A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

Principal submission prepared by the NSW Division of the Planning Institute of Australia
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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 over 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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1. Introduction

Overview

The Planning Institute of Australia (NSW Division) is pleased to have the opportunity to make this submission in response to the NSW Government’s Green Paper on the proposed new planning system for NSW.

This Submission and our Supplementary Submission on Changing the Culture of Planning present our initial response to the Green Paper. We will now engage in a testing process with our Members and look forward to contributing to the development of the White Paper and draft legislation.

PIA congratulates the NSW Government for its initiative in undertaking a comprehensive and fundamental review of the NSW planning system. As discussed in our previous submissions, the system is currently not functioning properly and must be thoroughly reformed. This does not only involve a new Act, but must encompass concurrently:

1. New planning regulations and other instruments;
2. A comprehensive (appropriately resourced and administered) strategic planning policy formulation process driven from the State and regional planning levels;
3. A comprehensive review of governance arrangements affecting all planning functions on a whole-of-government including local government basis;
4. A review of Land and Environment Court practice and procedures for development related appeals; and
5. A comprehensive program to promote positive cultural change within State and local planning and planning related authorities; stakeholders, the community and other professionals.

PIA supports and agrees with the broad direction of the reforms as outlined in the Green Paper. Consequently, rather than providing a critique of the broad principles, this submission will concentrate on recommended mechanisms through which the principles may be successfully translated to a level of detail appropriate to a White Paper.

The suggested mechanisms are not necessarily fully developed or detailed at this point. Rather, PIA hopes that our suggestions will be accepted by the Government in principle and be the subject of a co-operative effort between the Government, PIA and other key stakeholders to further develop the detailed provisions to be incorporated into the White Paper and Exposure Bill.

A common failing of previous attempts at planning law reform has been to translate broadly positive policy and procedural principles into successful legislative and operational provisions. The phrase “the devil is in the detail” is hackneyed but nevertheless a truism in this case.

PIA welcomes the fact that the Green Paper has embraced many of the broad policy and procedural reform principles contained in our previous submissions. PIA believes this has contributed to the Green Paper representing a robust platform from which to develop the more detailed legislative, policy and procedural mechanisms. The Members of PIA represent the broadest cross-section of the planning and allied professions across all levels of government, development interests, consultants, NGO’s, academia and others, not a narrow sectional or other special interest group. PIA believes that the White Paper and Exposure Bill will similarly benefit from the input of PIA Members into formulating those critical details.
Overarching principles for guiding and measuring reform
This submission adopts many of the positions outlined in our submissions to the previous phases of the Government’s planning reform process.

Indeed, prior to the 2011 NSW Election, PIA outlined a number of overarching principles for a new Act (in contradiction to the current Act), which we believe remain valid and which we suggest should be used as ‘performance indicators’ against which the various iterative stages and the ultimate outcomes of the systemic reform process are measured.

These are:

- 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, development assessment) the complexity of which is proportionate to the complexity of the issue;
- Roles and responsibilities of decision makers 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 guided by those strategic plans rather than vice versa; and
- Development decisions based on merits rather than legalities, and outcomes rather than processes.

The Green Paper appears to have embraced most of these principles. PIA will continue to use them as guiding principles for the more detailed recommendations in this submission and as benchmarks for assessing the success or otherwise of the future White Paper and Exposure Bill and associated policy and governance initiatives.

Objectives
PIA broadly agrees with the purpose and objectives of the planning system as described in Section 3 of the Green Paper.

PIA considers the role of the Objectives of the Act should be to:

- Define the scope of the Act;
- Provide relevant, meaningful and (where practicable) measureable Objectives to guide the substantive provisions of the Act and delegated instruments; and
- 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.

PIA also agrees with the principles for reform described in Section 3 of the Green Paper, however submits that considerably more attention needs to be given to the up-front funding of the introduction and initial implementation of the new planning system, as will be discussed in the last section of this submission.
Structure of this submission

PIA has structured its submission around the broad substantive headings of the Green Paper, which are as follows:

- Stakeholder engagement;
- Strategic planning;
- Development assessment; and
- Delivering a new planning system (including cultural change). For further details refer to our Supplementary Submission on Changing the Culture of Planning.

However, rather than dealing with infrastructure planning and co-ordination as a separate heading as under the Green Paper, PIA deals with it as one element of the more comprehensive heading of ‘Implementation’. Following an outline of PIA’s overall position under each of these headings, we have provided, where appropriate, specific responses to the 23 ‘transformational changes’ outlined in the Green Paper.
2. Community and Stakeholder Engagement

Overview

PIA strongly supports the emphasis on improved community and stakeholder engagement, for the reasons outlined in Chapter 4 of the Green Paper.

PIA considers that the success or failure of a planning system, the cornerstone of which is strategic planning, is fundamentally dependent on the quality and effectiveness of community engagement in the formulation of strategic plans at all levels.

The Green Paper is light on details on the methods that will be used to achieve effective community engagement. Rather it defers this detail to the yet to be formulated ‘Public Participation Charter’.

PIA supports the formulation of such a Charter and offers the broad experience and expertise of its members to assist in its development.

However, for the purposes of the current submission, PIA submits that the drafting of the Charter should take into consideration the following points:

- While the inclusion of community participation is strong in the strategic planning stage and this is important, traditionally this is the stage in which there is least community involvement. This can be attributed to several factors including lack of knowledge of ‘the bigger picture’ and the fact that the timeframes are so distant they seem sometimes unachievable, or unlikely to occur due to ever changing political and global circumstances. The fact that strategic planning is seen to be remote results in less engagement due to the position ‘it won’t affect me’.

- Local communities often have an intimate understanding of their area that can contribute greatly to the planning process. However, this understanding can potentially ‘overweigh’ local community interests above wider, regional, State or national interests. Communities of interest relevant to these higher level issues must be identified and appropriately represented in the formulation of State, regional and subregional plans.

- The issue of accessible participation mechanisms needs to be addressed, for example, access to the internet for older people, participation by ethnically diverse communities and lower socio economic communities. Otherwise these groups may be isolated from the planning process. There is a need to consider the different ways to engage different groups in communities. They are not all the same.

- The issue of equity in participation also raises the need to provide information in the key community languages of local government areas.

- Most community participation on land use matters will reflect the economic interests of sections of the community (e.g. property owners and businesses). Some sections of the community will be poorly represented in any consultation process (renters, low income households for example). Community engagement needs to ensure that all public interests are represented, remembering that planning is an activity undertaken to optimise the use of land in the public interest.

- During the roll out of the new planning system there is a risk of consultation fatigue as the community is asked to be involved in numerous State, regional and local planning documents and strategies. This will need to be carefully managed to ensure that the community and stakeholders remain engaged in the preparation and making of all relevant plans.
Specific responses to Green Paper “Changes”

**CHANGE 1 - A Public Participation Charter**

PIA supports in principle this change, subject to our earlier comments.

**CHANGE 2 - Strategic community participation**

PIA strongly supports this change.

**CHANGE 3 – Transparency in decision making**

PIA strongly supports this change.

**Evidence based and tested strategies**

PIA considers that the starting point for the formulation of Strategic Plans at all levels is a sound research and evidence base. An important part of the evidence base should be economic analysis to ensure plans are commercially ‘in tune’. All plans should be subject to either central government or other independent economic assessment.

All background information and evidence should be available to inform public consultation and debate. The City of Sydney provides a good example of how the on-going availability of background documents and studies allows the public and proponents to understand the rationale and decisions that sit behind the existing planning controls. However the requirement for evidence based planning and transparency involves more than the preparation of consultant studies. There is a need for this evidence to be tested and properly incorporated into the plans themselves. In this respect the UK system provides a mechanism to ensure that evidence and transparency is the foundation of planning. In the UK, local plans and background documents must be submitted to an independent inspectorate for examination. The purpose of independent examination is to determine whether the plan complies with all legislative requirements and is “sound”¹. The UK’s National Planning Policy Framework (NPPF), the UK’s single remaining planning policy document, sets out the following tests for “soundness”:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.²

**Plain English drafting**

In making the planning system more transparent and open, PIA supports the plain English drafting of plans and the new legislation, as much as possible. The non-statutory nature of the proposed State Planning Policies and Regional Growth Plans will allow the use of plain English in a manner not previously seen in State Environmental Planning Policies or

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¹ Planning and Compulsory Purchase Act 2004 (UK), section 20

² National Planning Policy Framework (UK), paragraph 182.
the former Regional Environmental Plans. It is important however that the lower order strategic plans (such as Local Plans and Subregional Delivery Plans) also embrace and utilise plain English drafting.

**CHANGE 4 – IT and e-planning**

The Green Paper rightly recognises that interface between users of the new planning system and strategic plans will progressively move away from printed documents and towards electronic platforms. The use of electronic platforms needs to be developed and delivered as part of the new planning system and new plans. An integrated system that is tailored to the new planning system is encouraged.

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. In this regard, a system such as the one operated in Victoria or the UK Planning Portal should be explored. This information should form the platform for wider e-planning applications across the State.

Anyone seeking to deal with land or develop land needs to be able to log into the portal, select a parcel of land by lot, section, plan number, and possibly pay a fee to obtain a certificate similar to a section 149 certificate.

In the current system each local council stores and records core property attributes in disparate database systems, in widely different formats, which are not accessible using a single portal. This system does not leverage the economies of scale and rigour (data structure and validation) that can result in serious savings for local government, State Government and the wider public by bringing a consistent approach to the storage, maintenance and accessibility of core property data and property attributes.

This core property system should expand to underpin not only e-planning but e-assessment, e-certification (including Compliance Certification) across NSW. It should include online lodgement of merit and code assessable applications.
3. Strategic Planning

Overview

PIA strongly supports the emphasis of the Green Paper on strategic planning being the cornerstone of the new planning system. Proper strategic planning is fundamental to a successful planning system.

PIA supports the generally hierarchy of State > Regional > Subregional and Local strategies/plans as outlined in Chapter 5 of the Green Paper. However, PIA recommends changes in some terminology, statutory interrelationships, purpose and content of elements of the hierarchy, as detailed in this section of the submission.

As stated in the Green Paper there should be a clear ‘line of sight’ between all strategic plans, so that their relationships and applicability to land-use planning and decision making is simply and easily understood by all.

The formal strategic plans should consolidate and reconcile all inputs and outcomes relevant to spatial planning decisions in the relevant area. Documents referred to in the Green Paper such as Sectoral Strategies and Infrastructure Plans are important to inform statutory plans but should not have any determinative role in decision making. Their provisions should only attain status to the extent they are actually incorporated into the body of the relevant plan/strategy. This is to avoid the current situation of a myriad of strategies, policies, studies etc formulated by various arms of government outside the formally made and recognised planning policies under the Planning Act, having sometimes significant influence over planning decisions. This approach is to enforce a whole of government discipline that ensures that all factors that may influence planning at any level are acknowledged, reconciled and prioritised within the formally recognised strategic plans administered under the Planning Act.

All relevant determinative considerations for development should be contained in the Local Plans. A frustrating feature of the existing system is the need for continual reference to controls in a number of interrelated State and local planning documents to determine (sometimes with guidance from a lawyer), which provisions take precedence in the case of an inconsistency and the relative weight to be placed on a planning policy. Under the proposed hierarchy, higher order plans should set planning directions and frameworks but should have no determinative status in themselves. They should achieve determinative status by incorporation of relevant provisions into Local Plans. The Local Plans become the ‘one-stop shop’ for the community and applicants needing to understand planning controls for any parcel of land.

Ministerial Directions should prescribe the form and content of Subregional Delivery Plans and Local Plans – standard format, clauses, zones, development streams, approval authorities, etc., with allowances for local variations subject to State oversight.

Plans at all levels should embody a presumption in favour of sustainable development, similar to that outlined in the United Kingdom’s National Planning Policy Framework, as presented over page:
“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- Local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.”

PIA agrees that there must be consistent, transparent, evidence based and consultative approaches to plan making across all levels.

PIA agrees that a key requirement of State and Regional Plans should be that they are 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.³

Agency consultation and signoff must be mandatory. There should be no capacity for agreement to be retracted or changed by an external agency after the plan commences, outside of the plan-making and formal amendment process.

The Department of Planning & Infrastructure should set the tone and pace for the roll out of the new planning system by early release of the NSW Planning Policy and Regional Plans in simple, concise and easily understood form. If the equivalent level Planning Policy for the whole of the UK can be contained in 47 pages, this should be seen as an achievable goal for NSW.

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

- Funding and governance within Regional and Local Plans;
- Roles and responsibilities for implementing all plans;
- Measurable performance indicators (KPIs) for all plans;
- Review of all plans; and

Specific responses to Green Paper “Changes”

CHANGE 5 - NSW Planning Policies

Overview

PIA recommends the preparation of a single NSW Planning Policy. The Green Paper’s proposal of some 10 - 15 separate policies would require them to be read in conjunction to obtain a holistic understanding of the planning vision for NSW. It also requires consideration of other plans that have been prepared for other purposes (e.g. NSW 2021, proposed State Infrastructure Plan, and draft Transport Master Plan). The Green Paper pre-supposes that each of its proposed NSW Planning Policies will be prepared

³ For example, see section 2.5A of the Integrated Planning Act 1997 (Qld). Regional Plans including the SEQ Regional Plan binds all state agencies.
consistently and collectively to deliver a co-ordinated approach to setting the planning agenda for NSW. PIA submits that this is more likely to lead to a continuation of the current uncertain, fragmented and uncoordinated approach to State level planning.

Policies focused on specific areas, sectors or issues will still be prepared across Government and the NSW Planning Policy should draw from all of these other documents as they relate to spatial land use planning. A requirement for all relevant planning policies to be incorporated into a single planning document will introduce a discipline to coordinate and prioritise often competing policy areas ‘up front’ rather than leaving those conflicts to be dealt with in ‘down stream’ decision making by agencies on individual projects.

The NSW Planning Policy should encompass and incorporate all key infrastructure, transport and other policy positions affecting State level spatial planning. It should identify the substantive planning issues for NSW within a 30 – 50 year planning horizon, such as:

- The targeted NSW population over the plan period;
- The planned distribution of population within NSW;
- The location of capital and regional cities;
- Matters such as transport, health and well-being, industry and employment strategies for NSW;
- Major infrastructure to be developed between and connecting regions;
- Natural resource management, water supply, etc.

The NSW Planning Policy may incorporate genuine State level objectives from existing SEPPs but should not include the level of statutory detail (development standards etc) contained in many SEPPs, which if necessary, can be percolated down to the Local Plans as mandatory State-wide provisions.

The NSW Planning Policy should be subject to significant public debate and potentially to public hearings, in accordance with the Public Participation Charter and endorsement by a State Planning Commission (see discussion in Section 5 of this submission). This level of debate and rigour is necessary to fulfil the binding nature of the Regional Plans on other government agencies and subsequently upon Local Plans.

It is important that the NSW Planning Policy is robust and not subject to continual change or political whim. It should therefore be adopted or endorsed by Parliament or at least tabled before Parliament as a disallowable instrument, akin to a Regulation. This would ensure that the NSW Planning Policy would become a key planning document that, like legislation will exist and maintain its status through successive governments. This is necessary to provide certainty and consistency over time for communities and for investment decisions. This does not and should not mean that it cannot be changed as circumstances require, since any government with a majority of votes in the Parliament can alter the Policy and indeed there should be a requirement for the Policy to be reviewed every 5 years.

Statutory provisions

The Act should:

- Mandate that a single State Planning Policy is to be prepared and be in place at all times;
- Prescribe that the NSW Planning Policy should have no determinative weight in planning assessments and decisions. Regional and Local Plans will be required to be consistent with and facilitate the implementation of the NSW Planning Policy;
- Include broad content areas, including implementation (funding and governance), monitoring and review mechanisms which are to be prescribed; and
• Prescribe plan making requirements, by reference to the Public Participation Charter.

**CHANGE 6 – Regional Plans**

**Overview**

The Green Paper’s term “Regional Growth Plans” implies that they might only be prepared for areas experiencing “growth”. There are different types of growth, such as population, jobs and economic output. Given that Regional Plans should be prepared for all of the State, including areas that may not be growing, these documents could more appropriately be called Regional Planning Strategies or Regional Plans.

The whole of the State should be divided into regions along LGA boundaries, with LGAs to be wholly within one region only. Early definition of regional and subregional boundaries is required to enable timely commencement of strategic planning.

Regional Plans will be required to be consistent with and facilitate the implementation of the NSW Planning Policy within the relevant region, giving consideration to inter-regional relationships.

The Act should mandate certain requirements for Regional Plans as set out in section 28 of Queensland’s Sustainable Planning Act, 2009.

The Regional Plans should 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;
- Key actions on housing, employment, conservation, natural resources, designating and protecting transport corridors etc;
- Implementation horizons between 10 and 50 years for each action identified;
- Implementation measures (funding and governance arrangements - see below); and
- Monitoring and review mechanisms.

Regional Plans may incorporate genuine regional level objectives and principles from existing SEPPs but should not include the level of statutory detail (development standards etc) contained in many SEPPs.

The Act should provide for a Sydney Metropolitan Plan which should establish itself as an enduring plan for Metropolitan Sydney⁴.

As with the NSW Planning Policy, there should be the ability for significant public debate and potentially for public hearings and endorsement by the regional plan-making ‘arm’ of the State Planning Commission. This level of debate and rigour is necessary to fulfil the binding nature of the Regional Plans on other government agencies and subsequently upon Local Plans.

⁴ See for example, Perth Metropolitan Regional Scheme. Gazetted in 1963 and still the primary Perth Planning Document.
Statutory provisions

The Act should:

- Mandate that a single Regional Plan is to be prepared and be in place at all times in a prescribed region;
- Prescribe that the Regional Plan should have no determinative weight in planning assessments and decisions. Subregional and Local Plans will be required to be consistent with and facilitate the implementation of the Regional Plan;
- Include broad content areas, including implementation (funding and governance), monitoring and review mechanisms which are to be prescribed; and
- Prescribe plan making requirements, by reference to the Public Participation Charter.

CHANGE 7 - Subregional Delivery Plans (SDPs)

Overview

PIA agrees with the need for a subregional planning vehicle. The Green Paper proposes SDPs for “areas within Metropolitan Sydney, growth centres within the Hunter and Illawarra and other areas of change”. The basis for selection of areas where SDPs will be prepared requires clarification. PIA believes that they must only be prescribed to genuine sub-regions or possibly smaller areas where genuine subregional issues arise.

Since SDPs will not apply in every location, their interrelationship with the mandatory Regional and Local Plans must be clear. To achieve this, PIA submits that SDPs should have a similar broad format and content to Local Plans so that their provisions may be directly and seamlessly incorporated into the relevant Local Plans.

The Green Paper’s proposal to allow councils within a sub-region to ‘trade’ their allocated growth targets in return for infrastructure spending being redirected elsewhere could result in well-serviced inner and middle ring areas with gentrifying populations and spare infrastructure capacity choosing to exempt or minimise their growth. This can result in underutilisation in some areas and costly duplication of that infrastructure in areas that agree to accept growth. This proposal may accommodate the desire of existing communities to resist change, but will do so at the expense of future generations who will incur higher costs for housing, transport and infrastructure.

While unfettered trading of targets is considered inappropriate, limited trading of targets, for example up to 10%, could be used to provide flexibility in local delivery of subregional targets, subject to any local shortfall being ‘made up’ over the timeframe of the target. However, infrastructure requirements of low growth areas should not be overlooked.

Statutory Provisions

The Act should incorporate the following:

- Prescribed statutory enabling provisions to prepare SDPs in subregional areas or smaller areas involving genuine matters of subregional significance;
- Consider SDPs for planning assessments/ decisions of sub-regional significance by deemed incorporation into Local Plans;
- Prescribe broad content areas, including implementation (funding and governance), monitoring and review mechanisms; and
- Prescribe plan making requirements, by reference to the Public Participation Charter.
CHANGE 8 - Local Plans

PIA agrees with the general form and content of Local Plans as described in the Green Paper. Local Plans should be based on a standard template.

Local Plans should be prepared by local government (consistent\(^5\) with and to facilitate the relevant Regional Plan\(^6\)). The State Planning Commission should ensure consistency with the relevant regional plan and should certify the consistency of Local Plans prior to them coming into operation.

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 public consultation and consideration will occur at the regional planning level and consideration of the same issue, once determined, at the local plan level is not warranted.

There should be direct incorporation of specified provisions of Regional Plans and of Subregional Delivery Plans into Local Plans. This will reduce, but not eliminate the need for Strategic Compatibility Certificates as described in the Green Paper.

To facilitate setting the scope and vision of a Local Plan and its timely production, there is merit in allowing the preparation, exhibiting and consultation of the general provisions of the plan, ahead of the detailed review of individual development standards and site specific provisions that normally typifies local plan consultation and exhibition. This has already been done in many local government areas, (i.e. local area studies, housing studies etc) however there is no legislative tie-back to the final planning documents.

It is important that Local Plans are based on a standard template for the State, with allowance for limited local variations that can be demonstrated to be consistent with delivering regional strategies, augmented by practice notes and guidelines. It is critical that Local Plans do not become large unwieldy documents.

Prohibitions on land uses should be limited as much as possible in Local Plans. 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 an unnecessary time and cost rezoning process.

To promote design flexibility, standards should be limited to the minimum required to control significant external impacts. It is appropriate to establish some baseline standards, such as density and height to provide 'valuation certainty' on land. Some councils may require State assistance to model the commercial implications of development standards to ensure they facilitate and not make appropriate development unviable.

Currently many DCPs take the approach that every aspect of development requires detailed prescriptive controls aimed at the 'lowest common denominator' of development. This has not necessarily led to improved development outcomes over time. Some DCPs

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\(^{5}\) See for example, the requirement for all Local Plans to be amended within 90 days of the making of a regional plan in 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 should be considered.
currently exceed 1000 pages and should not be allowed to be simply carried forward into Part D of the new Local Plan.

PIA considers it is appropriate to have a relatively ‘light touch’ on numerical controls for merit assessable development (more numbers may be required for code assessable elements) and concentrate on a performance based, qualitative assessment of design quality and impact mitigation. Approval should be relatively certain if performance standards are achieved rather than on the basis that all reasons for refusing the application have been avoided.

Relevant and appropriate SEPP development standards that warrant retention should be incorporated in Part D of the Local Plans rather than referring to a separate document. For example, the Residential Flat Design Code is transposed to a greater or lesser degree into many Council DCPs and sits sometimes uncomfortably alongside local flat codes. It is appropriate for it to form a part of the standard Part D flat code that may be adopted in full in the Council’s Local Plan or customised before its incorporation, subject to proper oversight that it remains consistent with achieving regional planning requirements.

It is recommended that all relevant determinative guidelines for development should be contained within the Local Plan. However, stand-alone ‘non-planning’ technical documents such as the Australian Standards, Building Code of Australia and engineering technical standards should be referenced rather than having their standards reproduced in Local Plans.

Statutory provisions

The Act should:

- Prescribe a requirement to have one (only) Local Plan in every local government area or applying to any particular area of land in the State;
- Prescribe that Local Plans must be in a standard form;
- Prescribe broad standard content areas via a Standard Instrument, allowing for non-standard local variations subject to appropriate oversight;
- Deem incorporation of prescribed areas of Regional Plans and any applicable Subregional Delivery Plans; and
- Prescribe that Local Plans contain the only and all determinative considerations for development assessments.

Change 9 – New and More Flexible Zones

The level of detail prescribed to specific zones is somewhat at odds with the broad policy approach at which the rest of the Green Paper is pitched. It is unclear as to how the proposed new zones will interrelate with existing zones under the Standard Instrument. It appears that they are in addition to the existing zones. If so, it would seem appropriate to review and rationalise existing zones in the light of any new zones, particularly as the Green Paper describes the new zones as being in “narrative form” which would put them at odds with the form of current zones.

Careful consideration is needed before these zones are incorporated, particularly the Suburban Character Zone (SCZ). The SCZ is akin to the relatively restrictive R2 zones already in place in many areas, which have been identified as part of the reason for poor housing supply and affordability (Productivity Commission; Grattan Institute; McKell Institute). It has potential to undermine the objective of broader, more flexible zoning and could sterilise the most accessible, viable and well serviced redevelopment opportunities. SCZs could inhibit much-needed renewal of ageing housing in middle ring suburbs.
Restriction of permissible land uses is unlikely to achieve the objective of protecting amenity and character. Community demographics are constantly changing and the planning system needs to support positive change, not seek to prevent change. Restricting the range of housing types in which investment can be directed can have unintended and unsustainable consequences such as over-investment in one form of housing which reduces overall housing affordability and choice.

Protection of amenity and character is more effectively achieved through permitting the range of housing types which the market seeks to deliver to meet local demand while providing effective design guidance to protect amenity and character.

Rather than reinforcing fear of change, communities should be assisted in envisaging the new, improved character that can be achieved through good development, without fundamentally losing the inherent characteristics of the area.

If SCZs proceed, they should be restricted to localities of outstanding, unique character, for example, the Appian Way) and should not prohibit sensitively designed infill redevelopments.

There is a need to consider the cumulative impact of SCZs in combination with other constraints such as flooding on achievement of regional housing targets.
4. Development Assessment

Overview

PIA supports the principles outlined in Chapter 6 of the Green Paper, since they are broadly consistent with our earlier submissions on the planning system review. However, PIA reiterates our earlier observation that the key to a successful development assessment system lies in well formulated strategic plans and our discussion below assumes that this is the case.

PIA agrees with the proposition that there should be a presumption in favour of sustainable development, similar to that outlined in the United Kingdom’s National Planning Policy Framework:

“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For decision-taking this means:

● approving development proposals that accord with the development plan without delay; and

● where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

   — any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

   — specific policies in this Framework indicate development should be restricted.”

The Act and its associated instruments should avoid the use of the term Development ‘Control’, which connotes ‘restricting’ all development, when the aim should be ‘facilitating’ appropriate development.

The Green Paper appears to confirm our previous submissions that provisions relating to all forms of development assessment should be encompassed within one overarching assessment system within the Act, that is, no separation into the current Parts 3A, 4 and 5. Change 19 could potentially be interpreted to mean that “public priority infrastructure” is intended for its own separate stream, however PIA considers that this is unnecessary as it can be readily accommodated within the streams outlined in Chapter 6 of the Green Paper (see more below).

As outlined in earlier parts of this submission, specific information on development assessment criteria, consent authority, process and public participation requirements for all development on any parcel of land should be contained in one Local Plan. Extraneous considerations such as Land and Environment Court ‘Planning Principles’ should not be considered unless they are directly incorporated into Local Plans.

PIA supports the Green Paper’s position that 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.

The track/stream assessment system based on these principles should be adopted, subject to confirmation of the status of “exempt” and “prohibited” development categories (see table below).

Certification of specified quantitative and objective criteria should be permitted and automated/electronic application systems encouraged (see more below).
BCA compliance, structural engineering etc should remain as a separate certification system and not be considered at the development assessment stage.

**Development Tracks**

Our suggested tracks (based on a modified form of the DAF recommendations”) are set out below:

<table>
<thead>
<tr>
<th>Development type</th>
<th>Requirements</th>
<th>Public notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt</td>
<td>No application, assessment or consent needed.</td>
<td>Nil</td>
</tr>
<tr>
<td>Applies to:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Development that has low impact beyond the site and raises no policy considerations; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Development (mainly infrastructure/State agency activities) of a type currently dealt with under Part 5) subject to a condition that a review of environmental factors is undertaken that demonstrates that the activity will not have a significant environmental impact. Should the REF conclude that it does have a significant environmental impact, the activity reverts to the ‘merit assessment’ track.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibited</td>
<td>No application, assessment or consent needed.</td>
<td>Nil</td>
</tr>
<tr>
<td>Development that cannot proceed because it is fundamentally inappropriate in the relevant context. Prohibited development should be limited to as few as possible fundamentally inappropriate uses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Code Assessment</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>
<td>Nil</td>
</tr>
<tr>
<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></td>
<td></td>
</tr>
<tr>
<td>Merit Assessment</td>
<td>Requires assessment against a set of 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>
<td>Public notice may be needed based on adopted policy of consent authority.</td>
</tr>
<tr>
<td>Combines DAF’s ‘Merit’ and ‘Impact assess’ tracks.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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 Planning Institute of Australia’s CPP accreditation (for quantitative and objective development

criteria) or Building Professionals Board accreditation (for quantitative and building/BCA
criteria).\(^8\)

In the case of the “Code Assessed” track, this is the whole development. Certification
would enable construction to proceed. In the case of “Merit Assessed” 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
building height, setbacks, floor area etc. Once certified, the consent authority must
accept the certified information and not directly or indirectly reconsider those elements in
its consideration of the merit assessed elements of the development.

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 should be entered electronically against each component.
Complying development certificates could be generated automatically on this electronic
platform.

“Merit Assessment” procedures

All developments in the merit assessment stream should have the same basic
characteristics, namely, they should be called ‘development applications’; they are lodged
with the pre-nominated assessment authority (council or State); they are subject to the
pre-nominated assessment procedures, which will vary depending on the risk profile of
the application; and they will be determined by the pre-nominated determining authority
and subject to standard format and standard and customised content conditions.

An example of how a system for “merit assessed development” that matches procedural
requirements to the risk profile of the development might operate is shown on the next
page.

External referrals are generally not required because Local Plans are required to
incorporate standard State Authority conditions (see above). Referral should only be
required where development seeks to vary standard State Authority conditions. Deemed
approval should apply if no response (allowing for requests for additional information
which ‘stop the clock’) is received from the referral authority within the designated time.

Chapter 7 (Change 19) of the Green Paper discusses a proposal to simplify and
streamline the delivery of ‘public priority infrastructure’. Whilst the principles described
are supported, PIA would not support the introduction of a separate approval track or
system for public priority infrastructure outside the structure outlined above. In most cases
such infrastructure would fall within the merit assessment track and involve the
assessment process identified in the table overpage as “High impact/State significance”.

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\(^8\) **Certified Practicing Planner or CPP** is the accreditation awarded to planning professionals by the Planning Institute of Australia. Further information is available on the Planning Institute of Australia website: http://www.planning.org.au/certification
<table>
<thead>
<tr>
<th>Potential impact/risk profile</th>
<th>Assessment requirements</th>
<th>Assessment/determining body¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low-moderate impact/local significance</td>
<td>Lodge with Council Limited if any public notice Assessed against local assessment criteria (with incorporated regional requirements)</td>
<td>Council delegate</td>
</tr>
<tr>
<td>High impact/local significance and/or Local policy variation</td>
<td>Lodge with Council Public notice Assessed against local assessment criteria (with incorporated regional requirements) Mandatory public hearing if development identified in the Local Plan as being generally not suitable on that land</td>
<td>Independent Local Assessment Authority</td>
</tr>
<tr>
<td>Any degree of impact/regional significance and/or Regional policy variation</td>
<td>Lodge with Council or State Planning Department Primary assessment against Regional policy and assessment criteria, secondary consideration against local assessment criteria. Public notice Mandatory public hearing if development identified in regional plan as being generally not suitable on that land</td>
<td>State Planning Department or Independent Regional Assessment Authority (may be delegated to Council if public hearing not required)</td>
</tr>
<tr>
<td>High impact/State significance</td>
<td>Lodge with State Planning Department Primary assessment against State and regional policy and assessment criteria, secondary consideration against local assessment criteria Public notice Mandatory public hearing if development identified as being generally not suitable or prohibited on that land</td>
<td>Minister for Planning or Independent State Assessment Authority</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 objective development criteria is possible.  
2. Public notice may include further community consultation
Types of Assessable Applications

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

- Partial consent; or
- Full consent.

Full consent may be detailed or conceptual.

An applicant may choose only to apply for consent for a concept proposal or 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 envelop 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 a building for which partial consent 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, with full consent not granted until that third party agency permit is issued.

As described under Changes 12 of the Green Paper for state significant development and Change 19 for ‘public priority infrastructure’, concept consents would assist in “providing for explicit approvals at the concept stage, hence streamlining further duplicative processes and approvals.” In such cases it may be determined that no further consents are required beyond the concept approval, “subject to environmental management” processes or that subsequent stages will be code assessable.

Where Councils are the determining authorities for Crown development, Crown agencies should retain a right to challenge Council decisions on refusals and conditions and may escalate unresolved disputes to JRPPs or PAC for resolution.

Specific responses to Green Paper “Changes”

Change 10 – Depoliticising Decision Making

PIA supports the proposal in the Green Paper that decision making on development applications be made by appropriate, independent and expert decision makers. However there are issues concerning transparency, accountability, probity and public confidence that must be adequately addressed as part of that shift in decision making power. In order to counter the risk that the community will feel disenfranchised by the removal of elected representatives from the development approval process, the new Planning Act (or preferably the accompanying Regulations) must prescribe the conduct of, meeting procedures for and appointment to expert panels.

A significant amount of effort has been invested by the Department of Local Government into the Model Code of Conduct under the Local Government Act 1993 which could be used as a precedent. It is important that the code for expert panels under the new Planning Act contains prescriptive statements concerning conduct that is and is not required of panel members and an open and transparent complaints mechanism.
PIA considers that the membership of expert panels must be prescribed and must include a mix of community representatives and experts (with some mandatory training), with the majority of members in the latter category.

Expert members serving on panels should do so on a rotational basis to avoid the potential for regulatory capture in favour of frequent applicants or adverse bias against frequent applicants.

Regard must be had to the way in which the Local Government Act 1993 deals with the delegation by Councils of the powers and functions to ensure that those provisions are consistent with the delegations under the new Planning Act.

In some cases Independent Hearing and Assessment Panels (IHAPs) may result in delay in the process and confusion among applicants. Most IHAPs presently make recommendations to the elected Council on development applications (rather than determine applications). This has the potential to slow the determination process, create confusion and erode public confidence when elected representatives do not accept the recommendation of the IHAP. IHAPs should have the power to determine applications in all cases.

Expert panels should not make policy decisions, which is the role of local government. Expert panels may inadvertently be involved in making quasi policy decisions when they consider applications for strategic compliance certificates or site compatibility certificates. Opening these decisions to 3rd party merit reviews is a check and balance on the discretion of expert.

PIA recommends that membership of Independent Panels includes people with a range of skills in planning, such as urban design, community planning and transport planning.

**Change 11 – Strategic Compliance**

PIA supports the use of strategic compliance certificates to facilitate good development. This is an important interim step to ensure that the planning system does not get bogged down in the intervening period between the making of subregional delivery plans and local land use plans.

There should be no scope for a consent authority to refuse a development application on the basis of permissibility when a strategic compliance certificate has been granted. However the issue of a certificate does not guarantee that the subsequent DA will be approved.

**Change 12 – Reforming State Significant Development**

Proposed accreditation of EIS consultants is considered unnecessary, impractical and problematic however we strongly suggest that a PIA Certified Practicing Planner is a leading member of the team. Accreditation bodies will be additional bureaucracy requiring allocation of resources. If introduced, accreditation would need to cover related professions preparing specialist reports (geotechnical, contamination, traffic, ecological, acoustic etc), which introduces further unnecessary complication.
**Change 13 – Smarter and Timely Merit Assessment**

PIA supports the use of certification for specified quantitative and objective assessment criteria. Automated/electronic application systems must be encouraged.

PIA supports the concept that the level of development assessment should match 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.

PIA supports better engagement by JRPPs in the assessment process. The JRPPs membership needs to be flexible to ensure appropriate expertise is involved. Panels may need to have specialists co-opted such as heritage, environmental, legal, social planning, property or urban design specialists.

There is currently a waiting list of projects going to some JRPPs. This is in the current situation where they only assess reports prepared by others. The extended range of matters within the remit of JRPPs will require adequate resourcing of JRPPs.

The “amber light” approach is already occurring in an informal sense and is supported, however it should not be mandatory where it is clear that a proposed development is fundamentally inappropriate or flawed and where no modification is likely to cure its shortcomings.

As stated in our submission to the Discussion Paper, 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 where existing, are successful where there is a bona fide attempt by both parties to seek a resolution. This should continue and be encouraged as part of a well administered development assessment process and new planning culture, rather than being imposed by legislative requirement.

The recommended move towards more code based assessment and simpler and more streamlined merit approvals should not be at the expense of lack of rigour, particularly in the consideration of aspects such as the social impact assessment of the development application. All merit based assessment should employ a triple bottom line approach that ensures social impacts are given due consideration with environmental and economic impact assessment of development applications.

PIA supports the concept that a state-wide standard ‘toolbox’ of conditions of consent should be formulated by the Government to reduce the necessity for each local area to develop its own. This will also improve consistency and reliability of development requirements for developers regardless of location. Local customised conditions and site specific conditions will always be necessary. State agencies which are currently required to provide concurrences on development applications should provide standard conditions to be incorporated for relevant pre-nominated development types or within specified locations, and no concurrence is required for those applications.

**Change 14 – Increasing the use of code complying development**

PIA reiterates the following points made in its earlier submission to the Discussion Paper:

- For all tracks requiring any form of review against quantitative and objective criteria, compliance may be certified by an accredited certifier. Certifiers should hold Planning Institute of Australia CPP accreditation (for quantitative and
objective development criteria) or BPB accreditation (for quantitative and building/BCA criteria).

- In the case of the “Code assessed” track, this is the whole development. Certification would enable construction to proceed. In the case of “Merit Assessed” 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 building height, setbacks, floor area etc. Once certified, the consent authority must accept the certified information and not directly or indirectly reconsider those elements in its consideration of the merit assessed elements of the development.

- 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.

PIA supports the idea of precinct place codes, for example a special code for areas such as Macquarie Park. There should be state-wide guidelines/model as to what can and cannot be included in complying codes, with the objective of not allowing ad hoc restrictions to the scope of complying development.

Codes need to be much simpler than current examples. Complexity and prescription should be proportionate to risk of impact.

The Department of Planning and Infrastructure should provide a template with prescribed topics. Regional Boards could review and approve draft codes having regard to reasonableness and financial viability of proposed controls.

Where a code based control is to be established by ‘evidence based’ studies such as urban design studies there needs to be a rationalisation of what are the important controls that should inform the codes.

**Change 15 - Right of review for rezoning and merit appeals**

PIA supports in principle the proposals within the Green Paper for reviews of DAs and modifications. However, merit appeals on DAs should be heard by Commissioners on an inquisitorial rather than a contested adversarial basis. Only related points of law should be subject to formal Class 1 proceedings, as they currently stand.

PIA supports in principle the proposal in the Green Paper to allow proponents to seek a review by the PAC or JRPP of pre gateway and gateway decisions for rezonings, of strategic compliance certificates and site compatibility certificates.

PIA supports the proposal in the Green Paper to retain the following appeal rights that exist under current legislation:

- the open standing entitlement to commence judicial review proceedings in respect of any breach of the new Act in the same manner as provided under section 123 of the current EP&A Act;

- the right of an applicant to an appeal on the merits against the refusal of deemed refusal of development application or modification application; and

- the right of an objector to designated development (or its equivalent under the new Act) to an appeal on the merits against the approval of an application for development. This right should be expanded to strategic compliance
certificates, site compatibility certificates and concept development applications for the reasons outlined below.

PIA reiterates our earlier submission on the Discussion Paper in respect of the current complying development certificates (which it is assumed is equivalent to the proposed "code complying development" under the Green Paper) that there be no right of merit review for that class of development. Code complying development 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 such applications, as 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 Complying Development Certificate (CDC) if a proposal complies with the objective criteria.

It is unclear whether a proponent has a right of review both at the pre-gateway and gateway decision stage. If a proponent has a right of review at both stages, that is two opportunities to ask for a review, this is cumbersome, costly and has the potential to slow down the process and unnecessarily increase the already high workload of the PAC or JRPP.

The same issue applies to the right of review in respect of a strategic compliance/site compatibility certificate and the right of review of the development application arising from the certificate. Does a proponent get “two bites”?

Strategic compliance certificates and site compatibility certificates involve decisions that are significant and should be subject to a 3rd party right of merit review to the JRPP.

The Government needs to consider the scope of an applicant’s right of merit appeal in the case of an application for development that is part code assessment and part merit assessment. In circumstances where a consent authority refuses the merit assessed component of an application PIA recommends that the merit appeal to the Land and Environment Court be limited to that component, not those components of the proposal that are code assessed.

The cost to councils of defending planning appeals is a significant strain on local government resources and should ideally be reduced under the new system. Costs and risks can be reduced by sharing the obligation to defend merit appeals with Government agencies involved in the decision giving rise to the appeal. Councils may be compelled to refuse or condition development applications based on Government agency standard strategic requirements or standard conditions. However those agencies do not bear the risk or financial burden of defending those decisions. PIA suggests that Government agencies are automatically joined as respondents to proceedings, but may file a submitting appearance, as may the council, in such proceedings.

**Enforcement Powers**

There is no mention in the Green Paper of enforcement powers and functions. These powers and functions are an integral part to any properly functioning development control system and should be given appropriate attention. Controls that are not able to be adequately enforced are useless. Enforcement mechanisms are also vital to maintaining public confidence in the planning system. They should not be an “after thought” as they were under the current legislation.

PIA reiterates its earlier submission on the Discussion Paper on the issue of enforcement powers and functions as follows:

- A system of local level civil enforcement orders (similar to s121B of the current EP&A Act) and local level criminal prosecution is essential.
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.

A breach of the Act should 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 similar to the powers that currently exist under the *Protection of the Environment Operations Act 1997*.

The current division between Departmental powers of investigation and council powers of investigation is confusing and unnecessary.

A mechanism for cost recovery for investigatory actions is required.

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. Improvements to processes through the Act may help this; however, breaches of the legislation that are 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.

The Courts (Local and Land and Environment) should have the power to make injunctive type orders in criminal proceedings.

**Complying Development and Certification**

During the course of our consultations in developing the PIA response to the Green Paper, we have been made aware of high levels of concern, particularly in local government, around certain aspects of the CDC process. PIA is aware of the current review being undertaken by the Building Professionals Board and the recent background paper “Better Buildings: a proposed model for improving building certification in NSW”.

In the context of our submission on the Green Paper, we make the following points:

- We support the proposed review to identify improvements to building regulation, policy, systems and responsibilities (Change 14)

- We support the statement by the BPB “There is current uncertainty in NSW about the certifier’s role and those of other practitioners in the building process. This uncertainty impacts the quality and safety of buildings and causes a lack of uniformity in the practices employed by certifiers across the State.”

- We support a more robust inspection and certification process

- We request a review of the current SEPP (Exempt and Complying Development Codes) 2008 in particular, in light of concerns raised by local councils relating to the complaints to ensure it is clear, transparent, uncomplicated and not open to interpretation.

- Better communication must exist between private certifiers and local authorities.”
5. Implementation

Overview

This Section of our submission responds to, but broadens, the scope of Chapter 7 of the Green Paper, on Infrastructure Planning and Co-ordination. In this Section PIA will deal with the issue of infrastructure delivery within the broader context of plan implementation, involving all aspects of funding and governance.

The successful delivery of infrastructure requires detailed funding and governance measures to be identified. The Green Paper focuses on some mechanisms (contestable provision and contributions), however PIA submits it is necessary for the White Paper to deal with the issue of infrastructure and other plan implementation funding holistically, with contributions and private funding being two of the myriad of potential funding mechanisms.

In this submission, the term infrastructure does not just mean ‘hard’ infrastructure such as roads, parks, drainage systems etc., but includes the full range of services and facilities necessary to support the welfare of the community.

Infrastructure also does not imply exclusively new infrastructure but also better and more effective and efficient use of existing infrastructure.

Funding

General propositions

It is important and necessary to have visions for the long term future of the State, region or local area, but without realistic funding those visions may never become reality. 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.

Expenditure on infrastructure is a means to enabling growth of housing and jobs in areas where people want to live and work and is ultimately reflected in housing costs and taxation, so needs to be carefully allocated.

It is essential for plans at all levels to incorporate funding strategies and mechanisms for each of their key outcomes/actions. This provides the community with certainty that plans will be implemented, provides market confidence for strategic investment decisions and facilitates whole of government fiscal planning and management alignment.

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 at all levels 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, full or part private financing and the like.

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 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.

This will require agencies such as Treasury and Roads and Maritime Services for example, to be involved in the preparation and ‘sign off’ of the plans.

State Treasury should be required to be involved in costing, review and/ or auditing of funding mechanisms contained in State and Regional Plans. A similar costing and auditing approach (not necessarily by Treasury) should apply to local infrastructure at the Local Plan level.

All plans should categorise all identified outcomes as either essential or desirable.

Essential outcomes should be accompanied by a clear implementation mechanism (funding and governance) as outlined above.

Desirable outcomes should be included as aspirational elements in a long term plan that may be implemented should funding become available, for example subject of an unsolicited proposal from private interest.

Desirable outcomes should not be undertaken in lieu of, or delay essential items unless the strategic plan is altered accordingly.

The Act should retain appropriate accounting provisions to ensure transparent and accountable management of funds.

Regional, subregional and local strategic plans should contain the following funding framework:

<table>
<thead>
<tr>
<th>Outcome Timeframe</th>
<th>Prescribed Funding within Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 - 50 years</td>
<td>No funding mechanism required to be prescribed, but outcomes only included in plan as essential outcomes if there is a reasonable expectation that they can be funded within the prescribed timeframe. Potential funding options may be flagged.</td>
</tr>
<tr>
<td>5 -10 years</td>
<td>Fiscal strategy to be identified for all essential outcomes. Specific funding mechanisms may be identified for any outcomes where known.</td>
</tr>
<tr>
<td>2 – 5 years</td>
<td>Funding mechanism must be prescribed for every essential outcome and included in each responsible agency’s forward budget estimates.</td>
</tr>
<tr>
<td>1 year</td>
<td>Every action must be included in each responsible agency's annual budget.</td>
</tr>
</tbody>
</table>
Funding of infrastructure should be based on:

- Value for money
- Competition and contestability where appropriate
- Total asset management, whole of life costs, (i.e. consider recurrent maintenance costs as well as up-front capital costs)
- Value capture for capital gains associated with planning decisions
- Compensation for capital losses associated with planning decisions
- Intergenerational equity, that is not all capital costs should be borne by the ‘first user’ but allow progressive delivery and payment of facilities and services over time. This contemplates short term deficiencies in services and facilities in some communities.

Potential funding sources:

- Federal, State and local taxes, rates and levies
- Private sector funding and delivery
- Public Private Partnerships
- User charges
- Voluntary Planning Agreements
- Developer contributions
- Bonds
- Any other legitimate creative source (some major infrastructure, for example, has been financed by lotteries)

Strategic plans should not lose sight of the fact that most implementation funding will come from the private sector. It involves institutional funding for major infrastructure, but also funding, by individuals, of private housing and smaller commercial developments that contribute towards realising the housing and jobs targets outlined in the plans.

Legislative response on funding:

- **Allow** for all potential (legal) funding sources and mechanisms to implement plans
- **Prescribe** funding sources and mechanisms to be incorporated in and/or to accompany all actions in plans at all levels (as per above table)
- **Create** specific planning related funding mechanisms:
  - Value capture and compensation
    - Developer contributions – prescribed and voluntary
    - Fees and charges
    - Fines
    - 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 enables equitable participation in the planning system by all stakeholders.
Governance and Administration

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 or associated regulations and delegated instruments.

It is essential for plans at all levels to incorporate governance mechanisms for each of their key outcomes/actions.

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.

Regional, subregional and local strategic plans should contain the following governance framework:

<table>
<thead>
<tr>
<th>Outcome Timeframe</th>
<th>Prescribed Governance within Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 - 50 years</td>
<td>Level(s) of government responsible for implementation (e.g. Federal, State and/or local)</td>
</tr>
<tr>
<td>5 - 10 years</td>
<td>Specific government or other agency(ies) responsible for implementation</td>
</tr>
<tr>
<td>2 – 5 years</td>
<td>Part of agency(ies) responsible for implementation</td>
</tr>
<tr>
<td>1 year</td>
<td>Part of agency(ies) responsible for implementation</td>
</tr>
</tbody>
</table>

Where government or local government agencies are identified in plans as having responsibilities to implement strategic plan actions, they must include that action in relevant long, medium and short term organisational operating plans consistent with the specified Strategic Plan timeframe, with:

- Single senior executive responsibility identified
- Identify all internal and external interests (private and public) and those with a role in implementation
- Outline internal and external communication and co-ordination requirements
- KPIs identified (individual, sectional, departmental, whole-of-government)
- Long, medium and immediate resourcing plan in place – budget, staff and equipment
- Staff job descriptions and KPIs incorporate action (identifying how that individual’s job requirements contribute towards the implementation of the action within the overall strategic plan (‘line of sight’))
- Internal and external performance monitoring mechanisms (individual, sectional, departmental, whole-of-government)
Governance models

The COAG Reform Council’s preferred model is the West Australian Planning Commission®. In the absence of undertaking our own detailed evaluation of alternatives, PIA is inclined to support the Reform Council’s recommendation. A further benefit of this approach is that if the Council’s recommendation is adopted across all jurisdictions, it will provide greater consistency and ‘portability’ across the Commonwealth.

Legislative response on governance:

- **Prescribe** that governance arrangements and responsibilities must be incorporated in and/or to accompany all actions in plans at all levels (as per above description).
- **Create** and empower specific planning administrative bodies.

Specific responses to Green Paper “Changes”

**CHANGE 16 – Contestable infrastructure provision**

PIA supports in principle the concept of contestable infrastructure provision as part of a broad, flexible suite of funding options, subject to an appropriate probity framework.

**CHANGE 17 – Growth Infrastructure Plans**

Growth infrastructure planning is supported, however PIA submits that their operational provisions must be incorporated into the formal strategic plans made under the Act. The Growth Infrastructure Plans, if produced as separate documents, should inform statutory strategies and plans but have no statutory status and or determinative weight in planning decision making except to the extent to which their provisions are directly incorporated in those statutory strategies and plans.

Consideration must be given to infrastructure provision to areas outside identified growth areas.

**CHANGE 18 – Infrastructure contributions**

PIA supports an overhaul of the infrastructure contributions regime in the context of a comprehensive review of infrastructure funding.

**CHANGE 19 – Public Priority Infrastructure**

PIA supports in-principle the necessity to improve the efficiency, effectiveness and certainty of public priority infrastructure as broadly described in the Green Paper.

**CHANGE 20 – Chief Executive Officers ‘Group, and CHANGE 21 – Regional Planning Panels**

PIA supports the proposal for whole of government and regionally representative governance input into plan making and implementation at the State and Regional levels,

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9 COAG Reform Council’s Review of Capital City Strategic Planning Systems Councils 2nd April 2012

Planning Institute of Australia (NSW Division): Submission on A new planning system for NSW Green Paper, September 2012
however considers the proposed mechanisms should be refined to more closely align with the COAG Reform Council’s best practice recommendations referred to above.

**CHANGE 22 – Mandatory Performance Monitoring**

Mandatory rigorous performance monitoring of plan implementation and administrative actions is fundamental to the success of the new planning system. PIA supports the concept of a Performance Monitoring Guideline for this purpose and while the Green Paper is short on details as to its content, PIA would welcome the opportunity to be involved in its formulation.

**CHANGE 23 – Planning Culture**

While PIA is pleased to see cultural change explicitly identified as one of the proposed changes (Change 23), the Green Paper does not provide any details on how this process might be implemented and measured.

PIA strongly believes there is a shared responsibility for delivering effective change to the culture of planning in NSW. This responsibility must be shared by State Government and its agencies, local government, PIA, the development industry and a broad range of stakeholder groups and the community.

As a result of the process of consultation which both led up to and followed the PIA supplementary submission to the Discussion Paper, PIA identified two key challenges:

a. Identifying what is meant by culture

b. Developing a realistic and achievable action plan in order to address the key issues.

Given the importance of planning culture to the implementation of a new planning system for NSW, and the work which PIA is undertaking in this area, PIA has provided a short supplementary submission on this.
6. Transitional Arrangements

PIA believes that the proposed reforms outlined in the Green Paper and in this submission will lead to a considerably more efficient and cost effective planning system for NSW, reducing not only transactional costs to industry but recurrent regulatory costs to government.

However, in the initial lead-in and transitional period, many of the current systemic cost inefficiencies will remain at the time when the new system is being introduced, with its inevitable substantial start-up costs. These start-up costs should be considered in the same manner as an industrial enterprise treats the upfront capital cost of acquiring more efficient equipment that once amortised over the life of the relevant operation, more than pays for its own productivity improvements.

The effort and resources required to properly prepare the layers of the plans proposed by the Green Paper cannot be understated. Its proper implementation will be one of the most ambitious tasks ever undertaken in town planning in NSW. What one would have thought to be the relatively simple exercise of translating current LEPs into standard template LEPs over the last several years gives a critical insight into the resourcing and time issues associated with introducing the systemic and transformational changes outlined in the Green Paper, and which may also be symptomatic of the cultural issues facing planning in NSW.

PIA urges the government to commit substantial funding over the next 2 to 3 budget periods towards implementing the various vital components of the new planning system, most particularly a new planning culture, whole-of-government strategic policy development, community engagement and e-planning systems. A failure to adequately fund the start-up of the new planning system will almost inevitably condemn that new system to replicate many of the failings of the current system – which would represent a major opportunity loss (and opportunity cost) for planning specifically and the NSW economy more generally.

NSW cannot endure a situation that arose following the adoption of the Environmental Planning & Assessment Act 1979 where planning instruments made under the Local Government Act 1919 were deemed to be environmental planning instruments for an unlimited period of time.

Now in 2012 as NSW moves towards the end of the EP&A Act, there are still local councils that have interim development orders and planning scheme ordinances adopted over 40 years ago as the basis of the land use and strategic planning. It is accepted that a transitional period is inevitable, however, there needs to be a defined limit as to how long this should last. PIA suggest that with appropriate funding and resources put towards the preparation of plans on all levels, this transitional period should be for no more than 2-5 years, with government initiated ‘higher order’ elements completed within 2 to 3 years and all local elements within 5 years.

It is not only the making of local level plans that should guide the transitional provisions of the new Act. The successful consultation and making of NSW Planning Policies and Regional Growth Plans as proposed in the Green Paper represents a foundation upon which the entire planning system will be built. It is fundamental that these State and Regional Plans are made both in a timely manner but also in accordance with principles of strategic consultation with strong foundations in evidence. It would be unfortunate if the existing Regional Plans and elements of SEPPs were simply translated or ‘grandfathered’ across at the commencement of the new Act.
In this regard, PIA submits that the Government looks to adopt a scenario loosely based on the transition between the *Water Act 1912* and the *Water Management Act 2000*. In this situation, the old Water Act continued to apply to areas around the state for a number of years until the relevant water sharing plans for each region had been prepared and adopted. PIA is not advocating an approach of multiple pieces of legislation applying across the State, but rather the principle of delaying the commencement of the Act (even after its assent) in order to allow the NSW Planning Policy and Regional Plans to be properly prepared with the benefit of properly evaluated evidence and with full consultation and debate prior to their making.

The transitional provisions need to provide certainty and not add to complexity. The overly complex and legalistic transitional provisions following the repeal of Part 3A and the adoption of a new state significant assessment system, demonstrates the problems that unwieldy transitional provisions can create.
7. Conclusion

The Planning Institute of Australia (NSW Division) is pleased to have the opportunity to make this submission in response to the NSW Government’s Green Paper on A New Planning System for NSW.

Representatives of PIA NSW would be pleased to meet with the Department to discuss any parts of this submission and The Institute looks forward to engaging further with the NSW Government on the proposed new planning system for NSW.

Sarah Hill MPIA
NSW President

14 September 2012