are seeking to invest \$100,000 than those who want to invest \$100 million. This is not consistent with providing a regulatory framework that attracts new investment to the state.

7. Costs

Part 3A application fees already put investors in the NSW economy at a disadvantage to do business compared with other states. Any additional costs associated with servicing the PAC must not be passed on to applicants which ultimately is passed on to consumers. UDIA NSW contends that Part 3A application fees must reflect the intention of the NSW government to re-attract investment to this state.

8. Performance

In providing a viable alternative to the current assessment framework, the PAC must be accountable to industry stakeholders, including regulators, applicants, and the community. UDIA NSW recommends that the performance of the PAC be reviewed annually with a report to the Minister for Planning that is released publicly.

The annual review of the operation of the PAC must account for:

- decisions made at variance to Department assessment recommendations;
- assessment timeframes; and
- feedback on performance of the PAC from applicants and stakeholders.

UDIA NSW recommends that the Government provide published procedures and performance measures to account for the operation of the PAC. These must also provide provisions for dealing with poor performance by PAC as a whole or individual members.