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Major Project Development Assessment Process
Productivity Commission
LB2 Collins Street East
Melbourne Vic 8003

Dear Productivity Commission

PIA SUBMISSION: MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESS

As the national peak body representing around 5,000 of Australia's urban and regional planning professionals working in all sectors, the Planning Institute of Australia (PIA) appreciates the opportunity to provide comments on the *Major Development Assessment Processes Draft Report*.

The Planning Institute of Australia (PIA) has a central role in developing and supporting high-quality planning professionals across all sectors to deliver good planning outcomes. PIA collaborates with government, academia, industry and the public and private sectors to improve the delivery of planning services and community access to planning.

This submission has been prepared on the basis of PIA's current policy base and position statements (refer to attachments), consultation with our members around the nation, and our membership knowledge and experience of working with, and devising, planning policy and systems across Australia.

Should you require more information, please do not hesitate to contact the undersigned on the details above.

Yours faithfully

Kirsty Kelly MPIA CPP
Chief Executive Officer

PIA SUBMISSION

MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESS



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The Planning Institute of Australia (PIA) has a central role in developing and supporting high-quality planning professionals across all sectors to deliver good planning outcomes. PIA collaborates with government, academia, industry and the public and private sectors to improve the delivery of planning services and community access to planning.

PIA has continued to contribute to numerous national committees and discussions regarding planning systems and policy at the national level including representation on the National Urban Policy Forum and the Development Assessment Forum. We are keen participants in a range of national level forums and projects including the Australian Sustainable Built Environment Council, Moving Australia Taskforce, Urban Coalition, the COAG Reform Council's Cities workshops and on a range of specific issues based matters including airports, climate change, renewable energy, water and other major infrastructure related matters.

This submission has been prepared on the basis of PIA's current policy base and position statements (refer to attachments), consultation with our members around the nation, and our membership knowledge and experience of working with, and devising, planning policy and systems across Australia.

Why Planning Matters

Planning strengthens communities, promotes economic development and improves the choice of where and how people live and work. It helps identify hazards and reduce risks; it identifies and protects environmental, social, cultural and heritage values.

The Planning Institute of Australia (PIA) is committed to ensuring its members use planning to deliver good outcomes. PIA declares that good planning is the best way to manage urban growth, secure necessary infrastructure investment, determine appropriate settlement patterns for our cities and towns, to generate economic development that contributes positively to the wellbeing of individuals and communities, and the natural and built environments on which we rely.

Planning matters and planners make a difference. Planners help manage change at a local, regional, state and national scale. They develop policy, identify and deliver agreed community outcomes, often in politically charged environments. Planners are professionals who contribute to solutions through encouraging vision, actively engaging and listening.

Planners enhance decision-making and help balance private, government and community interests for a better future. Planners help lead and manage change in the built and natural environment at a local, regional, state and national scale. They develop policy, identify and deliver agreed community outcomes; they contribute to

solutions by encouraging vision, engaging and listening.

While the day-to-day implementation of planning systems is carried out largely at the state/territory and local level, the Federal Government has a role to play in supporting good planning at a national level. The conduct of this study by the Productivity Commission demonstrates that policy guidance and direction is required at the national level in order to achieve planning systems and processes across the nation to achieve the desired economic, environmental and social outcomes for our communities.

PIA's Response to Draft Recommendations and Findings

PIA believes that there are improvements to be made to our planning systems and processes around the country, and are supporting the various State and Territory legislative reviews which are currently being undertaken around the nation. However, it is important that any changes made to the systems, processes and policies are well considered and maintain the ultimate objectives of good planning – to improve development outcomes, coordinate infrastructure, manage resources, protect the environment, improve quality of life and enhance productivity.

Achieving Regulatory Objectives

DRAFT RECOMMENDATION 5.1

Governments should review legislative and regulatory objectives across major development assessment and approval processes within their jurisdictions to ensure that they are clear and concise, with unnecessary objectives removed.

PIA supports this recommendation in principle; however, further clarity is required around what is considered 'unnecessary objectives'. What may appear to be 'unnecessary' at the national level may be of significant importance to the local community within which the development is being proposed.

DRAFT RECOMMENDATION 5.2

Where conflicting objectives are unavoidable, parliaments and governments should provide guidance to their regulators on the priority and weighting of different objectives. A range of approaches may be appropriate, from the inclusion of an overarching policy goal in objects clauses, to providing guidelines on how to make tradeoffs between objectives.

PIA supports this recommendation in principle, however, if some of the other recommendations of this report are implemented, for example improved strategic planning, improved public consultation processes, and others, these too will provide guidance in how to manage tradeoffs.

DRAFT RECOMMENDATION 10.1

Governments should ensure that agency responsibility and strategies for monitoring of compliance and enforcement with project conditions are clearly specified and communicated to stakeholders.

PIA supports this recommendation, however, it could be strengthened to ensure that monitoring of compliance and enforcement of conditions is actually implemented by the responsible agencies as well.

DRAFT RECOMMENDATION 11.1

Drawing on the lessons learnt from the use of Strategic Assessments to date, governments should use the tool in circumstances where it is likely to produce a reduction in the costs of project approval, while delivering regulatory outcomes equal or superior to those delivered under existing processes.

PIA strongly supports this recommendation in principle, and would welcome further involvement in the determination of the systems and processes derived to implement the 'strategic assessment' process. It is recommended that the Productivity Commission consider the 'Planning Systems Principles' (refer to attachment) when deriving such a process.

DRAFT RECOMMENDATION 11.2

State and Territory Governments should continue to improve the quality of their strategic planning by:

- ***making broad decisions about development at the strategic level so as to reduce the number of issues that need to be considered at the project level***
- ***using more effective public consultation techniques***
- ***ensuring thorough analysis of plan impacts through the collection of baseline environmental and heritage data and the use of Strategic Assessments.***

PIA strongly supports the recommendation 'to improve the quality of their strategic planning' and is working closely with the majority of State and Territory governments to achieve this objective. The quality of the strategic planning is directly relative to the quality of the 'evidence base' used, the quality of public consultation undertaken, and the level by which this is reflected in the decisions made at the 'project level'.

However, PIA suggests that the first dot-point, is not an appropriate objective. The need for improved strategic planning should not be to 'reduce the number of issues that need to be considered at the project level'. Improved strategic planning should provide prospective proponents with greater clarity and understanding of the issues pertaining to their development proposal and the issues that are important to address at a project level.

PIA recommends this statement is reviewed in relation to the objectives outlined in our 'What is Good Planning' position statement (attached).

The third dot-point refers to 'collection of baseline environmental and heritage data' that infers that this is the only 'baseline data' of importance. The planning profession considers all issues of importance and that good planning is based on the need to predict, avoid and ameliorate the adverse economic, social and environmental consequences of human activities, promote intergenerational equity, prudent use of non-renewable resources, the sustainable use of renewable resources, and the precautionary principle. There needs to be equal consideration of economic, social, environmental and cultural issues (not only environmental and heritage).

DRAFT RECOMMENDATION 7.6

Governments need to ensure that regulatory agencies have the resources, capacity and skills to efficiently administer major development assessment and approval processes.

PIA strongly supports this recommendation and will continue to work with governments, communities and the planning profession to enhance the capacity and skills of our planning professionals around the nation.

Reducing Regulatory Duplications and Overlap

PIA strongly supports improvements in the planning systems and processes that do minimize duplication and overlap. However, it is important that any such improvements are made with the correct objectives in mind, that being to protect the economic, social, environmental and cultural well-being of our communities.

All of the following recommendations in principle will assist in minimising duplication, however, this must be undertaken at the same time as improving strategic planning efforts, improving public consultation techniques, and increasing the resources and capacity of the planning professionals to be able to undertake their professionals responsibilities.

DRAFT RECOMMENDATION 7.1

The Australian and State and Territory Governments should strengthen and expand the scope of existing bilateral assessment agreements under the Environment Protection and Biodiversity Conservation Act 1999. Areas for improvement include agreements on standards and procedures for assessment and extending the number of regulatory processes accredited under current bilateral agreements.

PIA supports this recommendation in principle.

DRAFT RECOMMENDATION 8.1

Governments should aim to establish a 'one project, one assessment, one decision' framework by restarting negotiations on bilateral approval agreements between the Australian Government and the States and Territories. Such agreements must ensure that rights of appeal are no less than those in the Environment Protection and Biodiversity Conservation Act 1999.

PIA supports this recommendation in principle, however, would like to be involved in discussions in the preparation of such a framework.

DRAFT RECOMMENDATION 8.2

To ensure the successful negotiation of bilateral assessment and approval agreements:

- ***the task of negotiating the agreements should be properly scoped, approved by COAG and published with a timetable of key milestones***
- ***priority should be given to approval responsibilities for activities in urban areas (other than on Commonwealth land)***
- ***the COAG Reform Council should monitor progress with developing the agreements, examine how well they are working and draw out implications for improving current and future agreements. To facilitate this, State and Territory Governments should prepare annual reports on their implementation of the agreements.***

PIA supports this recommendation in principle and strongly supports the continued involvement of COAG and the COAG Reform Council in this process.

DRAFT RECOMMENDATION 7.2

The Australian Government should undertake and publish a regulatory impact assessment of the 'water trigger' amendment to the Environment Protection and Biodiversity Conservation Act 1999, including the exclusion of water trigger-related actions from bilateral approval arrangements.

PIA supports this recommendation in principle.

DRAFT RECOMMENDATION 7.3

Regulatory agencies at the state and territory level should establish cooperative arrangements (for example, memorandums of understanding) for joint or substitutable assessments to minimise unnecessary duplication between major project assessment processes within a jurisdiction.

PIA supports this recommendation in principle and continues to work with many of the State's and Territories in the review of their planning legislation and planning policy frameworks. This will work well with the achievement of effective 'major projects coordination offices' in each State/Territory (ie. implementation of draft recommendation 7.4).

Regulatory Certainty, Transparency and Accountability

PIA supports in principle any moves to improve certainty, transparency and accountability within the planning systems and processes. We continue to work with State and Territory governments to achieve such outcomes.

DRAFT RECOMMENDATION 7.4

Where they do not exist, State and Territory Governments should establish a major projects coordination office to:

- ***advise proponents on statutory requirements***
- ***develop project agreements that document agreed working arrangements among regulators and timeframes for the completion of processes***
- ***electronically track and report on progress against statutory and regulator-determined timeframes***
- ***facilitate interactions with relevant Australian Government regulators and local governments.***

These offices should be close to the centre of government and access should be limited to complex, large-scale projects of state or territory significance.

PIA supports this recommendation in principle. However, it is suggested that the facilitation of effective public consultation and stakeholder engagement be an additional role that this particular 'office' should be responsible for.

DRAFT RECOMMENDATION 8.3

Governments should develop statutory timelines that specify the maximum time that may elapse between a proponent's assessment documentation being lodged and when the assessment agency provides its report and decision recommendation to the relevant decision maker.

Legislation should also set the maximum time for the decision maker to make the decision. If no decision is made within the time period specified, the recommendation (along with the reasons and any conditions) by the assessment agency should be deemed to be the decision by the decision maker.

While PIA supports in principle the need to provide some certainty regarding maximum timelines, given the complexity of some of the major projects matters the timelines set would need to be sufficient to meet the assessment and decision making needs of complex matters. While timeframes are important, expedient decision making should not occur at the expense of the considered assessment of the potential long lasting impacts of major projects.

DRAFT RECOMMENDATION 8.4

Governments should provide guidance, preferably in statute, for the use of the 'stop the clock' mechanism. Such arrangements should only be available to assessment agencies when matters emerge that were not contained in the terms of reference and could not have been reasonably anticipated. Decision makers should only be able to stop the clock once. Proponents should be allowed to stop assessment and decision processes at any time. Any party that stops the clock should be required to disclose when these triggers are activated and the reason(s) why.

While PIA supports in principle the need to provide some certainty regarding the assessment process and the information requests in decision making, given the complexity of some of the major projects matters only one stop the clock may not be sufficient. In projects that are using new technologies or are dealing with sensitive environmental issues that may not have been fully explored previously it is unreasonable to only allow one opportunity to stop the clock for more information. Again, while timeframes are important, expedient decision making should not occur at the expense of the considered assessment of the potential long lasting impacts of major projects.

Compliance Costs

DRAFT RECOMMENDATION 6.1

Governments should establish statutory criteria as to which projects have access to designated major project pathways. Limited ministerial discretion should be available to 'declare' or 'call-in' a project that does not meet the criteria (making it subject to a major project pathway). However, in exercising this power the Minister must:

- **follow guidelines on when and how the power can be used**
- **publicly report the reasons for any declaration against the guidelines.**

PIA supports this recommendation in principle in order to provide the community and industry with certainty regarding what constitutes a major project, rather than the current seemingly politically motivated approach employed from time to time in some jurisdictions.

DRAFT RECOMMENDATION 8.6

Governments should publish the process that decision makers need to follow when making approval decisions, including:

- ***the factors that decision makers need to take into account when reaching decisions***
- ***how to consult with other decision makers, agencies and interested parties and take account of community concerns.***

PIA supports this recommendation.

DRAFT RECOMMENDATION 8.7

Decision makers should be required to publish statements of reasons (including identification of the risks being mitigated) for their approval decisions and conditions for all major projects.

PIA supports this recommendation.

DRAFT RECOMMENDATION 6.2

Governments should provide clear, upfront information and guidance on the development assessment and approval pathways that apply to major projects, including on the processes, generic information requirements, assessment criteria, standard and model conditions, and statutory timelines that apply under a given pathway.

PIA supports this recommendation.

DRAFT RECOMMENDATION 9.1

Judicial review is appropriate for major project primary approval decisions where a Minister is the decision maker. For decisions not made by a Minister, including those that are deemed because a Minister has not made a decision, limited merits review is appropriate. Where necessary, jurisdictions should amend their legislation to allow judicial review of ministerial decisions.

PIA supports this recommendation.

DRAFT RECOMMENDATION 9.2

Standing to initiate judicial or merits reviews of approval decisions should be limited to:

- ***proponents***
- ***those whose interests have been, are, or could potentially be directly affected by the project or proposed project, or***
- ***those who have taken a substantive interest in the assessment process.***

In exceptional circumstances, the review body should be able to grant leave to persons other than those mentioned above to bring a review application if a denial of natural justice would occur if they were not granted leave.

PIA supports this recommendation and is interested to see the outcomes of the additional feedback received on the advantages and disadvantages of the current legal costs arrangements.

Compliance costs

DRAFT RECOMMENDATION 10.2

Regulators should produce an annual major projects compliance statement that reviews monitoring and compliance activities and identifies redundant or ineffective conditions on approvals.

PIA strongly supports this recommendation and believes this will assist greatly in guiding strategic planning for the future of these projects as well as assist in public consultation activities by demonstrating how the 'system works' and give them confidence that monitoring and compliance is undertaken.

DRAFT RECOMMENDATION 7.7

Where it is not already the case, regulators should establish a hierarchy of assessment methods for major projects that correspond to different levels of regulatory scrutiny. Criteria for determining the level of assessment should be identified and in the public domain.

PIA supports this recommendation.

DRAFT RECOMMENDATION 10.3

Governments should ensure that third parties can initiate legal action to enforce conditions on primary approvals. Consideration should be given to ensuring legal costs do not present a barrier to legitimate actions of this type by individuals or bona fide community groups.

PIA supports this recommendation.

DRAFT RECOMMENDATION 7.8

COAG should commission an independent national review of environmental offset policies and practices, to report by the end of 2014. The review should:

- ***consider the merit of a single national offsets framework***
- ***survey the consistency of offset policy objectives against the principles of ecologically sustainable development***
- ***critically assess the methodologies used for identifying offsets***
- ***examine the role of market-based offset approaches.***

PIA strongly supports this recommendation and would like to work closely with COAG in the review of these policies and practices. The collective experience of our members will provide guidance in to the various mechanisms and processes which may be best suited to implement offset policies.

DRAFT RECOMMENDATION 7.9

Governments should ensure that regulatory agencies only set conditions and offsets that:

- ***are consistent with objectives and directed at the impacts of the development to be consented***
- ***are outcome-based wherever possible***
- ***can be amended by agreement, provided there is a strong case and the proponent is first consulted***

- **do not direct compliance, or the manner of compliance, with other legislation**
- **are public, and explain what impact the condition is seeking to address**
- **are enforceable, precise and reasonable in all other respects.**

PIA supports this recommendation.

CONCLUSION

PIA congratulates the Productivity Commission for the work undertaken to date on this review of Major Projects Assessment processes. As the only national body representing the planning profession we are well placed to engage further with the Productivity Commission and COAG in taking the recommendations of this report through to implementation.

To support our submission the following PIA position statements are attached for reference:

- What is Good Planning
- Planning System Principles
- Public Participation.