

JULY 2012

# A NEW PLANNING SYSTEM FOR NSW

## GREEN PAPER





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July 2012

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## HAVE YOUR SAY

The Green Paper will be on public exhibition until Friday 14 September 2012 and submissions and feedback are encouraged.

[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

# MINISTER'S FOREWORD

## Overhauling the entire NSW planning system



The NSW Government is creating a planning system for the 21st century. A planning system focussed on the public interest. A planning system that places people and their choices at the heart of planning decisions about their future.

The release of this NSW Government *Green Paper—A New Planning System for New South Wales*, is a bold step in the development of a new planning system for the State.

The *Green Paper* responds to and builds on the work undertaken by The Hon Tim Moore and the Hon Ron Dyer of the Independent Planning System Review and their report, *The Way Ahead for Planning in New South Wales*. I thank the Independent Panel for their detailed and comprehensive examination of the current planning system, and their recommendations for reform.

When it was first introduced, the *Environmental Planning and Assessment Act 1979* was reforming and innovative planning legislation. Over the past 30 years, the Act has been amended over 150 times in an effort to keep up with community expectations and changes in economic conditions.

Unfortunately, the system has become complex and legalistic, focussed heavily on process and not on the outcomes that users of the system are seeking to achieve. Comprehensive reform is needed.

From managing our strategic agricultural land to reserving land for biodiversity and to developing our urban renewal sites, the planning system must work effectively and efficiently for all users.

The new planning system must support the Government's priority to facilitate NSW being the number one choice for business investment, enable the sustainable growth of our cities and towns as great places to live and ensure that planning and environmental outcomes reflect the expectations of the community.

Our focus will be on good upfront strategic land use planning and removing the red tape from development assessment.

The Government is placing community participation at the forefront of planning policy and I encourage you to have your say on the Green Paper.

Following community and industry feedback on the Green Paper, the Government will be releasing a White Paper/draft legislation later this year which will invite further community input.

In early 2013 it is the Government's intention to present the new legislation to the NSW Parliament.

Finally, thank you to all the community who have helped the Government to this point in developing a new, strategic approach to planning.

**The Hon Brad Hazzard MP**

MINISTER FOR PLANNING AND INFRASTRUCTURE  
MINISTER ASSISTING THE PREMIER ON  
INFRASTRUCTURE NSW

# OVERVIEW

The NSW Government is proposing transformative changes to the planning system in NSW with a significant shift to a more strategic and streamlined system that facilitates economic growth and upfront community participation.

The transformative changes will move us from an overly regulated and prescriptive system to a simpler, strategic and more flexible performance based system. The new planning system will be based on transparency in process and decision making. The new planning system will deliver sustainable outcomes and improve people's quality of life.

## Blueprint for change

The NSW Government's blueprint for change to the planning system is based around four fundamental reforms:

- **Community Participation**

The major shift in the new planning system is to engage communities as an integral part of making key planning decisions that will affect the growth of their communities.

- **Strategic Focus**

A major shift to evidence based strategic planning in terms of planning effort, community and stakeholder engagement and decision making.

- **Streamlined Approval**

A shift to a performance based system in which duplicative layers of assessment have been removed, decisions are fast and transparent, and code complying development is maximised.

- **Provision of Infrastructure**

A genuine integration of planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

The achievement of these four fundamental reforms will necessitate substantial operational and cultural changes for planning practitioners at all levels. Therefore, an additional component of the 'blueprint for change' will be an increased focus on delivery and the creation of a more facilitative planning culture.

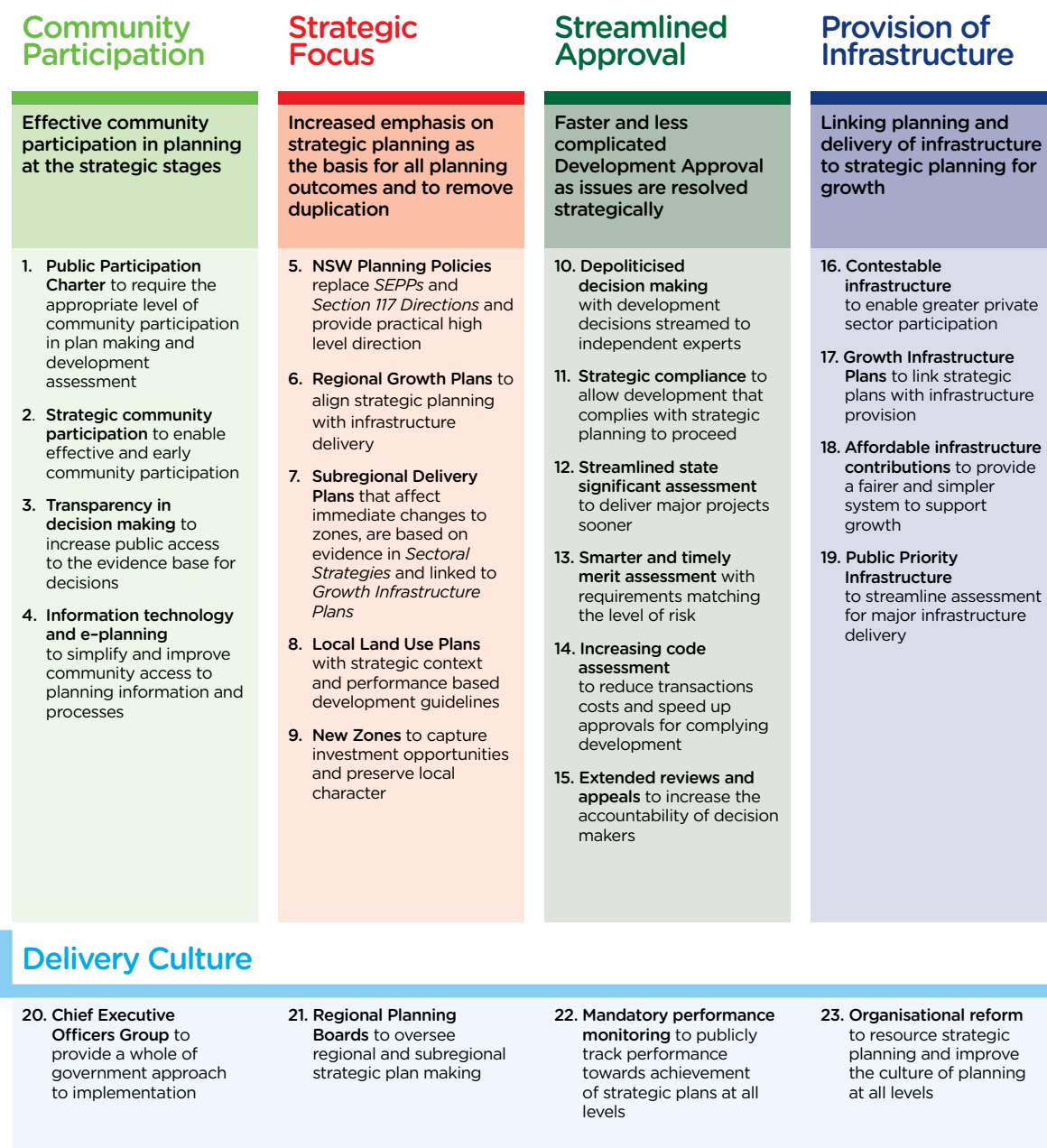
The 23 transformative changes proposed in this *Green Paper* are summarised in Figure 1 and detailed in the sections of the Paper.

## A new Planning Act

The new legislation will be an 'enabling' Act which will establish the broad framework for the planning system. The Act will not include detailed prescriptive controls, instead these details will be covered by guidance and good practice advisory notes.

The objectives of the Act will emphasise in particular the role of planning in facilitating and managing growth and economic development.

FIGURE 1 BLUEPRINT FOR CHANGE: A NEW PLANNING SYSTEM FOR NSW



## Community participation is at the centre of the new planning system

All parts of the community—individuals, organisations and businesses—will be able to participate to ensure we achieve the best possible local planning outcomes.

To empower communities in the decision making process it is proposed to engage the community early at the strategic planning stages in the setting of the overall planning outcomes for an area.

Decision making will be more transparent and community confidence in decisions will be increased through:

- evidence based decision making with full participation by communities
- a clear strategic context for decisions to be made and a clear line of sight through the hierarchy of plans
- readily accessible planning information with plans at all levels written in plain English
- public tracking of the decision making processes and public reporting of time frames.

The community will be better informed and able to access information and decision making through use of electronic planning, notification and engagement tools.

The NSW Government proposes a *Public Participation Charter* to require appropriate community participation to occur in plan making and development assessment.

## Strategic planning will become the cornerstone of all planning decisions

There will be major structural change at all levels of the planning system.

*NSW Planning Policies* will articulate the NSW Government's policy direction and position on major planning issues and will inform strategic plans at all levels. The *NSW Planning Policies* will replace the myriad of *State Environmental Planning Policies* and *117 Directions* currently in place, modernising and simplifying the current system.

*Regional Growth Plans* will become integrated growth plans, linked with the *NSW Long-Term Transport Master Plan* and the *State Infrastructure Strategy*. *Growth Plans* for the regional areas of NSW will be strengthened and include provisions to facilitate growth.

*Subregional Delivery Plans* will be prepared in growth areas in partnership between state and local government and stakeholders and in consultation with the community. The *Subregional Delivery Plans* will be underpinned by a series of evidence based *Sectoral Strategies* and linked to *Growth Infrastructure Plans*. Once approved, the *Subregional Delivery Plan* will directly deliver zoning outcomes in the *Local Land Use Plans*.

*Local Land Use Plans* will include four parts—a strategic context, spatial land use zones, an infrastructure growth and service delivery component and development guidelines and standards. There will be new zones to maximise flexibility, provide opportunities for investment capture, and protect suburban character in certain circumstances.

Importantly, it is proposed that all levels of strategic plans—regional, subregional and local—will now have common elements including:

- strong community and stakeholder engagement upfront and involvement in decision making
- a framework to facilitate investment and effectively manage change
- integration of land use and infrastructure
- a strong evidence base and understanding of financial feasibility
- operational components to deliver infrastructure and services
- incorporation of all government agency requirements hence switching off concurrence or referrals at the zoning or development application stage
- opportunities for streamlined decision making at development stages, including exempt/ complying development and code assessment development
- KPIs, performance monitoring and public reporting of outcomes.

## Strategic planning will deliver better environmental and conservation outcomes

Evidence based strategic planning at the regional and subregional planning level will deliver improved biodiversity and environmental outcomes instead of the ad hoc case-by-case assessments. Cumulative impacts and corridor protection will secure improved conservation outcomes, better integration with catchment management and better protection of valuable agriculture land.

## Development assessment will be streamlined

Development that is consistent with the strategic plan will be able to proceed in a timely and straightforward manner and development that exceeds base standards can still be considered based on merits and in the context of plan objectives. Code complying development will be maximised and where more detailed assessment is needed, the level of assessment will match the level of impact.

To depoliticise decision making, it is proposed that development applications be streamed to appropriate independent and expert decision makers. State and regional scale development will be assessed by the Planning Assessment Commission and the Joint Regional Planning Panel. One option being considered by the NSW Government is for local level development applications to be considered by an independent expert panel.

A series of changes are proposed to improve timeframes and processing of state significant proposals and to increase integration with other state agency approvals.

To ensure smarter and timely merit assessments, any matter that has been adequately dealt with at another stage of the approval process must not be reassessed. There will be targets set for timeframes for different types of assessment and the achievement of these targets will be monitored and reported, with implications for poor or inefficient decision making.

## Infrastructure delivery will be integrated with strategic planning

There are major changes proposed to the planning system relating to infrastructure delivery.

*Growth Infrastructure Plans* will be prepared to identify the infrastructure needed to support development in high growth areas of the state. *Growth Infrastructure Plans* will link strategic planning with infrastructure planning and provision, hence strengthening certainty and accountability for delivery. There will be opportunity for increased private sector participation in the delivery of infrastructure that supports growth.

The NSW Government is proposing a fairer, simpler system of infrastructure contributions to support the rapid supply of housing and improve affordability.

The new planning system will streamline the delivery of major infrastructure projects through a new process for Public Priority Infrastructure which will involve the community early in the planning process and providing upfront certainty that the project will proceed.



## Delivering the new planning system

To improve the delivery of the planning system four governance initiatives are proposed:

- **Chief Executive Officer's Group** to integrate and drive implementation
- **Regional Planning Boards** to advise on regional and subregional strategic plan making, infrastructure and planning issues
- **Mandatory performance monitoring** against clear indicators with regular public reporting and review
- **Major organisational reform program** to address the structure and culture of planning at all levels and within both the public and private sectors.

## Developing the detail for the White Paper and Exposure Bill

The next phase of the reform is developing a *White Paper* firming the scope of the legislative scheme as well as an *Exposure Bill* for public consultation. In the phase of developing the *White Paper* and *Exposure Bill*, much attention will need to be given to detail what needs to be included in the *Bill*, a process that goes beyond the broad policy outline set out in this *Green Paper*.

One of the outcomes that the Independent Panel was able to achieve as a consequence of the extensive community and stakeholder consultation process that it undertook, was to consider and make recommendations about a significant range of detailed matters that need to be considered in preparation of legislation for a reformed planning system.

Whilst this *Green Paper* takes a somewhat different broad path in its proposed framework, the consideration of detail for the *Exposure Bill* will need to consider the same topics of operational detail that have been traversed in the two volumes of the Independent Panel's *Review Report*.

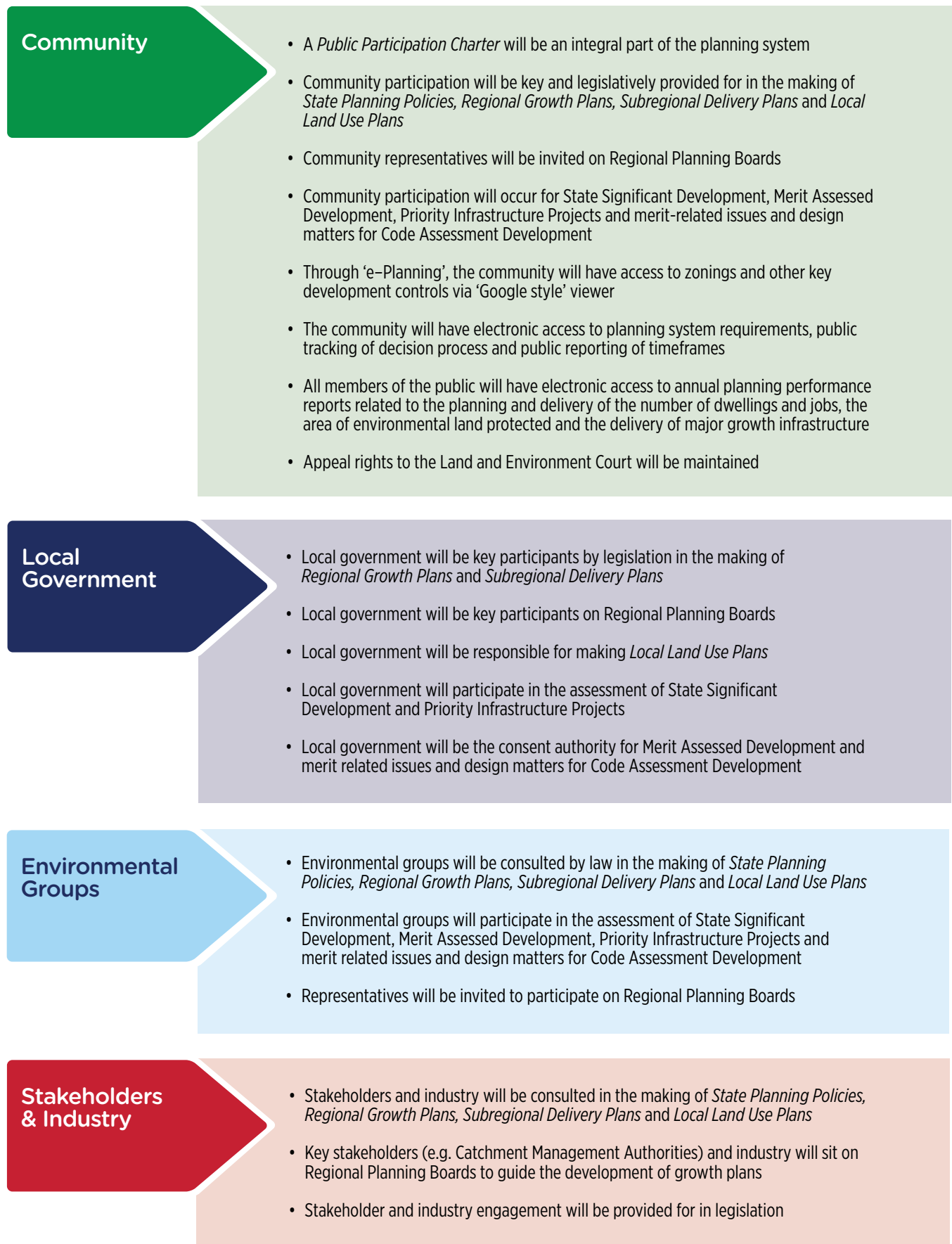
As a consequence, whilst neither endorsing nor rejecting their matters of detail, the two volumes of the Panel's *Review Report* provide an indication of the range of detailed implementation topics that will need to be considered. As a consequence, the next stage—moving to a *White Paper* and *Exposure Bill*—will also need to consider those matters of detail. The *Review Report* prepared by the Independent Panel will provide a useful platform to assist with that process.

### HAVE YOUR SAY

This *Green Paper* is the NSW Government's initial response to the recommendations of the Independent Panel and more than 600 submissions provided by the community and stakeholders.

The NSW Government invites you to be involved in the next steps of this important reform, the preparation of a *White Paper* and draft legislation. Register your interest and participate in our online forum at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

**FIGURE 2** COMMUNITY AND STAKEHOLDERS WILL HAVE A KEY ROLE IN IMPLEMENTING THE NEW SYSTEM



# 1

## INTRODUCTION

The NSW Government aims to build a world class planning system that facilitates sustainable growth and establishes NSW as the best place to live, work and do business.

A successful planning system promotes sound economic outcomes, facilitates sustainable growth and effectively connects people and places. It provides adequate and affordable housing and employment, aligns land use with infrastructure provision and protects our greatest natural assets. It facilitates sustainable development by balancing competing outcomes without getting bogged down in red tape.

To be successful, the planning system must also fully engage people in the decisions that will shape their local areas and economies. People care deeply about new development and how it changes their neighbourhood. All members of the community must be able to have their say on the decisions that affect them.

The NSW Government believes in good planning supported by an unwavering focus on delivery. It is our priority to work with the community, businesses and stakeholders to build a better planning system for NSW.

### **NSW 2021 A Plan to Make NSW Number One**

The Government's *Review of the Planning System* and *Green Paper* for reform are based on the strategies and goals outlined in *NSW 2021—A Plan to Make NSW Number One*. *NSW 2021* is a 10 year plan to guide the Government's policy and budget decision making and, in conjunction with the *NSW Budget*, to deliver on community priorities. It sets long-term goals and measurable targets, and outlines immediate actions that will help us achieve these goals. These reflect the Government's commitment to whole of state growth and delivery, to improve opportunities and quality of life for people in regional and metropolitan NSW.



FIGURE 3 LINKING STRATEGIC NSW REFORMS

NSW 2021 is based around five strategies:

#### **Rebuild the economy**

Restore economic growth and establish NSW as the 'first place in Australia to do business'

#### **Return quality services**

Provide the best transport, health, education, policing, justice and family services, with a focus on the customer

#### **Renovate infrastructure**

Build the infrastructure that makes a difference to both our economy and people's lives

#### **Strengthen our local environment and communities**

Improve people's lives by protecting natural environments and building a strong sense of community

#### **Restore accountability to government**

Talk honestly with the community, return planning powers to community and give people a say on decisions that affect them

Each of the five strategies outline a number of goals, targets, and priority actions that are being integrated into the machinery of government, setting the priorities for funding, guiding decisions and focusing the day to day work of the public sector.

These Strategies have informed the development of the *Green Paper* and will be the basis for the new NSW planning system to provide for the achievement of the goals and priority actions for NSW. Through the delivery of *NSW 2021*, industry and the community can have confidence that the reform to the NSW planning system is linked to and reflects other connected strategic reform activities including:

- **Regional Action Plans**
- **NSW Long-Term Transport Masterplan**
- **Sydney Metropolitan Strategy**
- **State Infrastructure Strategy**
- **Review of the Local Government Act, 1993**

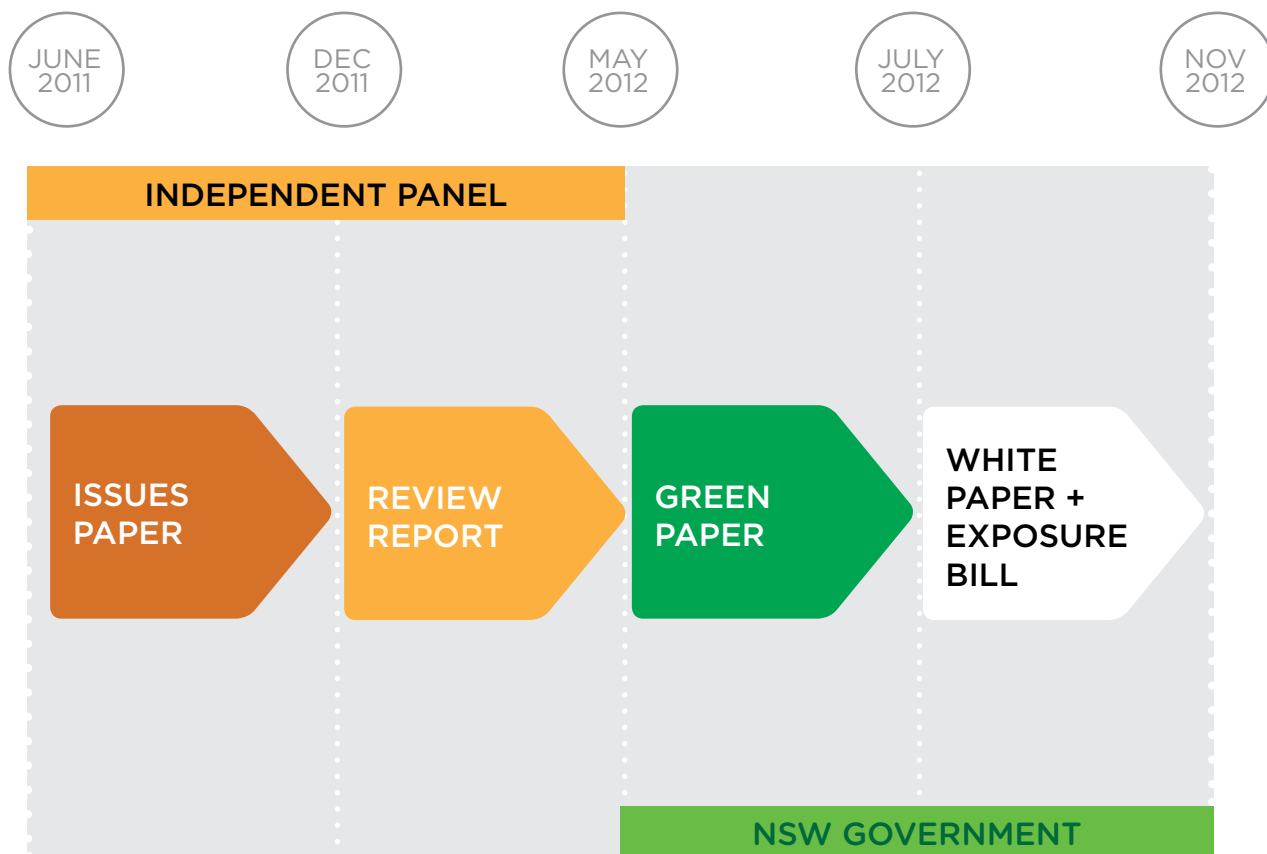


FIGURE 4 PLANNING REVIEW AND REFORM PROCESS

## The process for reviewing the NSW planning system

In June 2011, the Government established an Independent Panel to undertake the *NSW Planning System Review*. Led by the Hon. Tim Moore and the Hon. Ron Dyer, the Review was conducted with full public participation. Nearly 2,000 people attended 91 community forums held in towns right across NSW.

The NSW Government particularly values the work of the Independent Panel and the ideas provided by private individuals, community groups, local government, business and industry organisations. Over 600 submissions were received in response to the *Issues Paper* released in December 2011 by the Independent Panel. The depth and detail in these submissions reinforces the need for significant reforms.

Based on this consultation, the Independent Panel has now completed its Review and produced an extensive and detailed Report with 374 recommendations for consideration by the NSW Government.

This *Green Paper* is the next step on the pathway to a new planning system as illustrated in Figure 4 above. It is the NSW Government's initial response to the *Independent Report*.

The *Green Paper* sets out the NSW Government's fundamentals for reform, drawing extensively on the Independent Panel's Report. It includes transformative changes to create a new planning system for NSW that is focused on effective strategic planning and removes duplication and uncertainty that is a feature of the present system.

In preparing the *Green Paper*, the recommendations of the Productivity Commission, the COAG Reform Council, and the NSW Legislative Council *Inquiry into the NSW Planning System* have all been considered.

The *Green Paper* seeks to present the community with high level directions for reform before moving forward with a *White Paper*. The preparation of the *White Paper* will involve a series of targeted forums held over the remainder of the year. Comments received in response to proposals in this *Green Paper* will be considered in the subsequent steps of the development of the new planning system. All stakeholders including the community, experts and businesses will be consulted in developing the detail to be included in the *White Paper* and the new *Planning Act for NSW*.

## International best practice in planning law

The NSW Department of Planning and Infrastructure has commissioned a *Review of International Best Practice in Planning Law* to inform, and provide a reference for, the preparation of this *Green Paper*. The Review was conducted by Leslie Stein, Scholar in Residence, Centre for Environmental Legal Studies, Pace University School of Law, New York.

The *International Review* provides an objective analysis of world's best practice in relation to plan making and development control.

*'Best practices have evolved within different historical contexts. In the United States, for example, the planning system developed from a fixed set of building standards for tall buildings in New York without a requirement for planning permission. In the United Kingdom, planning law emerged as a system of development control to correct unhealthy living conditions. However, planning law is never static and there is, in all countries, a constant attempt to innovate and experiment with new ideas to accomplish effective planning and this has led to practices that have proved successful.'*

*—Leslie Stein<sup>1</sup>*

The findings of the *Review of International Best Practice* have informed the development of this *Green Paper* and are referenced throughout this document. The full Review is available on the website [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

# 2

## THE CASE FOR CHANGE

The most widespread sentiment in submissions to the Review was a lack of confidence in the current planning system. Fundamental reform is needed to reduce complexity, costs and delays and to improve transparency in decision making.

At the time it was made, the *Environmental Planning and Assessment Act, 1979*, was considered best practice in Australia. What was then innovative legislation that transformed town planning practices into the broader environmental planning framework has now become overly complex and legalistic.

The context for land use planning and development control has changed significantly and substantially greater expectations have been placed on the planning system to manage rapid growth and long-term change across NSW.

Since the *Environmental Planning and Assessment Act, 1979* was introduced it has been amended some 150 times with most of the changes aimed at addressing process issues as they emerged. As a result, the Act has become overly legalistic and difficult to navigate.

The *Independent Review* identified a deep cynicism toward the current planning system during their community consultations. The Independent Panel findings show that public confidence in the system has been eroded by the perception that politics can determine decision making. They found a significant lack of community confidence in the integrity of the planning system, particularly in relation to decisions about larger developments.

The need for reform of the NSW planning system has also been highlighted in recent performance benchmarking by the Productivity Commission which found that the NSW planning system under performed in a range of leading practices.

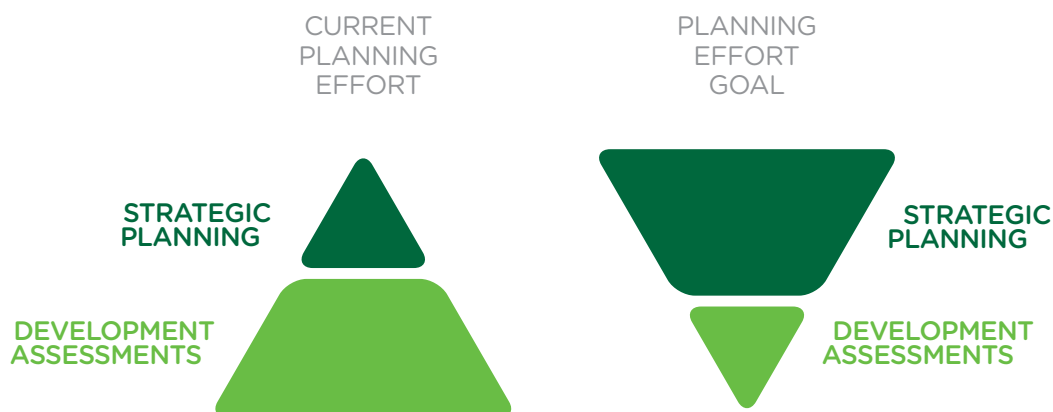
The New South Wales Legislative Council Standing Committee on State Development inquiry in 2009 into the New South Wales Planning System also concluded that:

*‘On the basis of the weight of evidence it received from practitioners and users of the current planning system, the Committee finds that there is a need for a fundamental review of the overall planning framework in New South Wales’*

— *NSW Legislative Council Standing Committee on State Development*<sup>2</sup>

The hundreds of submissions by business, the community and practitioners of the planning system consistently raised the following issues that are the focus for this planning review:

- reduce complexity and costs
- increase the focus on strategic planning
- focus on better economic outcomes
- engage with the community effectively and early
- streamline development assessment
- improve infrastructure funding and integration.



**FIGURE 5** PRODUCTIVITY COMMISSION SUGGEST CHANGING THE FOCUS OF PLANNING EFFORT

## Reduce complexity and costs

An overriding criticism has been the lack of clarity arising from the complex nature of the Act.

*'The current NSW planning system has been undermined by a combination of sweeping ad hoc changes and a constant flow of amendments, circulars, alterations to regulations and other minor changes, leading to confusion and uncertainty for councils, communities and developers and often resulting in a range of unintended consequences'*

**—Western Sydney Regional Organisation of Councils**

Submissions called for an Act that is clearer and more user friendly, and which delivers certainty and transparency.

*'It is generally accepted that the Environmental Planning and Assessment Act specifically, and the planning system in general requires substantive streamlining and simplification. Complexity in the planning system is not only onerous for developers and consultants but for Council Officers trying to navigate. Unnecessary levels of complexity cause delays and increase costs to all involved.'*

**—Dubbo City Council**

## Increase the focus on Strategic planning

Many submissions highlighted the need for significantly greater emphasis to be placed on strategic planning in NSW with proper links between land use and infrastructure planning and delivery.

*'Proper strategic planning is fundamental to a successful Planning Act.'*

**—Planning Institute of Australia**

It was repeatedly suggested in the submissions that if more effort was put into the strategic planning phase of the process, the development assessment process could be simplified and streamlined.

The Productivity Commission also noted the need to shift the current preoccupation with development assessment to strategic planning as illustrated in Figure 5.



## Focus on better economic outcomes

The planning system, through determining the allocation of land uses and managing processes around development assessment, can be an important facilitator of economic growth. A sound planning system is a necessary condition for a strong, flexible and responsive economy.

Evidence presented in a number of submissions illustrated that the current New South Wales Planning System could perform better against a number of key economic indicators, including:

- **Housing supply**

Housing completions in New South Wales have fallen to record lows, with impacts on house prices, population and economic growth.

- **Commercial development**

Commercial office rents in the Sydney Central Business District are among the highest in Australia, which reduces the capacity for firms to grow and innovate and reduces the economic benefits of agglomeration.

- **Retail development**

There is a lack of competition in some retail sectors in part because of planning restrictions, with impacts on grocery prices and accessibility for consumers.

Better consideration of the performance of the planning system against economic, social and environmental goals will ensure that decisions promote the appropriate balance between protecting local communities and promoting economic growth.

## Engage with the community effectively and early

Engaging with the community at the earliest stages of the planning process was also identified as a critical issue.

*'In order to improve awareness and transparency and certainty to the community and industry, consultation with the local community, stakeholders and industry should be conducted during the strategic planning and plan making stage with issues identified and resolved, including economic benefits, necessity and viability.'*

*—Urban Development Institute of Australia*

Better and more effective community participation at the strategic level was seen as enabling the community to participate in formulating the vision for a region or subregion, providing for simpler and more focussed community involvement at the later stages.

*'The NSW Government needs to ensure community input is meaningful and appropriate, with a focus on overall desired community outcomes in high level planning documents, rather than individual projects.'*

*—Australian National Retailers Association*

## Streamline development assessment

Strong support was also outlined in submissions for the depoliticisation of the decision making process. There was support for the introduction of a ‘track’-based assessment system which would align the impact of a development with the level of assessment undertaken.

Support was also evident for a development assessment framework to enable the State to deliver projects of genuine state significance particularly where backed by a government mandate.

*‘Public sector projects are generally delivered on the basis of net-benefit for the community and aim to produce returns for the greater good. For this reason they ought to be assessed under alternative criteria to those developments with purely profit seeking motives’.*

*—Infrastructure Partnerships Australia*

## Improve infrastructure funding and integration

The submissions pointed to the need for greater consistency and coordination in the infrastructure planning and delivery system. Local councils raised concerns regarding the current cap on Section 94 contributions for housing and requested that the cap be removed or alternative forms of funding for infrastructure be identified.

In addition, the issue of lack of coordination between strategic plan and infrastructure funding was highlighted as a significant issue for both the development industry and government at both the local and State level. Greater clarity around the costing, funding and delivery of infrastructure identified in strategic plans was seen as fundamental.

*‘Infrastructure plans need to be integrated into the planning system and supported with funding. The system should enshrine a new whole-of-government approach to the provision and planning of infrastructure which is a fundamental component to the acceptability of increased densities in both residential and commercial development.’*

*—Parramatta City Council*

# 3

## OBJECTIVES

The new planning system will support the achievement of the NSW Government's priority to drive economic growth. It will facilitate NSW being the number one choice for business investment, enable the sustainable growth of our cities and towns as great places to live, support high quality developments and ensure that planning outcomes reflect the community's expectations.

### Purpose of the planning system

The overarching purpose of the new planning system for New South Wales is to:

- promote economic development and competitiveness
- connect people and places
- protect the environment
- improve people's quality of life
- resolve land use trade-offs based on social, economic and environmental factors
- effectively manage growth and change.

### Objectives of the planning system

To meet these challenges the planning system will need to be:

- **Simple**—reduce complexity and remove red tape
- **Certain**—provide predictability and certainty about how decisions are made for both investors and the community
- **Transparent**—base decisions on strong community participation and evidence
- **Efficient**—achieve time frames for completion of planning processes through increased accountability for efficient decision making
- **Effective**—planning strategies facilitate investment and manage change
- **Integrated**—promote greater cooperation and partnerships between all levels of government, and balance environmental protection with economic growth
- **Responsive**—provide flexibility to respond to change and ensure markets are competitive.

These are the objectives of the broader planning system but they also inform the objectives of the new Act. The achievement of sustainable development will remain the main objective of the Act.

Proposed development that accords with standards in an up-to-date plan should be approved and development that seeks to exceed base standards can still be considered based on its merits and in the context of plan objectives.

The new Act will be an ‘enabling’ Act which will establish the broad framework for the planning system rather than contain detailed prescriptions for how land use planning and development assessment is to be carried out. Under this model, land use planning and development assessment policies will still be provided but will be in the form of delegated instruments or practice notes and guidelines. This approach provides the Act with the flexibility to respond to change without the need to amend the Act whenever there is a shift in policy. Rapid change is increasingly a feature of our society and the need to quickly and effectively respond to change is critical if NSW is to grow its economy and maintain the quality of life for its community.

## Principles for reform

The principles driving the reform of the NSW planning system are:

- the community is entitled to relevant, timely and accurate data on which to make decisions on planning issues
- robust and evidence based strategic planning will provide the foundation for certainty and integrity in decision making
- communities value their neighbourhoods, heritage and local environment, and have a right to be involved in decisions that shape their community
- where a proposal meets agreed requirements there is a presumption in favour of a right to develop
- time frames for development assessment and referrals must be clear and enforceable and set leading benchmarks amongst Australian planning systems
- planning decisions should be made by the level of governance capable of doing so, taking into account the economic and geographical area influenced by the decision
- individuals and markets are best placed to deliver diverse choices, vibrant communities and strong and sustainable economies.

# 4

## COMMUNITY & STAKEHOLDER ENGAGEMENTS

Community and public interest will be at the centre of the new planning system. All parts of the community—individuals, organisations and businesses—will be able to participate to ensure we achieve the best possible planning outcomes.

The NSW Government aims to restore community confidence and integrity in the planning system by making planning information accessible and planning decisions transparent. Public participation will be genuine and occur earlier in the strategic stages of the process.

Four changes are proposed by the NSW Government to empower the community in the decision making process:

- **A Public Participation Charter**

The NSW Government proposes a *Public Participation Charter* to require appropriate community participation to occur in plan making and development assessment.

- **Strategic community participation**

The community will be engaged early at the strategic planning stages in the setting of the overall planning outcomes for an area. This is important so that decision makers can fully articulate the trade-offs involved in strategic planning decisions.

- **Transparency in decision making**

Community confidence in decisions will be increased through:

- evidence based decision making with full community participation
- a clear strategic context for decisions and a clear line of sight through the hierarchy of plans
- readily accessible planning information with plans at all levels written in plain English
- public tracking of the decision making processes and public reporting of time frames.

- **Use of information technology and electronic planning**

The community will be able to access planning information and decision making through use of electronic planning, notification and engagement tools.

### Independent Panel recommends early community participation

Careful and early engagement is necessary to eliminate public concern that what is presented is a 'top down' approach rather than a 'bottom up' one. Many in our community forums regarded a participatory process in the early stages of plan development as a positive and necessary precursor to placing a draft plan on public exhibition and seeking public comment on it. What was seen as desirable was obtaining a strong community foundation for drafting a plan, prior to the actual preparation of a draft plan.

## Submissions identified the need for more effective community participation

The need for better communication and effective community participation was a constant issue raised in community and stakeholder submissions.

*‘Genuine and meaningful public participation has the benefit of empowering local communities, improving decision making by assisting decision makers in identifying public interest concerns and utilising local knowledge.’*

— *Nature Conservation Council, Environmental Defenders Office and Total Environment Centre*

Many submissions included support for an increase in consultation at the strategic planning level.

*‘At the early strategic planning stage, local communities must be very involved in helping shape the character of their local area.’*

— *Urban Taskforce of Australia*

The Productivity Commission also supports the effectiveness of more community involvement in strategic planning:

*‘Engaging the community more fully in developing strategic land use plans and subsequent changes can achieve better community buy-in for plans and their amendments. Responses to surveys indicated that a number of councils and state and territory agencies regard consultation primarily as a way to inform communities about their plans rather than engaging residents with a view to building plans around informed community opinions and preferences.’*

— *Productivity Commission*<sup>3</sup>

## NSW Government supports early and genuine engagement of local communities in strategic planning

### International best practice in community participation

The *International Review of Best Practise in Planning Law* found that public participation at its fullest extent makes the citizen’s role as important as that of the plan making authority. Key to consultation is making the proposals clear to those participating. Best practise for community participation in plan making was found to involve a number of components:

*‘Express a general objective for participation in the legislation, require the development of a community participation plan in the legislation and produce guidelines (including formatting guidelines), and require that the participation guidelines be followed. Set out in the completed plan the consultation that has taken place’*

— *Leslie Stein*<sup>4</sup>

An international study of city planning by the Grattan Institute found that early, genuine, and deep public engagement was a key success factor in the implementation of hard decisions in strategic metropolitan planning.

*‘...Early, genuine, sophisticated, sustained, and deep engagement was a recurring theme—particularly in cities that needed to make hard decisions and succeeded in doing so. Engagement seems to make tough decisions possible, and make them stick.’*

— *Grattan Institute*<sup>5</sup>

The NSW Government seeks to empower local communities through genuine community participation in plan making.

## The community feels disempowered under the current system

The current approach, while consultative, has regularly fallen short of delivering effective community participation. The planning process can be so long and complicated that few community organisations or businesses with an interest can afford to sustain their interest. The community perception is that engagement in the planning process requires deep pockets and great stamina.

In addition, the legalistic nature of some planning procedures prohibits effective participation of community members who do not have the specialist knowledge. As a result, consultation fatigue fosters a climate of cynicism where the community often conclude that their effort is a waste of time.

The new community participation framework will respond to these issues and feature a broad spectrum of techniques, designed not only to share information or elicit views but to effectively involve the public in timely, strategic decision making.

Engaging effectively with the community on whose behalf we operate is integral to the successful transformation of planning.

**FIGURE 6**  
THE COMMUNITY AND KEY STAKEHOLDERS WILL HAVE A KEY ROLE IN IMPLEMENTING THE NEW SYSTEM

<b>Community</b>	<p><i>A Public Participation Charter</i> will be an integral part of the planning system</p> <hr/> <p>Community participation will be key and legislatively provided for in the making of <i>State Planning Policies, Regional Growth Plans, Subregional Delivery Plans</i> and <i>Local Land Use Plans</i></p> <hr/> <p>Community representatives will be invited on Regional Planning Boards</p> <hr/> <p>Community participation will occur for State Significant Development, Merit Assessed Development, Priority Infrastructure Projects and merit-related issues and design matters for Code Assessment Development</p> <hr/> <p>Through ‘e-Planning’, the community will have access to zonings and other key development controls via ‘Google style’ viewer</p> <hr/> <p>The community will have electronic access to planning system requirements, public tracking of decision process and public reporting of timeframes</p> <hr/> <p>All members of the public will have electronic access to annual planning performance reports related to the planning and delivery of the number of dwellings and jobs, the area of environmental land protected and the delivery of major growth infrastructure</p> <hr/> <p>Appeal rights to the Land and Environment Court will be maintained</p>
<b>Local Government</b>	<p>Local government will be key participants by legislation in the making of <i>Regional Growth Plans</i> and <i>Subregional Delivery Plans</i></p> <hr/> <p>Local government be key participants on Regional Planning Boards</p> <hr/> <p>Local government will be responsible for making <i>Local Land Use Plans</i></p> <hr/> <p>Local government will participate in the assessment of State Significant Development and Priority Infrastructure Projects</p> <hr/> <p>Local government will be the consent authority for Merit Assessed Development and merit-related issues and design matters for Code Assessment Development</p>
<b>Environmental Groups</b>	<p>Environmental groups will be consulted by law in the making of <i>State Planning Policies, Regional Growth Plans, Subregional Delivery Plans</i> and <i>Local Land Use Plans</i></p> <hr/> <p>Environmental groups will participate in the assessment of State Significant Development, Merit Assessed Development, Priority Infrastructure Projects and merit related issues and design matters for Code Assessment Development</p> <hr/> <p>Representatives will be invited to participate on Regional Planning Boards</p>
<b>Stakeholders &amp; Industry</b>	<p>Stakeholders and industry will be consulted in the making of <i>State Planning Policies, Regional Growth Plans, Subregional Delivery Plans</i> and <i>Local Land Use Plans</i></p> <hr/> <p>Key stakeholders (e.g. Catchment Management Authorities) and industry will sit on Regional Planning Boards to guide the development of growth plans</p> <hr/> <p>Stakeholder engagement will be provided for in legislation</p>





## CHANGE 1 A Public Participation Charter

The NSW Government proposes a new *Public Participation Charter* to require that appropriate community participation occurs in plan making and development assessment.

A priority for the NSW Government is to ensure a strong democracy that is accountable to its community. This includes talking honestly with the community about our challenges and engaging people in decisions that affect them. The participation of all interested and affected community members in planning processes must be promoted, and all community members must have the opportunity to develop the understanding necessary to equitably and effectively participate.

### NSW Government proposed reforms

To this end, the NSW Government supports the recommendation of the Nature Conservation Council, the Environmental Defenders Office and the Total Environment Centre to include a *Public Participation Charter* in the new planning system for NSW. Such a charter would assist in the creation of new community participation strategies and could include:

- recognition that the community expects and has a right to participate in the plan making and development assessment
- requirement to provide information that is easy to understand as the basis for consultation
- support for new methods of engagement and interactive participation
- provision for clear feedback in response to issues raised prior to a decision being made.

A *Public Participation Charter* will set standards of community participation depending on the planning issue under consideration. The NSW Government aims to establish a framework that not only benchmarks minimum requirements, but encourages best practice and innovation. To transform the planning system to one that is understood and respected, all players will have to supply information in plain English, meet standards of consultation that are underpinned in law and engage in a richer dialogue with the community.





## CHANGE 2

# Strategic Community Participation

The NSW Government will effectively engage communities early at the strategic planning stages in the setting of the overall planning outcomes for an area.

There is currently no explicit statutory requirement for consultation on strategic planning documents and these will significantly increase in importance in the new planning system. The current approach often sees key issues being revisited by the community at various subsequent development assessment stages. This is generally a counter-productive exercise, avoidable under a framework that has a much stronger focus on community participation at the strategic planning stage.

### NSW Government proposed reforms

Under the new planning system, there will be genuine engagement with the whole community in the development of *Subregional Delivery Plans*. This will involve communities participating in the strategic planning for an area along with Local Government, NSW Government agencies and stakeholders. A strong evidence base for decisions will be prepared and made available to all and the trade-offs explained clearly. Planning objectives and scenarios for local growth and change will be tested publicly. Further detail on the proposal for *Subregional Delivery Plans* to be developed with genuine community participation, is provided under Change 7.

#### CASE STUDY

### Leading international practice in community participation

- In **Vancouver, Canada**, residents worked with developers and the City Council to develop a *CityPlan*. The benefits included quick action on behalf of Council to implement the changes, strong feedback and increased credibility in the process.
- **Seattle, USA** established a *Neighbourhood Planning Office*. The allocation of the planning budget placed a strong emphasis on community engagement, funding for neighbourhoods to develop their vision and particular effort on communication (language and technology used). This resulted in a high level of neighbourhood input and acceptance.
- **Portland, USA** developed a *Regional Framework Plan* with the assistance of public meetings, household surveys and collaboration between interest groups, city officials, retailers, property owners and neighbourhood groups.

*Summary taken from Environmental Defenders Office (EDO) Submission to the Review of the NSW Planning System (November 2011)*

The community participation that is currently undertaken by local councils in the preparation of their *Community Strategic Plans* is recognised as an effective model in local level strategic planning. Existing successful techniques such as these, as well as new community driven approaches, will be adopted to engage the community early in strategic planning at the subregional and local level.

# 3

## CHANGE 3 Transparency in decision making

The NSW Government proposes to increase community confidence in decisions made under the new planning system by developing a strong evidence base, improving access to planning information and providing accountability and a strategic context for decisions.

The Independent Panel found that communities across NSW lacked confidence in the integrity of the planning system. A major contributor was the perception that decision making under the current system was politicised.

The Independent Panel also received feedback that the lack of transparency in decision making was confounded by the complexity of the current Act and planning processes. Many communities experience difficulty understanding how plans would affect their lives.

*‘Providing plain language community guides for the development assessment and determination process is essential to help restore trust in the planning process.’*

*—Independent Panel*

The NSW Government supports this recommendation and the new planning system will aim to restore community trust in decision making and increase access to all planning information.

### NSW Government proposed reforms

Communities will be supported to engage effectively with planning processes through the provision of clear, relevant and accurate information. Greater public access to information will foster collaboration and increase efficiency. NSW aims to become a public sector leader in valuing and sharing information.

Under the new planning system, all planning documents will be accompanied by plain English explanatory material and communities will be able to readily access information on:

- what is being proposed and why
- the anticipated outcomes, impacts, benefits and costs of proposals and plans

- the evidence on which decisions and plans will be based
- how communities can participate and who is making the decision
- details of the process and time frames.

Accountabilities for decisions will be increased with public tracking of decision making processes, public reporting of time frames for decision making and performance assessment of planning outcomes.

Under the new planning system decisions will be evidence based not political. There will be a strong and public evidence base to inform strategic planning through the preparation of detailed *Sectoral Strategies*. There will be a clear strategic context for decisions and a clear line of sight through the hierarchy of plans right from the state level policy through to local land use controls.

To depoliticise decision making, the NSW Government is proposing that decisions on development applications will be streamed to appropriate independent and expert panels. State and regional scale development will continue to be assessed by the Planning Assessment Commission and the Joint Regional Planning Panel. In addition, one option being considered by the NSW Government is for local level development applications to also be considered by a local expert panel. Further information on this transformative change is provided under Change 10 in this *Green Paper*.

Ultimately, the measure of success will be the increased trust between the community and the government in relation to planning decisions and processes.



## CHANGE 4

# Use of information technology and electronic planning

The NSW Government proposes that under the new planning system most interactions with the planning system can be conducted online.

Community involvement can take many forms and encompass a range of activities and techniques. Consultation techniques have to be selected to suit the circumstances and particular characteristics of a community. However, 'e-planning' solutions and social media engagement offer the opportunity to improve access and convenience for community members.

When the current Act was passed in 1979, most people accessed information through a daily newspaper and many homes did not have a telephone. Now, one metropolitan newspaper is sold for every 30 to 40 citizens, over 80% of Australian homes are on the internet and millions log on to social media several times a day. Recognition of the fundamental changes to how we communicate, access information and engage must be an essential tool for creating a transparent and inclusive planning system.

### Independent Panel supports 'e-planning'

The *Independent Review* has identified clear support from state agencies, local government, professional practitioners and community groups for greater integration of the planning system with electronic systems.

NSW has fallen behind other States and territories in the delivery of online planning and development services. The creation of planning spatial datasets, the establishment of a planning portal and an electronic register of consents, and the creation of online codes assessable development will transform how people come to understand and use the planning system.

### NSW Government proposed reforms

The requirement for the provisions of all strategic plans and policies and information relating to any development application or approval to be provided and accessible online will be included in the new planning system.

Electronic planning ('e-planning') involves making the planning system, from development applications through to strategic plans and local zoning, available online. A comprehensive 'e-planning' network will not only ensure the entire development application process and relevant materials are online, but will also allow for the user to view all plans, planning documents and applications that apply to any one development site or piece of land.

The NSW Government intends to establish an online planning portal with a 'Google style' viewer that will provide users with access to the planning spatial datasets relating to zoning and the other key development controls, including floor space ratio, height of building, heritage conservation areas and heritage items, minimum lot size, key sites and land reservation acquisition. Users will be able to search for a property using the cursor, the street address or the Lot and DP number. The view will be able to be customised by choosing which spatial datasets are shown.

These changes will drive innovation and form the cornerstone of the NSW Government *ICT Strategy 2012*. They also mark a shift toward the establishment of a new service culture. For the first time, current, reliable and accurate electronic planning data for the whole State will become available to the public online 24 hours a day. The provision of accurate, real-time information online will also make the planning system more transparent and rebuild confidence in the system.



# 5

## STRATEGIC PLANNING

Strategic planning will become the cornerstone of all planning decisions. Strategic planning at all levels will be evidence based, prepared collaboratively with local councils with strong community participation and completely integrated with infrastructure provision. Strategic Plans will be approved by the whole of government removing the need for subsequent concurrences.

The new planning system will substantially and significantly shift its emphasis and provisions to a strategic planning framework. The NSW Government is proposing a transformative approach both in scope and in application with statutory recognition of strategic plans at the regional, subregional and local levels.

Major structural change is proposed at all levels of the planning system to remove complexity and duplication:

- **NSW Planning Policies** will articulate the NSW Government's policy direction and position on major planning issues—such as housing and housing affordability, employment, mining, coastal planning, conservation—and will inform strategic plans at all levels. The *NSW Planning Policies* will replace the myriad of *State Environmental Planning Policies* and *117 Directions* currently in place, modernising and simplifying the current system.
- **Regional Growth Plans**, including the current Metropolitan Plan for Sydney, will become integrated growth plans, linked with the *NSW Long-Term Transport Master Plan* and the *State Infrastructure Strategy*. Growth Plans for the regional areas of NSW will be strengthened and include provisions to facilitate growth and change.
- **Subregional Delivery Plans** prepared in growth areas based on groupings of local councils will be:
  - underpinned by a series of *Sectoral Strategies* that will provide a strong evidence base for housing, employment, retail, environment, rural, mining and other areas of focus
  - linked to *Growth Infrastructure Plans* which will provide a costed, funded infrastructure pipeline to support growth within the subregion
  - prepared in partnership with Local Government, state agencies and stakeholders and in consultation with the community
  - able to directly deliver the new zones once approved
  - based on new subregional boundaries that will group local councils based on economic growth patterns, natural resource boundaries and infrastructure catchments.
- **Local Land Use Plans** will include four parts
  - a strategic context, spatial land use zones, an infrastructure growth and service delivery component and development guidelines and standards.
- **New Zones** to maximise flexibility, provide opportunities for investment capture, and protect suburban character in certain circumstances.

**FIGURE 7** MAJOR STRUCTURAL CHANGE AT ALL LEVELS OF THE PLANNING SYSTEM



The new strategic focus will mean more decisions regarding land use, zoning and development control will be made in the strategic stages of the planning process, improving transparency and certainty for proponents and the community.

Strategic plans at all levels will be informed by cost benefit analysis and an understanding of economic, social and environmental impacts.

Importantly, it is proposed that all levels of strategic plans—regional, subregional and local—will now have **common** elements including:

- strong community and stakeholder engagement upfront and mechanisms for involvement in decision making
- a strong evidence base incorporating research and data to support credible strategic outcomes
- financial feasibility that reflects market demand and feasibility of development outcomes
- integration of land use and infrastructure planning
- operational components to deliver infrastructure and services
- incorporation of all government agency requirements hence switching off concurrence or referrals at the zoning or development application stage
- opportunities for streamlined decision making at development stages, including exempt/complying development and strategically complying development
- performance measures, monitoring and public reporting of outcomes.

## Independent Panel recommends a legislative framework to implement strategic planning

The Independent Panel has identified the need for strategic planning to be implemented through legislation.

Two propositions were also near universally supported across the spectrum of interests:

- express provision should be made for strategic planning in any new legislative framework
- such legislative provision should be accompanied by practical measures to encourage community participation with, and participation in, the development of such strategic plans.

A reformed planning system requires adopting strategic planning in both the legislative and implementation processes. It is clear that facilitating sustainable growth is one fundamental tension that must be addressed in the process of strategic planning. When implementing strategic planning:

- the objects must promote ‘triple bottom line’ outcomes
- it must be compulsory to take into account the outcomes of strategic planning in subsequent detailed local planning and in assessing and determining development proposals
- it must be a process that is gradually implemented in partnership between State and local governments, the development industry, conservation and social advocacy networks.

## Submissions support an increased emphasis on strategic planning

Submissions to the *NSW Planning System Review* highlighted the need to place significantly greater emphasis on strategic planning with the provision of proper links between land use and infrastructure planning and delivery.

*‘When a robust, inclusive and comprehensive strategic plan-making process is implemented the next step, the formation and implementation of Local [Environmental] Plans ... can be conducted in a manner that is similarly robust and dependable but also efficient.’*

— *Urban Development Institute of Australia*

The NSW Government agrees with the importance of strategic planning in providing clear strategic directions and coordination of issues. Already there is a commitment to better integrate strategic planning through coordinated review and delivery of the *Metropolitan Strategy for Sydney*, the *NSW Long-Term Transport Master Plan* and the *State Infrastructure Strategy*.

## Currently strategic intent is lost in the complexity

The current Act as it provides for strategic planning, principally deals with the preparation of environmental planning instruments at the state and local level. Environmental planning instruments provide the framework for land use and economic development in NSW through the zoning of land for particular purposes and the application of controls for development on that land.

The existing approach to the preparation of environmental planning instruments has been reactionary rather than visionary and has ultimately resulted in a myriad of controls, great complexity and significant uncertainty. In many cases the strategic basis for development controls has been lost in the process and rigid planning decision making has resulted.

In addition, existing *Environmental Planning Instruments* cover a broad range of issues from site specific concerns to state wide policy matters and in some cases, contain overlapping and contradictory controls. There is currently no mechanism to prioritise planning requirements in particular contexts or locations. All this complexity has inevitably resulted in blockages in the system and has frustrated the delivery of quality outcomes. In the absence of a strategic context, decision makers at all levels are not informed of the basis or significance of ensuing controls resulting in inefficient decision making processes.

Previous reviews of the planning system have aimed to address these issues but have focussed on streamlining the ‘plan making’ process not on setting a strategic context within which planning and investment decisions can be readily communicated and made.

While past strategic plans have provided policy and actions, they have not included clear responsibilities and delivery mechanisms. Also, they have not been tied to a costed and funded infrastructure delivery plan.

The Government is committed to addressing these challenges by placing a greater emphasis on integrated strategic planning in the new planning system.



# 5

## CHANGE 5

# NSW Planning Policies

The NSW Government proposes to streamline and simplify the way in which state development controls and policy guidance is provided. All *State Environmental Planning Policies (SEPPs)* and *Section 117 Directions* will be repealed and replaced with a succinct series of *NSW Planning Policies*.

The current system of State Government planning controls and directions is cumbersome and can be complex for many users of the planning system. Existing *State Environmental Planning Policies* and *Section 117 Directions* do not provide a clear and simple articulation of the Government's policy objectives in key areas.

*'SEPPs in particular have played a significant role in the delivery of planning policy in NSW and have been a major source of conflict and confusion.'*

— *Local Government and Shires Association*

## The Independent Panel recommends rationalising state level controls

The Independent Panel identified the need to change the way that state level planning controls are established and administered. The *Independent Review* includes the following recommendations:

*'A review is to be undertaken of the present range of State Environmental Planning Policies to determine which policies should be retained.'*

— *Independent Panel, Recommendation 15*

*'After the completion of the review, those controls that should remain and which cannot be incorporated in a digitally mapped form are to be collapsed into a single well indexed document to be known as the State Development Controls'*

— *Independent Panel, Recommendation 17*

While there is considerable merit in rationalising state controls and consolidating those policies to be retained into a single document, the NSW Government believes that a new approach is required to bring the process of articulating state planning objects in line with leading practice.

## International best practice is to consolidate state planning policies

The *International Review of Best Practice in Planning Law* evaluated the current *State Environmental Planning Policy* approach. It noted that many of the *State Environmental Planning Policies* have competing priorities and are overly complex. It is also noted that there is a need for the State to provide leadership and policy guidance regarding issues of significance in implementing the planning and development agenda of the NSW Government.

*'Best Practice for Consolidating State Policies is to combine policies into one document as much as possible and reduce its size.'*

— *Leslie Stein*<sup>6</sup>

## NSW Government proposed reforms

*NSW Planning Policies* will be introduced to provide plain English, clear and practical high level planning direction for key policy areas which are of interest to the state. These policies will provide the policy setting and framework for planning outcomes to be delivered in regional, subregional, and local plans.

The policies will guide spatial and sectoral planning outcomes in key areas such as:

- **Housing Supply and Affordability**
- **Employment**
- **Biodiversity Conservation**
- **Agricultural Resources**
- **Mining and Petroleum Extraction**
- **Coastal Management**
- **Retail Development**
- **Tourism**
- **Regional Development**
- **Infrastructure**

### CASE STUDY

#### INTERNATIONAL COMPARISON

### UK National Planning Policy Framework

The *National Planning Policy Framework* came into force in March 2012 in England. This was in response to a specific commitment by the new UK Government to streamline the planning system.

Previously, a complex system of Planning Policy Guidance Notes, Planning Policy Statements, Circulars and other guidance applied at the national level. This comprised some four thousand pages of guidance documents and was widely regarded as being cumbersome and overly complex.

The body of the new *National Planning Policy Framework* is 47 pages of succinct policy guidance. This document sets out the UK Government's planning policies for England and how these policies should be applied. The framework is explicit in stating that these represent the totality of the Government's requirements for the planning system to the extent that they are 'relevant, proportionate and necessary'. All the former guidance documents have been repealed.

There will be a limited number of state level planning policies (approximately 10–12) which will:

- be updated and approved by Cabinet as required to reflect the NSW Government's policy
- provide a statement of policy principle outlining the Government's policy setting and priorities for how planning will deliver outcomes across the State for particular sectors
- not be statutory planning instruments in themselves but will be identified in the *Act* and given effect through the development of strategic regional, subregional and local plans
- be developed in consultation with the community and stakeholders.

Where existing *State Environmental Planning Policies* include important development control provisions these controls will be collapsed into *Local Land Use Plans* and associated development standards and guidelines or adopted in the development of the relevant *Subregional Delivery Plans*.



## CHANGE 6

# Regional Growth Plans

The NSW Government is proposing to strengthen regional level strategic planning with an improved evidence base, strong links to infrastructure delivery, increased community and stakeholder engagement, and performance based implementation.

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The NSW Government currently undertakes metropolitan and regional strategic planning through a series of plans and strategies including:

- **Sydney Metropolitan Strategy**  
currently being reviewed
- **Regional Strategies**  
currently prepared for eight of 14 regions across NSW
- **Draft Strategic Regional Land Use Plans**  
currently prepared for the Upper Hunter and New England—North West.

### International best practice for measuring success of plans

The *International Review of Best Practice in Planning Law* found that in relation to plan making:

*'Best practice is to create specific indicators to measure the success of policies and have periodic reviews of the fulfilment of the expressed goals'*

— *Leslie Stein*<sup>10</sup>

Changes are needed to make sure our strategic plans at the regional level are delivered.

Currently, regional strategic planning is not well aligned with infrastructure funding and this has weakened both industry and community confidence that the regional plans will be achieved. The current plans have also not realistically reflected home buyer and business preferences, which has limited their success in providing guidance for private sector investment.

Previous plans have had poor delivery mechanisms, lacked accountability for performance, and this has been exacerbated by a clear lack of institutional support within Government for the delivery of outcomes within the regional strategies.

Finally, there has been debate over the targets incorporated in existing regional plans that specify the number of new homes and jobs. Rigidly applied housing and employment targets are prone to failure, particularly when supporting infrastructure is not delivered in the required time frame. Detailed investigation is needed to validate the actual capacity of a nominated precinct to accommodate the stated dwelling or employment numbers.

## National reviews recommend regional plans be more facilitative and effective

COAG highlighted the need for mechanisms to ensure that strategic plans are delivered. In their review of the strategic planning undertaken to date for Sydney, COAG found:

*‘The system contains strong planning and policy content, however, it lacks the hard-edged accountability, performance and implementation measures to drive these policies.’*

—COAG Reform Council<sup>8</sup>

The Productivity Commission advises that planning at a regional level should focus on being facilitative, rather than prescriptive about how growth will occur over time.

*‘Plans need to be regularly updated because the elements that underlie them—such as demographics, population growth and social and political goals—are constantly changing and it is a rare plan which accurately predicts these changes.’*

—Productivity Commission<sup>9</sup>

## Independent Panel recommends cumulative impacts be addressed in strategic plans

The Independent Panel made the following recommendations in relation to strategic planning processes:

*‘Strategic planning processes are to investigate the cumulative impacts of presently operating and approved development, both within and outside the footprint of the strategic planning area, which are contributing directly to impacts within the strategic planning area.’*

—Independent Panel—Recommendation 12

*‘In the designation of areas for future development, the processes are to take into account in the designation of areas for future development the potential to add to the existing and likely future cumulative impacts within that strategic planning footprint.’*

—Independent Panel—Recommendation 13

The NSW Government agrees with these recommendations and is going further to ensure that good strategic planning at a metropolitan and regional scale is supported by infrastructure and reinforced by a plan for implementation.

## NSW Government proposed reforms

The new *Regional Growth Plans* will provide the principal direction on how the Government expects a region to grow over a 20 year period. The delivery of *Regional Growth Plans* will be supported by the inclusion of clear accountabilities for delivery of actions, links to funding for infrastructure, performance measures and annual reviews of performance.

It is proposed for the *Regional Growth Plans* to incorporate the following key components:

- a broad spatial planning framework to guide regional growth over a 20 year period based on goals and targets within *NSW 2021—A Plan to Make NSW Number One*
- a range of population growth scenarios with the current rate of population growth to be used as the baseline
- the use of market and feasibility data to determine the likely pattern of development in the future
- policy objectives, priorities and 10 year growth targets for subregions to guide the future preparation of *Subregional Delivery Plans*
- spatial interpretation of planning outcomes required to support growth, based on the *NSW Planning Policies*
- detailed key actions required to provide for housing supply and affordability, employment, urban renewal, natural resources, biodiversity conservation and other areas of regional focus
- a consideration of cumulative impacts in setting the parameters for growth and change
- alignment between future land use changes and the planning and programming of infrastructure and services
- clear accountabilities for delivery and annual reporting of performance including implementation of actions
- a requirement for review every five years.

In particular, the NSW Government will strengthen strategic planning efforts to facilitate growth in regional and rural NSW. *Regional Growth Plans* for these regions will be a priority in the roll out of the new planning system.

The *Regional Growth Plans* will be referred to in the new Act, but will not be statutory instruments. The Act will include (amongst other things) provisions for:

- making, reviewing and updating *Regional Growth Plans*
- scope and content of the Plans
- the metropolitan area and the regional boundaries
- a whole of government integrated framework
- involvement of the community, Local Government and stakeholders
- coordinated implementation
- the process for measuring and reporting performance against achievement of the Plan.

It is proposed that *Regional Growth Plans* identify accommodating scenarios based on a validated set of development capacities. Targets or allocations could then be expressed as a range, with infrastructure dependencies clearly identified. These targets or allocations must be clearly evidence based. The process of deriving targets needs to be collaborative involving relevant State Government agencies and the applicable local councils. Once these targets have been agreed and adopted into subregional delivery plans and local land use plans then the plans and instruments can be interpreted by the market with some confidence. However, they also need to be flexible enough to accommodate change or adjustment as required.

## CASE STUDY

### Addressing cumulative impacts and natural resource planning

It is at the *Regional Growth Plan* level that we can best plan for the conservation and sustainable management of the State's natural resources and can consider cumulative impacts of development.

Under the current planning system, the complex trade-offs between the many elements for consideration is often left until the later stages of the planning process. At the DA stage the options for achievement of multiple outcomes are more limited and it is difficult to assess cumulative impacts. The NSW Government supports the recommendation of the joint submission from the Nature Conservation Council, Environmental Defenders Office and the Total Environment Centre to integrate environmental considerations and natural resource management much earlier in the planning system.

As noted in their submission:

*'There are wide benefits in prescribing a clear legislative framework for strategic planning that includes environmental assessment and public participation. These benefits include:*

- long-term sustainability of a region
- acceptance and support of local communities
- early assessment of land use suitability and identi-

*fication of areas for urban development*

- agricultural land and environmental conservation areas
- improved assessment of cumulative impacts, and
- reducing costs in the long term by pre-empting intractable land-use conflicts and court challenges'

In the new planning system natural resource management will be integrated with land use planning through:

- A clear *NSW Planning Policy* focused on the achievement of natural resource outcomes
- Spatial interpretations of high level principles and targets for environmental outcomes at the regional scale, which is underpinned by a strong and shared evidence base to inform strategic regional planning
- *Subregional Delivery Plans* will put into action how those principles and targets will be achieved in that context
- Translation into statutory provisions in the local plan and guiding local decisions.

Sydney's drinking water catchment lands are a good example where this new approach would offer significant benefits.



## CHANGE 7

# Subregional Delivery Plans

The NSW Government is proposing to fundamentally transform the role and function of subregional planning to ensure the effective and timely implementation of strategic planning at the local level.

*Subregional Delivery Plans* will be the new transformative delivery tool for high growth areas in NSW by:

- directly rezoning land in key areas, avoiding where possible the need for local plans to be separately and continuously amended
- providing a framework for code based assessment in key areas for subsequent development
- consolidating NSW Government agencies requirements for development in the subregion in a timely manner thereby reducing subsequent referral and concurrence requirements
- linking subregional planning to infrastructure planning and delivery, ensuring that communities that are planned to grow can expect support through infrastructure investment.

*Subregional Delivery Plans* will also be informed by a consideration of the economic and market drivers of investment.

Under the existing planning system, a key challenge is that statutory planning controls at the local level do not always reflect the strategic planning done at the regional level resulting in complexity for practitioners of the system and inconsistent planning outcomes. If the lag between the introduction of a new Metropolitan or Regional Strategy and the update of a local plan is too long, the value of the strategy in providing a reliable guide for growth and investment is diminished.

For example, the *Metropolitan Strategy for Sydney: City of Cities—A Plan for Sydney's Future* was first released in 2005 and provided guidance on the growth of Sydney over a 25 year period. Nearly seven years after its introduction, the majority of *Local Environmental Plans* in the Sydney region still do not reflect the *Metropolitan Strategy*. This is also true in regional areas, with considerable lag times between *Regional Strategies* being prepared and *Local Environmental Plans* being updated to reflect the strategic planning.

*'The lack of clear nexus between strategic and statutory plans leaves NSW highly exposed when attempting to plan for and manage urban growth.'*

—*NSW Business Chamber*

## International best practice effective state intervention for growth areas

The *International Review of Best Practice in Planning Law* found that priority should be given to funding infrastructure projects in growth areas. Development is not restricted outside these growth areas but state funding will not be available thereby creating an incentive for localities to drive growth in established or identified growth areas.

*'Give priority funding to projects in established areas (for infill) and also the nominated growth areas.'*

—*Leslie Stein*<sup>7</sup>



## NSW Government proposed reforms

*Subregional Delivery Plans* will provide the implementation mechanism for the objectives and priorities outlined in the *Regional Growth Plans* and will be the key to guaranteeing consistency between strategic planning and local land use plans.

*Subregional Delivery Plans* will be the principal planning tool for effecting land use change and for the setting of development parameters and criteria within a region. They will be prepared for areas within Metropolitan Sydney and growth centres within the Hunter and Illawarra. Additional subregions will also be identified in areas of change.

The *Subregional Delivery Plans* will:

- determine the distribution of the targets defined in *Regional Growth Plans* (e.g. housing affordability and growth, employment, retail, environment protection) taking into account the state of the market and development feasibilities
- identify the required supporting infrastructure and inform the preparation of a *Growth Infrastructure Plan* (refer to Change 17 for further detail) for the subregion
- identify key growth centres, precincts, and corridors which will be required to support increased growth

- identify key biodiversity conservation areas/ corridors, environmental protection or prime agriculture land to be protected
- identify priority growth areas where change is key for delivery of the *Regional Growth Plan*. For each priority growth area, provide the necessary planning framework to facilitate its delivery.
- rezone key areas and provide for streamlined assessment of development in these areas
- provide for integrated approvals in line with development parameters and guidelines.

## State of Maryland

### Reflecting strategic planning objectives in local controls

Unlike most systems where there is a growth management plan that simply overrides local plans, the State of Maryland has developed a more effective system under the Maryland's *Priority Funding Areas Act* that provides for the flow of State funds for 'growth related projects' to existing communities and areas where growth is planned if the areas meet criteria for residential density and other matters relating to infrastructure.

Development is not restricted outside these growth areas but State funding is not available therefore creating an incentive for growth to occur within existing communities.

It has been found that the greater the State subsidy of a project under this system, the more likely the local authority will comply with the State initiative.<sup>11 & 12</sup>

### Community participation in strategic planning

One of the principal aims of the new planning system is to shift community participation to the strategic planning stage of the development process where communities will have a real opportunity to influence how their area will grow and how change will be accommodated.

The current approach to strategic planning performs poorly in this respect.

The new *Subregional Delivery Plan* process will ensure that subregional planning translates to outcomes on the ground and therefore provides a genuine opportunity for communities to shape the growth of their local areas.

### Empowering councils in subregional delivery planning

The *Subregional Delivery Plan* framework will provide opportunities for local councils to work with their communities to propose strategic planning solutions they most prefer to deliver regional growth outcomes.

A possible approach to consider is for councils within a subregion to 'trade' their allocated growth requirement between them to meet growth outcomes. Some councils may be eager to accommodate more growth and thereby share in the benefits that this can bring. Alternatively other communities may wish their council to plan for a smaller share of housing supply and employment opportunities, in turn accepting a smaller share of new infrastructure investment from the State Government, and the prospect of lower economic growth in their areas.

The *Subregional Delivery Plans* will be supported by a strong evidence base and detailed infrastructure planning.

*Sectoral Strategies* will be prepared for each of the drivers of growth in the subregion and will form part of the *Subregional Delivery Plans* to enable a more outcome based plan. *Sectoral Strategies* will be highly evidence based and will provide the basis for integrated zoning and development criteria wherever applicable. These could range from land release and housing precincts in urban areas, to major employment generating uses within a subregion. *Strategic Regional Land Use Plans* are proposed to become *Sectoral Strategies* given they largely cover sectoral issues.

*Growth Infrastructure Plans* will be a component of the *Subregional Delivery Plans*. These will be integrated and funded infrastructure plans agreed by the NSW Government (more detail is provided in Chapter 7).

The key benefits of the new subregional planning approach is that the NSW Government will work together with local councils to ensure that the key strategic planning objectives and key local matters are reflected in statutory planning controls effective immediately upon approval of

the *Subregional Delivery Plans*. This will provide greater certainty for the community and investors regarding how an area will grow over time.

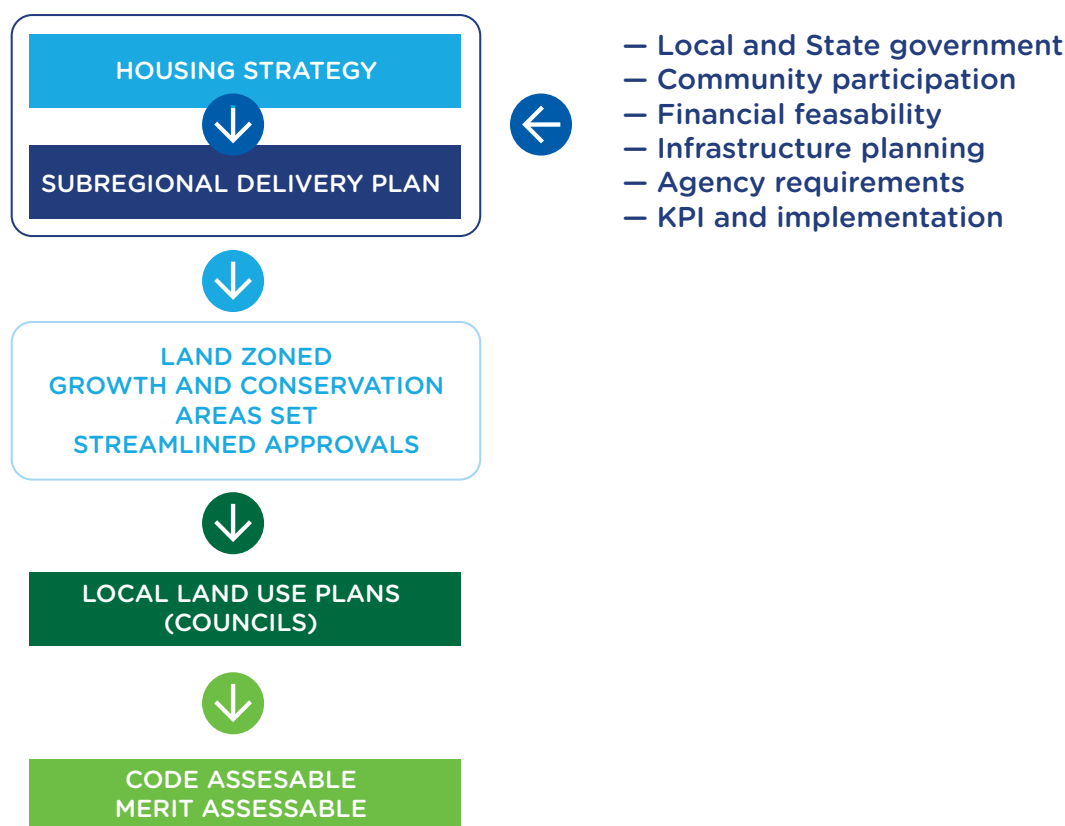
The preparation of the *Subregional Delivery Plans* will be informed by the *NSW Planning Policies* and the applicable *Regional Growth Plan*. The way each subregion chooses to meet its obligations under these higher order plans will be determined by a Regional Planning Board with input from communities and reflecting home buyer and business preferences.

In particular the *Subregional Delivery Plans* will account for cumulative impact considerations and other opportunities to secure conservation areas/corridors within a strategic context hence substantially improving biodiversity and ecological protection. This will avoid land use conflicts or offsetting mechanisms that add no value or are poorly derived.

*'The movement towards cooperation and consensus and away from schemes that are only regulatory and impose State control is a fundamental feature of modern European and North American planning.'*

—Leslie Stein





**FIGURE 8** HOUSING DELIVERY UNDER THE NEW PLANNING SYSTEM

Local councils will be placed at the centre of the *Subregional Delivery Plan* process, in partnership with each other, and working together with State agencies, key stakeholders and their communities to cooperatively develop the plans. Communities themselves will have greater opportunities to participate in this process. There will be community reference groups for each subregion during the process and the community will be encouraged to put themselves forward to participate in those groups.

The Regional Planning Boards (discussed further under Change 21) will comprise:

- An independent chair
- Key stakeholders with relevant experience
- The General Manager or Director of Planning of each of the Local Government Areas within the subregion
- Senior representatives of NSW Government Departments including Planning and Infrastructure, Transport, DTIRIS, Office of Environment and Heritage, and Infrastructure NSW.

The preparation of *Subregional Delivery Plans* will require resourcing and will be given the highest priority within the Department of Planning and Infrastructure. It is anticipated that *Subregional Delivery Plans* for all identified subregions be completed within two years of the introduction of a *Regional Growth Plan*.

Importantly, local communities will be engaged in the development of *Subregional Delivery Plans*. Local councils within the subregion will lead the engagement with their local communities to determine how growth and change (identified in the *Regional Growth Plans*) should be accommodated.

The subregional delivery plan process will focus the community's attention at the early stages of the strategic planning process where real change can be effected. The fact that these plans will translate to real changes on the ground (through zoning, infrastructure provision etc.) will provide a real incentive for communities to be engaged and to consider how their area will accommodate growth within the overall subregional context.



## CHANGE 8

# Simplifying Local Land Use Plans

The NSW Government proposes to reform local planning by moving away from rigid development controls to local plans that provide strategic context and deliver fast, merit-based planning decisions and strategically based development standards and guidelines.

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Existing *Local Environmental Plans* are rigid statutory instruments with development controls that often lack strategic context. Their lack of flexibility and responsiveness to change, and the lack of consideration of unintended financial impacts of decisions (e.g. house prices and retail competition), has meant that in many cases they have inhibited the achievement of good planning outcomes and have been unable to accommodate innovation to the detriment of local communities. Key issues in relation to the existing *Local Environmental Plans* are:

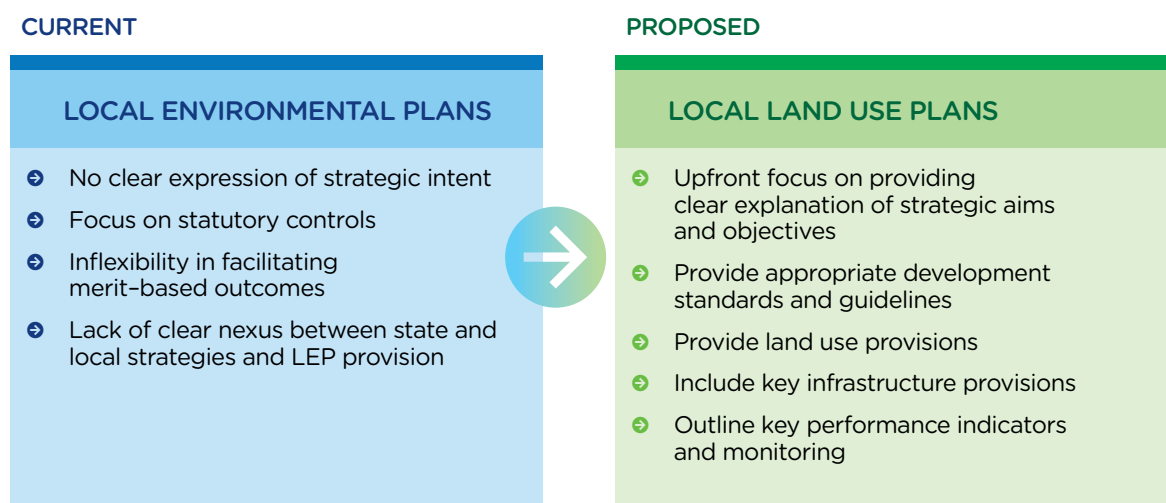
- lack of clear link between the strategic intent and statutory planning controls
- lack of consistency with, and clarity of, state and regional strategies or priorities
- narrow focus on measurable development controls (e.g. heights, floor space ratios) rather than merit-based planning outcomes
- the time and resources taken to prepare including even minor amendments to existing instruments and resultant impact on investment decisions (opportunity loss). Around 109 amendments to *Local Environmental Plans* are currently processed every year in NSW
- the lack of technical basis or justification for many of the existing controls
- time delays and resources taken up in referrals and concurrences on *Local Environmental Plans* to a multitude of government agencies for little benefit.

In addition the ever increasing use of planning controls within *Development Control Plans* adds another layer of complexity and regulation which has further exacerbated dysfunctions in the system.

A number of previous reforms have attempted to incrementally address some of these issues. Notable reforms have included the introduction of a gateway process to improve upfront certainty regarding *Local Environmental Plans* preparation and amendment and the imposition of statutory time frames. The most significant reform was the introduction of the Standard Instrument *Local Environmental Plans* with the adoption of standard land use definitions.

While the above reforms have been appropriate, the NSW Government now proposes to take the reform of local planning further.

**FIGURE 9** PROPOSED CHANGES TO LOCAL ENVIRONMENTAL PLANS



## Independent Panel recommends greater consistency between plans

In relation to local planning the *Independent Review* recommended:

*The proposed Sustainable Planning Act is to require that Local Land-Use Plans must be consistent with relevant strategic plans.*

—Independent Panel, Recommendation 11

The NSW Government agrees with this recommendation and the new integrated hierarchy of strategic plans will ensure that regional and sub-regional planning is given effect at the local level.

## International best practice for local planning

The *International Review of Best Practice in Planning Law* (supplement) notes the need to provide a strategic context to planning controls.

The most significant problem with a system of development control is that decision makers do not know the intention of the plan makers except by interpretation of the regulatory instruments and policies. As the regulatory instrument is fundamentally one of restriction and control, it is not a fulsome explanation of the basis of planning for a locality.

*‘The best practise examples of local planning provide as much information for the decision makers as possible as to the reason for the regulatory controls and the vision for the area and its interrelationship with the region. The only means to do this is to make this planning process and its outcomes part of decision making. In the US, Canada and most of Europe this is accomplished by giving the strategic, spatial plan primacy and making the regulatory controls the consequence of the plan and not the basis for the plan.’*

— Leslie Stein<sup>13</sup>

In addition the *International Review* advises on best practice for state intervention in local planning:

*‘Explain in the legislation in clear terms the responsibilities of the State, any named agency, and local governments.’*

— Leslie Stein<sup>14</sup>

There is a sliding scale internationally as to the degree of state intervention in local planning ranging from a completely imposed state regime to one where there is absolute local autonomy.

As there is no ideal balance between State intervention and local autonomy, the best practice appears to be to explain in the Act exactly what arrangements are contemplated and why, when the State will intervene, when the local authority has autonomy.

## NSW Government proposed reforms

*Local Land Use Plans* will become plain English spatial land use plans that reflect the State, regional, and local priorities for growth and community expectations.

The changes proposed are:

- an upfront focus on providing a clear explanation of the strategic intent of the plan to facilitate growth, including the desired development outcomes to meet state and local planning objectives
- integration of future land use and local infrastructure provision
- guidance on desired development standards, with a focus on merit based assessment
- full delegation to councils to undertake amendments to plans that are consistent with *NSW Planning Policies*, applicable *Regional Growth Plans* and *Subregional Delivery Plans*
- no concurrence and referrals as key issues will be addressed at the regional or subregional level (except in exceptional circumstance)
- provisions to ensure performance is monitored
- allowing for development that is consistent with the strategic plan to proceed in a timely and straightforward manner, and development that seeks to exceed base standards can still be approved based on its merits in the context of plan objectives.

*Local Land Use Plans* will comprise four parts: a strategic section, a statutory spatial land use plan, a section on delivery of infrastructure and services and finally a section providing development guidelines and performance monitoring requirements.

The strategic section within the *Local Land Use Plans (Part A)* will be comparable to the existing approach to *Community Strategic Plans* which are currently prepared by councils. The existing *Community Strategic Plans* set high level objectives for land use planning that are translated into zonings in the *Local Environmental Plan*. *Community Strategic Plans* will, as applicable, provide the necessary input and if necessary be adjusted to reflect the strategic intent.



**FIGURE 10** INTEGRATION OF LOCAL GOVERNMENT PLANNING WITH THE NEW PLANNING SYSTEM

## Strategically focussed development guidelines and standards

The *Subregional Delivery Plans* and the *Sectoral Plans* will set the applicable development parameters and criteria. These will be translated in the *Local Land Use Plans*, as the relevant development controls and guidelines for development assessment. This approach is more appropriate than the current practice of defining controls that often lack evidence based foundation.

The legislative scheme should provide for development controls and standards to be clearly applied by way of guidance. The current practice of implementing *Development Control Plans* as statutory instruments results in lack of flexibility and can inhibit viable outcomes. The complexity and layering of the controls combined with their inflexible application increase compliance costs and stifle innovation. Non-compliance with the controls should not be construed as prohibition. A merit assessment of the development proposals should be undertaken to fully justify the basis of non-compliance. This approach is consistent with the recommendations of the *Independent Review*.

The Government's clear intent for this area of development assessment is that guidelines should facilitate outcomes desirable to the market, not dictate solutions that preclude choice and flexibility. Development guidelines will guide development through merit assessment but will not mandate a result.

Standards will not be applied inflexibly during the assessment. The guidelines will provide a context for the development of proposals and a context for their merit assessment. Development guidelines will focus on performance based outcomes and will not merely be a compendium of rules. Moving towards a performance based approach will make development guides simpler, clearer and easier to navigate than many development control plans are today.

The guidelines will allow alternative design solutions and will encourage proponents to innovate when formulating a development proposal. Development guidelines may contain prescriptive standards where those provisions are 'deemed to satisfy' a performance based outcome. If a proposal does comply with a prescriptive standard in a guideline or is an acceptable alternative solution then the proposal will get a tick on that issue. This cannot be revisited.

Unlike development control plans, development guidelines will be fully integrated within the *Local Land Use Plan*. There will be much better linkages between the provisions of the development guidelines and the other parts of the Plan. The guidelines will be instrumental in implementing the strategic, spatial and infrastructure and services components of the Plan.

### LOCAL LAND USE PLANS

PART A Strategic	PART B Spatial Land Use Plan	PART C Infrastructure and Services	PART D Development Guidelines and Performance Monitoring
<p>This part will provide:</p> <ul style="list-style-type: none"> <li>a clear, simple, plain English explanation of the strategic framework that the plan is trying to implement. It will reflect:</li> <li><i>NSW Planning Policies</i> <ul style="list-style-type: none"> <li>—regional (including metropolitan) and subregional planning outcomes</li> <li>—Local council strategic direction</li> <li>—Community expectations</li> <li>—concise statements on the desired planning and development outcomes to be achieved across the local government area</li> </ul> </li> </ul> <p>This part will draw on the existing <i>Community Strategic Plans</i> prepared by councils</p>	<p>This part will provide:</p> <ul style="list-style-type: none"> <li>Standardised zoning based on a reformed more flexible standard instrument</li> <li>Local land use allocation to reflect strategic planning</li> </ul>	<p>This part will provide:</p> <ul style="list-style-type: none"> <li>An outline of infrastructure (local, regional and State) to be provided to support development including timing and delivery mechanism</li> <li>This part will be closely linked to the local infrastructure funding plan</li> </ul>	<p>This part will provide:</p> <ul style="list-style-type: none"> <li>All necessary guidelines/performance measures for development. Development guidelines/performance measures will inform and provide context to assist in the assessment of development proposals</li> <li>Provisions for code assessable development</li> <li>Key performance indicators and monitoring requirements to assess the Plan's performance in achieving the planning and development outcomes articulated in Part A</li> </ul>

FIGURE 11 PROPOSED STRUCTURE OF LOCAL LAND USE PLANS

# 9

## CHANGE 9

# New zones and greater flexibility within zones

The NSW Government proposes to introduce three new zones:

- **Enterprise Zone** to capture investment opportunities
- **Future Urban Release Zone** to indicate future use prior to programming infrastructure investment
- **Suburban Character Zone** to give greater certainty in areas where the local community want to preserve local character.

### Three new zones are proposed to address problems with the current zoning framework

Firstly, the current approach can have the effect of inhibiting innovation and investment with the process for changing land uses through an LEP time consuming, difficult to navigate and inefficient. Zoning which allows a broad range of uses and which encourages innovation has not been readily embraced by the NSW planning system to date. Previous efforts to capture one off investment opportunities have focussed on bypassing existing inflexible local planning controls. Understandably, these attempts have proven unpalatable to councils and their communities. A new zone is needed which prevents innovative development from being stifled by over regulation or restrictive development control practices.

Secondly, the current practice for future urban release area planning requires that zone boundaries for the release area be identified at the initial rezoning process for the first stage of the development. Many release areas develop over extended periods of time and decisions in relation to the location of local centres, and higher density areas can change in response to market preferences and requires a statutory zone boundary adjustment or spot rezoning.

Under the new planning system, high priority growth areas in a Council area, including urban release areas will be zoned at the subregional planning stage. The result is that some future urban release areas will be zoned, but not yet ready to be developed for housing. An interim zoning is

required to indicate the future use, but not commit the Government or Council to programming infrastructure investment until appropriate.

Finally, there are many complaints from community members about the impact of new development on the existing local character of a suburban area. The current zoning framework includes a low density residential zone, but legally provides for development opportunities that community members believe negatively impacts on the character of an area. There is a need for a new zone that gives greater certainty about what can and can't be developed in an area the local community want to preserve because of the importance of the urban character.

### International best practice is to indicate what the zone is like and how it operates

The *International Review of Best Practice in Planning Law* considered the best way to express goals in the planning scheme:

*'Best practice is to explain the goals for the area in a narrative form and to include illustrative maps to indicate what the zone is like and how it operates.'*

— *Leslie Stein*<sup>15</sup>

In the United States, many zoning ordinances (the regulatory part of the comprehensive plan) explain in narrative form the reason for the zone and the goals that are to be achieved, drawing from a summary of the comprehensive plan or elaborating on



specifics for particular districts. This is in addition to the details for the area in the comprehensive plan. This has the advantage of explaining the purpose of the zoning and the goals for each area when the zoning ordinance is read.

## NSW Government proposed reforms

### Greater flexibility within zones

In its benchmarking report on zoning, planning and development assessment, the Productivity Commission notes that the prescriptiveness of particular zones should be reduced, with the objective of limiting incompatible uses and allowing greater scope for complementary uses to develop

and compete. In practice, this approach should facilitate new retail and commercial formats to locate in business zones provided there are no major adverse impacts, and would provide more flexibility for residential developments to respond to changing preferences.

The zoning framework in the new planning system will provide greater flexibility to provide for a broader range of uses within a prescribed zone. This approach will allow a larger number of compatible land uses to be undertaken in a particular area with limited regulatory requirements, while segregating out those activities that are truly incompatible.

### Enterprise Zones

To proactively provide for innovative investment and to boost employment generation, the NSW Government will introduce a new land use class called an 'Enterprise Zone'. *Enterprise Zones* will be characterised by very little, if any, development controls providing they do not result in any significant adverse environmental impacts. Enterprise zones will generally be targeted to attract employment generating development but could provide opportunities for mixed use housing investment. In this regard, Enterprise Zones will constitute a more flexible zone.

The designation of *Enterprise Zones* will need to be consistent with the *NSW Planning Policies* and is not to compromise other state or local policy objectives. In addition to reduced regulation, additional incentives could be utilised to attract investment to an *Enterprise Zone*. Some financial incentives could include:

- Local rate or land tax relief for a prescribed time frame
- Exemption from development levies, and/or
- State or Local Government investment in infrastructure provision or the like to support the area.

It is envisaged that Enterprise Zones could be identified through *Regional Growth Plans*, *Subregional Delivery Plans* or through *Local Land Use Plans* and would be given effect by a zoning change. Local government and community support would be fundamental to the success of this initiative. Enterprise zones could vary in size from precincts (e.g. North Ryde, North Eveleigh, Norwest Business Park) to whole local Government areas that are eager to attract investment in employment.

### Future Urban Release Area Zone

The new planning system will provide greater flexibility for a Council to identify an area as a future urban release area without having to detail zone boundaries for the future land uses at an early stage in the process.

It is proposed to introduce a *Future Urban Release Area Zone* for growth areas that have been identified by the Council. This will provide a clear indication of a Council's intention to provide housing in designated greenfield locations over time, but does not necessarily require immediate infrastructure coordination and delivery.

The process of identifying future urban release areas will also provide greater certainty for industry and the community about where growth is likely to occur.

### Suburban Character Zone

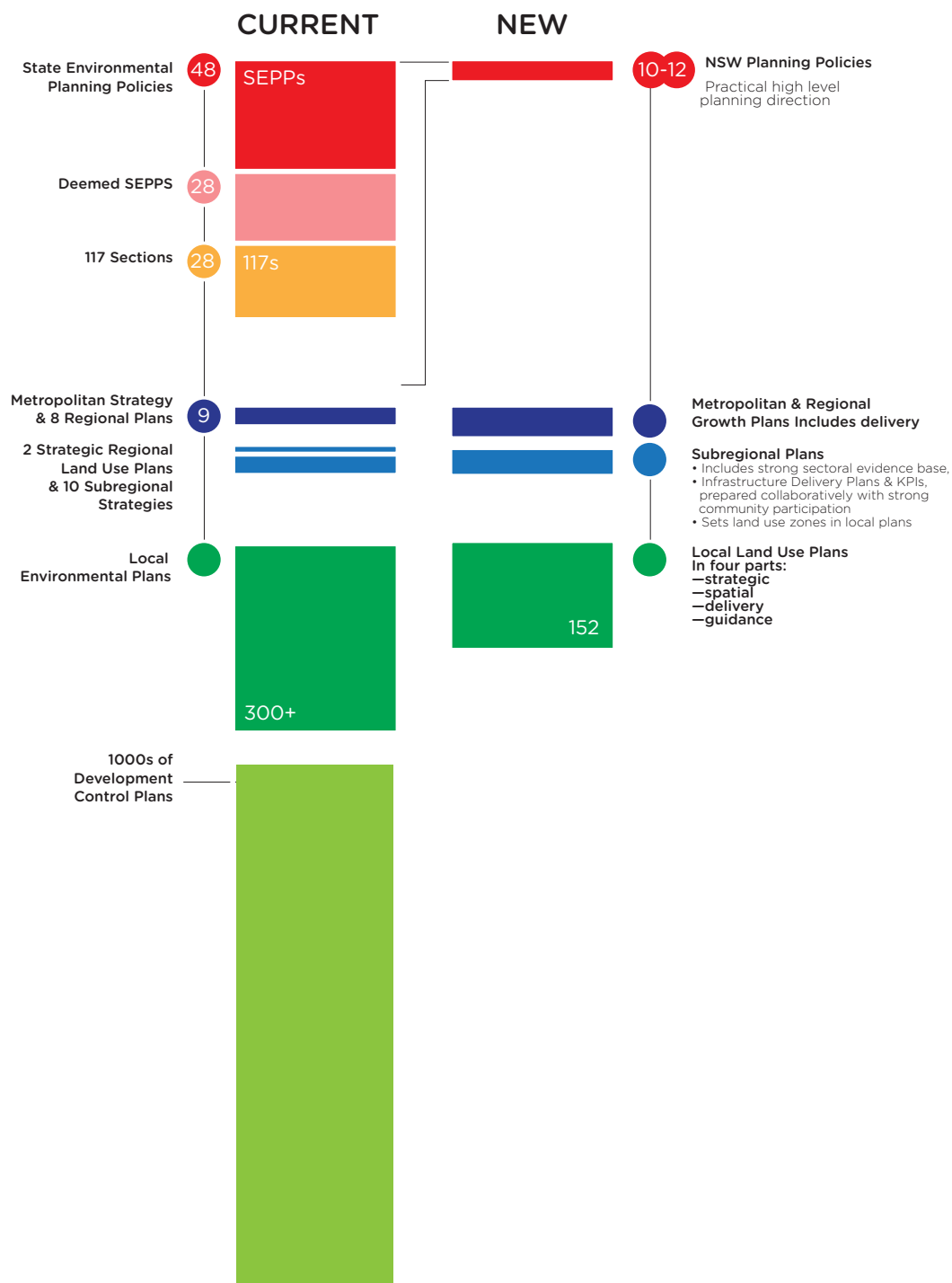
While the NSW Government's agenda is to increase the supply and diversity of housing opportunities, the planning system should also provide for urban outcomes that reflect the whole community's priorities and values.

There may be some locations within a local government area that the Council and the whole community want to preserve because of the proven significance of the urban character or because of its established development patterns and amenity. The NSW Government is proposing to introduce a *Suburban Character Zone* that can be applied to an area that will explicitly preclude development that adversely impacts on the local character.

Many landholders are supportive of planning controls that restrict development in particular areas, but also recognise the inherent value in development potential that a zoning on their property can provide. However, if there is clear evidence in support for the character of an area to be preserved, Council will have the capacity to apply a zone that will ensure the preservation of the character of that area by excluding medium or high density development.

The proposed shift to subregional planning to provide a strategic approach to delivering housing and employment opportunities will mean that some areas may not be required to support adverse increases in housing density. The introduction of a *Suburban Character Zone* can give greater certainty about what can and can not be developed in an area that has been designated for preservation.

FIGURE 12 REDUCING COMPLEXITY AND DUPLICATION IN THE HIERARCHY OF PLANS





# 6

## DEVELOPMENT ASSESSMENT & COMPLIANCE

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Development that is consistent with the strategic plan will be able to proceed in a timely and straightforward manner, and other development will be assessed on its merits against strategic outcomes. Code complying development will be maximised and where more detailed assessment is needed, the level of assessment will match the level of impact.

A significant shift is required in how we undertake development assessment in NSW to successfully meet the challenges of promoting economic competitiveness, managing growth and change, and improving people's quality of life. Development assessment in NSW is too complex, too lengthy, too process-driven, too detailed and too adversarial.

*'Development assessment should generally be led by strategic planning, not lead it. This creates certainty and consistency at the assessment stage for developers and communities.'*

*— Planning Institute of Australia*

Good development assessment processes are characterised by rules and processes for approval which are clear and predictable. It is equally important that the extent and type of assessment that is carried out reflects, and is proportional to, the complexity of the proposal, its environmental impacts, and the level of public interest in the proposal. The new planning system must stream the assessment of proposals into tracks based on the environmental, social and economic significance of the proposal.

The 'transformative ideas' for development assessment and compliance, outlined over the page, seek to make demonstrable changes to the way a planning approval may be obtained in NSW. The key ideas are aimed at providing certainty and clarity to the system so that an applicant knows what the assessment path will be, what the requirements for lodgement and assessment will be and who will determine the application. Many of the concepts will have added improvements which are not outlined in detail.

The NSW Government proposes transformative changes for streamlined development assessment within the new planning system:

**Depoliticising decision making** so that decisions on development applications are made based on evidence by independent expert panels.

**Strategic compliance** to reduce costs and speed up delivery of development that is consistent with strategic planning including:

- Introducing a strategic compatibility certificate so that good development, implementing metropolitan or regional strategies can be considered straight away, before the local land use plan catches up
- Providing that councils and other consent authorities cannot refuse a proposal that complies with detailed building envelopes and standards developed through subregional planning—code assessment with any remaining components to be merit assessed by the consent authority.
- Removing concurrences through strategic planning by:
  - switching off concurrences and referrals in the local land use plan once regional or subregional strategic planning is complete
  - integrating the assessment of regional development in the same way as State significant development—removing the need for separate agency approvals by involving the agencies in the single, timely, comprehensive assessment
  - allowing Councils to deem State agency approvals in accordance with standard conditions and guidelines if no response within time frames.

**Reforming State significant assessment** to deliver major projects sooner to drive economic growth:

- By exploring new opportunities for further integration of assessment—including agencies working together in new ways to complete major assessments
- Improving environmental impact assessment processes
- Ensuring State planning principles and state and regional issues are considered, along with local impacts.
- Facilitating strategic level approvals—and tailored assessment for subsequent stages
- Streamlining measures—including matching the level of assessment to the stage of the approval, case management, and standard requirements

**Smarter and timely merit assessment** to promote economic growth through all levels of development assessment:

- Matching information requirements to the assessment stage
- Speedy assessments
- Bringing Joint Regional Planning Panels into the assessment process
- Adopting an amber light approach
- Letting the market bear the risk
- Smart consent conditions.

**Increasing code assessment (complying development)** to reduce transaction costs and speed up approvals:

- Increasing the range of development types that are be exempt from any approval
- Extending the development types that can be approved by accredited certifiers
- Allowing councils to vary standards for specific applications
- Expanding the electronic housing code
- Working with councils, industry and planning and building professionals to make code assessment simpler and more user friendly.

**Extend reviews and appeals** to make government and councils more accountable

- Allow proponents to seek an independent review of a council's decision on whether a rezoning should go ahead
- Allow councils and proponents to seek an independent review of the Department of Planning and Infrastructure's decision on whether a rezoning should continue
- Allow proponents to seek an independent review of the Department of Planning and Infrastructure's decision to issue a *Strategic Compatibility Certificate* or a *Site Compatibility Certificate*
- Ensure more independent post approval reviews.

The current Act has been extensively modified since it was introduced. The result is a convoluted five stream approval system that requires an expert to navigate the relevant parts even for something as basic as the construction of a new house.

Since the most recent reforms in 2008 our stakeholders have been asking for a complete rewrite of the planning legislation and a review of the planning system so that NSW is equipped to drive forward economically, to house its growing population affordably and to deliver badly needed infrastructure in a rational and planned way.

Development assessment in NSW is seen by many as a cumbersome process which adversely impacts on the viability of development and ultimately affordability.

For state significant development, all public and agency submissions should be provided and considered by the Department of Planning and Infrastructure before advice is provided to the Commission. There should be clear processes that inform and allow Ministers and Departments to provide submissions on relevant matters and the agency consultation process should be integrated and streamlined.

## Submissions support a new approach to development assessment

The submissions by stakeholders and the community emphasised the need to rethink key aspects of the development assessment streams.

*'The difficulty inherent in devising a new DA system is to balance the expectations for citizen engagement occurring at the right time, getting the right DA track for the assessment, ensuring that all of the necessary merit and technical issues are considered, ensuring that probity and openness is observed and ensuring that a determination is not delayed by bureaucracy.'*

— *Planning Institute of Australia*

While there are some parts of the system that are working well these parts need to be cohesively integrated into a system that has regard to sound strategic planning and that matches the level of assessment with the level of 'risk' and impact of a development.

## Independent Panel supports leading practice model

The *Independent Review* looked to the work of the Development Assessment Forum (DAF) as well as the recommendations of the Productivity Commission's *Performance Benchmarking of Australian Business Regulations: Planning, Zoning and Development Assessment 2011*.

*'The processes for development assessment that are adopted across Australia have varied widely but there has been a significant degree of convergence over the last decade. Much of this has arisen from studies commissioned by the Development Assessment Forum....The Forum adopted a leading practice model for development assessment in 2005.'*

— *Independent Panel*

The NSW Government proposes that development applications would be streamed into their appropriate assessment 'tracks' that correspond with the level of risk and impact of the development and therefore the level of assessment attention required to make an appropriately informed decision. This is consistent with leading practice model advocated by the DAF and the Productivity Commission.

*'[This approach will] ...both speed up most development applications and release assessment resources to focus on those proposals which are particularly technical and complex or may significantly impact on neighbouring residents or the local environment.'*

— *Productivity Commission*<sup>16</sup>

Consistent with the recommendations of the Independent Review Panel the new planning system will adopt an assessment track approach.

Ultimately the focus of this chapter is to improve the development assessment system so that an application is linked back to the strategic plan and is integrated with the broader context for a region and its cohesive development. Critically, by engaging the community at the strategic phase in the planning process it is possible to achieve outcomes that are truly reflective of what a community considers beneficial to their area.

*'... As a result of better community engagement and consequently better public ownership of the strategic plans, the prospective assessment of any future development in the locality can be undertaken in accordance with the resulting plan.'*

— *Productivity Commission*<sup>17</sup>



## CHANGE 10 Depoliticised decision making

The NSW Government strongly supports a fundamental shift in the planning system that will see decision making on development applications streamed to appropriate, independent, and expert decision makers. State and regional scale development will continue to be assessed by the Planning Assessment Commission and the Joint Regional Planning Panels.

The Government is proposing that all councils follow the lead of a number of major councils in adopting the use of independent experts to determine development applications.

On coming to office, the NSW Government moved swiftly to repeal *Part 3A* of the *EP&A Act*, and implement a new framework for State significant development which ensures that those proposals are determined by the independent Planning Assessment Commission. The Government's reforms to restore independent, transparent, and merit based decision making to state significant development proposals is fundamental to restoring public confidence in the integrity of the NSW planning system.

There have been strong calls from the community and key stakeholders that this approach should be applied for all development proposals in the planning system. There are strong arguments for ensuring that all development proposals, big or small, should be entitled to be judged exclusively on their merits, by those with appropriate expertise, and free from political influence.

A fundamental shift towards this approach was foreshadowed by the now Premier in March 2010,

*'We need a system that allows State and local government the ability to plan ahead for their share of a larger Australia and a larger NSW and to be able to deliver on those plans. And we understand that constraining, or limiting politics, is important in providing this certainty. Development approvals should be determined on the basis of planning rules and merit—not on the vagaries, whims or politics of either councils or State Government.'*

— **Barry O'Farrell**  
*Speech to Property Council of Australia*

Statistics collected annually by the NSW Government on the processing of development decisions reveal that in 2010, only three per cent of development decisions made in NSW were determined by the elected council, and these are generally larger applications with more significant implications for economic growth, and potential to impact the local area. In contrast 84 per cent of all decisions on development applications are made by council staff under delegated authority with almost 13 per cent made by accredited certifiers<sup>18</sup>. This includes minor development applications which account for the vast majority of development activity in NSW.

In the last decade a number of major councils have established independent expert panels to determine development applications including Liverpool, Warringah, Wollongong and Sutherland. These councils have moved the focus of elected councillors from individual projects which must conform to strategic planning policies to the development of the strategic planning policies themselves.

This enables those councils to better reflect their communities' wishes in shaping the future growth of their areas strategically, and not focussing on individual development applications. This is consistent with the reform agenda outlined in this Green Paper. This Green Paper seeks to focus effort on the development of good strategic planning, and to move away from the site specific conflicts that are symptomatic of a lack of good, upfront policy development involving active community participation.

As those councils with independent panels understand, use of independent expert panels also helps remove individual councillors from potential corruption risks which can arise when elected officials are responsible for making decisions on private development proposals. When elected officials are not involved determining development applications they are much less likely to be exposed to lobbying, and political pressures that can influence decision making.

Recently, Lane Cove Council observed in adopting an independent expert panel to determine locally significant development proposals:

*‘Over the past 10–15 years Council has steadily streamlined the determination of development applications by improving processing times, increasing delegations and reducing legal costs.*

*It is now time to consider improving the situation further by the establishment of an IHAP to ensure that those few particularly complex, contentious or Council specific development applications, currently determined by the elected Council, are able to be determined in a non-political environment by a highly qualified expert panel with community representation.’*

*—Report to Lane Cove Council*

To restore public confidence in the planning system and merit based decision making, the Government considers a shift towards independent expert decision making as highly desirable. The Government strongly supports those councils which are already using independent expert panels and encourages all other councils to consider and implement this reform, initiated by local government, in the transition to new planning system for NSW.

The move towards independent expert panels for development decision making reflects a change in community attitudes about how decisions on development should be made and the role of elected councillors.

A survey of over 1000 homeowners across NSW undertaken in 2011 by Auspoll from the Property Council of Australia (*Auspoll for the Property Council of Australia, 2011, Homeowner attitudes to local councils, the planning process and NSW Joint Regional Planning Panels, 2011*) in relation to attitudes towards the local councils and the planning process found that:

- 78 per cent of people want independent experts in charge—and only 22 per cent want local councillors making decisions
- 83 per cent think independent panels keep politics and self-interest out of planning
- 88 per cent agree that independent panels can help keep decisions consistent, transparent and honest.

This shift will involve elected councillors assuming a strong leadership role in engaging with the community and advocating for their policy and planning priorities.

The Government’s agenda for greater involvement from councils in regional and subregional planning will also necessitate more frequent and thorough engagement by the elected councillors with the local community. The shift towards engaging the community to think about planning beyond local government boundaries will depend on strong council leadership. That is best delivered by those people elected to serve the community.

## Independent Panel supports delegated decision making

The *Independent Review* supported the continued role of elected councillors as decision makers but encouraged councillors to delegate decision making to council staff or independent expert panels.

*‘It is recommended that the new planning legislation retain the right of the elected council to make decisions about particular classes of development. However we do consider it important that decisions are made on proper planning grounds and not as the result of populism or political expediency. Thus, it is desirable that decisions are delegated to as often as possible to council staff or to an independent expert panel.’*

*— Independent Panel*



The NSW Government agrees it is desirable for decisions to be evidence based and made by independent experts. One approach to achieve this is for all local and regional development applications to be determined by an independent expert panel or by Council staff under delegation as appropriate and reflective of the level of community interest.

## Hierarchy of decision makers

The delegation of decision making to independent expert panels, council staff and senior officers of the Department of Planning and Infrastructure depending on the level of community interest will be essential to delivering an efficient development assessment system and building greater public confidence in the planning system. The NSW Government proposes development assessment decisions be streamed as follows:

DEVELOPMENT TYPE	DECISION MAKER
<b>State Significant Infrastructure</b> <i>including Public Priority Infrastructure</i>	<i>Minister for Planning and Infrastructure</i>
<b>State Significant</b>	<i>Planning Assessment Commission/Department of Planning and Infrastructure</i>
<b>Regional</b>	<i>Joint Regional Planning Panel</i>
<b>Local</b>	<i>Council General Manager and Staff Under Delegation/Local Expert Panel</i>
<b>Code Assessable</b>	<i>Council/Accredited Certifier</i>

Importantly the *Independent Review* examined the threshold for considering development to be state significant concluding that the existing thresholds should be carried forward with two new additions:

*‘Projects of a retail and/or commercial nature of a project value of \$75 million and over are also to be designated State significant development.’*

— *Independent Panel, Recommendation 37*

*‘Residential developments with a planned yield of 500 dwellings or more (including staged development underpinned by concept plans or master planning to such an anticipated yield) are to be regarded as State significant development.’*

— *Independent Panel, Recommendation 38*

The Government will consider the Independent Panel’s recommendations in the context of the other initiatives in this paper following response to community submissions.

## State and regional decision makers

The *Independent Review* recommended that the Joint Regional Planning Panels should remain part of the NSW planning system. The *Independent Review* endorsed the continuation of the Minister for Planning and Infrastructure’s role in determining major infrastructure proposals while reaffirming the continued need for an independent expert body like the Planning Assessment Commission (PAC) to decide proposals of State significance. The *Independent Review* recommended that the PAC become a quasi-judicial body in the new planning system.

The NSW Government’s main objective is to strengthen the PAC and Joint Regional Planning Panels to equip them to carry out their enhanced roles effectively and transparently. This includes strengthening their procedures and codes of practice, how they engage with the community, performance monitoring and how they receive feedback, particularly from stakeholders through user groups.

In the light of operational experience the PAC’s role to make decisions on State significant proposals on behalf of the Minister for Planning and Infrastructure will be more focussed. As a decision maker the PAC will evaluate the evidence based merit assessment carried out by the Department of Planning and Infrastructure, particularly in response to the issues raised in submissions and the proponent’s responses to those issues, rather than reassessing a proposal itself.

Decisions made on state significant proposals will be made consistently or in accordance with established strategic planning and principles, and government endorsed policies and technical standards. In cases where the consideration of a proposal raises some issues about strategic directions or planning or endorsed policies and technical standards these will be referred to the Minister or the Department for consideration in a State-wide policy context, rather than adopting a new principle, policy or standard ad hoc in determining a particular application.

The NSW Government considers that the current provisions regarding reserve powers for state significant development proposals are appropriate and should be retained in the new planning system.

The Government sees the role of the PAC as separate and distinct to that of the Land and Environment Court. The Court focuses on the review of development assessment decisions, and the enforcement of legal rights. The Government is keen to ensure that the PAC’s approach becomes more practical and outcomes focussed, does not become legalistic in its processes and procedures, and most importantly does not become an alternative Court.

# 11

## CHANGE 11 Strategic Compliance

The NSW Government is proposing that a development that is consistent with a strategic plan that has been prepared with community involvement may proceed in a streamlined way.

### Strategic Planning and Development Assessment

At present, there are many layers in the development process. This process is unwieldy, extremely slow and costly and often does not lead to better outcomes. The many layers of assessment and determination are very confusing for the community and provide very little certainty for applicants.

However, if there is a strong focus on strategic planning which clearly sets the parameters for development in an area, involves genuine community participation and is endorsed by State and local government, then a more streamlined approval system could be put in place for development which is consistent with that strategic plan. Therefore, if a strategic plan has been endorsed for an area and has involved meaningful consultation with the community then any development proposal which conforms to the parameters set out in the strategic plan should be allowed to proceed. By making clear to the community that development that is consistent with an endorsed strategy is likely to proceed will further encourage community participation at the strategic planning phase.

Once a whole of government strategy has been endorsed then referral and concurrence at the zoning or development application stage will be removed.

*‘Once communities have participated in the strategic planning phase of plan making and have agreed on the key drivers of the character of a precinct, including the setting of development standards such as height, setbacks and floor space controls, there is no reason why more development could not be considered as code assessable and removed from the merit assessment stream.’*

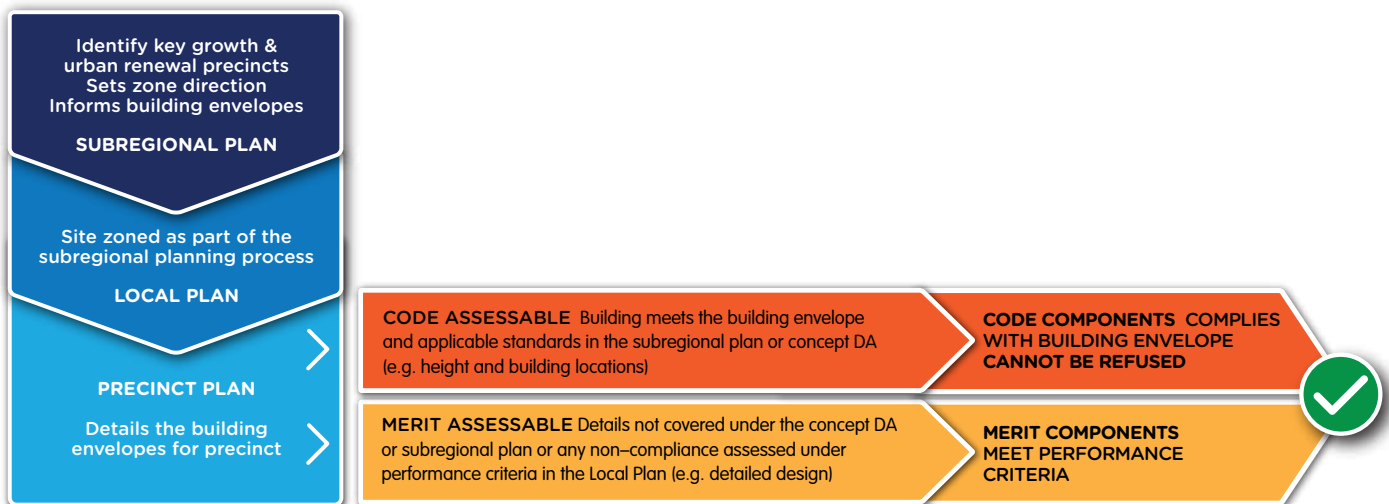
— *Urban Taskforce Australia*

### Strategic compliance before Subregional Delivery Plans are complete

One of the key challenges these reforms seeks to meet is the delay or failure to implement metropolitan and regional strategic planning at the local level. Chapter 5 explains how the necessary changes to the *Local Land Use Plan* will take place as a key component of the subsequent *Subregional Delivery Plan* process.

While this will speed up the implementation of metropolitan and regional strategies it still leaves a period between the finalisation of these strategies and completion of subregional delivery planning. In this period the provisions of local land use plans may not reflect metropolitan and regional strategic directions and may even actively work to prevent the delivery of those strategic outcomes.

**FIGURE 13** GROWTH AREA AND PRECINCT PROCESS FOR CODE COMPLYING DEVELOPMENT



The consideration of development proposals that deliver on the metropolitan or regional strategies should not have to wait until the *Subregional Delivery Plans* have been done. In this period the focus must also be on delivering on the ground outcomes of that strategic plan. Where local land use plans do not reflect metropolitan and regional strategic planning outcomes following a strategic planning process with community participation, applications should be assessed primarily against those strategies, rather than out of date controls in the existing local land use plan.

A proponent with a strategy consistent development proposal that will deliver metropolitan or regional strategic planning outcomes before the subregional planning process is complete will be able to seek a *Strategic Compatibility Certificate* from the Director General of the Department of Planning and Infrastructure. That certificate will authorise the assessment and consideration of a strategy consistent development proposal where the provisions of the local land use plan prevent the implementation of the strategy.

If dissatisfied with the Director General's decision a proponent or council will also be able to seek a review of the Director General's decision from the relevant Joint Regional Planning Panel.

If a certificate is issued by the Director General or the Joint Regional Planning Panel the proponent can lodge an application for the development proposal with the appropriate consent authority and it will be determined by the usual decision maker after the consideration of community views.

## Streamlining development assessment where Subregional Delivery Plans are in place

*Subregional Delivery Plans* will be developed for an area with meaningful community consultation. Once the Plan is endorsed then it should be clear that any development proposal that conforms to the standards and requirements set out in the plan will go ahead. Making it clear to the community that a development proposal that is consistent with the plan will go ahead encourages better community participation in the strategic planning phase—when the *Subregional Delivery Plan* is being developed.

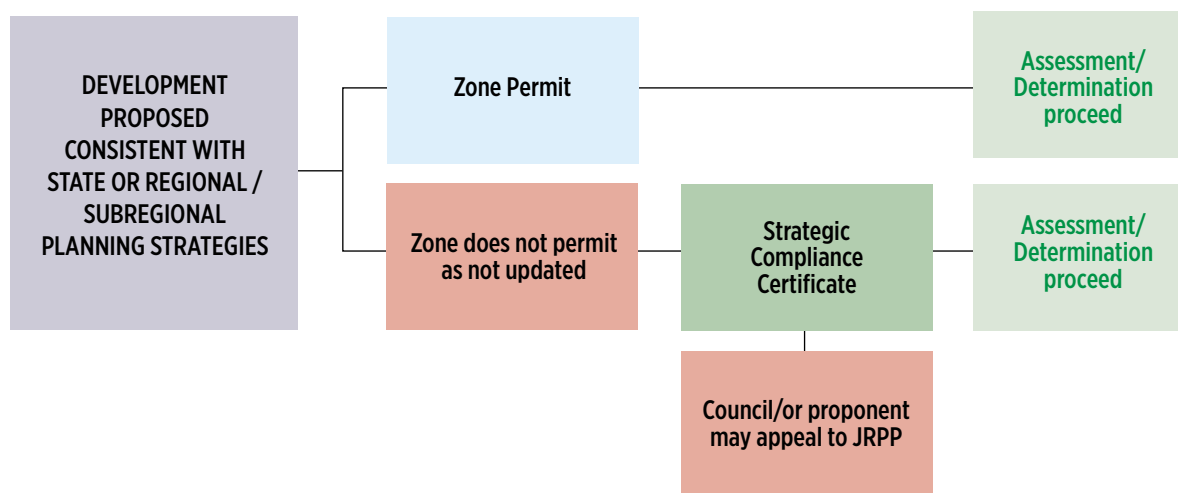
The assessment of development proposals identified in the *Subregional Delivery Plan* will be streamlined through a code assessment. Consistent with the *DAF Leading Practice Model* development which conforms to the standards and requirements set out in the *Subregional Delivery Plan* must be approved.

There will be two types of code assessment in the new planning system. The first is code assessment where the consent authority, generally the council, will make the decision. The second is where an accredited certifier, whether private or council employed, decides.

Consent authority code assessment will be carried out by the council, or other consent authority, like the Joint Regional Planning Panel. The development proposal which may be a residential flat building, office building or shopping centre, would be assessed against the zones, standards and requirements of the *Subregional Delivery Plan*, such as building envelopes and car parking. If the proposal meets the standards and requirements in the Plan, it must be approved within prescribed time frames.



FIGURE 14 STRATEGICALLY COMPLYING DEVELOPMENT



In some cases it may not be possible to provide for all necessary standards and requirements in the *Subregional Delivery Plan*. In those circumstances the consent authority will conduct a combined code assessment and merit assessment for the proposal against strategic objectives in the plan. The code assessment will be against all the pre-determined standards and requirements in the Plan. The proposal cannot be refused if it meets the standards and requirements in the Plan.

The consent authority's merit assessment will be strictly limited to those areas where there are no predetermined standards and requirements in the Plan. The merit assessment will not be an opportunity to re-open discussion on the standards and requirements set by the previous strategic planning exercise. This will be a flexible regime that allows standards and requirements to be tailored to local circumstances through strategic planning. It will not be a one size fits all approach.

Over time market conditions may change and the envelopes and land uses set out in a *Subregional Delivery Plan* may no longer provide for desired development outcomes. In that case a proponent may come forward with a proposal that seeks to vary some of the standards and requirements set out in the Plan. If so, the consent authority's merit assessment will extend over those areas where the proponent seeks to vary the standards as well as those areas where standards have not been developed.

It may not always be possible to develop the necessary standards and requirements for consent authority code assessment when the *Subregional Delivery Plan* is developed. It is proposed to allow those standards and requirements to be developed through a subsequent concept development application in which the community will be involved. Once granted, subsequent stages of the development would also be approved through code assessment.

## Removing concurrences through strategic planning

The strategic planning phase provides an opportunity for individual government agencies to identify and resolve key matters relating to future development. At present, there are concurrence and approval requirements in 101 local and State statutory instruments, including various pieces of planning and non-planning legislation. While these approval arrangements can play an important role, many seem unnecessary particularly if matters can be resolved with agencies at the strategic planning phase.

For example, the Standing Committee on State Development, in its inquiry into the planning system, was advised that 87 per cent of the applications referred by local councils are unnecessary as they meet the Planning for Bushfire Protection guidelines. Assistant Commissioner Rogers said he did not know if this was because councils were adopting a risk management strategy, but it did cause an unnecessary overload of referrals for the Rural Fire Service.

*'Government agencies should also be required to be actively involved during these [strategic planning] stages of the planning process to ensure that all issues are identified and resolved and the need for concurrences is avoided. Applications for planning consent should not be the stage at which to resolve State Agency issues.'*

— *Urban Development Institute of Australia*<sup>19</sup>

## CASE STUDY

### Central Park (former Carlton United Breweries site), Broadway, Chippendale

In February 2007, the then Minister for Planning approved the *CUB Concept Plan* and development controls by a *State Significant Site* rezoning in the *Major Development SEPP*. The *Concept Plan* incorporated a masterplan for a residential, commercial, retail and public open space development with a capital investment value of around \$1.3 billion. Since then, seven Project Applications for subsequent stages have been determined by the Department and a further four Project Applications are in the pipeline. This process has been costly, unnecessarily time consuming, and has resulted in a number of duplicative applications effectively reviewing the same aspects of the proposal at each stage of the development process.

The CUB site is one of the most important urban renewal sites in Australia, yet has been frustrated by overlapping and duplicative assessment procedures, lack of cooperation between state and local government, and a lack of certainty of process and outcome for investors.

To avoid this happening in the future, in the new planning system, a streamlined code-based assessment process could be introduced once the original concept plan and development controls have been established. This would ensure that planning considerations are not revisited in subsequent assessment stages of the development and the developer can have confidence that a timely determination can be achieved.

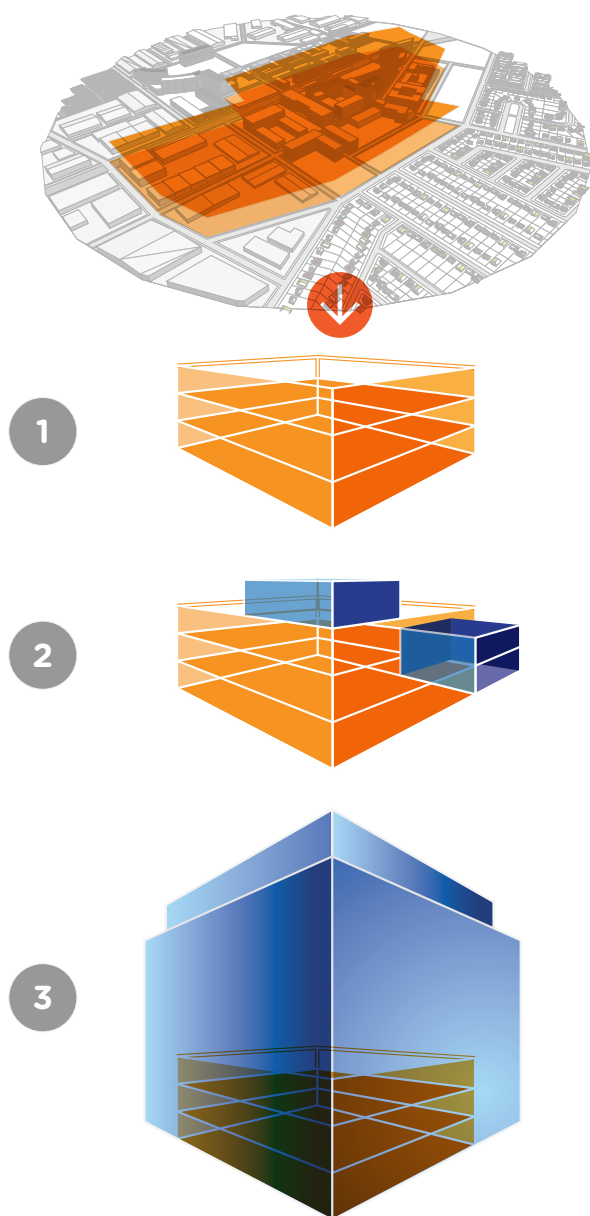
Provided that comprehensive strategic planning has occurred in conjunction with the relevant government agency, there is no need for a government agency to be consulted about a particular development proposal which is consistent with a strategic plan. In this way, the need to refer matters to government agencies at a later stage can be avoided.

Specific requirements to address agency concerns could, if necessary, be included in the *Local Plan*, removing the need for later referral of development applications to the agency. Alternatively the Department of Planning and Infrastructure could notify consent authorities of standard conditions for certain developments that should be included in development consents to address agency issues. In any event once the strategy is resolved, and any agency requirements or standard conditions are in place, concurrences will be switched off by the legislation.

In exceptional cases specific approval from other government agencies will still be required. For development considered by JRPPs, the existing arrangement in relation to integrated approvals for State Significant Development could be adopted. Under this arrangement, certain agency approvals would no longer be required (e.g. Fisheries permits and Native Vegetation), while some other approvals would need to be issued by the state agency consistent with the planning approval (e.g. environment protection license, *Road Act* approval). State agencies will be consulted during the assessment of the proposal in the same way they are for State significant development and any resulting conditions imposed on approval.

To further streamline integrated approvals and concurrences, the Government is proposing that consent authorities should assume state government agency approval in line with standard conditions if a concurrence or approval body does not respond within the statutory time frame. Under this circumstance, the consent authority will be obliged to assume that the particular agency has no objection to the development and apply standard conditions.

**FIGURE 15** CODE AND MERIT ASSESSMENT



## PRECINCT ENVELOPE

DEVELOPMENT FITS ENTIRELY WITHIN BUILDING ENVELOPE

➔ **CODE ASSESSMENT**

BLUE AREA + DEVELOPMENT FITS WITHIN BUILDING ENVELOPE

➔ **COMPONENT IS CODE ASSESSMENT**

BLUE GROUND FLOOR AREA EXCEEDS ENVELOPE

➔ **COMPONENT IS MERIT ASSESSMENT**

DEVELOPMENT ENTIRELY EXCEEDS ENVELOPE OR THERE IS NO ENVELOPE

➔ **FULL MERIT ASSESSMENT**



## CHANGE 12

# Reforming state significant development

The NSW Government is proposing a suite of reforms to streamline assessment of state significant development including integration with state planning principles and streamlining concurrence requirements.

The following changes are proposed to improve and streamline the assessment of state significant proposals.

### Considering state planning principles

Generally it is important that decisions regarding state significant proposals take into account broad economic, social and environmental considerations, not just those local matters prescribed currently under *Section 79C* of the Act. State significant proposals by their very nature have State and regional impacts and it does not make sense that these impacts are not integral considerations in the assessment process.

As discussed in Chapter 7, the introduction of state planning principles will provide a better strategic framework in which to assess state significant proposals, rather than that provided by purely local land use plans. State planning principles should be taken into account by the decision-maker for state significant proposals (i.e. the PAC in any determination it makes).

### Improving environmental impact statement procedures

Under the current system, *Environmental Impact Statements* give consent authorities information and evidence on the environmental implications of a development. Information provided in Statements includes impacts on water, threatened species, heritage and bushfires.

Many submissions raised issue of environmental impact assessment procedures, including:

- impartiality of consultants undertaking *Environmental Impact Statements*
- significant resources, time and costs to prepare an *Environmental Impact Statement*
- duplication of analysis undertaken in *Environmental Impact Statements*.

The NSW Treasury submission to the Planning Review suggested the following:

*‘Information requirements should be streamlined where possible to minimise the regulatory burden on applicants. To improve the confidence of the system, planning reports should be provided by consultants or bodies that are pre-approved or certified by the NSW Government.’*

— *NSW Treasury*

The NSW Government proposes that consultants that provide *Environmental Impact Statements* should be chosen from an accredited panel, and required to meet certain standards regarding the impartiality and quality of their work. The NSW Government is also considering options to codify/ streamline *Environmental Impact Statements* requirements where appropriate.

## Seeking greater opportunities for integration in assessment

The NSW Government will maintain the current level of integration in the state significant assessment processes and look for additional opportunities to integrate other relevant State agency approvals. For example it is proposed to integrate the aquifer interference approval under *section 90* of the *Water Management Act 2000* in the new State significant assessment system.

The Government will bring together assessment expertise from different agencies to work as a team in undertaking the assessment of major infrastructure and private sector projects to work in outcome focussed teams until the assessment is completed. This will build better integration across agencies and enable speedy resolution of inconsistent agency requirements. This will also build better understanding about the whole of government assessment of State significant projects once staff return to their agencies.

A series of changes are proposed to improve time frames and processing of state significant proposals:

- strategic level approval—enabling the approval of a concept plan and the design of individual approval regimes for subsequent stages once the overarching approval is in place. This could be through a mix of subsequent applications, post approval management planning and code assessable development as appropriate
- matching the assessment to the stage of the development assessment process—focussing the assessment on matters that have not already resolved strategically and ensuring that the information that is required to accompany an application matches with the complexity and stage of that application
- case management—introducing a case management approach to application assessment for proponents, councils and other agencies, to deliver expected outcomes
- streamlining *Director General Requirements* (DGRs)—ensuring that DGRs are succinct and appropriate, reducing the 28 day consultation period if not required and developing standard DGRs for different types of development.

# 13

## CHANGE 13

# Smarter and timely merit assessment

The NSW Government is proposing to speed up and improve development assessment by setting assessment timeframes, involving decision making Panels early, and providing applicants the opportunity to redesign their proposal prior to a refusal.

### Matching information requirements to the assessment stage

There is often an excessive amount of supporting information required to be submitted at every stage of a development process. Some of this material may not be relevant to the matter under consideration. This practice unnecessarily increases the costs of seeking approval and the complexity of the assessment

The Productivity Commission identified that this as an issue that should be addressed, noting that the range of reports that must accompany an application should be limited to:

*‘...those essential for planning assessment, including referrals, leaving the need for other reports (e.g. such as for construction site management and most engineering and drainage) until after planning approval is obtained.’*

— *Productivity Commission*<sup>20</sup>

The Government is proposing to specify a requirement that at each development stage any matter that has been or will be adequately dealt with at another stage of the approval process must not be reassessed. Duplication will be avoided. This will apply equally to staged applications and building certification stages.

### Speedy assessments

*‘Complaints regarding delays in obtaining planning approval ... have been a recurring theme among developer interests in [the Productivity Commission study]. Planning approval delays can lead to significant costs for business including increases in land holding costs, lost revenue, interest costs, higher input costs (on materials and labour) and contractual penalties for exceeding agreed delivery times ... In some cases, the likelihood of delays may even prevent certain projects from proceeding in some locations’.*

— *Productivity Commission*<sup>21</sup>

Where there are delays experienced in the assessment of development applications there are significant costs to both developers and the community at large. The Productivity Commission has noted that average approval times are influenced by a range of factors including the nature of the planning controls, complexity of the proposal, mix of development types, quality of the development applications, government agency requirements and resourcing levels within consent authorities. Many of the recommendations in this *Green Paper* are aimed at addressing these issues.

There is currently no accountability for timely determination of approvals by consent authorities. Therefore, there is no incentive to determine applications quickly.



The Department will be implementing measures to increase accountability for decision makers to expedite the assessment of applications without sacrificing appropriate levels of assessment. These measures could include alternative determination pathways for proposals once prescribed assessment time frames have been exceeded, and sanctions for continued inefficient or poor quality assessment and determination processes.

The proposed changes will set leading benchmarks amongst planning systems.

## Bringing JRPPs into the assessment process

At present JRPPs operate at ‘arms length’ from the DA assessment process, with this process being effectively separated from the determination process which is the responsibility of the JRPPs.

A development application process is often iterative, with applicants and councils negotiating improvements to the project during the assessment process. However, JRPPs are not party to this process and may have contrary views to that which arise as a consequence of dialogue between the applicant and the council’s staff.

This can be frustrating for applicants who have made design changes to reduce the impact of their proposal and address the concerns of council staff, only to find that the changes are not supported or sufficient for the JRPP.

To address this issue, it is proposed that there will be appropriate opportunities for:

- JRPPs are involved in pre-lodgements meetings or briefings or at least issue identification early in the assessment process
- there are regular briefings to the JRPPs between the council and the applicant so that the JRPP can hear both sides of the story, similar to the conciliation method used by the Land and Environment Court to have everyone talking in the room
- consideration be given to providing dedicated staff to the JRPPs assessment process to assist with input into the assessment/determination interface.

Greater involvement of JRPPs in the DA assessment process does raise issues of transparency. It is also important that the decision makers are not

involved in designing proposals. However, it is considered that this can be managed through briefings with protocols.

## Adopting an ‘amber light approach’

In the current practice of development assessment, some consent authorities, whether they be a council, Joint Regional Planning Panel, or the PAC, will provide an opportunity for a proponent to modify a development application in a way that will make the proposed development, which without amendments would be refused, acceptable for approval. This provides for a much more collaborative approach to facilitating development outcomes that are acceptable to the community, as opposed to formal court proceedings, particularly when the instances of objection to a proposed development often apply to aspects of a proposal that can easily be modified.

This approach is not formally required under the current Act, nor is it an approach that all consent authorities choose to follow.

The *Independent Review* has described this process as the ‘amber light approach’ to development assessment, and recommends that the new planning system formalise an obligation on consent authorities to provide advice to an applicant where a proposal may be refused and allow the proposal to be modified.

Specifically, the *Independent Review* recommends the following:

*‘The assessment processes in the proposed Sustainable Planning Act are to impose an obligation on consent authorities to advise applicants of amendments to an otherwise unacceptable development that would, if adopted, render the proposal acceptable and no assessment report recommending refusal is to be finalised without providing the applicant with an opportunity (within 14 days) to adopt any recommendations made.’*

The NSW Government agrees with this recommendation and proposes to adopt it in the new planning system. The NSW Government agrees with the *Independent Review* that:

*‘An attitude that facilitates acceptable development—or development capable of being made acceptable—is an essential part of the cultural change that must accompany legislative reform.’*

## Letting the market bear the risk

In NSW there have been instances where a development proposal has been refused on the grounds that the market could not support a particular development. This is an example of market intervention by planners who are making decisions based on their assessment of demand. If a particular land use is allowed under the zone then a consent authority should not be able to refuse an application on the grounds of perceived insufficient demand. The planning system should facilitate investment and development and if a proponent is willing to invest dollars into a proposal then that is the measure of whether a proposal is viable within the market.

The *Barker Review of Land Use Planning (2006)* outlines this point:

*‘Planners should not be attempting to determine if there is sufficient ‘need’ for a given application—rather the applicant, who is bearing the risk, should be responsible for assessing that likely demand is sufficient to make the development viable.’<sup>22</sup>*

*‘It is not the role of local planning authorities to turn down development where they consider there to be a lack of market demand or need for the proposal. Investors who are risking their capital and whose business it is to assess likely customer demand are better placed than local authorities to determine the nature and scale of demand.’<sup>23</sup>*

— *Kate Barker*

## Smart consent conditions

Currently in NSW it is not enough to get a development consent. You also have to have regard to what constraints, sometimes onerous, have been placed on the approval by way of a condition of consent. While there are legitimate reasons for imposing conditions, in many cases the conditions are superfluous or are not directly related to the development.

Conditions are an important and necessary part of development consents. They ensure impacts are mitigated and amenity is maintained. Inconsistent, duplicative and unreasonable conditions add complexity to development assessment in NSW and pose risks for developers and the community, particularly in terms of compliance costs.

Development consent conditions must be clear, reasonable, cost effective and proportionate in addressing the assessment issue. They should not duplicate other conditions or matters that are dealt with through building certification. They should only be imposed to ensure that the development is actually carried out as proposed and to mitigate unacceptable adverse impacts of the proposed development.

The Government will establish clear principles about the types of development consent conditions that are appropriate, ensuring that they do not duplicate other regulatory requirements and facilitate the development of standard conditions, possibly on a regional basis so that there is consistency across councils.

Standard conditions should be made publicly available (published on council website) to enable proponents to view the likely conditions to be imposed on their proposed development.





## CHANGE 14

# Increasing the use of code complying assessment

The NSW Government is proposing to maximise the proportion of complying developments by introducing a new mechanism for considering variations from the standards for an otherwise compliant house.

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### A 10 day code approval reduces costs for new home buyers and for industry

This development assessment track will be significantly expanded in the new planning system. Like consent authority code assessment it may be developed through a strategic planning exercise, like a *Subregional Growth Plan* or through a concept development approval. The Government will develop targets for code complying assessment development types strategically through the *NSW Planning Policies*.

It will also be expanded through state-wide codes possibly with regionally variation. These codes will be embedded in the new local plan.

Developed in consultation with industry, councils, professional bodies and technical experts, and with community involvement, codes provide for a 10 day fast track code approval for low risk low impact development.

The NSW Government will work with councils, industry and the community to extend the existing codes to new low risk low impact development types. The Government will look at extending the codes to new industrial buildings on industrial land, additions to those buildings, additions to existing commercial buildings, townhouses, terrace housing and villas and housing on smaller lots. In expanding the codes the Government will work with stakeholders to ensure the codes respond better to local conditions.

The NSW Government will also continue expanding the *electronic housing code* (EHC). The EHC is a pilot partnership between the Local Government and Shires Associations and the Department of Planning and Infrastructure. It is a shared, integrated electronic platform for the end-to-end processing of complying development applications under the *NSW General Housing Code*. The EHC allows online inquiries, lodgement and even determination.

Last year the Government committed additional resources to expand the EHC to 33 local government areas, additional accredited certifiers and to include the *NSW Commercial and Industrial Code*.

Finally the Government will work with councils, industry, professional associations, planning and building professionals, and the involving the community, to make code assessment simpler and easier to use. It will take stock and examine a range of measures to remove the impediments to more people obtaining the benefits of a 10 day approval.

## CODE COMPLYING DEVELOPMENT

### Accredited Certifier



FIGURE 16 PROCESS FOR CODE COMPLYING ASSESSMENT IN THE NEW PLANNING SYSTEM

## CODE COMPLYING DEVELOPMENT

### Accredited Certifier with Council assessed variation

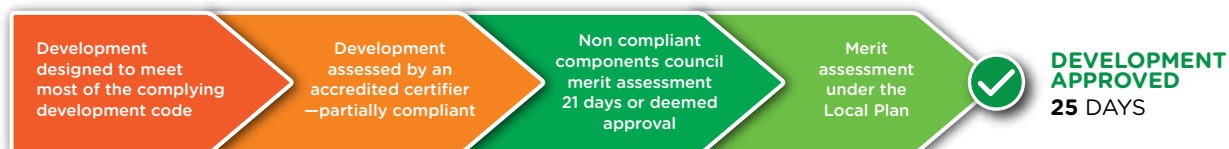


FIGURE 17 PROCESS WHEN DEVELOPMENT IS PARTIALLY COMPLIANT

## MERIT ASSESSMENT

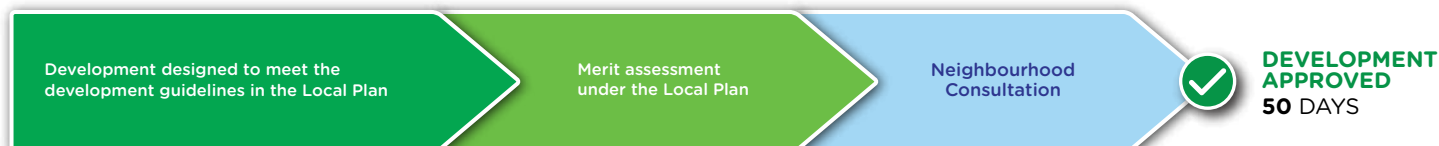


FIGURE 18 PROCESS WHEN DEVELOPMENT IS NON COMPLIANT

## Building regulation

NSW stakeholders have identified issues in the building industry, including:

- accountability of builders and other building practitioners
- liability of those builders and other practitioners
- quality of building outcomes
- cost and effectiveness of consumer protection measures
- confidence of investors and builders
- consistency of regulation.

The Government is proposing to undertake a review to identify improvements to building regulation, policy, systems and responsibilities.

The Building Professionals Board is currently setting up a cross-department group that will investigate the regulatory framework of building in NSW.

To ensure that such a review is independent and focuses on policy fundamentals, the review will be independently overseen with the Building Professional Board providing appropriate input.



## CHANGE 15

# Right of review for rezonings and merit appeals

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### Matching information requirements to the assessment stage

There is often an excessive amount of supporting information required to be submitted at every stage of a development process. Some of this material may not be relevant to the matter under consideration. This practice unnecessarily increases the costs of seeking approval and the complexity of the assessment.

The NSW Government believes that it is important that those parts of the planning system where strategic planning intersects with development assessment on a site specific level are made more accountable. This means allowing proponents to seek a review by independent expert bodies like the PAC and Joint Regional Planning Panels pre and post gateway for rezonings, for strategic compliance certificates, and for site compatibility certificates. In recognising the review focus of these bodies will be expanded, it will be necessary to ensure that the membership of these bodies have sufficient skills in this area.

### Review of rezoning proposals

The decision by a council whether to pursue a rezoning proposal by a proponent should be more transparent and more accountable. The Government is proposing to formalise the existing practice of seeking independent reviews for some rezoning proposals in line with the recommendations of the Independent Panel.

*‘The administrative based rezoning application process announced by the Minister for Planning and Infrastructure on 27 March 2012 be incorporated as a statutory scheme in the proposed Sustainable Planning Act.’*

***— Independent Panel, Recommendation 40***

The plan making reviews proposed are:

- **Pre-gateway Reviews**—which may be requested by a proponent before a planning proposal has been forwarded for Gateway determination. This may occur where a council refuses or delays preparation of a planning proposal. Subject to meeting strict eligibility requirements, including consistency with strategies, the pre-gateway review would be undertaken by the relevant JRPP and if considered to have merit, the proposal would proceed to gateway.
- **Gateway Reviews**—would apply where the proponent or the council do not agree with the gateway determination. Gateway reviews may be requested by a council or proponent following a gateway determination, but before community consultation on the planning proposal has commenced. In these instances, planning proposals would be reviewed by the Director General of the Department with advice from the PAC.

## Developer proposed rezoning

The new planning system aims to significantly reduce the need for spot rezonings through a shift to good, upfront strategy in planning.

There will however be instances where as part of the planning for a subregion, individual sites will not be specifically identified for growth or change because the future needs for that site may not have been made known. In these instances there still needs to be a process for rezoning on a site by site basis, characterised by transparency, accountability, probity, community participation and clear timeframes.

Joint Regional Planning Panels have a role in undertaking merit reviews of rezoning proposals that are not approved. These reviews should be based on clear processes and criteria, including an overriding public net benefit, informed by cost benefit analysis.

## Review of Strategic Compatibility and Site Compatibility Certificates

As set out in Chapter 7 a proponent will be able to seek a review of the Director General's decision to issue a strategic compatibility certificate by the appropriate independent Joint Regional Planning Panel. Similarly it is also proposed to allow a proponent to seek a review of the Director General's decision to issue a site compatibility certificate, also from the Joint Regional Planning Panel.

## Review of DAs and modifications

*'The right of review to the consent authority, such as currently provided by section 82A of the EP&A Act, should continue in a new Act. Section 82A is working. An application for review of a decision is less costly than court proceedings and allows the applicant and consent authority to maintain control of the process and outcome. Barriers to applications for internal review should be removed.'*

— *Planning Institute of Australia*

Existing s82A and s96AB review mechanisms are proposed to be retained and expanded. Reviews must be undertaken by an expert not involved in the original decision making where the original decision is to be confirmed and as set out below:

- Where decision was made by Department staff—Planning Assessment Commission to review
- Where decision was made by elected council—Joint Regional Planning Panels to review
- Where decision was made by council staff—a mechanism to be established where senior staff of the adjoining council(s) undertake the review—'jury duty' or establishment of a small appeals tribunal similar to the City of Sydney model
- Where decision was made by Joint Regional Planning Panels or Planning Assessment Commission—no review mechanism
- No review on Public Priority Infrastructure.

It is proposed that existing appeal rights under the Act be retained.

# 7

## INFRASTRUCTURE PLANNING & CO-ORDINATION

The new planning system will align the funding and delivery of infrastructure with strategic planning to support growth across NSW.

The timely delivery of infrastructure is critical to achieving our strategic plans for growth. The new planning system will align planning and infrastructure delivery to provide certainty to the community, development industry and infrastructure agencies.

The NSW Government has already progressed a number of significant reforms to improve infrastructure planning and delivery, including:

- establishing Infrastructure NSW to prepare a 20-year *State Infrastructure Strategy*, five year infrastructure plans and project implementation plans for major infrastructure
- contributing to a rolling national infrastructure pipeline of committed major projects with Infrastructure Australia
- establishing Transport for NSW, an integrated transport agency that is leading the development of the *NSW Long-Term Transport Master Plan* for the entire state
- supporting reforms to local government service and infrastructure planning through implementation of the integrated planning and reporting framework by the office of local Government

The major changes proposed to the planning system relating to infrastructure delivery are:

- **Contestable infrastructure** provision to enable greater private sector participation in the delivery of infrastructure that supports growth
- **Growth Infrastructure Plans** to link strategic planning with infrastructure planning and provision, hence strengthening certainty and accountability for delivery
- **Fairer, simpler system of infrastructure contributions** to support the rapid supply of housing and improve affordability
- **Public Priority Infrastructure** to streamline assessment for major infrastructure delivery and provide upfront certainty accounting for increasing public private delivery models.

## Independent Panel supports provisions for state significant infrastructure

The NSW Government supports the recommendation of the *Independent Review* to retain a process that enables the integrated planning and streamlined assessment of infrastructure projects that are of importance to NSW. The *Independent Review* recommended the following:

*‘Provisions contained in the State Environmental Planning Policy (State and Regional Development) 2011 concerning State significant infrastructure and critical State significant infrastructure are to be retained and carried forward into the new planning system’*

— *Independent Panel, Recommendation 39*

Priority infrastructure projects that are of genuine state significance will continue to be assessed by the Department of Planning and Infrastructure and determined by the Minister for Planning and Infrastructure (or delegate).

## Submissions support the integration of infrastructure and strategic planning

Stakeholder submissions to the *Independent Review* have confirmed the need to bring together infrastructure and strategic land use planning with the following clear messages:

- strategic land use plans should be prepared in the context of existing and planned infrastructure. Where new infrastructure is required for the plan’s success, clear infrastructure delivery programs need to be developed
- State agencies should demonstrate a stronger sense of common purpose, and be focused on providing infrastructure essential for the success of government strategic land use plans
- the provision of State infrastructure should not ignore regional towns
- infrastructure contributions should be simpler, more transparent and cheaper.

*‘The provision of infrastructure should be made central to the new planning legislation.’*

— *Western Sydney Regional Organisation of Councils*

The submissions reflect the current sub-optimal arrangements for integrating strategic land use planning with infrastructure provision. Delivery of infrastructure in NSW has failed to maintain pace with growth particularly within the Sydney metropolitan area. Key to this issue is the lack of alignment between growth and infrastructure delivery and the need for better coordination between State agencies in the provision of infrastructure.

## Current approach has resulted in delays in housing supply and affordability issues

The current approach to infrastructure planning and financing has been subject to various amendments in an attempt to respond to market conditions over time. This has resulted in a system that is now unnecessarily complex and has been ineffective in stimulating growth.

Despite past policy efforts, examples can be seen across the State where there has been a series of failures to deliver timely infrastructure leaving residents facing significant congestion, travel costs and delays.

High and inefficient infrastructure charging costs have also contributed to delays in the supply in housing and reduced the competitiveness of house prices, and this has been particularly evident in Sydney, resulting in affordability issues as well as a lack of supply.

The NSW Government aims to minimise infrastructure delivery issues by prioritising the release and rezoning of lands that are best capable of accommodating housing. Other options to fund and deliver major infrastructure will be opened up. New policy in this area will be characterised by transparency and accountability and underpinned by early community participation.



## CHANGE 16

# Contestable infrastructure provision

The NSW Government is introducing accountability to development assessment, rezoning and site compatibility certificates through new appeal and review rights.

Individuals and markets are best placed to deliver diverse choices in all development outcomes including housing and local centres. In both infill and greenfields development, the Government should refrain from any policies and actions that constrain housing providers from meeting market expectations. Past policies which produced a ‘cookie cutter’ approach through government masterplanning and infrastructure specification added unnecessary costs and reduced housing diversity and affordability.

The reforms to improve infrastructure funding and delivery involve:

- embedding the principle of contestability into the core infrastructure planning and delivery process to maximise innovation, diversity, choice and best value
- subjecting all stages of infrastructure concept, design, construction and operation, to full contestability
- minimising cost, maximise efficiency and encourage innovation in the planning and delivery of infrastructure through performance based planning
- enable processes for transparent and ethical consideration of unsolicited proposals from developers on innovations (including planning agreements) to accelerate housing related and other infrastructure
- use of special purpose vehicles to drive more innovation including in-kind contributions to deliver more of our infrastructure requirements.

## Contestability, Third Party Access and Public Private Partnerships

For growth precincts, the private sector should be given the ability to design, fund, deliver, manage and operate infrastructure networks, such as for the provision of road, waste water, communications and energy supply. This would mean new access arrangements would need to be established to open up private sector delivery and operations of major infrastructure networks.

For larger government infrastructure projects, greater consideration should be given to the value for money offered by holding competitive tenders for the private sector using an outcome specification. This approach offers potential to reduce to costs by encouraging innovation to meet the outcome specification whilst also defraying the upfront capital costs into annual availability payments so more projects can be delivered in the short to medium term.

The mechanism to signal these proposals should be through *Growth Infrastructure Plans* that are attached to approved *Regional* and *Subregional Growth Plans*, but the principle would extend to any infrastructure requirements.



## Voluntary Planning Agreements

*Voluntary Planning Agreements* need to be phased out or significantly modernised and simplified.

It is evident that fragmented areas have been a limiting factor in the ability for growth areas to develop as individual landowners have not been large enough to take responsibility for the delivery of precinct scale infrastructure (such as drainage, open space, and key intersections). As a result, an expensive public infrastructure program was mandated across Sydney's growth centres which needed to be funded by local and state infrastructure development contributions, which required as much as \$70,000 per lot.

*Voluntary Planning Agreements* are intended to be linked to larger precinct developments. For major housing development proposals, the NSW Government will expeditiously negotiate bespoke agreements with proponents to boost supply of housing whilst also agreeing smarter cost sharing arrangements for delivery of infrastructure. *Voluntary Planning Agreements* can be complex and time consuming to execute as they are subject to negotiation between the State, proponent and possibly council. The intention here however, is to boost resourcing to ensure these new agreements are an efficient method to enabling more developments to be brought to market.

Clear minimum *Voluntary Planning Agreement* benchmarks should be established, that will feature:

- defined infrastructure performance outcomes (rather than simple lists of traditional assets) to enable the private sector to innovate and optimise scope
- defined negotiation time frames recognising holding costs and the need for urgent action to boost housing supply
- more developer contributions in-kind and innovations to improve cost effectiveness as well as the livability or amenity of these new communities so that they are more attractive and marketable to home buyers.



## CHANGE 17

# Growth infrastructure plans

The NSW Government is proposing new *Growth Infrastructure Plans* to integrate the planning and provision of infrastructure with strategic planning for growth. The *Growth Infrastructure Plan* will provide a single, evidence based capital program facilitating private sector contestability and improving certainty and accountability for infrastructure delivery.

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The provision of infrastructure is essential to supporting growth.

Delivery of appropriate infrastructure in housing development areas needs to match over time housing production and be coordinated between agencies. This will ensure housing delivery is not unnecessarily delayed and will reduce the problem of infrastructure being left ‘stranded’ without housing development proceeding.

Currently, each infrastructure agency has its own budget and planning process and consequently has its own priorities in terms of infrastructure provision, subject to whole of Government Budget and regulatory processes. However, the result of multiple agencies operating within their separate processes have sometimes led to infrastructure provision decisions that appear disjointed, with impacts on development and efficient and timely infrastructure provision.

In the past, expenditure on the infrastructure needed to support growth has been a relatively minor consideration, with the agency’s own specific business needs taking priority. This led to instances where some services are available for a development, but not others, and with the agency required to deliver services to an area having no knowledge of these requirements.

Another key problem is one of information availability and certainty for the community, development industry and local councils, which has increased uncertainty for housing development. Infrastructure agencies are often unable to make public commitments to particular projects beyond those listed in the Budget Papers, given that once information is available in the public domain, it can be perceived to constrain an agency’s actions.

Developers, infrastructure agencies and councils need, and have sought, high quality, up to date information about planning status, progress with development activity and necessary infrastructure within a development area. This provides certainty and consistency and allows efficient planning, priority setting and infrastructure investment.

The NSW Government is addressing this issue in a number of key ways.

## State Infrastructure Strategy

Infrastructure NSW is developing a 20 year *State Infrastructure Strategy*. It will be the first time that an integrated and long-term view of infrastructure has been delivered for NSW.

The final strategy, which will be released to the NSW Government in September 2012, will identify what infrastructure the state needs to achieve economic growth and how to activate both public and private sector resources to deliver it.

Infrastructure NSW will prioritise those sectors that drive productivity growth and have the greatest impact on economic growth and, ultimately, quality of life.

The strategy will go through a disciplined process that takes into account:

- 20 year forecasts of the NSW economy
- predicted population growth and demand for infrastructure and services
- the current state of infrastructure in NSW
- the NSW Government's long term objectives for sectors such as transport, water, electricity and telecommunications
- options for demand management and other policy, pricing and regulatory reforms
- investment policies and strategies to efficiently and effectively address infrastructure needs
- identify funding options and financing models for combined public and private sector investment.

Each year, InfrastructureNSW will publish a five-year *State Infrastructure Plan*, which identifies priority infrastructure projects to be delivered annually.

The outcome of Infrastructure NSW's work will be a clear pipeline of integrated infrastructure projects and/or reforms. The strategy will guide the right investment choices at the right time to drive the continued economic growth of the economy.

## NSW Long-Term Transport Masterplan

The Government is preparing the *NSW Long-Term Transport Masterplan*, a comprehensive, integrated strategy for all modes of transport across NSW. The plan will identify a clear direction for the development of transport infrastructure of the next 20 years through addressing key challenges for the transport industry, such as population growth and job creation in order to maximise the benefits to the economy and align with land use strategy. The final Masterplan is scheduled to be released in late 2012. The *NSW Long-Term Transport Masterplan* will in particular integrate land use planning and hence facilitate growth strategic planning as advocated in this reform paper.

## NSW Government proposed reform

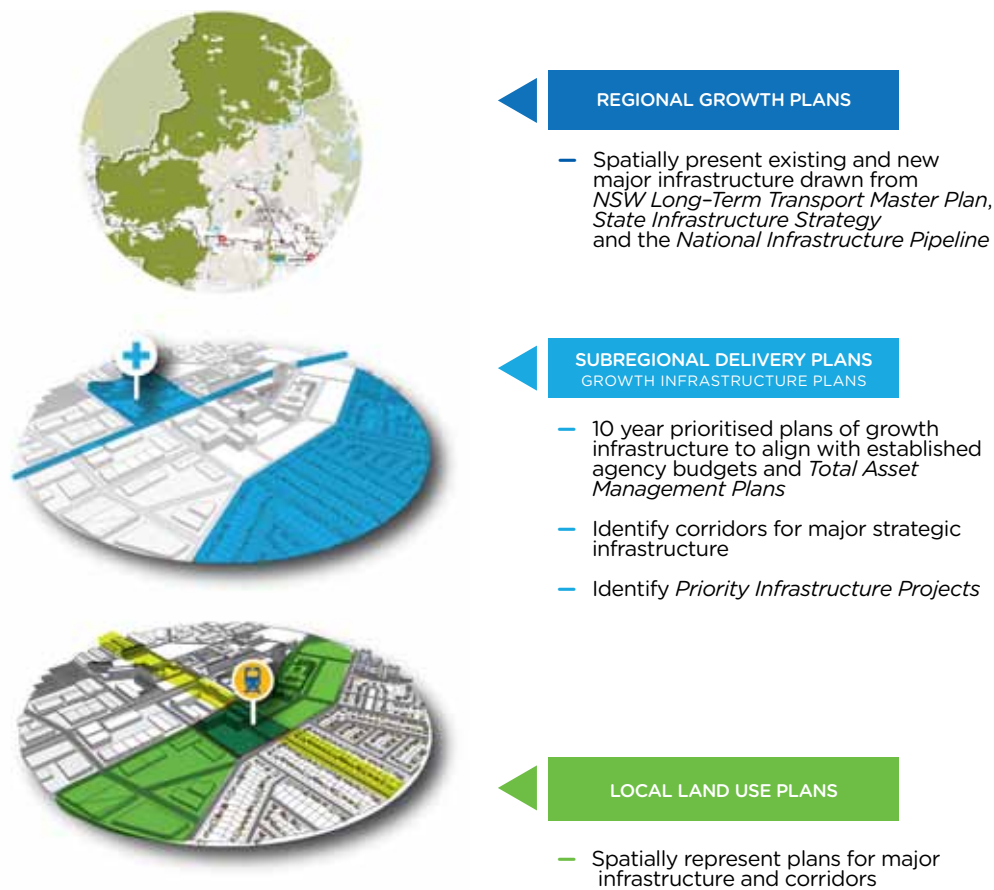
New *Growth Infrastructure Plans* will be prepared by the Department of Planning and Infrastructure in consultation with infrastructure providers and agencies, including Infrastructure NSW, and will identify the infrastructure needed to support development in the high growth areas of the state.

Critically, the *Growth Infrastructure Plans* will take a spatial approach to infrastructure planning, rather than a sectoral approach. In other words, infrastructure planning will focus on an area of growth, rather than an individual infrastructure provider's business plan.

The Plans will be prepared in conjunction with *Subregional Delivery Strategies*, ensuring that future land use decisions are aligned with infrastructure planning and delivery.

The *Growth Infrastructure Plans* will be based on the most recent development activity and market evidence sourced from regular state monitoring, councils and developers. This will ensure that the infrastructure identified in the Plans will directly support development outcomes.

The primary purpose of this approach is to facilitate growth by ensuring that the right infrastructure is planned and provided in the right location at the right time to meet housing and employment development forecasts.



**FIGURE 19**  
STRENGTHENING THE INTEGRATION OF LAND USE AND TRANSPORT AND INFRASTRUCTURE PLANNING

*Growth Infrastructure Plans* will be prepared for a five and 10 year horizon to align with the establishment budget and *Total Assessment Management plan* processes of Government. The Plans will be aligned with the *State Infrastructure Strategy*.

The Growth Infrastructure Program will:

- achieve better identification, prioritisation, coordination and delivery of growth infrastructure to meet housing delivery needs
- provide increased transparency about the growth infrastructure pipeline, allowing increased certainty for industry, councils, and the community.

The *Growth Infrastructure Plan* development will be based on four key steps as follows:

1. Develop evidence base with subregional snapshot of current planning and infrastructure issues
2. Identify current and future infrastructure needs in concert with subregional planning processes
3. Develop infrastructure delivery program and prioritise capital allocation
4. Appoint *Growth Infrastructure Plan* Delivery Managers to monitor, coordinate and troubleshoot on issues that impact on the timely delivery of infrastructure in the catchment.

## Corridor reservations

Governments have traditionally been slow to protect the corridors needed for the future delivery of efficient infrastructure networks. A failure to reserve appropriate corridors for future infrastructure projects can significantly increase development and construction costs, which can impact on the viability of investment.

To address this issue, corridors for major strategic infrastructure will be identified in regional strategic planning processes and reflected in the relevant spatial plans, in particular, Local Land Use Plans, to provide certainty for infrastructure development and mitigate risks of encroachment from incompatible development.

# 18

## CHANGE 18

# Fairer, simplified and more affordable system for infrastructure contributions

The NSW Government is proposing a fair and affordable system for infrastructure contributions to support the rapid supply of housing in growth areas.

The approaches to development contributions in the past have been complex, inequitable, and inefficient. Successive reviews and reforms have not substantially improved the structure and operation of the levy framework.

Development contributions at a local council level have evolved significantly over the past two decades from the provision of baseline facilities immediately required to support growth, such as roads, and drainage, to the inclusion of more extensive community infrastructure, such as community centres, and recreational facilities. This shift has contributed to an increased cost of development contributions, and has impacted on the supply of housing, which has impacted on housing affordability.

Recent reforms to the local contributions framework, including reducing the scope of infrastructure funded through contributions, and the introduction of a cap on contributions amounts have not addressed the fundamental flaws in the system, and it remains a major issue for both the development industry, and local councils.

There are also issues with the levy framework for *State Infrastructure Contributions*, particularly in relation to the concentration of costs in greenfield areas, and the lack of transparency between levy revenue and infrastructure programming and delivery.

Submissions to the *Planning Review* identified problems with the development contributions system, many of which highlighted the impact of contributions on housing affordability.

Concerns in relation to the levy framework were also raised by the Independent Pricing and Regulatory Tribunal (IPART) in its submission to the Review:

*‘The large number of policy changes may have reduced investment certainty. Further, the rationale for the current allocation of costs between these parties is not clearly articulated. The system is fragmented, resulting in inequities in the allocation of the costs of development depending on the location and the ultimate owner of the infrastructure.’*

— *Independent Pricing and Regulatory Tribunal*

The current situation is summarised as follows:

- new development generates demand for new facilities and infrastructure
- various tools are in place at the local and state level to ensure this infrastructure is funded, but these tools have not always worked in an equitable, timely or administratively efficient manner
- as a result, infrastructure provision has been delayed, has become more costly than necessary, is administratively complex and has contributed to pressures on housing affordability,
- in the context of a comprehensive reform of the wider planning system, a comprehensive reform to development contributions is warranted and necessary.

## New principles for infrastructure levies

Infrastructure provision has costs, and the Government believes that both government and private sector infrastructure providers should be entitled to recover some of the costs associated with investing in the infrastructure required to support growth.

The Government will reform the development contribution framework for state and local government infrastructure, providing a fairer, more transparent, and more efficient scheme for the future. The framework will be based on a number of key principles as follows:

- levies should be based on principle of contributing to cost recovery
- levies must be competitive with comparable markets in other jurisdictions
- levies must not compromise housing affordability or inhibit housing delivery
- the ‘beneficiary pays’ principle and the principle of ‘avoidable cost’ suggested by the productivity commission and in the *Henry Tax Review* should apply in appropriate circumstances
- levies should demonstrate an element of ‘cost reflectivity’—demonstrating that the provision of infrastructure in some areas is higher than others, and the levies should reflect at least some of that cost
- levy contribution should spread costs to the broadest base of beneficiaries—including over time where possible

- levy framework should avoid any unnecessary concentration of costs on consumers
- levy system should support contestability
- levy system should encourage providers to cater for a diverse range of market expectations and demands for infrastructure and services
- some cross-subsidisation of infrastructure costs can occur where there is a government or council policy decision to concentrate growth and therefore costs in a particular area or costs arise as a result of general population growth
- there must be a clear, transparent link between levy revenue collection and infrastructure programming and delivery
- levy revenue must not be hoarded or banked to consolidate an authority’s fiscal position
- levy framework must be transparent and be able to be implemented efficiently.

The Government is considering a number of options for reform to implement the new principles for infrastructure levies and will be engaging with local government and the development industry to further develop these reforms. It is important that any reforms in this area are consistent with the principles outlined earlier, and are sustained over the long term to provide consistency for industry and the community.



One option that is under strong consideration that addresses a number of the key cost drivers for development contributions is proposed as follows:

## 1. Local Infrastructure identified in Local Infrastructure Plan

The local infrastructure needs required to support development would be identified in a Council's local infrastructure plan, and could include only the following scope of works:

- local roads
- local drainage works
- land for community facilities (not open space or drainage)

Councils would have two options for recovering costs from development to contribute to the cost of delivering the *Local Infrastructure Plan*:

- a contribution to the cost of delivering the local infrastructure which is apportioned evenly across the defined area, typically a greenfield release area; or
- a contribution to the cost of delivering the local infrastructure based on a percentage of the proposed capital investment value in carrying out the development—typically applied in areas where infill development occurs.

## 2. Regional Open Space Levy

A fixed levy per residential development in both infill and greenfield areas could be made to contribute to open space and drainage requirements across a region. Open space and drainage requirements may have broader benefits than just the immediate development and it is appropriate that this cost be spread more broadly. The *Regional Open Space Levy* will be used to fund the acquisition of:

- local, and regional open space land
- local, and regional drainage land
- biodiversity conservation offsets.

These acquisitions could be undertaken by Councils and the State Government, with ownership transferred to the most appropriate public or private body for ongoing management.

## 3. Regional Infrastructure identified in Growth Infrastructure Plan

*Growth Infrastructure Plans* will be prepared for high growth areas of the State to ensure that land use changes are supported by infrastructure planning and investment. To assist in the recovery of some of the costs of this investment, a contribution to regional infrastructure could be levied on new development to fund the following items:

- new and upgraded regional roads
- land for health and educational facilities
- land for emergency service facilities.

Similar to *Local Infrastructure Plans*, the cost of Regional Infrastructure could be supported by differential contributions in infill and greenfield areas. Regional infrastructure requirements will be identified in the *Growth Infrastructure Plans* and costs could be recovered through either:

- a contribution to the cost of delivering the regional infrastructure which is apportioned evenly across the defined area, typically in areas where there is high levels of greenfield development; or
- a contribution to the cost of delivering the regional infrastructure based on a percentage of the proposed capital investment value in carrying out the development—typically applied in areas where infill development occurs.



**FIGURE 20** OPTION FOR FOR DEVELOPMENT CONTRIBUTION REFORM

INFRASTRUCTURE	LOCAL INFRASTRUCTURE PLAN	REGIONAL OPEN SPACE FUND	GROWTH INFRASTRUCTURE PLAN	RESPONSIBLE DELIVERY AUTHORITY*
LOCAL ROADS	•			LOCAL COUNCIL
LOCAL DRAINAGE WORKS	•			LOCAL COUNCIL
LAND FOR COMMUNITY FACILITIES	•			LOCAL COUNCIL
LOCAL OPEN SPACE		•		LOCAL COUNCIL
LOCAL AND REGIONAL DRAINAGE LAND		•		LOCAL COUNCIL
REGIONAL OPEN SPACE		•		NSW GOVERNMENT
NEW AND UPGRADED REGIONAL ROADS			•	NSW GOVERNMENT
LAND FOR HEALTH AND EDUCATIONAL FACILITIES			•	NSW GOVERNMENT
LAND FOR EMERGENCY SERVICE FACILITIES			•	NSW GOVERNMENT

\* MAY BE DELIVERED  
BY PRIVATE SECTOR

**FIGURE 21** OPTION FOR DEVELOPMENT CONTRIBUTION REFORM

Calculating Growth Infrastructure Contribution	Greenfield Development	Infill Development
Local Infrastructure Contribution	Contribution amount identified in <i>Local Infrastructure Plan</i>	Contribution will be percentage of capital investment
Local and Regional Open Space Fund	Fixed Nominal Contribution	Fixed Nominal Contribution
Regional Infrastructure Contribution	Contribution amount identified in <i>Growth Infrastructure Plan</i>	Contribution will be percentage of capital investment

## The need for simplified and strengthened administrative arrangements

There are a number of significant issues in relation to the administration of development contributions that the Government believes need to be addressed. These include:

- varying standard of administration of contribution revenue
- varying standard of financial modelling and accounting for contributions plans—some councils use the ‘Net Present Value’ financial model, and most others use a ‘Return on Investment’ approach
- the use of contributions revenue to consolidate an authority’s fiscal position
- delays between contribution revenue collection and infrastructure construction
- a lack of appropriate reporting and accountability for contribution revenue collection and links to infrastructure programming and delivery
- the capacity within some councils to efficiently manage contributions plans and ensure strong links with revenue collection and infrastructure delivery.

The Government proposes to establish a Taskforce with local government to develop solutions to these key issues. The *White Paper* will detail the Government’s proposed reforms.

## Timing of development contribution payments

Many submissions to the Planning Review highlighted issues around the timing of payment of development contributions. The development industry has consistently contented that the payment of levies early in the development process exposes developers to holding costs, which are then transferred to consumers by way of higher house prices.

The new framework for development contributions will provide for payment of levies as late as practically achievable in the development process. The Government recognises the need to limit any unnecessary cost burdens on the development industry and will ensure that the new contributions system is consistent with this objective.

## Linking development contributions to infrastructure planning and delivery

The budget process has never formally incorporated a mechanism for the allocation of development contribution revenue to the relevant agencies. This has provided both funding uncertainty for infrastructure agencies, and servicing uncertainty for industry and the community.

This has also contributed to a perception of a lack of transparency about how infrastructure contributions are used. Some stakeholders have complained of money disappearing into a ‘black hole’ within Government, and whether funds collected from developers are actually used to fund infrastructure provision in the areas where development is occurring.

At present, there is no visibility around where funds have been directed and what is in the pipeline.

To ensure greater transparency, clarity, and accountability in the state development contribution and budget process, the Government will implement the following reforms:

- Development contributions collected within a catchment will be spent on infrastructure within that catchment—ensuring that the ‘beneficiary pays’ principal is maintained
- Development contribution revenue will be directed, or hypothecated, towards infrastructure provision, rather than getting lost in consolidated revenue
- A clear reporting process through the Budget will show the value of development contributions collected, and how they have been allocated to infrastructure planning and delivery.



## CHANGE 19

# Public Priority Infrastructure

The NSW Government is proposing to simplify and streamline the delivery of Public Priority Infrastructure projects—which are major infrastructure projects of highest priority to the Government and the community.

These major projects will be identified in high level strategic documents, such as the *State Infrastructure Strategy* and the *NSW Long-Term Transport Masterplan*. They represent the NSW Government's agenda for infrastructure as they will result in wide economic and social benefits and will be essential to managing growth.

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Currently, NSW has capability for efficient project construction however the delivery of major infrastructure has not been well aligned to growth or the changing priorities of government. Often there are long project development lead times, high project costs and ongoing backlog of essential infrastructure that is not yet planned or delivered. This has occurred during a rapid period of growth particularly within the Sydney Metropolitan area and has disadvantaged the community and the economy and damaged the State's reputation for infrastructure delivery.

The existing infrastructure assessment and delivery process is cumbersome and has impacted on economic growth and productivity. The current emphasis on requiring extensive investigations and detailed management plans and commitments prior to project approval has meant that after approval is finally given, it is often too difficult, costly and time consuming to adjust the project even if better solutions are presented by the private sector.

The current system does not fully account for private sector participation in the delivery of infrastructure as there is not up front certainty at the pre-tendering stage. In addition, the current system does not promote innovation in that changes post approval requires formal modification or subsequent approvals.

The NSW Government proposes a new approach that reduces the complexity of approvals without compromising community and environmental outcomes.

## NSW Government proposed reform

The proposed new approach for Public Priority Infrastructure will provide for:

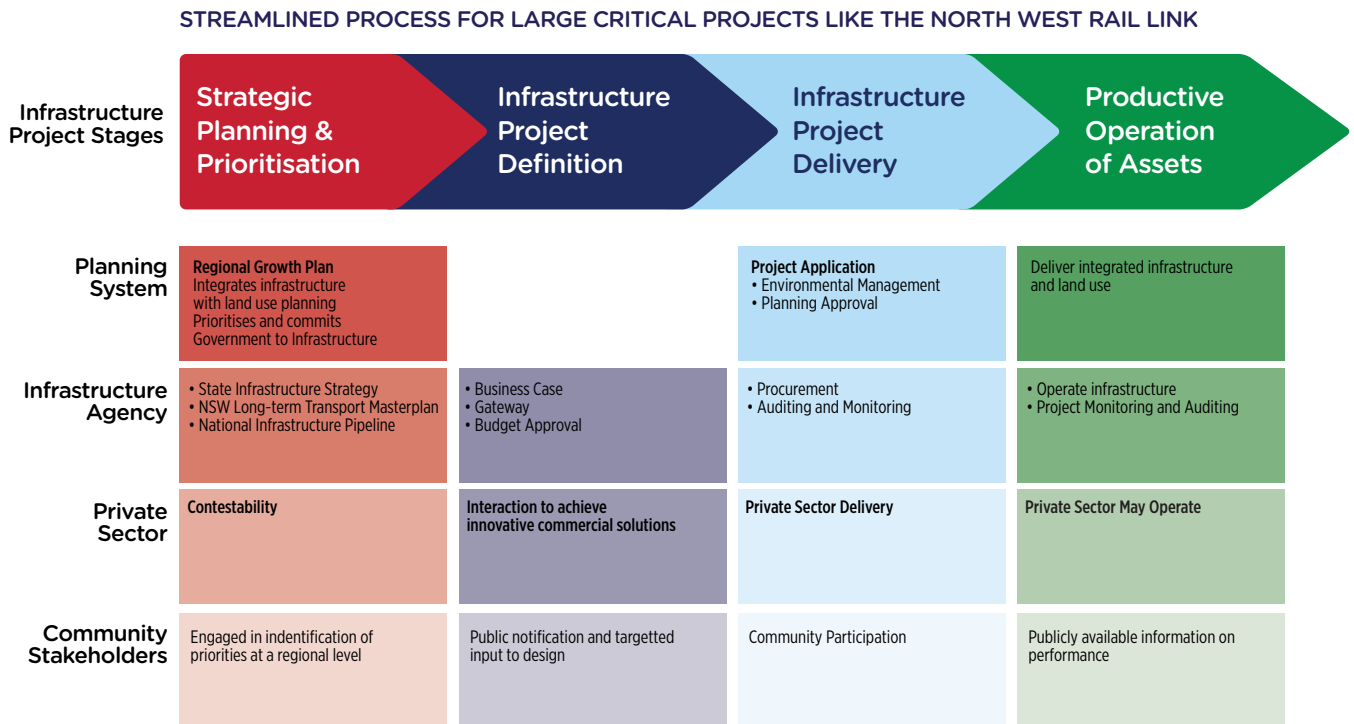
- improved community participation early in the planning process
- early certainty for the community, industry, planning, financing and land acquisition that the project will proceed
- faster delivery of infrastructure benefits to the community and the economy,
- greater opportunity for private sector involvement to improve innovation in design.

The NSW Government proposes to decide whether projects will go ahead at the relevant strategic planning level. The subsequent environmental assessment process will focus on how these projects will proceed and on managing the environmental impacts of the project rather than whether these projects will proceed.

The new planning system will address excessive cost, delay, duplication and uncertainty in delivery of essential State significant infrastructure. Public Priority Infrastructure will:

- provide early certainty to the community and industry
- expand meaningful opportunities for community input at the strategic level and in managing the environmental and amenity impacts
- deliver the world class infrastructure that NSW needs.

FIGURE 22 PROCESS FOR PUBLIC PRIORITY INFRASTRUCTURE



Currently a project cannot be approved for delivery until all elements of the project's environmental impact assessment and management is resolved in fine detail. The new framework will provide for early certainty, community participation and private sector involvement through:

- greater emphasis to the outcomes of strategic planning and allow early Government commitment to delivery of identified Public Priority Infrastructure projects. Once agreed at the strategic level, the legislation will clarify that those projects will proceed subject to environmental management rather than formal approval
- enabling Government departments to better engage early with industry and stakeholders and will allow greater flexibility in project development and modifications
- providing for early community comment on the project and allow industry, government and the affected communities to work together to develop management strategies that optimise outcomes and minimise and mitigate impacts on social amenity and the environment
- requiring all government agencies to work cooperatively and proactively for the common goal of minimising impacts and find the solutions required to efficiently and cost effectively deliver the infrastructure
- providing for explicit approvals at the concept stage, hence streamlining further duplicative processes and approvals.

To deliver this new framework, government has proposed 9 key elements to make it happen. These are:

- integrated and strategic assessment of the State's infrastructure needs, including publication of *Regional and Subregional Growth Plans* that identify and prioritise *Public Priority Infrastructure* projects (including alignment of *State Plan* objectives and *State Infrastructure Strategy* projects)
- early Government commitment to delivery of Public Priority Infrastructure projects, aligned with Cabinet and Treasury gateway and budget allocation processes
- early project definition phase that will include publication of a clear *Project Definition Report* (containing a business case) and a *Project Environmental Management Statement* describing how potential environmental impacts are to be minimised and managed during design and construction
- early and coordinated engagement of relevant government agencies so they can meaningfully input into project design considerations—allowing them to contribute to identifying and resolving environmental and social impacts at the design phase
- effective community participation at various phases including project development and detailed design phases—this will enable the community to focus on the issues that are most important at each stage of project
- early engagement with industry after the project definition phase, allowing innovations and ideas that may be critical in project development and delivery
- use of plain English guidelines and strategies to describe how environmental and social impacts are to be minimised, managed and mitigated during construction and operation
- avoiding multiple approvals and applying an outcomes focussed approach to assessment requirements and approval conditions
- more effective use of auditing and monitoring processes to ensure construction processes and project outcomes meet community and stakeholder expectations.

The new planning framework that will deliver Public Priority Infrastructure is designed to simplify and streamline the process from strategic planning to detailed design and delivery issues. It will be aligned to existing Government planning and Treasury gateway processes and will be structured to provide greater certainty and clarity. Engagement will be commenced earlier and will be more focused to enhance project outcomes. This will result in a more inclusive approach that retains transparency, certainty and focuses on cost effectiveness.

# 8

## DELIVERING A NEW PLANNING SYSTEM

A good planning system must deliver what it sets out to achieve.

Delivery mechanisms and responsibilities must be clear and performance against measurable planning goals must be regularly monitored and communicated. Plans at all levels must be owned and driven by the whole of government, in partnership with local government and the community.

To improve the delivery of the planning system new governance initiatives are proposed:

- A Chief Executive Officer's Group to integrate and drive implementation
- Regional Planning Boards to advise on regional and subregional strategic plan-making, infrastructure and planning issues
- Mandatory performance monitoring against clear indicators with regular public reporting and review
- Major organisational reform program to address the structure and culture of planning at all levels and within both the public and private sectors.

In implementing a new planning system in NSW there will be a need for a number of transitional arrangements while subregional plans are being prepared. In addition, links to related legislation and regulations that cause planning red tape will also need to be reviewed. These transitional arrangements and related legislative reviews will be detailed in the White Paper.



## Submissions supported strengthening implementation and performance measures

A key theme identified in submissions to the *Planning Review* from a range of stakeholders, was that implementation, monitoring and review are weaker elements of the current system. As it applies, the system has been criticised for a lack of accountability and poor implementation.

The COAG review of strategic planning in Sydney found:

*‘The [strategic planning system for Sydney] contains strong planning and policy content, however, it lacks the hard-edged accountability, performance and implementation measures to drive these policies.’<sup>24</sup>*

— *COAG Reform Council*

The NSW Government supports strategic plans having a clear operational component with performance measures, accountabilities for delivery of actions and budget commitments.

The importance of a ‘whole-of-government approach’ has also been identified as critical to the development and delivery of a successful new planning system for the State.

*‘Ensuring the strategic planning framework which emerges from this review is embraced across government, and that all government departments recognise the framework as the government’s growth strategy, rather than just the Department of Planning’s strategy is essential.’*

— *Property Council of Australia*

In the past the planning system has been unable to keep pace with changing expectations and conditions. Accordingly a series of ad-hoc and time consuming legislative amendments have been pursued by various governments. This reactive approach has resulted in a complicated and multi-layered Act.

The NSW Government supports a more responsive approach with ongoing, high level monitoring and review to ensure that the system is delivering what it sets out to do. This process will allow failures in the system to be identified early and rectified in a coordinated way.

Any planning system—no matter what regulations or processes are in place—is only as good as the people who run it. There is a strong view that the planning profession is currently overly controlling and is highly risk-adverse. There are also concerns that the profession is solely focussed on how to stop outcomes, rather than how to facilitate good outcomes. This makes the planning profession appear unhelpful and excessively bureaucratic.



CHANGE 20

## Chief Executive Officer's Group

The NSW Government will establish a formal NSW CEO Group with clear accountability for the delivery of approved strategic plans, including infrastructure coordination and provision across the State.

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The CEOs Group would need to ensure a whole of government integrated approach in planning making at the strategic level, and in particular, in coordinating the delivery and implementation of the plans and associated infrastructure. In addition, in order to avoid duplicative processes, the CEOs Group would need to ensure all agencies interest and requirements are addressed at the relevant strategic level so as to prevent concurrence and referral at the development application stage and increase certainty.

Key features of the governance arrangements of the CEOs Group include:

- governance and functions will be provided for in legislation
- membership will include the CEO/Director General of: Department of Planning and Infrastructure; Department of Premier and Cabinet; Treasury; Transport for NSW; Department of Trade and Investment, Regional Infrastructure and Services and Infrastructure NSW.

Key functions of the CEOs Group would include:

- overseeing the whole of government input into the preparation of growth plans, planning policies and standards; and secure a coordinated integrated outcome
- signing off at the relevant strategic level on agencies relevant statutory requirements as applicable
- ensuring the integration and services in the strategic plans
- coordinating implementation, delivery and monitoring.

# 21

## CHANGE 21

# Regional Planning Boards

The NSW Government proposes to establish Regional Planning Boards (in Metropolitan and regional/rural areas of NSW) to provide a regional partnership of stakeholders, state and local governments to oversee regional and subregional planning initiatives.

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The NSW Government proposes to establish Regional Planning Boards (in Metropolitan and regional/rural areas of NSW) to provide a regional partnership of stakeholders, state and local governments to oversee regional and subregional planning initiatives.

The emphasis on strategic planning and the adoption of a flexible approach to develop standards and planning practices necessitate strong governance arrangements and key stakeholder participation as an integral part of the planning process. Independent advice from expert stakeholders and close involvement of local government is essential in overseeing the system and its implementation.

The key functions of Regional Planning Boards would include:

- providing advice on the formulation and implementation of growth strategies, local land use plans, planning guidelines and practices
- providing an independent transparent source of advice to the Director General of Planning and Infrastructure and the Minister for Planning and Infrastructure on the functioning of the planning system and the adoption of growth plans at the regional and subregional levels.

Membership of the Regional Planning Boards would include:

- independent local chair
- key stakeholders with relevant experience (e.g. Catchment Management Authorities)
- representatives of local government
- *ex officio* members representing relevant NSW Government agencies.



## CHANGE 22

# Mandatory Performance Monitoring

The NSW Government is proposing the introduction of regular and mandatory performance measurement for strategic planning at all levels, with requirements to be embodied in the new Act.

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A *Performance Monitoring Guideline* will be developed which includes *Key Performance Indicators* and accountabilities to be included in strategic and local plans. Performance measures will be developed and assessed annually against planning targets in regional, subregional and local level plans, including tracking the timely delivery of infrastructure.

In terms of measuring outcomes on the ground, the performance measures will include the number of dwellings and jobs planned for and delivered, the area of environmental land protected and delivery of associated infrastructure.

Quarterly reporting against the performance measures will be provided in a public report that includes this data and any action taken to remedy problems will be published annually.



## CHANGE 23 Planning Culture

The NSW Government is proposing organisational reform to resource strategic planning and to improve the culture of the planning profession at all levels.

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The Planning Institute of Australia identified that a cultural shift in planning is required first and foremost to set a foundation to enable a new act to be most effectively and efficiently implemented.

*‘To be truly effective....the Planning Institute of Australia (PIA) believes the review should be broader reaching than the preparation of a new planning act. Whilst a new act could give the structure to a broader change, a review of the NSW Planning System should also focus on the ‘glue of planning—its culture—and how it could be improved.’*

*— Planning Institute of Australia*

### **It is recognised that there needs to be a strengthening in the culture of the planning professional**

There needs to be a shift of culture and resources to focus more on strategy, outcomes and innovation, and move away from statutory planning, repetitive processes and bureaucratic procedures. In particular, resources need to move toward a next generation of planners who can lead the integration of infrastructure and land use, and better understand land economics and growth management.

The NSW Government is proposing a major cultural change program led by the Department of Planning and Infrastructure in partnership with the Planning Institute of Australia, key local government and stakeholder representatives. A dedicated change manager will be appointed at a senior level within the Department to drive and champion organisational change programs.

# 9

## NEXT STEPS

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*A White Paper and Exposure Bill* will now be prepared in discussion with planning stakeholders including the profession, business and the community.

This next stage in the development of a new planning system for NSW will involve developing the detail and testing each of the supported proposals in the *Green Paper*. This is likely to be the most challenging stage of the Planning Review and its success will depend on appropriate resourcing and expertise.

The NSW Government invites you to be involved in the next steps of this important reform. Register your interest and participate in our online forum at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

Information about focused workshops to develop up the detail of proposals in this *Green Paper* will also be available on the website.

## REFERENCES

1. Stein L, Scholar in Residence, Centre for Environmental Legal Studies, Pace University School of Law, New York, 2012, *Supplement to a Review of International Best Practice in Planning Law: for the NSW Department of Planning*, p 1
2. New South Wales Legislative Council Standing Committee on State Development, 2009, *New South Wales Planning Framework*, p 14
3. Productivity Commission 2011, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Vol 1, p 45
4. Stein L, op. cit., p 29
5. Kelly, J-F, Grattan Institute, 2010, *Cities: Who Decides?*, p 36
6. Stein L, op. cit., p 12
7. Stein L, op. cit., p 13
8. COAG Reform Council, April 2012, *Review of Capital City Strategic Planning Systems*, p 4
9. Productivity Commission, op. cit., p. 366
10. Stein L, op. cit., p 53
11. *Priority Funding Areas Act (1997)*, Codified in ss.5-7B of the State Finance and Procurement Article of the Annotated Code of Maryland
12. Howland M, Sohn J, 2007, *Has Maryland's Priority Funding Areas Initiative Constrained the Expansion of Water and Sewer Investments*, Land Use Policy, vol 24, p 175
13. Stein L, op. cit., p 35
14. Stein L, op. cit., p 4
15. Stein L, op. cit., p 18
16. Productivity Commission, op. cit., p 276
17. Productivity Commission, op. cit., p 18
18. NSW Department of Planning and Infrastructure, Feb 2012, *Local Development Performance Monitoring: 2010-11*, p 63
19. New South Wales Legislative Council Standing Committee on State Development, op. cit., p 143
20. Productivity Commission, op. cit., p 276
21. Productivity Commission, op. cit., p 249
22. Barker K, Great Britain Treasury, December 2006, *Review of Land Use Planning Final Report Recommendations*, p 7
23. Barker K, Great Britain Treasury, December 2006, *Review of Land Use Planning Final Report Recommendations*, p 29
24. COAG Reform Council, op. cit., p 4



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