13 April 2017

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing, and Special Minister of State
PO Box 5341
SYDNEY NSW 2001

Dear Minister,

PIA Submission on Draft Updates Environmental Planning and Assessment Bill

The Planning Institute of Australia NSW (PIA), with over 1,400 planners as members, welcome the planning reforms outlined for the Environmental Planning and Assessment Act, 1979 and the associated future reforms that will occur in the Regulations, State Environmental Planning Policy, Local Environmental Plans and Development Control Plans. The planning system is complex, and therefore PIA NSW believes for NSW to implement a great planning system, the planning reforms and associated amendments to other planning frameworks need to occur in an integrated manner to be effective.

We understand that the Government will not be undertaking wholesale changes to the Act, however we recognise the changes proposed in this planning reform, together begin to make promising amendments. We hope the NSW will not stop at this round of changes, but provide annual or additional reforms to continue to simplify our planning system.

PIA NSW appreciate the opportunity to provide input and comment to the reform of the planning system. We generally support the planning reforms proposed. We seek a partnership with the Department to progress the reform agenda over the next year, and set up a working group with you to provide practical input from both public and private practitioners.

PIA NSW has been strongly advocating for more strategic planning upfront, with a simplified and transparent statutory process for developments, and an overhaul of the infrastructure funding system.

PIA strongly support the strategic planning thrust of the Bill, as this is the fundamental means by which planning creates social, environmental and economic value. The inclusion of good design also emphasis creation of good place and good built form, which the result is a good reputation for planners.

PIA NSW also commends the proposed reforms for:

- Local Strategic Planning Statements demonstrating Council leadership and setting the vision at a local level that links to the district/regional policy
- Updating LEPs more regularly and aligning to the strategic planning framework
• Standardising Development Control Plans to ensure more consistency and simpler assessment framework
• Consistent community participation plans and consultation with neighbours
• Seeking improved quality and turn-around times for agency referrals which can assist both council and private sector applications and development
• Simplification and review of Exempt and Complying Code
• Expanded use of planning panels and amendment to regional development thresholds for panels and delegation of planning functions to staff

The Institute also recommends that the reform package further address the following matters included in our attached submission:

• Ensuring that strategic planning intent has strong effect and is reflected in responsive LEPs where LEPs are strategically reviewed with planning zones or controls changed to reflect the strategic planning intent
• Implementing reforms proposed for affordable housing via the planning system that provides incentives for its development through a fast tracked process
• Reducing the detail requested at the DA stage in order to deal with design detail at construction certificate stage
• Further improvement of referrals and concurrences processes, or alternatively assume concurrence after 30 days
• Embedding good design in all planning frameworks
• Reinforcing the role of the Greater Sydney Commission for the integration of infrastructure planning and funding
• Holistic infrastructure funding policy
• Improving confidence in the planning system by having professional recognition of Registered Planners as accountable for the sign-off of key planning documents (ie EIS, Statements of Environmental Effects) and where discretionary planning judgements are involved in relation to Complying Development Certificates

One aspect that is missing from the planning reforms is the future planning for aboriginal lands to ensure the economic and social equity is translated from the lands to provide benefits to the communities. We understand this may be a vexed issue, but we believe that by PIA working together with key stakeholders and the Department, some innovative solutions may be developed.

Please contact me on any aspect of our submission. Our members look forward to contributing towards making the proposed improvements work, as well as expanding the scope for further reform.

Yours sincerely,

Jenny Rudolph
President, PIA NSW

cc. Ms Carolyn McNally, Secretary NSW Department of Planning and Environment
Planning legislation updates 2017, NSW DPE, GPO Box 39, Sydney NSW 2001
legislativeupdates@planning.nsw.gov.au
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PIA SUBMISSION: ENVIRONMENTAL PLANNING AND ASSESSMENT BILL

1. KEY REFORMS SOUGHT BY PIA

- PIA supports the planning reforms and in particular the stronger focus of strategic planning in the Bill, and propose the associated reforms in the Section 117 Directions, as well as the Local Environmental Plans.

- PIA NSW commend progress on the inclusion of community engagement processes in strategic planning processes, and not only development applications.

- In terms of Bill structure, PIA continues to advocate a combined assessment pathway which integrates Parts 4 and 5.

- PIA supports the proposed objects of the Act (including the new design objective) - with an addition to emphasise planning for health and an amendment to include orderly as well as timely development. These objects should be reflected throughout the Act.

- PIA strongly supports the introduction of Local Strategic Planning Statements (LSPS), however they require further reform to strengthen their statutory status. LSPS should further connect with the reform to the SI LEP to improve its responsiveness and ensure that strategic planning intent is fully reflected.

- A Local Strategic Planning Statement should provide the link between Regional or District scale strategic planning, Community Strategic Plans and the LEPs. They should provide the narrative behind the vision and directions for the local government area. The LSPS should be reviewed every 4-5 years and have statutory effect via a s117 Direction to influence planning proposals and LEP review.

- The proposed Development Control (DCP) template should provide a clear format and guidelines without stifling innovation and enabling the preparation of place based DCPs. The DCP should link the LEP with a vision regarding land use and built form. DCPs should be guidelines and not seen as controls.

- PIA supports the selective introduction of Local Planning Panels with determinative authority especially in urban areas with a high development assessment volume and in circumstances where there is no delegation of assessment or determination to appropriate council officers.

- PIA support in principle the use of complying development for medium density housing so that there is no relative disadvantage for this form of development. However, this support is subject to first installing a raft of improvements to bolster confidence in the system and improve the quality of built form outcomes. It should also be supported by good design guidelines.

- PIA seeks further reform to reduce the amount of cost and detail included in DAs since they have included substantial building or infrastructure detail. It could mean that new guidelines are provided for information for a DA. The level of detail associated with a
DA has significantly increased placing more pressure on council resources and more cost for the applicant.

- Public trust in the complying development process is low and PIA NSW recommend measures in place of private certification to address complex and discretionary design elements. Rather than have two classes of certifiers PIA would see those developments that require ‘higher performance’ certification as requiring a DA.

- Notification of neighbours of complying development without a process in place to address concerns would be frustrating, costly and unproductive for councils. PIA NSW therefore does not recommend notifying neighbours for complying development and providing false expectation of making changes, influencing decisions or having any appeal rights.

- PIA support targeted planning system reforms that can promote supply in the affordable housing sector. We support the initiative included in the District Plans mandating 5-10% of new product as affordable housing. We suggest a planning reform that provides a fast-tracked process for affordable housing by the private sector to encourage additional supply.

- Reform to s96 modifications is supported to prevent gaming and compromising the modifications system and enabling substantially different development from being ultimately approved. However, the proposed amendments could result in a situation where very minor modifications (eg errors in consent) might not be able to be retrospectively approved (with conditions) nor be issued with a Certificate. In these ‘justifiable’ circumstances demolition would be too extreme a sanction. We propose that the reforms reflect these justifiable circumstances for s96 applications.

- The proposed referrals hub reform offers a stronger project management role by Department of Planning and Environment (DPE) staff via a facilitation team to chase down agency positions in a timely fashion. The addition of a step-in power for the Secretary is strongly supported. PIA favour a fully empowered referrals hub with incentives to make more efficient, timely and well founded decisions. However, this hub must have the capability and authority to safely manage risks of making timely and responsible decisions on behalf of Government.

- Amendment to local infrastructure and state infrastructure levies is only a first step towards comprehensive infrastructure funding reform. A holistic infrastructure funding regime related to development and property is required for Regional and District Plans to be integrated with infrastructure strategies and effectively implemented. It should address State Infrastructure Contributions, Section 94 / 94A contributions, Voluntary Planning Agreements (VPA), value capture, land tax, stamp duty and rate capping.

- PIA has prepared a specific submission on the Department’s VPA guidelines generally in support of the increased rigour but acknowledging that value capture offers a legitimate rationale for sharing uplift between the developer and the community via provision of land, infrastructure funds or works in kind.

- The highest planning industry standard of professional capability is PIA’s Registered Planner qualification. This should be recognised in the reform package where there is
the need for the highest assurance of professionalism and competence for a critical task or decision. PIA recommend Registered Planners sign off on LEP amendments, SoEE and EIS preparation.

- Close attention is required to maintain the high level strategic and coordination role of the Greater Sydney Commission – rather than have its innovation and change agent potential eroded by becoming a planning decision making bureaucracy.

2. SCOPE OF REFORM AND CONSISTENCY WITH PIA PRIORITIES

The reform Bill is commended for addressing many issues that require improved planning system responses. In 2011 PIA developed overarching reform principles (below) – these remain valid and offer a reference point for assessment of the reform Bill’s overall scope and performance.

<table>
<thead>
<tr>
<th>PIA overarching reform principle</th>
<th>Response on Amendment Bill performance</th>
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<tbody>
<tr>
<td>A logical structure and easily understood provisions</td>
<td>Largely achieved – but recommend combining parts 4 &amp; 5</td>
</tr>
<tr>
<td>Meaningful objectives that the rest of the Act is geared towards achieving, not ‘motherhood’ statements</td>
<td>Largely achieved – with recommended addition of ‘health’ and reintroduction of ‘orderly’ objects</td>
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<tr>
<td>Ability to proactively and quickly respond to changing circumstances without endlessly changing the Act</td>
<td>Largely achieved – However further reform is needed to make the SILEP more effective and responsive to delivering planning outcomes</td>
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<tr>
<td>Processes (for plan making, consultation, appeals, development assessment) the complexity of which is proportionate to the complexity of the issue</td>
<td>Improved (especially re community engagement) – but remains complex</td>
</tr>
<tr>
<td>Roles and responsibilities of decision makers logically and clearly defined</td>
<td>Largely achieved – however further clarification of the role of GSC and DPE is important, as well as GSC Commissioners role is setting the framework, talking to communities/developers and making the decision.</td>
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<tr>
<td>Procedures that promote co-operative rather than adversarial decision making</td>
<td>Working towards</td>
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<tr>
<td>Requirements for strategic plans that balance and properly integrate State, local, public and private interests - accompanied by administrative and funding strategies to facilitate their achievement over time</td>
<td>Largely achieved – especially LSPS introduction, however substantial reform is required to achieve integrated infrastructure planning and funding measures</td>
</tr>
<tr>
<td>Development decisions guided by those strategic plans rather than vice versa</td>
<td>Largely achieved but to be enforced further with the LSPS</td>
</tr>
<tr>
<td>Development decisions based on merits rather than legalities, and outcomes rather than processes.</td>
<td>Improved</td>
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The planning reforms and the Bill should be more ambitious in its scope, and more fully resolve matters advocated by PIA since the 2014 review, including:

- A holistic infrastructure funding regime related to development and property
• Reform of the rigid statutory approach of Standard Instrument Local Environmental Plans,
• Improving confidence in development certification systems for better built form outcomes especially where there is a design judgement required
• Consolidation of all development pathways into a single part of the Act
• The need for non-mandatory standard consent conditions
• Reduction in legal adversarial component in Class 1 merit appeals
• Fully enabling e-planning for DA lodgement and strategic planning visualisations
• Recognising the professional status of Registered Planners for complex planning judgements holding them accountable for sign-off of key planning documents.

3. STRUCTURE, LANGUAGE AND APPROACH OF THE DRAFT BILL

From the outset of the NSW government’s planning reform process in 2011, PIA has championed the need for a completely new Planning Act, in response to its complexity and need for the content to be modernised to reflect current state. However, PIA accepts the political realities of achieving reform and the pragmatism required. Therefore, whilst believing that a completely new Act would have been beneficial, we consider that the current Bill represents a comprehensive and substantive reform of both the structure and content of the EP&A Act, that goes much further and is far more effective than many previous attempts at ‘reform’ of the Act since its inception in 1979.

PIA’s July 2016 submission to the Environmental Planning and Assessment Act updates 2016 included a structure for an amended Act (compared to the current Act) to make it simpler to work with. In the following table, we compare PIA’s proposed structure with that contained in the Amendment Bill:

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<th>Amendment Bill structure</th>
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<td>6</td>
<td>Certification</td>
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<td>7</td>
<td>Finance</td>
<td>Infrastructure contributions &amp; finance</td>
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<td>8</td>
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<td>Reviews &amp; appeals</td>
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<td>Implementation &amp; enforcement</td>
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<td>10</td>
<td>Miscellaneous</td>
<td>Miscellaneous</td>
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As is clear from the comparison table, the Amendment Bill appears to have adopted, by and large, PIA’s suggested structure. The main differences are:

• The Bill maintains the separation between Part 4 and Part 5 assessments rather than combining them into a single Part as suggested by PIA;
• The Bill places reviews and appeal into a separate Part, whereas PIA’s structure incorporated review and appeal provisions into the relevant Parts of the Act which triggered those functions (primarily Part 4).

In relation to the balance of policy content between the Act, regulations, SEPPs and other place based policy statements, it is PIAs view that:
• The Act should not contain specific policy detail but it should enable decision making systems to operate via more detailed procedural input through the regulations and reference to policy elsewhere; and
• The State Environmental Planning Policies be the home for high level planning policy statements – they should be simplified and expressed by theme (eg housing) and leave place based policies to be set out in the Regional and District Plans and ultimately the LEPs.

**Combining Parts 4 and 5 assessment pathways**

In relation to maintaining the separation between Part 4 and Part 5 assessments, PIA’s submissions to previous rounds of planning reforms have promoted combining all assessment/approval pathways in one Part of the Act. In our opinion, there is no clear justification as to why “development without consent”, which in all cases requires at least some level of environmental assessment prior to being undertaken, should not follow one of the pathways available under Part 4, rather than requiring a separate process in a separate Part of the Act.

Whilst this may have previously been to facilitate primarily public authority projects, this line is being blurred by the recent and proposed additions of private organisations (including non-government schools) deemed to be public authorities for certain approval activities under the current Act. In suggesting this, we are not seeking to impose any additional or more (or less) onerous assessment requirements on ‘public authority” activities. The only substantive difference is that development requiring a full Environmental Impact Assessment would require formal determination by the Independent Planning Commission or Regional or District Planning Panel, rather than being ‘self-assessed’. We do not believe this is unreasonable and may provide a greater degree of public confidence in government decision making on proposals with a significant impact on the environment.

PIA’s previous submissions described how these projects could be incorporated into Part 4, as follows:

“Currently, the vast majority of activities which are the subject of Part 5 (EP&A Act) do not require an EIS and are dealt with via the mechanism of a review of environmental factors (REF). This system may be replicated if identified development falls within the ‘exempt development’ category subject to a condition that an REF is undertaken to confirm that the development “is not likely to significantly affect the environment.”

Where the REF confirms that there is likely to be a significant effect on the environment (or it is clear this will be the case without the necessity of a REF), the development ‘falls out’ of exempt development and becomes merit assessed EIS development.”

**Separate Part for reviews and appeals**

We support the proposal to consolidate all ‘reviews and appeals’ provisions in a separate Part of the Act, because of its ease of ‘navigation’ and in assisting the overall understanding of those processes.

LEPs should prescribe all development pathways, processes and consent authorities for each development category.
Overview of structure

Generally, although having to ‘blend’ parts of the current Act with new provisions does not make for an entirely seamless structure. The way provisions within each of the Parts has been structured is generally logical and legible and an overall improvement on the current Act.

Therefore, whilst remaining of the opinion that the Act can be further rationalised and simplified by combining Parts 4 and 5 in a single “development assessments” Part of the Act, PIA supports the overall proposed structure of the Amendment Bill.

Language

From our very first submissions in 2011 to the government’s planning reform agenda, PIA placed plain English and simplification of the Act and all subordinate instruments under that Act, as an “overarching principle” by which successful planning reform should be measured. The proposed new provisions are generally reasonably legible (although with any new legislation, will be subject to the scrutiny of the Courts as to their interpretation).

However, as identified in the above quotation, whilst the language in the Act should be as simple and legible as possible, it is even more important that the delegated instruments (strategic and statutory plans and DCPs), with which the community are much more likely to directly interact, are genuinely simple and understandable in their format and content. This is a principle PIA will seek to ensure all plan making authorities under the Act follow in future.

Finally, PIA remains of the opinion that the term “development control plan” should be replaced with the term “development guidelines”, to better reflect their statutory status (per current Section 74BA of the Act). This terminology is also more encouraging of a mindset within consent authorities of facilitating good development through guidelines rather than “controlling” development through mandatory restrictions. It also follows the lead of the Government’s own “Apartment Design Guide” under SEPP 65.

4. OBJECTS OF THE ACT

PIA commends the inclusion of good design and heritage as objects of the Act and the retention and strengthening of ecologically sustainable development. The objects strike a balance between the role of planning as an instrument of economic development and the protection and improvement of the environment. The objects are strongly supported with the proposed additions below:

- Insertion of ‘orderly’ (S1.4(c) – to promote the orderly and timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing)). This is important to reinforce the value added by orderly development sequencing and planning for the delivery of infrastructure to achieve successful development outcomes.
- Insertion of ‘strategic planning’ (S1.4(a) - to promote the social and economic welfare of the community and a better environment by the strategic planning and proper management, development and conservation of the State’s natural and other resources). This is to reinforce the role of strategic planning in the achievement of each object.
5. DESIGN THROUGHOUT THE ACT

PIA supports the further integration of the design objective through the Bill to ensure great places can create communities and promote their health and wellbeing:

- As a head of consideration in Clause 79C, as well included as items within part 4 and 5 of the Act.
- Design considerations should be included in s117 Directions.
- Reforming the standard Instrument LEP, as well as all LEPs so that it includes design of the built environment as a key consideration.
- Criteria for good design should be incorporated into current and future SEPPs, including state significant development and state significant infrastructure and as principles in regional and district plans.
- Good design and the Government Architect’s “Architect and Design Policy” should be embedded into LEPs and DCPs, as well as SEPP for Apartment Design Guideline
- Design objectives and criteria should be included by the Secretary in EIS requirements.
- Requirements for design should be incorporated in the Precinct Plans that the NSW Government manage and implement.
- Legal challenges to Construction Certificates to ensure good design is retained as supported in the approved DA is necessary.

Aspects of design judgement are not able to be consistently well addressed via the certification process – mechanisms to enable design judgement to remain with / or be considered by council should be explored.

At the local level the biggest impact will be achieved by:

- Design, health and wellbeing considerations should be included as considerations in the preparation of components of Local Strategic Planning Statements.
- Better built form can be achieved with more emphasis of site context and the design responds well to the context or changing environment. The design of the built form within the topography, site and context should be included in the DA checklist
- In key places/areas of NSW provide design criteria and/or design review processes in LEPs. PIA NSW is of the view that this is where the biggest
change to the development and planning culture can occur. We however do not believe that design competitions should increase the cost or time for the DA.

- Including reference to design of places and built form in all Development Control Plans. PIA NSW is of the view that this is where the second most important mechanism to achieve good outcomes.
- Place based DCPs and master plans are an appropriate means to communicate the urban design intent.
- Having design in the objects of the Act would allow councils to raise the issue at Pre-DA meetings and during the DA process.
- Councils should also lead by example and include good design in their own projects and precinct planning.

Good design principles and objectives are included within all government infrastructure projects. In particular, design should be incorporated in the Transport Impact Guidelines (TfNSW). Please refer to our submission to the Government Architects office at www.planning.org.au/documents/item/8302

6. PLANNING PANELS

Panels, IHAPS and the role of councillors

The proposed amendments to the Act (Schedule 2 Administration) confirm the trend to direct more day to day responsibility away from councillors in the direction of appointed independent panels (as well as staff delegations). Many Councils now refer matters to:

- District Planning Panels – compulsory when over $20m
- SEPP 65 panel – optional
- Independent Hearing and Assessment Panel – optional
- JRPP (when over $20m) continues to be supported - with more clarity required to be provided to Council and community representatives where conflicts of interest arise.

The amendments propose the following procedures as applicable to IHAPS/Planning Panels:

- Panel to comprise three members: independent expert chair, independent expert member, community representative;
- Panel not subject to direction or control of council
- Panel members appointed by council;
- Council to set the rules for which matters go to the panel;
- NSW Government to develop a model charter and operating procedures

In addition, a new power is proposed to be created for the Planning Minister to be empowered to direct a council to establish a local planning panel to determine DAs. The Minister would have power to approve panel members. PIA NSW recommends that criteria be developed for use of this power, for example, when council lack resources, no delegations are provided to council officers or when a development would comply with the District Plan and unable to be deal with within a certain period of time.

In addition, proposed changes are supported to the matters to be referred to the District Panel for determination regarding:
• Thresholds for development to go to District Panel (Capital investment > $30M, and Council DAs > $15M where there is a local planning panel)
• Model Codes of Conduct to be developed for Sydney District, Regional and local planning panels, and presentations or briefings by Council staff or the applicant.

In terms of governance, the changes represent a clearer separation of powers whereby elected councillors retain their parliamentary style function of law and policy making, and the administration function relating to approvals/refusals is managed either by delegation to staff, or in the case of more substantial matters by a panel.

The reserve power of the Minister to direct a Council to establish a panel and for the Minister to approve panel members, is presumably a last resort to be applied in cases of misbehaviour or where a Council does not use Council officer delegations. This may reduce the need to use alternative solutions previously applied by government which have been to sack councils, or appoint a planning administrator.

Whilst the changes raise issues of centralisation of powers and lack of trust, there is a positive element to the changes which should be identified and strongly supported.

• With the increasing complexity and size of developments, especially relating to urban renewal projects, greenfields housing estates, natural resource projects and major infrastructure, it is essential that assessments and determinations are based on professional and technical expertise and less on political will.
• Elected councillors have a two-way role of being understanding and knowledgeable of local community issues and secondly of ensuring as far as possible that the development of local controls and policies are relevant to those issues. This role is enhanced if councillors are not seen as promoting narrow, or worse, individual interests.
• In many ways, the role of councillors can be seen as similar to that of MLAs where they become a representative in parliament (council) able to voice community concerns and influence policy without being the actual administrator of individual decisions.

The panels are not a surrogate for ethics and good behaviour but they do serve to reinforce the fact that good governance at times needs to be defined more rigidly.

PIA support the introduction of Local Planning Panels (formerly IHAPs) with determinative authority especially in urban areas with a high development assessment volume in circumstances where there is no delegation of assessment to staff. PIA is concerned that in some cases where there are IHAPs currently operating successfully they are under threat to be disbanded by a new Council, after local government elections. However, they should not be mandated in circumstances where there is an effective and harmonious alternative delegation system in operation.

7. COMMUNITY ENGAGEMENT

The commitment of the NSW Government to increase the focus on community participation at all levels of planning and for all planning authorities is supported wholeheartedly by PIA. PIA NSW are of the view that consultation will lead to an outcomes and delivery culture that produces a facilitative rather than an adversarial or obstructionist approach. PIA’s various submissions to the previous planning reforms have emphasised the need to have community participation embedded
in the provisions of the Act. PIA NSW wishes to ensure that there is meaningful engagement in planning processes, particularly at the strategic planning stage.

The increased emphasis on community engagement early in the planning process is also strongly supported. One of the fundamental roles of planning is to resolve competing priorities and land-use conflicts. If the draft Planning Bill can shift resolution of conflict to earlier in the process, that is good – instead of the unresolved conflicts manifesting at the Planning Proposal or the development application stage.

PIA welcomes and supports the inclusion of Division 2.6 Community Participation in the draft Bill. Of particular importance is the inclusion of principles (Schedule 2.1(1) clause 2.23(2)) that have to be considered when a planning authority is required to prepare a community participation plan. These will provide important reference points for both the community and the planning authorities to ensure that there is transparency and accountability in the consultation process. PIA was supportive of the community participation charter from the 2013 planning reform process and from where these principles are derived.

PIA supports planning authorities tailoring their community engagement plans to their needs and going beyond the minimum requirements set for exhibition and the giving of reasons. This means planning authorities should be encouraged to adopt as mandatory the key elements of their plan and accept that this will create appeal rights for the community. PIA believes this offers context and greater certainty for both the community and applicants in understanding the minimum various requirements for both strategic plans and development applications.

Monitoring of the implementation of community engagement plans will be important. PIA believes that there is an argument for the introduction of maximum as well as minimum exhibition requirements if unwarranted delays emerge; although deemed refusal considerations work against this.

Many Councils already have Community Engagement Plan equivalents and the integration of new Community Engagement Plans needs to be recognised and factored into the draft Planning Bill and DPE’s intentions to produce a model Community Participation Plan.

The inclusion of the numerous planning authorities (Schedule 2.1(1) clause, 2.23(1)) in the draft Bill is also welcomed so that both State agencies and local government are subject to the same requirement to prepare a community participation plan. It is sensible to allow a council to utilise the broader community engagement strategy that has to be prepared under the Local Government Act 1993. The principles developed under the EP&A Act would have to be considered if councils choose this approach. This will assist in the avoidance of community engagement fatigue and bring planning functions into the community strategic plan process which is considered more sustainable.

PIA has considered the requirement for neighbours to be notified of adjacent complying development and argue that this should not be a mandatory state-wide requirement. Our concern is that notification without recourse to assistance or remedy will generate frustration from the neighbour - and the council who will receive complaints. If the class of development would benefit from notification, then it should be addressed via a Development Application.

The following specific comments on the Bill regarding community participation are offered:

- The development of model plans and guidance material is supported in assisting councils but guidance material should also apply to government agencies as well.
Schedule 2.1[2], clause 19(2)(c) (inclusion of reasons for decisions) is supported as it will make planning authorities think carefully about the reasons for decisions made and where community views will need to be considered and responded to.

The fact that applicants for State Significant development will need to consult with the community prior to the lodgement of applications is welcomed.

PIA welcomes that the Government will work to ensure that all users of the planning system understand and encourage community participation. It is good that community participation plans (and other EPs etc.) will be located within the NSW planning portal. This will bring increased transparency to the consultation process for the community. It is important that the Government develop the proposed resources (new guidance materials, online tools, best practice etc.) to assist planning and consent authorities in improving their consultation approaches to ensure they are meaningful and relevant.

8. STRATEGIC PLANNING AND LOCALSTRATEGIC PLANNING STATEMENTS

Strategic planning provides the vision and the framework

The elevation of status of strategic planning is strongly supported. Strategic planning provides the vision for the future of our communities at a local and regional level. Statutory planning can assist to achieve the vision, and the government’s priority of providing housing diversity and affordability. PIA supports the direction of strategic planning reform in the Bill with some additions:

- A Local Strategic Planning Statement (LSPS) should provide the link between Regional or District scale strategic planning, Community Strategic Plans and the LEPs. They should provide the narrative behind the vision and directions for the local government area. The LSPS should be reviewed every 4-5 years and have statutory effect via a s117 Direction to influence planning proposals and LEP review.
- The proposed Development Control (DCP) template should provide format clarity without directing content, stifling innovation and enabling the preparation of place based DCPs. The DCP should reflect the LSPS and link the LEP with the vision of the LGA regarding land use and built form.
- Community Participation Plans provide transparency in plan making and are supported through the development and adoption of the Community Strategic Plan by local government.
- The Comprehensive SEPP review is ongoing and should be progressed faster for completion this year. Priority should be given to SEPPs impacting land supply, but there are still overlaps and confusion. SEPPs should provide the high-level planning policy with no development provisions.

Local Strategic Planning Statements

PIA strongly supports the reforms of Schedule 3 including giving effect to Local Strategic Planning Statements (LSPSs).

PIA notes the importance of integrating the Bill with the role of the Greater Sydney Commission. A gap that remains is the effective implementation of strategic plans (regional, district or local) given the predominantly regulatory, legalistic and rigid system contexts (especially via the SILEP) that will continue. However, in the absence of ‘root and branch’ reform of strategic planning processes the proposed Local Strategic Planning Statements are
strongly supported as a bridge between regional and local plans. LSPS’s should include policies which are the means of tangible implementation - connect with decision-making for Planning Proposals and development applications.

PIA see LSPS having greatest value as statements of the planning narrative for a place. Setting out the outcomes for place and how the planning system is intended to be used to get them. The LSPS should communicate a story and not be bound up in the rigid style of an LEP. They should be relatively brief - but sufficient to interpret whether proposed land uses are consistent. They need to be taken into account in the review of LEPs and the consideration of planning proposals. To do this PIA recommend that the draft Planning Bill better recognise the statutory status of LSPS to give them effect by:

- Using a s117 Ministerial Direction to require planning instruments to give effect to LSPSs;
- Referencing LSPS’s to require explicit demonstrated consistency or justification of inconsistency of a Planning Proposal with the LSPS in the gateway process;
- Referencing consistency with LSPS upon review on an LEP; and
- Having Secretary’s requirements for State Significant Development (SSD) respond to the intent of the LSPS.

PIA advises that the currently proposed means of recognising LSPS through endorsement by DPE is inadequate (ie DPE adoption of an LSPS). There are very few endorsed plans in existence and the DPE workload to assess and adopt LSPS across the state would be overwhelming. PIA proposes an alternative approach of having any LSPS being given effect by a s117 Direction where that Statement meets the criteria set out (in guidelines to be prepared) and is consistent with the District or Regional Plan.

An LSPS should be monitored and reviewed regularly (with discretion as whether it should be exhibited if amended) because of the dynamics of change affecting many LGA’s. they should also be aligned with the Council’s obligatory review of Operational Plans which may well influenced the LSPS (eg with changed funding capacities for infrastructure delivery). The integration of the LSPS with Councils’ Community Strategic Plans, Delivery Programs and Operational Plans is also strongly supported to avoid duplication and delay. This reflects some of the State Government’s original intentions with the LEP being derivative document from Community Strategic Planning. It also removes some community confusion about the integration of Community Strategic Planning and Land-use strategic planning.

A practical measure to streamline the inclusion of planning statements would be to include a LSPS as a mandatory component of all LGA wide or significant planning proposals. This would be consistent with the purpose of a Planning Proposal to provide a clear description of the rationale behind the proposed planning controls and the intended outcomes.

**EPI Review Process**

A review of LEPs and other EPIs every 5 years to determine their currency is necessary but difficult goal. In practice, this may require significant resources by Councils resulting in a degree of flexibility required. The urgency for review might respond to trigger such as changing demographic trends, amalgamation or other shift in context. A suggested response in the Bill would insert at the end of Section 73 (2):
• Every 5 years following such a review, the Planning Secretary is to determine whether relevant State Environmental Planning Policies should be updated and a council is to determine whether relevant local environmental plans should be updated.

The intention is for there to be a review every five years and then update if necessary. An alternative pragmatic approach would be to review more regularly but then only change and exhibit the elements to be altered. Otherwise the whole LEP is up for review each time and every settled issue is raised all over again. The provision should also apply to Development Control Plans.

Potential for further LEP reform

PIA believes there is a risk that the improved LSPS strategic planning approach will be eroded without complementary LEP reform to promote innovation in local planning through a more responsive structure and form.

There is also a specific need to undertake a review of the Standard Instrument LEP. An LEP should be a legal tool to implement as LSPS – not the substitute / quasi strategic plan that many LEP’s are at present – including many conversion LEP’s. Development assessment should be the tool to implement the LSPS and LEP.

A comprehensive Review of the Standard LEP should strongly consider ways of improving how LEPs can better achieve place outcomes by:

• standardising format - not content where the use of more rigid mandatory clauses, zones and permissible/prohibited uses limits the achievement of specific place based solutions (including location specific clauses and better targeted use of DCPs);
• including clauses to the effect that the determining authority must only give consent if an application is concluded to be consistent with the LSPS as adopted from time to time by the Council - unless there is a circumstance requiring special consideration such as a hospital;
• Integrating the LSPS with the Standard LEP considering improvements on the earlier model of how a Local Environmental Study LES informed an LEP.

Development Control Plan standard format

PIA understands Section 74E is solely to set the format for Development Control Plans and is not at all like the Standard Instrument approach which influences content. There is the potential for the preparation of a model Development Control Plan from which Councils could adopt all or some provisions.

PIA supports a standard format for Development Control Plans and the issuing of a model Development Control Plan for the guidance of planning authorities. It would not support the mandatory adoption of a standard Development Control Plan if that influenced content and stifled innovation including the opportunity for place specific DCPs and masterplan style DCPs. DCP structure should also not necessarily include some elements, such as infrastructure capacity and provision, or community infrastructure required in all open space parks.
9. DEVELOPMENT ASSESSMENT AND COMPLYING DEVELOPMENT

Improve confidence in complying development systems

Complying development assessment by certifiers is an important planning process supported by PIA. We understand that complying development now represents 32% of all local development in NSW. We also support in principle the ultimate expansion of complying development to medium density housing so that there is no relative disadvantage for this form of development in the assessment process. This support is subject to first installing a raft of improvements to bolster confidence in the system and improve the quality of built form outcomes.

PIA has prepared a detailed submission on the Medium Density Design Code and have proposed measures to strengthen governance and performance. It is recommended that the current system be urgently improved to the point of regaining public confidence before significantly expanding Complying Development Certificates (CDCs) to cover new development forms which will only exacerbate current distress. The details of the complying development class should be included in this package of planning reforms in order to provide a holistic principle and view, and certainty to the process moving forward. We acknowledge that some details in the Regulations or SEPP may be developed later, but in such a sensitive Code, certainty and transparency is required upfront.

PIA support the following measures within the reform Bill to improve confidence in the certification system:

- Medium Density Design Code to improve design outcomes
- Amendment to allow validity of Complying Development Certificates (CDC) to be challenged allowing a court to objectively determine whether the certificate is in accordance with the relevant standards.
- Regulations may specify certain forms of complying development that can only be issued by a Council (Sch 7 s85A(2)). These key criteria should be included as part of the reform package
- Councils will be able to issue a temporary stop work order on a project which has been approved by a private certifier (but not built in accordance with the CDC)
- A compliance levy to be applied to CDCs (eg to resource any council inquiries).
- Special Infrastructure Contributions (SICs) and VPAs to be applied to CDC
- Allow deferred commencement of CDCs (eg where registration of subdivision plan required).
- Accredited certifiers enabled to place conditions on construction certificates and complying development certificates.
- Controls on construction certificates to prevent significant departures from planning approvals. If controls need to be exceeded, however it is still substantially the same development, then a clause 4.6 application should apply.
- Allow online lodgement of CDCs and DAs via NSW Planning Portal.
- Court to be able to declare a construction certificate invalid if it is inconsistent with the consent. (eg Burwood v Ralan). Such proceedings limited to three months after the construction certificate has been granted.

The above amendments are valid and necessary as evidence has proven that the current system of issue and management of CDCs needs improvement. Clearly the issue of CDCs by certifiers has reduced the time to issue a DA and Construction Certificate (CC) for certain forms
of development. It has been argued that much of the time frame involved with approval of many building projects is the result of the conversion of DAs and BAs to DA/CC via amendments to the EP&A Act/Local Government Act process in 1997. Prior to that time, a BA which focused primarily on building health and safety issues was the main control for dwellings, with DAs required for multi-dwellings and rural dwellings but not single suburban dwellings. This system should be reconsidered, or alternatively the level of detail being requested at DA stage should be focused to key elements and not necessarily health and safety which is looked at in CC stage.

**Too much detail requested at DA stage**

With increasing number of development applications and resource impacts on Councils, the level of detail to be included within a development application should be reconsidered.

The impact could be less upfront cost to the landowner or developer, the assessment of the principle matters by the council planner, less resource pressures on Councils, and appropriate conditions for the certifying authority.

PIA argue that further reform is needed to reduce the amount of cost and detail included in DAs since they have included substantial building detail. The integration of DA and BA processes was introduced to streamline assessment processes in the 1990s. This reform has had a reverse effect. The level of information now being requested at the DA stage is too detailed resulting in expense and time delays impacting on supply. The option of the level of detail commensurate to the type of development should be included, and an option should be to consider split applications to development application and building application again.

An alternative could be to enable conditions of Construction Certificates (CCs) so that the BCA detail is not included in a DA but in the CC only. This would improve the timeliness of assessment consistent with the objects of the Act. The DA component should include the input necessary to assess development context and to address the more subjective and discretionary design elements, but enable certifiers to address building detail and certain technical reports (eg geotechnical).

PIA NSW initial view is that some principles that can be considered, for example in subdivision applications are:

- General “in principle” support for simplifying the process and ensuring appropriate information and assessment occurs at the right stage.
- There is however an underlying issue that Councils need certainty though the process and project, and need to fulfil their statutory obligations.
- Internally within Councils, Council departments should liaise more often and work closer together to have “carriage” of both parts of the development process.
- There is a need to ensure that the process is fair and equitable and not to discriminate against private certifiers.
- Contamination assessment must be consistent with the requirements of SEPP 55 and related guidelines.
- Detailed flow analysis & calculations for stormwater and drainage may be needed at the DA stage, but generally where there is a significant slope
- Assessment of the freeboard may need to be undertaken at DA stage as it could affect height and design of buildings.
- Staging and timing of local parks that will be dedicated to Council must be provided at DA stage.
- Traffic management facilities should be included in the DA.
- There should be sufficient information regarding stormwater and drainage, and water quality at DA stage to allow council to determine ongoing maintenance responsibilities. Detailed designs do not have to be undertaken.

**Complying development notification not appropriate**

PIA does not support the proposal to require neighbour notification of complying development proposals. Although communication between neighbours on all aspects of development should be encouraged, notification would only create frustration from false expectations that a process exists for resolving objections. Councils would find themselves in a difficult position of having to handle inquiries and complaints for which there is no recourse.

**Complying development and the ‘missing middle’**

The government’s intention is clearly to expand CDC approvals to include the “missing middle”. Effectively this amounts to allowing private certifiers to approve a broader range of medium density developments within R3, R2 and R1 zones. The concept of allowing medium density developments in formerly purely low density neighbourhoods is not entirely foreign.

There are examples of low impact medium density developments (as flats) in many areas of Sydney which constitute examples of urban consolidation. The buildings whilst not being architectural gems were respectful in terms of surrounding development by not being too high, having generous setbacks on all sides, and not creating issues of overlooking or overshadowing. These buildings were an early form of affordable housing in that they were strata titled, enabling individual ownership, they were well built and fairly fire proof due to their brick and concrete construction and generally located within walking distance of public transport and shops.

The re-creation of these types of residential flat buildings in modern form eg terrace housing, manor housing and applying new controls along the lines of the Medium Density Design Guide and Medium Density Housing Code is likely to produce equal or better results than the concept of the “missing middle”. That latter document presumes that by throwing the DA process away and allowing broader use of CDCs, the market will produce increased housing supply of an acceptable quality. Actually, there has been a lack of a suitable housing type which is now available via the definition:

**Multi dwelling housing (terraces)** means 3 or more dwellings (whether attached or detached) on one lot of land, each dwelling has a frontage to a public road and no other dwellings are above or below.

The inclusion of multi dwelling housing (terraces) in zones R1, R2 and/or R3 in an LEP broadens the housing opportunities available to the community. By application of the checks and balances available via the DA process improved outcomes are achievable over the CDC process.

Councils fear that while housing output may be accelerated if the “missing middle” via CDCs is implemented, there will be a substantial increase in neighbour unrest due to lack of consultation, and an increase in compliance activity which falls squarely on Councils to resolve.
The key point for consideration is that the “missing middle” concept is to be implemented in existing neighbourhoods, not in green field situations. PIA accepts that substantial redevelopment will occur in the middle ring suburbs where older housing stock is available and suitable for redevelopment. These middle ring areas have a defined and established character however, include heritage items and heritage character areas. Heritage conservation is important at the local community level and the DA process is the best means of dealing with new development in these circumstances. Governments also need to be respectful of the fact that the redevelopment of medium density developments is often a twelve month process after demolition/building commences. Communities know from experience that private certifiers will not be available to resolve their concerns as work progresses and the work load on Council compliance staff is significant.

PIA considers that place-based Development Control Plans (DCPs) offer a useful way forward. Where these DCPs are in the form of a spatial Master Plan with integrated design principles then a higher degree of complying development would be justified. The alternative is design criteria being developed and achieved in the CDC clauses

Delivering supply of affordable housing

Planning makes a contribution to reducing the cost of housing through the supply of land suited for all types of housing with supporting infrastructure and high quality living environments. The planning system facilitates rapid approval of a diversity of dwellings based on sound strategic planning. The Medium Density Code will enable quality terrace, villa and town house products to be approved rapidly as complying development is an important initiative. However, the market is not providing sufficient housing stock that is affordable to very low to moderate income earners in the heart of our major cities (ie affordable housing).

PIA support targeted planning system reforms that can promote supply in the affordable housing sector. We support the initiative included in the District Plans mandating 5-10% of new product as affordable housing. PIA supports:

- Affordable housing targets to be included in LEPs with the percentage being non-mandatory and based on local need and market conditions, but with 5-10% as a minimum.
- The LEP Standard Zones, especially the R2 and R3 zones, should be reviewed to provide more housing diversity, with associated reduction of minimum lot size and FSR amendments.
- Inclusionary zoning should be included into LEPs via a model code so that it is clear and transparent.
- Re-evaluating the infrastructure levy and that charged to developers, and in turn passed onto the home buyers
- Additional building issues about converting large houses into two smaller dwellings with amenity and privacy to allow families to remain in the local area but have an opportunity to downsize
- Providing guidance on local engineering standards, and in particular in greenfield sites, where there is a need to reconsider engineering standards making them more consistent between councils (which can reduce time and cost) and more efficient usage of “holes” and maintenance issues of roads and parks
However, to ensure the planning reforms and planning system support the provision of affordable housing (not social housing) for sale or rent, a streamlined or faster planning process should be considered, such as:

- Developments with 20% or more affordable housing is required to be fast tracked development (such as that in the Development Assessment Best Practise Guide)
- Development by the private sector that comply with AHRSEPP should be, if say less than say 20 dwellings and no more than 2 storeys, be part of complying development or a fast tracked development process

We would welcome the opportunity to discuss further with the Department.

**When to use a council certifier**

The draft Bill enables regulations to nominate the types of complying development that cannot use a private certifier (Sch 7 s85A(2)). On face value, this reform is welcomed to enable a higher degree of public assurance in the discretionary judgements made by certifiers for complex and larger scale development. However, this creates a conundrum in that all certifiers should meet the same competency and probity standards. The reform suggests that public trust in certification systems has eroded to such a degree that we are prepared to accept a fiction that a council certifier offers higher performance. PIA's preferred alternative would be to nominate those developments that require ‘higher performance’ certification as requiring a Development Application.

The draft Bill and guidance notes do not expand on the kind of development that might be excluded from approval by accredited private certifiers. If this reform progresses, it is recommended that more complex and larger scale development involving a higher degree of discretionary design judgement be considered. An example would be four storey school buildings proposed as complying development under the Draft Education and Child Care SEPP.

PIA supports Councils having additional powers to stop work. PIA would like to work with the Minister on the further work and circumstances when Councils can only be the Certifier.

Nominating a specific kind of development requiring certification only by council certifiers will need an adequate lead time to ensure councils have adequate resources available do the work. The reversion to sole control by Council certifiers will prove difficult in council areas where councils have previously taken a decision to discontinue a certification role, leaving building certification to accredited certifiers. The issue is of significance to councils as they will need to know the size and nature of building “kinds” that they will be required to certify.

Councils cannot expand and contract their staff numbers as easily as private companies. Building surveyors especially at the higher grades are not found in every council. Councils have, as a result of Complying Development Certificates, adjusted their staff complement to reflect the work flows which are substantially higher in compliance work and substantially reduced in certification work. Presumably the certification work which will be quarantined to Council certifiers will require qualifications of a specific nature which may or may not exist in the current staff complement due to the attrition which has occurred over years of reduced certification work by councils.
10. CONSENT MODIFICATIONS

Section 96 modifications

Reform to s96 modifications is supported to prevent gaming of the modifications system and enabling substantially different development from being ultimately approved. Modifications must result in development being ‘substantially the same’ and if required, should also fall within the tests for Clause 4.6 SILEP (there should be a link).

However, the proposed amendments could result in a situation where very minor or ‘justifiable’ modifications (eg errors in consent) might not be able to be retrospectively approved (with conditions) nor be issued with a Certificate. In these ‘justifiable’ circumstances demolition would be too extreme a sanction.

PIA support the thrust of the proposed reform but recommend including a pathway for retrospective s96 approval for very minor and justifiable modifications.

Modifications to concept plan consents under former Part 3A

PIA is also concerned that the proposed amendment will compromise concept plan approvals. Concept plan approvals should not be discarded unless modifications fail a ‘radical transformation’ test. PIA recommends insertion of a subsection to resolve the validity of concept plans in the face of modifications to consents. This is an important issue regarding the transition of Part 3A projects for which modifications were formally dealt with under s75W. They will now be dealt with under s96 and be subject to a more restrictive test that is not as relevant to concept approvals. This would have the effect of freezing existing Part 3A concept approvals and making modifications to them difficult to progress.

While PIA support the transition away from the legacy of Part 3A, the translation of modification provisions requires further reform to retain the utility of existing concept plan consents.

11. AGENCY REFERRALS

Referrals and concurrences need improvement

Both Councils and the private sector find agency comments or referrals one of the major delays due to limited resourcing in agencies. The proposed reform offers a stronger project management role by DPE staff via a facilitation team (Referrals Hub) to chase down agency positions in a timely fashion. PIA has supported the regional planning forums approach undertaken in the past.

The addition of a step-in power for the Secretary DPE to act on slow referrals is strongly supported. Referrals and concurrence through the hub should provide clearer criteria as to under what circumstances the Secretary would use ‘step-in powers’, and not just for Integrated Development or State Development. The Act should clarify whether the Secretary is acting with the legal authority and protection of the agency whose powers is being executed via the Secretary of the DPE.

However, PIA support further reform in this area because the facilitation model does not address power imbalances among planning and major infrastructure agencies nor a culture of non-decision making and risk aversity. PIA favour a fully empowered referrals hub with incentives to
make rapid and considered decisions. However, this hub must have the capability and authority to safely manage risks of making timely and responsible decisions on behalf of the NSW Government. Where it can manage these risks, it should be empowered to enable the issuing of general terms of approval (GTAs) – even for bushfire protection. This is key to making the hubs successful.

PIA note the argument that expert secondments into an empowered referrals hub might not resolve valid agency concerns. However, further monitoring of the quality and timeliness of referrals via transparent reporting of the proposed facilitation approach might indicate the need for more radical reform in the future, such as the full empowerment of seconded hub members.

12. INFRASTRUCTURE CONTRIBUTIONS

Holistic infrastructure funding approach required

Amendment to local infrastructure and state infrastructure levies is only a first step in towards comprehensive infrastructure funding reform. A holistic infrastructure funding regime related to development and property is required for Regional and District Plans to be integrated with infrastructure strategies and effectively implemented. It should address State Infrastructure Contributions, Section 94 / 94A contributions, Voluntary Planning Agreements, value capture, land tax, stamp duty and rate capping.

The Bill provides the basis for constructive but modest reforms in relation to development contributions for local and state infrastructure funding. PIA support the reforms enabling the levying of Special Infrastructure Contributions (SIC) for complying development and strengthening the guidelines around the use of Voluntary Planning Agreements (see PIA submission on VPAs) recognising that a component of the value created by land use decisions should be shared towards funding necessary infrastructure.

However, PIA argues that there must now be holistic reform of the infrastructure funding regime in support of integrated planning outcomes. This reform agenda needs to go beyond the scope of the current Bill. This is because the delivery of adequate infrastructure to maintain liveability is fundamental to the social contract between government and communities to accept urban growth and intensification. Increased support and acceptance of higher housing densities depends on firm commitments to upgrade the infrastructure to support the demands created by the extra populations and improve liveability.

However, what the community sees happening in infill areas is land values increasing due to rezoning but little return in terms of infrastructure investment. At the same time caps on rates and s94 / s94A are impacting quality and amount of infrastructure (especially local) needed to deliver the best urban outcomes alongside growth and intensification.

This is the basis for considering a holistic reform of the balance of developer contributions, land owner and general taxation contributions towards growth infrastructure. A regional levy in infill areas (paid by all property owners) should be considered in the mix.
Proposed basis for an integrated infrastructure funding regime

PIA has outlined elements of a comprehensive urban infrastructure funding regime in our submission on the draft District Plans for Greater Sydney (see Appendix A to this Submission). The key elements are:

- Indicative infrastructure requirements must be announced up front - with a structure plan for a growth precinct – setting expectations early to improve certainty for investment.
- Infrastructure funding measures and indicative obligations should be announced at the same time as the first structure plan proposal - this is important to build infrastructure funding obligations into early development feasibility calculations to manage speculation and ensure that property prices are not inflated and the value uplift available to fund infrastructure is not lost.
- Nexus and hypothecation of funds towards identified infrastructure needs is important for trust and support for the infrastructure funding and delivery system.
- S94 reviews important to strengthen nexus and ensure contributions are spent in a timely manner on the right infrastructure.
- There is potential to increase s94A contributions levels where there is a demonstrable need for supporting infrastructure – but this should be balanced with opportunities for regional contributions from property throughout the beneficiary catchment of a growth infrastructure planning area.

Voluntary Planning Agreements (VPA)

VPAs are a powerful and effective tool to provide community benefits via value capture. PIA can see the potential for abuse of VPAs which will lead to negative outcomes in a number of areas. To avoid this, PIA wishes to see adherence to strong planning principles in all negotiations involving VPAs along the lines of the proposed guidelines to ensure they generate net benefits without a degradation of best planning principles and practice.

VPAs are especially appropriate for addressing the infrastructure needs arising from one off development, where:

- one or few developments give rise to specific infrastructure needs; and
- substantial value uplift is generated by a planning decision leading to upzoning.

However, VPAs should not become the means by which general contributions are planned and levied as s94 offers the rigour and discipline to identify needs and prepare a comprehensive infrastructure funding list upfront. It is unfortunate that the restriction of s94 due to caps has created an incentive for the extraction of maximum funds via planning agreements.

PIA has prepared a specific submission on the Department’s VPA guidelines generally in support of the increased rigour but acknowledging that value capture offers a legitimate rationale for sharing uplift between the developer and the community via provision of land, infrastructure funds or works in kind. PIA support the key elements of the policy package consistent with our position statement, and initial letter to yourself, including:

- adoption of best practice principles as a basis for a VPA acceptability test;
- more direct and transparent connection between the VPA and the achievement of agreed and published planning benefits by a council (or planning authority);
the measurement and valuation of the potential planning benefit, including roles for an independent appraisal of an agreement;

- the need for council VPA policies to be linked to their strategic, infrastructure and asset planning mechanisms;
- clarity on the relationship of Clause 4.6 SILEP with the terms of a VPA;
- defining the boundaries between a VPA negotiated at the planning proposal stage versus development application stage; and
- higher standards of probity, fairness and transparency throughout the package.

**SIC for Complying Development (3) s94EE**

PIA understands that the proposed change to provide the opportunity for draft VPAs to accompany Complying Development Certificates (CDCs), in addition to DAs and applications for changes to EPIs is for the purpose of allowing ‘satisfactory arrangements’ contributions toward State infrastructure to be imposed on and paid by all developments. This is apparently because certain substantial developments (such as new industrial buildings up to 20,000 square metres GFA) are complying development and thus escape these contributions.

PIA supports the initiative but raises the following comments on this proposal:

- Draft VPAs are required to be exhibited for at least 28 days. This needs to be resolved because CDCs are not usually publicly exhibited.
- It is difficult to appreciate how a broad power to link a CDC with a draft VPA could operate. A private certifier is not a planning authority, and so cannot be a party to an agreement. Assuming the issue is about complying development paying State infrastructure contributions, then the draft Amendment Act’s proposal to make complying development pay SICs is the better way to achieve the objective.

However, PIA does not support the Department’s use of satisfactory arrangements clauses as de facto SICs since the charge is not transparent, and is often not even able to be disclosed to developers when the environmental planning instrument containing the clause is first made.

**13. REVIEWS AND APPEALS**

The reform Bill does not appear to make substantial changes to the appeals process. However, there is an opportunity for targeted reform via regulations and guidelines in relation to:

- requiring the listing of fewer and more precise ‘contentions’ for appeals; and
- allowing a more realistic timeframe for the lodgements of appeals due to the limitations of only a 6 month window from the point when a right to appeal is received (s82A review).

**14. IMPLEMENTATION AND ENFORCEMENT**

Reforms to Schedule 9 (Implementation and Enforcement) and compliance action and development control orders are supported.
15. PROFESSIONAL RECOGNITION OF REGISTERED PLANNERS

The highest planning industry standard of professional capability is PIA’s Registered Planner qualification. This should be recognised in the reform package where there is the need for the highest assurance of professionalism and competence for a critical task or decision. PIA recommend Registered Planners sign off on LEP amendments, SoEE and EIS preparation.

(Appendix A: Key Elements of an Infrastructure Funding Regime (overleaf))
APPENDIX A: KEY ELEMENTS OF AN INFRASTRUCTURE FUNDING REGIME

Amendment to local infrastructure and state infrastructure levies is only a first step in towards comprehensive infrastructure funding reform. A holistic infrastructure funding regime related to development and property is required for Regional and District Plans to be integrated with infrastructure strategies and effectively implemented. It should address State Infrastructure Contributions, Section 94 / 94A contributions, Voluntary Planning Agreements, value capture, land tax, stamp duty and rate capping.

- The overriding principle of any development contributions / infrastructure delivery scheme must be that it strikes an effective balance between:
  - Consistent, certain and reasonable infrastructure contributions for developers
  - Certainty that the new communities will be provided with an acceptable standard of baseline infrastructure
- The infrastructure needed to support development growth can be effectively achieved by:
  - a properly researched infrastructure plan
  - a balanced funding mix
  - a nexus-based development contributions plan
- There should be comprehensive infrastructure funding and delivery plans for Priority Growth Areas. The delivery plan should be underpinned by a funding mix, with the respective roles / shares to be provided by contributions, value sharing/betterment, special rates, grants, other taxes and charges. A comprehensive approach would see State and local infrastructure contributions and infrastructure schedules in the one plan for a Priority Growth Area.
- At least indicative levels of State and local contributions and any value sharing arrangements must be made public at the same time that structure plans for Priority Growth Areas are publicly released. The charges should be predictable for land purchasers so that the full fair share of any value uplift created by subsequent rezonings is returned to the new community through infrastructure upgrades.
- The State Government should be subject to at least the same level of accountability in contributions planning and management as that expected of local government.
- Suspension of the operation of all 'satisfactory arrangements' clauses in EPIs where the nature and extent of the satisfactory arrangements have not yet been determined. There should be no local or regional contributions requirements or 'gateways' imposed on development unless there is a costed and properly apportioned plan prepared.
- DPE commit to a policy of converting all other satisfactory arrangements contribution rates to SICs. The current situation where residential subdivisions of just a few lots trigger the need for the applicant to enter into a VPA with the Minister for Planning, just so that the contribution toward State infrastructure can be authorised, is totally unacceptable.
- Practice notes and / or training on the timely delivery of infrastructure contained in contributions plans. Matters include budgeting, programming, internally borrowing, promoting best practice in works in kind agreements, winding up plans, and minimising funding risk throughout the life of the plan.
- Timely application of contributions: to address perceptions of hoarding the Government could look at encouraging all councils to pool funds (i.e. borrow between funds). For example, a Ministerial direction could require all councils in a given timeframe (say 5 years) to have their contributions expenditure at least match the total contribution amount received.
- Government should retain but integrate s94F affordable housing contributions and SEPP 70 into a new holistic system potentially via a model affordable housing code. This should
be the vehicle for delivery of developer-funded affordable housing that picks up the GSC’s 5-10% inclusionary zoning target.

- A major priority is to get the affordable housing inclusionary zoning standard embedded / locked into all Planning Proposals that enable extra development potential on a site. The future availability of key worker housing in accessible locations should not be left to vagueness. There is vagueness around the feasibility test. In principle, there should be no reason why more than 10 or 20% of the extra unearned development potential available to a landowner through rezoning in an inner or middle ring area cannot be returned to the community through affordable housing.

- Either increasing or removing of the section 94 cap (and s94A amounts), so that clear pricing signals about the cost of developing land can be sent to the development industry. The industry cannot sustain the overnight removal of the cap, and so a phasing-in of the cap increase (or outright removal) needs to be implemented.

- Once an array of contribution requirements (State and local) are adopted for a particular area, they should remain in place for some years so as to provide certainty for development. Any significant change to the contributions regime should be phased in.

- Clearer guidance for councils wanting to increase the maximum rate of section 94A levies they wish to apply to development in their area.

- Practical guidance / best practice examples given to councils of implementing a properly planned value sharing scheme in their area.

- State Government should support initiatives aimed at more efficient use of infrastructure, including strategies that minimise the acquisition of expensive land while maintaining the level of service to the populations of new development (eg joint use of school assets and retrofitting existing open space in high density areas to increase its carrying capacity).