

Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 24 June 2013*

Time: *6.00pm*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council (“R” Items)

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- Broad strategic matters, such as:-
 - Town Planning Objectives; and
 - major planning initiatives.
- Matters not within the specified functions of the Committee.
- Matters requiring supplementary votes to Budget.
- Urban Design Plans and Guidelines.
- Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Traffic Management and Planning (Policy) and Approvals.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

Delegated Authority (“D” Items)

- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of the Minutes of its Meetings.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed above.
- Statutory reviews of Council's Delivery Program and Operational Plan.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

20 June 2013

To: His Worship the Mayor, Councillor Andrew Petrie ex-officio
Councillors Greg Levenston (Chair)
 Ted Bennett
 Luise Elsing
 Elena Kirillova
 Katherine O'Regan
 Matthew Robertson
 Toni Zeltzer (Deputy Chair)

Dear Councillors

Urban Planning Committee Meeting – 24 June 2013

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 24 June 2013 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 27 May 2013	1
D2	Minutes of the Oxford Street Working Party Meeting - 29 May 2013 – 349.G	2

Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	White Paper & Planning Bills	6
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Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 27 May 2013**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 27 May 2013 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 27 May 2013 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: D2 Delegated to Committee
Subject: Minutes of the Oxford Street Working Party Meeting 29 May 2013
Author: P Kauter, Executive Planner
File No: 349.G
Reason for Report: To submit the minutes of the Oxford Street Working Party meeting 29/5/13

Recommendation:

That the minutes of the Oxford Street Working Party meeting 29/5/13 as contained in the Annexure to this report be received and noted

Report:

The Oxford Street Working Party's Terms of Reference provide:

DELEGATED AUTHORITY

The Working Party is an advisory committee only and has no delegated authority. The Working Party will report to the Urban Planning Committee as required.

MEETING PROCEDURES

4. Minutes of all meetings shall be made accessible to the public.

***DUTIES
STAFF***

3. The responsible staff member shall submit all minutes of the Working Party meetings to the Urban Planning Committee for appropriate action.

In accordance with the Working Party's Terms of Reference the minutes of the meeting held on 29/5/13 are annexed for the Committee to receive and note. The minutes will be accessible to the public through our web site under the Urban Planning Committee's agenda.

Conclusion:

The minutes of the Working Party meeting held on 29/5/13 as set-out in the Annexure be received and noted by the Committee.

P Kauter
Executive Planner

Annexure:

Minutes of the Oxford Street Working Party held on 29/5/13

Oxford Street Working Party
Meeting Minutes

Meeting held - Wednesday 29/5/13

Present: **Councillors:** Andrew Petrie - Mayor, Luise Elsing, Greg Levenston, Anthony Marano, Matthew Robertson and Susan Wynne (Chair)

Katherine O'Regan (Non-Working Party member)

Paddington Business Partnership: Kane Kelfkens (President), Sally Tremlett (Precinct Co-ordinator) and Robby Ingham

Staff: Tom O'Hanlon (Director – Technical Services) and Peter Kauter (Executive Planner)

Apologies: Peter Cavanagh, Deborah Thomas, Elena Wise and Toni Zeltzer

Meeting opened: 5.30pm

Item No.	Subject	Discussion	Action
1.	Late correspondence		
1.1	Eric Winton email 22/5/13, re: Mayor creates Oxford Street Working Party	Email includes photos of street plantings as suggestions for Oxford Street.	The correspondence be kept on file for future reference
1.2	Paddington Business Partnership's (PBP's) funding request 2013 – 2014	See Minutes item 4.	Noted
2.	Confirmation of previous minutes		
	Confirmation of minutes from previous meeting held on 8/5/13	Moved – Councillor Wynne Seconded – Councillor Petrie	Adopted
3.	Matters arising from previous minutes		
	Nil		
4.	PBP's presentation		
	Kane Kelfkens provided information on the PBP's: <ul style="list-style-type: none"> • Background, establishment and operations • Activities and achievements during the current funding 	The funding request for 2013-2014 will be the subject of a report to our Corporate & Works Committee in July 2013; the report to also include the PBP's Strategic Plan 2011-2014	Noted & the Working Party thanks the PBP's representatives for their presentation

	<ul style="list-style-type: none"> Proposed activities for the next funding period, 2013-2014 with reference to the funding request 		
5.	General business		
5.1	Vacant shops	<p>Pop-ups – City of Sydney’s experiences were discussed; tenure issues (e.g. any longer than 6 months can be problematic); attitude of landlords of long term vacancies may be changing; matching landlords & tenants web sites, etc.</p> <p>Approval processes – complexity is a deterrent</p> <p>Uses that do not need approvals</p>	<p>Noted</p> <p>Staff to look at approval processes and in particular food & drink uses</p> <p>Staff to test practicability of establishing what uses don’t need approval, using a sample of existing vacant premises (to be identified by PBP) based on any previous, still valid consents/uses</p>
5.2	Parking	General discussion on a range of parking related issues	Mayor & Chair to discuss practicability of scenarios with Senior Management
5.3	Consultation	<p>Initial consultation has taken place with the PBP</p> <p>Next stage of consultation to involve focused meetings with selected stakeholders before next Working Party meeting</p> <p>Future consultation to involve a survey of all shopkeepers</p>	<p>The Working Party to maintain a close liaison with the PBP</p> <p>Arrange meetings with stakeholders</p> <p>Staff to prepare survey questionnaire canvassing pertinent issues</p>

There being no further business, the meeting closed at approximately 7.15pm.

NEXT MEETING:

TBA

Item No: R1 Recommendation to Council
Subject: **White Paper and Planning Bills**
Author: Chris Bluett - Manager Strategic Planning
Patrick Robertson - Manager Development Control
Tim Tuxford - Manager Compliance
File No:
Reason for Report: To inform Council of the White Paper, Planning Bill and Planning Administration Bill.
To obtain Council's approval of a submission to the Department of Planning and Infrastructure about the White Paper and Planning Bills

Recommendation

- A. That Council endorse the submission on the White Paper and Planning Bills contained in annexure 1 of the report to the Urban Planning Committee meeting on 24 June 2013.
- B. That the Committee's recommendation proceeds to the Council meeting on 24 June 2013 as a matter of urgency due to the closing date for submissions on 28 June 2013.

1. Background

In July 2011 the NSW State Government commenced a review of the NSW planning system. To date, the review has been carried out in a number of stages, with the latest stage being the subject of this report to the Urban Planning Committee. The stages are:

1. July 2011 – independent review commenced under the joint chair of the Hon. Tim Moore and the Hon. Ron Dyer.
2. November 2011 – completion of a listening and scoping exercise with interest groups and other participants across the state.
3. December 2011 – release of the issues paper of the NSW planning system review titled *The way ahead for Planning in NSW* (Issues Paper)
4. July 2012 – release of the independent panel's review report titled *The Way Ahead for Planning in NSW (volume 1 – major issues) and (volume 2 – other issues)*, together with *A New Planning System for NSW – Green Paper*.
5. April 2013 – release of *A New Planning System for NSW – White Paper*; Planning Bill 2013 and Planning Administration Bill 2013.

We prepared reports and submissions on the Issues Paper and the Green Paper which were considered by the Urban Planning Committee on 13 February 2012 and 22 October 2012 respectively. The Council endorsed the submissions and they were sent to the Department of Planning and Infrastructure (DPI) for consideration.

Our submission on the Issues Paper included a number of points:

- The strong environmental planning objectives of the *Environmental Planning and Assessment Act 1979* (EPA Act) should not be watered down to give emphasis to efficiency and economic development.

- Only applications of genuine state or regional significance should be determined by external panels or state bodies.
- There are likely to be difficulties in developing a model which requires consent authorities to focus only on elements which are non-complying.
- We do not support deemed approvals.
- There may be merit in extending the assessment criteria under section 79C of the EPA Act provided the criteria are tailored to the scale and potential impacts of development.
- Model instruments of delegation should not be mandatory.
- Elected councillors should have an ongoing role in determining DAs, particularly those which raise matters of public interest.
- A target that 50% of all proposals in NSW be dealt with as complying development is not supported.
- Exempt and complying development provisions are far too complex and need to be simplified.
- There is a widespread dissatisfaction with the private certification system.

The Green Paper introduced a structural level to the review by indicating a blueprint for change based on four themes:

- | | |
|--------------------------------|---|
| 1. Community participation | Effective community participation in planning at the strategic stages |
| 2. Strategic focus | Increased emphasis on strategic planning as the basis for all planning outcomes and to remove duplication |
| 3. Streamlined approval | Faster and less complicated development approval as issues are resolved strategically |
| 4. Provision of infrastructure | Linking planning and delivery of infrastructure to strategic planning for growth |

We made a detailed submission on the Green Paper reiterating many of our comments and concerns about the content of the Issues Paper. Our submission included numerous points.

- Qualified support for the intention to promote community participation at the strategic planning level.
- Concern about the apparent overall decline in community participation which would result from the proposed community participation approach.
- Concern about whether the proposed changes will provide effective communication throughout the whole planning process.
- Opposition to the premise that community engagement at the strategic planning level will justify the substantial reduction of consultation at the development assessment stage.
- Support for ePlanning.
- Support for the intention to streamline and simplify state policies.
- Opposition to the further erosion of Council's role as a planning authority and decision maker.
- Concern about whether the new planning system would improve transparency in decision making.
- Concern about the potential trade-offs between subregional priorities and local expectations.
- Questions about the uncertain future role of Council's LEP and place-based DCPs.
- Concern about retaining adequate heritage protection for Woollahra's heritage items and heritage conservation areas.
- Opposition to proposed timeframes for merit assessment of development applications.
- Opposition to proposed standard conditions for development applications.
- Support in principle to the creation of the Chief Executive Officer's Group.

- Support for a more coordinated approach to decision making, public spending and infrastructure delivery.

This report provides an overview of the White Paper and draft legislation. The legislation is contained in two documents: *Planning Bill 2013 – Exposure Draft* (Planning Bill) and *Planning Administration Bill 2013 – Exposure Draft* (Planning Administration Bill). The Planning Bill contains the main planning legislation whereas the Planning Administration Bill contains provisions for the Minister, the Planning Assessment Commission, regional planning panels (formerly joint regional planning panels), subregional planning boards and independent hearing and assessment panels.

Our comments on the White Paper and legislation are provided in the draft submission contained in **Annexure 1** of the report. For the benefit of councillors we have provided a summary of the submission's main points in the following section.

2. Summary of submission on White Paper and draft legislation

We reiterate our general support for reform of the NSW planning system. In our view the current system is cumbersome, confusing and difficult to use. However, we remain concerned about the nature of proposed changes to the planning system presented by the state government. We consider there is an unacceptable emphasis on promoting economic growth across NSW at the expense of environmental considerations particularly at the local level.

We are not convinced the new system will reduce the multi-layered and complex nature of planning across NSW.

Regrettably, many of our comments provided in response to the Issues Paper and Green Paper have not been taken up in the White Paper and legislation. Accordingly, we provide a mixed response to the White Paper and legislation.

We can offer support for the particular aspects of the White Paper and legislation listed below, though at times this is qualified support or support in principle due to lack of details.

- Efforts to increase community participation at the strategic planning level – but not at the expense of other participation at the development proposal stages.
- Further recognition and encouraged use of ePlanning – with a need for further details regarding costs and resources.
- The concept of community participation plans – but not where they are vetted to remove options for broad community participation throughout the planning processes.
- Efforts to provide a coordinated approach to decision making, public spending and infrastructure delivery – with some concern about the equitable distribution of funding and infrastructure across local government areas (LGAs).
- Encouraging better development outcomes through the amber light approach to development assessment.
- Expanding critical stage inspections.
- Expanding inspections for areas of work which commonly exhibit defects.
- Expanding certification for particular aspects of a building such as disability access.
- Stronger enforcement powers, including expanding requirements for private certifiers regarding the regulation of development consent breaches.

Notwithstanding this, we consider there are many changes proposed in the White Paper and legislation which we cannot support. In particular, we strongly oppose the following proposals:

- Reducing opportunities for local communities to participate meaningfully and effectively throughout the whole planning process, including policy stages and development assessment stages.
- Permitting higher order plans to override local plans so that development can be approved which is not permitted under a local planning instrument.
- Reducing the local policy making role of councils by removing locally approved development control plans and developer contributions plans and requiring their replacements to be approved by the Minister for Planning and Infrastructure within the framework of the new local plans.
- Shifting decision making from local government representatives towards joint regional planning panels (JRPPs) and independent hearing and assessment panels (IHAPs).
- Reducing merit assessment of development proposals by expanding exempt and complying development types and introducing a new code based assessment process, all of which substantially remove a qualitative appraisal of development thereby potentially increasing poor environmental outcomes.
- Increasing monitoring of local government planning activities with the intention of forcing councils to meet state-wide performance indicators for development assessment.

3. Overview of White Paper

The White Paper maintains and expands on most of the proposed changes suggested in the Green Paper. The primary features of the paper are:

- A strong focus on facilitating private sector investment and economic growth within NSW. This is a recurrent theme which forms the platform and justification for the new planning framework. In particular, there is a focus on improving housing supply in order to increase housing choice and reduce housing costs and rents.
- An emphasis on strategic planning which involves production of a hierarchical set of strategic plans.
- Further state-wide standardisation of planning.
- A mandated scale of community participation throughout the planning processes.
- A reduction in the role of local government as a planning policy maker.
- An intention to reduce local political involvement in decision making associated with development matters.
- An intention to provide a whole of government approach, particularly with the delivery of major infrastructure.
- Streamlining the development process in order to achieve faster approvals.
- Marginal changes to building regulation and certification.

On a broader level, the White Paper identifies that a new planning system forms one part of the state government's strategic business plan for NSW which is contained in the document titled *NSW 2021 – A Plan to Make NSW Number One*. Other reform actions linked to the new planning system are identified in the White Paper. They include a long term transport master plan, regional action plans and a review of the *Local Government Act 1993*.

There are six main parts to the paper:

1. Delivery culture
2. Community participation
3. Strategic planning framework
4. Development assessment

5. Provision of infrastructure
6. Building regulation and certification.

Parts 2 to 6 align with sections of the Planning Bill.

3.1 Delivery culture

White Paper position

The purpose of this chapter is to outline how, according to the State Government, planning culture across NSW needs to change in order to accommodate the new planning system. In particular, it provides a framework for changes to planning practices, education and attitudes. There are numerous comments about producing a new planning culture which assists with delivering economic growth.

The importance of this chapter should not be underestimated because of the underlying implications for planning at the local level. Furthermore, whilst not explicitly stated, there are suggestions that current community expectations about participation within the planning and development processes also need to change under the new culture.

The White Paper says that building and maintaining this new culture will involve numerous actions and processes including:

- Restructuring the DPI with an emphasis on strategic planning and community participation.
- Establishing within the state government departmental structure a Chief Executive Officer's Group in order to co-ordinate a whole of government approach to plan making.
- Establishing a Cultural Change Action Group to oversee the various cultural change actions in conjunction with implementation of the new planning system. The group will comprise representatives from the planning profession, local and state government, academia, the development industry, industry groups and the community.
- Providing a hierarchy of strategic plans which establish how areas will change over time.
- "Repositioning" the planning profession's attitudes to align with the key objectives of the new planning system and legislation.
- Re-educating and broadening the skill sets of planners with an emphasis on economic and infrastructure planning skills.
- Introducing a performance monitoring guideline with a methodology, performance indicators and targets for monitoring the implementation of the planning reforms.
- Retaining the performance monitoring of the development assessment system – this is the Local Development Performance Monitor currently applying to councils.

3.2 Community participation

White Paper position

The White Paper promotes community participation, particularly at the strategic planning level, as a central component of the new planning system. Consistent with its standardised approach to planning for the state, the NSW Government seeks to introduce and regulate a community participation process through three avenues, two of which will be legislated.

1. A community participation charter.
2. Community participation plans – setting out the scope of community involvement in the planning processes.

3. The use of information technology to deliver planning services.

Community participation charter

The community participation charter describes the broad manner in which public involvement with the new planning system will be available. The charter comprises seven principles:

1. **Partnership**
The community is to be provided with opportunities to participate in planning.
2. **Accessibility**
The community is to have access to information that is easy to read and obtain so that planning issues and decisions can be better understood.
3. **Early involvement**
The community is to be provided with opportunities to participate in strategic planning as soon as possible before decisions are made.
4. **Right to be informed**
The community has a right to be informed about planning decisions which affect them.
5. **Proportionate**
Community participation in development decisions is to be proportionate to the significance and impact of the proposed development
6. **Inclusiveness**
Planning authorities are to seek the views of the community by selecting participation methods that are representative, inclusive and appropriate to the needs of the community.
7. **Transparency**
Planning authorities are to make decisions in an open and transparent way and provide the community with reasons for their decisions (including how community views have been taken into account).¹

The community participation charter is given legislative status through its inclusion within the Planning Bill. The charter will apply to a number of planning authorities including the Minister for Planning, the Director-General of the DPI, the Planning Assessment Commission, regional and subregional planning boards, a council and a certifier who issues a complying development certificate.

The charter will apply when certain functions are carried out, including the preparation of community participation plans, strategic planning functions, development consent functions and environmental impact assessment functions.

Community participation plans

Community participation plans will be mandated through legislation. These plans –

- Must have regard to the charter.
- Will be prepared with input from the community.
- Provide processes for participation for plan making and planning decisions.

¹ These principles are taken from the Planning Bill using headings provided in the White Paper.

- Set out how and when the community will be informed about planning proposals and development applications.
- Set out how the community can provide comments.
- Will indicate how information about decisions and planning proposals can be viewed.

The DPI will prepare community participation guidelines which planning authorities are to meet in preparing their community participation plans. All community participation plans will be audited by an expert panel established by the Director-General.

Plans will need to be published on the NSW Planning website and should be reviewed regularly. The effectiveness of community consultation will be assessed through monitoring by the DPI's panel.

The use of information technology to deliver planning services

Electronic planning services (commonly referred to as ePlanning) and social media are identified as two measures for improving access to planning information and providing greater opportunities for community participation.

3.3 Strategic planning framework

White Paper position

The White Paper acknowledges that the current planning system contains a multi-layered, complex and confusing set of planning documents at the state and local levels. The paper considers that:

- Although there has been substantial strategic planning, it has not been effectively used in development assessment.
- Development has often been assessed without regard to strategic direction and sound evidence.
- A lack of strategic context and recognition of strategic objectives has resulted in poor planning outcomes, negative local community attitudes of change and opposition to new development.

To address this situation, a new strategic planning framework based on a hierarchy of interrelated plans prepared with strong community participation is proposed. This new framework is intended to be one of the key components of the new planning system.

Within the new framework, strategic planning will:

- Be based on sound evidence.
- Integrate infrastructure with land use
- Involve whole of government co-ordination and input.
- Provide strong performance measures.

According to the White Paper, a key objective of the new strategic planning framework is to streamline the development assessment process. Once again, the White Paper makes a point of emphasising economic growth and the delivery of housing and employment opportunities.

Ten principles have been prepared to guide the preparation of the new framework and its key components. These principles are given statutory status by being reproduced within the Part 3 of the Planning Bill.

Principles focused on strategic planning outcomes

PRINCIPLE

1

Strategic plans should promote the state's economy and productivity through facilitating the delivery of housing, retail, commercial and industrial development and other forms of economic activity, by way of sustainable development—strategic planning should integrate economic, environmental and social considerations in decision making to enable development that is sustainable.

PRINCIPLE

2

Strategic plans are to be integrated with the provision of infrastructure—all strategic plans are to be prepared with an understanding of existing and approved infrastructure priorities and infrastructure plans should be informed by strategic plans.

Principles focused on strategic planning processes

PRINCIPLE

3

Strategic plans are to guide all decisions made by planning authorities, and allow for streamlined development assessment—development proposals that are consistent with agreed plans should be subject to streamlined decision making.

PRINCIPLE

4

Strategic planning is to provide opportunities for early community participation—plans and policies should be informed by community input and the level of community participation should be equal with the scale of the plans or policies.

PRINCIPLE

5

Planning authorities and state agencies are to cooperate constructively in the preparation and implementation of strategic plans—this involves partnering and engaging with relevant bodies on an ongoing basis.

PRINCIPLE

6

Strategic plans should reflect agreed planning outcomes in setting the planning vision for an area—there should be a line of sight from NSW Planning Policies through to Local Plans, with each plan further down the hierarchy reflecting agreed planning objectives, policies and actions in other plans.

PRINCIPLE

7

Strategic plans are to be standardised, easy to use and available online—each plan and policy will follow a common plain English format to enhance ease of use between different plans and will be available electronically through ePlanning.

PRINCIPLE

8

There should be monitoring and reporting of strategic planning outcomes—councils and state agencies will be held accountable for delivering plans through ongoing monitoring and reporting of both results and processes.

PRINCIPLE

9

Strategic plans are to be based on evidence, set realistically deliverable targets and take account of social, economic and environmental considerations—strategic plans should be informed by community and business needs as well as forecast market demand over the life of the plan as well as evidence on social and environmental impacts.

PRINCIPLE

10

Local Plans should facilitate development that is consistent with agreed strategic planning outcomes and should not contain overly complex or onerous controls that may adversely impact on the financial viability of proposed development—Local Plans should be deliverable over the life of the plan and contain land use and development controls that support the economic viability of development over time so that the plan can achieve its broader objects and outcomes.

Source: White Paper. p.63

Under the new system there will be a four-tiered hierarchy of plans:

- NSW planning policies.
- Regional growth plans.
- Subregional delivery plans.
- Local plans.

NSW planning policies

Content

- The state's planning objectives and priorities.
- Relevant existing state environmental planning policies (SEPP) will be integrated with the new set of policies. However, relevant development controls appearing in existing SEPPs will be relocated to the planning controls and development guides of local plans.
- Policies will tend to be subject based, addressing matters such as housing supply and affordability, employment and economic growth, environment and conservation, energy and resources, infrastructure and development assessment.

Prepared by

- State government, primarily DPI with input from other agencies, councils and public participation.

When prepared

- Anticipated completion before commencement of the Planning Act.

Where applicable

- Across the state, although as with current SEPPs, may apply to nominated areas.

Regional growth plans

Content

- A vision for a region and key outcomes for a 20 year period.
- The broad structure and shape of urban areas and regions.
- Numerical housing and employment targets allocated to locations for inclusion in subregional delivery plans.
- Economic objectives.
- Location of approved and existing infrastructure and corridors.
- Planning policies and actions for the environmental and natural resources including waste, water, natural hazards, air quality, biodiversity and energy resources.

Prepared by

- State government, primarily DPI with input from other agencies, councils and public participation.

When prepared

- Progressively across the state, but no time frame provided.

Where applicable

- Across the state.
- The Draft Metropolitan Strategy for Sydney to 2031 will be the new regional growth plan for Sydney.

Subregional delivery plans

Content

- A vision for the subregion and precincts for a 20 year period with a focus on the first 10 years.
- The role and function of important centres.
- Corridors for development, transport and infrastructure.
- How housing targets are to be distributed across the subregion.
- Measures to achieve housing, employment and environmental targets.
- Identification of major and significant sites.
- An integrated financial and infrastructure program.

- Recommendations for direct zoning of precincts and activities with associated development controls, exempt and complying development and code assessment development types (the Minister will make an order to amend a local plan to include these recommendations).
- Recommendations for detailed future structure planning by councils or the DPI.
- Recommendations for future urban release land or future infrastructure corridors.
- Regional priority areas with associated zoning and development guides and classes of exempt and complying development – these may be established where delays occur in approvals under a local plan and there are consequences in terms of the supply of housing or in meeting targets for regional land needs.

Prepared by

- Subregional planning board – comprising representatives from each council in the subregion, four state representatives appointed by the Minister and an independent chair appointed by the Minister but with the concurrence of Local Government NSW.
- The main function of the board is to prepare subregional delivery plans. However, a board will also have authority to advise the Minister about planning issues in the subregion and monitor the performance of plans, including recommending action where plans are not meeting objectives.

When prepared

- All subregional plans are to be completed within two years following commencement of the new legislation.

Where applicable

- For areas of high growth or where a whole of government approach to planning is required.

Local plans

Content

Will comprise four parts:

Part of local plan	Content
Part 1 - Strategy	<ul style="list-style-type: none">▪ Context statements; a vision for the LGA; strategic outcomes (how the plan delivers relevant aspects of NSW policies and applicable regional growth plan and subregional delivery plan; performance indicators.
Part 2 – Planning controls	<ul style="list-style-type: none">▪ A standardised set of land use zones which permit a diversity of uses.▪ Standardised definitions.▪ Suburban character areas.²▪ Maps which can be accessed electronically.▪ Associated provisions for matters including heritage items, heritage conservation areas, flooding and land acquisition.▪ Mandatory provisions applying to development, including relevant existing provisions within SEPPs.
Part 3 – Development guides	<ul style="list-style-type: none">▪ Will include development assessment codes.▪ Codes can apply to different development types.▪ Will include building envelopes (to replace FSR) and urban design and design excellence provisions.

² The White Paper (p.96) describes suburban character areas as an area “where council and the community want to preserve the proven significance of the urban character, including established development pattern and amenity.”

Part of local plan	Content
Part 4 - Contributions	<ul style="list-style-type: none">▪ Codes must describe performance outcomes for development and acceptable solutions for achieving the outcomes.▪ Code assessment development guides will need to be tested in terms of their economic viability.▪ Will incorporate existing state-wide exempt and complying development codes.▪ Will identify assessment tracks for different types of code assessed, exempt and complying development.▪ The amount of local and regional infrastructure contribution payable in regard to particular development types.

Prepared by

- Local plans will be prepared by councils with input from the local community, relevant government agencies and the relevant subregional planning board.
- Local plans will generally be approved by the Minister. Approval of minor plans will be delegated to councils.

When prepared

- No specific time frame for the preparation of the first plan has been provided.
- Recommended that development guides should be prepared with community input when Parts 1 and 2 are being prepared.
- It is understood that transitional provisions will be introduced to deal with the conversion of local environmental plans and development control plans into local plans.
- Once prepared, plans will have a timeframe of ten years with reviews carried out every four years.

Where applicable

Local plans will apply to a local government area.

Strategic compatibility certificates – development not permissible under a local plan

The Planning Bill makes provision for the Director-General to issue a strategic compatibility certificate which certifies that “specified development on specified land is permissible” under the Act despite any prohibition under a local plan. (section 4.32, Planning Bill)

Particular criteria must be satisfied before the certificate can be issued. In particular:

- A regional growth plan or a subregional delivery plan which applies to the development must be in force.
- The development is consistent with the plan.
- The development will not have any significant adverse impact on likely future uses of surrounding land.

3.4 Development assessment

White Paper position

The White Paper sets out a range of major changes to the development assessment system. According to the White Paper the new system represents “a shift to a performance based system where decisions are faster and transparent but with no less rigour, which makes greater use of code complying development and which removes layers of assessment.” (p.114)

These changes seek to streamline the delivery of development and reduce those costs associated with the development process which are currently borne by the community and business sectors.

The main outcomes and timeframes being sought are:

- Within 3 years, 50 per cent of all development will be complying or code assessment.
- Within 5 years this figure should rise to 80 per cent.
- Fully compliant complying development approvals within 10 days.
- Complying development with variations determined within 25 days.
- Code assessment development determined within 25 days.
- Code assessment development with alternative solutions within 50 days.
- Merit assessment development determined within 50 days.

The implications of these outcomes is that community involvement with the assessment and decision making steps will be substantially reduced when compared with the current system because complying development and full code assessment track proposals will not involve neighbour notification. Additionally, it must be noted that many development proposals are carried out without the need for approval as exempt development. There is an intention under the new system to expand these exempt development types thereby further increasing proposals which bypass neighbour involvement.

The delivery of this new system and the intended outcomes are to be achieved through a number of interrelated measures.

1. Legislation
Primarily the new Planning Act, which allows for a hierarchy of strategic plans, in particular NSW Planning Policies and local plans, regulations (yet to be released) and the Planning Administration Act.
2. Use of a track based development assessment process with the main outcomes being drawn from five tracks:
 - exempt development
 - complying development (including complying development with minor variations)
 - code assessment development
 - merit assessment development
 - prohibited development.

Outside these tracks, major development could fall within three other assessment tracks

- environmental impact statement assessable development
 - state significant development
 - regional development.
3. Expanding the exempt and complying development categories, initially within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) and then through the new local plans.
 4. Limiting community participation in the development assessment processes.
 5. Increasing independent decision making through IHAPs and JRPPs

6. Various procedural measures including:
- monitoring councils' performance through benchmarks including:
 - targets within a new NSW Planning Policy for each assessment track for council areas
 - timeframes for determining applications
 - the proportion of decisions made at the councillor and IHAP levels
 - the proportion of decisions made in accordance with professional staff recommendations
 - the establishment of IHAPs with decision making powers where benchmarks are consistently not achieved.
 - only requiring information from an applicant that is sufficient to enable a council to determine an application
 - restricting stop the clock ability of councils
 - standardising conditions of consent across the state.

Establishing the assessment track

A NSW Planning Policy will set out principles to assist councils when determining which development types will be placed into particular tracks. The policy will require certain types of development, in specified circumstances, to be code assessment. However, code assessment development types may be limited due to site-specific factors.

The White Paper outlines a number of opinions and methods for streaming different types of development into the assessment tracks. For example, the White Paper says “a single dwelling house in a residential zone identified for lower density uses should be subject only to the lower level of assessment as complying development.” (p.122)

Local plans will stream different types of development into assessment tracks. Initially, however, exempt and complying development types will be identified by the DPI on a state wide basis.

The following table shows the development tracks that are most likely to apply within Woollahra on a regular basis.³

Development tracks

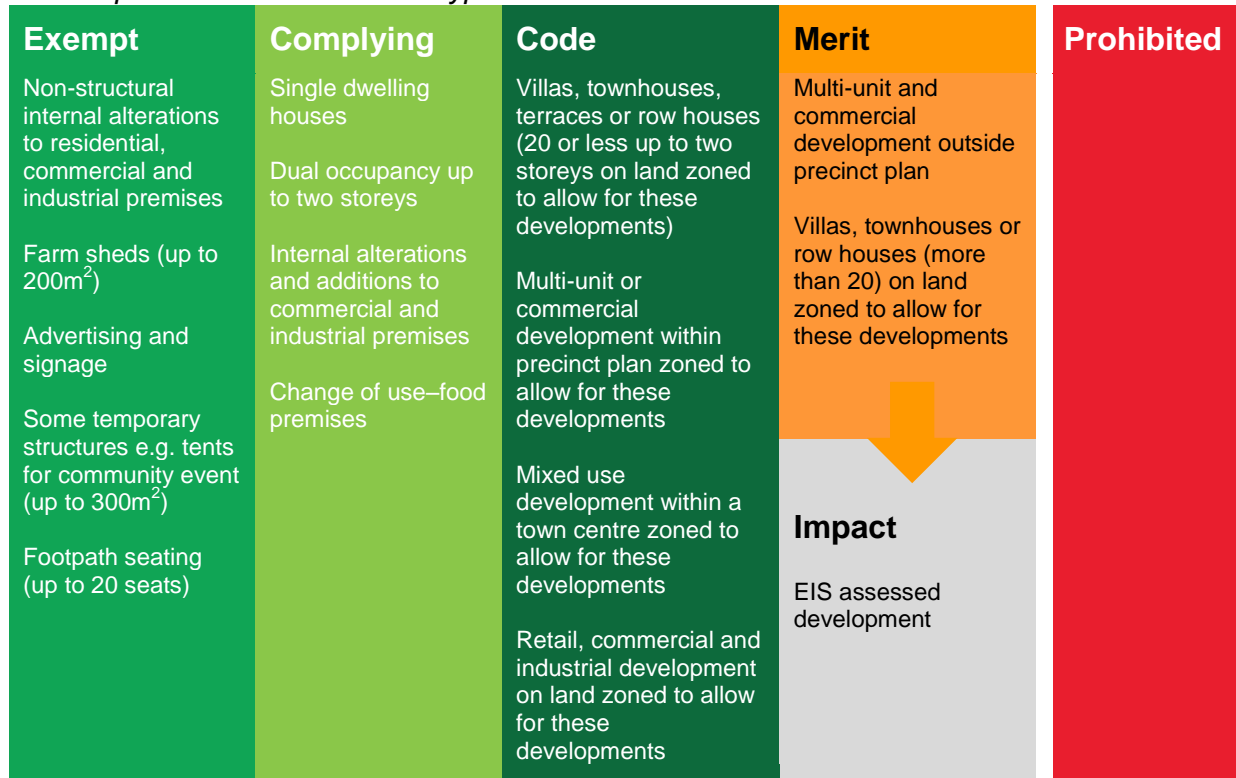
Track	Strategic alignment	Impacts	Assessment against	Assessment by
Exempt	Full	Minor	Local plan	Self
Complying	Full	Low	Local plan	Certifier (council or private)
Code	Full	Managed by the plan	Local plan	Council
Merit	Partial to full	Medium to significant	Local plan + impacts + strategies + community views + public interest	Council
Prohibited	None	High	Not applicable	Not applicable

Source: White Paper, Table 5 Development tracks, p.122

The following table shows a range of indicative development types for different development tracks. The table is taken from the White Paper and is not intended to be a standard distribution of land uses for all councils.

³ Prohibited development is shown because certain development types will still be shown as prohibited within land use zones. The Planning Bill maintains provisions for existing use rights.

Development assessment track types



Source: White Paper, Figure 32 Development assessment track types, p.124

A NSW Planning Policy will provide principles for assisting councils when determining development types which should be included in relevant assessment tracks. This policy will require certain types of development to be code assessment in specified circumstances.

Exempt and complying development

The existing state-wide exempt and complying development types currently set down in the Codes SEPP will be expanded. The White Paper broadly identifies the expanded exempt and complying development categories.

For the exempt development categories, expansions will occur in -

- Minor structures around the house
- Fit outs
- Changes of use
- Temporary structures
- Temporary uses.

Expansions to complying development will occur in the categories for -

- New dwelling houses
- Alterations and additions to dwelling houses
- Additions to existing industrial and commercial buildings
- New industrial buildings.

Complying development with minor variations

The White Paper identifies that proposals which vary in minor ways from complying development criteria and which do not have significant additional adverse impacts on neighbours could be approved. These types of development would initially be considered by councils and if the council considers the merit test is satisfied it must issue an approval to the variation within 14 days. The accredited certifier then issues a final approval within 11 days, making a total assessment period of 25 days.

The timeframe for issuing an approval to the variation suggests that neighbours will not be notified of the proposal prior to council's assessment and final approval by a certifier.

Code assessment development

Local plans will be required to identify development types for code assessment. However, within this process a NSW Planning Policy will require certain types of development to be code assessment in specified circumstances. These circumstances will be determined after a "risk assessment" is carried out.⁴

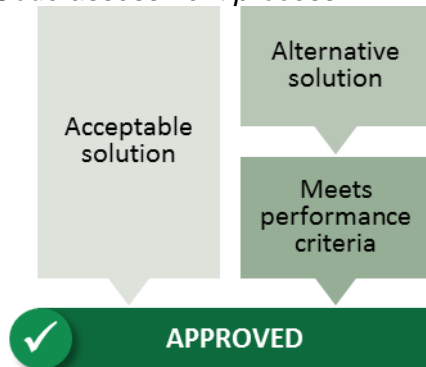
The main aspects of the code assessment track are:

- Assessment will occur within council.
- Development will be assessed against performance criteria and acceptable solutions set out in a local plan, specifically criteria and solutions within codes contained in the development guidelines.
- An acceptable solution, which may be a numerical standard, is one way a development can satisfy performance criteria.
- If an application uses an acceptable solution for an aspect of development identified in an applicable code:
 - the aspect of development cannot be further considered in the assessment
 - the council cannot refuse consent on the grounds related to that aspect of development
 - the council cannot impose conditions that are more onerous than the standards for that acceptable solution.
- An applicant may put forward an alternative solution where a development does not comply with an acceptable solution.
- An alternative solution is assessed against the performance criteria of applicable codes.
- If an application uses an alternative solution for an aspect of development within an applicable code and the solution meets the performance criteria for that aspect:
 - the council cannot refuse consent on the grounds related to that aspect of development
 - the council cannot impose conditions that are more onerous than the standards for that acceptable solution.
- Community consultation under the code assessment track is variable:
 - Council can only notify an application which complies with acceptable solutions for the purpose of advising that an application has been received. It cannot notify for the purpose of seeking submissions. The notice is made before determination.
 - Consultation may occur where alternative solutions are proposed. The council's community consultation plan will establish whether consultation will occur in all cases. Council can only consider comments received which relate to aspects of the development that rely on the alternative solutions.

⁴ The White Paper does not elaborate on the nature of this risk assessment. It does, however, mention that the policy will be open to public consultation before it is made.

The following diagram illustrates the code assessment process, excluding the consultation option:

Code assessment process



Source: White Paper, Figure 33 Code and merit assessment, p.136

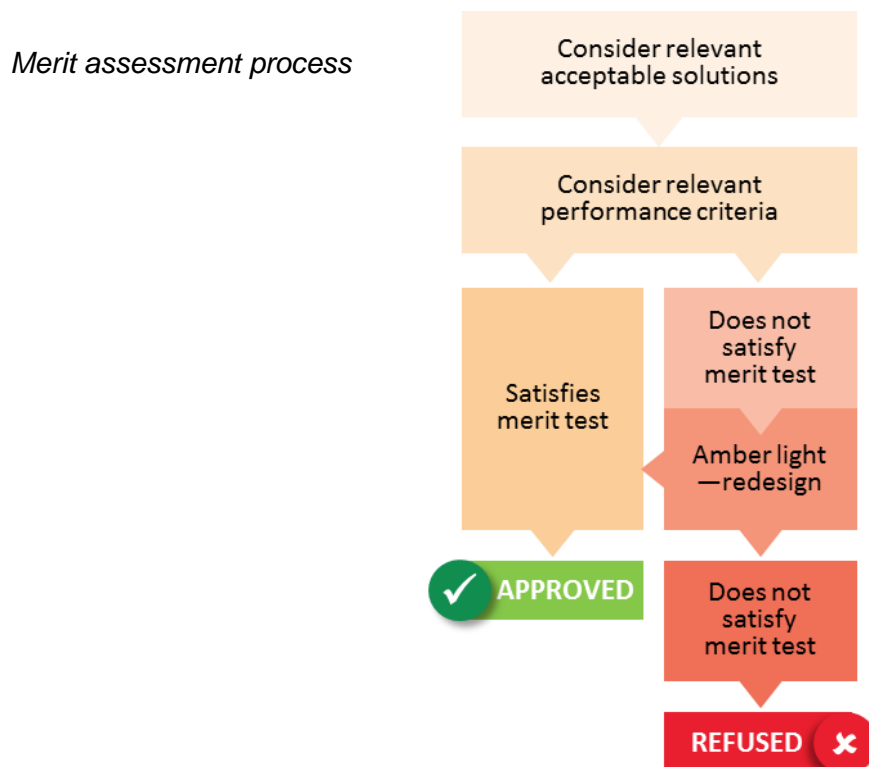
Merit assessment development

Development which is not streamed into other assessment tracks and development, or part of a development, which does not comply with code assessment considerations, will undergo merit assessment. Merit assessment is carried out for local development, state significant development and regionally significant development. Merit assessment is also carried out for applications which rely on a strategic compatibility statement.

The main aspects of merit assessment for local development are:

- Assessment will occur within council.
- Assessment will need to take into consideration:
 - four matters which replace the heads of consideration currently used from section 79C of the EPA Act –
 - consistency with the strategic context provisions of the local plan and the objectives of the applicable land use zone
 - public submissions
 - the likely impacts including environmental impacts and economic or social impacts
 - the public interest.
 - relevant development assessment codes (including their acceptable solutions and performance outcomes).
- Councils will have to adopt a process of encouraging a proponent to modify a development so that impacts are more acceptable and in line with the broader vision for an area. This is referred to as the amber light approach.
- If a council does not use an amber light approach for a development it must justify its reasons for that decision.
- Community consultation will occur and will be tailored to the nature of development and its potential impact. The period of consultation is to be a minimum of 14 days.

The following diagram summarises the merit assessment process.



Source: White Paper, Figure 33 Code and merit assessment, p.136

There is a significant change in emphasis within the new heads of consideration with regard to assessment against relevant development controls and the public interest. The White Paper mentions that merit assessment will only occur on development or aspects of a development which do not satisfy standards which have been agreed through a previous strategic planning process. This arrangement does not appear to be expressed in the Planning Bill, but it follows the general approach set down in the White Paper of restricting development assessment to matters of non-compliance in order to streamline the overall assessment process.

The second major change in emphasis occurs with the consideration of public interest. The Planning Bill makes a distinction between public interest and private interest. It states that a consent authority is to consider “the public interest (in particular whether any public benefit outweighs any adverse impact of the development).”⁵

Consideration for the public interest now echoes comments made by then Senior Commissioner of the Land and Environment Court in *Double Bay Marina v Woollahra Council* [2009] NSWLEC 1001 where he said:

Councils often confuse the public interest with the complaints of individual objectors. In most cases the interest of objectors is a private interest.

Under the Planning Bill, Council will be expected to balance the broader public interest against the more confined private interests of an objector.

⁵ Planning Bill 2013, section 4.19(2)(d), p.24

Decision making and the increased role of IHAPs and the JRPP

Decision making under the new planning system will retain a multi-layered approach based on a hierarchy of development types and their compliance with planning strategies and controls. The main features are:

- Encouragement for councils to establish decision making IHAPs.
- Performance monitoring of decisions by IHAPs and councillors.
- Establishing timeframes for decisions made by councils and IHAPs.
- Increasing the number of JRPPs.
- Aligning JRPPs with the new subregions.
- Reducing the number of JRPP panel members from five to three – one council representative, one expert appointed by the Minister and a chair appointed by the Minister with agreement from Local Government NSW.

Performance monitoring will focus on benchmarks for timeliness of decisions and whether decisions are in accordance with professional staff recommendations. Councils that consistently fail to meet benchmarks will be required to establish an IHAP with decision making authority.

Preferred decision making model

	PRIVATE PROPONENTS		PUBLIC PROPONENTS
	Complex	Routine	Infrastructure
State significant	Planning Assessment Commission	Senior officers of DP&I	Minister for Planning & Infrastructure
Regional	Regional Planning Panel	Senior council staff	State agencies
Local	Independent Hearing & Assessment Panel	Senior council staff	Elected councillors

Source: White Paper, Table 11 Preferred decision making model, p.137

Expected benchmarks for determination

Assessment track	Comment	Type of notice	Notice period	Timeframe
EXEMPT	Not applicable	No	Not applicable	Not applicable
COMPLYING	Not applicable	Notice for information only	Before determination	10 days
COMPLYING WITH VARIATION	Not applicable	Notice for information only	Before determination	25 days
CODE	Meets acceptable solutions	Notice for information only	Before determination	25 days*
	Alternative acceptable solution proposed	Consultation for submissions at the discretion of consent authority	14 days	25 days* if not consulted for submissions 50 days* if consulted for submissions
MERIT	Local and regional	Consultation for submissions	14 days	50 days*
	Designated and state significant	Consultation for submissions	28 days	90 days*

* deemed refusal period

Source: White Paper, Table 12 Determination timeframes, p.141

Appeals and reviews

It is proposed to expand the types of appeals that will be streamed into the mandatory conciliation/arbitration tracks in the Court. This is unlikely to impact significantly on Woollahra Council as the majority of its Class 1 matters involve residential development which currently incurs a mandated conciliation step⁶.

The White Paper also proposes special appeal rights for small developers by establishing a third ‘very fast track’ in the Land and Environment Court for appeals on single residential dwellings and dual occupancies. In such very fast track appeals, commissioners may determine a matter based on the documents only without calling for expert witnesses. For very minor matters, the Court may determine an application on the papers alone.

3.5 Provision of infrastructure

White Paper position

Changes to the planning system outlined in this chapter concentrate on measures to integrate the delivery of infrastructure with land use planning, specifically the provision of housing and employment opportunities. Developer contributions, which provide one funding mechanism for public infrastructure have been reviewed as part of the new system.

The following diagram illustrates the new infrastructure contributions system.

Preferred decision making model

	PRIVATE PROPONENTS		PUBLIC PROPONENTS
	Complex	Routine	Infrastructure
State significant	Planning Assessment Commission	Senior officers of DP&I	Minister for Planning & Infrastructure
Regional	Regional Planning Panel	Senior council staff	State agencies
Local	Independent Hearing & Assessment Panel	Senior council staff	Elected councillors

Source: White Paper, Table 11 Preferred decision making model, p.137

The key components of the new system relating to the delivery of infrastructure and developer infrastructure contributions are:

- The use of growth infrastructure plans and local infrastructure plans to identify infrastructure and allocate funding.
- Targeting infrastructure contributions and State Government budget funding to priority growth areas in greenfield and infill localities. This provides a spatial approach to the planning and delivery of infrastructure whereby agencies will have responsibility for infrastructure for an area rather than planning and providing infrastructure based on their individual business priorities.
- Legislation to integrate infrastructure provision within the tiered strategic planning framework.
- Simplifying infrastructure contributions derived from development consents.
- Linking infrastructure plans at the local, subregional and regional levels.
- Streamlining public priority infrastructure.

⁶ *Land and Environment Court Act 1979; s34AA*

- Introducing a NSW Infrastructure Planning Policy.
- Introducing contestable infrastructure provision – increasing competition for the provision of infrastructure by facilitating private sector involvement in order to produce more timely and cost efficient design, delivery and operation of infrastructure.

Two types of infrastructure plans are proposed: growth infrastructure plans and local infrastructure plans.

Growth infrastructure plans

These plans will be prepared by the NSW Government, with primary responsibility vested in the Minister for Planning and Infrastructure. Consultation will occur with the community and stakeholders before the plans are approved.

Growth infrastructure plans will:

- Apply to infill and greenfield areas identified for housing and employment growth.
- Operate with ten and five year area-based infrastructure requirements for growth areas.
- Include prioritised infrastructure schedules with funding allocation within a five year period
- Indicate private sector participation.
- Contain a regional infrastructure contribution schedule.
- Be linked to land use and performance outcomes provided in subregional delivery plans.
- Contain contestability assessments for all infrastructure identified in the schedules.

Local infrastructure plans

Local infrastructure plans will replace the existing section 94 and section 94A contributions plans. The White Paper contains little information about the content and operation of local infrastructure plans. The main details are provided in the Planning Bill and in summary are:

- A plan may be prepared by a council and is to be approved by the Minister for Planning and Infrastructure.
- The plan must identify the local infrastructure for which a contribution is to be imposed. Local infrastructure is limited by definition to local roads, local drainage works, open space and community facilities.
- A plan may contain other infrastructure, but it appears that a developer contribution cannot be required for such infrastructure.

Developer infrastructure contributions

One of the main changes with the new system involves a variation to developer infrastructure contributions and their use. Currently there are two main forms of contributions. The first is often required as a condition of consent to development which generates new dwellings. The occupants of these dwellings create a demand for new community services or facilities or additions to existing services and facilities.⁷ The second contribution type may be required for development in general which will require use of existing or new public infrastructure.⁸

The White Paper indicates that the current developer contributions system requires change for numerous reasons:

⁷ These contributions may be imposed under section 94 of the EPA Act and are often referred to as direct contributions.

⁸ These contributions may be imposed under section 94A of the EPA Act and are often referred to as indirect contributions.

- The system is complicated, unpredictable, lacking in transparency, too expensive and unfair.
- The scope of infrastructure works has become too broad.
- Development contributions do not always reflect the actual cost of delivering infrastructure.
- Revenue is not always being spent in a timely and transparent way.

In response to these and other issues, the new infrastructure contributions will comprise three components:

1. Local infrastructure contributions.
2. Regional infrastructure contributions.
3. Regional growth funds.

1. Local infrastructure contributions

The main features of these contributions are:

- They can only be applied if an approved local infrastructure plan is in place.
- Contributions are limited to local roads (although the White Paper also includes traffic management), local open space and embellishment, basic community facilities and the capital cost of drainage.
- Contributions will be based on standardised, benchmarked costs prepared by IPART.
- Councils can apply to have contributions varied if they consider actual costs for providing infrastructure are greater.
- Contributions will comprise either direct contributions or indirect contributions. Direct contributions must satisfy a nexus test whereas with an indirect contribution there is no requirement for a connection between the proposed development and the expenditure of funds.
- Direct contributions will adopt either a full cost recovery approach or an apportionment approach whereby recognition is given to capacity within existing infrastructure to cater for further population and demand.
- Direct contributions can include dedication of land or works in kind.
- Only one type of contribution (that is direct or indirect) can be imposed as a condition of consent on a development application.
- Contributions are to be used within three years or an extended period allowed by the Minister.

2. Regional infrastructure contributions

The main features of these contributions are:

- They will apply across the Sydney Metropolitan Area and to other parts of the State where high growth is occurring or expected to occur.
- They replace the current mechanism for state-based developer contributions, which is known as Special Infrastructure Contributions and which only applies to the North-West Sydney and South-West Sydney Growth Centres and the Central Coast.
- Contributions will be used to recover part of the cost towards State and regional roads, land for drainage, transport infrastructure, regional open space and educational establishments.
- Contributions will be calculated and charged on a subregional basis using the subregions described in the Draft Metropolitan Strategy for Sydney to 2031.
- Contributions collected within a subregion will only be used to fund infrastructure projects within the subregion.

3. Regional growth funds

The main features of these contributions are:

- Contributions will be calculated and charged on a regional basis.
- Contributions will apply in the Sydney Metropolitan Area and other high growth areas.
- All forms of new development within a region will be required to contribute towards the fund.
- Funds will be used towards the cost of acquiring regional open space and drainage land.

3.6 Building regulation and certification

White Paper position

The White Paper notes that while the Green Paper did not contain any significant proposals for change to the building and regulation sections of the EPA Act, submissions were received recommending:

- A tougher and better building regulation regime for the life cycle of buildings.
- A review of the building regulation system to deliver improved safety and consumer protection.
- Greater accountabilities and steeper penalties in the private certification system.
- The prevention of accredited certifiers being engaged by vested interests.

In response to those submissions, the White Paper identifies that “Changes are being made to the building regulation and certification system to rebuild confidence in the quality and safety of buildings and to provide better direction and support to the NSW building sector.” (p.180)

The White Paper lists nine proposals which aim to improve the design, approval and certification of development and the ongoing management and compliance of buildings.

1. Clarify minimum acceptable standards and requirements for the regulation and certification of buildings, critical building systems and subdivision.
2. Improve approval/certification processes and procedures.
3. Require additional qualified professionals to certify building elements and systems.
4. Link more effectively certification and approved plans (including designs for structural, hydraulic, geotechnical, fire protection and stormwater engineering) with built outcomes and the development generally.
5. Improve mandatory critical stage inspections.
6. Improve the level and quality of documentation and other building information at all phases of approval, construction and ongoing use and management.
7. Improve support for building certifiers and councils in relation to decision making and ongoing compliance monitoring.
8. Enhance compliance with approvals and standards.
9. Improve the life cycle performance of important building measures and features.

Within these nine proposals a range of actions and changes will occur, including:

- Removing unnecessary requirements for detailed plans, specifications and reports dealing with building matters from the development application stage.
- Introducing a set of consistent development consent conditions to assist with better compliance between approved development applications and applications for construction certificates.

- Combining the roles of certifier and principal certifying authority into a single role called a building certifier with authority to issue a construction certificate, conduct inspections and issue relevant certificates. The position will be a private accredited certifier or a council.
- Creating a role called subdivision certifier who can be a private accredited certifier or a council.
- Allowing the staged submission of detailed and certified plans for critical aspects of the building during the construction process instead of requiring them all before construction commences.
- Requiring a building certifier to prepare a report on how a building complies with the BCA.
- Requiring, where necessary, an accredited access consultant to provide a report on compliance with access legislation.
- Requiring a building certifier, in the case of complex building types, to obtain certificates from relevant professionals certifying that construction plans are not inconsistent with the development consent. For small, low scale developments this action is optional.
- Establishing responsibilities for building certifiers to report unauthorised work to councils and to assist councils during investigations relating to those matters.
- Mandating inspections for building works that are commonly being found as building defects.
- Requiring a building inspector to ensure at each critical stage inspection that building work is consistent with the development consent and complies with conditions of consent.
- Establishing a new certificate called compliance certificate (completion), in lieu of an occupation certificate, which certifies that satisfactory completion will be required for those parts of a building which cannot be occupied such as swimming pools, fences, interior walls and fire protection systems.
- Enabling subdivision certifiers to issue construction approvals for subdivision, subdivision certificates and, in some cases, strata subdivisions.
- Introducing a building manual for certain buildings which is issued by the building certifier at the completion of works and which contains items such as fire protection systems and restrictions relating to management and use of the building.

4. Overview of Planning Bills

The Planning Bills represent a redrafting of the existing EPA Act with certain additional measures and provide a large part of the legal machinery for the new components of the State Government's revised planning system. The regulations, which support the new Acts, have yet to be released.

Provisions for the existing and proposed office bearers and administrative bodies and provisions for a range of administrative functions have been separated from the main act and are contained in the Planning Administration Bill. The Bill includes details for:

- The Minister and Director-General.
- The Planning Assessment Commission.
- Regional planning panels (formerly JRPPs).
- Subregional planning boards.
- Council independent hearing and assessment panels.

The Planning Bill contains a large amount of material from the EPA Act, albeit in a revised format and with varied expression. Some of the key changes are:

- Object of Act - priority to economic growth; reference to timeframes for delivery of housing and employment, revised community participation object, revised sustainable development object.

- New part for community participation – includes the community participation charter, requirements for community participation plans and timeframes for public exhibition of applications.
- New part for strategic planning – includes strategic planning principles, hierarchy of strategic plans, details for local plans and provisions for planning proposals.
- Expanded development assessment provisions– new assessment tracks for code assessment and merit assessment; new division for strategic compatibility certificates, revised heads of consideration.
- New part for infrastructure and other contributions – includes principles for infrastructure contributions, local infrastructure plans and contributions, regional infrastructure contributions, growth infrastructure plans, biodiversity offset contributions, planning agreements and regional contribution fund.
- Slightly expanded building and subdivision provisions.

The savings and transitional provisions relating to the continued operation of SEPPs, LEPs, DCP and contributions plans have not been provided.

5. Further details to be released

Important components of the new planning system are not provided in the current release of documents. These include:

- The regulations for the Planning Act which will provide details on many operational matters.
- NSW Planning Policies - in particular, the policy which sets out principles for determining the development types to be streamed into the code assessment track.
- Guidelines for preparing subregional delivery plans.
- Transitional provisions for Standard Instrument LEPs, development control plans, section 94 and section 94A contributions plans.
- Community participation plan guidelines and the auditing process for those plans.
- A template or standard instrument for new local plans, including the final list of land uses.
- Explanatory notes and guides for local plans to address elements such as suburban character areas, in particular their relation to heritage conservation areas.
- Model development guidelines for local plans.
- The likely cost and resources required by Council to contribute to the ePlanning program.

In keeping with the proposed community participation charter, it is critical that these documents are and details made available for comment.

6. Conclusion

The proposed new planning system described in the White Paper and set out in part within the Planning Bill and Planning Administration Bill represents a fundamental change to planning in NSW. This change is heavily weighted towards facilitating economic growth across NSW and, in particular, providing new housing and employment opportunities.

It is based on assumptions that public interest in planning and development will be satisfied largely at one end of the planning process – the strategic planning level – rather than at the delivery end when development is proposed, approved and constructed.

The White Paper continues and expands on the State Government's practice of standardising planning across NSW, mainly in the interests of fast tracking development. The intention to reduce local government's independent role as a planning authority both in the policy making and development application fields is evident. This is to be done through legislation and, if deemed necessary by the State Government, by direct removal of powers.

We can give limited and qualified support for certain proposed changes. However, we are not convinced the substantial layering and complexity of the planning system has been resolved with the new legislation. The combined Bills still represent substantial details, albeit in a different layout and in some respect a more succinct language. Furthermore, other components of the legislation and its administration have still to be released. These include the regulations and numerous guidelines, procedures and practice notes.

Further reports will be presented to Council when additional aspects of the new system are released.

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Annexure

1. Submission on White Paper and Planning Bills

Political Donations – matters to be considered by Councillors at Meetings

