



**Office of the Director General**

The Hon. David Ipp AO QC  
Commissioner  
Independent Commission Against Corruption  
GPO Box 500  
Sydney NSW 2001

13/17648

Dear Commissioner

Thank you for your letter dated 18 October 2013 supporting the key changes proposed to the NSW planning system set out in the draft *Planning Bill 2013* and *Planning Administration Bill 2013*.

I note your comments about the implementation of the new planning system and the opportunities to include effective anti-corruption safeguards in the supporting regulations, plans and policies that will be drafted prior to commencement. The Department is keenly aware of these issues and we will continue discussions with staff of the Independent Commission Against Corruption to ensure there are appropriate anti-corruption safeguards incorporated in these supporting documents.

**Merit assessed development**

I note one of the Commission's key implementation concerns is the criteria for development subject to merit assessment where variations to development standards are proposed. I understand this concern particularly applies to those developments, such as residential flat buildings, where material variations to development standards for height and floor space ratio (FSR) are proposed which may lead to significant financial gain.

The Department proposes to address these concerns during implementation through the following measures, which include specific provisions in the *Planning Bill 2013* as well as mandatory assessment requirements that will be incorporated in all Local Plans:

- ***Strategic approach to identifying planning controls***  
Planning controls will result from strategic planning processes for the region as a whole (cl.3.5(2)(d)). Planning controls and development standards will be developed having regard to the outcomes of strategic planning processes in which the community has had a say.
- ***Retention of current zones***  
As you know the proposal to consolidate zones set out in the White Paper will not now proceed. This means the full range of current land use zones will be retained. This means that it will generally not be possible for residential flat buildings to be permissible and considered in R1, R2 and R3 zones by way of a variation of development standards. As now, any such change will require a separate rezoning.

Under the new planning system the objectives of each zone will specifically identify the purpose of the zone in its strategic context so that the assessment of development against zone objectives will be more meaningful (including variations from development standards).

- ***Key development standards will be part of the planning controls in Local Plans***

Development standards for height and FSR will be identified as part of the planning control provisions of Local Plans, in the same way as occurs in Local Environmental Plans now. These provisions are made by the Minister, rather than a council. Height and FSR standards will be based on objective criteria which can be independently verified. In addition, they will be drafted with clear objectives against which proposed variations can be assessed.

- ***Assessment criteria for variations will be part of the planning controls provisions***

A consistent set of assessment criteria for variations will be set by the State and located in Local Plans. The criteria cannot be amended by a council.

The Department proposes to develop assessment criteria that will be more robust than that which applies currently under *State Environmental Planning Policy 1* and Clause 4.6 of the *Standard Instrument*. The criteria will include consideration of:

- consistency with strategic plans (including NSW Planning Policies)
- consistency with zone objectives and planning control objectives
- the likely impacts of the variation, including any community benefits the development may deliver (e.g. open space or community facilities)
- a separate justification report required to be provided by an applicant (see below)

State Environmental Planning Policies (including *SEPP 65: Design Quality of Residential Flat Development*) will be incorporated into local plans and will continue to apply as part of the merit assessment of DAs (cl.4.18(2)(a)).

- ***Justification report required where development standards sought to be varied***

Applicants will be required to prepare a justification report to accompany a development application (DA) where development standards are proposed to be varied (cl.4.4(j), Schedule 4). The justification report will be required to clearly address all the assessment criteria and to be exhibited along with the DA. The requirements for justification reports can be set according to the level of risk of development. For example, more onerous justification requirements can apply for significant variations to standards for those development types that cause the Commission most concern.

- ***Mandatory exhibition and duty to provide reasons for decisions***

The Bill includes, for the first time,

- mandatory exhibition for all merit assessed DAs (cl.2.9, Schedule 2); and
- a mandatory requirement for decision makers to publish reasons for their decisions, including how community views were taken into account (cl.2.22, Schedule 2): this would include how the assessment criteria has been applied where proposed development exceeds development standards.

- ***Expanded independent decision making***

The Bill provides increased opportunities for independent decision making by Regional Planning Panels and independent hearing and assessment panels (IHAPs) (cl.3.13(c) & (e)). As occurs currently, Regional Planning Panels will exercise consent authority functions for development over \$20 million. This includes most residential development of concern to the Commission.

For similar developments under \$20 million, where significant variations to developments standards are proposed, the Local Plan can require such DAs to be determined by either Regional Planning Panels or IHAPS.

- ***Monitoring and auditing variations to development standards***

Councils will be required to report on variations to development standards in the same way as applies currently. The reporting requirements will include details of the standards that have been varied and the extent of the variations to ensure effective monitoring of planning controls in local plans. The program of random auditing carried out by the Department will continue.

### **Code assessed development**

I note the changes made to the code assessment provisions of the Bill ensure the assessment risks associated with variations to development standards do not arise for code development. This is because the Bill requires strict compliance with development standards in codes (cl.4.17(1)).

### **Statement of intent**


The Department is committed to implementing the new planning system in the manner described to strengthen the anti-corruption safeguards relating to the variation of development standards, particularly for those developments the Commission has identified as of concern.

The Department is committed to working closely with your staff during the implementation of the new planning system to ensure these anti-corruption safeguards incorporated in new Local Plans, policies, guidelines and regulations as appropriate.

Thank you for the opportunity to provide further details as to how we intend to implement the merit assessment requirements under the new planning system.

Should you have any further enquiries about this matter please do not hesitate to contact me on 9228 6448, or your staff can contact Marcus Ray, Executive Director, Planning Reform & General Counsel on telephone number 02 9228 6396.

Yours sincerely

  
Sam Haddad  
Director General  
22/10/2013