



PLANNING SYSTEM REVIEW ISSUES PAPER

WSROC Submission

March 2012

Planning System Review Issues Paper: WSROC Submission

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INTRODUCTION

Background

WSROC welcomes the opportunity to make a further submission to the NSW Planning System Review.

In 2011 the review panel sought the community's views on what should be the broad underpinning principles for new legislation to replace the *Environmental Planning and Assessment Act 1979*. WSROC made a submission in response which identified some of the major challenges of the current planning system and proposed a range of improvements and reforms based on feedback from member councils.

WSROC's submission strongly endorsed the intentions of the review and outlined some of the key flaws of the current planning process. These included the confusion and uncertainty caused by the high rate of ad hoc changes to the planning framework, the lack of consideration of the wide-reaching impacts of some of these changes and the lack of connection between local planning instruments and the lofty visions of strategic planning documents such as the Metropolitan Plan.

WSROC proposed that a new planning system should be based on the following key principles:

- **Integration:** the need to achieve a more integrated focus on identifying priorities and achieving better outcomes for the planning system and in particular the importance of integrating the wide range of plans and planning processes including those outside the Environmental Planning and Assessment Act.
- **Simplicity:** the need to rationalise and streamline all planning-related legislation and to simplify the planning system.
- **Consultation:** the need to establish a true partnership between State and Local Government and to provide the community with greater access and input.
- **Consistency:** the need to adopt a more consistent approach to amending the planning system, for example, issuing amendments at set times once or twice a year.
- **Flexibility:** recognition that the "one-size-fits-all" approach doesn't work and the need for a more flexible and adaptable LEP template.

WSROC's submission expanded on these principles in responding to the questions asked in the first phase of the review, reiterating the need to develop a completely new planning system focussing on strategic outcomes, not detailed process. In particular WSROC urged the retention of "no right of appeal" for rezoning applications and supported place-based controls, the removal of the cap on S94 contributions and the integration of infrastructure and service provision with planning.

The structure of this submission

In December the Planning Review released an Issues Paper titled *The way ahead for planning in NSW* and called for submissions responding to the paper's 238 questions. This submission draws on WSROC's previous response, discussions with WSROC member councils, reviews of their draft submissions and the outcomes of meetings with member council staff to discuss the planning review.

Consistent with WSROC's emphasis on the importance of the broader aspects of planning, WSROC's submission commences with general comments on the review process and an overview of the organisation's position on some of the key strategic issues. These responses are divided into three sections:

1. **The planning review process.** This section discusses issues with the planning system review process, especially the content and structure of the Issues Paper and the extremely tight deadlines for the lodgement of submissions and the completion of the review.
2. **Strategic elements of the planning system.** This section focusses on the more strategic elements of the planning system review. These were the elements identified in part in the Issues Paper questions in sections A, B, C and F.
3. **Planning process issues.** This section responds to specific questions that primarily relate to planning processes contained mainly in sections D and E of the Issues Paper.

Priority has been given to questions relating to strategic and regional issues as well as those which a majority of WSROC councils identified as being of major concern. However this submission does not necessarily reflect the position of any individual council on any specific question or issue, especially as there has been insufficient time to conduct a detailed survey of WSROC member councils. Councils have a range of views on some of these issues and therefore their submissions need to be read in conjunction with this response.

The appendix contains detailed responses to some of the questions in the issues paper, though these should be read in the context of the general comments section. Because of the detailed nature of the Issues Paper and the tight deadline for responses, not all questions in the issues paper have been addressed, with priority being given to those which have a strategic or regional focus or which have been identified as a high priority by the majority of WSROC councils.

It is important to note that a non-response to any specific question is not to be construed as acceptance (or rejection) by WSROC or any of its member councils of any propositions contained in that question. A non-response should also not be taken to mean that WSROC or its member councils regard the particular issue identified in the question concerned as being of lesser importance.

1 RESPONSE TO THE PLANNING REVIEW PROCESS

In its previous response WSROC noted that the planning review was a “much needed re-assessment of the entire planning process in NSW”.

The release of the Issues Paper is an important next step in this process and demonstrates the extent of input from the earlier consultations. The range of questions posed is extensive and covers many aspects of the planning system. However, while a number of the 238 questions address some of the strategic issues highlighted in WSROC’s earlier response, the paper does not fully consider many aspects of the broader planning system, for example the relationship between planning as defined in the EPAA and the planning processes of other authorities, for example, health, education and transport.

There is also inadequate delineation between those questions in the issues paper which do address strategic issues and the much larger number which relate to detailed aspects of the planning process. It can be argued that the imbalance between the two suggests the review is focussing more on process detail than the urgent need to reform the whole system. There is also no “weighting” of the questions which are asked, either in relation to their priority or significance or in terms of the extent to which specific questions were raised in the public consultation process.

There is also little consideration of the previous attempts at planning reform in NSW, such as the PlanFirst initiative and the subsequent regional planning processes, which tried to address similar issues to those highlighted in this review but which were subsequently abandoned or weakened. There is also no

discussion of “best practice” examples of planning systems in other jurisdictions either in Australia or overseas. It is understood that this is being developed concurrently with the current stage in the review, but this means that this discussion was not available for consideration in the responses to the issues paper.

The release of the issues paper just before the holiday period, the tight deadline for responses and the large number of questions has prevented full consideration of these issues by the community, councils and in particular elected representatives. This is a particular problem with those questions which do pose major strategic policy choices (for example, C1, “Should there be an independent State Planning Commission to undertake strategic planning? Or should there be an independent Planning Advisory Board?”). These questions warrant much more detailed consideration and debate.

The planning review website does provide a brief overview of the inquiry timeline and stages, but there is little detail about the processes involved. For example the next stage is the release of a Green Paper which will set out the review panel’s preferred structure for a new planning system. However, there is no indication of what consultation process will be used in relation to the proposed Green Paper or whether there will be any consultation at all. There is also no information regarding the composition of the working group that will assist the review panel in preparing the Green Paper or what the exact role of this group will be.

More broadly, it is not clear whether the current planning system review is intended to be a comprehensive “stand-alone” reform or is merely a first step in a wider process; if it is the former the timing of the review process with its ambitious deadlines runs the risk that the outcome will end up becoming more of a “patch-up job” rather than a real reform.

This perception is reinforced by the lack of an “options paper” stage between the Issues Paper and the Green Paper. Such an options paper could distil the outcomes of the consultation process and the review panel’s research on best practice in other jurisdictions to outline a range of alternatives for the strategic aspects of the planning system. These could then be subjected to further consultation before proceeding to the Green Paper.

In the absence of such an options paper or the opportunity for further discussion about the strategic issues and potential alternative models (which should have been given far greater prominence in the issues paper) there will be far too little considered debate on these key components of the planning system before the review panel presents its preferred option.

2 OVERALL COMMENTS ON THE ISSUES PAPER

2.1 Strategic Elements of the Planning System

A. Introduction

As WSROC’s earlier submission noted, 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.

Another outcome is the increasing disconnection between the optimistic visions put forward in strategic planning documents such as the Metropolitan Plan and the local planning instruments and processes used by councils. The failure to implement the infrastructure “commitments” which were originally intended to

underpin these strategic plans has added to this disconnect – and this failure has been exacerbated by the capping of Section 94 developer contributions for local infrastructure.

Compounding these flaws is the lack of a consistent relationship between the strategic planning processes administered by the Department of Planning and Infrastructure (DPI) and those undertaken by other state agencies over which the DPI appears to have little control. The result of these systemic failures has been the inadequate and often-delayed provision of infrastructure over the past three decades in major growth areas such as Western Sydney.

The issues paper does not adequately deal with these major strategic issues. As indicated earlier, it is strongly recommended that a preliminary options paper be prepared by the review panel dealing specifically with strategic issues and outlining a number of options for the overall structure of the planning system across the whole of government. This paper should be released for further consultation before the green paper is prepared.

B. Key elements, structure and objectives of a new planning system

As noted above, the planning review should give much greater emphasis to these elements which make up the core of the planning system before considering the process issues. The primary task of the review should be the delineation of a clear hierarchy of planning responsibilities and accountabilities across the whole of government, clarifying for example the relationship between the State Plan, the responsibilities of the DPI in relation to the metropolitan and other regional plans, sub-regional plans and other planning functions as well as those undertaken by state agencies and local government.

This process should involve the adoption of consistent standards and processes for accountability and reporting by all state agencies and local government. These accountabilities should be seen as a two-way process; not only should regional, sub-regional and local plans acknowledge and incorporate the priorities set out in “higher” plans, but in turn the high-level plans should also monitor the performance of other plans and also contain a mechanism for feedback from regional and local plans.

Perhaps the most critical relationship is that between the land use planning system and the State Infrastructure Plan. Confidence in the planning system has been undermined by the failure to deliver on infrastructure commitments that were included in strategic and regional plans. A new planning system must ensure the adequate and timely provision of local and regional infrastructure at the time of or prior to development or redevelopment.

The provision of infrastructure should be made central to the new planning legislation. For example, while the current objectives of the EPAA are broadly supported, WSROC reiterates its call for a reference to infrastructure to be included. Despite the importance of infrastructure, WSROC does not support the ranking or weighting of the Act’s objectives; however a commitment to sustainability and sustainable communities in their broadest sense is supported rather than a specific reference to ecologically sustainable development (as proposed in the issues paper at B2). This should reflect the quadruple bottom line objectives of supporting economic development and employment, environmental sustainability and biodiversity, social sustainability including public health and wellbeing and cultural wellbeing and diversity.

C. Making plans

Consistent with the objectives outlined in B above, the NSW government, in consultation with councils and the community, should set the overall aims and objectives for the state’s management and growth through

strategic and regional plans. While it is acknowledged that there would still be a need for some state government oversight, as much as possible the translation of these aims and objectives into land-use planning and management, including rezonings, should be the responsibility of local government.

This delineation of responsibilities needs to be reflected in a consistent planning hierarchy. This should include:

- A state-wide plan which sets out the high-level aims and objectives for NSW across all state agencies and local government and which also identifies major funding, infrastructure and service commitments. This plan should monitor the implementation of other plans and also include opportunities for ongoing input through the planning system;
- State agency plans which incorporate the aims and objectives of the state plan, including, specifically, an integrated state-wide strategic land use plan;
- A state-wide infrastructure plan which is fully integrated with and supportive of all the other plans and which is backed by funding commitments;
- Regional strategic plans, including the Metropolitan Plan, which provide aims, objectives and infrastructure commitments at the regional level that reflect the direction set in the state plan, state infrastructure plan and state strategic plan and which also incorporate the relevant aims and objectives of other agency plans;
- In the metropolitan area, sub-regional plans which in turn reflect the strategic directions of the state-wide and metropolitan plans;
- Local environmental, community and management plans prepared by councils which implement at the local level the aims and objectives of state, regional and sub-regional plans.

These plans should be developed with strong council and community input, particularly at the strategic, regional and sub-regional levels and supported by sound funding strategies. In addition the new planning system should simplify the process of local plan making. The current “one size fits all” approach of the standard LEP template has not succeeded in its primary aim of simplifying the planning process and making it more flexible and user-friendly. In fact, the practical outcome has been the opposite.

While there is still a need for some form of standard “baseline” template, this should be made much more flexible to allow councils to respond to specific local planning needs; for example, managing the urban-rural interface especially in environmentally sensitive areas, or dealing with steep slopes or bushfire or flood-prone areas. Councils need to be able to add clauses as appropriate to this baseline template to deal with these issues and to provide for placed-based or precinct planning.

The issues paper seeks answers to some fundamental and significant questions about the planning system, for example (and as noted earlier) C2 asks if either a State Planning Commission or a Planning Advisory Board should undertake strategic planning. WSROC would favour a more independent approach to planning which also provides an opportunity for high-level local government input to strategic planning. However this is a critical policy question and should be the subject of further discussions and consultation.

In several places the issues paper also asks questions about regional planning and the potential role of Regional Organisations of Councils (ROCs); for example, A6 seeks responses on whether there should be a framework for regional planning and C2 asks if ROCs should be “recognised” within the planning system. This submission argues that regional plans (and in the case of the metropolitan area, sub-regional plans) should be reinstated and strengthened to provide an interface between state-level strategic planning and local planning.

Regional and sub-regional plans should reflect the priorities of state-level strategic and infrastructure planning and should also provide a vehicle for input to these broader plans. They should interpret these priorities in a regional context and also respond to specific regional issues as well as providing a more manageable framework for interaction between state and local government around planning issues.

Obviously, given their regional focus and perspective, ROCs can play a key role in providing input on these regional issues and in coordinating council responses and engagement in a revitalised regional planning process, subject to the agreement of their member councils. However, it would not be appropriate for ROCs to receive blanket statutory recognition within the EPAA as formal planning bodies; in any case, the majority of ROCs do not have the expertise or resources to undertake a statutory role. Similarly, while all WSROC councils believe that strategic and regional plans need to be strengthened, most are of the view that these plans should be regarded as strategic rather than statutory documents.

F. Implementation of the new planning system

The DPI should be responsible for coordinating and integrating high-level strategic planning activities across all state agencies as well as overseeing the administration of the planning act. In overseeing the land use planning system, the Department should also focus on strategic and regional planning and setting the parameters for local planning, rather than micro-managing councils in discharging their planning functions, or calling in developments which are clearly not state-significant.

To achieve these outcomes the Department will need to establish comprehensive consultation processes relating to strategic planning and provide effective community leadership on planning issues, all of which will require additional resourcing of the DPI and its regional offices. However, refocussing the Department's priorities on strategic planning and streamlining the mechanisms for amending the planning system should provide opportunities to reallocate existing resources.

Within this new framework councils will also face some resourcing challenges. However it is appropriate that the new planning system reaffirm their primacy in managing local planning without direct intervention by the Department. This submission argues that councils should have the right to prepare, exhibit and adopt their own LEPs within an appropriate framework and consistent with strategic and regional plans. At the very least councils should be able to make minor amendments to LEPs as long as they are consistent with strategic and regional plans.

2.2 Planning Processes

D. Development proposals and assessment

E. Appeals and reviews; enforcement and compliance

As a regional submission concentrating on strategic and regional planning issues, this submission does not seek to comment in detail on all the questions contained in sections D and E of the Issues paper. As argued earlier, the structural and strategic components of the planning system should be dealt with first before consideration is given to the extremely detailed process questions contained in these sections.

Nonetheless, responses are offered on selected matters which were identified by the WSROC councils as being of major significance. These include:

- Confirmation of the role of councils as the primary authority for local land use management. For example the definition of state significant developments should be restricted to developments

which are genuinely state significant and as much as possible councils should be responsible for all other assessment matters;

- Greater flexibility for councils in managing the planning system to suit local needs, for example the ability to adjust exempt and complying development criteria;
- The need to simplify the development assessment process;
- Retention of the current appeals system and in particular opposition to any proposals for a right of appeal on zoning decisions;
- The removal of the cap on Section 94 contributions or at least the ability to vary it to set realistic contribution levels;
- Further review of the role of Joint Regional Planning Panels (JRPPs) consistent with the approach that councils should be responsible as much as possible for assessing developments which are not state significant;
- Greater accountability and oversight of private certifiers.

Appendix: Planning Review Issues Paper: WSROC Response to Specific Questions

As noted earlier, because of the detailed nature of the Issues Paper and the tight deadline for responses, not all questions in the issues paper have been addressed, with priority being given to those which have a strategic or regional focus or which have been identified as a high priority by the majority of WSROC councils. Councils also have a range of views on some of these issues and therefore their submissions need to be read in conjunction with this response.

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A INTRODUCTION

1 A new planning system: What should the underlying principles be?

1.1 An overarching objective for new planning legislation

A1 What should the objectives of new planning legislation be?	<p>The current objectives are broadly supported but may need updating, for example to include a reference to infrastructure.</p> <p>The objectives in section 5 parts (b) referring to sharing the responsibility for planning between different levels of government and (c) regarding public involvement could also be strengthened. Consideration should also be given to making them more outcomes-focussed.</p>
A2 Should any overarching objectives be given weight above all other considerations?	<p>There should be a broad commitment to sustainability and sustainable development based on the quadruple bottom line contained within the objectives, rather than an overarching commitment to ecologically sustainable development or any other objective.</p>

1.2 Flexibility and the planning system

1.3 Strategic planning

A6 Should new planning legislation provide a framework for regional strategic planning processes? If so, how should appropriate regions be determined for strategic planning?	<p>Yes. While strategic and regional planning are ultimately state government responsibilities, this process should be a “whole of planning” approach involving strong input and “buy-in” from councils, ROCs and Departmental regional offices.</p> <p>Regional planning provides a framework for applying state objectives at a regional level while taking into account regional differences and needs as a framework for local plans. It also provides an interface for negotiation between state and local government. The same applies to sub-regional planning within the metropolitan area.</p>
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	For a discussion of regional and sub-regional boundaries see the response to C17.
A7 Should strategic plans be statutory instruments with greater weight?	<p>While there is a consensus that the role of strategic planning needs to be strengthened, the majority of WSROC councils have indicated that strategic plans should not be statutory instruments.</p> <p>It is more important to integrate strategic planning with broader planning processes across government and in particular to support strategic planning with infrastructure and funding commitments.</p>
A8 How should implementation of strategic plans be facilitated?	<p>Strategic planning needs a strong implementation strategy, including:</p> <ul style="list-style-type: none"> • Political and budgetary commitment to strategic planning with some form of multi-ministerial accountability; • Two-way integration with State Plan, State Infrastructure Plan, strategic plans of other state agencies; • Strong regional and sub-regional plans informed by state-wide plans that can be reflected in infrastructure provision and LEPs, without prescribing detail in local plans; • Comprehensive consultation with councils and the community at all levels of the planning process. As part of this process, ROCs can provide an interface between local and state government for the development of regional plans. • Prioritisation of “hotspots” – areas that are undergoing rapid development or redevelopment.

1.4 *Community involvement*

A9 In a new planning system, how can we improve community participation opportunities? How can we improve consultation processes for plan making and development assessment?	<p>As indicated in A8, there should be comprehensive consultation with councils and the community at all levels of the planning process, in particular in relation to strategic, regional and sub-regional plans.</p> <p>This should involve adequate notification and information, with adequate time for councils and the community to respond.</p> <p>There should be a greater effort to provide information in community languages about the planning system as well as in consultations to develop specific plans.</p>
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1.5 *The provision of infrastructure and community facilities*

A10 How should levies to pay for local and state community infrastructure be set?	<p>The system of developer levies making a contribution to infrastructure provision should be maintained, but the current system is mired in red tape and uncertainty.</p> <p>Many WSROC councils believe that councils should not</p>
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	<p>be subject to a cap on S94 contributions. There is little or no evidence that the savings are being passed on to buyers. The S94 cap is unrealistically too low and leading to shortfalls in the funding of infrastructure. If they are to be regulated some councils are questioning the role of IPART in the process, claiming that the value of S94 contributions is being eroded.</p>
<p>A11 What alternatives to – or additional funding sources for – such infrastructure should be considered?</p>	<p>While developer contributions are a critical component of infrastructure funding, additional sources of funding are needed so that state government can make a greater contribution.</p> <p>This is a significant issue and should be the subject of further discussion and economic analysis, as there is no “silver bullet” solution. It is worth looking at the section of the Christie Transport Public Inquiry which dealt with infrastructure funding. While this concentrated on how to fund public transport infrastructure, some of the options canvassed may be relevant to local infrastructure provision.</p> <p>Also there is a need to look at the total lifecycle cost of infrastructure, not just the upfront costs, and recognise that different parts of Sydney have different infrastructure needs and that some need more infrastructure investment than others, eg, areas undergoing new development or major redevelopment.</p>

1.6 *Development decision-making*

<p>A12 Who should decide regionally significant development and local development applications?</p>	<p>While the majority of WSROC councils support the view that as much as possible councils should be able to decide all development that is not state significant, including regionally significant and local development applications, there is a range of views about whether and to what extent JRPPs should have a role in this process.</p>
<p>A13 Should Joint Regional Planning Panels decide development applications? If so, which applications should the panels decide? Who should identify these?</p>	<p>See A12 above. If JRPPs are going to have a role, consideration should be given to limiting these for example to applications worth over \$50 million or which involve applications which cross LGA boundaries.</p>
<p>A14 Should councils be able to apply to be exempt from the Joint Regional Planning Panel process?</p>	<p>See responses to A12 and 13. If the current role of JRPPs is maintained, then a mechanism for councils to seek exemption is supported; however, if the role of JRPPs is limited, the need for exemptions would also be reduced.</p>

1.7 *Other matters*

1.8 *Complying development*

<p>A15 Should any changes be made to complying development and the process of approving it?</p>	<p>The current system of exempt and complying development has become too rigid, complex and confusing. Exempt and complying development requirements are currently spread through a number of</p>
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	<p>SEPPS and should be simplified and consolidated in a single policy.</p> <p>The “one size fits all” approach also does not suit many areas which have specific needs. There should be a simple baseline which councils can add to and tailor for local situations.</p>
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1.9 *Building certification*

<p>A16 What changes should be made to the private certification system?</p>	<p>There is increasing questioning of whether private certification has been effective. Some councils strongly oppose private certification but others consider it appropriate for minor developments.</p> <p>If the system is retained there is a need to provide better oversight of private certifiers and to improve accountability, the power of the Building Professionals Board and auditing processes. There should be stronger provisions to deal with certifiers who approve work that is not consistent with the overall approval.</p> <p>There is also a need for greater clarity regarding endorsement and appeal processes. These should include a facility for councils to recoup all costs associated with the investigation of complaints of privately-certified projects or the introduction of a separate process to undertake such investigations which does not involve any cost to councils.</p>
<p>A17 How can private certifiers be made more accountable?</p>	<p>See A16</p>

1.10 *Changes to zoning*

<p>A18 Should there be a right of review or appeal against a council decision concerning the zoning of a property?</p>	<p>The majority of WSROC councils oppose rights of appeal on rezonings and all are opposed to appeals where council has refused an application to make a zoning change.</p> <p>These are policy matters, not a development right issue. The only limited exception may be where council has zoned land contrary to an adopted policy or plan; however in these cases the appeal process should be technical in nature rather than legal.</p>
<p>A19 Should there be any distinction between a council decision to change a zoning and a council refusing an application to change the zoning?</p>	<p>See A18</p>
<p>A20 If there is to be a right of appeal or review of a council zoning decision, who should decide that appeal or review?</p>	<p>See A18</p>

1.11 *Environmental impact statements*

<p>A21 What are appropriate measures that might be implemented in a new planning system to create public confidence in the integrity of environmental impact statements (and their supporting studies) for major development projects?</p>	<p>Major developments should be subject to a high standard of scrutiny and assessment. There is a perception that the planning system increasingly makes rules which apply only to small developers; larger developers can do what they like, especially if there is no cost to the state government for the provision of infrastructure.</p> <p>Government agencies also need an adequate level of experienced staff and resources to be able to fully test the assumptions of an EIS relating to major developments.</p>
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B KEY ELEMENTS, STRUCTURE AND OBJECTIVES OF A NEW PLANNING SYSTEM

1 The objects and philosophy underpinning a planning framework

1.1 *Objectives of new planning legislation?*

<p>B1 What should be included in the objectives of new planning legislation?</p>	<p>See A1. The current objectives are broadly supported but may need updating, for example to include a reference to infrastructure. The objectives in section 5 parts (b) referring to sharing the responsibility for planning between different levels of government and (c) regarding public involvement could also be strengthened. Consideration should also be given to making them more outcomes-focused.</p>
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1.2 *An overarching objective*

<p>B2 Should ecologically sustainable development be the overarching objective of new planning legislation?</p>	<p>See A2. There should be a broad commitment to sustainability and sustainable development based on the quadruple bottom line contained within the objectives, rather than an overarching commitment to ecologically sustainable development or any other objective.</p>
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1.3 *Ranking or weighting of objectives*

<p>B3 Should some objectives have greater weight than others?</p>	<p>All objectives should have the same weight, in part because it would be an extremely difficult to weight them objectively or to administer such a system in terms of its impact on other plans and individual development applications.</p>
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1.4 *Separate objectives for plan making and development assessment*

<p>B4 Should there also be separate objectives for plan making and development assessment and determination?</p>	<p>The broad objectives contained in the Act should inform all levels of plan making and development assessment. More specific objectives consistent with these broad objectives could be incorporated in regional plans, sub-regional plans and individual planning instruments.</p>
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1.5 *Operational objectives*

B5 Should the objectives address the operation of the new planning legislation?	See A1 and B1. The objectives in section 5 parts (b) referring to sharing the responsibility for planning between different levels of government and (c) regarding public involvement could be strengthened. In general terms however the Act itself should be written in a way that increases the transparency and accountability of the operation of the new planning system.
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2 **Definitions**

B6 Are the current definitions in the Act still relevant or do they need updating?	The current definitions are relevant but should be reviewed regularly.
B7 Does the present definition of 'development' need to be rewritten? If so, in what respect?	No.
B8 Should there be a definition of 'minor'? If so, what should it say?	No
B9 Should 'public interest' be defined? If so, what should it say?	No, though there is a case for guidelines to explain how it is used in different aspects of the planning system. Public interest should be retained as a head of consideration for development assessment.

3 **The structure of new planning legislation**

3.1 *A single instrument*

B10 Should there be one act or separate acts for different elements of the planning system?	The majority of WSROC councils would prefer a single Act that covers the whole of the land use planning system. However it is important to recognise that other forms of planning (eg, state infrastructure plan, strategic plans of other government agencies) fall outside the remit of the planning legislation. These relationships should be acknowledged and referenced within the planning legislation.
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3.2 *Regulations*

B11 What should be in regulations?	Regulations should continue to cover detailed procedural matters referred to in the Act, rather than incorporating these processes into the Act.
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4 **Reviews of new planning legislation and planning instruments**

4.1 *Periodic review of planning legislation*

B12 Should there be a statutory requirement to review legislation periodically? If so, at what interval?	Yes. At least every 10 years and preferably every five years. See also responses to C6-C8.
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4.2 *Periodic review of other elements*

B13 Should there be requirements to periodically review other planning instruments and maps?	Yes – see responses to C6-C8.
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5 Information technology and a new planning system

B14 Should the information available about land on a central portal be able to be legally relied upon, if there is the ability for it to be certified for accuracy?	Yes, but the issues relating to accuracy and resourcing need to be addressed. Ideally such a database would contain all property and planning controls applicable to each parcel of land in NSW. This would provide a basis for online development applications throughout the state.
B15 Would this be able to replace section 149 Planning Certificates?	No response – please see individual WSROC council submissions

6 Decision making

6.1 Independent decision making

B16 What provisions should there be for independent decision making?	Councils should have primary responsibility for land use management and development assessment. Within this framework councils should be encouraged to adopt a model code for the use of delegated authority for all standard categories of development.
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6.2 The role of the Minister

B17 What should be the role of the Minister in a new planning system?	The Minister is ultimately responsible for overseeing the implementation of the state’s planning legislation and for pursuing the state government’s planning agenda. This should also involve liaison with other Ministers to ensure that planning objectives are met and that the legislation and agenda are fully integrated with all government planning activities.
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C MAKING PLANS

A State Planning Commission or a Planning Advisory Board?

C1 Should there be an independent State Planning Commission to undertake strategic planning? Or should there be an independent Planning Advisory Board?	<p>While there is no specific view on these or other alternatives among WSROC councils there is broad agreement on the need to consider options for alternative management of the planning system that overcome the current “silo” mentality of government departments and depoliticise the process.</p> <p>Any such alternative should prioritise strategic planning and bring greater independence, accountability and transparency to the planning process. It would need to be resourced and the community and local government need to be represented in the process. There would also have to be confidence that such an alternative structure would not be abolished by a Minister opposed to some of its decisions.</p> <p>As indicated in the general comments, these types of questions warrant much more detailed consideration and debate. This should involve a wider review of all the governance structures related to planning.</p>
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Regional Organisations of Councils

<p>C2 Should regional organisations of councils be recognised in new planning legislation?</p>	<p>See general discussion and the response to A6. ROCs can have a role in providing input to regional planning and (with the endorsement of their members) acting as an interface between state government and councils and local communities. However they should not be recognised as statutory planning bodies nor should they be given a formal role in the statutory planning process.</p> <p>The regional planning process needs further consideration. There is a need to develop a consistent pathway and process for regional planning, which could possibly involve some sort of regional planning body. However, none of the current bodies that operate at the regional level; ie, DPI regional offices, ROCs or RDA committees, are currently adequately resourced or have the appropriate auspice to undertake regional planning.</p>
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1 Plan making: Process

1.1 Community participation

<p>C3 Should new legislation prescribe a process of community participation prior to the drafting of a plan?</p>	<p>This issue needs further consideration. While there should be a clear indication that community participation should occur through the exhibition process and by retaining and strengthening the principles of public involvement in the objectives, the Act should not be overly prescriptive on these matters.</p> <p>There is a case however for mandating more detailed community participation processes into the development of state-wide or regional plans, as well as the state infrastructure plan.</p>
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1.2 The public interest

<p>C4 Should there be required consideration of the ‘public interest’ in the plan making process?</p>	<p>Yes – the public interest needs to be considered in all government processes.</p>
<p>C5 Should there be a definition of what constitutes the ‘public interest’? And what should it say?</p>	<p>No. See B9 response.</p>

1.3 Regular reviews

<p>C6 Should plans and associated maps have prescribed periodic reviews?</p>	<p>Yes, subject to simplification of the plan-making process and consideration of the resource implications for councils (see response to C8). The review process should also be integrated with council’s Integrated Planning and Reporting (IPR) processes; this would result in reviews every four, eight or 12 years.</p>
<p>C7 At what suggested intervals should such reviews occur?</p>	<p>See response to C6. Reviews should occur at least every 10 to 12 years and preferably every four to five years,</p>

subject to resource implications, the nature of the local government area and the degree of integration with council's IPR process.

1.4 *Co-ordination with planning under the Local Government Act*

C8 How can new planning legislation co-ordinate with council planning under the Local Government Act?

See responses to C6 and C7. There should be better integration of LEPs and local land use planning processes with the Local Government Integrated Planning and Reporting (IPR) processes adopted in 2009 and in particular the Community Strategic Plan. Both planning processes should inform each other and ideally the review processes would be integrated as part of the same cycle.

2 Plan making: Content

2.1 *Data and statistics*

2.2 *Climate change*

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

This should be informed by federal and state government policies and scientific advice. It also has to be acknowledged that there is limited capacity for local plans to address broad climate change issues and that there are other environmental changes that councils will always need to consider.

2.3 *Biodiversity*

C12 Should biodiversity and environmental studies be mandatory in the preparation of plans?

Yes, but only when they are relevant. In addition some aspects of these issues may be best dealt with through studies at the regional and sub-regional levels, linked to regional and sub-regional plans.

2.4 *Aboriginal cultural landscapes*

C13 How should landscapes of Aboriginal cultural heritage significance be identified and considered in plan making?

They should be included but the process should be the subject of further consultation including discussions with relevant Aboriginal groups and an examination of best practice to date in this area.

3 Strategic planning

3.1 *A statutory framework*

C14 Should new planning legislation provide a statutory framework for strategic planning?

Yes, though this does not necessarily mean that strategic plans themselves should be statutory instruments (see A7 and C15).

3.2 *Legal status*

C15 Should strategic plans be statutory instruments that have legal status?

See A7 response. While the role of strategic planning needs to be strengthened, the majority view of WSROC councils is that state-wide, regional and sub-regional strategic plans should not be statutory instruments.

3.3 Implementation

<p>C16 How can the implementation of strategic plans be facilitated?</p>	<p>See section 2.1 in General Comments and in particular 2.1.B. In summary, strategic planning needs a high level of political and budgetary commitment from the state government and should be implemented within a whole-of-government framework This should include the following planning hierarchy:</p> <ul style="list-style-type: none"> • A state-wide plan which sets out the high-level aims and objectives for NSW across all state agencies and local government and which also identifies major funding, infrastructure and service commitments. • State agency plans which incorporate the aims and objectives of the state plan, including, specifically, an integrated state-wide strategic land use plan • A state-wide infrastructure plan which is fully integrated with and supportive of all the other plans and which is backed by funding commitments; • Regional strategic plans, including the Metropolitan Plan, which provide aims, objectives and infrastructure commitments at the regional level that reflect the direction set in the above plans; • In the metropolitan area, sub-regional plans which in turn reflect the strategic directions of the state-wide and metropolitan plans; • Local environmental, community and management plans prepared by councils which implement at the local level the aims and objectives of state, regional and sub-regional plans. <p>It would also be useful to assess why previous attempts to develop a stronger focus on strategic planning such as PlanFirst have failed.</p>
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3.4 Geographic area

<p>C17 To which geographical regions should strategic plans apply – catchments or local government areas?</p>	<p>Strategic planning needs to take place at all levels – state-wide, regional, sub-regional and local. As argued elsewhere in this submission, councils should have primary responsibility for local strategic planning and so LGAs are the most logical geographic region.</p> <p>However it needs to be acknowledged that not only natural catchments but also other “catchments” involving settlement – employment, education, transport etc – transcend local boundaries. This should be reflected in both local and regional planning. In addition there are a number of existing regional boundaries such as ROC regions that could form the basis for planning regions in rural areas.</p> <p>Similarly in the metropolitan area there is a need for sub-regions which reflect the structure of the city. Again the established ROC boundaries may be the most</p>
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	<p>appropriate. In the western half of the city both the WSROC region and the Greater Western Sydney Region (essentially WSROC and MACROC) are well-established and either would be an appropriate area for a Western Sydney planning sub-region.</p> <p>Whatever boundaries are selected for regions and sub-regions, there will need to be a mechanism for dealing with cross-boundary issues.</p>
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4 Environmental planning instruments

4.1 State environmental planning policies (SEPPs)

<p>C18 Should there be State environmental planning policies? If so, should they be in a single document? Or should they be provisions in a local environmental plan?</p>	<p>The majority view of WSROC councils is that there is a role for SEPPs but they should be streamlined and preferably contained in a single document or incorporated into regional plans or LEPs. More flexibility is needed to overcome the “one-size-fits-all” problem of current SEPPs – possibly via a regional approach.</p> <p>SEPPs should be more strategically focussed and set targets and objectives rather than being prescriptive. SEPPs should also not zone land. There should be one approval plan for an area.</p>
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4.2 Public participation

<p>C19 Should there be statutory public participation requirements when drafting SEPPs?</p>	<p>Yes. Just as LEPs require public exhibition because they impact on development., so should SEPPs.</p>
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4.3 Disallowance by Parliament

<p>C20 Should a SEPP be subject to disallowance by Parliament?</p>	<p>This proposal needs further discussion</p>
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4.4 Local environmental plans (LEPs)

<p>C21 Should there be a review process to deal with issues arising between the Department and councils that relate to the preparation of local environmental plans?</p>	<p>Yes</p>
<p>C22 Should there be a legislative provision to establish this?</p>	<p>Yes</p>

4.5 Preparation of zoning proposals

<p>C23 How should rezonings (planning proposals) be initiated?</p>	<p>Rezonings should be initiated only by the council.</p>
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4.6 Timeframes

<p>C24 How can amendments to plans be processed more quickly?</p>	<p>The majority view is that councils should have the delegated authority to amend LEPs themselves subject to</p>
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	the objectives of state and regional plans, apart from gazettal. Consultation with state government agencies should be streamlined and occur within a prescribed timeframe.
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4.7 *Appeals and reviews*

C25 Should there be a right of appeal or review for decisions about planning proposals?	<p>No. LEPs are the result of community consultation and represent the direction set by the community for future development. Once determined LEPs and zonings should not be subject to appeal.</p> <p>See also the response to A18. The majority of WSROC councils oppose rights of appeal on rezonings and all are opposed to appeals where council has refused an application to make a zoning change.</p>
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4.8 *Compensation for the consequences of a rezoning*

C26 Should there be a right for a landholder to seek compensation for the consequences of a rezoning of their land?	<p>The majority of WSROC councils oppose this proposal. It should be noted that the concept of compensation where land value decreases as a result of rezoning introduces the prospect of community betterment for up-zoning, in part as a mechanism to provide compensation.</p> <p>The prospect of having to pay compensation may also impact on council’s ability to make zoning decisions in the public interest, for example, if new information emerges about the potential impacts of development on a particular area.</p> <p>Many decisions by all levels of government can impact on property values, for example, the announcement (or cancellation) of nearby infrastructure projects, but no compensation is provided. If the notion of compensation is adopted, then the state should carry the liability to pay any compensation claim based on a rezoning that resulted from implementing a state policy.</p>
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4.9 *Consulting government agencies when making or amending a local environmental plan*

C27 When local environmental plans are being made or amended, how can transparency and opportunities for negotiation be improved during consultation with government agencies?	<p>Ideally the integrated planning system commented on in the general discussion and in C16 would provide a transparent basis for consultation. Government agencies should be required to provide information to councils regarding their own plans as part of the LEP process and councils should also have the opportunity to comment on their strategic plans.</p> <p>Consideration could be given to a “one-stop-shop” in the Department of Planning to coordinate and monitor all referrals. In the case of conflict between government agencies, the Department should have the authority to determine the issue.</p>
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4.10 *Minor rezoning proposals*

C28 Should some individual rezonings not require any merit consideration at a state level?	Yes – this should be explored further.
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4.11 *Heritage issues in local environmental plans*

4.12 *Student housing*

5 Development control plans and other instruments

5.1 *Legal status*

C32 What should be the legal status of a DCP?	Their current status should be maintained. Trying to make DCPs legally binding on all development is unworkable.
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5.2 *A standard instrument DCP*

C33 Should there be a standard template for DCPs?	The precedent of the “one-size-fits-all” approach of the LEP standard template has set an unfortunate precedent for the proposal for a standard DCP. There may be a role for some standardisation and the development of high-level templates but these should be available as “best practice” rather than mandated.
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6 Planning issues across council boundaries

C34 How should new planning legislation facilitate cooperative cross-border planning between councils?	Strengthened regional planning should provide a basis for cooperative cross-border planning
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7 Other matters

7.1 *The anomalous position of Aboriginal reserves*

7.2 *Provision of land for registered clubs in new release areas*

C36 Should developers of greenfield residential land release areas be required to make provision for a registered club and associated facilities?	No. This is a market issue. Councils should not be required to zone or potentially acquire land for such uses. This is very different to the setting aside of land for genuine recreational, community or cultural purposes.
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D DEVELOPMENT PROPOSALS AND ASSESSMENT

1 Types of development

D1 How should development be categorised?	The present system should be simplified, possibly following the model proposed by PIA.
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1.1 *State significant development*

D2 What development should be designated as State significant and how should it be identified? Should either specific projects or types of development generally be identified as State significant?	Major projects which are genuinely significant to the whole state in terms of type or scale should be regarded as state significant, with the criteria established in legislation. The value of development is not necessarily a good indicator and current values are too low.
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1.2 *Regional or local significance*

D3 What type or category of development, if any, should be identified as regionally significant and be determined by a body other than the council?	The majority of WSROC councils have indicated that as much as possible regionally-significant projects should be determined by councils. However this process should take place within the context of well-developed regional and sub-regional plans which could specify the nature of regionally-significant development.
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1.3 *Exempt and complying development*

D4 What development should be exempt from approval and what development should be able to be certified as complying?	These should be limited to low impact development and not include large scale development.
D5 How should councils be allowed local expansions to any list of exempt and complying development?	There should be a baseline regional approach to which councils can add rather than current “one size fits all” state-wide approach. This could be state-wide or regionally based.

2 **Other development issues**

2.1 *Is complying development contrary to objectives of the Planning Act?*

D6 Should there be a public process for evaluating complying development applications?	There should be no need to involve the public in exempt or complying development. It should be either a DA or a complying development.
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2.2 *Development ‘as of right’*

D7 Should there be an absolute right to develop land for a purpose permitted in the zone subject only to assessment of the form proposed?	No – the proposal is not supported. There could be a range of impacts which need consideration.
D8 Should there be an automatic approval of a proposal if all development standards and controls are satisfied?	No – if it was that straight-forward, it would already be complying or exempt.

2.3 *Staged development applications*

D9 Should conceptual approvals be available for large scale developments with separate components?	Yes, provided there is guidance on the level of detail required to accompany an application for a concept approval.
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2.4 *Issues relating to existing use rights*

D10 Should a new planning system reinstate the ability to convert one nonconforming use to another, different nonconforming use?	The majority of WSROC councils oppose this proposal. Ideally over time land uses should change to conform to those permitted in the zone.
D12 Should existing nonconforming uses be permitted to expand the boundaries of their present site (subject to a merit assessment)?	No – the proposal is not supported.

D14 When there is a change in zoning of the land, should an application be able to be made to a council for a declaration of the nature and extent of an existing use?	Qualified support, subject to full cost recovery of fees and obligation to provide full information
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2.5 *Transferable development rights for agricultural land*

2.6 *Challenging prohibitions in a zone*

2.7 *Approving unauthorised structures*

D18 Should there be a single application to the council to obtain permission to use an unauthorised structure?	Yes - should be a single application. It should not be possible to get a building certificate without development consent, nor should this enable an illegally erected structure to provide a means of achieving an otherwise prohibited use. Also the costs associated with such an application should be higher to provide a disincentive.
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2.8 *Flexibility in requiring an environmental impact statement*

2.9 *Anticipating future changes to residential patterns in single dwelling areas*

2.10 *Applications for community events*

3 **Pre-development application process**

3.1 *Director General's requirements*

4 **Making an application**

4.1 *Simplifying the process*

D23 How can the application process be simplified?	See response to D24.
D24 Should there be standard development application forms that have to be used in all council areas?	Yes, preferably electronic forms to encourage online lodgement.

5 **After an application is lodged but before assessment**

6 **Assessment of development proposals – processes**

6.1 *A quicker process*

D27 Should deemed approvals take the place of deemed refusals for development applications?	No – this proposal is not supported. Delays in processing are often due to the poor quality of applications and the inadequate provision of information. The precautionary principle should apply. Adoption of this process might also encourage councils to refuse problematic applications outright rather than negotiate with the applicant to secure better outcomes, as the delay could risk triggering a deemed approval.
D28 Should councils be able to charge a higher development application fee in return for fast-tracking assessment of a development proposal?	No. The proposal is inequitable; everyone's application should be assessed equally. It is also impractical if everyone pays extra and in any case an accelerated assessment cannot be guaranteed if the application is of poor quality and/or does not provide adequate information.

6.2 *A less expensive process*

6.3 *State significant development*

D31 How should State significant proposals be assessed?

Genuinely state significant developments should be assessed by the Department with appropriate input from councils. The process should be transparent and ensure that the relevant council's planning controls are considered.

6.4 *Crown development*

6.5 *Council as an applicant*

6.6 *Environmental impact statements and assessment reports prepared by the applicant*

6.7 *Architectural review and design panels*

7 Assessment of development proposals – assessment criteria

7.1 *The broad framework*

8 Additional specific matters suggested for development assessment

8.1 *Project viability*

8.2 *Mandating the amber light approach?*

8.3 *Impact on property values*

8.4 *Design excellence*

8.5 *Impacts beyond the immediate locality of a site*

8.6 *Cumulative impacts*

D44 Should a consent authority be required to consider any cumulative impact of multiple developments of the same general type in a locality or region? Should this be a specific requirement in assessment criteria?

The issue of cumulative impacts needs to be considered, though there are a range of views on how to approach this which need further consideration. Some councils consider that cumulative impacts should be incorporated in assessment criteria, though appropriate methodologies need to be developed. It can also be argued that the implications of cumulative impacts should be considered in the strategic planning process and appropriate safeguards built into regional and sub-regional plans.

8.7 *Project life cycle impacts and greenhouse gas emissions*

8.8 *The weight to be given to the 'public benefit' of a proposal*

D46 Should the broader question of the public benefit of granting approval be balanced against the impacts of the proposal in deciding whether to grant consent?

Yes – this already occurs.

8.9 *Past unsatisfactory performance by a development applicant and future development applications*

8.10 *Variations to standards*

D48 Should objections to complying with a development standard remain?	Yes – this has benefits and the mechanism should remain
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8.11 *Applying an ‘improve or maintain’ test*

8.12 *Risk of natural disaster as an assessment criterion*

8.13 *Urban water issues*

D52 What water issues should be required to be considered for urban development projects?	This issue needs further consideration, but this matter may be better addressed through guidelines rather than legislation.
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9 Amendments to applications

10 Ensuring council performance

11 Concurrences and other approvals

12 Making decisions

12.1 *State significant development*

D62 Who should make decisions about State significant proposals?	See response to D31.
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12.2 *Delegations*

12.3 *Planning Assessment Commission – scope of role*

D65 What decisions should the Planning Assessment Commission make? Should the Commission’s processes be inquisitorial or adversarial?	The PAC should determine state significant development through an inquisitorial process.
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12.4 *Planning Assessment Commission processes*

12.5 *Local participation on Planning Assessment Commission panels*

12.6 *Assessment criteria for the Planning Assessment Commission*

12.7 *Joint Regional Planning Panels – general*

D70 Should a new planning system include Joint Regional Planning Panels?	See response to A12. While the majority of WSROC councils support the view that as much as possible councils should be able to decide all development that is not state significant, including regionally significant and local development applications, there is a range of views about whether and to what extent JRPPs should have a role in this process. JRPPs may have a role in cross-boundary issues, major developments, council developments and for referrals for review from councils where councils have refused consent and officers have recommended approval.
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	<p>If JRPPs are going to be retained, the processes need to be improved and more consistency is needed across all planning processes, eg, in relationship to probity and accountability.</p> <p>If JRPPs are to be retained, the current \$20 million threshold is too low – it should be at least \$50 million.</p>
D73 Should a council be able to refer a matter to a Joint Regional Planning Panel for determination even if the matter would not ordinarily fall within the jurisdiction of such a panel?	Yes, if they are retained and subject to further discussion
D75 If a proposed development is recommended for approval by council staff, has no public submission objecting to it and is not objected to by the Department, should it be determined by the council?	Yes, unless it is a project involving the council.

12.8 *Development across or impacting across council boundaries*

D76 Should it be possible to constitute a Joint Regional Planning Panel with a single representative of each of the affected councils to consider and determine a significant development proposal that extends across the boundary between two local government areas?	Yes, if they are retained and subject to further discussion
D77 If located entirely within one local government area, should a significant development proposal that is likely to have a significant planning impact on an adjacent local government area be determined by such a two council panel?	This proposal needs further discussion.

12.9 *Exemptions from JRPPs*

D78 Should a council should be able to apply to the Minister to be exempt from a JRPP?	If there are going to be JRPPs, councils which perform well should be exempt from the JRPP process. It can be argued that in some cases JRPPs have actually made the process slower.
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12.10 *Aggregation of developments on different sites to attract the jurisdiction of a Joint Regional Planning Panel*

D79 Should aggregation of multiple proposals to bring them within the jurisdiction of a Joint Regional Planning Panel be banned if, separately, they would not satisfy the jurisdictional threshold?	Yes – this should not be used as a “backdoor” way of triggering the JRPP threshold.
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12.11 Council resolutions to Joint Regional Planning Panels

D80 Should an elected council have the right to pass a resolution to supplement or contradict the assessment report to a Joint Regional Planning Panel?	Yes – councils should have the same right as anyone to make a submission.
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12.12 The Central Sydney Planning Committee

12.13 Council decision making processes

D82 Should elected councillors make any decisions about any development proposals?	Yes, but it should be noted that the vast majority of applications are considered by staff under delegated authority
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12.14 Giving reasons for a decision – general

12.15 Giving reasons for a decision – council approving a project recommended for refusal

12.16 Who should be the consent authority for quarry applications?

13 Conditions on developments

13.1 Standard conditions of consent

13.2 Public interest conditions

13.3 Reviewable conditions

13.4 Climate change and time limited consents

13.5 Public positive covenants

13.6 Performance bonds or financial sureties

13.7 Imposing conditions requiring payment of charges imposed under the Local Government Act

13.8 Putting conditions on construction plans

D94 If there is to be a more concept based development application process, should councils have the power to impose conditions on construction approvals?	Yes – the proposal is supported
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13.9 Compulsory condition of consent for EIS based development approvals

14 Infrastructure contributions

14.1 Community and State infrastructure contributions

D95 Should IPART be given a general reference to examine and make recommendations about how any shortfall in development contributions plans for necessary community infrastructure should be funded?	This proposal needs further discussion. If it were implemented such an inquiry would need extensive input from councils and would require recognition of local infrastructure cost differences.
D96 Should IPART be given a reference to make recommendations about what	Yes if the proposed criteria are advisory and provide a baseline which councils can vary; no if the intent is to

should be the extent, standard and nature of community infrastructure works that should be included in contributions plans?	make it mandatory,
D97 In light of the particular circumstances that might apply to the area covered in a contributions plan, should IPART be given a standing reference to enable councils to apply for variation to the cap on community infrastructure contributions?	The preferred position of a number of WSROC councils is to see the cap removed as it is leading to significant funding gaps and shortfalls in infrastructure provision, particularly for councils with major new release area development. If the cap is not going to be removed, then the ability to apply for a variation is essential.
D98 Is it reasonable to require IPART to undertake a detailed analysis of each contributions plan developed by councils?	No
D99 Would it be preferable to give IPART a general reference to develop an appropriate plan preparation methodology and approach to construction costing for community infrastructure contributions plans?	Yes, provided the process involves detailed input from councils and communities.
D100 Should IPART be given a reference to make recommendations as to when community infrastructure contributions should be available? Should this include recommendations as to whether a delayed payment system should apply and, if so, at what development stages payment should be made?	The majority of WSROC councils have indicated that the adoption of a delayed payments schedule should be a decision of council.
D101 Should there be a requirement for councils to publish a concise, simply written, separate document on community infrastructure funds collected and their proportionate contribution to individual elements in the council's contributions plan?	This already occurs in most councils through various reports, including the Infrastructure Contributions Register.
D102 Should IPART be given a reference to consider whether or not guidelines and/or mandatory requirements should be set for councils about community infrastructure prioritisation and levels of community infrastructure funds permitted to be available?	There are a range of views on this matter among WSROC councils. In summary, while the development of guidelines may be acceptable they should not be made mandatory as there are different circumstances in each council area.

- 14.2 *The use of voluntary planning agreements to purchase additional development rights*
- 14.3 *Appeals against reasonableness of development contributions*
- 14.4 *Developer contributions for development modifications*
- 14.5 *Regionally-based community facilities*

D106 Should regional joint facilities funded by developer contributions shared between councils be encouraged?	Yes. There should be provision for contribution plans to fund regional joint facilities.
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15 Making changes to an approved development

16 Matters relating to consents

17 Certifying compliance of development

17.1 Private certification

D117 Should private certifiers have their role expanded and, if so, into what areas?	<p>Some WSROC councils strongly oppose private certification but others consider it appropriate for minor developments, for example certification against pre-determined standards.</p> <p>If they are to remain there is consensus on the need to provide better oversight of private certifiers and to improve accountability, the power of the Board and auditing processes. These measures should be in place before any expansion of the role of private certifiers is considered.</p> <p>It is also suggested that the role of private certifiers in enforcing compliance and investigating complaints against their own certificates could be expanded as a way of reducing costs and increasing accountability.</p>
D118 Should private certifiers be permitted, in effect, to delegate certification powers to other specialist service providers and be entitled to rely, in turn, on certificates to the certifier from such specialist professions?	Yes, as long as they are appropriately qualified and accredited specialists, are subject to the same disciplinary controls as private certifiers and are independent of the applicant and certifier.
D119 Should certifiers be required to provide a copy of the construction plans that they have certified (as being generally consistent with the development approval) to the council to enable the council to compare the two sets of plans?	Yes, but for administrative reasons and not for the purposes of enforcement or comparison by the council.
D120 Should there be a requirement for rectification works to remove unacceptably impacting non-compliances when these are actually	This proposal needs further consideration. There would still need to be an opportunity for judicial review.

built rather than leaving an assessment of such non-compliances to either a modification application assessment or to the Court on an appeal against any order to demolish?	
D121 What statutory compensation rights, if any, should neighbours have against a certifier who approves unauthorised works that have a material adverse impact on a neighbouring property?	This proposal needs further consideration.

17.2 *Changes to development approval plans*

D122 Should construction plans be required to be completely the same as the development approval and not permitted to be varied by a private certifier for construction purposes?	The majority of WSROC councils are opposed to the proposal to make construction plans strictly the same as the approval as there needs to be some flexibility between development approval and construction approval. However there are concerns that the current practice has become too lax. A mechanism is needed to ensure that the “not inconsistent” test is not abused.
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17.3 *Choosing a certifier*

D123 Should developers be permitted to choose their own certifier?	This proposal needs further consideration, though WSROC councils are agreed on the need to better manage conflicts of interest. Some favour the “first cab off the rank” rule, others support some council input to the process. There are concerns however about issues such as the range of specialisation of certifiers if the “first cab” role was introduced.
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18 Other matters relating to development

18.1 *Ensuring compliance for major projects*

18.2 *Occupation certificates*

18.3 *Coordination with Commonwealth approvals*

D127 What might be done to have power delegated by the Commonwealth to State authorities or councils to give approval under the Commonwealth Act?	There are problems with delays on referrals especially to the Commonwealth which means councils can’t meet their statutory deadlines. Commonwealth and State should get together to streamline their processes. COAG could be a vehicle for this to occur.
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18.4 *Guidelines for the role of councillors in the planning process*

D128 Should there be a guide prepared to explain to councillors what their roles are in the development proposal assessment and determination process and how it is appropriate that they fulfil that role?	Yes, though the preparation of such a guide does not need to be incorporated in legislation.
D129 If there were to be such a guide	The Department in conjunction with the LGSA and subject

prepared, who should have the responsibility for its preparation and what participation and consultation processes should be undertaken in its development?	to consultation with councils.
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18.5 *Aggregated developments in mine subsidence areas*

18.6 *Community engagement after approval*

D131 Should there be specific statutory obligation to require the establishment of (and the procedures for) community consultation forums to be associated with major project developments?	This proposal needs further consideration.
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18.7 *Calculating fees*

D133 What fees should councils receive for development applications?	The fees should cover the cost of assessing an application and all associated costs. Council should be able to increase these fees on the basis of the CPI or changes in processing costs. The threshold and amount of the Planning Reform Fee and whether it should continue at all also need to be reviewed.
D134 When and how should council development application fees be reviewed?	Annually as part of a council's review of all its fees and charges.

E APPEALS AND REVIEWS; ENFORCEMENT AND COMPLIANCE

1 Appeals

E1 What appeals should be available and for whom?	The current appeal system should be retained. This includes no rights of appeal in relation to rezoning applications and no rights of third party appeal in relation to merit decisions except in relation to designated development.
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1.1 *Open standing*

1.2 *Objector appeal rights*

E3 In what circumstances should third party merit appeals be available?	See response to E1
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- 1.3 *Approval bodies and concurrence authorities*
- 1.4 *Time limit for appeals about local environmental plan provisions*
- 1.5 *Costs orders*
- 1.6 *Appeals against reasonableness of development contributions*

E7 Should any appeal be allowed against the reasonableness of a development contribution if it has been approved by the Independent Pricing and Regulatory Tribunal?	No, if it is part of an approved contribution plan.
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2 Reviews

3 Right of entry for council officers

4 A ‘best endeavours’ defence for councils?

5 Enforcement and compliance

F IMPLEMENTATION OF THE NEW PLANNING SYSTEM

The role of the Department in the implementation of the new planning system

F1 What should be the role of the Department in implementing a new planning system? Should the role and resourcing of regional offices be embraced? And, if so, in what respects?	<p>See general discussion. The Department has become far too focussed on process and ad hoc intervention in the planning system rather than setting strategic directions and outcomes, or coordinating other infrastructure agencies and service providers.</p> <p>In implementing a new planning system the Department should have responsibility for coordinating and integrating high-level strategic planning activities across all state agencies as well as overseeing the administration of the planning act.</p> <p>In managing the land use planning system, the Department should also focus on strategic and regional planning and setting the parameters for local planning, rather than micro-managing councils in discharging their planning functions, or calling developments which are clearly not state-significant.</p> <p>To achieve these outcomes the Department will need to establish comprehensive consultation processes relating to strategic planning and provide effective community leadership on planning issues, all of which will require additional resourcing of the Department and its regional offices. Regional offices should also be given more responsibility for decision-making.</p>
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The role of councils in implementing a new planning system

<p>F2 What should be the role of councils in implementing a new planning system?</p>	<p>See general discussion. The primacy of councils in managing local planning without direct intervention by the Department should be reaffirmed. Councils should have the right to:</p> <ul style="list-style-type: none"> • Implement and provide input to State and Regional strategic plans; • Prepare, exhibit and adopt their own LEPs within an appropriate framework and consistent with strategic and regional plans. At the very least councils should be able to make minor amendments to LEPs as long as they are consistent with strategic and regional plans; • Zone land; • Assess and determine development proposals apart from those that were state significant development; • Prepare exempt and complying development criteria.
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Changing the culture of the planning system

<p>F3 What can be done to ensure community ownership of a new planning system?</p>	<p>See general discussions and earlier responses regarding the need for improved community consultation, particularly in relation to the preparation of strategic and regional plans, and for a more consistent approach to both small and large development proposals.</p>
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Encouraging public participation

<p>F4 What actions can be undertaken by bodies preparing strategic plans to increase community engagement with the planning system?</p>	<p>See response to F3. There is a need for a substantial cultural change in the planning process and the development of genuine partnerships with councils and the community.</p> <p>The current process does not have a proper working relationship between state and local government in particular. There is a need to engage with councils and the community much more at the strategic level at the plan-making stage, not during assessment.</p>
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Better coordination

<p>F5 What changes can be put in place to ensure more effective cooperation between councils, government agencies, the community and developers within the planning system?</p>	<p>See response to F4. This issue needs further discussion but both proposals contained in the issues paper – the UK “duty to cooperate” and the re-establishment of an urban development committee of cabinet – are worth considering.</p> <p>See response to C27. Consideration could be given to a “one-stop-shop” in the Department of Planning to coordinate and monitor all referrals. Also S79C of the EPAA should be more specific about the role the public has in the consultation process.</p>
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Ensuring probity in the planning system

F6 What checks and balances can be put in place to ensure probity in the planning system?	See general comments and earlier responses regarding the need to make the planning system more transparent and accountable. This issue needs further discussion.
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Application of information technology to a new planning system

Monitoring and evaluating objectives

F8 Should the new planning system contain mechanisms for reporting on and evaluating objectives of the legislation?	Yes, but this is more relevant at the strategic level rather than in relation to development assessment.
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The planning system in a multicultural society

F9 How should information about the planning system be made more accessible in a multicultural society?	There is a need for better community education, especially in community languages, about the planning process. This process will need adequate resourcing.
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