Planning Institute of Australia (NSW Division)

Submission: Local Government Amendment [Planning and Reporting] Bill and Regulation 2009 - Consultation Draft

About PIA
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 1,300 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 submission has been prepared on behalf of PIA NSW by Members of the Social Planning Chapter of the Institute.

Introduction

The aim of the proposed legislation is

‘to require a Council to have a long-term resourcing strategy for the provision of the resources required to achieve the objectives established by the community strategic plan’ (Overview (b)),

and to have an associated delivery program, operational plan.

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PIA NSW supports the overall objective of the proposed amendments.

The consultation draft of the Bill proposes to amend the Local Government Planning and Reporting Bill to require a Council

‘to engage in long-term strategic planning...’
(proposed amendment to Section 8, The Council’s charter).

PIA NSW supports the inclusion of this responsibility in the charter of local Councils. The purpose of this submission is to recommend a number of changes to the proposed legislation in order to:

• make the taking up of this responsibility more straightforward for Councils,
• ensure that important roles and responsibilities of local Councils are not inadvertently undermined by the new requirements, and
• facilitate its understanding by members of the public.

The main points of this submission relate to:

• Continuing the mandatory requirement for the preparation of a five year social plan by Councils to ensure that Councils’ attention to social issues in their local government area and resourcing of sustained responses to these issues are not undermined by the proposed amendments.

• Improving the terminology used in the Act and Regulation to achieve clarity of meaning and better understanding.

• Providing definitions where these would assist understanding of the legislative requirements by elected representatives, residents and ratepayers in a local government area.

• Clarification of the steps to be taken in preparing a Long-Term Strategic Plan to reduce misapprehensions and avoid unnecessary misunderstandings.

• Better specification of some sections to avoid bias and omissions in the plans prepared.

The detail of PIA NSW’s submission and recommendations are set out below.

ISSUE 1 : NEED TO MAINTAIN THE MANDATORY REQUIREMENT FOR SOCIAL PLANS

PIA NSW is concerned to note the proposed loss of a mandatory requirement for social plans as separate documents. The discussion document states:
‘While the mandatory structure of the Social Plan would no longer be applied, Councils would still be expected to undertake social planning and monitoring.’

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However, significant environmental planning instruments, including the LEP and State of the Environment Reports, will continue to be required as separate documents. Despite more than 10 years of legislative requirement, social planning is generally not recognised as a high priority in local government planning activities and often given fewer staff and resources than other aspects of Council work.

The lack of priority given to social planning potentially affects health, safety, life expectancy, economic resilience and social capital of a local government area. Despite the role of state and federal governments in many aspects of social wellbeing, local Councils still play a very important role in the social wellbeing of their areas. This role should not be diminished.

PIA NSW is concerned that the proposed Amendment to remove the mandatory requirement for social plans may result in a diminution of resources applied to social planning.

While aspects of social plans as they are currently done could be improved, they are slowly but surely raising the awareness of local Councils to the scope of their responsibilities for social wellbeing in their local area. Removing the requirement for social plans has the potential to undermine more than 15 years of achievements by social planners.

Specifically, in the absence of a requirement to prepare a social plan Councils may:

- postpone expenditure on State of the Community Reports/social and demographic profiles and/or fail to update these on a regular basis,

- fail to make a regular and well documented assessment of social trends and social issues in the LGA,

- encounter as a result, greater difficulty in justifying expenditure on social infrastructure and/or why one option should be preferred over another (because the groundwork has not been done or done recently/on a regular basis)

- endeavour to incorporate the role of social planner in another job leading to reduced attention to social issues and a decline in the number of these professionals in the state.

PIA NSW considers the label ‘community’ is no guarantee that the Community Strategic Plan (Long-Term Strategic Plan) will address critical social issues.

PIA NSW is firmly of the view that mention of social justice principles at s402(3)(b) is insufficient redress for the likely loss of a social plan in most Councils.
Overall, these potential outcomes may result in a Council purporting to be including social wellbeing issues in its Community Strategic Plan (Long-Term Strategic Plan), without having to hand the basis for this work in the form of an up to date social profile and social plan, professional staff to advise it and the habit and practice of planning for better social outcomes.

PIA NSW recommends that the amending legislation specifically includes a continuing requirement for a five year Social Plan.
ISSUE 2 THE PLAN SHOULD BE CALLED A COUNCIL’S ‘LONG-TERM STRATEGIC PLAN’

The proposed Amendments refer to the preparation of a Community Strategic Plan by local Councils. In its Options Paper, the Department stated

*The term “Community Strategic Plan” has been used to refer to the strategic plan, to reinforce the view that it is a plan for the community, rather than just the Council.* (Options paper p 12)

Although the document goes on to say

‘There is no intention to mandate what Councils should call their plan.’;

the Amendment does not make this clear and by using the term encourages Councils to do likewise.

The Options paper also states (p12)

‘...Councils need to think beyond the services that they can directly provide and determine where they, as an organisation, will fit within their community’s future. They need to understand where their community is going and what it wants before they can respond to this in a meaningful and appropriate way and direct their energies where they will be the most effective.’

PIA NSW understands the intention behind these statements but believes that it would be preferable to refer to a Council’s Long-Term Strategic Plan without including the word “community”.

REASONS:

1. The name of a strategic plan should reflect the name of the body which is responsible for its implementation. This is good practice. In this case, the responsible body is the local Council, not the residents of the local government area or other members of the general public.

PIA NSW understands that residents and ratepayers are frequently confused when a plan is called a ‘community plan’ because some believe that this means that it is the residents’ and ratepayers’ plan, in the sense that decision making is devolved to the ‘community’. This misperception may result in unnecessary conflict and is avoidable. The important issue of responsiveness to local trends and issues is better expressed as responsibilities of the local Council.
2 The title ‘community plan’ suggests that in each local government area there is only one community – an erroneous assumption also evident in the quote from the Options Paper above: ‘Councils need to ...understand where their community is going and what it wants...’ No local Council has only one community to take into account – see extended discussion under Issue 3 below.

3 Confusion also arises because there is already a term ‘community planning’ which is used to refer to a process in which the planning is done by self-selected members of a group (e.g. a group of residents) who also make the decisions about what should go in the plan. This method is usually used to make relatively small decisions, e.g. the inclusions for a park. It is clear that this is not what the legislation has in mind. However, the pre-existence of the term ‘community planning’ will muddy the interpretation applied in many local areas. This will create needless difficulties for Councils.

4 Many Councils have called their social plan a ‘community plan’. Calling the Long-Term Strategic Plan of a local Council the “Community Strategic Plan” as proposed may erroneously suggest to some people that this long-term plan is the same as, or incorporates all the components of, a social plan. However, this is clearly not the intention of the legislation, nor will it be the outcome.

5 The term “Community Strategic Plan” suggests a focus on what is happening within the boundaries of the local government area (cf also the emphasis on ‘the local community’). However, a good strategic plan must take account of the Council’s many external contexts. These are not just the State Plan and other state and regional planning documents but also include the many catchments and systems in which the local Council plays a part. There is always a risk with local Council strategic planning that the plan is inward-looking rather than outward-looking, that is, concerned with the wellbeing of residents and ratepayers but not with the role that the Council is playing in the larger context – the water catchment context, the social housing context, the transport context etc. The title of the Long-Term Strategic Plan should not encourage parochialism or boundary riding.

PIA NSW considers it important that the naming of the Community Strategic Plan (Long-Term Strategic Plan) give rise to as little misunderstanding as possible.

PIA NSW is of the view that these difficulties can be avoided and recommends that the Plan be called a Council’s Long-Term Strategic Plan.
ISSUE 3  THE PLAN SHOULD RELATE TO THE LOCAL GOVERNMENT AREA (RATHER THAN ‘THE LOCAL COMMUNITY’)

In the context of local government, and the proposed Amendment, the term ‘the local community’ privileges territory-in-common over other things that people have in common – such as their membership of interest groups and ethno-cultural affiliations.

In many parts of NSW, the local government boundary bears no relationship to these other communities. As a result in any LGA there is likely to be more than one business community, many professional &/or occupational communities, many ethno-cultural/religious communities, as well as a range of communities based on recent patterns of settlement, traditional lands and so on. It is unusual for these communities to be confined spatially to one LGA.

It is the role of a local Council to have regard to the diversity of communities within its boundaries, and the social, economic and cultural context of these many communities, when determining strategic priorities and a long-term resourcing strategy. No local Council has only one community for which it is responsible.

Referring to ‘the local community’(singular) risks the implication that the local Council area is or should be homogeneous and singular in its sense of commonality.

This is inconsistent with a Council’s duty of care, duty of diligence and responsibility to act in the public interest taking account of the diverse groups within its area of responsibility.

PIA NSW recommends that the new legislation, supporting regulation and other supporting documents refer to long term priorities and strategies for the local government area rather than for a “local community”.
ISSUE 4  THE MAIN COMPONENTS AND SAFEGUARDS OF THE LONG-TERM STRATEGIC PLAN SHOULD BE STATED MORE CLEARLY

Proposed s402 (1) states that the Community Strategic Plan (Long-Term Strategic Plan) must identify ‘main priorities and aspirations for the future of the local community’. This wording again suggests a unitary local community with an inward looking focus.

As well this section states that the Community Strategic Plan (Long-Term Strategic Plan) must cover a period of at least 10 years. While this is normal practice, the pace of change means that no plan should remain in place for 10 years without review. The Act should provide a minimum review requirement.

Proposed s402 (2) requires the Plan to have objectives and strategies but none of the following:

- an assessment of issues that need to be addressed,
- documentation of the basis for this assessment (research, issues papers, criteria for evaluation of relative importance),
- documentation of options for aims and strategies which have been considered,
- Documentation of resourcing options that are or have been considered.

These elements need to be spelled out in this section because they are the due diligence part of strategic planning, but frequently overlooked. As well, some people confuse community consultation with the due diligence processes of research, issues identification and assessment.

Because s402 also contains a requirement for a community engagement strategy, there is also a high risk that some people will believe that this refers to the issues identification and assessment process.

Proposed s402(3)(a) states

‘The Council must ensure that the community strategic plan (a) addresses social, environmental, economic and civic leadership issues’.

This statement could be read as implying there are social leadership issues, environmental leadership issues etc. It is not clear what is meant by a leadership issue.

Proposed s402 (3)(b) states that the Plan must be ‘based on social justice principles of equity, access, participation and rights’. PIA NSW supports this inclusion but notes that a number of other important principles have not been mentioned, for example: the precautionary principle.

Proposed s402 (3)(c) requires the Council to have due regard to the State Plan and to other relevant regional plans of the State government. PIA NSW supports this but recommends that the legislation make it clear that this includes any State or regional plan relevant to the full
scope of the Community Strategic Plan (Long-Term Strategic Plan) (i.e. relating to housing, water catchments, distribution of leisure facilities, age facilities and arts facilities and so on).

**Proposed s402 (4) states that** ‘the Council must establish and implement a strategy (its community engagement strategy) for engagement with the local community in connection with the development of the community strategic plan ...’

PIA NSW suggests that the term ‘community engagement strategy’ be replaced for the following reasons:

1 ‘community engagement’ is a term that is currently in vogue but may not last as long as the Act.

2 “Community engagement” is often taken to mean that interested parties can become informed about something a Council is dealing with, and also participate in discussions about the issues, provide feedback and assist in the resolution of competing priorities, claims and interests. However, the term is not defined so it is not clear how many of these processes are intended to be covered in the development of the Community Strategic Plan. It is important for Councils that the Act is clear on what is intended by this sub-section.

3 Many ‘community engagement’ strategies are perceived as public relations exercises which often do not provide reasonable opportunities for interested persons to acquire enough information to know the issues or to participate in an informed and helpful way. This perception discredits the term.

4 Community engagement processes sometimes emphasise and seek consensus. As a result they give inadequate time to views expressed by marginal, or inadequately represented groups, fail to provide mechanisms to address conflicting views, rely on empanelled groups (whose interests become modified by the experience of being on a panel) and/or treat selected stakeholders as adequately representing the diversity of residents and ratepayers.

These potential outcomes are not consistent with good strategic planning or with the aims of the Amendment.

Further, there is no provision in the Amendment for compulsory public exhibition of either the draft Community Strategic Plan (Long Term Strategic Plan) or the draft Resourcing Strategy. A consultation process is valuable but no substitute for a public exhibition process at draft stage. Currently the Bill only provides for public exhibition of the final document (in s402(5). PIA NSW believes drafts of both documents should be made available for public comment before finalisation.

Although many of these matters can be taken up in Guidelines as indicated in s406, guidelines are subject to amendment and interpretation and their strength and value rests in the strength
and clarity of the legislation. This is particularly the case in regard to consultation and public exhibition requirements.

It is particularly important that the research and issues/background/discussion papers prepared to inform the Community Strategic Plan (Long-Term Strategic Plan) should be readily available to members of the general public, in full, without charge. Schedule 1 [3] should be amended to include availability of these preparatory documents free of charge. Provision on the internet should be in a manner that assists download by people accessing the internet with document size limits (cf the way in which the Bureau of Crime Statistics and Research releases its Crime Maps).

PIA NSW recommends that s402 be reworded as follows:

s402 (1)(a) Each local government area must have a Long-Term Strategic Plan that has been developed and endorsed by the Council. A Long-Term Strategic Plan is a plan which sets out the aims and long term resourcing decisions by a local Council for the social, economic and environmental wellbeing of the area for which it is responsible.

S402(1)(b) A Council’s Long-Term Strategic Plan should cover a period of at least ten (10) years and be reviewed at least every five (5) years.

s402 (2) A Long-Term Strategic Plan is to establish the Council’s long-term strategic aims and the strategies for achieving these aims. Within this framework it should set out specific objectives (milestones to be achieved towards the long term aims), the main actions the Council proposes to undertake and the timeframe for the commencement or completion (as appropriate) of these.

s402 (3) The Council must ensure that its Long-Term Strategic Plan

(a) identifies the social, economic, cultural, environmental and governance issues to be addressed in the Plan;

(b) identifies options considered in regard to aims and objectives and the reasons for selecting the options on which the Plan is based, including research and other evidence on which the Council is relying in making its selection;

(c) is based on social justice principles of equity, access, participation and human rights as well as the principles of precaution, biodiversity, resource conservation and ecologically sustainable development.

(d) has due regard to the State government’s State Plan and other State and regional plans of the State government relevant to the full scope of the Long-Term Strategic Plan.

S 402(4) The Council must establish and implement a consultation strategy with residents, ratepayers and other relevant groups likely to be affected by the Plan.
S 402(5) The draft Long-Term Strategic Plan must be placed on public exhibition for a period of not less than six weeks, which period must conclude before the Council considers the final document. Public exhibition shall include placing the draft on the Council’s website as well as in hard copy at all Council offices and library branches. The draft Long-Term Strategic Plan on exhibition must include the following:

- Issues, background or discussion papers commissioned for the Plan,
- the research or other information on which these papers are based (can be footnotes and bibliography),
- the strategic options (the various strategic aims and objectives and means to achieve them) that have been considered,
- resourcing options (various options to pay for implementation of strategies) that have been considered, and
- the aims, objectives and strategies that the Council proposes to adopt (the draft Plan) and the manner in which it is proposed to resource these (the draft resourcing strategy).

The Council must list all the submissions received in an Appendix to the final Plan and make these available to any person on request.

S 402 (6) remain as 402(5) in the draft Bill.
ISSUE 5

REVENUE POLICY SHOULD BE LINKED TO THE SOCIAL JUSTICE AIMS OF THE COMMUNITY STRATEGIC PLAN (LONG-TERM STRATEGIC PLAN)

S403 of the Bill requires a Council to have a long term Resourcing Strategy and to include provision for long-term financial planning, workforce management planning and asset management. However, this section does not require Resourcing Strategy to reflect the principles on which the Community Strategic Plan (Long-Term Strategic Plan) is based.

If the Community Strategic Plan (Long-Term Strategic Plan) is to be ‘based on social justice principles of equity’, or more generally on intra-generational equity and sustainability principles, then the strategy to resource it must also be based on the same principles, if the Plan is to be credible. The matters to receive priority in the Resourcing Strategy should reflect the priorities of the Community Strategic Plan (Long-Term Strategic Plan).

This nexus between the principles of the two documents is omitted from s403 and undermines s402 (3) (b) of the current Bill. In addition, the Council should be required to have regard to the equity of impact of its Resourcing Strategy.

PIA NSW recommends that s403 state that the Resourcing Strategy must be consistent with the principles and priorities of the Community Strategic Plan (Long-Term Strategic Plan) and the Council must ensure that the burden of the revenue raising impact is distributed fairly across the groups in, or using, the local government area and paying rates and other fees and charges, having regard to the detrimental impacts of any increases in relative income inequality.
ISSUE 6  NEW REPORTING REQUIREMENTS

PIA NSW supports the proposed change in reporting requirements from objectives and performance targets to an assessment of the effectiveness of activities undertaken to achieve the objectives of the Community Strategic Plan (Long-Term Strategic Plan). This will provide elected representatives, Council staff and members of the public with more relevant and useful data with which to assess the implementation of the Community Strategic Plan (Long-Term Strategic Plan) than is currently the case. This model is also consistent with performance management processes undertaken by a range of other State Government agencies.

PIA NSW believes however that the integrated planning framework should be supported by the requirement for Councils to develop and report on a consistent set of social sustainability/social well being indicators. These indicators should be informed by international best practice and closely linked to the World Health Organisation (WHO) Social Determinants of Health http://www.euro.who.int/document/e81384.pdf. An indicator model should establish a framework that incorporates measurement tools and data sources that will identify and monitor those positive indicators of successful, integrated, resilient communities. A minimum suite of indicators should be established so that all local Councils report against these and can compare their successes and the level of challenge they face with the experience of other Councils.

The Department of Local Government should be guided by the highly successful Community Indicators Victoria (CIV) Community Well-being Index and Reporting framework http://www.communityindicators.net.au/ which is supported by every Victorian local government authority, the Victorian State Government (including all relevant State Government agencies), LGSA, ABS, University of Melbourne, Swinburne University of Technology, RMIT and the Municipal Association of Victoria. Determining benchmarks for these indicators will better assist Councils to develop policies and strategies across all levels of operations with the aim of improving its performance against these indicators.

PIA NSW recommends that the Department works collaboratively with Councils and State and Federal Government agencies to develop a best practice indicator framework for implementation by Councils in NSW to measure their performance across programs and activities.
ISSUE 7     DEFINITIONS

PIA NSW strongly recommends that all terms which include the word ‘community’ are defined in the legislation. Including:

1    If the term ‘community strategic plan’ is to be used, this should be defined as ‘a plan which sets out the aims and long term resourcing decisions by a local Council for the area for which it is responsible.’

2    If the term ‘the local community’ is to be used, it should be defined. The definition should make clear that ‘the local community is a geographical or spatial concept comprising residents and non-residents. Among the non-residents are ratepayers, workers and visitors. While the local government area may be a ‘community of territory’ it contains many communities of interest and affiliation. Many of these communities extend outside the Council area into neighbouring areas and sometimes other parts of the state and nation.’

3    If the term ‘community engagement’ is to be used, it should be defined as ‘the mechanism by which the local government authority ensures that the key elements in the preparation of a plan namely:

   i    the issues/background/discussion papers,
   ii   the bibliography (research or information on which these papers are based), and
   iii  the strategic and the resourcing options before Council

are freely available to members of the public on a basis which allows sufficient time for consideration, comment and feedback to the local Council.

PIA NSW Division

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