Submission to the Independent Commission Against Corruption

Corruption Risks in the NSW Development Approval Processes

Discussion Paper

Submission by the Planning Institute Australia (NSW Division)

February 2006
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Background – the NSW Planning System</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Review of trends</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>PIA National Inquiry into Education and Employment</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Current Ethical Framework</td>
<td>3</td>
</tr>
<tr>
<td>6</td>
<td>Complaints or a Problem?</td>
<td>4</td>
</tr>
<tr>
<td>7</td>
<td>Response to Specific Discussion Paper Topics</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>7.1 Councillor Issues (Sections 2 - 4)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>7.2 Council Officers and Conflicts of Interest (Section 5)</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>7.3 Conflicting Roles of Consent Authorities (Section 6) and Council land disposal (Section 7)</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>7.4 Consultants (Section 8)</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>7.5 Development Standards (Section 9)</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>7.6 Planning Agreements (Section 10)</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>7.7 Political Donations (Section 11)</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>Summary of recommendations</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Attachments</td>
<td>13</td>
</tr>
</tbody>
</table>

Note:

This submission has been prepared on the basis of work undertaken by Steve Gow, of Armidale Dumaesq Council, and also work by Angus Witherby of Wakefield Planning. The views expressed in this submission are, however, the views of the Planning Institute of Australia NSW Division and do not necessarily represent the views of the employers of those preparing the work.
1. Introduction

The Planning Institute of Australia (PIA) is the peak professional body representing professions involved in planning Australia’s cities, towns, regions and places. PIA is a not-for-profit association delivering benefits to over 4,000 members nationally. Our members are drawn from a range of planning professions – urban and regional planning, social planning, urban design, environmental planning, economic development planning, transport planning and planning law. A large proportion of our membership is employed in local government.

The shared core interest of PIA, as stated in its Constitution is:

“the community, and the education, research and practices relating to the planned use of land, its associated systems, and of the natural and built environmental, social and economic impacts and implications of the use of land”.

This submission by the Planning Institute of Australia (PIA), NSW Division, responds to the Corruption Risks in NSW Development Approval Processes Discussion Paper, which follows the Commission’s Paper “Taking the Devil out of Development” in 2001/2002. Clearly there is still concern over development control issues which continue to be the subject of many submissions to the Commission.

2. Background – the NSW Planning System

In the period since the Commission published its 2002 Position Paper, the NSW planning system has become significantly more complex. This has resulted in increasing level of confusion and uncertainty over multi-layered planning controls amongst professionals, elected representatives and in the community. It has also provided a fertile basis for objections, challenges and appeals, against a background of an increasingly litigious society.

The current NSW planning system no longer, in our view, provides for meaningful public involvement (one of the objects of the Act) as its very complexity now threatens transparency and any effective public understanding of the system.

These problems arise from repeated (and at times misguided) attempts to tinker with or patch up existing legislation rather than develop a new, best practice basis for planning in the state. The latest system reforms introduced and being foreshadowed by the Department of Planning during 2005, in the wake of the failed “PlanFirst” initiative, provide evidence of this.

There has been little attempt to consider what might be learned from jurisdictions interstate or overseas in the development of a new, integrated system which Government frequently espouses as its goal. Instead, the community is confronted with a bewildering array of overlapping but uncoordinated categories such as “complying”, “integrated”, “advertised”, “designated” and “state significant” and “Part 3A/Part 4/Part 5” developments defined and “managed” by a maze of often conflicting regulatory instruments. The resultant complexity makes it increasingly difficult, and at times virtually impossible, for practitioners to provide clear, unequivocal advice to applicants, the community and Councils.

Indeed, planning in NSW in 2006 appears to have more to do with process, legal interpretations, knowledge of complex statutes and special legislation to fast track ‘difficult’ proposals, than with achieving better environmental outcomes and true community engagement.

The Department of Planning is in a continued state of flux, with internal changes and restructuring affecting the planning system at the State Government level. The constant change is impacting on management of the planning system, whereby up-to-date procedures are no longer accessible and there is an ad hoc system of circulars and letters advising of legislative and procedural changes, often after these changes have actually taken effect. The lack of information is evident for Local Government, private
consultants and even the Department of Planning’s regional offices. There is a need for a web-based system of notification, which provides updates at regular and timely intervals, prior to changes being implemented.

Most recently, changes to the Native Vegetation Act have established a control regime for the clearance of indigenous vegetation which now requires development consent to be obtained not from the usual local consent agencies – Councils – but separately, from regional Catchment Management Authorities. This appears at odds with the approach for “integrated” development applications only established relatively recently by the State Government.

Considering that one of the oft-cited advantages of having eight parallel systems of planning and development control throughout Australia is the potential for comparative evaluation and improvement, it is disappointing that the reality in NSW reveals a significant degree of parochialism and an unwillingness to consider fundamental change. NSW is now significantly behind most jurisdictions in Australia.

Issues such as these, in PIA NSW’s view, are the major concerns with the current development control system in NSW which need to be seen as clearly underpinning the current problems.

3. Review of trends

Within this context, the trends in the development assessment aspect of planning are clear, and of concern:

- This continues to be the subject of most submissions to the Commission;
- The parties involved in development control issues are increasingly resorting to personal attacks on those involved in administering the planning system as a means of achieving their ends with improper conduct often alleged, frequently with no evidence to substantiate such claims;
- The level of criticism to which staff can be subjected in their day to day employment is increasing, including attacks in public forums such as Council meetings;
- Substantial delays exist in the system, and are worsening, in many cases as a result of increasingly complex legislative requirements, considerably heightened expectations for community consultation, and resource constraints; and
- As was highlighted in the Planning Institute of Australia’s National Inquiry into Planning Education and Employment in Australia (PIA, 2004), these factors have contributed to some local government planning departments now being seen as “toxic” workplaces, contributing to resource shortages.

In the context of these trends, the level of complaint to the Commission needs to be seen as symptomatic of a failed system, not merely as a circumstance where, in a basically sound system, stronger ethical guidelines and requirements can be expected to address the problems of contested outcomes affecting valuable property and commercial profits.

4. PIA National Inquiry into Education and Employment

In 2004, the Planning Institute of Australia conducted a National Inquiry into Planning Education and Employment which was funded by the Planning Officials Group, representing all State and Territory planning departments. The Inquiry conducted a national questionnaire, workshops, received submissions and consulted with a wide range of industry and government organisations.
A copy of the Inquiry’s report as well as associated documents, including relevant State and Territory reports can be found at:  

There are around 8,000 urban and regional planners nationally; 50% of planners work in Local Government, 30% in the private sector and the remainder in the Commonwealth, State Governments and Universities.

The Inquiry found that there is a severe shortage of planners due to a range of reasons including an expanding job market, shortage of graduates, loss of experienced planners, disillusionment of the profession, and planners working overseas. The Inquiry made a number of recommendations to address this shortage.

The Inquiry also found that planners often work in difficult workplaces, particularly those working in development assessment in Local Government and this is compounding the shortage, as many planners chose not to work in Local Government or leave the profession altogether. In these situations planners face a multitude of pressures from elected representatives, developers, members of the community, legislative time frames and limited financial and human resources.

The Inquiry made a number of recommendations which have been addressed by PIA through its implementation committee and by ongoing PIA national committees. The full range of recommendations are outlined in the report. Some of the relevant recommendations to the ICAC inquiry include:

- Develop a code of conduct which provides politicians, users of the planning system and planning staff on their roles and responsibilities;
- Require all Local Governments to have employee assistance schemes in place;
- Review PIA Code of Professional Conduct; and
- All local government councillors who are involved with development assessment should be required to undertake compulsory training on their roles and responsibilities.

Aspects of those recommendations are included in the body of this submission.

**Recommendation 1:**

*That the Commission considers more widely the systemic problems underlying the planning system and the way in which these contribute to a developing “climate of crisis and complaint”.*

5. **Current Ethical Frameworks**

Planners in local government are already bound by their Councils’ Codes of Conduct and, where they are members, the ethical requirements of the Planning Institute of Australia. Not all planners are, however, so bound. The paper raises the issue of consultants, who, unless a Member of the Institute, are not bound in the same way as Council planners or Institute Members.

Unlike many other professions, there is no legal requirement for applicants or persons representing themselves as planners in connection with development applications in NSW to have any minimum level of professional competency or commitment to any codes of professional ethics.

This is considered a major deficiency, which limits the ability of the Institute to monitor and address competency and ethical issues. The Institute is, however, taking what steps it can to further enhance its role in the professional competency and ethical areas, in particular through the following:
• The development of the Certified Practicing Planner (CPP) scheme, being implemented in July 2006, which will provide those employing accredited planners under the scheme (both public agencies and private firms and individuals) with confidence that the planners they employ hold recognised planning qualifications and are being continually re-skilled through ongoing professional development and training. For more information on CPP, please see the PIA website www.planning.org.au;

• A mentoring program for planners, also to commence in 2006, which focuses on those planners, particularly younger planners, working in isolated workplaces (e.g. as the sole planner in a Council);

• An active Continuing Professional Development program of events and conferences, including topical issues of the day;

• The recent development of additional chapters of the Institute, including Environmental Planning, Urban Design, Economic Planning, Social Planning, Transport Planning and Planning Law to improve the ability of the Institute to provide appropriate professional coverage of all the sub-disciplines of planning;

• The previous development of Special Interest Groups, including Consultant Planners, Local Government Planners and Young Planners to address the particular professional needs of these groups, in particular for training and professional development; and

• Proposals for an enhanced ethical framework for local councillors and council planners which includes Councillor training in the development assessment role. A copy of the draft Code of Conduct prepared by PIA is attached.

Recommendation 2:

That the Commission consider recommending to Government legislative action to ensure persons using the title “planner”, “town planner” or similar, be required to meet certain minimum levels of professional competency, training and ethics.

Recommendation 3:

That in NSW the draft PIA code of conduct for Councillors and Council Planners is considered by the Commission as a model to underpin an enhanced NSW Code.

Recommendation 4:

That compulsory training for Councillors is considered for implementation in NSW, in particular to address roles and responsibilities, the issues of pecuniary interest, and the planning system. Further, that ongoing training is considered similar to professional CPD requirements.

6. Complaints or a Problem?

It is clear from the experience of Members, that many complaints are made, however comparatively few appear proven. Given the number of local planning authorities, applications assessed and practitioners involved in development control activity in NSW, it would be interesting to know how many allegations of misconduct levelled against Council planning staff and Councillors have been found to be proven. Making public the percentage of proven complaints would assist to ensure the public have a balanced view of the severity of the problem. Institute Members continue to report that public confidence in Councils and Council planners, in particular, is very low, with many members of the public now assuming corruption is the norm.
This, in part, stems from people making unfounded allegations, which often consume large amounts of Council time and community funds. In particular, the lack of accountability of complainants for the consequences of their actions is of concern, with often severe effects on council staff, and morale. This is one of the causes of the current resource shortage of planners, and of the poor quality of many local government workplaces.

While the community clearly needs to be protected from corrupt conduct, it also needs to be protected from unreasonable allegations made by persons motivated not by any sense of public interest, but by motives such as a desire to achieve personal ends. This can apply to both major and minor proposals.

**Recommendation 5:**

*That the Commission considers the impacts of unfounded complaints on public confidence in the planning system, and of those working within it. In this respect, unfounded or vexatious complaints need to be carefully considered, in particular when arising from “serial complainants” with further action being taken to discourage these. Complainants need to be fully informed of the seriousness of consequences that unfounded complaints can cause.*

**Recommendation 6:**

*A system of public exoneration in the case of unfounded complaints should be considered by the Commission, where the complaint has become a public matter, and where the person complained against requests it.*

**Recommendation 7:**

*Statistics on the percentage of complaints upheld should be issued, in the context of information about the total number of complaints and also the total number of applications processed by the system.*

7. **Response to Specific Discussion Paper Topics**

7.1 **Councillor Issues (Sections 2 - 4)**

Improved independence where Council has a dual interest (e.g. as property owner and consent authority), or a conflict of interest involving a majority of Councillors or senior staff would be welcomed. In particular, the use of outside advice and/or assessment where Council is the property owner, or where Senior Staff have a potential interest in an outcome is recommended. This should be mandated so long as adequate resourcing of this function is available (see further discussion).

**Recommendation 8:**

*That a properly resourced framework for independent and professional advice where potential conflicts of interest exist be developed and mandated for all Councils in NSW. This should include situations where, for example, sufficient Councillors have a conflict of interest such that the Council would be inquorate; where the Council either owns or has recently owned land the subject of an application; or situations where one or more senior staff (particularly in small councils) may have a conflict of interest. There should be a complete separation between those preparing applications for Council and those assessing them. The assessment function is the most crucial function which should be undertaken independently. Note that for minor applications, reporting to, and public decision by Council is appropriate.*

Potentially inappropriate political decision making is much harder to detect and avoid. This is an area where best practice examples from other jurisdictions may be useful, as the role of local Councils as planning consent authorities is common in many western nations. Simple “block voting” along factional or political lines appears an incorrect use of Councillors’ roles as community representatives where issues are varied and complex. Further clarification and separation of administrative, policy and representative
roles under relevant legislation appears appropriate, together with enhanced Councillor training as outlined in Recommendation 4.

While staff endeavour to ensure the focus of most Council business is of a policy nature rather than day to day administration, some Councillors do take a close interest in such matters on behalf of constituents and see this as their legitimate role. Some Councils have a reasonable and responsible approach to development matters in which they look to direct involvement typically only for major development or proposals involving significant community objection. Otherwise, a high level of delegation to staff should be in operation, consistent with the LGSA findings quoted on page 17 of the Corruption Risks in NSW Development Approval Processes Discussion Paper, with staff also required to declare any pecuniary or non-pecuniary interests affecting their work. A further issue with delegations relates to ensuring that at the staff level, delegation does not permit development determinations without a “sign-off” by a more senior staff member, noting that in small Councils this may not be a planner.

**Recommendation 9:**

Guidelines for the exercising of delegation need to be enhanced, and consideration given to certain mandated basic requirements (e.g. that the same individual may not both assess and “sign off” a development determination), recognising the resource constraints of small councils and many rural communities. Council staff should be required to declare any pecuniary or non-pecuniary interests potentially affecting their work.

Many councils permit a “Your Say” session at each Council meeting where it is common for proponents and objectors to have an opportunity (usually 5-10 minutes each) to personally address Councillors about Development Applications. However, the shortcomings of this arrangement and lobbying processes which occur outside the Council Chamber, as canvassed on page 15, of Corruption Risks in NSW Development Approval Processes Discussion Paper are noted. Particularly with major development proposals, such lobbying may commence well before an actual application is lodged. A system of recording and disclosing relevant approaches by developers or objectors might be considered, although it is difficult to imagine how the process of lobbying might be outlawed in a democratic political process, which the Commission, quite realistically, sees as continuing in future (p.17).

**Recommendation 10:**

That the Commission give consideration to recommending a requirement for a “register of approaches” for Councillors.

Planners prefer to deal with written submissions and to respond to factual questions. On occasion, people making statements in public Council meetings, with media in attendance, have resorted to personal attacks from which staff are unable to protect themselves. Recent serious example of this has led to a heightened awareness of the important role of the chair in preventing such situations. Perhaps additional training or “rules of participation” should be developed for such forums.

**Recommendation 11:**

That consideration be given to specific training being required in meeting procedure for Mayors and Deputy Mayors.

Explaining that written or verbal submissions in connection with development applications will be a matter of public record may also assist in tempering the behaviour of some participants. PIA NSW notes that some Councils are now posting letters of objection on internet sites, and this is supported, although there is a need to clearly flag privacy implications with the people making submissions. There is also a related issue with access to reports and submissions prepared by applicants which often make it difficult for the public to access material on which Council staff and/or Councillors will be making decisions. The rights of the public to access information need to be clearly spelled out, in the interests of increased transparency in the planning system.
Recommendation 12:

Making objections and submissions publicly available (including through websites) is supported. Clearer definition is needed in the information that the public can access, and this needs to be facilitated.

Recording Councillors’ positions on votes and reasons for decisions contrary to officers’ recommendations would help to increase accountability, as suggested on pages 18-19. These records could then become part of public minutes which could be reviewed in the event of any subsequent concerns. The importance of providing reasons for decisions or responses to objections is supported and in our experience is observed in the conduct of matters before most Councils.

Recommendation 13:

As part of Councillor training (recommendation 4) the importance under the Act of reasons for decisions (either of approval or refusal, as well as of specific conditions attaching to an approval) need to be highlighted.

The Commission’s suggestions about popular Mayoral elections are noted; the common concern about such an approach, of course, is where the elected body may become unworkable because popularly-elected Mayors may not enjoy the support of their fellow Councillors. Nevertheless the problems of factional systems and the annual Mayoral election are also clear, where the Mayor is more likely to be accountable to a faction, rather than to the electorate at large. Both systems can work well or work badly. This is a matter the Government should consider and determine, again with reference to other jurisdictions, for NSW as a whole – PIA NSW notes that the City of Sydney has had a popularly elected Mayor for many years.

Recommendation 14:

It is recommended that consideration be given to a uniform system of Mayoral elections for NSW.

Larger Councils or more regional entities that have occurred with recent amalgamations can increase the regulatory distance between individual applicants and decision makers – however this can also favour better resourced applicants/organisations at the expense of individuals in representing their cases. The balance, and the issue of paying Councillors full time salaries, is tricky, as increasing levels of dependence on income from short political terms could also create the potential for corrupt conduct around re-election times.

In this context, Independent Hearing and Assessment Panels (IHAPs) have much to commend them. However, resourcing these truly independently is a critical issue in regional areas, as well as in monetary terms. There has been some evidence of the use of independent consultants by Councils at their own cost where a Council may be perceived as being unable to exercise its function objectively because of conflicts of interest, and this approach has support (refer to Recommendation 8).

On the issue of third party appeals discussed at 4.5 in the Discussion Paper, there is merit in extending current provisions for major proposals and developments involving SEPP 1 objections. Consideration could also be given to broadening third party appeals in the case of Council developments.

Recommendation 15:

That selective broadening of third party appeals be considered for major development, SEPP 1, and Council development.

Finally, the introduction of a systematic and compulsory system of introductory training for new Councillors in specialist areas such as planning would be welcome, as has previously been recommended at Recommendation 4. Refresher and update courses would also be necessary. Preferably senior staff
could also be in attendance at these sessions. Delivery of courses could be managed through Universities or Professional Associations such as the Planning Institute of Australia. Once again, resourcing would be an issue and would need to be addressed as part of any requirements.

7.2 Council Officers and Conflicts of Interest (Section 5)

As recognised in the Discussion Paper, there can be special difficulty for Council staff working in smaller communities in maintaining or being seen to maintain an appropriate distance from other stakeholders involved in the development control process. Inevitably, in smaller communities, Council staff are regularly dealing with the same builders, developers, architects, lawyers and other consultants. At the same time, there are insufficient staff resources to ensure that these people can regularly expect to be dealing with different Council officers. In many small Councils, there are only one or two responsible officers in place.

Moreover, Council staff (especially in non-metropolitan Councils where there is a real desire to see economic development take place), are encouraged to be “customer friendly” in their work. How does such an approach sit with the concept expressed in the discussion paper as “regulatory capture”? PIA NSW suggests that there is certainly a clear need to separate those responsible for encouraging economic development in Councils from those involved in the administration of local planning controls. This applies not only in cases where a Council has an interest as a property owner (see below). Even where this separation does occur, however, planning input frequently comes very late in the process, leading often to inappropriate initiatives gaining considerable momentum at the expense of good planning.

Staff are also well aware of the requirement of the current NSW Model Code of Conduct to avoid meeting with developers “alone and outside office hours” (cl.8), mentioned at page 23. PIA NSW understand from the NSW Department of Local Government that both components have to be in place for the Code to be breached (i.e. alone AND outside office hours).

In view of problems with meeting developers that have arisen, even where staff have been exonerated, there is a need to review whether it may be necessary to insist that all such meetings are held at Council offices, and/or with a Council or independent witness present. Such a step could have significant resourcing implications and has the potential to significantly delay other work in progress. This seems unfair to others, such as persons who have paid to have their applications processed expeditiously. A more sensible approach should, in our submission, rely on the reasonable judgement of staff as to when Council witnesses should be present, based on appropriate criteria relating to the matter in hand and the other parties involved.

Nevertheless, as a result of such concerns, it is apparent that many staff working in regulatory fields are exercising increasing caution in their everyday lives, even in their casual social contacts, to avoid any perception that there may be an inappropriate connection between stakeholders on different sides of the regulatory fence. In a smaller community this can be difficult and at times embarrassing. Again, this situation derives from an apparent lack of trust in governments, which is unfortunate and largely undeserved.

PIA NSW would therefore welcome some practical guidance from the Commission as to reasonable steps that could be taken to deal with the probity issues surrounding regular dealings with routine work contacts, especially in regional and rural NSW, as well as the issue of avoiding inappropriate pressure that could be placed on Council staff in planning roles, as discussed at pages 23-24 of the Discussion Paper.

Recommendation 16:

That the Commission consider issuing Guidelines for Councils and Council staff, with an emphasis on staff in small communities, to address the probity issues associated with routine work contacts.
In the meantime, the PIA is aware of the importance of the independence of the planning process from political or other pressures to make partial decisions. In this regard in all Councils it is important that staff are made aware of their rights at work and have adequate support mechanisms around them to prevent any pressure from above, whether intentional or perceived, leading to undesired or inappropriate outcomes.

**Recommendation 17:**

*It is recommended that further attention be given to providing easily accessible advice for Staff on their rights at work, and that Councils be encouraged to develop and/or enhance staff support mechanisms as part of their internal operating requirements/staff policies.*

### 7.3 Conflicting Roles of Consent Authorities (Section 6) and Council land disposal (Section 7)

Improved arrangements where Council has a dual interest (e.g. as property owner and consent authority), or a conflict of interest involving a majority of Councillors or senior staff would be welcomed. However, as indicated previously, resourcing of this approach, whether by the use of consultants or a specialist agency or panel is the critical issue.

Various approaches are possible: These include the assessment of Council applications by

(a) appropriately-qualified Council officers not involved in preparing or commissioning the application; and/or
(b) appropriately-qualified consultants; and/or
(c) appropriately-qualified officers of another Council; and/or
(d) the use of an outside “panel of experts”.

All Council applications should be reported to open Council meetings for decision, unless they are major applications that should be decided outside the Council process.

While many Councils now turn to independent consultants to undertake an assessment where a Council may be perceived as being unable to exercise its function objectively because of conflicts of interest, in such situations it is still unsatisfactory that the Council normally remains the consent authority at law. Legislative change in this area is recommended, and should also cover the situation where a Council has also been a recent owner of land (e.g. previous 5 years).

This issue is not one where, however, “one size fits all”. Any regime should be appropriate for the size and type of development; and the type of potential conflict. As an example, a model might be developed that incorporates a range of mechanisms:

- Reporting in open Council for minor applications where there are no or few financial implications;
- Independent assessment and reporting in open Council for small applications where there are some financial implications or potential conflicts of interest;
- Independent advice and outside assessment of larger applications, particularly where Council seeks a financial benefit and is/was recently an owner of the land, together with third party appeals; and
- Independent advice, outside assessment and outside decision making for major applications, where Council seeks a financial benefit and is/was recently an owner of the land, together with third party appeals.
PIA NSW notes that the NSW Department of Planning does not currently and is unlikely in the immediate future to be involved in this task, although it has issued specific guidance on the matter of “LEPs and Council Land” (DUAP, 1997).

**Recommendation 18:**

It is recommended that the Commission consider requiring Councils to seek appropriate outside advice where Council owns, or has recently owned land, and that this be properly resourced. The level of outside advice should be commensurate with the type and size of development, with minor matters being appropriate to be reported to and decided by Council. Major matters should be assessed by and decided by a body outside Council.

**7.4 Consultants (Section 8)**

PIA NSW welcomes the consideration of the role of the consultants in your Paper. Most consultants acting in connection with development issues do so on an advocacy basis. In our experience almost all are honest and trustworthy, though naturally they are paid to represent the interests of their clients, which may not always coincide with what Council considers to represent the community or environmental interest.

It is noted that many Councils have had unsatisfactory experiences with some persons acting as consultants who do not appear to have acted ethically in particular cases, having regard to their own interests, positions on other matters, knowledge obtained as former Council employees or in making subjective rather than professional judgements.

On other occasions, consultants are also required to represent public agencies, including local government, often in strategic planning and also in property matters.

PIA NSW Division agree with the suggestions in the Discussion Paper that when dealing with development and planning matters consultants should be required to declare any pecuniary or other interests relevant to their participation. This would ensure consistency in the approach to pecuniary interest. As discussed earlier, there should also be a legislated requirement that persons acting as advisors to applicants should be required to have appropriate levels of professional competence (see Recommendation 2).

**Recommendation 19:**

That a register of pecuniary and other interests of consultants, to be managed by Councils, be considered by the Commission.

**7.5 Development Standards (Section 9)**

PIA NSW notes the NSW Department of Planning’s apparent intention to significantly tighten the current SEPP 1 provisions in the Draft SEPP on the Application of Development Standards published in 2004 and the Draft Model LEP published in 2005. Particular emphasis has been given to “reining in” Councils’ discretion with regard to rural subdivision, for example. These proposals appear to follow from the Commission’s 2002 initiative, but PIA NSW notes that these are still to take legal effect.

The reason for this delay is unclear; while the Government’s intent is apparent, savings clauses in the Draft SEPP maintain an uncertain regulatory environment for applications currently being assessed. This is unsatisfactory.

Perhaps if stricter provisions are to be introduced there should still be an avenue for proponents to seek a variation of a development standard in the circumstances of a case, other than by full LEP amendment.
process, but through the use of an independent tribunal other than Council. Council could make representations in this process but not be the decision maker.

**Recommendation 20:**

*That the Commission consider a recommendation that discretion still be provided for development standards, possibly incorporating third party rights of appeal.*

### 7.6 Planning Agreements (Section 10)

The 2005 introduction of changes in Part 4 of the EPA Act to allow for Planning Agreements, while intended to reduce red tape and provide real innovation in negotiating better planning outcomes on major developments, remains of real concern in terms of public perceptions, nexus and transparency. The NSW Department of Planning’s guidelines are therefore essential. The Department’s Practice Note, issued last year is not part of the previously issues Section 94 Manual, but a stand alone document, the status of which remains unclear.

While PIA NSW Division agree with the intent of the Practice Note, there is some caution surrounding its use, mainly because of the probity issues that are identified in the Discussion Paper.

If the Commission wishes to examine further safeguards for the use of planning agreements, PIA NSW suggests it should look to the UK, where a system for planning agreements in relation to public benefits from private development has been in place for years.

**Recommendation 21:**

*That the Commission examine measures for safeguards in planning agreements in other jurisdictions, such as the UK.*

### 7.7 Political Donations (Section 11)

This is clearly a special area which merits detailed consideration at a State level as well as locally. While PIA NSW does not offer any particular suggestions in this area, any steps which can reduce dependence on campaign donations, increase transparency in decision making, and thus improve public confidence in politicians is to be welcomed.

### 8. Summary of recommendations

PIA NSW makes the following recommendations:

1. That the Commission considers more widely the systemic problems underlying the planning system and the way in which these contribute to a developing “climate of crisis and complaint”.

2. That the Commission consider recommending to Government legislative action to ensure persons using the title “planner”, “town planner” or similar, be required to meet certain minimum levels of professional competency, training and ethics.

3. That in NSW the draft PIA code of conduct for Councillors and Council Planners is considered by the Commission as a model to underpin an enhanced NSW Code.
4. That compulsory training for Councillors is considered for implementation in NSW, in particular to address roles and responsibilities, the issues of pecuniary interest, and the planning system. Further, that ongoing training is considered similar to professional CPD requirements.

5. That the Commission considers the impacts of unfounded complaints on public confidence in the planning system, and of those working within it. In this respect, unfounded or vexatious complaints need to be carefully considered, in particular when arising from “serial complainants” with further action being taken to discourage these. Complainants need to be fully informed of the seriousness of consequences that unfounded complaints can cause.

6. That a system of public exoneration in the case of unfounded complaints be considered by the Commission, where the complaint has become a public matter, and where the person complained against requests it.

7. That statistics on the percentage of complaints upheld be issued, in the context of information about the total number of complaints and also the total number of applications processed by the system.

8. That a properly resourced framework for independent and professional advice where potential conflicts of interest exist be developed and mandated for all Councils in NSW. This should include situations where, for example, sufficient Councillors have a conflict of interest such that the Council would be inquorate; where the Council either owns or has recently owned land the subject of an application; or situations where one or more senior staff (particularly in small councils) may have a conflict of interest. There should be a complete separation between those preparing applications for Council and those assessing them. The assessment function is the most crucial function which should be undertaken independently. Note that for minor applications, reporting to, and public decision by Council is appropriate.

9. That guidelines for the exercising of delegation need to be enhanced, and consideration given to certain mandated basic requirements (e.g. that the same individual may not both assess and “sign off” a development determination), recognising the resource constraints of small councils and many rural communities. Council staff should be required to declare any pecuniary or non-pecuniary interests potentially affecting their work.

10. That the Commission give consideration to recommending a requirement for a “register of approaches” for Councillors.

11. That consideration be given to specific training being required in meeting procedure for Mayors and Deputy Mayors.

12. That objections and submissions on development applications be made publicly available (including through websites). Clearer definition is needed in the information that the public can access, and this needs to be facilitated.

13. That as part of Councillor training (recommendation 4) the importance under the Act of reasons for decisions (either of approval or refusal, as well as of specific conditions attaching to an approval) need to be highlighted.

14. That consideration be given to a uniform system of Mayoral elections for NSW.

15. That selective broadening of third party appeals be considered for major development, SEPP 1, and Council development.

16. That the Commission consider issuing Guidelines for Councils and Council staff, with an emphasis on staff in small communities, to address the probity issues associated with routine work contacts.
17. That further attention be given to providing easily accessible advice for Staff on their rights at work, and that Councils be encouraged to develop and/or enhance staff support mechanisms as part of their internal operating requirements/staff policies.

18. That the Commission consider requiring Councils to seek appropriate outside advice where Council owns, or has recently owned land, and that this be properly resourced. The level of outside advice should be commensurate with the type and size of development, with minor matters being appropriate to be reported to and decided by Council. Major matters should be assessed by and decided by a body outside Council.

19. That a register of pecuniary and other interests of consultants, to be managed by Councils, be considered by the Commission.

20. That the Commission consider a recommendation that discretion still be provided for development standards, possibly incorporating third party rights of appeal.

21. That the Commission examine measures for safeguards in planning agreements in other jurisdictions, such as the UK.

9. Attachments

PIA NSW Division has attached the Draft PIA Code of Conduct for Councillors and Council planners, as well as the current PIA Code of Professional Conduct, for your information.