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Chapter A. Introduction

1.1 An overarching objective for new planning legislation

A1 What should the objectives of new planning legislation be?

The community and the environment must have an equal, and primary, place in any planning system in NSW and the legislation's overarching objectives should reflect this.

The fundamental distinction between plan making and decision making should be reflected in any new legislation.

A2 Should any overarching objectives be given weight above all other considerations?

Ecologically sustainable principles, including the precautionary principle, the need for preparedness for climate change, energy and water efficient buildings and development must be core to the system.

In order to place the community at the centre of their planning system, consultation and engagement need to be central to any new planning system and not simply an afterthought.

Overarching objectives should recognise that good process and community involvement produce good outcomes which should be respected.

1.2 Flexibility and the planning system

A3 Should there be strict controls in plans?

The current planning system too readily allows departures from planning regulations that deliver larger (often excessive) developments. This undermines certainty in the planning system, favours those seeking excessive development outcomes and prejudices both the community and the environment.

There are a number of principle reasons for this. First, many decision makers; often citing support from the Court, treat Development Control Plans (DCPs) only as "guides". This approach fails to give sufficient regard to these local, and adaptable, planning regulations.

Second, State Environmental Planning Policy 1 (SEPP 1) has become a gaping hole through which variations can be achieved to Local Environment Plans (LEPs). The ease with which variations can be achieved to LEP controls such as Floor Space Ration (FSR), building height, number of stories, setbacks and other essential controls, shows the need for stricter controls that do not have the SEPP 1 "get of gaol free card" for developer interests.

A4 Should applications that depart from development controls be permitted?

Overall there is a need for very clear and strict definitions on when departures from controls will be permitted, and certain rights in place for community objections to such deviation.

A5 What should the test be for a proposed variation?

Clearly there must be some flexibility in any planning system to recognise that the built environment is both dynamic and endlessly variable. However this must be constrained by a test that requires the developer to prove any variation is not only in the interests of the individual development, but improves the amenity and outcomes for neighbours and the surrounding community and environment.

There ought to be some situations where flexibility is curtailed, such as when there is a need to protect critical habitats for threatened species and ecological communities.

There is no clear rationale for the distinction between LEPs and DCPs. Single planning instruments for any one parcel of land would be preferable, and clear planning objectives would structure discretionary planning decisions.

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?

Strategic planning will be particularly important if we are to achieve environmentally sustainable development, including well considered medium density living in NSW.

In general it is considered that strategic plans should be implemented on a regional level. There are well understood regions in this State that have both a community of interest and economic and organisational linkages. These include the Hunter, the Illawarra, the North and South Coasts, Western Sydney and the like. Regional planning founded on these well understood regional areas is strongly supported.

Regional planning is often seen as a method of achieving the environmental, economic and affordability benefits from increased population density in a given area. To assist in achieving such an outcome it would be necessary for clear acknowledgement that this can only happen where urban consolidation is accompanied by:
a. maintenance of ecological values and productive farmland
b. improved access to infrastructure, especially public transport infrastructure, in Sydney and throughout regional NSW

c. high quality public open space
d. reduced housing prices
e. environmental benefits such as improved air quality and lower resource use.
f. Respecting heritage values.
g. Consideration of all land use and strategic issues including water resources and mining.

A7 Should strategic plans be statutory instruments with greater weight?

The use of regional planning instruments as the formal basis for ecologically sustainable regional planning is supported. Such a strategy should further ensure regional planning puts in place bio diversity and nature corridors and protected areas for remnant woodlands, threatened ecological communities and critical habitats for threatened species.

There are two options to be considered for the implementation of regional plans:

1. The first option is where the plans are given statutory force as one of the layers of planning instruments in NSW. The plans would then directly be used for making planning decisions. If regional planning policies are well considered, taken through extensive community engagement and consultation, then there is a strong argument that these should be given significant weight as statutory instruments. To date most regional planning in NSW has not met these benchmarks.

2. Under the second option plans are considered to be policy documents which are then used by the Minister and other decision makers to make certain determinations. Under this option Regional Plans should be used to test and approve local LEPs and DCPs. This would be similar in structure and function to the current Section 22 of the South Australian *Development Act 1993*.

A8 How should implementation of strategic plans be facilitated?

Existing regional plans (with some notable exceptions such as the Sydney Harbour Regional Environmental Plan) have too often been imposed on communities and therefore faced legitimate and ongoing community opposition. For instance the Lower Hunter Regional Strategy delivered growth centre outcomes that were against the weight of both the community and expert preferences and has been largely discredited in that region.

Strategic planning should be put in place through disallowable Regulations and not by unreviewable SEPPs. An overall strategic plan has the advantage that it makes things like cumulative impact easier to consider. In developing strategic regional plans there will need to be a legislative requirement to consider cumulative impacts on the environment such as ecological values, air and water quality, as well as public amenities, transport and other services.

Structures must be in place to harmonise regional and local planning instruments – in a perfect world having a single instrument produced through both state-wide and local input.

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?

The prime reason for the broad scale dissatisfaction with planning in NSW is as a result of the inadequacy of community involvement in plan and decision making under the existing Planning Act.

One of the most problematic parts about the now repealed Part 3A (much of it now unfortunately repeated in the current government's Part 4 State Significant development provisions) was that it diminished community consultation whilst also exempting developments from important controls. The result has been an understandable lack of trust from the community in developers, decision makers and the overall planning system.

Many significant reforms to the planning system have been imposed on local councils and their residents by a State government that is often out of touch with the needs of local communities. The imposition of the inflexible Standard Instrument LEP is a case in point. The Standard Instrument LEP removes the special use zonings from community facilities like schools and churches and means that these crucial public resources are rezoned for possible commercial sale. Had consultation occurred on this in its initial phase there is little doubt that this highly problematic requirement would have been identified and potentially excluded.

A similar failure to consult and engage the community before mandating new State Environmental Planning Polices also reduces the effectiveness and acceptance of these instruments.

This ongoing failure must urgently be addressed by making community consultation and engagement a central part of every step of the planning process. It is often the most difficult and troubling developments which the community gets shut out from having anything more than a passing say on, yet it is precisely these developments where their input is most needed.

Planning must deliver outcomes that improve the health and wellbeing of communities and eco-systems. Given the obvious fact that communities know their local environment intimately, involving them early on in any significant planning decision will almost inevitably improve the outcome. Community involvement in the planning process is inherently democratic, promotes transparency and accountability, and will lead to better planning outcomes because:
(i) residents are able to contribute their local knowledge and expertise, and
(ii) involvement in the process will promote greater community acceptance of outcomes.

1.5 The provision of infrastructure and community facilities

A10 How should levies to pay for local and state community infrastructure be set?

The existing developer contribution provisions have not have worked to provide communities with sufficient high quality infrastructure. Most participants in the planning system would accept that the existing s94 and 94A developer contribution systems are not adequate to meet the ongoing need for state community infrastructure.

Section 94 contributions are based on excessively technical local plans, have unnecessary and unhelpful restrictions for expenditure and fail to address infrastructure needs in non-greenfield development areas. This often means that even where contributions have been received by councils, the ongoing restrictions on use mean that it can be literally decades before councils are in a position to expend the funds.

Section 94A contributions, whilst less technical, are inadequate to deliver much needed community infrastructure, especially in greenfield development sites. The failures in the existing provisions allow developers to build substantial developments – particularly residential - without requiring them to provide sufficient investment in the infrastructure needed to support these new communities.

Developer contributions should continue to remain under the control of local councils in order to ensure that the benefits are appropriately distributed.

A11 What alternatives to – or additional funding sources for – such infrastructure should be considered?

A less technical system, with greater scope for flexibility on a council by council basis is required to allow developer contributions to realistically meet the needs of local areas.

Infrastructure levies should be geared towards healthy and supportive communities, well beyond minor contributions towards sewers and roads. Functioning communities require recreation facilities, adequate parking, green space and so on. Best practice must be ensured so that facility provision does not lag behind construction of the development. Independent costing would also ensure that all such contributions (particularly if done in kind) are of appropriate value.

With the strategic objectives to increase certain areas to medium density to allow access to transport, special care must be taken to ensure that appropriate infrastructure facilities are provided.

Infrastructure should also be provided in a timely fashion – it should in most circumstances be in place at the time development occurs.

1.6 Development decision making

A12 Who should decide regionally significant development and local development applications?

The current division in decision making, between local councils, JRPPs, the Land and Environment Court, the Planning Assessment Commission and the Minister is arbitrary, dysfunctional and open to developer manipulation. It must be reformed.

Clearly some development is of state significance and ought to be determined at a State level. Such development includes the construction of major railways, bridges, regional hospitals and major airports. Decisions on such applications should be made by an Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations endorsed by the Parliament and granted clear legislative independence from the Minister.

Consideration should be given to prescribing a set of state significant environmental 'triggers'. An example of a state significant environmental trigger could be a serious threat to an endangered ecological community listed on the Threatened Species Conservation Act. In order to seriously address climate change in the planning system a 'greenhouse trigger' might also be considered whereby any development that will create significant greenhouse gas emissions over a specified threshold is considered state significant.

A13 Should Joint Regional Planning Panels [JRPPs] decide development applications? If so, which applications should the panels decide? Who should identify these?

JRPPs should not have any ongoing role. Their decision making power should be returned to local government as soon as possible. JRPPs are in effect state-dominated planning panels that do not have the resources, or political capability, to enforce controversial planning decisions they make when they are at odds with the relevant local council. The arbitrary dollar value on which developments come before JRPPs does not reflect their environmental impact and inappropriately disenfranchises local councillors from determining often the most important development applications in their local area.

Many councils and individuals have expressed concerns about the current use of and composition of the JRPPs. In particular their independence and accountability to local communities have come into question.

Well resourced local councils, operating in an environment with clear, community focused local, regional and state planning instruments should be viewed as the primary planning decision makers in any new system. This is because local councillors are often the best placed to make development decisions – not only do they understand their local areas better but they also are accountable to their local communities.

A14 Should councils be able to apply to be exempt from the Joint Regional Planning Panel process?

If the primary submission of abolishing JRPPs is not adopted than clearly there should be a path to allow councils to apply to be exempt from the JRPP process. Grounds that might be considered appropriate for such an application could include community will, improvement of consultation on DAs, adequate resources held by Council to determine DAs and so on.

Once decision making is returned to local councils it is important to also empower the local community by allowing a robust form of third party appeal to the land and environment Court for questionable planning decisions. Some reasonable, but not excessive, threshold should be in place to limit the number and cost of any third party appeals, especially in relation to decisions regarding modest single residences.

1.7 Other matters

1.8 Complying development

A15 Should any changes be made to complying development and the process of approving it?

The Greens NSW support repealing the state-wide Exempt and Complying Development Codes SEPP and returning the power to make these instruments to local communities.

There clearly is some scope for exempt and complying provisions on the grounds that property owners should have the right to make minor alterations and improvements on their property without undue cost or interference.

Arbitrary targets for complying development (such as 50% of all development applications) are wrong in principle and will deliver poor planning outcomes. Heritage areas and areas of high environmental value, must be given special protection and allow for only limited exempt development to occur.

A simpler development application process would remove many of the existing pressures for extended exempt and complying processes.

1.9 Building certification

A16 What changes should be made to the private certification system?

Private certification is a failed experiment and should be promptly abandoned. Certification should be returned to local councils.

A17 How can private certifiers be made more accountable?

The private certification system contains at its heart a fundamental conflict of interest with the developer selecting and paying for their own certifier. This conflict makes it next to

impossible to ensure private certifiers make their decisions independently and free of bias when it is clear that those hiring them are expecting particular outcomes.

There are literally thousands of complaints made annually against private certifiers who are not responsible to affected residents as local council building inspectors are. There is minimal oversight of private certifiers and there are many instances where they have certified that a development is compliant with a consent, without ever visiting the subject site.

The failings of private certificate place at risk the integrity of the entire planning system, from ensuring conditions of consent are enforced, to simply requiring basic building standards are respected in the building process.

Once a private certifier determines to issue orders against a developer, then it still falls to the local council to undertake the expensive and onerous job of enforcement. This is a system which in effect socialises the expensive and time consuming part of the compliance regime while privatising the profitable aspects of it.

A partial (and inadequate) reform would be to strengthen compliance and discipline measures for private certifiers and put in place a blind selection process where a developer is allocated, rather than self selects, a private certifier in regards any particular development. This would ameliorate but by no way fix the present mess.

1.10 Changes to zoning

A18 Should there be a right of review or appeal against a council decision concerning the zoning of a property?

Questions of the appropriate zoning of any land in a Local Government Area should be left to the determination of the local council, with the further requirement of concurrence by the Minister for any change of zoning.

Questions of appropriate uses for land in a local area must be made by elected local representatives who know their local area and are democratically responsible to their residents. Appeal rights should not be granted.

A19 Should there be any distinction between a council decision to change a zoning and a council refusing an application to change the zoning?

Where there is a contentious rezoning application there should be a given process at the state level including a public panel hearing (and publication of any following report), before a Ministerial approval for a rezoning.

A20 If there is to be a right of appeal or review of a council zoning decision, who should decide that appeal or review?

Substantial zoning changes must only occur following robust community consultation. Developers and land owners should not be granted appeal rights in relation to zoning changes for their land.

A 'betterment' tax, payable to local councils on sale or disposal, to be levied on windfall gains that accrue to a land owner as a result of rezoning that increases the development potential, and therefore the value, of land should be considered. This could be an important source of revenue to provide for local infrastructure for new development.

1.11 Environmental impact statements

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?

As with private certifiers, those experts engaged by developers to compile environmental impact statements (and supporting studies) have an inevitable conflict in being chosen by a developer to, obviously, support their development. Those who fail to offer support would not expect a second commission. Those who are known to be "developer friendly" are far more likely to attract work than others who may be seen as "dangerously independent".

One potential partial solution would be, as with private certifiers, to put in place a blind selection process where a developer is allocated, rather than self selects, a relevant expert in regards any particular development.

Another partial solution for improving the independence and integrity of those preparing environmental impact statements would be to adopt a mandatory Ecological Consultants Accreditation Scheme such as put forward in Greens MP Cate Faehrmann's *Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2011*. This should include industry recognised standards, an independent accreditation body, mechanisms for peer review for ecological assessment reports that come into dispute, and disciplinary and appeal mechanisms.

Chapter B. Key Elements, Structure and Objectives of a new Planning System

1.1 Objectives of new planning legislation

B1 What should be included in the objectives of new planning legislation?

The existing objects of the Act do not reflect prioritisation between the various concerns and interests listed. These objects will be used by legal practitioners and others to interpret the Act and so it is desirable that they reflect the appropriate balance between interests and concerns.

The objectives of the planning legislation (as reflected in any new Act) should reflect that environmental considerations and community support are to be prioritised. In particular, ecologically sustainable development (ESD) should be the primary consideration in any planning decision.

1.2 An overarching objective

B2 Should ecologically sustainable development be the overarching objective of new planning legislation?

Planning must give primacy to Ecologically Sustainable Development (ESD) principles, which strengthen environmental and social considerations in the decision-making process. This will include the application of the precautionary principles to planning decisions.

Furthermore, environmental assessment provisions must be strengthened to require consent authorities to refuse to approve development proposals where an EIS has shown that there will be significant deleterious impact on critical habitat or the environment.

1.3 Ranking or weighting of objectives

B3 Should some objectives have greater weight than others?

In the past community consultation and environmental concerns have often been sacrificed in order to facilitate development.

Given the financial and political clout of developers it would be appropriate to weight objectives to ensure that they are not able to ride roughshod over environmental concerns.

1.4 Separate objectives for plan making and development assessment

B4 Should there also be separate objectives for plan making and development assessment and determination?

Plan making and development assessment should both prioritise community-oriented and ecologically sustainable development.

Changes are required to the current planning system to ensure the cumulative impact of development is considered at both a plan and strategic level, and also at the level of individual DAs. Failure to make such changes will likely mean that any resultant plans will not be effective in creating the kinds of environments that communities want and need.

Some additional objectives may apply mainly to decision making in regards specific developments than when making planning regulations (and vice versa). In the case of plan making relevant objectives might include: broader public transport planning and access, protection of public spaces, and overall community balance between residential and infrastructure services. In the case of individual DAs, objectives might include: procedural fairness and a sense of a just outcome for all stakeholders.

Making any objectives universal to every planning decision will foster greater consistency, focus and compliance. This will allow the public to better engage with and understand the purpose of the system and how this relates to their lives.

1.5 Operational objectives

B5 Should the objectives address the operation of the new planning legislation?

The need for clarity and certainty of developers, community members and councils will be best served by the inclusion of operational objectives separate to the primary objects of the Act. These would include objectives relating to timeliness, certainty and transparency.

2.0 Definitions

B6 Are the current definitions in the Act still relevant or do they need updating?

B7 Does the present definition of 'development' need to be rewritten? If so, in what respect?

B8 Should there be a definition of 'minor'? If so, what should it say?

B9 Should 'public interest' be defined? If so, what should it say?

In general, definitions are a matter of drafting and not a proper subject for this review process.

However, the current definition of 'premises' is too broad and should be refined.
The current definition of 'development' should remain.

There is some merit in defining 'community and other events' (such as festivals) as a separate class of development to encourage councils to consider separate development controls for these.

3.0 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?

A single Act written in plain English would be the simplest and most accessible way to structure any new planning legislation. The Act should clearly distinguish between decision-making and plan making in its structure.

Moving away from the current SEPP model would also mean that any changes would be made through the Act itself (or at least through regulations that are overseen by the Parliament) and there would be an opportunity to debate and vote on such changes.

3.2 Regulations

B11 What should be in regulations?

Regulations should be used primarily to support and provide detail on the operation of legislation. If SEPPs continue to be used as part of the planning system in NSW this should be done through regulations so that at the very least they are reviewable by the Parliament.

4.0 Review 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?

Periodic review of the legislation is one potential way of ensuring that problematic clauses are identified and removed. A periodic review of the legislation every five years by an independent body (such as the Law Reform Commission) might thus be appropriate.

The United Nations Environment Programme supports entrenching such reviews. "*Determining whether environmental laws and regulations are having their intended effect is an essential step in protecting the environment. As such, evaluations of the existing legal and regulatory provisions should be conducted regularly and with sufficient frequency to ensure their usefulness. These assessments should focus on whether the laws are achieving their intended goals and aims, not just on the number of enforcement actions*."[1]

[1] http://www.unep.org/dec/onlinemanual/Enforcement/InstitutionalFrameworks/EvaluationofLegalProvisions/tabid/95/Default.aspx

Any such review should include community consultation and a detailed examination of the operation of the legislation with a particular focus on cases in which there is public dissatisfaction with outcomes or where substantial litigation has ensued.

There should be provisions to allow smaller councils to opt-out from such reviews where there have only been minimal changes.

4.2 Periodic review of other elements

B13 Should there be requirements to periodically review other planning instruments and maps?

Reviews of other planning instruments may be desirable for the reasons outlined above. Other instruments that could be included here:

- Local Environment Plans
- Regional Strategic Plans

Equally, there may be arguments that regular reviews of local planning instruments allow developers additional opportunities to effect zoning changes, or other changes, to allow more intense and inappropriate development.

5.0 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?
B15 Would this be able to replace section 149 Planning Certificates?

Online access to all planning documents (both controls and consents) is desirable to improve access for many members of the community. There will however continue to be a role for local councils to have hard copies of DAs and land plans for those not able for various reasons to access this material otherwise.

Ideally such a system would be able to be relied upon for all required purposes. This could potentially replace s149 Planning Certificates although in contracts for sale of land there would likely be an ongoing need for some kind of material confirmation to be included with contracts. This, if done well, will provide for transparent and cost-effective access to information and monitoring of consents.

While a central portal is a worthwhile goal, it should not be progressed to the detriment of effective and workable planning laws. When considering the application of an IT system consideration should include the role of Council Libraries as an access point.

Note that reports provided on websites should be accessible – the current use of image scans of text are often not accessible (blind people's readers can't access the information/others can't do searches on text).

6.0 Decision making

6.1 Independent decision making

B16 What provisions should there be for independent decision making?

The current system uses JRPPs and the PAC as independent decision-making bodies. Although these bodies are not directly controlled by the State government there are many ways in which they may be perceived as being within its sphere of influence – particularly for ongoing support. Appointment of members to these bodies by the Minister, for example, creates a reasonable perception of bias.

Local councillors are directly accountable to their local residents through the ballot box and therefore must retain a primary role in determining development applications in their local area. This must be supported by adequate training and a rational, clear and workable planning system that fosters good decision making.

Third party appeal rights to the Land and Environment Court would be a further—and entirely appropriate—measure of accountability for local council decisions.

An Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations who are subject to Parliamentary approval and supported by legislation to ensure independence, should be created. The ISPC's task would be limited to assessing major, infrastructure and utility projects against objective criteria with no role for the Minister for Planning to exercise discretionary power.

6.2 The role of the Minister

B17 What should be the role of the Minister in a new planning system?

The discretionary powers of the Minister for Planning to dispense with environmental protections, consultation processes and appeal rights in relation to any project should be removed. Furthermore, the creation of legislation to override a court decision refusing a specific development and legislation designed to impede a specific court case should be opposed. Proposals should follow and open and transparent hearing process where the matter is contentious.

The Minister should continue to have a role in approving changes to local environmental plans, on the advice of the planning commission.

It is appropriate for the Minister to be involved in setting a direction for regional planning objectives and overall system-wide objectives but not for individual planning decisions.

Chapter 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?

C2. Should regional organisations of councils be recognised in new planning legislation?

The Issues Paper considers two alternative models – namely a State Planning Commission which is itself a decision making body, OR a Planning Advisory Board which is a body intended to provide advice to the Minister who then is the decision maker.

There are strong reasons to remove the Minister as decision maker in the planning system as much as possible. An independent expert body is much more likely to be able to make informed and transparent decisions than a politician. For strategic planning to be effective it must be based on community interest, long term projections, sustainability and a realistic appraisal of what can be done. All of these may be more readily delivered by an independent body than a Minister who may only be in the position for a few years and who must plan for electoral cycles rather than long term strategic development.

Equally there must be political "ownership" of planning decisions and the ability to ensure that strategic planning decisions meet with a government's other policy priorities such as transport and population planning. To this extent continued political involvement (and responsibility) may be seen by many as desirable.

Greens policy would be most supportive of an Independent State Planning Commission (ISPC) to decide state significant development decisions. This is identified as an Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations, the composition of the ISPC to be subject to approval of Parliament and supported by legislation to ensure its independence.

Once this body was established it should have access to Planning Department Staff so that it also has appropriate strategic planning skills to act as a persuasive advisory body on strategic planning matters (as opposed to its determination role in regards state significant development applications) to give recommendations to the Minister on strategic planning matters. If the State Planning Commission:

(a) was respected and its members well resourced with tenure;
(b) held public hearings;
(c) made final determinations on individual development matters referred to it;
(d) made public strategic planning recommendations to the Minister; and
(e) any deviation by the Minister from a strategic planning recommendation was required to be supported by published reasons from the Minister then this would provide the appropriate framework of independence and political responsibility for strategic planning.

Regional organisations of councils should not be separately considered in strategic planning. The planning system most definitely does not need a further layer of complexity in decision making. They are not sufficiently accountable, nor sufficiently resourced, to provide strong strategic planning basis. They may however be valid stakeholders to be considered in any strategic planning process.

1.0 Plan making: Process

1.1 Community Participation

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

There should be a statutory requirement for community participation prior to drafting a plan. However any specific process should not be mandated in the legislation as it would not be possible to consider the multiplicity of possibilities, and local requirements, for plan making across the State.

For example the participation requirements for a small amendment to the residential boundaries of the Orange LEP would require an entirely different process to a major coastal land use amendment for the whole of Warringah Council. Any legislative mandate that sought to cover such differing processes would likely be so general as to be near to meaningless.

Rather, there should be a requirement for a planning authority to determine a community participation plan moulded to the strategic planning matter being considered. The content of these plans should be considered in a summary sign-off process with the department of planning (or at a state level the ISPC). To assist the sector it may be appropriate for the department to also draft model community engagement plans that could be adopted by councils on an as-needs basis. Any such process would best be set out in broad legislative requirements, supported by more detailed regulatory provisions.

This is an important element in any planning process for the following reasons:

(a) Improving community participation prior to drafting a plan would have a number of positive results. Firstly it would mean that communities are not just rubber stamping a final plan but can shape its formation from the beginning (there is a big difference between being asked to comment on a document proposed by planning professionals and sitting down early on and being asked what you think should be included or not in any future plan). This would help to reduce current community sentiment that they are only asked for their opinion once the process has gone so far that major changes are no longer possible.

(b) community participation would also assist councils and planners to respond early on to community concerns – thereby potentially saving costs in redoing plans or even entering into litigation. This could reduce the need to re-exhibit draft plans and thereby streamline the process; and

(c) effective participation produces plans that are more in line with community objectives, more attuned to local needs and give the community greater acceptance of, and commitment to, the eventual results.

Minimum consultation periods should be included in statute with an exhibition period of at least 21 days. If adequate time is not provided for exhibition consultation cannot occur in a meaningful way.

Care should be taken to ensure that with requirements for such consultations does not become a simple 'tick box' exercise as has occurred in the past.

1.2 Public Interest

C4. Should there be required consideration of the "public interest" in the plan making process?

C5 Should there be a definition of what constitutes the "public interest"? And what should it say?

Public interest is not currently defined in this or other Acts. This may be in part because any definition will necessarily be incomplete. For the term to have any meaning a definition would be useful.

Public values, public land, public views and social access issues need to be part of the planning system through a refined public interest provision.

The sections on public interest considerations in ss 12 – 15 of the *Government Information (Public Access) Act 2009* may be instructive as a guide to improved drafting: http://www.legislation.nsw.gov.au/maintop/view/inforce/act+52+2009+cd+0+N

Care must be taken so that decision makers cannot refer to a generalised (and often near meaningless) concept of public interest to override specific matters contained in planning instruments. In particular tit must not be drafted so as to water-down a requirement for ecologically sustainable decision making (which includes the concept of broader public interest in sustainable planning outcomes).

1.3 Regular Reviews

C6. Should plans and associated maps have prescribed periodic reviews?

C7 At what suggested intervals should such reviews occur?

Reviews of planning instruments are of course necessary, but given the improved strategic planning being proposed in the new scheme care must be taken not to undermine the consistency of the instruments, nor place too great a burden on planning authorities, by mandating too regular reviews.

In particular there should be some opt-out provisions where there have been only minimal changes to a locality or a council is of the view that the current instrument(s) are meeting community expectations.

While reviews could form an important part of Council forward planning and consultation with residents, if they are too frequent it is possible the community will be less likely to engage in them and councils will not have enough time to properly undertake them and they will become driven by the local development industry.

A minimum period of reviews every 10 years might be a solution.

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?

Any changes must not fetter current requirements under the Local Government Act for the development of a local council's long term financial, delivery and social planning.

Coordination between new planning legislation and the Local Government Act would arguably improve the delivery of services towards areas facing increased pressures due to development.

Ideally objectives in the planning instruments should, in part be informed by a council's strategic planning framework. This should be part of the community consultation process.

Any competent local council will take into account future development and economic pressures (or other planning pressures such as increased local industry/ warehousing /agriculture) when undertaking planning under the Local Government Act and therefore it is likely that specific statutory requirements may prove overly bureaucratic and unproductive.

2.0 Plan making: Content

2.1 Data and Statistics

C9. What information and data should be used when preparing plans?

C10. Should there be a requirement to make it publicly available?

Population and growth projections together with a thorough understanding of local environmental constraints and climate change effects should form a core part of decision making for plans.

By understanding the local environmental constraints and needs, strategic planning can protect and enhance biodiversity in all planning decisions as an essential first step.

Once these studies have been undertaken then population and growth projections can be used to identify local housing and employment needs so as to most effectively allocate land and determine the need for public transport and other social infrastructure.

This base-line data should be made available to the public before any specific plan is proposed to allow for genuine community participation in the plan-making process.

The projection assumptions should be publicly available to enable appropriate scrutiny of plans and to allow the community, academics and planners to develop additional research and analysis.

More broadly the public availability of projections and assumptions can help foster a climate of evidence-based policy making in the area of planning.

2.2 Climate Change

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

As previously expressed, ecologically sustainable development should be the foremost principle for any new planning regime. This, of necessity, will require pro-active consideration of the potential impacts of climate change.

Climate change is one of the greatest challenges facing the world and NSW stubbornly remains a part of the world. It would be negligent and short-sighted for any plan-making not to address the potential effects of climate change.

Regardless of greenhouse gas abatement schemes currently proposed, some level of adaptation will be required to cope with inevitable warming. This must go to issues beyond just sea level rises, to include planning for increased severity in weather conditions and adaptive land use policies.

BASIX was an important way to set targets for dwellings energy and water efficiency. In order to continue to be relevant and effective the scheme must be adapted to cover additional sustainability criteria as they emerge.

It is also necessary to expand the application of BASIX to all building forms and the life cycle of developments. Finally it is crucial that allowances be made for local councils to increase BASIX minimums if their community supports this wish.

2.3 Biodiversity

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

Yes. Ecologically sustainable development must be the foremost principle for any new planning regime. Again, of necessity, this will require pro-active consideration of the

potential impacts of planning changes on the environment and biodiversity in any given area.

The loss of biodiversity, like climate change, is one of the most pressing issues facing the planet and this State and one that should be prioritised when preparing all types of planning instruments.

In particular, existing and potential future nature corridors, endangered ecological communities and threatened species, must all be given strong legislative protection in any new planning Act.

The inclusion of these studies in the preparation of any significant plan-making should be mandatory. Steps should also be taken to ensure the integrity of these studies, specifically by ensuring the independence and qualifications of those preparing them.

2.4 Aboriginal cultural landscapes

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

There is a need to protect not just landscapes, but also sites and items of significance to the Aboriginal community.

It is essential when considering landscapes of Aboriginal cultural heritage to consult with the appropriate local traditional custodians and their land councils.

An amendment to the Heritage Act in 2011 saw a change to require an expert in Aboriginal Heritage to be on the Heritage Council NSW. Similar provisions ought be considered here.

The current practice of issuing Aboriginal Heritage Impact Permits, being effectively a licence to destroy Aboriginal sites and objects of cultural significance, should be substantially reformed to better allow the integration of planning decisions and Aboriginal heritage decisions. Too often approval is given by a planning authority to a development, subject to the developer obtaining a permit to destroy Aboriginal heritage on site.

A preferable system would require a pro-active assessment of the Aboriginal heritage on the site, which is then considered by the planning authority when making the planning decision. This would enable planning decisions to be made to limit the impact on any Aboriginal heritage in the first instance, rather than force a decision to be made between Aboriginal heritage and an entire development, late in the process (being a decision that in most past instances does not favour the Aboriginal heritage).

The NSW Aboriginal Land Council has submitted a number of papers to Department of Planning reviews covering this subject. They recommend that "the Department of Planning work with NSWALC to develop more comprehensive advice about how Aboriginal cultural heritage can be protected through the local government planning framework, in addition to

ensuring LALCs and the Aboriginal community are key groups consulted about any developments that may impact on Aboriginal culture and heritage."

The Greens NSW support this position.

3.0 Strategic Planning

3.1 A statutory framework

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

One of the issues in drafting a response to this is determining what is meant by strategic planning. This submission assumes it is a reference to the broad consideration of matters such as land use, protected corridors for wildlife, infrastructure, drainage, housing and employment goals, environmental protection, biodiversity, impacts of climate change and the like.

In light of the above, then yes, any new planning legislation should provide a statutory framework for strategic planning. If it doesn't do this then it will repeat past failures.

A statutory requirement for strategic planning would provide greater access and certainty for all participants. Statutory requirements could include community participation and consultation, reporting requirements, and the need for strategic plans to be consistent with the overarching objectives of the planning system (which we propose should be Ecologically Sustainable Development and Community Involvement).

The Greens NSW see a positive role being played by an ISPC in this process as noted above and below.

As noted earlier, community participation should be legislatively required, but care needs to be taken in being too prescriptive as to the form. A better approach would be as set out in response to Question C3 above.

3.2 Legal status

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

A strategic plan which is ecologically sustainable and responds to the wishes of the community should be complied with. If strategic plans are to have real force they must be required to be considered in the planning process.

There are two separate models for requiring consideration of strategic plans:

1. Would be to require any new local, regional or state planning instrument to be made consistent with strategic planning instruments – and provide that new planning instruments may not come into effect until they have been acknowledged by the

Minister (on advice from an Independent State Planning Commission) to be consistent with strategic plans; or

2. To give the strategic plans legal status and make them in effect overarching planning instruments that are separately enforceable.

There are pros and cons in both approaches. The benefit of the first is that it would work to make local environment plans consistent with strategic planning goals and hopefully produce better local planning framework. It would prevent inconsistencies between planning instruments being subject of disputes and simplify the planning system for decision makers. It would however not allow a Court or planning authority to separately refer to the strategic plans for guidance in an individual case.

The benefit of the second approach is that it gives strategic planning legal "teeth" in the decision making process, however it may lead to contradictions or tensions with local planning instruments and produce greater legal uncertainty and costs.

On balance the preferred option is number 1 above.

3.3 Implementation

C16. How can the implementation of strategic plans be facilitated?

This has otherwise been addressed above.

3.4 Geographic area

C17. To which geographical regions should strategic plans apply – catchments or local government areas?

In general it is considered that strategic plans should be implemented on a regional level. There are well understood regions in this State that have both a community of interest and economic and organisational linkages. These include the Hunter, the Illawarra, the North and South Coasts, Western Sydney, Central Coast and the like. Regional planning founded on these well understood regional areas is strongly supported.

Greens policy supports reviving the use of regional planning instruments as the formal basis for ecologically sustainable regional planning. Such a strategy must ensure regional planning puts in place bio diversity and nature corridors. If regional planning policies are well considered, taken through extensive community engagement and consultation, then they must be given significant weight in the plan making process (see above). To date most regional planning in NSW has not met these benchmarks.

On the question of strategic planning by catchment areas or LGAs this does not include the most viable option which is regional planning on the basis of currently understood regional areas (see above). Boundaries of these regions already generally reflect the boundaries of

groups of existing councils. These are the regional areas that seem most rational to work with in any regional planning context.

4.0 Environmental planning instruments

4.1 State environmental planning policies (SEPPs)

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 environment plan?

SEPPs in their current form should be abolished entirely. Strategic planning should be put in place through a new Act or by disallowable Regulations and not by unreviewable SEPPs imposed at the whim of a Planning Minister.

State wide consistency on environmental protection and social policy should be achievable through the primary legislation together with statewide strategic plans adopted following:

(a) rigorous community consultation including local council engagement; and
(b) the assistance of an independent state planning commission or similar.

It is suggested that if SEPPs were abolished it would be possible to place relevant existing SEPP provisions into the Standard Instrument local environment plan (LEP). This does not address the absence of accountability and inappropriately inflexible approach taken in the State government's imposition of the Standard instrument.

A fresh approach should be taken, and this is best started by doing away with the ad hoc, discretionary and unaccountable SEPP framework.

4.2 Public participation

C19. Should there be statutory public participation requirements when making SEPPs?

We do not support the continued existence of SEPPs. If they are to exist however just like all other strategic planning instruments public participation must be mandatory. As is noted above the form and content of the participation must be crafted to the issue at hand.

4.3 Disallowance by Parliament

C20. Should a SEPP be subject to disallowance by Parliament?

Again we do not support the continued existence of SEPPs. However, if they are maintained they should be at the very least treated like regulations and subject to disallowance.

4.4 Local environmental plans (LEPs)

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?

C22. Should there be a legislative provision to establish this?

The former government used the LEP standardisation process to "dumb-down" many local environmental plans and facilitate the wholesale rezoning of, amongst other things, public land and roads. Local councils and communities need to have the flexibility to plan for the future of their areas, and also to ensure the protection of key public facilities such as schools, hospitals and libraries.

As is noted in the balance of our submission, the Greens do not support the continuation of the existing fractured planning system with a multiplicity of instruments of various legal strengths governing planning in regards a parcel of land (be they SEPPs, REPPs, LEPs or DCPs.) However we do support having flexible local planning instruments with legal force.

Under any new planning Act where there is a significant disagreement between a local council and the Minister on the terms or limitations of a local planning instrument (or an LEP if they are retained), as well as in circumstances where there has been local controversy concerning the provisions of a proposed local planning instrument, then there should be a process for independent external review.

This would best be done through an Independent State Planning Commission that reviews the matter, hears submissions and holds a public hearing before providing public advice and reasons to the Minister. If the Minister determines to adopt a position at variance with the advice of the Independent State Planning Commission then there must be an obligation on the Minister to provide reasons for doing so.

4.5 Preparation of zoning proposals

C23. How should rezonings (planning proposals) be initiated?

Rezoning proposals must remain the property of the community, as expressed through their local councils. To allow for developers to initiate rezoning applications, and worse still potentially allow them to appeal a council's refusal to rezone, would be a disaster for the NSW environment and the community.

4.6 Timeframes

C24. How can amendments to plans be processed more quickly?

If differences between the State Government and local authorities in relations to plan making decisions were primarily resolved by the recommendations of an independent State Planning Commission, then it is likely plan making will both more timely and more transparent.

Statutory timeframes may prove useful but some flexibility would be required to ensure that decisions were made with appropriate access to data.

Given the importance of quality plan making, timeliness must be considered to be only a secondary goal.

4.7 Appeals and reviews

C25. Should there be a right of appeal or review for decisions about planning proposals?

Developers should not be given a right to appeal council decisions not to grant rezoning. Such a right might push councils to approve rezoning simply to avoid additional costs and time expended.

Developers already hold excessive sway in planning matters in this state and allowing them the capacity to contest rezoning decisions by council would, given the money at stake in most of these matters, place an unsustainable financial burden on local communities.

Finally strategic planning is a matter for accountable elected government, not judicial decision making.

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?

No. Compensation for the "loss of development" potential assumes the existence of a positive right to develop land regardless of public interest or environmental impact. This is not sustainable.

Allowing such an amendment would end heritage protection and most environmental protection being undertaken through strategic planning in the state.

If the State government was intending to impose such an obligation on local councils then it will need to identify an income stream through which already cash-strapped local councils can meet these new obligations. Given the state of NSW finances this does not seem feasible.

Times change, expectations change and the environment itself changes. Planning must have the flexibility to meet these changes without putting in place crippling financial burdens.

4.9 Consulting government agencies when making or amending a local environment 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?

Requiring comments from government agencies to be published as part of changing or making a local planning instrument seems reasonable and fits with the push for greater transparency in all steps of the planning process. Responses to such a submission should also be required to be public.

As noted above, transparency and accountability can best be achieved through an Independent State Planning Commission that reviews the matter, hears submissions and holds a public hearing before providing public advice and reasons to the Minister on any controversial plan-making matter.

A stand alone concurrence office would be one way to address this. Our submission in response to Chapter D discusses this further.

4.10 Minor rezoning proposals

C28. Should some individual rezonings not require any merit consideration at a state level?

Rather than removing the requirement for state oversight, there would be scope for a more streamlined state merit consideration of minor rezoning matters. In practice this happens in the current system.

In the case of small, but controversial matters, it may be worth considering a fast-track state level consideration for such proposals where the Independent Planning Commission has strict timelines imposed on it for this class of matters.

4.11 Heritage issues in local environmental plans

C29. What should be the processes prior to listing an item of local heritage in a local environmental plan?

Heritage items should be a mandatory requirement for identification and inclusion in LEPs - this is not currently so. Part of the preparation of an LEP should be a heritage study and inclusion of those items deemed to have heritage value by an accredited consultant.

Before final heritage listing on a local planning instrument any local council must consult with the owners of a heritage property together with the local community. Where possible heritage inventory sheets should also be provided for comment.

Otherwise the Act should not be prescriptive in relation to such consultation. We would not support a blanket veto by owners of proposed heritage listing of their properties. If allowed, this would prevent the great majority of heritage protection in NSW.

4.12 Student housing

C30. Should student housing be included as affordable housing?

C31. How can abuses of 'student housing' be prevented?

While the housing crisis affects many people, students — who have very limited resources — are hit particularly hard. Younger Australians today face unprecedented challenges in terms of housing affordability and housing stress.

The lack of affordable housing, particularly for people on low incomes, represents both a serious market failure as well as serious policy failure by Federal, State and many local governments. Students from lower socio-economic backgrounds and those facing housing stress must be considered in strategic planning and affordable housing factored in.

Student housing will not always be affordable housing, many of the residential colleges for instance, do not explicitly cater towards those in universities who need affordable housing. There should however be provisions for genuine affordable housing for students.

There is little state-wide evidence of systemic abuse of the limited pool of existing student housing. There is anecdotal evidence of overcrowding by some students in residential properties. Greater compliance powers are needed for local councils to address this matter.

5.0 Development control plans and other instruments

5.1 Legal status

C32. What should be the legal status of Development Control Plan (DCP)?

As is noted above, there is no logical reason to retain the distinction between DCPs and LEPs. A more rational planning system would have a single set of development controls that regulated all aspects of local development.

If DCPs are to be retained they must be given legal status and respect by both local councils and the Land and Environment Court.

Most complaints about the operation of DCPs relate to their provisions being effectively disregarded when it suits a particular development outcome. These complaints are both genuine and legitimate.

5.2 A standard instrument DCP

C33. Should there be a standard template for DCPs?

As noted above there is little reason to retain the existing distinction between DCPs and LEPs.

If DCPs are to be retained, then their only real benefit is to allow for locally focussed and flexible planning regimes that respond to particular local needs. For this reason a standardised instrument would defeat the very purpose of retaining them.

6.0 Planning issues across council boundaries

C34. How should new planning legislation facilitate co-operative cross-border planning between councils?

Regional level strategic plans can provide a useful framework in and of themselves to facilitate cross-border planning. These or a similar method are required to ensure that when developments or decisions effect more than one council area regional issues are considered. However this should be on a co-operative, not prescriptive basis as any new planning Act should aim to reduce complexity, not further it.

7.0 Other matters

7.1 The anomalous position of Aboriginal reserves

C35. Should a program be developed to integrate Aboriginal reserves properly into a new planning system and, if so, how should that program be developed and what timeframe could be targeted for its implementation?

Improving the links between local Aboriginal Land Councils and the planning system would allow for improved planning in these areas, particularly for infrastructure.

The NSW Aboriginal Land Council submission to the initial stage of the planning review in November 2011 recommends the following regarding former missions and reserves:

4.1 That the new planning laws for NSW must include specific transitional arrangements and provisions to allow for the reintegration of these sites into the NSW Planning System without undue expense; and
4.2 The new planning system for NSW must provide administrative and resource support for the transition of the existing communities of the former reserves and missions into the planning system; support such as a waiver of associated fees (provided there will be no net increase in the economic use), access to apply for funding including that of the planning reform fund, and assistance such as that provided by the former state significant sites now state significant precincts program.

The Greens NSW adopt these proposals.

1.2 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 would provide undue additional cost for new developments and provide only highly-contestable social outcomes.

1.3 Planning in the unincorporated area of New South Wales

C37. Who should have responsibility for planning in the unincorporated area of the State?

In the absence of sensible local government reform, responsibility for this area should rest with the State Government. Consultations provisions applicable to local government in regards plan making and decision making should, with necessary minor changes, apply to the State government in regards this area.

Chapter D. Development Proposals and Assessment

1.0 Types of development

D1. How should development be categorised?

A reduction from the current 9 categories of development is supported both because the existing system is overly complex and because many of the categories have been effectively created to avoid the scrutiny of regular processes.

A proposed new list, based on the proposed national model categorisation from the Development Assessment Forum has the following categories of development:

- assessable development
- certifiable development
- exempt development
- prohibited development

There is a concern that these categories of development fail to include Integrated Development (being development that requires concurrent approvals from State bodies and gives all objectors third party appeal rights to the L&E Court on merit) will be lost. Retaining this class of development (or at least a class of development that requires concurrent approvals – together with broad merit appeal rights in other classes) is appropriate.

Subject to the above, there is no inherent problem with these basic categories but this will depend on what is included in each category and the assessment processes and criteria.

The failure to include in this categorisation a State Significant development category may be an oversight. The Greens would not oppose a class of development in the form of critical state infrastructure which may need to be set in a category of its own in order to be delivered effectively and in a way that responds to community concerns. It must however be assessed against all existing controls.

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?

Development should be considered as State Significant when it comprises state significant infrastructure delivery. This would include railways, major roads, hospitals, airports and similar.

Essentially significant public infrastructure, and substantial private infrastructure that delivers transport, power, water, sewerage and similar essential and large scale infrastructure.

It is not appropriate for private State Significant Development to be identified by a dollar value. In the past defining it this way has lead to many developers inflating their project costs in order to have their development considered under what often were less stringent laws for this class of development.

Ministerial discretion to declare state significance must be prohibited for private infrastructure and seriously constrained for public infrastructure with reasons required to be given.

Clear rules and binding planning controls are required for these classes of development so as to avoid the overly discretionary, and opaque planning processes that have bedevilled these projects in more recent history.

1.2 Regional or local significance

D3. What type or category of development, if any, should be identified as regionally significant to be determined by a body other than the council?

There is little merit in having this class of development. Councils should be the primary body to determine developments in or affecting their local area. The primary assumption should be that unless state significant infrastructure is involved then the council will be the decision making body.

That said there may be some instances in which a council may not have the resources available to decide a particularly large or otherwise onerous development application. In these instances it has been proposed in the issues paper that the council should have the option to refer the development to a JRPP. Given that we do not support the retention of these undemocratic bodies in any new planning system we would not support this suggestion.

It might be considered that in instances where a council finds a particular development to be of regional significance and is not willing or able to be the sole decision maker that an Independent State Planning Commission could be asked to partner with the council to make the decision.

The current quasi-state government panels called Joint Regional Planning Panels ("JRPPs") are an unfortunate creation for considering so-called regionally significant development, with little ongoing merit. Not only are JRPPs unfunded, and therefore ultimately reliant on council resources to defend controversial decisions they make if challenged in court, but they are comprised of majority State government appointees who are not accountable to the communities for which they make decisions.

The lack of accountability of state appointees to JRPPs is aggravated by the fact that they are not full time positions, and therefore the appointees normally continue to work in substantial private architecture and planning practices. This inevitably involves ongoing sources of conflict of interest. Even where an appointee, as is currently the case, is bound by a code of conduct not to sit on a planning matter where they have an existing

commercial interest, this does not prevent instances where there is pressure to determine a matter favourably in order to gain future work.

To put it simply, a JRPP representative who is regularly seen as harsh on development matters (or perhaps just "a stickler for the rules") is less likely to receive on-going commissions for private work from the development industry – being the primary source of engagement for most of these professions. This conflict is irremediable and is sufficient reason, of itself, to abolish JRPPs.

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?

D5. How should councils be allowed local expansions [sic – exemptions?] to any list of exempt and complying development?

Exempt development should only apply to those changes which relate solely to the property in question, will not have any measurable impact on neighbours, the streetscape, or the community generally and which are regarded by the local council as entirely uncontentious.

Obviously these will differ by property types. For instance garish repainting of a residence in a heritage precinct may not be included as exempt development while in most other areas this would be appropriate. Maintenance, internal renovations and compliant fencing are the style of development appropriate to be classed as exempt. Demolition and new dwellings are not appropriate.

Complying development is an appropriate category for other relatively uncontentious changes by landholders such as the installation of a carport. There is a strong case to remove from complying development any changes that might raise concerns about health impacts for neighbours and the community (specifically the removal of asbestos) on the grounds that those potentially affected should be properly notified and extra steps taken to ensure the safety and compliance of works so undertaken. For this reason alone, demolition should not be complying development under a state-wide uniform code.

Importantly, one-size-fits-all classes of exempt and complying development across the state do not work. Different localities have different values and different local factors that require protecting. This means that any general code must be able to adopted with appropriate local variations by local councils to meet local conditions. The previous administration's approach in the matter was flawed and should not be followed.

In particular local councils must be able to significantly limit the use of exempt and complying development categories in areas of heritage or conservation significance. In these areas the importance for preservation is high enough to warrant fuller consideration of proposed changes.

There is merit in extend exempt and complying controls to amateur radio aerials that are of modest scale.

Change of use applications for retail ventures (especially where it may include a restaurant/bar/entertainment element) should not be considered under complying development. The potential impacts on neighbours in terms of impacts such as noise, parking and waste management are too great to allow these changes to be considered without independent scrutiny.

The exempt category as it currently stands is inherently unsatisfactory as it allows applicants, or their paid private certifiers, to be the judge in their own interests.

2.0 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?

If it is allowed to expand to any great extent, then the answer must be yes.

While the need for timely processing of such applications is high, standards of public notification and participation in decision making must be adhered to in all development that impacts on neighbours and the community.

While it may well be that very modest developments with only minor impacts can be assessed in a more streamlined fashion, this does not equate to expansion of the "tick-a-box" approach to approvals found in the complying development regime in this State.

Allowing local areas to determine more streamlined assessment process for minor DA's is a far preferable solution to expanding the complying development categories. Such a change would be consistent with new core objectives of community engagement and ecologically sustainable development in any new planning system.

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?

D8. . Should there be an automatic approval of a proposal if all development standards and controls are met?

No. Zoning is not a sufficiently focused instrument to allow this right.

Outside of the development industry, there is almost no support for the creation of an absolute right to develop a property for a use permitted by its zoning. Changes to an area may mean that the zoning does not reflect the developing character of the area and it is proposed to be changed.

The creation of such a right to be enforced above environmental and other considerations which may make development wholly unacceptable would represent a dangerous tilting of the system in favour of developers and their interests.

Regarding the suggestion that there should be no merit assessment for developments that comply with all numerical controls, this proposal is not supported.

A development may comply with all technical controls in place but still not be appropriate for the site, the local community or the environment. Further, such a process would create an entitlement to develop, a position which the Greens maintain is untenable if a new planning system is to maintain community acceptance. It will also likely produce unattractive, unthinking development that does not seek to positively respond to the locality.

The suggestion that developments should be classified into those that comply with local controls and those that do not is itself emblematic of a concerning attitude towards these controls by developers.

If this was to be allowed then it would inevitably reduce the assessment process to a "tick-a-box" approach inconsistent with what will hopefully be new overall objectives for the planning system. It has been a long standing and positive element in the planning system that numerical controls are maximum entitlements, not entitlements as of right, and this philosophy must be maintained in any new planning system.

2.3 Staged development applications

D9. Should conceptual approvals be available for large scale developments with separate components?

Conceptual approvals of Master Plans for large developments which may be built as separate components may have some use in increasing the understanding of both the true scale and impact of any development. Public exhibition and public hearings must be an integral part of this.

Such a conceptual approval must not give a final entitlement to development if later assessment indicates insuperable or wholly unacceptable difficulties (such as engineering, geotechnical or environmental impacts/constraints).

As is noted below in relation to the potential reintroduction of the Building Approval process, where a significant technical or environmental matter is raised in the initial assessment process then there must be scope to allow the planning authority to undertake a more detailed assessment of this aspect of a matter at the outset, including in a staged development process. If this is not allowed, then a particularly impacting development (perhaps one that removes a swathe of sensitive bushland, or is in a sensitive coastal location, or will produce inevitable and unviable traffic generation) may be allowed to proceed either to completion or to a second and more expensive assessment stage when it should have been stopped early by sensible planning intervention.

In short, any staged approval must not be seen as a right to develop regardless of later technical, environmental or social considerations being considered in more detail at a later stage.

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?

No. Existing nonconforming use rights are granted specifically for the nonconforming use in question and in the context at the time. The rational for allowing the use is that neighbours in surrounding areas bought into an area knowing full well an existing use was being undertaken and therefore cannot be heard to complain if that use continues. However this rational does not extend to a change in use to a second non-conforming use.

Properties with non conforming uses have the option of returning to the use appropriate to their zoning, or sticking with the approved nonconforming use.

This approach is consistent with the public good in seeking to have development accord with the surrounding zoning.

D11. Should existing nonconforming uses be permitted to intensify on the site where they are being conducted (subject to a merit assessment)?

There may be room for such a proposal subject to strict merit assessment criteria. Such intensification should not be assumed to be a right that flows with the property. Equally it must not be allowed to ex[and the footprint of the existing non conforming use.

D12. Should existing nonconforming uses be permitted to expand the boundaries of their present site (subject to a merit assessment)?

No. Allowing an expansion would bring more property in the region into this non-conforming use. It is contrary to controls developed after long term community minded planning has been undertaken.

D13. Should properties with existing nonconforming uses have access to exempt and complying development processes?

A limited use of these categories for very minor maintenance type works could be considered. Strict criteria should be in place to ensure that these do not do more than allow the owner to maintain property in good condition for the existing use (including the existing scale of use) and are not used as a back door to more intense non conforming development.

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?

A limited protection, by way of declaration, of existing use rights in regards a parcel of property would reflect the underpinnings of property ownership in NSW. However such protection must not extend to create a right to develop land in accordance with any previous LEP zoning. It must be limited to the existing use at the time of any zoning change.

2.5 Transferable development rights for agricultural land

D15. Should there be a system of transferable dwelling entitlements to permit owners of an agricultural holding to transfer a dwelling entitlement from that land to another parcel of land?

D16. Extinguish that dwelling entitlement on the original agricultural landholding?

No. This is a defacto subdivision entitlement that is not appropriate.

It may however be appropriate in a limited class of cases where the prior entitlement is extinguished, subject to merit assessment and remediation of the prior site.

2.6 Challenging prohibitions in a zone

D17. Should it be possible to apply for approval for development that is prohibited in a zone?

No. This would negate the purpose of rational, community based planning instruments and lead to excessive and unproductive litigation from the property industry. The costs of such a system would cripple the already stretched local government sector in this State.

It would in large part be the death knell of development control in NSW.

2.7 Approving unauthorised structures

D18. Should there be a single application to the council to obtain permission to use an unauthorised structure?

No. This is a back door rezoning and should not be permitted.

The existing, or similarly onerous, constraints must be strengthened not watered down.

2.8 Flexibility in requiring an environmental impact statement

D19. Where a small scale proposal requires an environmental impact statement, should it be possible to seek a waiver?

No. In such a case the scope of the assessment should be crafted to the impact.

The logical flaw in such an approach is that it is hard to know on what basis an exemption could be given in the absence of an environmental assessment.

Given the importance of ecological considerations in any planning decision it is considered that there should be no increased scope to avoid environmental impact statements or similar.

2.9 Anticipating future changes to residential patterns in single dwelling areas

D20. Should dual service connections be permitted for residences in Greenfield residential developments?

The Greens make no comment on this matter.

2.10 Applications for community events

In principle we would support changes to improve ease of access by the community to applications for events including markets, fun runs and festivals.

As is noted in earlier response, a separate sub-class of development that allows for more streamlined consideration of these one off or very periodic events is appropriate. Regular "Sunday markets" and the like should however continue to be the subject of development assessment process like any other development.

3.0 Pre-development application process

D21. What provisions, if any, should be made for pre-lodgement processes?

Pre-development application processes are currently voluntary and not codified in the law. This means that there are no defined requirements for record keeping of these processes.

Codification of certain requirements for such a process would be appropriate and promote clarity and consistency.

The advantage of such processes mean that people wanting to undertake developments will have clearer ideas of the processes involved and the documentation required. This process may also allow them to assess if they are in the "right ball park" with their application or if it is likely to require substantial modification.

Care should be taken to ensure that advice given by staff in this process does not lead to an assumption that councillors or planning staff will be guaranteed to approve the DA. Indeed, despite apparent good will from many council officers in undertaking these meetings, this is a common complaint with pre DA processes under the present system. It is also a potential source for corrupt behaviour as was identified in the too-close connections that were fostered between developers and planning staff in councils such as Wollongong.

For the above reasons real care, openness and rigorous standards must accompany any expanded pre-DA process. At a minimum all such processes must be minuted and the minutes must be made publicly available on line within 24 hours of any such meeting being undertaken.

3.1 Director-General's requirements

D22. How should Director-General's requirements fit in the planning process?

Director General's requirements should be unnecessary in any reformed system. They are ad-hoc development assessment requirements imposed in a discretionary and often seemingly unprincipled manner to deal with the absence of controls for state significant and integrated development.

It is time they ceased to be.

4.0 Making an application

4.1 Simplifying the process

D23. How can the application process be simplified?

D24. Should there be standard development application forms that have to be used in all council areas?

The issues paper proposed changing the application types such that:

- The first application might be called a 'development concept application'
- The second application might be called a 'construction approval application'

The first of these would deal with the building footprint, envelope and type of use, the second would correspond closely to the current construction detail plans that are now required to be presented when the Development Application is lodged.

This proposal is said to potentially simplify the system without removing substantial amounts of relevant information from the decision makers at each stage. Care would have to be taken to ensure that the development concept application did not become a way to hide information to proceed to the next stage in the assessment process.

This takes the system back towards the previous Building Approval scheme. It would have the benefit of allowing unacceptable applications to be winnowed out early at lesser cost.

It would have the detriment of allowing some matters to gain an "in principle" approval without a rigorous assessment of more technical matters such as geotechnical, environmental and engineering factors that, if only assessed at a later stage, may not be given sufficient weight to prevent unacceptable developments from proceeding.

As is noted above in relation to staged development assessment processes there must be the capacity to require additional ESD based reports at the initial stage if a council believes this is appropriate.

All of this must be done after public consultation and notice by Council officer. It would be a disaster is this allowed for any expansion of a private certification system.

To be clear, those concerned with development standards, those promoting community engagement in development decision making and The Greens would flatly oppose this bifurcation in the planning assessment process if it involved any greater role for private certifiers in the NSW planning system.

Currently there can be multiple DAs valid for a site. These DAs can contain conditions of consent that are in total conflict. This then allows the the developer may pick which they choose to apply. There should be only one approved DA current for any site at one time. If a new DA is approved then any previously approved DA should be automatically rescinded.

5.0 After an application is lodged but before assessment

5.1 Public notification

D25. What public notification requirements should there be for development applications?

The principle should be that any development application that may reasonably be considered to have an impact on a neighbour or a street should be publicly notified, including with a notice on the property in question.

The lack of public notification or insufficient notification of state significant developments, as well as complying development applications such as demolitions of properties, has been a source of substantial concern for many affected communities in NSW.

Often affected residents in an area first hear about a proposed development through local community groups or the newspaper rather than direct notification from proponents or local councils. The system should err on the side of greater, rather than narrower, notification areas.

Materials must be prepared in plain English as far as possible. The required environmental and statutory controls should be clearly identified and the project's performance against these identified.

Correspondence regarding the merits of the application or possible concerns from government agencies, community groups, councils or individuals should be freely available with responses also provided for public information.

This is not just an issue at local council level. Often the complexity of materials available is compounded by its presentation in regards many developments currently on the NSW Government Major Projects Register. Even a cursory review of the material on that website

demonstrates it is not able to be accessed by the ordinary public to understand the nature, scope and potential impacts of a development. The list of documents relating to almost any of the developments on the site requires expert knowledge to understand. Unhelpful presentation such as Attachment 1, 2, 3, ..., 46, 47 etc adds unnecessary complexity. This is not meaningful public notification. It is public obfuscation.

Notification periods must not include public holidays and prima facie should not run in school holiday periods or over the Christmas and New Year period.

Current concerns about access to DA plans being restricted for copyright reasons must urgently be addressed by this review. The Office of the Information Commissioner has published a number of publications which provide a useful guide for changes that are required in this area and to address privacy concerns relating to access to DA information. The Greens endorse these suggestions.[2]

5.2 Community consultation and submissions

D26. How can the community consultation process be improved?

In substantial developments, independent third party assistance to represent and interpret the developer's (often self-serving) material for the community would be a positive step forward. At present the material seen by the community is the developer's assessment and the developer's expert reports which the community is then required to respond to unaided. This loads the dice against the community from the start of the process.

There must be a reformed system of expert reports to partially ameliorate this. Any such system must produce less partisan expert reports who are then able to provide a clearer picture of the real impacts of a proposed development.

Equally, providing some assistance to the community to take them through the documentation and the potential impacts would go some way to rebalancing this part of the development assessment process. The assistance could be in the form of a dedicated council officer, partly funded through a very modest developer levy, or by a separate third party entity.

[2] Untangling the web: Development applications and personal information on local council websites: http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m150001l2/consultation%20report%20-%20untangling%20the%20web.pdf
Guideline 3: Local Councils personal information contained in development applications: what should not be put on council websites:
http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m150001l2/guideline_3_personal_info_councilwebsites_may11.pdf

6.0 Assessment of development proposals – process

6.1 A quicker process

A balance must be achieved between the need for a simplified and quicker process for development and ensuring that community consultation is given adequate time and protections are not eroded.

Different time periods for different applications could be considered – it is agreed that in general a DA for a new coal mine should (although it doesn't at the moment in NSW) take longer to be considered than a modest extension to a residential property.

However time frames should be a second order issue, getting the right development should be the primary goal – not an arbitrary turnaround time.

D27. Should deemed approvals take the place of deemed refusals for development applications?

No. Deemed refusals allow for a merits based assessment to be undertaken, if not by the local planning authority, then by the Court. Deemed approvals would entirely bypass merits assessment and would inevitably deliver significant environmental and community damage.

D28. Should councils be able to charge a higher development application fee in return for fast-tracking assessment of a development proposal?

No. Such an approach is wrong in principle providing essentially two classes of developers, those who can afford to pay for fast service and those (the majority) stuck in the slow lane. One of the goals of any planning system must be promoting social harmony and equitable access. This would be contrary to those principles.

The solution is working to improve the development assessment process for all concerned, not just a privileged minority.

D29. If an application partially satisfies the requirements for complying development, should it be assessed only on those matters that are non-complying?

No. Such an outcome will produce a fractured assessment process that will not be able to consider the real impacts of a development. It will also complicate greatly the assessment process and likely produce dissatisfaction amongst the community when they are asked to comment on a development, only to be told that potentially the great majority of their concerns cannot be addressed because of the complying development matters.

This will produce complexity, lack of community ownership and second rate assessment process and should not be adopted.

6.2 A less expensive process

D30. How can unnecessary duplication of reports and information seeking be eliminated from the development process?

The issues paper identifies many respondents as saying the duplication of reports at different stages of the assessment process as adding delay and expense.

The Greens support independent expert reports being obtained, with the developer meeting the cost and the planning authority selecting the expert from a pool Independent experts top help provide clarity and reduce the complexity of multiple conflicting reports being obtained. Such a selection would be on a "blind" basis from a pool of qualified experts on a state maintained register.

6.3 State significant development

D31. How should State significant proposals be assessed?

Such development must be assessed in accordance with the local, state and regional planning controls and following genuine community consultation. This will include high level and constant communication with the local council if not in collaboration with them.

It is not desirable that entirely separate assessment processes should apply to state significant development – in the past these have consistently been used to avoid local controls, particularly Development Control Plans, and other environmental and social criteria.

As has been noted earlier in this submission, the Greens advocate creating an Independent State Planning Commission to assess developments of genuine State Significance.

6.4 Crown development

D32. Should the Crown undertake self-assessment?

D33. Should the Crown undertake self-determination?

The present system makes some allowance for crown authorities to make determinations on their own projects unless these are identified as state or regionally significant development.

Determination of applications by the applicant poses serious questions of bias, accountability and transparency. Planning instruments should be used to help deliver socially progressive outcomes, such as increased public and affordable housing, in preference to using lax internal assessment processes by crown authorities.

As has been noted earlier in this submission, the Greens advocate creating an Independent State Planning Commission to assess crown developments of genuine State Significance.

6.5 Council as an applicant

D34. Should councils undertake self-assessment?
D35. Should councils undertake self-determination?

As with crown development, councils have some capacity currently to act as the decision making authority regarding some smaller developments that they are proposing to carry out.

This produces inevitable conflict and bias.

A preferable method would be to have councillors from neighbouring councils, picked by lot, to assess council developments in instances where there is any significant level of resident concern (for example where objections have been made that have not been able to be satisfied by amendments or conditions of consent).

6.6 Environmental impact statements and assessment reports prepared by the applicant

D36. How can the integrity of an environmental impact statement be guaranteed?

Those experts engaged by developers to compile environmental impact statements (and supporting studies) have an inevitable conflict in being chosen by a developer to, obviously, support their development. Those who fail to offer support would not expect a second commission. Those who are known to be "developer friendly" are far more likely to attract work than others who may be seen as "dangerously independent".

As is noted above, one potential partial solution would be to put in place a blind selection process where a developer is allocated, rather than self selects, a relevant expert in regards any particular development. Such a selection would be on a "blind" basis from a pool of qualified experts on a state maintained register.

Other methods for improving the independence of those administering environmental impact statements should also be prioritised including an accreditation scheme. This could include industry recognised standards and an independent accreditation body. For more information see: http://catefaehrmann.org/2011/08/ecological-consultants-accreditation-scheme/

In addition we would support the Issues Paper proposals of:

- Requiring a funding system that permits councils or community groups to engage an expert reviewer
- Stipulating that the consent authority must engage the consultants, rather than the applicant; and
- Stipulating that all reports must be peer reviewed by externally nominated reviewers

6.7 Architectural review and design panels

D37. Should new planning legislation make provision for councils to appoint architectural review and design panels?

Independent panels such as this could be used to provide advice to councils about architectural, environmental, design and other expert aspects of proposals but would have no decision making capability.

There should be scope for some councils to seek to be excluded from this on the grounds that they do not, or are unlikely to, receive such applications.

7.0 Assessment of development proposals – assessment criteria

7.1 The broad framework

D38. What changes, expansions or additions should be made to the present assessment criteria in the Planning Act?

As is noted in the initial parts of this submission, the primary focus for any development assessment must be ecologically sustainable development, seen through the prism of well crafted, and community supported, planning controls.

If the controls are sufficiently well developed then having additional layers of considerations contained in the Act would be superfluous, and potentially contradictory.

8.0 Additional specific matters suggested for development assessment

8.1 Project viability

D39. Should the economic viability of a development proposal be taken into account in deciding whether the proposal should be approved or in the conditions for approval?

No. Planning authorities are not equipped to deal with these financial issues which are complex, contestable and essentially matters for the proponent.

Developers know the rules and buy land on the basis of calculated yield from LEP controls. This is their risk and councils must avoid the potential of altering the rules or interpretation of the planning rules in order to make projects “viable”.

8.2 Mandating the amber light approach

D40. Sometimes there are changes that would rectify problems with a proposal and thus permit its approval. Should it be mandatory during an assessment process for the consent authority to advise of this?

Consent authorities should be encouraged wherever possible to work constructively with proponents to advise them of alterations to plans that could make their proposals compliant with local controls.

Requiring such changes to be incorporated into the development plans rather than just referring to conditions of consent would be the most desirable way for such a process to proceed.

There may be some instances in which mandating the amber light approach is unfeasible – for instance if a project is so noncompliant with local Development Control Plans and other instruments that any amendments required would amount to an entirely different proposal. In these cases mandating such an approach from councils would not be appropriate.

To avoid legal complexities any "amber light" approach must not allow for further complicated legal challenges to refusals where a developer belatedly alleges a failure by council. The primary responsibility for presenting approvable developments must lie with the proponent, not the planning authority.

8.3 Impact on property values

D41. Should a new planning system permit adverse impacts on the value of properties in the vicinity of a proposed development to be taken into account when considering whether a development should be approved?

No. As is noted above, planning authorities are not equipped to deal with such assessments. These impacts are best dealt with through looking at the amenity and other substantive impacts of a development, not expanding the issues to encompass secondary financial impacts.

8.4 Design excellence

D42. Should local development controls be allowed to preclude high-quality, environmentally sustainable, residential designs on the basis that they are inconsistent with the existing residential development in the vicinity?

This question is predicated on maintaining poor planning controls that do not allow for best practice environmental design. This assumption is not supported.

Requirements for consistency with an existing streetscape may lead to some more contemporary environmentally friendly built forms being rejected. That said, it will in most

instances be possible to build a residence that conforms with the existing streetscape and incorporates ecologically sustainable design principles.

8.5 Impacts beyond the immediate locality of a site

D43. How can the planning system ensure that the impact of development that is remote from but directly affecting a community is taken into account in the assessment process?

Improvements to the consultation processes for developments would be the primary way of addressing such concerns as previously noted, together with well crafted planning controls that consider ecologically sustainable development.

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?

Yes. Failure to do so can result on serious adverse impacts on communities including, but not limited to, failure to provide sufficient infrastructure including public transport, excessive traffic congestion, lack of parking, loss of public space and more.

The failure under the present system to consider the cumulative impact of the proposed developments is well illustrated with the Lewisham Towers and the Summer Hill Flour Mills developments. There the cumulative impact of the developments will lead to a devastating effect on local communities that is simply not being considered in the assessment process.

Such considerations should be incorporated into the assessment process through properly understanding ecologically sustainable development. Other examples are late night trading and proliferation of alcohol and gambling venues.

8.7 Project life cycle impacts and greenhouse gas emissions

D45. As part of the assessment process for some classes of development project, should there be a mandatory requirement in a new planning system for full carbon accounting to be considered?

Yes. The Greens support mandatory carbon accounting including downstream emissions for all large and state significant projects. This could be particularly useful in the consideration of mines, forestry developments and coal seam gas installations.

This should include proper energy audits (i.e. embodied energy in any existing buildings, replacement energy requirements) not just the current BASIX requirements that only measure energy consumption on completion of project and which is open to retrofitting with air conditioners and pools by the operation of Exempt and Complying provisions.

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?

Once again this question is predicated on the current system of having poorly crafted planning instruments that do not take into account such considerations. Such considerations should be incorporated into the assessment process through well crafted planning controls that properly understanding ecologically sustainable development.

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

D47. Should a consent authority be able to take into account past breaches by an applicant of an earlier development consent in considering whether or not it is reasonable to expect that conditions attached to any future development consent would be obeyed?

Yes. Given the difficulties and costs of enforcement there should be some grounds for consideration of repeated previous failure to comply in the development assessment process.

If a developer has repeatedly breached conditions of consent in the past then the community can have little faith that the impacts of any future development will be ameliorated by yet further conditions of consent. This is only common sense.

8.10 Variations to standards

D48. Should objections to complying with a development standard remain?

Given the existing problems of non compliance with development standards, further relaxing these provisions is not supported. The SEPP 1 process is not an adequate method of delivering strong and enforceable controls. It should be repealed and a new test established that gives genuine primacy to the controls with a narrow exclusion where there is proof of improved environmental and social outcomes being delivered by any modest non compliance.

8.11 Applying an 'improve or maintain' test

D49. Should an 'improve or maintain' test be applied to some types of potential impacts of development proposals?

D50. If so, what sorts of potential impacts should be subject to this higher test?

Insofar as such a test could allow a more sophisticated method for assessing environmental impacts and encouraging proponents to ensure the overall positive impact of their development, this is supported. It should however be an essential part of the general planning scheme not limited to this class of development.

8.12 Risk of natural disaster as an assessment criterion

D51. Should there be a specific assessment criterion that requires risk of damage as a consequence of either short-term natural disasters or long term natural phenomenon changes to be included in development assessment?

Yes. However for the reasons stated above this is best incorporated in the planning instruments, not mandated as a separate assessment criterion in the Act. Current flood plain and bushfire hazard considerations go some way towards this. It is understood the Insurance Council of Australia is agitating for such a change as it would allow them to better assess properties. This will also need to include easements for geographical reasons (not just roads, sewers and railways) for example with respect to unstable cliff tops in Eastern Sydney.

Consideration of the impacts of climate change and required adaptation should be considered for all new developments through clear provisions in the planning instrument(s) applicable to a particular site.

8.13 Urban water issues

D52. What water issues should be required to be considered for urban development projects?

Steps to promote urban water recapture are supported. BASIX should be seen as providing a statutory minimum which councils can move beyond in their local area in terms of water sensitive urban development. BASIX should be primarily about energy and water efficiency of the built form, not appliances, with a parallel requirement for energy and water efficient appliances.

We would also support consideration of DAs including potential impacts of residential developments on urban aquifers.

8.15 Existing residential uses in industrial zones

D53. When development is proposed that has an impact on an existing, nonconforming residential use, should any special assessment criterion be required to take account of the residential use?

No. Once again this question is predicated on the current system of having poorly crafted planning instruments that do not take into account such considerations. Such considerations should be incorporated into the assessment process through properly understanding ecologically sustainable development.

8.16 Availability of assessment reports

D54. Should new planning legislation fix a time at which a council assessment report concerning a development application is to be made available for access? If so, when should that be?

Yes. Timely public access to such reports is essential. They should be required to be produced on a council's website as soon as practical following completion. To make this practical, there must also be requirements on developers to lodge digital copies of relevant documentation in a given form.

9.0 Amendments to applications

D55. When should an amended application be re-exhibited and when is a new application required?

Re-exhibition is required where an amendment causes a new, or increases an existing environmental impact.

A fresh application should be required where the amendment changes the substantive nature of the development.

10.0 Ensuring council performance

10.1 Local government performance monitoring

D56. What are appropriate performance standards by which council efficiency can be measured in relation to development assessment?

The primary standards should be environmental, social and built outcomes together with community acceptance. Arbitrary league tables based on turnaround times are poor indicators of performance.

10.2 Local government performance auditing

D57. Should there be random performance audits of council development assessment?

These should not be the primary tool for assessing council performance. A far superior method would be to require regular reporting by council's against environmental, social and built outcome criteria.

11.0 Concurrences and other approvals

11.1 Concurrences from other government bodies

D58. How should concurrences and other approvals be speeded up in the assessment process?

D59. What approvals, consents or permits required by other legislation should be incorporated into a development consent?

D60. Should a council be able to delegate to a concurrence authority power to impose conditions on a development consent after the council approves the proposal?

Too often local councils are attacked for delay in development assessments when the delay is occasioned through poor response times from state government authorities.

Rather than requiring a council to negotiate with numerous state instrumentalities and authorities in the concurrent approval process, there should be a central "Concurrence Office" in the State government which is the central point of contact for local councils. That office can then be responsible for co-ordinating and chasing responses from the State government. This will free up local council resources and streamline the process considerably.

Deemed concurrence or deemed approval periods are not desirable inasmuch as they introduce a presumption in favour or development, or in some cases in favour of breaches of certain codes and requirements.

Baseline standards of consent may be useful to give all players – government bodies, proponents and communities – a clear understanding of the criteria being considered. These would likely help reduce delays, as would the imposition of strict timeframes on government bodies which must then be reported against. They must however be sufficiently flexible to deal with the multiplicity of developments across the State.

Rather than allow for retrospective conditions being imposed by a concurrence authority, a streamlined concurrence process should be adopted. Importantly this will allow the issues relevant to consideration by the concurrence authority to be before the planning assessment authority when making its determination. Clearly, allowing for retrospective concurrence would defeat this.

11.2 Timely dispatch of applications to concurrence authorities

D61. Should there be some penalty on a council if a referral to a concurrence authority has not been made in a timely fashion?

A forfeiture of the referral fee where the dispatch of applications to concurrence authorities is longer than a set period of time could be considered. A better solution is a 'Concurrence Office' as noted above.

12.0 Making decisions

12.1 State significant development

D62. Who should make decisions about State significant developments?

As per previous answers, an Independent State Planning Commission is the appropriate body to make such decisions.

12.2 Delegations

D63. What concurrence decisions should be able to be delegated?

D64. Should there be a model instrument of delegation?

State Government concurrence should not be delegated to local councils who do not, in the main, have the skills to deal with these issues.

Delegation of some decision making is often necessary to ensure that decisions are dealt with in an efficient and timely fashion by any organisation. In councils delegation to staff should in general be reserved for uncontentious developments. In general, larger developments, or highly controversial developments, should be determined by councillors acting in their roles as representatives of the community.

A model delegation instrument could provide some guidance on appropriate and inappropriate uses of this delegation power. There must however be scope to vary it to allow for local conditions.

Care should be taken to ensure that any delegation is to a more knowledgeable authority, not just passed down the line to junior officers in order to avoid controversial decision making.

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?

None. The PAC should be abolished and replaced by an Independent State Planning Commission.

The Greens NSW supports the creation of an Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations (including at least one ecologist) endorsed by the Parliament and granted clear legislative independence from the Minister.

This would operate differently from the PAC which is under the authority of the Minister and does not make decisions on applications directly.

12.4 Planning Assessment Commission processes

D66. What should be the processes required for hearings of Planning Assessment Commission panels?

See the answer to Q65 above. It is unfortunate that the review process appears to be predicated on the maintenance of a series of highly flawed institutions and provisions in the current planning system. Any root and branch reform of the planning system would not retain a quasi-independent and opaque body such as the PAC.

For any state assessment body, community consultation hearings must include rights to speak (within reason) for those affected or interested in the project in question, together with proactive publication of all relevant documentation and the prompt public provision of staff officer's initial assessment.

Prioritising community engagement in the system means allowing flexibility for supporters or objectors to plans to present their responses. Given the highly technical nature of many plans a speaking time of only a few minutes may be insufficient to capture all of the concerns that there are about them. Flexibility must be retained to allow for these occasions.

12.5 Local participation on Planning Assessment Commission panels

D67. Should a local member be on any Planning Assessment Commission panel considering a proposed development?

D68. If so, should this be mandatory for all commission panels?

See the answers to Q65 and 66 above.

Greens policy supports the creation of an Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations endorsed by the Parliament and granted clear legislative independence from the Minister.

12.6 Assessment criteria for the Planning Assessment Commission

D69. Should the development assessment criteria for the Planning Assessment Commission be the same as for any other development assessment process?

Yes. See the answers to D65, 66 and 67 above.

12.7 Joint Regional Planning Panels – general

D70. Should a new planning system include Joint Regional Planning Panels?

D71. What should be the composition of a Joint Regional Planning Panel?

D72. What should be the hearing processes for a Joint Regional Planning Panel?

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?

D74. Should State nominated members of a Joint Regional Planning Panel be precluded from taking part in any decision concerning the local government area in which they reside?

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?

The Greens NSW do not support any ongoing role for JRPPs and advocate the return of their decision-making power to local government. As is noted above JRPPs are in effect state-dominated planning panels that do not have the resources, or political capability, to enforce controversial planning decisions they make when they are at odds with the relevant local council.

The arbitrary dollar value on which developments come before JRPPs does not reflect their environmental impact and inappropriately disenfranchises local councillors from determining often the most important development applications in their local area.

Many councils and individuals have expressed concerns about the current use of and composition of the JRPPs. In particular their independence and accountability to local communities have come into question in some instances.

Well resourced local councils, operating in an environment with clear, community focused local, regional and state planning instruments should be viewed as the primary planning decision makers in any new system. This is because local councillors are often the best placed to make development decisions – not only do they understand the local areas better but they also are accountable to their local communities at the ballot box.

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?

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?

No. See the answers above as to the in principle opposition to JRPPs. Again it is unfortunate that this root and branch review of planning appears to assume an ongoing role for such a poorly conceived institution as the JRPPs.

Collaboration between councils affected by developments should be encouraged. The situation with the Lewisham Towers and Summer Hill Flour Mills is a good case study where each development is situated in one council area but will affect the adjacent area, including because of the cumulative impact of the proposals. A statutory regime that encourages co-operation rather than providing compulsion is the solution in such cases.

More information about this specific issue is available here:
http://davidshoebridge.org.au/2011/09/05/no-lewisham-towers/

12.9. Exemption from JRPPs

D78. Should a council be able to apply to the Minister to be exempt from a JRPP?

If the primary submission of abolishing JRPPs is not adopted than clearly there should be a path to allow councils to apply to be exempt from the JRPP process. Grounds that might be considered appropriate for such an application could include community will, improvement of consultation on DAs, adequate resources held by Council to determine DAs and so on.

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. The use of such behaviour is one part of why separate development assessment processes like JRPPs should be abolished. Any attempt to provide statutory provisions to prevent developers from aggregating proposals will likely be ineffective and subject to legal and technical challenges. A far preferable solution is to abolish JRPPs and avoid this confusion and complexity.

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?

If the primary submission of abolishing JRPPs is not adopted, then councils must be able to continue to make submissions regarding proposals that are not in their communities' best interest. This is one of the roles of a democratically elected council.

12.12 The Central Sydney Planning Committee

D81. Should the Central Sydney Planning Committee be established under legislation for a new planning system or should it remain established by a provision in the City of Sydney Act?

The Central Sydney Planning Committee should be abolished and its planning powers return to the local council.

If this primary position is not adopted then, in the interests of having all of the legislation relating to planning in NSW in one Act insofar as this is possible, it may be desirable for this to be included in any new proposed legislation.

12.13 Council decision making processes

D82. Should elected councillors make any decisions about any development proposals?

Yes. As elected representatives, councillors have a unique role to play in deciding developments. Their role should remain.

12.14 Giving reasons for a decision – general

D83. What should be the requirement for a decision making body to give reasons for decisions – in particular as to why objections to a proposal have not been accepted?
Reasons should be provided where a decision is at variance with the written recommendation and/or report of planning staff. Anything that substantively varies from the council officer's report must be explained.

Part of introducing new accountability and transparency into the planning system will include requiring more information from decision making bodies for reasons for decisions – both for approvals and refusals.

These should be readily available through online systems and on request from the council or relevant decision making body. Reasons should be in plain English insofar as possible and clearly set out the relationship between the proposal, relevant legislation and policies and community responses.

If the decision is made in a council meeting then those moving to have a decision adopted must be required to present their reasons at the time. These reasons must however not be taken to limit the legal bases on which a decision is ultimately defended if challenged in Court.

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

D84. If a council resolves to approve a development proposal where the assessment report recommends rejection, should the council be obliged to provide reasons for approval of the development?

Yes. See above 12.14

12.16 Who should be the consent authority for quarry applications?

D85. Should approval of developments proposals for quarries be removed from councils?

Primarily local councils should decide such applications. Local controversy should not be a reason for removing decision making from councils about certain developments. There may however be grounds to allow councils to refer such decisions to an independent state planning commission for its consideration if the local authority determines it does not have the skills, or capacity to make a well informed and impartial determination of a matter.

13.0 Conditions on developments

13.1 Standard conditions of consent

D86. Should there be a range of standard conditions of consent to be incorporated in development controls?

No. There is no compelling reason to standardise conditions of consent across the State. They must be able to adapted to local conditions.

13.2 Public interest conditions

D87. Should new planning legislation make it possible for public interest conditions to be imposed that went beyond the conditions that immediately relate to a particular development?

Yes. Such an amendment would slightly change the current tests which must be satisfied in order to impose a condition. The change would involve an amendment to the current criteria: "the condition must fairly and reasonably relate to the development" and allow consideration of a broader environment and context.

This could allow community compensation funds to be created for certain major developments like coal mines. Consideration should be given to whether such funds should be limited to being distributed in local areas only or whether it would be appropriate to consider then being used in a broader local area or region.

Wind farms would not produce sufficient impact to require onerous conditions.

There would need to be close controls on such conditions to avoid there being a conflict in that a consent authority may approve a damaging development in order to obtain a collateral (non-planning related) benefit.

Cumulative impacts on the public domain should be considered.

13.3 Reviewable conditions

D88. Should nominated conditions of consent be able to be reviewed at regular, specified intervals?

Where further amendments are made to an application by the proponent – for instance modifying an application or negotiating for an extension to a mining consent - it would seem appropriate that consent authorities could at this stage review and amend existing conditions of consent.

Prime reasons for reviewing such conditions should be to allow for cumulative impacts to be appropriately managed, and to allow for changes in technological and scientific understandings to be updated in any conditions.

13.4 Climate change and time limited consents

D89. Should it be possible to grant a long-term time-limited development consent for developments that are potentially subject to inundation by sea level rise caused by climate change?

No. If allowed to occur on any broad scale this will produce a nightmare for future generations as they seek to deal with inundation and erosion when it occurs.

The cost of removal and remediation will need to be met in future years when it is likely the land will have lost all, or almost all, of its value and therefore the then owner will have no incentive to undertake the remediation. Equally if the local planning authority undertakes the work on behalf of the community it will have no asset from which to recover the costs.

Long term planning decisions would be the preferred approach.

13.5 Public positive covenants

D90. Should consent authorities be prohibited from requiring public positive covenants as part of development approvals, if the matter could be dealt with by a condition of consent?

No. Public positive covenants currently are used by councils to enforce conditions of development consent. They go some way towards addressing perceived issues with the enforcement of conditions.

They provide more certain, and effective, enforcement than DA conditions alone.

NB - A public positive covenant is created under either s.88D or s.88E Conveyancing Act 1919 and imposes obligations on the new owner of the land burdened (the servient tenement), in favour of a prescribed authority. These obligations include:

- *carrying out specified development on or with respect to the land, or*
- *the provision of services on or to the land or other land in its vicinity, or*

- *the maintenance, repair and/or insurance of any structure or work on the land*.[3]

13.6 Performance bonds or financial sureties

D91. Should new planning legislation make it possible to impose performance bonds or sureties unrelated to the protection of public assets?

Yes. We would support the new planning legislation including discretion as to what performance bonds or sureties can be required. In the situation discussed in the issues paper where a developer has a poor history of compliance with development condition this discretion would make sure that failure to comply by the developer would not come at a cost to neighbours or the council.

Equally in a residential setting, financial sureties should be able to be imposed to ensure the protection of significant trees on a development site, and other significant features such as rock outcrops and Aboriginal heritage sites.

In a more standard residential setting a surety or bond to protect substantial existing trees on a property from damage or loss during development would also be a positive step forward.

D92. If so, should there be any restrictions on the reasons for which such bonds or sureties could be required?

Reasons for imposing such bonds should reflect the objects of the principle object of the Act – namely - ecologically sustainable development.

The issues paper also mentions concerns that changes are required regarding conditions for approval of wind farms. The argument was made that mine sites are subject to certain bonds and sureties regarding the rehabilitation of the sites and that similar requirements are necessary for wind farms .

The Greens are strongly of the view that there is no reasonable basis to impose such bonds on the wind industry as they have negligible impact compared to the coal and mining industry. Further these industry specific matters are more appropriately dealt with once a new planning system is in operation, not at this stage of the process.

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

D93. Should a new planning legislation system permit a council to impose a condition that requires payment of charges that would fall due under the Local Government Act?

There is no harm in this.

[3] http://rgdirections.lpi.nsw.gov.au/deposited_plans/easements_restrictions/positive_covenants/public_positive_covenants

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?

As is noted above the Greens categorically do not support the continued existence of private certification in its current form nor in any extended form.

We do not support a split in the approval process if private certifiers are to be given any role in the assessment process. Councils must retain responsibility for all the existing elements of the assessment process, albeit split potentially into two 'streams'.

If the system of DA approval is changed to reflect a system of concept approval followed by construction approval then councils would logically require the power to impose conditions on each of these approval stages as is determined to be appropriate.

Private certifiers have proven such a comprehensive public policy failure in NSW that if the planning review made recommendations for their expanded role in the planning system the recommendations of the panel would be roundly condemned by any thinking participant in the current system.

13.9 Compulsory condition of consent for EIS based development approvals

Should there be a mandatory condition of development consent for approvals based on an application supported by an EIS that the development is carried out in accordance with that EIS?

Yes. The experience of many local communities is that Environmental Impact Statements (EIS) are often treated as simply a step in an overall process, rather than as a document that should guide planning for a development and consideration of its impact.

Changes that would make this a mandatory and enforceable condition of approval in a similar fashion to the current requirement of compliance with the Building Code of Australia would be a positive step.

14.0 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?

Mechanisms for funding infrastructure shortfalls are needed. IPART may have some role in suggesting these. However this is a matter that this planning review must confront if it is to come to grips with one of the most divisive issues in development here in NSW.

The current infrastructure contribution requirement system has not worked to provide appropriate community infrastructure in either existing developed areas as density increases, or in greenfield developments.

The Government's reduction of State Infrastructure charges for Greenfield developments in Sydney's west is of particular concern. This reduction allows industry to develop these areas without an associated requirement to fund the kinds of infrastructure needed to support these communities adequately. The result is that either these communities do not receive adequate and timely infrastructure provision (refer to for instance many of these new development areas which have no, or poor, public transport creating whole new car-dependent suburbs), or the cost of the provision of such infrastructure is shifted to the rest of the community, usually the local council.

Many of the developers consulted by the review have exerted pressure for the reduction of infrastructure contributions, arguing in the words of the issues paper that "such caps represent an undesirable and upward impact on the costs of development and, consequently, on housing affordability for first home buyers in new release areas". This kind of argument fails to recognise the overall cost to the community, and those moving into these developments, due to developers failing to pay their fair share of the infrastructure costs.

In these instances the initial seemingly low cost of the dwelling hides the attendant social and economic costs of insufficient infrastructure provision. It is not acceptable that the only way affordable housing can be provided is in areas that do not have an adequate level of services and infrastructure.

Development is a highly profitable enterprise and for some time has been relatively unfettered by either environmental or social concerns – any review of the planning system must take substantial steps towards remedying this situation.

Housing affordability is not best guaranteed by allowing developers to shirk ever more responsibility but by setting strong targets for affordable housing and plans for how increases will be achieved that do not result in affordable housing only existing in areas with inadequate services.

Greater local flexibility to impose developer contribution levies must be given to local councils who know best what infrastructure is required to make a community work. The final costing of any works may be appropriately considered by IPART to ensure integrity in the costings developed by a local council, but IPART must not, due to it being unaccountable and unelected, the de facto determination body for the appropriate level of community facilities in NSW.

One of the key roadblocks to infrastructure delivery by local councils under the current s94 and 94A developer contributions system is the unreasonably tight restrictions on what councils can do with accumulated finds. Often funds are accumulated over many years (sometimes decades) to produce infrastructure that may at a later point become outdated or inappropriate. A preferable solution would be to allow councils to expend developer

contributions (such as s94 and 94A funds) on a wide class of infrastructure across their municipality without unnecessary and often intractable, restrictions that many times leaves funds sitting in accounts for years, unable to be spent on much needed local infrastructure.

In light of the above, a general reference to IPART about the role of development contributions for community infrastructure is not opposed, but it must be in light of clear direction being given by this planning review.

D96. Should IPART be given a reference to make recommendations about what should be the extent, standard and nature of community infrastructure works that should be included in contributions plans?

For the reasons cited above, no. IPART may well have a limited role in produce recommendations on the cost of works that are included in a contributions plans, supported by relevant data. However it does not have the political legitimacy to determine what is the appropriate level of community services and support required for a community. This must rest with elected government officials.

This could help in the assessment of the true cost of development, particularly in Greenfield areas which could in turn feed into the development of new evidence based policy in this area.

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?

This is a far from satisfactory solution. The current uniform caps across release areas do not reflect on the ground costs that are not uniform. A standing reference given to IPART to enable councils to apply for variations to the current caps on contributions would be a only a marginal improvement on matters. As is noted above, IPART could have a role in testing the costings applied by a local council, but should not have a role in determining the scope or timeliness of infrastructure and service delivery to a community.

D98. Is it reasonable to require IPART to undertake a detailed analysis of each contributions plan developed by councils?

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?

The answer to D98 is no for the reason set out above.

The answer to D 99 is yes, to the extent it is dealing with costings for the reasons set out above.

It is notable that the 3 studies considered in which IPART undertook detailed analysis of plans showing some minor savings of between 4 and 7 per cent could be achieved. The

effort required to uncover these savings, combined with the possibility that they represent only statistical sampling suggest there is unlikely to be a strong enough justification to require such analysis of all plans.

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?

Again, this is a matter that must be considered in this planning review and not deferred for later consideration by IPART.

The Greens do not support any measures that would allow developers to delay infrastructure contributions under the guise that this would allow for more affordable housing. Such an argument presents a false economy and fails to recognise the importance of high quality and timely infrastructure provision, particularly in green field development areas.

In any event such conditions will likely be unenforceable when a developer goes into liquidation after distributing the profits from its successful subdivision. Deferral is, in short, a recipe for disaster.

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 contribution plan?

This is a good idea, but it must not become legally enforceable, nor used to interpret the more carefully drafted development contribution plan. A simple requirement for councils to publish information regarding the infrastructure funds they have received and expended would be an appropriate way of ensuring that these funds are administered appropriately and transparently.

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?

As is noted above, this is not a proper role for IPART which has expertise on costing and funding, not on the provision of local infrastructure or the needs of local communities. This is more appropriately a matter to be dealt with by each individual council.

14.2 The use of voluntary planning agreements to purchase additional development rights

D103. Should new planning legislation make provision for voluntary planning agreements to permit departure from numerical limits that would otherwise apply to a development?

No. Voluntary planning agreements to allow developments to exceed numerical restrictions in controls have tended to work against the public interest and the environment and have resulted in many oversize and inappropriate developments being foisted on communities.

While there may be some very limited circumstances in which departure from controls is appropriate these should not be effectively encouraged by having local councils (or State government) benefitting from payments or other inducements in return for breaches of planning standards. Such a system puts in place unacceptable conflicts of interest.

14.3 Appeals against reasonableness of development contributions

D104. Should any appeal be allowed against the reasonableness of a development contribution, if it has been approved by the IPART?

This question is predicated on a substantial ongoing role for IPART that it should not have.

If however IPART is given such a role then there is little merit in having it reviewed by the courts on a merits basis. Reasonableness in this instance is no better determined by a Court than by IPART. This should not prevent Court challenges based on alleged procedural or jurisdictional flaws.

14.4 Developer contributions for development modifications

D105. Should developer contributions apply to modifications of approved development?

Yes. Developer contributions should be allowed to apply to modifications of approved development if the council or approving authority reasonably believes that the modification will increase demand for community facilities.

14.5 Regionally-based community facilities

D106 Should regional joint facilities funded by developer contributions shared between councils be encouraged?

Yes. If it is considered appropriate by a majority of the councils in question that a regional pooling of resources would allow them to make better use of developer contributions then this should be permitted. Primary criteria should remain those mentioned above – public interest and ecologically sustainable development.

15.0 Making changes to an approved development

15.1 Modification applications

D107. What should be the permitted scope of modification applications?

D108. Should there be a limit to the number of modification applications permitted to be made?

Modification applications can be used to tweak development proposals in response to community or other concerns. Some changes requested in such applications may be so substantial that they amount effectively to new proposals. It would be desirable to set some reasonable limitations on the scope of modification to avoid this.

Modification which makes a proposed development smaller or reduces its impact should be permissible in most instances. However modification which increases the size or footprint of developments needs to be carefully regulated. Multiple modification applications which increase the size of a proposed development ("incremental modification") should either face strong requirements to justify the public interest and ecologically sustainable development criteria under which this should be permitted, or should be required to prepare a new development application.

This area of the law requires reform as too often successive s96 applications are used to incrementally, but substantially, amend approvals without requiring full public notification of the proposed amendments.

15.2 Modification applications – retrospective approval

D109. Should any modification be able to be approved retrospectively after the work has been done?

D110. If so, should retrospective approval be confined only to minor changes and not more substantial ones? Should this be the case even if major changes leave the development substantially the same development as the one originally approved?

There are serious concerns about the existing use of retrospective modification approval, or lack of will to impose demolition orders, which is often used by developers to build oversize and unsuitable developments on the assumption that local councils will be unable or unlikely to engage in the expensive and cumbersome legal processes required to remedy this.

Councils have not been assisted in this matter by a Court that is unwilling to order demolition, even where a developer has wilfully disregarded local controls or strict conditions or limitations in a development consent.

In this circumstance the community and environment tends to pay the price for the developer's gamble on the council being unable to enforce previously approved plans.

Any new planning system must go some way towards addressing this imbalance and ensure that the risk in such a situation is borne by the developer rather than the council or community.

In such cases the burden of proof should be altered so that once non-compliance or unlawful building activity has been proven the onus falls on the developer to prove that demolition should not be ordered in the instant case.

Increased penalties, attaching to the land, must also be put in place – including linking them to the financial benefit obtained by the developer.

15.3 Modifications to Planning Assessment Commission or Joint Regional Planning Panel Approvals

D111. Should minor modification applications made to Planning Assessment Commission or Joint Regional Planning Panel approvals be decided without a public hearing?

D112. Should councils be able to deal with minor modification applications to major projects?

As is noted above the Greens do not support an ongoing role for the PAC. If the PAC is to remain then minor modification applications with no impact on local residents, local amenity or the streetscape of a development may be able to be assessed without a public hearing by PAC, but the class must be strictly limited. Public hearings should be held in all other cases.

We do not support an ongoing role for JRPPs, however if they were to be retained a similar structure should be in place.

Returning minor modifications to local councils would be one way to make it easier for local communities to be involved in their consideration. Public exhibition of such modifications along with time for submissions to be provided may reasonably be expected in such circumstances.

It is of concern that the questions in this planning review appear to adopt the false premise that different principles can apply for local or state significant development. Public consultation and participation and open decision making must be consistent across all levels of the planning system.

15.4 Modifications that breach a numerical limit

D113. Development applications that propose breaches to (or increases in breaches to) numerical limits in local environmental plans are subject to special tests. Should modification applications be subject to these same special tests?

Yes. In both instances the breaches of controls should be taken seriously and subject to rigorous testing and community consultation. As is noted above, the current lax threshold in SEPP 1 must be significantly reformed and tightened.

16.0 Matters relating to consents

16.1 Lapsing of development consents

D114. Should the 'substantially commenced' test for ensuring the ongoing validity of development consent be retained?

D115. If the present test was not retained, what new test should replace it?

The "substantially commenced" test must be tightened to require real commencement of a project - something more than simply digging a hole or obtaining a construction certificate.

While there should be some allowance for proponents requiring time to obtain finances and build their projects this should not extend to the absurd situation where surveyor's pegs in the ground keep the development consent active for a period of years – and in theory indefinitely.

A more stringent test requiring that sufficient and significant activity was undertaken on the development within a 5 year timeframe from the consent, with a further requirement of completion in a "reasonable period of time" would seem practical and realistic. 'Reasonable' would of course depend on the context and is a term that the courts have substantial experience interpreting in different fields.

16.2 Time periods before lapsing of a development consent

D116. How long should development consents last before they lapse?

The current five year standard maximum period for which development consent can be granted should be retained. Discretion to reduce this period is appropriate and the system under which extensions up to 5 years can be requested should be kept.

As is noted above there must then be a requirement to complete the works in a reasonable period, unless the consent mandates a more specific time of no more than 5 years.

17.0 Certifying compliance of development

17.1 Private certification

D117. Should private certifiers have their role expanded and, if so, into what areas?

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?

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?

D120. Should there be a requirement for rectification works to remove unacceptably impacting non-compliances when these are actually 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?

As is noted earlier in this submission the private certification system is fundamentally flawed and far from being expanded should be abolished.

The private certification system contains at its heart a fundamental conflict of interest with the developer selecting and paying for their own certifier. This conflict makes it next to impossible to ensure private certifiers make their decisions independently and free of bias when it is clear that those hiring them are expecting particular outcomes.

There are literally thousands of complaints made annually against private certifiers who are not responsible to effected residents as local council building inspectors are. A great many of these complaints are well founded and rational. There is minimal oversight of private certifiers and there are many instances where they have certified that a development is compliant with a consent, without ever visiting the subject site.

The failings of private certificate place at risk the integrity of the entire planning system, from ensuring conditions of consent are enforced, to simply requiring basic building standards are respected in the building process.

Once a private certifier determines to issue orders against a developer, then it still falls to the local council to undertake the expensive and onerous job of enforcement. This aspect of the system socialises the expensive and time consuming part of the compliance regime while privatising the profitable aspects of it.

Rather than tinkering with a broken system it must be abolished.

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?

Yes. Variation should be through the consent authority and not through private certifiers who are beholden to the developers who have hired them.

17.3 Choosing a certifier

D123. Should developers be permitted to choose their own certifier?

No. Private certification is a failed experiment and should be promptly abandoned.

A partial (and inadequate) reform would be to strengthen compliance and discipline measures for private certifiers and put in place a blind selection process where a developer is allocated, rather than self selects, a private certifier in regards any particular development. This would ameliorate, but by no way fix, the present mess.

18.0 Other matters relating to development

18.1 Ensuring compliance for major projects

D124. What should the Department's compliance inspection role be?

An increased compliance inspection role for the department should be considered with a possibility to run a pilot program to assess the efficacy of such a move. It is not a remedy to removing the conflict inherent on the private certification system.

18.2 Occupation certificates

D125. Should Interim Occupation Certificates have a maximum time specified and, if so, how much time should this be?

Yes, this would be a reasonable recognition of the interim nature of such a certificate. Note that these certificates might be issued when a project is ready to be used but when external works of various kinds for instance may not have been carried out meaning that the visual impact of the interim structure is substantially different to the completed approved plan.

D126. Should a certifier issuing a Final Occupation Certificate be required to certify that the completed development has been carried out in accordance with the development consent?

Yes. If final occupation certificates are to have any value they must relate back directly to the development consent.

It is astounding it is not already required.

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?

We do not believe changes are required in this area.

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. A number of such publications already exist.

Local councillors are directly accountable to their local residents through the ballot box and therefore must retain a primary role in determining development applications in their local area. This must be supported by adequate training and a rational, clear and workable planning system that fosters good decision making.

D129. If there were to be such a guide prepared, who should have the responsibility for its preparation and what participation and consultation processes should be undertaken in its development?

The Planning Department seems the logical author of such a guide and the LGSA and Department of Local Government should be partners in producing it.

18.5 Aggregated developments in mine subsidence areas

D130. Is it appropriate to consider, in legislation for a new planning system, providing a statutory basis for spreading the cost of a necessary rehabilitation or stabilisation measure across all property ownerships benefited by such a measure?

The issues paper discussed this in the context of underground mine workings in the Newcastle CBD. It may be appropriate to consider specific legislation to address apportionment of remediation costs in this specific instance. However it must not become a tool whereby a particular developer can force unwanted development on adjoining neighbours and then, to add insult to injury, compel them to pay for remediation works to make it happen.

There are no known grounds for the creation of a general rule to this effect across NSW.

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?

Yes. Establishment of such bodies with appropriate requirements for public provision of information, an independent chair and performance monitoring is a step forward. Such community engagement models should be considered in the overall context of establishing a more transparent, accountable planning system that is responsive to community concerns.

These projects must remain with local councils as consent authority.

18.7 Calculating fees

D132. Should a quantity surveyor's report be required to accompany applications for large projects?

D133. What fees should councils receive for development applications?

Yes. Given fees such as DA assessment fees and s94A contribution fees are dependent on accurate assessment of construction cost this seems rational. Many councils already require a report when the floor space of the development, together with industry standard construction costs, suggest an underestimate by the developer. This is a good model to follow and limits unnecessary production of reports.

D134. When and how should council development application fees be reviewed?

IPART could be given a reference to undertake such a review every 4 or 5 years. Ideally this would be specified in the legislation to ensure the greatest consistency possible. There must also be scope for individual councils to seek a variation due to particular costs in a local area.

Chapter E. Appeals and reviews; enforcement and compliance

1.0 Appeals

E1. What appeals should be available and for whom?

The current system of allowing unlimited merit appeals by developers and prohibiting merit appeals (for the most part) by the community or impacted neighbours has skewed the planning system in favour of the developer lobby. It needs reform and it must be rebalanced.

Once decision making is returned to local councils it is important to also empower the local community by allowing a robust form of third party appeal to the land and environment Court for questionable planning decisions. Some reasonable, but not excessive, threshold should be in place to limit the number and cost of any third party appeals, especially in relation to decisions regarding modest single residences.

Questions of the appropriate zoning of any land in a Local Government Area should be left to the determination of the local council, with the further requirement of concurrence by the Minister for any change of zoning. Questions of appropriate uses for land in a local area must be made by elected local representatives who know their local area and are democratically responsible to their residents. Appeal rights must not be granted.

Developers should not have a right to appeal against contributions plans on plans created under any new planning Act.

Existing appeal rights for designated development must be retained.

If decision making is given to an Independent State Planning Commission in respect of State significant development, then merit appeal rights should not be included.

1.1 Open standing

E2. Should anyone be able to apply to the Court to restrain a breach of the Act?

Yes, the capacity for third parties of any kind to intervene to protect the environment or community interests should be paramount.
Restricting such a right to only those able to demonstrate a direct or material interest would be an unreasonable restriction on the ability for community groups to get involved. However it would be reasonable to include a public interest test for standing in cases where the applicant did not have a direct or material interest in the issue.

The Courts should maintain a discretion in terms of remedy, and costs, where breaches are thought to be insignificant or trivial or proceedings are considered vexatious.

1.2 Objector appeal rights

E3. In what circumstances should third party merit appeals be available?

See above. We support the extension of third party merit appeals to all merit decisions.

They are particularly applicable in situations in which developers have not complied with local planning instruments. Costs must not be such that the public are discouraged from taking court action in the public interest.

It would be reasonable to include a modest public interest test for standing in cases where the applicant did not have a direct or material interest in the issue. Some restriction is also required for merit reviews of modest single residence development approvals

1.3 Approval bodies and concurrence authorities

E4. Should approval bodies or concurrence authorities be the respondent to some appeals?

This relates to the situation where a deemed refusal results from a concurrence authority not providing a timely response to a council request and where the council would have otherwise approved the development.

The creation of a Concurrence Office within the State Government which would have responsibility for managing such requests would likely go most of the way towards addressing this situation.

In those instances where the concurrence office fails to provide a timely response and a project is by reason of this deemed as refused (and if the council would, subject to that response, have approved the development) it would be appropriate for a concurrence office to be an additional respondent to appeals. In many cases the planning authority may then enter a submitting appearance, subject to costs.

1.4 Time limits for appeals about local environment plan provisions

E5. What should be the time limit for any appeal about LEP provisions?

This submission does not endorse the maintenance of the distinction between various levels of planning instruments (being mixtures of LEPs, DCPs, SEPPs and legislative considerations). As is noted above, the current system is complex, contradictory and expensive to administer and should not be accepted as the base line in any new planning system.
The need for certainty in the validity of plans support the imposition of a time limit on appeals of provisions. We would support a reasonable time limit on such appeals to no more than 6 months after relevant changes are made and entered into the Government Gazette.

The law should not encourage such challenges given the process undertaken in establishing local planning instruments.

1.5 Costs orders

E6. Should the Court have absolute discretion as to costs orders? Or should the Court's discretion be limited and, if so, in what respects?

The Court should be retain its discretion in the awarding of costs with a strong presumption that in merit appeals and most other matters that costs orders will not be made.

Developers who produce late amendments to plans where issues are crystallised well in advance, those who press absolutely unmeritorious appeals, vexatious and wasteful litigants should all face potential costs penalties.

1.6 Appeals against the 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?

This matter is primarily addressed in answer to D104.

No. Developers should not have a right to appeal against contributions plans or plans created under any new planning Act.

Reasonableness in this instance will best be determined by a local government body (and as to individual costings IPART) and should not be regarded as a component of development which can be shirked, reduced or argued before a Court.

2.0 Reviews

E8. What sort of reviews should be available?

The current range of reviews available is appropriate for merit based development assessment matters, but limited to delegated decisions (undertaken by full council) and open to objectors and applicants.

Granting reviewing bodies the power to remake decisions for rezonings or in regards to State significant development is not supported.

2.1 Independent review

E9. Who should conduct a review?

We would support maintaining the present system where a higher level of delegated authority within a council reviews a previous council decision. It should be open to councils if they wish to establish an IHAP to assist in this process.

2.2 The role of objectors

E10. What rights should third parties have about reviews? And what provisions should apply regarding the costs of the review?

This is dealt with in some detail above. Currently objectors have few rights to review decisions other than Class 4 proceedings in the Courts.

This often results in substantial costs being incurred that might otherwise been avoided if they had access to the regular merits review process. Such access should include a right to be heard and/or make a submission during a review.

The costs of such a review might properly be determined by the reviewing body but with a prima facie position that each party bears its own costs.

2.3 Recommendations by the Planning Assessment Commission

E11. How might recommendations by the Planning Assessment Commission be reviewed?

The PAC should be abolished and replaced by a genuinely Independent State planning Commission which will obviate the need for such a review process. Good structures under good laws produce good decisions.

If it is retained, an appeal right should be included to the Land and Environment Court for proponents and objectors.

3.0 Enforcement and compliance

3.1 Penalties

E12. Do some present penalties need to be increased?

It is agreed that the current penalties are too low in many cases to act as a real deterrent.

Penalties should fit the crime and the Courts should be able to have some regard to the impact of a breach as well as any potential economic benefit that a developer may have reaped (or sought to reap) in breaching the law.

Prior conduct must be relevant in assessing quantum of costs. Any penalty order should attach to the land as rates do.

3.2 Orders

E13. What new orders should there be or what changes are needed to the present orders?

The issues paper contains a proposal to allow councils to be able to issue special order provisions for all illegal or unapproved uses causing significant adverse impacts on amenity.

Such provisions could be useful but should be subject to strict tests regarding what constitutes an impact on amenity and the overall public interest.

One aspect of the current system that has not been considered in the review is the overly complex process in issuing orders. With an appeal right to the Land and Environment Court there is little utility in retaining the notice of intention process which is overly cumbersome and bureaucratic.

The current system gives excessive discretion to the Courts in issuing orders and the onus should be changed so that developers have to prove why demolition orders should not be made when a breach concerning built form is proven.

3.3 Improving enforcement

E14. How can enforcement be made easier and cheaper for consent authorities?

Changes that ensure that council orders do not get overturned by the court because of technical drafting errors are supported.

See answer to E13 above. Enforcement processes need to be made easier and cheaper for consent authorities. This could be enabled by either:

1. Making a standard template order notice available to councils to reduce the risk of such challenges, or
2. Specifying in statute that orders cannot be challenged on technical drafting grounds if the intention is clear.

Importantly the criminal standard should be replaced with a civil onus in proving breach "on the balance of probabilities".

E15. Should councils have a costs or other remedy against private certifiers in certain circumstances?

We do not support the ongoing existence of the private certification scheme. If, however, this scheme is maintained then councils should be able to seek remedies against certifiers, including striking them off, where they have certified unauthorised works where they know or ought to have known such works were unauthorised.

Damages should also be available to recoup the cost to the community and council incurred as a result of the failures of a private certifier.

For this system to be viable certifiers must be compelled to obtain public liability and professional liability insurance to meet the costs of such potential claims.

3.4 Reviewable conditions for monitoring and compliance

E16. Should monitoring and reporting conditions be reviewable?

Yes. Such a change would allow greater peace of mind to approving authorities and the local community.

3.5 Private certification and third parties

E17. Should there be an appeal right for third parties in proceedings against private certifiers?

We do not support the ongoing existence of the private certification scheme.

If they are retained then full appeal rights should be included.

3.6 Revocation of development consents

E18. Should a consent authority have a wider right to revoke a development consent?

The current system is rarely used and is essentially ineffective. We would not support councils or other consent authorities being given an unfettered right to decide to revoke development consents. It is appropriate that limitations remain on this ability in a similar form to that which exists.

4.0 A 'best endeavours' defence for councils?

E19. Should councils have a statutorily created 'best endeavours' defence?

Such a defence already exists under the Local Government Act when councils act in good faith. This is appropriate.

5.0 Right of entry for council officers

E20. Should council compliance officers be given rights of entry and inspection and of access to official databases for compliance and enforcement inspections under planning legislation on the same basis as they have such rights under the Local Government Act?

Yes, the current lack of access to this information should be remedied, subject to obligations to protect privacy of information obtained.

Chapter F. Implementation of the new planning system

The role of the department in 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?

Centralisation of power and organisation in the NSW Planning Department has produced outcomes which are not responsive to local and regional concerns and widely condemned. This would not be remedied by putting in place a further layer of state officials in a revamped regional office network.

Many councils believe that the department does not provide enough support – particularly technical – to assist them. This belief is in large part well founded. The suggestions that the department should set up systems of secondment of professional staff to councils in response to identified needs – such as the implementation of a new LEP is in theory supported. Such a secondment would have to occur only in the context of a request from council for support on a particular matter.

The establishment of a regional trainee planner program seems an appropriate way for the department to ensure that regional areas have access to planners and also provides skills and experience to these planners in regional and rural issues that might otherwise be difficult to obtain.

In general, the Department should adopt a less intrusive, but more strategic, role in plan making and development assessment than it has under the present Act.

The role of councils in implementing a new planning system

F2. What should be the role of councils in implementing a new planning system?

Council administration currently includes:

- Preparation of local planning controls including local environment plans and development control plans
- Assessment and determination of local and regional development proposals
- Compliance and enforcement functions.

These roles should continue subject to far reaching reform of planning instruments and increased compliance roles with the end of private certification.

Councils will also be responsible for a larger range of development applications with the abolition of JRPPs. Councils should be give greater local flexibility in determining the content of their local planning control(s).

Councillors should retain their development assessment powers.

Changing the culture of the planning system

F3. What can be done to ensure community ownership of a new planning system?

Many positive suggestions as to increased community engagement in the planning system are contained in previous answers. The fact that it is presently difficult - without a substantial amount of experience - to understand the key planning documents governing the planning system has been a substantial bar to community access and ownership.

Changing the culture of the planning system so that it is community oriented and responsive to community interests and concerns should be a core objective of any reform.

Better guidelines, an Act written in plain English, engagement in initial planning processes and opportunities to speak at public hearings about developments will also aid community access and involvement.

Consideration should also be given to the provision of information and educational resources to councillors and potentially also to engaged members of the public.

Encouraging public participation

F4. What actions can be undertaken by bodies preparing strategic plans to increase community engagement with the planning system?

Many positive suggestions as to increased community engagement in the planning system are contained in previous answers. The current process of simply exhibiting plans and requesting submissions generally will only mean that only the most motivated and engaged members of a particular community will become involved in consultation.

The suggestion of holding stalls in local shopping precincts, markets or similar is supported.

Better online access to such documents and opportunities to submit responses in this way is also desirable and should be encouraged.

Importantly the community must be involved at the very start of a process when new planning regimes are first being developed, rather than consulted once draft plans have been crystallized.

Better co-ordination

F5. What changes can be put in place to ensure more effective cooperation between council, Government agencies, the community and developers within the planning system?

As is noted above, the creation of a Concurrence Office within the State Government would be one way to facilitate better, and more timely, cooperation between the different levels of the planning system.

A model such as the UK 'duty to cooperate' which requires stakeholders to engage actively and constructively in planning on an ongoing basis is worthy of consideration. (Note however that such provisions are no longer operational as they relate to local planning: http://www.idea.gov.uk/idk/core/page.do?pageId=15334629)

The issues paper suggests the establishment of an urban development committee of Cabinet. It is not desirable that this be re-established, such a committee is not the best way to manage overall strategic planning in the state.

Already the present government has taken strategic land use decisions away from councils and planners and placed them in the hands of unelected and unaccountable department heads. This is a pathway that should be promptly blocked.

Councils should be encouraged to put in place senior officers responsible for outcomes and communications in a locality on a "place manager" model.

Ensuring probity in the planning system

F6. What checks and balances can be put in place to ensure probity in the planning system?

Donations reforms, including prohibiting developer donations to political parties, has gone some way to cleaning up the system.

The overall perception of corruption in the planning system must still be addressed. Suggestions in the issues paper to do this include:

- Requiring an independent person to be present during meetings between planning staff of the Department or council with developers of registered lobbyists
- Requiring an independent overseer to manage the preparation of voluntary planning agreements

These processes are supported. An independent person could be sourced from a separate part of a council.

At a minimum, reporting of such meetings, outcomes and attendees is required. Publicly available on line access to minutes of all such meetings is a base level accountability measure that is endorsed by this submission.

See also submissions above as to probity and processes in relation to pre DA meetings.

Application of new technology to a new planning system

F7. How can information technology support the establishment of a new planning system?

Improvement of the planning IT system to make more information available in a clearer format to all relevant parties would go some way to making sure the community is able to access the planning system and relevant information.

Reducing the need, particularly of those in regional areas or who are less mobile, to go to their local council or to the Planning Information Office in Sydney City would also substantially reduce frustrations at the inflexibility of the system. This will require substantial IT expenditure by the State government linked to the land titles database.

Monitoring and evaluating objectives

F8. Should the new planning system contain mechanisms for reporting on and evaluating objectives of the legislation?

A requirement to report to an independent body against the objectives of the Act could help to improve the overall accountability of the planning system. Some of the criteria may need to be reported against in a qualitative fashion while others will be well described by quantitative measures.

The establishment of a joint parliamentary standing committee on planning would be the most logical review mechanism. It could be modelled on the parliamentary oversight provided for the motor accidents scheme here in NSW.

The planning system in a multicultural society

F9. How should information about the planning system be made more accessible in a multicultural society?

Better access to an online system in which a number of languages can be made available would be one positive step.

It might also be considered useful to develop educational and information materials in important community areas. Councils could assist in the development of such materials to ensure they are relevant for that particular area.

Equally, once a community is genuinely engaged in the planning process this should deliver closer understanding and personal investment in the planning system by culturally and linguistically diverse communities.