PlanCom Consulting Pty Ltd
Phone: 02 9331 4336
Mobile: 0425 212 333
Postal Address: PO Box 411
Potts Point NSW 2011
Email: julian@plancom.com.au
Website: www.plancom.com.au

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NSW Planning System Review
GPO Box 39
Sydney
NSW 2001
review@planningreview.nsw.gov.au
www.planningreview.nsw.gov.au

NSW PLANNING SYSTEM REVIEW
SUBMISSION BY PLANCOM CONSULTING PTY LTD

INTRODUCTION

PlanCom Consulting Pty Ltd (PlanCom) is a consulting firm established in 2007 by two practitioners each with over 25 years experience in the planning profession.

PlanCom welcomes the State Government's initiative to review the NSW Planning System. The Issues Paper dated December 2011 is a well prepared and comprehensive document and I commend your team for their efforts to date.

The *Environmental Planning and Assessment Act 1979* (EP&A Act), when it was originally proclaimed, was a great leap forward from the provisions of Part X11A of the *Local Government Act 1919*. The EP&A Act has served the State well during that time but it has become unwieldy from continual amendment and does not provide the confidence to manage the increasingly complex land use issues of a burgeoning population into the future. It needs to better address areas of poor performance and needs to draw from the large pool of available best practice at both the national and international level.

The management challenges for the next version of the State's Planning System are vital to the future natural, social and economic health and wellbeing of NSW and the nation. It is imperative that we act as custodians of the State and carefully work towards leaving a positive legacy to ensure a better quality of life for future generations. A balanced, equitable and considerate approach must prevail.

Presented below are:

- Suggested changes to the planning system paradigm to provide greater focus on strategic planning and enforcement; and
- Responses to specific issues raised in the Issues Paper.

SUGGESTED CHANGES TO THE PLANNING SYSTEM - A NEW FOCUS IS NEEDED

Too much emphasis on Development Control

Currently the Planning System is too focussed upon the Development Control Phase.

Proponents and practitioners spend considerable time and effort absorbed in preparing Planning Instruments, Development Control Plans, Development Applications and supporting documentation, assessment of Development Applications, and the decision making process (ranging from presentations to Council committees, Joint Regional Planning Panels, Planning Assessment Commission to legal proceedings at the Land and Environment Court).

Too little emphasis on Enforcement

Should a conditional approval be granted and implemented, the enforcement of conditions is given very limited resourcing and may, for example, form part of the responsibilities of a Council Enforcement Officer, Building Certifier or an Environmental Management Representative.

In the vent of the proponent being found in breach of conditions, the penalties given are usually low, even though opportunities for significant penalties do exist under the *Protection of the Environment Operations Act 1997*. Furthermore, it is quite common to find the quantum for early completion bonuses in Project Deeds for construction contracts to far outweigh the penalties should conditions of approval be breached. The focus is then on early completion and not on compliance.

The incentives and disincentives to implementing the conditions of approval, which were the result of the considerable effort undertaken during the Development Control Phase, require a far greater degree of improvement if we truly want to achieve better outcomes in practice.

The way in which the public might monitor and influence the implementation of these conditions is unclear and it is quite difficult to find their way through this system to make a complaint.

Need to Legislate Strategic Plans

Strategic planning is a fundamentally important area of planning that warrants considerably more attention than it currently receives. Strategic planning needs to take a long term view (e.g., 50 years) of the spatial environment, consider the attributes of the environment, population trends, connectivity requirements for transport and other major services and be able to accommodate change.

Most importantly strategic plans need to be legislated so that they influence all other planning instruments.

A great Australian example of strategic planning at the metropolitan level is the planning that commenced in the early 1960s for Perth's transport corridors. These corridors were kept by successive governments, a small tax was levied upon

property transactions to acquire land for these corridors and in time transport services were developed within the corridors.

Sydney's "Government of the Day" approach to strategic planning on the other hand has resulting in, for example, road reservations for major desire lines being abolished for short term financial gain. Yet those major desire lines to key hubs in the city (such as the port, airport, key employment centres) still remain, have become increasingly congested (resulting in lost productivity, pollution and risks to human life) and have no clear solution except for prohibitively expensive tunneling options.

At its most fundamental level strategic planning should be required to provide for major transport linkages, major employment centres and major open space areas/facilities to ensure access and employment, recreation and environmental protection areas. This needs to be legislated and funding mechanisms need to be adopted to respond to and further enhance these fundamental requirements. This should form the foundation for the NSW Planning System.

RESPONSES TO SPECIFIC ISSUES RAISED IN THE ISSUES PAPER

A9. In a new planning system, how can we improve:

- **Community participation opportunities?**
- **Consultation processes for plan making and development assessment?**

Some authorities and private sector have learned through experience (usually bad ones) that they need to involve the public in the early phases of the development of a plan. There needs to be adequate assessment at the outset and early discussion with community to understand what they might need in the process. The community will be able to tell us at what stage in the process they might need to be consulted. There may be little need for consultation on some developments but the most appropriate people to tell you that this is the potentially impacted community with a connection to the locality.

B1. What should be included in the objectives of new planning legislation? & B2. Should Ecologically Sustainable Development be the overarching principle of new planning legislation

Mention is made of the precautionary principle. However, the objectives should focus specifically on **all** principles of Ecologically Sustainable Development (ESD), not just the precautionary principle. The principles have been in use globally since the Brundtland Commission Report "Our Common Future" in 1987. They are also important objects (Section 5) of the existing EP&A Act, which cross refers to the definition contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, see below:

> *(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:*

(a) the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
In the application of the precautionary principle, public and private decisions should be guided by:
(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
(ii) an assessment of the risk-weighted consequences of various options,
(b) inter-generational equity-namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
(c) conservation of biological diversity and ecological integrity-namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
(d) improved valuation, pricing and incentive mechanisms-namely, that environmental factors should be included in the valuation of assets and services, such as:
(i) polluter pays-that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

C3. Should new legislation prescribe a process of community participation prior to the drafting of a plan

Being prescriptive about consultation has not necessarily improved the experience of the public. It has in some cases led to the practice of only doing the minimum or led to a "tick a box" type approach. A better approach would be to meet objectives for the community such as: evidence of community understanding of the proposal and community input to the development of mitigation measures. Every development will call on a different level of involvement from the public.

C11. Should there be a requirement for plans to address climate change?

Yes. Climate Change and Greenhouse Gas Assessment should be a requirement for plans.

C.17. To which geographical regions should strategic plans apply - catchment or local government areas?

A catchment area approach is the preferred approach when considering environmental outcomes.

A clear hierarchy of strategic plans starting with the higher level plan, which has adopted national principles and considerations applying to the whole State, should be adopted.

C.26. Should there be a right for a landowner to seek compensation for the consequences for a rezoning of their land?

Such a concept should only be progressed if society is prepared to accept the consequences if there was a rise **OR** fall in value having a proven direct nexus with the rezoning decision. That is, should there be a negative impact the landowner should be compensated. Alternatively, should there be a positive impact the landowner should be liable to pay a betterment tax or some similar form of levy that would then further assist the council or statutory agency with improving facilities and services in the area.

Alternatively, these consequences could be internalised within an organisation through provisions enabling the establishment of special purpose vehicles such as Development Corporations charged with the responsibilities of both providing higher value land through development and/or through acting as catalysts for higher value land creation (such a major utilities and transport facilities and services providers).

C.30. Should student housing be included as affordable housing?

Yes. However, many other forms of housing must be mandatorily included as affordable housing. For example, housing for essential service workers, housing where subsided rents can apply, housing for the aged and those with disabilities, youth crisis accommodation, housing for first home buyers, housing for pensioners etc. The term should have far greater general application to remove the social stigma of the term "affordable housing".

C.36. Should developers of greenfield residential land release areas be required to make provision for a registered club and associated facilities?

No. There should be no special dispensation for clubs whatsoever. Clubs need to go through the same planning approval processes as other organisations, Each application should be assessed on its merits.

Instead, consideration should be given to more late night economy zones within release areas to allow clubs, bars, nightclubs, music venues and other forms of adult entertainment the opportunity of being established in areas which are safe environments (for example, not industrial zones), well lit, where there is good public transport and are well removed from sensitive receivers, such as residential areas and hospitals etc.

D.1. How should development be categorised?

Use of the national model developed by the Development Assessment Forum should be adopted.

D.8. Should there be an automatic approval of a proposal if all development standards and controls are satisfied?

Such an approach should only be applied to development with negligible impacts.

All other development should be assessed on its merits.

The potential long lasting impacts on the surrounding environment and population need to be assessed and carefully evaluated.

We need to instill into the community the principle that development is not a right but a privilege.

D.20. Should dual service connections be permitted for residences in greenfield residential developments?

This seems to be a very narrow minded view of development and its resultant impacts.

If a greenfield residential area is being planned to accommodate a particular housing density, **all** services/facilities and utilities need to be provided to reflect the proposed housing density. This obviously needs to be factored into development costs and resultant housing costs.

Alternatively, the issue can be addressed using a merit based approach on a case-by-case basis.

D.25 What public notification requirements should there be for development applications?

D 26. How can the community consultation process be improved?

The whole process can be improved for everyone if there is encouragement for proponents to work with communities from the outset. The experience of notifying and having the fight through the Development Application process is only working well for those with enough funds to resource the Land and Environment Court process.

Some developers see that consultation is of no value unless it is going to convince the public to support their development. This leads to outraged communities who are even more intent on seeing developers not get what they want. Early interventions that encourage the parties to listen to their various perspectives will avoid the battles that are inevitable if the first the public hears is a notification in the post or via the local Action group that is lobbying for support against the proposal.

D.27. Should deemed approvals take the place of deemed refusals for development applications?

No. This concept should not be considered. Many consent authorities struggle with staffing and resourcing issues. Similarly, many Development Applications which are lodged contain inadequate information and do not warrant close examination until sufficient supporting information is received.

D.32. Should the Crown undertake self-assessment? and D.33. Should the Crown undertake self-determination?

Yes. The Crown should continue to undertake these functions.

However, it needs to do so with community engagement provisions similar to those which would apply for private sector development.

I raise no objection to public social housing and other forms of housing such as those outlined in my response to **C.30**. being determined by the authority responsible for providing these forms of housing.

D.36. How can the integrity of an environmental impact statement be guaranteed?

It is quite often forgotten that an environmental impact statement is prepared as part of a suite of documentation for an application seeking approval for a development or activity. An environmental impact statement is not as an independent piece of work.

The professional integrity of consultants involved in preparing the environmental impact statement is closely scrutinised by many people and can have dire professional and commercial consequences if consultants do not take an objective and professional approach toward their work.

The existing processes of reviews are very rigorous. They are scrutinised by the peers in the consultant's team; by the client; they are subject to discussions and reviews by consent authorities prior to application lodgement; scrutinised by the community, statutory agencies, competitors in the marketplace, professional consultants etc during the public exhibition period; issues raised in submissions arising the public exhibition period need to be considered; and finally subjected to careful evaluation by the consent authority and relevant statutory agencies before a recommendation is made.

The current process is highly transparent and effective and perhaps goes way beyond steps taken by many other professions in scrutinising the integrity of a document.

The involvement of consultants with the public during the environmental impact statement process, while they are engaged by the proponent, provides a level of independence. They are able to talk to the community about what is required with a more open view (than the proponent) about potential solutions. They can assist with the process of listening and taking on board the community views.

D.39. Should the economic viability of a development proposal be taken into account in deciding whether the proposal should be approved or in the conditions for approval?

No. Our market based economy is based around entrepreneurialism and risk/reward principles. Economic or financial factors are a decision for the applicant who need to assess and be responsible for their own actions regarding such matters.

D.45. As part of the assessment process for some classes of development project, should there be a mandatory requirement in a new planning system for full carbon accounting to be considered?

Yes. This should be adopted for certain classes of development.

D.47. Should a consent authority be able to take into account past breaches by an applicant of an earlier development consent in considering whether or not it is reasonable to expect that conditions attached to any future development consent would be obeyed?

Yes. Provisions in the new planning system should allow the consent authority to request that the applicant fully disclose such details of past performance of its organisation, past organisations, parent and subsidiary companies etc so that it has a more clear understanding of the applicant's record of commitment toward environmental compliance.

This is one mechanism which could be used to shift the planning system towards the new focus suggested earlier in this submission.

D.51. Should there be a specific assessment criterion that requires risk of damage as a consequence of either short-term natural disasters or long term natural phenomenon changes to be included in the development assessment?

Yes. In many respects this is dealt with via **C.11** above.

It could also be assessed by requiring a risk assessment methodology taking into consideration such factors as part of the development application documentation.

If you wish to discuss any matter please do not hesitate to contact me on Telephone number: 9331 4336 or Mobile number: 0425 212 333.

Regards.

Julian Ardas
Director – PlanCom Consulting Pty Ltd