



Review of the White Paper – A New Planning System for NSW

Prepared for the NSW Government -

NSW Planning and Infrastructure

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Prepared by the Physical Disability Council of NSW

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (ie self advocate).
- To educate and inform stakeholders (ie about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council appreciates the opportunity to consider, and make comment on the NSW Planning and Infrastructure White Paper – A New Planning System for NSW.

Background to the ‘New Planning System for NSW – White Paper (2013)

The White Paper outlines proposed planning reforms including strategic planning and code assessment. It outlines the interrelationship and development of NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans, Local Plans and Growth Infrastructure Plans, and their relationship to code assessment, where building assessment will be designated to either of the following delivery tracts; Exempt, Complying, Code, Merit or Prohibited. With these reforms NSW Planning and Infrastructure will gain greater overall leadership and governance over building assessment and regulation, community engagement and strategic planning. In summary the White Paper addresses the following issues and concerns:

- The lack of focus on strategic planning
- The need to reduce complexity and regulation
- The need to reduce costs and delays
- The lack of integrity and transparency into decision making
- The need to engage with the community effectively and early
- An increased need to focus on quality planning outcomes and
- The need to improve infrastructure funding and integration.

Background to the Access Premises Standard

The *Disability Discrimination Act (Cth) 1992* (DDA) contains the legal parameters that provide protection the community in Australia against discrimination based on disability, and contains the following objects:

- a) To eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - i. Work, accommodation, education, access to premises, clubs and sport; and
 - ii. The provision of goods, facilities, services and land; and
 - iii. Existing laws; and
 - iv. The administration of Commonwealth laws and programs; and
- b) To ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community
- c) To promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.¹

The DDA includes the following relevant sections:

Section 23 – Requires accessibility to be provided to the following premises:

- a) A structure, building, aircraft, vehicle or vessel; and
- b) A place (whether enclosed or built on or not); and
- c) A part of premises (including premises of a kind referred to in paragraph (a) or (b)).²

Section 31A – Exemption (Unjustifiable Hardship) This section refers to an exemption where the provider/s of the building works is not able to comply with the Access Premises Standards. This exemption is determined by determining the impact of not providing sufficient access and the financial impact on those responsible for providing access to the given place or premises. This exemption is more relevant to building works that require upgrades, renovations or refurbishments rather than new building works because of the costs incurred of providing access to existing buildings.

Following the adoption of the Access Premises Standards in 2010, these Standards were incorporated into the Building Code of Australia (BCA) in May 2011, and these codes provide a minimum national regulatory code for the provision of access. States and Territories have the option following the adoption of the Access Premises Standards of using these minimum standards as is or developing enhanced standards in policies and different initiatives it may be implementing.

¹ Commonwealth Government – Attorney General's Department *Disability Discrimination Act (Cth) 1992*

² Commonwealth Government – Attorney General's Department *Disability Discrimination Act (Cth) 1992*

Discussion

The purpose of preparing this submission is to reinforce the relationship between the importance between State and Territory planning systems and the *Disability Discrimination Act 1992 (Cth)* (DDA). This will be addressed in context to reforms identified in the New Planning System for NSW – White Paper (2013) and consultations conducted by NSW Planning to assist with the preparation of the White Paper.

1. As part of this review into planning policies PDCN would like to highlight the importance in the adoption of the NSW Environmental Planning & Assessment Act Amendment (Disability Access, Fire Reports & Spas) Regulation 2012 to ensure that people living in NSW have the legal right to lay a complaint on the grounds of unjustifiable hardship, and so that stakeholders are familiar with the contents of the DDA and Access Premises Standards.
2. It concerns PDCN that information provided by the NSW Building Professional Board is inconsistent regarding the adoption of a specialist Access Committee to review claims of unjustifiable hardship and recommends its adoption if it has not done so.
3. The White Paper identifies the preparation of the two Bills that will be introduced as part of these planning reforms. Neither of these Exposure Draft Bills identifies the relevance to the Access Premises Standards, and PDCN believes the Access Premises Standards needs to be included in all relevant legislation so that it is included in NSW Planning policies and then embedded into the strategic planning framework. This will ensure its inclusion in the following strategic plans:
 - Regional Growth Plans
 - Subregional Delivery Plans
 - Local Plans and
 - Growth Infrastructure Plans
4. As part of the Access Premises Standards PDCN would recommend that NSW Planning and Infrastructure inform stakeholders that universal access is required when planning, designing and constructing the following public places and premises:
 - Public footpaths and walkways
 - Educational institutions
 - Shops and department stores
 - Banks, credit unions, building societies
 - Parks, public swimming pools, public toilets, and pedestrian malls
 - Cafes, restaurants, pubs
 - Theatres and other places of entertainment
 - Lawyers' offices and legal services
 - Libraries
 - Sporting venues
 - Social and sporting clubs
 - Government offices
 - Public transport including trains, buses, ferries, boats, ships and planes
 - Dentists' and doctors' surgeries
 - Hospitals

- Hairdressers and beauty salons
 - Travel agents, and
 - Government-run services
5. The White Paper refers to the NSW Affordable Housing Taskforce but provides no further detail regarding affordable accommodation targets for those eligible. As people with disability usually have limited incomes and often fall into the lowest equivalised income, they need to be considered as eligible for affordable housing. And as a consequence PDCN would recommend that targets for affordable accommodation be included into Regional Growth Plans, and that NSW Planning and Infrastructure and NSW Housing work collaboratively to effectively implement affordable housing programs and initiatives.
 6. The White Paper also refers to the need to provide employment targets as part of Regional Growth Plans. With this in-mind and recognition of the severity of unemployment rates among people with disability, PDCN would recommend that the NSW Government lead by example and established best practice principles by earmarking employment targets particularly for people with disability.
 7. Feedback from the initial review of the DDA Transport Standard highlighted the difficulty in financing and resourcing of infrastructure improvements in regional and rural locations. Identified improvements in infrastructure included improvements to conveyances such as buses, bus stop infrastructure and footpaths. To assist with the implementation of the DDA Transport Standards in regional and rural NSW, PDCN would recommend that funds to be provided as part of Growth Infrastructure Plans and/ or as part developer contributor funds.
 8. As part of reforms to building assessment pages 126 and 127 of the White Paper identify existing exempt and complying developments with the review of expanding the range of developments considered as exempt or complying in the future. Currently the following developments considered exempt in the following building types:
 - Non- structural internal alterations to residential, commercial and industrial premises
 - Farm sheds (up to 200 square meters)
 - Advertising and signage
 - Some temporary structures eg tents for community events (up to 300 square meters)
 - Change of use eg retail office to business, light industry to light industry
 - Footpath seating (up to 20 seats)

PDCN agrees with the development types considered as exempt as long as public paths, access ramps, landscaping and BBQ facilities available to the public, are not being considered as part of a park with footpath seating. As PDCN considers public seating as a public facility, this should require approval from a consent authority.

The following developments are considered as complying in the following building types:

- Single dwelling houses
- Dual occupancy up two levels

- Industrial alterations and additions to commercial and industrial premises
- Change of use- food premises

PDCN understands that as part of the proposed reforms any development being assessed as a complying development would still need certification from a regulatory authority, and this would ensure that if access provisions were still required that these developments would be reconsidered as having a greater impact and subsequently be re- assessed as a code or merit development, and subsequently requiring a full assessment and certification by a Council Officer.

9. The White Paper identifies a shift in building assessment from a highly prescriptive and regulatory process based on building zones, to a focus on spatial data and code assessment. As the Access Premises Standards were developed based on a highly prescriptive and regulatory process, PDCN is concerned that it will be made harder with the proposed planning reforms to review the following issues earmarked as contentious as part of the initial review of the Access Premises Standards:

- Application of Access Premises Standards to 80% or 90% of people with disability
- Number and location of sanitary facilities
- Location of accessible entrances
- Provision of step ramps in new and existing buildings
- Provision of threshold ramps in new and existing buildings
- Design requirements of passing and turning spaces
- Access to class 2 buildings
- Application of Schedule 1 in small buildings
- Lift floor dimensions
- Provision of lifts where constant pressure is required
- Signage
- Swimming pools
- Number of dwellings/rooms to be accessible in class 1b & class 3 buildings
- Ceiling Height of undercover car parks³

10. The White Paper recognises the need to ensure additional training, peer review, and accreditation for all involved in the regulatory and building industry, in both the public and private sector. As part of this training PDCN would recommend that all educational and training providers be required to include a supplement on the DDA, Access Premises Standards and Transport Standards. Additionally PDCN supports the accreditation of Access Consultants.

11. The White Paper and draft Exposure Bills identify a range of agencies where referrals are made seeking external advice. PDCN believes that with the adoption of a specialist Access Committee through the Builders Professional Board that this needs to be included in relevant legislation as a recognised concurrence.

³ Commonwealth Government – House of Representatives Standing Committee on Legal and Constitutional Affairs (2010)

12. PDCN supports the requirement for a building manual as part of building assessment to be available for all building developments particularly for Class 1b- 9 buildings. This would ensure that information would be readily available for current and future owners and occupants for the following purposes:

- Critical building systems and measures and any important features
- Building and use limitations
- Other information important to fire and structural safety.

13. PDCN supports the engagement of community participation throughout the planning process, but it is assumed in the White Paper that all stakeholders have the skills and ability to use the internet to access a range of planning documents and this access can not be assumed particularly for older persons. PDCN understands that the Community Participation Charter will be enacted with legislation reinforcing its importance. Reinforcing this point, the Draft Exposure Planning Bill Part 2 - Community Participation Charter 2.1 (1) b refers to the need to provide information that is easy to read and obtain so that planning issues and decisions can be better understood. The following information about NSW Planning and Infrastructure needs to be made available in an easy to read Charter:

- Minimum service standards and how services are to be provided
- Contacts and sources of additional information
- What you need to know so you can help us to help you
- Enquiries, feedback, compliments, complaints and suggestions.

14. It is understood that whilst the Draft Exposure Planning Bill contains legislation requiring all regulatory authorities to establish a Community Participation Charters, and that the NSW Planning and Infrastructure will be providing guidelines and templates to assist regulatory authorities establish Community Participation Charters, it concerns PDCN that due to the differences in regulatory authorities, that different regulatory authorities will adopt different procedures and protocols resulting in confusion and varying implementation with potentially different outcomes.