A NEW PLANNING ACT FOR NEW SOUTH WALES

Submission prepared by the NSW Division of the Planning Institute of Australia.
March 2012

Response to Issues Paper of the NSW Planning System Review (December 2011)

The Planning Institute of Australia (PIA) is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 4,500 members nationally and around 1,200 members in New South Wales. PIA NSW plays key roles in promoting and supporting the planning profession within NSW and advocating key planning and public policy issues. This paper has been prepared on behalf of PIA NSW by Members of the Institute.
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Planning Institute of Australia (NSW Division)

A New Planning Act for New South Wales

1. INTRODUCTION

The Planning Institute of Australia NSW Division (PIA NSW) is pleased to have the opportunity to comment on the ‘Issues Paper of the NSW Planning System Review - The way ahead for planning in NSW’, which was released for public comment in December 2011.

The Institute hopes this Submission will assist the Panel in preparing the Green Paper and would welcome the opportunity to engage with the Panel on any aspect of this submission and working on the next steps of the Review. The Institute is keen to ensure that planning systems from overseas and interstate jurisdictions will be reviewed so that innovative and alternative models can be examined and learnt from.

We believe that it is essential that expert practitioners across the whole industry, including PIA NSW, be engaged in a short, sharp exercise to assist in providing the content for the Green Paper within the available timeframe.

There is much agreement across the various representative groups and goodwill to assist in introducing the best possible planning system. Without this collegiate effort, the Institute is concerned about the potential options and outcomes of the Green Paper.

It is essential that the new Act not be merely a re-badge of the current Act. This is a once in a generation opportunity to take a fresh approach to planning in NSW so that it again assumes the forefront of planning in Australia.

Whilst this Submission responds to the Issues Paper, the Institute’s focus is on the implications of the issues for preparing the new legislative framework. The Submission does not address each issue in turn but considers relevant issues in the context of developing ideas and proposals for a new Act.

The structure of this Submission is to address each of the primary chapter headings of the Issues Paper having regard to the Institute’s previous submission on a ‘New Planning System’ dated November 2011. This submission considers whether the Institute’s previous comments need to be revised in response to the Issues Paper, identifies whether there are still matters not covered by the Issues Paper and how the issues might refine the legislative structure foreshadowed in the Institute’s previous Submission.

The Institute has conferred with a cross section of our members, and with other stakeholders, such as other professional associations and industry groups in preparing this Submission so that other professional and industry perspectives are taken into account.

As an initial proposition, the Institute considers that the Issues Paper is a valuable resource to understand the shortcomings of the current legislation and to assist as a guide to framing a modern, well constructed and workable planning system that:

- seeks to resolve the key issues that have been raised with the Panel;
- will stand the test of time;
- can serve as a best practice model for other jurisdictions;
- will be accepted (even if not by consensus) by the community, industry, State and local authorities as well as key stakeholders and interest groups; and
- will result in a cultural change in the way urban and regional planning occurs and is perceived in NSW.

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The Issues Paper is not a blueprint for the new legislation. Many of the items deal with the minutiae of the future legislation. The Institute considers that many of the items could be the subject of Regulations or further policy development outside the Planning System Review. Many of the issues do not fit neatly into the Issues Paper chapter themes and many overlap.

The Institute submits that the Review process must be focused on the broad structure of the Act and the System – it is unproductive at this stage to be drawn into minutiae. The risk in the latter is that the Act will be drafted from the bottom up rather than the top down and remain as piecemeal and unintegrated as it has currently become. If the higher order structure is well resolved, the minutiae will be more readily resolved in a consistent and integrated manner.

The Institute is concerned that the Issues Paper might distract people from commenting on the ‘big picture’ as well as exploring new ideas for the planning system and therefore make it more difficult to move in the very short time available towards a Green Paper dealing comprehensively with what a new planning system requires. For example, question C36 is not considered to be a key issue for the NSW Planning System review. Question C36 asks “Should developers of greenfield residential land release areas be required to make provision for a registered club and assorted facilities?”

This submission proceeds from our earlier submission specifically because it has been pitched at the higher structural and systemic level which we believe is where the focus leading to a Green Paper should remain.

The Submission considers each of the primary Issues Paper chapter headings with proposals for how the Green Paper can inform the structure and key components of the new Act.

2. **CHANGING THE CULTURE OF PLANNING**

In parallel with the review of the planning system, the Institute has undertaken work on the steps necessary to make positive changes to the culture of planning in NSW.

In November 2011, the Institute made a supplementary submission to the Planning Review on ‘Cultural Shifts in Planning’. That paper drew attention to the perceptions of Planning in NSW that have the potential to undermine the successful implementation of a new Act unless they are concurrently addressed.

The Institute has analysed the causes of the current attitudes toward planning and planners in NSW and proposes a series of actions that can shift those attitudes in a positive way. The shift will not happen overnight but change, in the context of the review of the planning system, is the most appropriate start. Even though the actions proposed by the Institute do not have a direct bearing on the form and content of the text of the new Act, the Institute requests that the Review Panel consider the issue of changing the culture of planning that needs to occur as part of a new System.

The Institute proposes to work collaboratively with the State Government to implement the cultural change actions concurrently with the implementation of our new Planning System.
3.  KEY PRINCIPLES, ELEMENTS, STRUCTURE AND OBJECTIVES OF A NEW PLANNING SYSTEM

3.1  Principles

The Institute reiterates a number of principles for a new Act which remain valid:

- A logical structure and easily understood provisions;
- Meaningful objectives that the rest of the Act is geared towards achieving, not just a series of ‘motherhood’ statements;
- The ability to proactively and quickly respond to changing circumstances without endlessly changing the Act;
- Processes (for plan making, consultation, appeals and development assessment) the complexity of which is proportionate to the complexity of the issue;
- Roles and responsibilities of decision makers are logically and clearly defined;
- Procedures that promote co-operative rather than adversarial decision making;
- Requirements for strategic plans that balance and properly integrate State and local, public and private interests and are accompanied by administrative and funding strategies that facilitate their achievement over time;
- Development decisions are guided by those strategic plans rather than vice versa; and
- Development decisions based on merits rather than legalities, and outcomes rather than processes.

These principles should be used to test the new planning system once it has been drafted and after 12 months of operation as benchmarks for the effectiveness of the new planning legislation.

A high level principle is whether the Act should itself prescribe planning “strategy” or “policy” or whether it should be simply an “enabling” Act, which outlines the broad scope of planning principles, processes and procedures for the development and implementation of policies. Under the latter model, the policies themselves would be in the form of delegated instruments (similar to the current SEPPs and LEPs). These would be the State Strategic Plan, Regional Plans and Local Plans. This allows the Act to be flexible in adapting to changes in Government policy over time and not requiring legislation to amend the Act time every time there is a change in strategic policy direction.

This structure would also potentially enable ‘planning policies’ to incorporate a wider range of matters (land management, vegetation protection, threatened species, heritage, natural resources, transport planning, etc) into integrated state or regional plans, without also requiring the strategic functions of all the other disparate Acts to be excised and incorporated into the Planning Act. A Local Plan should address the Integrated Planning and Reporting requirements of the NSW Local Government Act 1993.

These higher level broad ranging strategic inputs into planning policy should ideally be given statutory status within the Planning Act. Whilst not yet that broad reaching, the current documents that get closest to this are the Metropolitan Strategy and the various other Regional and draft Sub-regional Strategies, which have only limited recent statutory recognition (some have no statutory recognition).

The enabling elements of the Act in a strategy sense should therefore deal with matters such as by whom strategies/policies are made, at what level (Parliament, Independent Commissioners, Councils), public participation requirements, facilitation of cross agency coordination, requirements for regular review and updates, and the like. Regulations can provide the detail of the procedures and logistics of the matters.

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A second high level principle concerns the role and degree of public participation or community consultation. The term “consultation” encompasses notification inviting comment; engagement through facilitation; conciliation and mediation; as well as public participation in the strategic planning or development assessment process.

Whilst all strategic plans require community consultation, not all development proposals will require the same level of consultation. The degree and type of consultation must be commensurate and proportional to the complexity of the proposal, the scale of potential environmental impact and what level of consultation occurred at the Strategic Plan stage. Different levels of consultation are discussed within the Institute’s National Position Statement on Public Participation, released in May 2011.

The new Act and any accompanying Regulation needs to define the degree and type of consultation appropriate to the scale and type of strategic plan (State, Regional, Local) or development (State, Local, Complying).

The applicable Strategic Plan can define who is the “community”; what are the public interest objectives; how should further consultation occur through the plan delivery stages (including development); and what matters will not involve further consultation (certificates, complying development).

### 3.2 Elements and Structure

The basic structure of the new Act can have the following components shown in the figure over-page.

Many of the Parts are similar to the current Act but a similar goal is to simplify the main parts of the Act. The Institute considers that the planning legislation can be contained in one Act. This is beneficial to maintain the links between strategic planning and development assessment, reduce the need to ensure that 2 (or more) Acts can work interdependently in a legal sense and simplify the legislative framework. The aim with the structure is to simplify and refocus rather than start from a blank canvass. The final structure will flow from the agreement on key principles, outcomes and processes.

The table over-page is indicative only to present the intended scope of the new Act and the main elements. Each Part can be the subject of discussion as to the best mechanism to achieve the desired outcome subject to consideration against the Principles above.
<table>
<thead>
<tr>
<th>Function</th>
<th>Elements of the function</th>
<th>Provisions of the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>Identify desired future outcomes &amp; how those outcomes are to be achieved</td>
<td>Establish a vertically integrated hierarchy of Strategic Plans (State, regional, local), prescribing:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Content</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Plan making processes (including public participation)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Roles and responsibilities for implementing the Plans (whole-of-government involvement, levels of government &amp; private sector)</td>
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<td></td>
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<td>▪ Funding mechanisms to implement the Plans (public and private)</td>
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<tr>
<td></td>
<td></td>
<td>▪ Performance monitoring mechanisms</td>
</tr>
<tr>
<td>Design</td>
<td>Guidelines for designing places, infrastructure and development</td>
<td>Prescribed contents and plan making processes for design guidelines (for public and private development, public domain and infrastructure)</td>
</tr>
<tr>
<td>Permissions to proceed</td>
<td>A system of permissions to proceed with public and private development</td>
<td>Establish a ‘tracked’ assessment system for proposed development and infrastructure based on its complexity and impact risk profile, including:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Prohibited development</td>
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<td>▪ Exempt development</td>
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<td>▪ Certified development</td>
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<td>▪ Assessable development</td>
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<td>Application requirements for each application track</td>
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<tr>
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<td></td>
<td>Assessment/consent roles and responsibilities</td>
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<td></td>
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<td>Certification systems</td>
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<tr>
<td></td>
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<td>Process and public participation requirements</td>
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<tr>
<td></td>
<td></td>
<td>Assessment criteria (by reference to Plans, Guidelines and impact assessment)</td>
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<td>Permits and conditions</td>
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<td>Review and appeal processes</td>
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<tr>
<td>Construction</td>
<td>Systems to ensure construction standards are adequate</td>
<td>Provisions relating to construction processes and standards</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Systems to regulate and control breaches of the Act</td>
<td>Provision including:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Fines</td>
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<td>▪ Orders</td>
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<td>▪ Legal action</td>
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</tbody>
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3.2.1 General propositions for Objectives

- Define the scope of the Act.
- Provide relevant, meaningful and (where practicable) measurable objectives to guide the substantive provisions of the Act and delegated instruments.
- Provide a means by which actions under the Act will be monitored and measured.
- All substantive provisions of the Act and delegated instruments under the Act should have a direct link to one or more of the objectives.

The following section provides some examples of objectives, relevant to the various elements of the Act outlined above. The Institute is not necessarily advocating that all of the example objectives be incorporated in the Act.

3.2.2 Example objectives

In its broadest sense, the aim of the planning legislation is to:

- Promote sustainable development, balancing environmental, social and economic factors to best serve the public interest; and
- The overarching goals of the Act are to promote integrated planning, ecological and economic sustainability, community engagement in strategic planning and development assessment and social equity.

In terms of ‘integrated planning’ the Institute means producing a single, coherent outcome. Integration may be vertical by rationalising structures, processes or policies between higher and lower order plans and policies; or horizontal involving integrating different aspects of a single system, such as one approvals process.¹

A. Scope of the Act

To establish an Act to:

- Manage the interrelationships of land uses, resources and the environment within the State in a sustainable way;
- Strategically plan for future growth and change within the State;
- Support the timely delivery of public facilities, infrastructure and services to meet community needs;
- Promote sustainable development;
- Regulate construction and subdivision activity;
- Provide mechanisms for judicial and other reviews of decisions made under this Act;
- Provide for the enforcement of this Act;
- Provide funding and governance mechanisms to support the Act; and
- Promote public participation, consultation and engagement at appropriate times and levels through the strategic planning and development assessment process.

¹ A good source document is the Local Government and Planning Ministers Council (LGMPC) National Planning System Principles, report prepared by the Queensland Government for the LGMPC, December, 2009.
B. Strategic Planning objectives

To establish a hierarchy of compatible State, regional and local plans that:

- Achieve integrated planning with other legislation and between decision makers;
- Achieve ecological sustainability (including climate change mitigation and adaptation), economic sustainability, community engagement and social equity;
- Identify and plan for the implications of changes to the natural environment and climate over time;
- Identify and plan for the implications of changes in human activity over time;
- Facilitate productive and liveable communities with access to jobs, infrastructure, affordable housing and services;
- Promote the retention and growth of productive rural and urban industrial capacity;
- Plan for the productive and economically sustainable growth of businesses and centres;
- Identify how plans and policies will be funded, implemented and their performance measured; and
- Have the health and well-being of communities as a primary goal.

C. Development and conservation objectives

To establish a framework under the Act that will:

- Promote development consistent with the achievement of State, regional and local planning policies;
- Promote development that protects the public interest;
- Promote environmentally sustainable development;
- Identify and promote the conservation of the natural and built heritage of New South Wales;
- Ensure that decisions on development are made in an open and transparent way; and
- Ensure that development assessment and approval occurs in an efficient way.

D. Administrative objectives

- Provide guidelines for administrative decision making that promote probity and certainty whilst maintaining merit based and flexible assessment of development under this Act;
- Promote the simplest and most efficient and effective administrative and regulatory processes and policies commensurate with the level of public interest, potential risks and impacts;
- Co-ordinate and integrate, where practicable, decision making on planning and development matters across all agencies with roles and responsibilities affecting land use planning within the State; and
- Encourage the most effective and practicable public involvement in policy making.
E. Funding objectives

To establish a framework under the Act that will:

- Implement clear and certain funding mechanisms for activities under this Act; and
- Ensure that all policies made under this Act include provisions which identify the means by which the administrative processes and outcomes of those policies are to be funded over their operational life.

F. Enforcement and review objectives

To introduce procedures that will:

- Establish a review system for administrative decisions made under this Act.
- Establish a system through which compliance with this Act may be subject to judicial or other enforcement.

To give some legal “force” to these objectives, the Institute would suggest a provision of the new Act require that all State, Regional and Local Plans must demonstrate how the objectives, particularly those under B. and C. above will be achieved by implementation of the Plan.

3.3 Governance

The principles, objectives and structure of the new Act need to be built around an agreed framework for governance. Essentially this means defining the roles and relationships of the various parties, how policies will be determined and how decisions will be made.

3.3.1 Relevant New Act Principles

- That decision making is co-operative (seeking outcomes which advance both the public interest and legitimate private interests) rather than adversarial.
- Roles and responsibilities of decision makers are logically and clearly defined (Government, Ministers, Councils, Panels, Commissions, Certifiers, etc);
- Procedures that promote transparent and open decision making with safeguards for probity and avoidance of corruption;

3.3.2 General propositions

- The purpose of prescribed procedures under the Act is to implement the outcomes of the stated objectives of the Act. All processes and procedures should be subject to this purposive test - to demonstrate how they contribute towards and most effectively and efficiently achieve the objectives of the Act. Any that do not ‘pass this test’ have no place in the Act.
- It should be clear who is responsible for administering each process and procedure (or who has rights under those procedures) in the Act.
- The Act must provide a capacity to monitor the performance of each stakeholder’s responsibilities.
- Stakeholder responsibilities should be allocated to enable single-handed dealing with that process or procedure to avoid matters passing through multiple stakeholders and blurring ultimate responsibilities. This involves allocating responsibilities according to the complexity, scope and risk of the function.
- The table on the following page provides examples (not a comprehensive list) of the roles, responsibilities and rights of the various stakeholders in terms of various activities under the Act.
<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Responsibility (selected examples)</th>
</tr>
</thead>
</table>
| Parliament                        | • Enact planning legislation  
• Allow or deny Regulations  
• Allow or deny the State Strategic Plan  
• Approve budget allocations to implementation of State, regional & other plans                                                                                         |
| Court (& Tribunal)                | • Development appeals  
• Judgements on points of law  
• Enforcement of Act                                                                                                                                                                                                       |
| Government                        | • Endorse State Strategic Plan                                                                                                                                                                                                       |
| Planning Minister                 | • Responsible for administration of Planning Act and planning law reform  
• Direct the strategic planning for and preparation and regular reviews of State Strategic Plan and regional strategic plans  
• Invite and coordinate input of other Ministers to State Strategic Plan and regional plans  
• Responsible for implementing State Strategic Plan and regional plans  
• Concurrence to local statutory plans (LEPs)  
• Resolution of disputes between agencies  
• Determine State significant development  
• Removal of council planning powers & appointment of administrators  
• Delegation of functions under the Act                                                                                                                   |
| Other Ministers                   | • Responsible for respective Ministries input to State and regional plans and implementation of whole-of-government planning functions prescribed by the Planning Act                           |
| D-G Planning                      | • Day to day management of administration of Planning Act  
• Monitoring performance of implementation of the Planning Act and delegated instruments under the Act  
• Recommendations to Planning Minister on his/her planning functions (as described above)  
• Undertake Ministerial delegations                                                                                                                                                                                   |
| Other DGs                         | • Responsible for respective Departments’ input to State and regional plans and whole-of-government planning functions prescribed by the Planning Act                                                                                         |
| State Independent Panels (PAC)    | • Conduct inquiries and reviews as directed by Minister  
• Review and endorsement of State Strategic Plan  
• Determine State significant developments                                                                                                                                                                               |
| Regional Independent panels       | • Review and endorsement of regional strategic plans  
• Determine regionally significant developments                                                                                                                                                                                   |
| Council                           | • Direct the strategic planning for and preparation and regular review of local plans, in consultation with local community  
• Responsible for implementing local plans  
• Prepare and adopt development design guidelines  
• Determine non-policy compliant local developments                                                                                                                                                             |
| Council delegates                 | • Determine developments under delegation  
• Certify ‘certifiable development’  
• Undertake enforcement action                                                                                                                                                                                                 |
| Private Certifiers                | • Certify ‘certifiable development’  
• Certify quantitative and objective criteria for ‘assessable development’                                                                                                                                               |
| Community                         | • Involved in formulation, performance monitoring and review of all levels of strategic plans and design guidelines  
• Submissions on notifiable development applications  
• Private development proponents  
• Private finance for infrastructure  
• Initiate third party objections (where available) to applications and legal actions for breaches of the Act                                                                                         |
3.4 Definitions and Interpretation

The current set of definitions under the EP&A Act is adequate to interpret the legislation. The list of terms will need to be revised in the light of the clauses and provisions of the new Act and wherever possible definitions should be contained in one place rather than in various documents. The definitions do need to be reviewed to ensure that there is no ambiguity as may have been identified through Court cases and to ensure there is no inconsistency with similar terms in other legislation. Best standard dictionary (Macquarie) meanings should in general be adopted. New definitions may be required to reflect the terminology of the new Act. For example, the State Strategic Plan, Regional Plans, Local Plans, assessable development, the public interest and so on depending on the final drafting of the legislation. Plain English meanings should prevail over legalistic definitions unless a “term of art” or technical term requires definition. The Institute sees the Act moving away from the culture of prohibitions and control which characterises the current Act with its reliance on a multitude of definitions. Greater emphasis should be given to standard dictionary meanings to interpret provisions.
4. PLAN MAKING- STRATEGIC PLANNING

The Department of Local Government has required all Councils to undertake ‘integrated strategic planning and reporting’ based on a community strategic plan for their area.

Other jurisdictions in Australia, and internationally, have placed greater emphasis on the value of strategic planning for more certainty in private investment, development decisions, managing change and building communities. These jurisdictions should be researched to learn from alternative models and see whether there is a particular framework that could be incorporated in the new Act. This should be indicated in the Green Paper so that the key elements of a preferred model can be examined and then adopted for the drafting of the new legislation.

The following sections highlight some general propositions and format for the new model.

4.1 General propositions

- Proper strategic planning is fundamental to a successful Planning Act.
- All projects, infrastructure and development must be consistent with the strategic planning framework. If they are not, or there is no strategic plan in place, then a more complex process is required to enable a proposal to be considered.
- Strategic Plans contain different levels of detail according to their scope.
- Strategic plans must rely on evidence based research and must be vertically and horizontally consistent with other strategic plans in a hierarchy.
- Leadership from State Government and the Department of Planning & Infrastructure needs to be provided in the form of costed, evidence based and clear strategic plans that are transparently made, considered and adopted so as to bind all lower order plans and other government agencies in so far as their decisions relate to ‘higher order’ planning considerations.
- Minimum requirements for plan making, consistent across all levels of plans, should be established incorporating best practice such as the European Strategic Environmental Assessment (SEA) approach.
- Public engagement and government agency ‘sign off’ in strategic plan making is fundamental. This will reduce issue by issue debate and considerations as part of individual development assessment and will allow appropriate ‘Exempt and Certifiable’ development to be identified (see Chapter on development assessment).
- A funding mechanism for the achievement of the planning outcome for each plan is to be considered and incorporated into each relevant plan. These funding mechanisms need not require developer contributions but should identify where the funding will derive from (and if provision has been made for it). This will require agencies such as Treasury and Transport for NSW etc to be involved in the preparation and ‘sign off’ of the plans.
- All property information, planning related data and planning controls should be accessible from a central/State Government maintained data management system, freely accessible to all agencies and the public. This information should form the platform for wider ‘e-planning’ applications across the State.

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Cities: Who decides? The Grattan Institute October 2010

Planning Institute of Australia (NSW Division)
4.2 Introduction of a hierarchy of plans and cornerstone plans

A new Act should provide for a hierarchy of plans (all of which have statutory force and are binding in nature and on those plans below them in the hierarchy).

A State Strategic Plan

↓

Regional Plans

↓

Local Plans

The Act would present the process for plan making that would cover the scope and requirements for community participation (not just notification) by plan type. It would also identify the body responsible for undertaking then approving the plan.

A State Planning Commission would oversee the Plan making processes to ensure consistency and serve as a body for review of major changes or advice to the Director General Department of Planning on interagency consultation, delays in processing and adjudication on planning policy. The Commission would comprise independent professionals who have expertise in strategic planning, infrastructure and planning policy and would be supported by the Department of Planning providing research and advice on policy. Regulations would set out terms of reference and operating guidelines.

The strategic plans must be spatially based so that they cover geographical areas and recognise the linkages between areas as they cannot exist in isolation.

State Strategic Plan

A State Strategic Plan would be a cornerstone planning document that is prepared by the Department of Planning & Infrastructure with government agencies and endorsed by a State Planning Commission - potentially following public hearings. The State Strategic Plan would then be adopted or endorsed by Parliament. This would ensure that the State Strategic Plan would become a key planning document that (like legislation) will exist and maintain its status through successive governments.

The State Strategic Plan will identify the ‘big planning’ issues for NSW including for example:

- The planned NSW population for the next 25 years;
- The planned distribution of population within NSW;
- The location of capital and regional cities;
- Matters such as transport, industry and employment strategies for NSW;
- Major infrastructure to be developed between and connecting regions; and
- Natural resource management, water supply, etc.

All regional and local plans will need to be consistent with and facilitate the State Strategic Plan.

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3 See for example, the right of veto to Regional Plans in section 56 of the Western Australian Planning and Development Act 2005.
Regional Plans

Regional Plans will be prepared by the Department of Planning & Infrastructure in consultation with Councils and will be made by the Minister.

Input from the relevant Regional Organisation of Councils will be part of the community participation requirements along with other stakeholder agencies and interest groups.

The Act should provide for a Sydney Metropolitan Plan which should establish itself as an enduring plan for Metropolitan Sydney.\(^4\) Regional Plans would cover the State and incorporate any State Policies (based on the State Strategic Plan) including those that are currently framed as SEPPs. The Institute does not support a proliferation of SEPP type documents as has occurred over time under the current system. All policies are to be incorporated in the respective Plan.

Like the State Strategic Plan there should be ability for significant public debate and potentially public hearings and endorsement by the State Planning Commission. This level of debate and rigour is necessary in order to fulfil the binding nature of the Regional Plans on other government agencies and subsequently upon local plans.

The regional plans will identify and set regional objectives and outcomes, including:

- Dwelling and employment targets and requirements;
- Broad regional land use plans designed to achieve these targets and requirements;
- Regional infrastructure needed to meet these targets and requirements; and
- Funding models and methods.

Local Plans

Local Plans will be prepared by local government (consistent\(^5\) with and to facilitate the relevant regional plan\(^6\)). The State Planning Commission will ensure consistency with relevant regional plans and must give concurrence to Local Plans prior to coming into operation.

Local Plans will not always be the same in content and the Regulations may provide guidelines on formats for different Local Plan types covering metropolitan areas, rural areas or coastal areas. The Institute supports a standardised format (definitions, model clauses and mapping) for the Local Plans but with allowance for variations based on the local area issues that are being addressed or special circumstances.

Whilst public participation in local plans is essential, there will be circumstances where the amendment of a local plan to respond to a change in a regional plan will not require public review. This is consistent with the principle that if public consultation and consideration of an issue giving rise to the amendment has occurred at the regional planning level then consideration of the same issue (once determined) at the local plan level is not warranted.

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\(^4\) See for example, Perth Metropolitan Regional Scheme. Gazetted in 1963 and still the primary Perth Planning document.

\(^5\) See for example, the requirement for all local plans to be amended within 90 days of the making of a regional plan order to be consistent (section 29 of the Sustainable Planning Act 2009 (Qld)).

\(^6\) The relationship of Local Plans under the Planning Act with Community Strategic Plans developed under the Integrated Planning and Reporting requirements of the Local Government Act 1993 (NSW) should be considered.
4.3  A focus on Strategic (Urban and Regional) Planning

In the preparation of Regional and Local plans, the Act should provide for a requirement to engage in strategic planning in the preparation of plans. The Act will set out the matters that are to be addressed to enable good planning in regional and local plans. Whilst the Act should be an enabling Act, there must be a general level of matters that need to be addressed in each plan to ensure that real strategic planning is undertaken. This will better ensure consistency of plan making between governments and from Council to Council.

In addition to strategic planning matters, the Act should require mandatory provisions for:

- Funding and governance within regional and local plans;
- Roles and responsibilities for implementing the plans;
- Measurable KPIs for all plans;
- Review for all plans and a fixed period in which a plan is to operate; and
- Annual plan reporting mechanisms (similar to annual reporting requirement for local government under LGA 1993 and POEA 1997).

A key policy decision to be made by the Government is how to reconcile or weigh public interest with private interests. This means that the public interest inherent to a strategic plan needs to be explicit so that its success (a positive outcome) can be recognised.

For example, should all plans be able to satisfy a net community benefit test as a measure of meeting the public interest? Aspects of the “public interest” that might comprise the test arise from the overarching principles listed in Section 2 of this Submission being integrated planning (holistic and consistent), ecological sustainability, economic sustainability, social equity, community engagement (open and transparent). The Institute would be pleased to work further on this with the Review Panel.

Any plan must also be able to demonstrate explicitly how it will achieve the objectives of the Act. If a Plan at whatever level cannot satisfy the objectives of the Act then it should fail. This position should be made clear in the Regulations for plan making.

4.4 Whole of government commitment to plan making

A key requirement of State Strategic and Regional plans will be the fact that they will be prepared in conjunction with other government agencies such that on adoption they will bind other government agency decisions and policy as they relate to planning matters.

Agency review and signoff (even if by way of veto) is to be sought at the plan making stage to reduce and discourage ongoing policy assessment on a development by development basis.

The Act will require Treasury to cost State Strategic and Regional Plans and provide for or identify funding mechanisms required to deliver plans (including private or public funding). These funding mechanisms will be identified with each of the relevant plans. A similar costing and auditing approach (not necessarily by Treasury) should apply to local infrastructure at the local plan level.

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7 See for example section 20 and sections 88-90 of Sustainable Planning Act 2009 (Qld).

8 For example, see section 2.5A of the Integrated Planning Act 1997 (Qld). Regional Plans including the SEQ Regional Plan binds all state agencies.

9 For example see EPA review and sign off of Regional Plan in WA pursuant to section 38 and 39 of the Planning and Development Act 2005 (WA).

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4.5 Principles for development plans and guidelines

All information on development for any parcel of land is to be drawn from the following documents:

- The Local Plan, which incorporates regional policy development requirements and high level planning controls (land use criteria, density, infrastructure requirements, etc). Also to identify applicable development tracks for types of development on sites, including consent authority; and
- Local Development Guidelines, which contain more detailed guidelines and procedural requirements.

This information must be publicly accessible and searchable through a compatible (cross-Government and Councils) electronic data base and platform managed by the State Government.

Current “development controls” in LEPs and DCPs are often couched in negative terms - what cannot be done through strictly legally defined terms and (not always but often) a ‘tick the box’ assessment approach against multiple numerical and other standards. This may be designed to provide certainty for the participants in the system, but is often aimed at preventing the ‘lowest common denominator’ development rather than facilitating good development. Clearly this hasn’t happened, with applications of moderate complexity often determined on a legal definitional rather than a planning merit basis and excessive time and money spent to obtain uncertain outcomes, the planning outcomes of which often have not benefited from the process. Legal challenges (often on legal drafting and procedural issues) are many.

Drafting should be facilitative not wholly negative. It should identify what are the desired outcomes. Prohibited development should be limited as much as possible. Fundamentally inappropriate uses should be prohibited, but most inherently unsuitable land use types will not pass a merit assessment and do not require outright prohibition. On the other hand, it enables some uses that may fall into an otherwise prohibited land use that have merit, to be assessed subject to more onerous assessment pre-conditions, rather than requiring unnecessarily time and cost consuming rezoning processes. If approval for a “prohibited” use is sought then there must not be a merit appeal allowed against a refusal of the proposal.

Local Plans should outline desired settlement patterns, the ‘carrying capacity’ of the land, rural and other economic activity areas, social and physical infrastructure, environmental and heritage protection etc. Land uses should where ever possible carry their plain English meaning. Development assessment should be based principally on planning merit according to the relevant strategic plan not legal advice to determine permissibility and procedures.

It is appropriate to establish some base line standards (such as density and height) to provide ‘valuation certainty’ on land, however development guidelines should be more performance based rather than prescriptive – approval should be relatively certain if performance standards are achieved rather than only if all the reasons for refusing the application have been avoided.

The Institute proposes that amendments to Local Plans should be able to be made by local councils subject to oversight by a State Planning Commission to check consistency. Councils should be able to obtain their own legal advice as to the validity of a plan and certify that it is consistent with the Regional and State Strategic Plans. The Institute does not support appeal rights to the Land and Environment Court or bodies such as the Joint Regional Planning Panel for private amendments to a Local Plan that have been rejected by a Council. The Minister, on advice from the Commission, should retain the right to initiate an amendment to a Regional Plan or a Local Plan.
4.6 Community Consultation, Participation and Engagement

PIA submits that effective community engagement is a critical component of preparing a successful and truly representative strategic plan.

PIA identifies the need to engage and empower the community at the appropriate planning stage. There is strong consensus that the strategic planning stage is the most appropriate phase in planning to prioritise community involvement. Improved community involvement at this stage would improve input to plans so that the outcomes are truly reflective of what a community considers beneficial to their area. It is also an ideal time to inform and educate the public as to the research underpinning the strategic vision for an area and all of the elements and options that must be considered / balanced in preparing policies.

As a result of better community engagement and consequently better public ownership of the strategic plans, the prospective assessment of any future development in the locality can be undertaken in accordance with the resulting plan. As a consequence planning decisions can be made in light of the public interest of today and the future, in accordance with the role of planning as a profession with a longer term perspective.

In particular, some categories of plans and development would have no consultation while a high level of community engagement should be mandated for the preparation of a Local Plan.

It is essential that community consultation becomes less individual project specific. This is going to require a change in how the community perceives planning and at which stage they should provide their input. The new planning system needs to shift this focus to create a more sustainable planning system and elevate planning back to creating a strategic vision for a community.
5. DEVELOPMENT ASSESSMENT

5.1 General propositions

The difficulty inherent in devising a new DA system is to balance the expectations for community participation/consultation occurring at the right time, getting the right DA track for the assessment, ensuring that all of the necessary merit and technical issues are considered, ensuring that probity and openness is observed and ensuring that a determination is not delayed by bureaucracy. This means that either the process is carefully prescribed in enormous detail to ensure that everything is fully considered (the current system) or that a degree of risk is allowed for whereby competent professionals are trusted to make the decisions.

The Institute proposes that this matter be canvassed in the Green Paper to allow for a working group with the objective of identifying the detail of a more efficient process for development applications that is:

- proportionate to the risks of the decision making;
- provides for appropriate delegations and certification powers; and
- simplifies the requirements for applications, assessment and determination according to application types.

The key to a successful development assessment system lies in well formulated strategic plans (see “Strategic Planning” Section). This paper assumes that this is the case.

Development assessment should generally be led by strategic planning, not lead it. This creates certainty and consistency at the assessment stage for developers and communities. However, the development assessment system should allow enough flexibility to accommodate ‘good ideas’ that were not anticipated at the strategic planning stage, subject to appropriate checks and balances.

Provisions relating to all forms of development assessment should be encompassed within one overarching assessment system within the Act.

Specific information on development assessment criteria, consent authority, process and public participation requirements for all development on any parcel of land must be contained in one Local Plan and one Local Development Guideline (see more discussion below).

The extent of required development assessment should be commensurate with the risk associated with the development. Risk includes potential environmental impacts or departures from established strategic policy settings. Assessment criteria, procedural requirements, and public scrutiny become progressively more rigorous as the risks become greater.

A track/stream assessment system based on these principles should be adopted, as outlined within the following section.
5.2 Development Tracks

Our suggested tracks (based on a modified form of the DAF recommendations\(^{10}\)) are set out below:

<table>
<thead>
<tr>
<th>Development type</th>
<th>Requirements</th>
<th>Public notice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exempt</strong></td>
<td>Applies to development that has low impact beyond the site and raises no policy considerations.</td>
<td>No application, assessment or consent needed.</td>
</tr>
<tr>
<td><strong>Prohibited</strong></td>
<td>Development that cannot proceed because it is fundamentally inappropriate in the relevant context.</td>
<td>No application, assessment or consent needed.</td>
</tr>
<tr>
<td><strong>Certifiable</strong></td>
<td>Combines DAF’s ‘Self assess’ and ‘Code assess’ tracks. May include larger range of activities undertaken by State or local authorities than apply to private developments.</td>
<td>Requires assessment against a set of quantitative criteria (in all cases) and performance based criteria (in some cases) which, if met, can always proceed under a standard consent. Assessment certified by private certifier or consent authority.</td>
</tr>
<tr>
<td><strong>Assessable</strong></td>
<td>Combines DAF’s ‘Merit’ and ‘Impact assess’ tracks.</td>
<td>Requires assessment against quantitative and performance based criteria which may be certified by private certifier as being met and if so, require no further assessment against those criteria. Also requires merit and impact based assessment undertaken by consent authority. Application requirements, assessment criteria, process requirements and consent authority will vary depending on the risk profile and/or policy non-compliance of the development (see below).</td>
</tr>
</tbody>
</table>

5.3 Certifiable elements of development

For all tracks requiring any form of review against quantitative and objective criteria, compliance may be certified by an accredited certifier. Certifiers should hold Certified Practicing Planner (CPP) accreditation (for quantitative and objective development criteria) or Building Practitioners Board (BPB) accreditation (for quantitative and building/BCA criteria).

In the case of the “Certifiable Development” track, this is the whole development. Certification would enable construction to proceed. In the case of “Assessable Development” this certification would be the first element of the assessment (the other being the merit assessment by the consent authority). Those elements that may be certified are zoning and numerical guidelines such as

\(^{10}\) “A leading practice model for development assessment in Australia”, Development Assessment Forum (DAF) March 2005

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building height, setbacks, floor area etc. Once certified, the consent authority must accept the certified information.

This certification process lends itself to an electronic system (similar to BASIX certification). Certifiable components of Statutory Plans should be contained electronically and calculations by the certifier are entered electronically against each component. Certifiable development certificates could be generated automatically on this electronic platform.

### 5.4 “Assessable development” procedures

An example of how a system for “assessable development” that matches procedural requirements to the risk profile of the development might operate is shown below.

<table>
<thead>
<tr>
<th>Potential impact/risk profile</th>
<th>Assessment requirements</th>
<th>Assessment/consent body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low-moderate/local</td>
<td>Lodge with Council</td>
<td>Council delegate</td>
</tr>
<tr>
<td></td>
<td>Limited if any public notice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assessed against local assessment criteria (with incorporated regional requirements)</td>
<td></td>
</tr>
<tr>
<td>High/local</td>
<td>Lodge with Council</td>
<td>Council or Independent Local Assessment Authority (may be delegated if IHAP/public hearing not required)</td>
</tr>
<tr>
<td></td>
<td>Public consultation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assessed against local assessment criteria (with incorporated regional requirements)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mandatory public engagement if development identified as being generally not suitable on that land</td>
<td></td>
</tr>
<tr>
<td>Low-high/regional</td>
<td>Lodge with Council or State Planning Department</td>
<td>State Planning Department or Independent Regional Assessment Authority (may be delegated to Council if IHAP/public hearing not required)</td>
</tr>
<tr>
<td>Regional policy variation</td>
<td>Primary assessment against Regional policy and assessment criteria, secondary consideration against local assessment criteria.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public consultation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mandatory independent review and public hearing if development identified as being generally not suitable on that land</td>
<td></td>
</tr>
<tr>
<td>High/State</td>
<td>Lodge with State Planning Department, Minister for Planning or State Planning Commission</td>
<td>Independent State Planning Commissioner</td>
</tr>
<tr>
<td></td>
<td>Primary assessment against State and regional policy and assessment criteria, secondary consideration against local assessment criteria</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public consultation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mandatory independent review and public hearing if development identified as being generally not suitable or prohibited on that land</td>
<td></td>
</tr>
</tbody>
</table>

1. *Indicative only, delegations levels generally not appropriate for inclusion in Act. In all cases private certification of compliance with quantitative and object development criteria is possible.*
External referrals are generally not required because Local Plans & LDG are required to incorporate standard State authority conditions (see “Strategic Planning” discussion). Referral is only required where development seeks to vary standard State Authority conditions. Deemed concurrence should apply if no response is received (allowing for requests for additional information which ‘stop the clock’) within designated time.

5.5  Types of Assessable Applications

At the applicant’s discretion, approvals may be sought for:

- Partial consent, or
- A Full consent.

An applicant may choose only to apply for consent for certain elements of a proposal. The approval authority cannot require additional information on matters for which consent is not sought. If partial consent is granted, a separate (full) consent is required before the development can commence. A complete assessment of the full DA is required, but the development cannot be refused on grounds involving a matter for which partial consent has been granted. The purpose is to enable applicants to obtain certainty over certain aspects of a development without necessitating the full documentation required for a full DA.

Examples might be:

- Consent may be requested for a building envelope on the land which may vary the height limit for the area. The consent authority may require information on shadowing or view loss, but cannot request information on traffic, drainage or other matters not related to the issue of building height. A full DA for which partial consent for a building of a certain height has been obtained can be refused for any reason except the height of the building.

- A permit may be required under other Acts (currently ‘integrated development’). The applicant may seek partial consent which does not include that other permit. The full consent will not operate until that third party agency permit is issued.

Crown agencies should retain a right to challenge Council decisions on refusals and conditions and may escalate unresolved disputes to a State Planning agency or the State Planning Commission for resolution.
6. APPEAL / REVIEW RIGHTS AND ENFORCEMENT

6.1 Underlying purpose of appeal/review rights

Appeal/review rights are necessary in a public law statute such as a Planning Act in order to ensure integrity, certainty and public confidence in the planning system. There should be a correlation between an appeal right and the risk of a decision undermining the integrity, certainty and public confidence in the planning system.

6.2 Appeals by applicants

Applicants require certainty of process. Certainty about the outcome of a determination may not be possible; however economic development requires the right to have a decision determined by an independent arbitrator. Development application determinations for more complex proposals involve a high degree of discretion. An appeal right is a means of providing an applicant certainty about how that discretion will be exercised and by whom. For that reason an applicant for consent should have a right of appeal, on the merits, against a consent authority’s determination of a development application.

The ability for applicants in a merit appeal to amend a development proposal during the course of the appeal continues to have the potential to undermine public confidence in the appeal process. To the extent that this can be addressed in the Planning Act (as opposed to the Land and Environment Court Act and case management procedures) mechanisms need to be considered that encourage applicants to exhaust all possible amendments at the DA stage.

A right of merit appeal against refusal of a CDC application may not be necessary given that CDC applications are assessed against objective criteria and the risk of a poor discretionary decision is limited. There are disadvantages in allowing appeals against refusals of CDC applications: certifiers could be discouraged from offering services if they are at risk of the expense of defending an appeal. Certainty for applicants can be provided in other ways such as a statutory obligation on a certifier to issue a CDC if a proposal complies with the objective criteria.  

Applicant initiated requests to modify Strategic Plans should not be subject to merit appeals. It is proposed that prohibitions in Strategic Plans are strictly limited to fundamentally inappropriate uses. Consequently, unlike the current statutory planning system which places restrictive zonings and legal permissibility at the front end of development assessment, planning merit should be the primary determinant of development assessment. If that system is adopted in the new Act, appeals against ‘spot rezonings’ would be unnecessary. If an application for a prohibited use was allowed then there must be no appeal rights against a refusal. All other (non-prohibited) uses will be generally subject to appeal rights as a present.

The right of review to the consent authority, such as currently provided by section 82A of the EP&A Act, should continue in a new Act. Section 82A is working. An application for review of a decision is less costly than court proceedings and allows the applicant and consent authority to maintain control of the process and outcome. Barriers to applications for internal review should be removed.

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11 See for example s85A(7) of the EP&A Act

12 Department of Planning Development Performance Monitor.

13 Such as the exclusion of applications for integrated development from the right of review.

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The proposition that appeals should be determined against the same policies and objective rules and tests as the original decision is supported but will require legislative intervention to overturn current case law that requires applications to be determined against the law as it exists at the time of determination of the appeal.\textsuperscript{14}

6.3 Third-party appeals – judicial review

A third party should have open standing to question the validity of any administrative decision purportedly made under a new Act. This reflects the common law and ensures public confidence and integrity in the system. The current appeal provision in section 123 of the EP&A Act should be carried through in some form to a new Act. There should be no exclusions.

6.4 Third-party appeals – merits

A third party right of appeal on the merits may be necessary to ensure public confidence and integrity in the planning system. A right of appeal by a third party may be appropriate for development:

- where the risk of corruption is high;\textsuperscript{15}
- that departs, significantly, from policy;
- that falls under a “conditional permissibility” category of development (e.g. an approval of a “prohibited use”) and then only if it can be demonstrated that there will be a direct affect.

Third party appeals should not be permitted where:

- Discretion is limited (i.e. for development assessed against objective criteria).
- Development has undergone a rigorous consultation process, such as a Public Inquiry, and the 3rd party did not make an objection at the public consultation stage.\textsuperscript{16}
- The 3rd party is a trade competitor or has no interest affected by the decision.
- The appeal is assessed to be vexatious.

Some Australian states have very liberal 3rd party merit appeal rights. Victoria for example, allows appeals against almost all decisions to be appealed by a third party and, consequently, has a significant number of appeals.\textsuperscript{17} This requires an extremely efficient appeal process, which is administered by the Victoria Civil and Administrative Tribunal.

The practices and process of the NSW Land and Environment Court (which can result in time consuming and expensive appeals) do not presently engender themselves to a significant enlargement of 3rd party appeals, without the potential of bogging down decision making.

That appeals should be determined on an inquisitorial rather than adversarial basis is beyond the scope of a Planning Act. Amendments to the Land and Environment Court Act coupled with changes to the Court rules and practices to implement such a system would be supported and would be consistent with changing the culture of planning.

\textsuperscript{14} Sofi v Wollondilly Shire Council (1975) 31 LGERA 416

\textsuperscript{15} In 2007 ICAC recommended 3rd party merit appeals for DAs: relying on significant SEPP 1 objections; where a council was both applicant and consent authority or on land owned by the Council; involving major and controversial development; involving planning agreements.

\textsuperscript{16} See for example section 75L of the EP&A Act

\textsuperscript{17} in 2009-2010 the relevant Tribunal in Vic dealt with 3,326 appeals compared to 577 in NSW and 679 in QLD

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6.5 Conciliation, mediation, neutral evaluation

Processes such as conciliation, mediation and neutral evaluation should continue to occur in a formalised manner under the Land and Environment Court legislation and associated procedures rather than as part of the original development assessment process under the Planning Act. Attempting to introduce these as formal steps in the original assessment stage may only create additional and unnecessary procedures and associated uncertainty, delays and costs. These procedures occur informally now and if successful, there is generally a bone fide attempt by both parties to seek a resolution. This should continue and be encouraged as part of a well administered development assessment process, rather than being imposed by legislative requirement. The skills associated with development mediation and negotiation should be part of the training of all NSW development assessment planners, preferably through a formal and mandatory accreditation course.

This is an area where greater confidence in the planning system will allow a more outcome focussed approach rather than regulatory compliance approach. It does involve an element of risk taking and a climate of good will between parties.

These matters are outside the scope of the drafting of the new Act but are important parts of the change to the culture of planning and the overall planning system.

6.6 Enforcement Powers

A system of local level civil enforcement orders (similar to s121B of the current Act) is essential. A breach of the Act should explicitly include a breach of development consent or an order. The Act must provide authorised officers with adequate powers of investigation including the power to require answers to questions, powers of entry and powers to require production of documents. The current division between Departmental powers of investigation and council powers of investigation is confusing and would appear unnecessary.

A mechanism for cost recovery for investigatory actions is required. Another option is for all development consents to include an enforcement levy component.

The current penalties system should be reviewed to ensure that fines reflect the seriousness of the offence rather than apply a simple two tier fine system. There is a perception by some applicants/owners that the delays and associated holding charges inherent in the current approvals processes creates a view that it is easier and cheaper to take the risk and pay the fine than obtain necessary approvals. The capital gain from the unauthorised work generally outweighs the value of the fine.

It is also common that offenders accept the fine knowing that in most cases they will not be required to reinstate the approved building because, in their argument, “it doesn’t hurt anyone “. Improvements to processes through the Act may help this; however, breaches of the legislation if not effectively and efficiently brought to account undermine the public confidence in the system when offenders seem to get off “lightly” or not be brought to account.

The option to prosecute in the Local Court or the Land and Environment Court is useful however it invariably is a considerable cost in time and resources to the authority prosecuting which is rarely compensated by an adequate fine.

The local level civil enforcement orders should include the power to require the preparation and implementation of remediation plans in the case of unauthorised clearing of vegetation, land filling or causing environmental harm.

Planning Institute of Australia (NSW Division)
7. IMPLEMENTATION OF THE NEW PLANNING SYSTEM

7.1 General propositions

The purpose of prescribed procedures under the Act is to implement externalities (the outcomes of the stated objectives of the Act). All processes and procedures should be subject to this purposive test - to demonstrate how they contribute towards and most effectively and efficiently achieve the objectives of the Act. Any that do not ‘pass this test’ have no place in the Act.

It should be clear who is responsible for administering each process and procedure (or who has rights under those procedures) in the Act. The Act must provide a capacity to monitor the performance of each stakeholder’s responsibilities.

Stakeholder responsibilities should be allocated to enable single-handed dealing with that process or procedure to avoid matters passing through multiple stakeholders and blurring ultimate responsibilities. This involves allocating responsibilities according to the complexity, scope and risk of the function.

7.2 Roles and Responsibilities

New legislation is an opportunity to review and strengthen the role of the Department of Planning and Infrastructure. The Department would set the strategic framework for integrated land-use planning in NSW including the overarching State Strategic Plan and regional plans. This would include the involvement of other State agencies. The Department would ensure that Councils are adequately funded to undertake the research and proper strategic planning for the Local Plans and ensure that Councils had access to all necessary government data to underpin good strategic planning and evidence based planning.

The Department would play a key role as the central portal for planning information accessed through government and council data bases. The Department then becomes an important body for communication to the community, investors, developers and other agencies of the goals and programs for change in NSW.

7.3 Funding

- The purpose of revenue raising provisions under the Act is a means of implementing the adopted planning strategies made under the Act, not an end in itself.
- The Act should be flexible enough to accommodate all potential infrastructure funding mechanisms within the ambit of a Planning Act (including State, regional and local level developer levies, voluntary agreements, value capture (betterment) mechanisms, user pays etc).
- Strategic plans must include an integrated strategy for full funding of the Plan’s proposals, which can include any of the revenue raising mechanisms under the Act, but also include other funding sources such as general revenue, special rates, grants, self-funded by operational revenue, State or local (Treasury approved) bond issues (for example for investment in areas where up-zoning leads to increases in property value), development contributions and full or part private financing etc.
- The specific method of funding particular infrastructure or other elements of a strategic plan (whether State, regional or local) is a policy decision for the planning body (not to be prescribed by the Act). Depending on the nature of the proposals, the funding could be entirely from developer contributions, a combination of Federal grants and State infrastructure budget funding, or any other combination of sources. The only requirement under the Act should be that every element of the strategic plan with an implementation horizon of say 5 years should identify the funding sources which will
amount to 100% of the estimated implementation cost. The contribution types should be separately defined and clear principles to govern cost and value apportionment should be articulated for each type:

- Infrastructure charges (up front user payments);
- Impact mitigation payments (compensation for effects that were unanticipated in the Local Plan or Regional Plan);
- Betterment taxation or development license fees (reflecting value added by changes in development capacity authorised by a Plan);
- Inclusionary requirements (for example, affordable housing component) which may attract bonus incentive development potential to offset the requirement.

- As part of the plan making process an appropriate body such as IPART should review and endorse the proposed funding arrangement provided for in the plan. Once that approval has been given in the adopted plan, then there should be no appeal allowed in respect to the contribution or charge.
- The Act should continue to enable planning bodies to charge reasonable fees and charges for services (development assessment, certifications, plan copying, enforcement recovery, etc) with an obligation to ensure they are at a level which fairly represents the actual cost of the service provided and enables equitable participation in the planning system by all stakeholders.
- The Act should retain appropriate accounting provisions to ensure transparent and accountable management of funds.

The detail of the various mechanisms should be covered by Regulations. The Act is to be enabling not prescriptive.

### 7.4 Smart Planning Technology

The Planning Institute strongly supports the proposal that information technology is to be integral in establishing a new planning system.

The two relevant areas are:

- Integration of publicly held databases so that the maximum amount of information concerning any parcel of land is available through a simple-to-use internet portal.
- Maximising the use of electronic lodgement of (and public accessibility to) applications seeking approval for development.

All property information, planning related data and planning controls should be accessible from a central/State Government maintained data management system, freely accessible to all agencies and the public. This information should form the platform for wider ‘e-planning’ applications across the State.

The web could also be used to provide development monitoring data in real time. For example, calculations for local population density and available development yield are continuously updated when an occupation certificate is issued.

PIA recommends a track/stream assessment system commensurate with the likely level of risk associated with the development type. In particular PIA supports certification of specified quantitative and objective criteria and encourages automated/electronic application systems for the certification process.
Certifiable components of Statutory Plans should be contained electronically and calculations by the certifier can be entered electronically against each component. Certifiable development certificates could be generated automatically on this electronic platform.

Most councils have within the last 5-10 years invested significant amounts of money into ePlanning or property information systems. To address the inter-relationship and ability to “talk” between different platforms DAF introduced eDAIS to provide a consistent standard so that there was some harmonisation between different software platforms. This has had limited success in enabling a consistency in accessibility of datasets across jurisdictions in NSW. The NSW Government would be best positioned to deliver a software platform that is used for all councils and agencies across NSW relating to planning spatial information and electronic delivery of applications.

It is recommended that as part of wider delivery of a new planning system the NSW Government develop an electronic planning system that can be adopted by councils as their current systems require updating. There will be significant funding cost associated with such an ePlanning venture.