Where to planning?

City Futures Research Centre Occasional Paper

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WHERE TO PLANNING?

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City Futures is a University Research Centre dedicated to developing a better understanding of our cities, their people, the policies that manage their growth, the issues they face, and the impacts they make on our environment and economy.

Based in the UNSW Faculty of the Built Environment, City Futures is interdisciplinary in outlook and activity. It draws on the skills and knowledge of those within the Faculty whose knowledge encompasses the physical and spatial aspects of urban living, as well as those in other Faculties in the University whose interests coincide with our focus on the city.

The core activity for City Futures is research. It offers a place where scholars can pursue research on aspects of urban development and change. But it also focuses outwards, engaging with the wider audience beyond the University. Wherever possible, City Futures works in partnership with the community, government and business to contribute to growing the evidence base on the issues that impact urban regions and how we can better manage their dynamic progress.

City Futures also focuses on the training of the next generation of urban research scholars through an active postgraduate research program. We are committed to expanding the skills and capacity of young urban researchers and to communicating the value of good research to those involved in making policies that impact on the city.

Together with colleagues in other institutions who share our focus and passion, City Futures is committed to research and training that will contribute to better urban outcomes for Australia and beyond.
THE AUTHOR

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He spent 12 years as Director Development Services at Tweed Shire Council and 20 months as the Director of Environment and Planning at Wollongong City Council up to 1 July 2005.

After taking a well earned extended break and operating as a Planning Consultant for six months, David took up the position in April 2006 as Group Manager Sustainable Planning at Port Stephens Council, and he still holds that position.

David cares greatly about the contribution that planning can make to the community and in demonstrating the value of planning and the planning profession to Governments at all levels and to the community broadly.

He is a fellow of the Planning Institute of Australia since 1997 and he was the NSW President of the Planning Institute of Australia between 2000 and 2004.

Caveat: The views expressed in this Occasional Paper do not necessarily represent those of City Futures Research Centre, Faculty of Built Environment or the University of New South Wales.
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INTRODUCTION

Why Write this Paper?

It is my central proposition that planning as a profession has lost its way as a service to Government and community – particularly in NSW. My prime motivation in writing this paper is to seek to explain why and how planning should be more valued by government and community thereby demonstrating how planning as an activity and profession can contribute so much more to broad community benefit. I shall seek to demonstrate how legal, governance, cultural and practice frameworks for planning should change to enable that improved contribution to take effect. My timing in writing this paper is deliberate in terms of contributing to the debate leading up to the NSW State Election on 27 March, 2011. I am passionate about seeing the planning profession prosper and being held in high regard by government at all levels and by the public generally.

Planning is a profession that touches all of us. That may be at the top of the “pyramid” – macro level planning for the distribution of future population at the national level or it may be responsible for managing impacts right the way through to the ‘pointy end’ micro level at which an individual landowner is seeking to build a house or even remove a tree.

My very challenging experiences in two NSW Coastal Councils (Tweed Shire and Wollongong) may serve to demonstrate some of the issues associated with planning at state and local levels and have gained me some profile to elevate the understanding of planning practices and processes. Also my experiences may serve to demonstrate how the formal codes/frameworks around interactions between planners, politicians, General Managers, and senior staff in local government need to be improved.

Who'd be a Planner – particularly in Local Government?

Why would you be a planner in Local Government? I have lost count of how many times I have been asked this question. I am reminded of the research by the Planning Institute of Australia (2000) that concluded that Local Government planners work in a "toxic environment". I reply: "I often wonder".

However I know that this is the level of government at which planning has its greatest connections with results and at which planning professionals are really accountable for the rights and wrongs of decisions made and advice given. It is where planning most touches the
lives of the community. My University lecturer once remarked that doctors can bury their mistakes, but planners can't! For many planning professionals with an affinity to serve the community, Local Government is the level for which they are truly motivated to work. Many good planners have left Local Government in recent years because of the working environment but many choose to "hang in there" because of motivations to work in a more "community service" oriented organisation and role.

As a planner you can experience the best and worst of human behaviour in any one day. There is much money to be won and lost with development projects. There is emotion generated by the potential loss of property rights, views, privacy and general 'amenity' of living on your property as may be detrimentally affected by "the proposal next door". There is also much emotion in "getting your project to happen", "getting approval for your dream home". That generation of emotion and reaction of communities extends to people considering that the safety of their neighbourhood is threatened by a development proposal. It can be generated by fighting for causes such as less density in their neighbourhood or preservation of the environment.

Planning and Politics – some initial comments

It is my contention that Australia as a mature country of global significance has some relatively undeveloped and immature political, legal and institutional frameworks around dealing with issues of growth of its cities; managing the development of its regions; managing its environmental attributes and in decision making about allocation of funding towards key infrastructure projects. The immaturity of politics around planning tends to be symptomatic of wider lack of leadership in Australian politics at all levels. Politicians tend to react to what is considered to be what the community wants to hear, what the media will report favourably for wider consumption – rather than what the community needs to hear about the future of its cities, regions and environment.

The NSW System – some initial comments

There is wide spread disillusionment about the New South Wales planning system amongst local government planners and other stakeholders. There has been significant loss of community trust in planning over recent years. The NSW planning system is so complex and fragmented that it cannot deliver good service to the community and
good outcomes have become subservient to the efficiency of administrative processes to “get development to happen”. The system has a strong perception of being overly politicised, cumbersome, overly subject to ad hoc, piecemeal “fixes and add-on’s”, and unwieldy and overly long in processes to try and achieve good development and environmental results. Planners could be accused of losing sight of what they are “really there for” – achieving good development and environmental outcomes on the ground. Those good outcomes, not process, should dominate the professional culture and practices.

**Planning can achieve so much more**

Planning is a profession that can offer so much beyond current impacts, practices and legislative framework. Community trust needs to be rebuilt. Resource capacity limitations at both state and local government levels undermine the delivery of good planning - this needs to be addressed.

**The Structure of this Paper**

My emphasis is on raising issues, and proposing directions, in relation to the NSW planning system (Section 4) – with intent of influencing the parties to the NSW election on 26 March 2011.

To put those issues and directions into proper context, analysis and proposals are put forward for the involvement of the Commonwealth Government in planning (Section 3). Also, I endeavour to portray relevant explanations about planning practice, theory and context in Section 2.

This Paper embodies my personal views and proposals about the planning profession and the context within which it works. It is a story that is not necessarily any more important than anybody else’s. However, I have taken the time to reflect on that story and write this Paper with the central purpose of seeking to improve the practices and effects of, and community opinion about, planning. I would like to see the profession rejuvenated. The views expressed are mine only and should not be read to reflect any positions or views of my employer: Port Stephens Council.
WHAT IS PLANNING AND WHAT CAN IT CONTRIBUTE?

What is Planning?

Again, I would argue that that planning as a profession has lost its way and needs to have central purposes rethought to reconnect with government and the broader community. To advance this proposition, it will be useful to reflect on what is planning and some theories about the activity and profession.

Planning is something we all do – on a daily basis. We have jobs to do, we set ourselves goals – and then we work out the ways to achieve them by logical sequencing of tasks, how and when to spend the money involved and how all the different aspects best fit together. Other examples are planning how to get a destination in the shortest time and by the best route and how to do the weekly shopping within a limited financial budget. Planning is forward thinking - what is the desired outcome and how to best achieve it.

Two enlightening quotations about planning are: “achieving the outcome or implementing the plan can involve a choice of actions from a range of options some of which may be dependent on the completion of others” (Chifley Business School – Legislation and Governance course notes for the Planning Institute of Australia, 2010); and “planning is a universal activity involving the consideration of outcomes before choosing amongst alternatives and a deliberate, self-conscious activity and an activity based on linkage between knowledge and organised action in the public interest” (Dr. Michael Elliott, Georgia Tech.).

In terms of land use planning, the focus is on the best locations of various types of land uses, how and when they are provided with supporting services, their inter-relationships and impacts on neighbours and the broader community. All this occurs within the context of time and dynamic social, economic and environmental factors. The professions response is also limited by financial and human resources.

For our cities and regions, in its simplest form, trained planners engage local communities in the definition of desired short, medium and long term outcomes for their area and then devise the legal, policy, funding and other mechanisms to achieve those. However, this too is encompassed by complex political, social, economic, physical, environmental and financial factors – with a complex labyrinth of conflicting positions, views and other competing interests. Planning is about resolving conflicting interests, claims on resources and conflicts between land uses – and hence is inevitably intertwined with political processes. Some would argue e.g. economic rationalists - that the
market will resolve these conflicts. However we know that the market favours some more than others. The value in planning should be to achieve outcomes that are consistent with a defined set of directions and a clear concept of the greatest public good.

Planning should therefore be macro level definition of directions and outcomes that also enable clarity of decision-making for micro level issues / individually proposed developments. Planning very often does not have high public profile until micro level issues create “moments of truth”- a proposed development affecting a neighbour or neighbourhood or a policy affecting a particular group of people with a common interest.

Hans Westerman commented that planning is the process of managing change in our communities: “planning is an ongoing process of setting objectives, exposing connections, presenting alternatives and their likely consequences, and making choices about strategies, policies, projects and developments” (Westerman, 1998).

Gleeson and Low stated that land use planning is an important part of urban governance and that: “Planning is about the activity of governance required to make sure that all the services people need in a city, town or region are provided when and where the need occurs and at a price they can afford. Just as importantly planning must ensure that a good environment is provided for all, both locally and globally.” (Gleeson and Low, 2000).

**Strategic Planning and Development Assessment**

There are two broad functions when we are talking about development and environmental planning - Strategic Planning and Development Assessment. (I particularly want to acknowledge the Chifley Business School for the content of following section (PIA Certification course: Legislation and Governance).

“The functions of strategic planning are to link, plan and shape the strategic environment in ways which identify and achieve community aspirations whilst also maintaining the environment within which we live. It is concerned with the medium, long term management, development and conservation of resources for the purposes of promoting the social, cultural, economic and ecological wellbeing of the community and a better environment for present and future generations. This requires an integrated and holistic approach to decisions involving the use and development of land and natural resources” (Commonwealth Development Assessment Forum 2001).
The process of strategic planning (which is often a political process) is usually from a long term aspiration-based strategic plan supported by objectives, policies, priorities, programs and funding commitments. It also provides a framework for statutory planning instruments, development assessment and decision making in response to specific development objectives.

Development control planning has the function of developing statutory development control plans, policies, guidelines and codes with the aim of funding and regulating development. Implementation of those statutory plans is through the development assessment and approval processes of the State Government, Local Government and public agencies and used in response to specific development applications. The connections here should achieve plans and principles that therefore have results “on the ground” consistent with the strategic plan.

**Differences and Linkages**

Some key differences between strategic planning and development assessment have been concluded by the Commonwealth Development Assessment Forum (report of 2001) to be:

- Strategic planning is an interactive, proactive dynamic and deliberative process. In contrast development assessment decisions are generally reactive or response driven;

- Strategic planning is essentially a policy function where development assessment is operational and ideally carried out within a clear policy context;

- Strategic planning is an essential pre-requisite for development assessment – providing the basis for development assessment decisions. Development assessment however without strategic planning can be ad hoc and ineffective. In the absence of strategic policy objectives and strategies, development assessment decisions will be driven by self interest considerations rather than what may be in the wider societal interest;

- Development assessment is one means of making decisions about the use, development and conservation of land and natural resources and achieving strategic planning objectives. Other mechanisms include capital works programs, joint public/private sector initiatives, fiscal policies, economic and other incentives;

- Development assessment officers often have to make quick decisions about how to respond to strategic objectives or policies and other high level imperatives as well as problem solving in
the face of competing interest. Strategic thinking and planning skills can help in both circumstances. All planners strategic as well as statutory, or development planners, can benefit from the understanding of the principles and practices of good strategic planning.

Linkages between strategic planning and development assessment could be described as follows:

- Strategic planning sets the objectives for policies and objectives for action to achieve the desired outcomes. It provides the context and instruments (statutory plan making, plan amendments, development controls and codes) under which development assessment decisions are made;

- The extent to which each and every development assessment decision can deliver in terms of meeting the desired strategic objectives is reliant on the structure or relationship between the two processes. This relationship include organisational as well as the formal (including the legal relationship) between strategic planning documents and development control documents and guidelines;

- Relationships between staff in the two main functional areas and relationships between strategic advisors and decision makers are also of very high significance;

- Land use planning aims to provide degrees of predictability about the future; however such planning must be able to accommodate change in such a dynamic, social, economic, environmental, financial, political and unpredictable context in which we work. Therefore there must be degrees of flexibility, defining and maintaining the right balance between predictability / certainty and flexibility is a major challenge for the profession, and one in which the profession has not dealt with adequately.

Four Key Elements of Planning

There are four key elements – policy, processes, implementation and relationships which are intertwined but, ideally, balanced with one another and well resourced to be effective.

- Policy - the statements of: intent, desired outcomes, and structure and rules for decision making and guidance to decision makers;

- Processes – the systematic ways in which: policies are prepared, implemented and reviewed, legal Instruments are
prepared, implemented and reviewed; and engagement of decision makers and affected people and groups is carried out.

- Implementation – (the element for which the profession probably needs to most improve performance) - the monitoring, review and actioning of plans through reactive assessment, negation and decision-making of applications to develop from the private and public sectors and pro-actively through funding, advocacy and negotiation to get plan contents actualised;

- Relationships – (probably having the most underestimated importance of the four) – how interactions occur between the politicians, professionals, development industry, applicants, community and stakeholders in policy-making and decision making.

Policies will be in various forms – legislation, State Ministerial directions, local plans, development control plans and planning standards. They should provide the rationales and guidance to connect with sound decision making and clear guiding parameters for the preparation of private development proposals and their assessment for determination.

Processes should be clear and explicit for any participating person – hereby holding the responsible professionals and politicians accountable.

Relationships should be managed well and also have clear codes associated with many such working relationships to ensure that respect and probity are ensured. Again, the relationships are often only triggered when planning bites at a micro level – impacts of particular proposals or policies on individuals or neighbourhoods – and often when public controversy and conflict is already initiated.

It has been a serious and concerning trend over the last decade or so that strategic planning and development assessment have become increasing separated. This is due to the factors such as resource constraints with the consequent focus predominantly on the short term work pressures of development control and also to some extent due to the introduction of efficiency programs and rationalisation of staff resources to focus only on immediate priorities. There has been a consequent failure of state and local government in NSW to seriously and adequately commit to strategic planning. There is also a more distinct delineation therefore between strategic planning and development assessment which has grown - particularly over the last decade or so.

Strategic planning both in terms of both content and processes must be robust and adaptive enough for certainty and yet have the flexibility to accommodate changes in strategic direction. It is clearly evident that major problems can emerge when individual development applications
are used as the basis for determining new policies or strategic objectives – as de facto policy decisions.

**The Influences on, and the Context of, Planning**

There are a complex range of influences on planning as a government activity on behalf of the community – whether it is preparation of policies, implementation of plans, designing projects or applying the development assessment system.

Planning strategies express outcomes based upon community expectations, aspirations and needs and provide paths/roadmaps for achieving those outcomes - produced at state, regional and local levels. Governance systems provide the framework for decision-making and the use of discretions – including the allocation of political and professional responsibilities for decision-making. There are not only technical considerations for evaluation and advice in policy making, development assessment and decision–making but very significant qualitative and diverse interests to take into account, many of which will be intangible and unpredictable.

Planning is arguably an inherently political process by definition – involving the resolution of conflicting interests and allocation and management of resources.

A difficult balance has to be sought between providing certainty and having the flexibility within planning instruments to adapt policies and controls to specific site circumstances, the use of discretion by decision makers and the dynamic social, economic and environmental context in which planning and decision making for development operates.

Planning can be very expensive, slow and highly litigious –although there have to be real questions as to why it has to be this way. Outcomes are difficult to measure and to validly relate back to test the real impact of the Plan that expressed the outcomes - .i.e. what has been achieved or not achieved. Planning is often very publicly controversial in these terms.

There is no doubt however, that the absence of planning would lead to widespread chaos, disorganisation and other significantly adverse outcomes in our cities, towns and regions – socially, economically and environmentally. It can place constraints and imposts on economic activities with the purpose of ensuring that the range of externality costs (social, economic, environmental) are minimised, negated and/or compensated.

Arguably, interventionist government seems to meet higher levels of resistance from governments and communities in Australia compared to
many other countries. Is it related to property being such a private and sacrosanct asset in Australia? Maybe we are a strong individualistic society – more so than most countries. There is relatively more litigation to protect property values and there are more affluent people to afford to do pursue their interests – with a very receptive legal system.

**Planning and Sustainability**

Is sustainability a valid, fundamental principle and foundation for planning? Both sides of politics advocate sustainability – albeit with somewhat different philosophical leanings. Sustainability is a concept that has been overly dominated by jargon, rhetoric and motherhood rather than pragmatic foundations. There is a Commonwealth Minister of ‘Sustainable Population’. Former NSW Premier Nick Greiner probably encapsulated liberal perspective when he portrayed sustainability as fundamental to planning Sydney’s future and that growth and wealth creation (population and economic) were prerequisites of sustainability (Speech to the "Great Debate" – organised by the NSW Property Council, 5 November 2010).

If sustainability means short term decision-making based upon long term considerations, balancing social, economic and environmental factors and seeking to achieve inter-generational equity – then a pragmatic approach to sustainability is a valid and valuable foundation for planning.

**Economic Sustainability – Development and Infrastructure**

Planning in recent years has been highly influenced by micro-economic reform agendas, deregulation, competition and privatisation. Consequently planning has been increasingly relegated to discrete processes involving regulation aimed at avoiding conflict between land uses, or between the use of, and conservation of, natural resources. However, planning (and especially strategic planning) is a crucial element of governance and can play a vital role in reshaping and limiting the excesses of the market for broader social economic and environmental outcomes.

Planning has a unique contribution to make to efficiency of how our cities, towns and regions function through the coordination of decisions made at different times by different agencies and stakeholders that would otherwise not be coordinated through the market or by independent decision making by agencies and stakeholders. There is no doubt that billions of dollars are at stake, in terms of direct and opportunity costs, when we plan transport systems in a major city like Sydney.
Social Sustainability - The Role of Planning in Fairness and Equity

Planning has a responsibility and significant potential to influence social outcomes and in particular to achieve improved equity and fairness in terms of the provision and location of public facilities and services (health and recreational facilities), education, employment and a transport infrastructure linking those facilities and services. There should be a close integration therefore between social and economic policies and spatial planning – particularly where issues of cost effective delivery of infrastructure (especially transport) service provision is concerned.

Environmental Sustainability

Planning has always been fundamentally concerned about the environment but many commentators now rate its performance in this area as not having kept pace with community expectations and appropriate professional achievement. Planning arguably has not reflected the true value of environmental assets.

Planning must do more in evaluating the use and development of land and natural resources relative to global resource consumption and global trends. Human activity must be organised in ways that are socially and environmentally sustainable and avoid irreversible damage to the environment. Local and regional communities are expressing increasing concern about not only social and economic change but also the relationship to community wellbeing to the declining state of the environment.

There is growing recognition of the links between exploitation of finite natural resources and the quest for long term social and economic sustainability for present and future generations.

Governance - Planning & Democracy

A fundamental part of successful planning is respecting the right of people to participate in planning and decisions that affect their community. The report of the Development Assessment Forum concluded that over recent decades there has been a marked shift away from genuine consultation and participation of local communities in planning and in decisions affecting them.

The reliance on representative democracy where all responsibility, all decision making and accountability rests with the elected representatives no longer appears to be the optimum model of democracy as seen by Commonwealth, State and Territory Governments insofar as the preparation of plans and decision making on significant development applications is concerned.
Planning will benefit from understanding the complex interactions of local government and the community. In relation to the community it serves, local government is a regulator, a provider and an advocate. On the one hand it regulates certain aspects of community behaviour and development within the community and on the other hand, it procures and uses resources, powers and information in order to provide a variety of services for that community. Hence, there is a continuing dialogue of some kind between a government system and a community system. There may be multiple public agencies comprising the government system and being responsible for providing for, and regulating, the other. The precise boundary between the two systems will be very difficult to define, but that should not deter any attempts to provide concepts about the system and the interactions between them. Geoffrey Vickers (1965) drew the distinction between the “realm of market choice” (in which people make choices on their own behalf), and the “realm of political choice (in which people make choices on behalf of others). This reflects what is, (unfortunately), a common view of “us” (the people) and “them” (the government or the authorities). There is, obviously, a rich and complex, range of interactions of members of the community, their environment and their “government”. There is a continuing complex interchange of influence and information between them. Government responds frequently to specific demands and pressure points – including in planning, when the micro impact tends to be the focus of public reaction and political response. The selection of response by the government system to a situation that arises in the community is, in general terms, an intervention to achieve a desired outcome and when there is some resolution of conflict of a “greater public good” over private benefit.

The more that government can anticipate change and community situations in which political intervention is needed, the more effective and pro-active is that government system. However, when dealing with potential future situations, which planning is inevitably doing, the concept of uncertainty needs to be considered. Friend and Jessup (1975) explained these well as the uncertainties in the external environment (UE), uncertainties as to related fields of choice (UR) and uncertainties as to appropriate value judgements (UV). The first uncertainty (UE) can lead to need to more research, the second (UR) means need for broadening the field of consultation and decision-making and the third uncertainty (UV) triggers need for more policy guidance based upon consultation with the community served.
Who are our customers?

The concept of who are the customers of planning also needs clear reasoning. By definition, the customers of planning are current and future generations and those who will be served by making decisions today that are based upon long term evaluation. Herein lie some of the fundamentals of sustainability – planning for inter-generational equity and short term decision making based upon careful consideration of longer term implications.

Customers of planning include:

- The children of today, and those not yet born, who will be needing houses, jobs and a good environment in ten, twenty years time and beyond. The needs of current and future generations for such housing, jobs and longer-term quality of environment tend to be silent and submerged by the micro-level, direct impact, short term and louder voices that tend to have the greatest influences over planning decisions – injecting more short-term expediency than there should be;

- The stakeholders impacted upon by a particular development proposal – the neighbours, people in the street, members of an interest group – or people living away from the site but still potentially going to be affected by the externalities - e.g. communities of the Upper Hunter who may be affected by the cumulative degradation of air quality because of the approvals for coal mines;

- The investment and development industries are major customers with needs of gaining direction from strategic planning and approvals that genuinely enable feasible, cost-effective developments to proceed to provide the housing, jobs and facilities of the future. The excessive influence of the development industry on the NSW State Government, gained by lobbying and disproportionate access to Ministers, reflects how its needs are not being met by the system and professional practice;

- Leaders of all sectors and political leaders- having the information and advice to make well informed choices and decisions;

- The presence of lawyers is very evident as customers of a litigious and pedantic system – with the Courts and adversarial legislative approaches being far too dominant over merit based professional decision making.
Political decisions can be largely made for short term reasons given that politicians serve for three year terms (Federal level) and four year terms at state and local government levels. Political expediency can counteract good planning. At the end of the day, professional planners are there to advise the democratically elected representatives of the community. Their advice should include the best analysis possible of longer term implications. Also, there is a strong role of the planner to advocate vision and, in many cases local councillors are very receptive to setting longer term vision and directions for the area and the community they represent.

Rational Planning missing the mark with our customers

Much of the strategic planning and planning regulation tends to assume that there is a public interest to serve that represents the aggregated perspective of the rationally motivated people who comprise the “community” for whom we plan. The individual, group and aggregate psychology of that community and our customers on planning matters may be very different.

I am drawing on an excellent article by Ross Gittins in the Sydney Morning Herald of 12 -13 June 2010 (“The economy’s animal spirits”). He points to how the assumptions of conventional economics those economic actors (you and me) are always rational (with carefully calculated self-interest) and never emotional or instinctive”. This is, in my view, a potent point for much of the practice and theory of urban and regional planning. Planning is characterised by “black and white”, “one size fits all” regulation rather than having a clear vision with adaptive engagement with customers and negotiated outcomes.

What is the purpose or “raison d’être” of planning – to achieve good and sustainable built form, infrastructure and environmental outcomes – as good a quality of life for as many as possible. Outcome focus should be our mantra as a profession but we have become process dominated. Some will say get the process right and the outcomes will follow. To some extent that’s true but the highly regulatory nature of the profession and being submerged in the labyrinths of legalities and regulation certainly undermines, and certainly sucks the energy out of, that outcome focus.

The reality is therefore that the “customers “of planning are an aggregate of a pluralistic society comprising diverse financial, lifestyle needs and values belief systems which also contain layers of conflicting positions – this is what planning does not readily get to grips with. John Smith may want an affordable, detached house for his family, with a decent back yard, access to good schools for his children, a good surrounding environment and a short journey to work. Herein may lay irreconcilable objectives for an individual let alone for a group of people/ the community more broadly.
Planners tend to do two things. Firstly, assume that developers and other customers consider all available options before selecting their site, their preferred mode of transport, their style of housing. Secondly, often impose some rather purist and self-generated design ideas rather than those grounded in policy or prevalent wants of customers. This again is where the profession would benefit from more customer surveys and engagement with customers – to guide the formation of policies and controls based upon customers’ wants and realism of delivery. It also reduces the isolation of the planner - having policies that are grounded in a well conceived and substantiated customer engagement process. It may also alleviate the common reaction of planners of not understanding why others do not support them for their concept of the public interest of the best outcome, design idea – or whatever.

All this points to the need to engage more with our customers at the policy making stage – carrying out good research and customer surveys; bringing residents’ and interest groups together at micro and macro levels - to contribute on ongoing bases about policy making and adaptation, to reconcile differences.

**Commitment by all Parties / Stakeholders**

The level of commitment by relevant parties to the strategic planning process is absolutely crucial to successful integration of strategic planning and development assessment. This requires effective communication and collaboration based on mutually agreed approaches between the community, policy advisers and politicians as to how that better community engagement can be achieved.

If effective links are not achieved between strategic planning and development assessment at the outset of strategic planning processes then problems will emerge such as:

- The inability of strategic planning processes to achieve their desired outcomes;

- Poor translation of strategic planning objectives and targets into development planning and hence into development assessment decision making;

- Failure to recognise the impacts of external influences and managing changes in strategic directions.
**Adaptive Planning – responding to Uncertainty**

Planning can be defined as a process of “continuing choice in a changing environment” (Friend and Jessup, 1969) – requiring therefore, the capacity for anticipation of future situations.

A “Plan” should be a series of statements of coordinated future intentions containing elements of both a specific and generic character – statements about specific development projects and policies for development control of proposals from the private sector. There needs to be a strong underpinning principle of contingency planning – to adapt to the uncertainties of the future be they generated from the external environment, related fields of decisions making or by changes in community values.

Friend and Jessup (1969) also provide an insightful interpretation of adaptive planning – “it is exceptionally difficult to formulate strategies in advance which are sufficient to cope with all conceivable contingencies; the complexity of the community system and the imperfect understanding of it in the governmental system” …. “In these circumstances, planning must become in some degree, an adaptive process. Although firm commitments may from time to time be required in particular sectors of a complex decision field, it may also become particularly important to retain an element of flexibility in other sectors in the expectation that, by the time commitment in these other sectors becomes inevitable, the state of knowledge of the environment may be very different and the whole context of decision may have changed.”

**Some Conclusions - The Need to Re-Evaluate Planning**

In a nutshell therefore, planning should be:

- Based upon an emphasis on strategic planning with related shifts of practice and resource commitment;

- Research based and predictive as is feasible about the future states of the external environment, the range of decision fields, responsible agencies and of community values;

- Based upon the principles of sustainability – notably, inter-generational equity and short term decision making being based upon the best possible analyses of longer term implications;

- A mix of statements of intents (policies) that connect well with recognition of actions needed by which agency (ies) that are
macro level policies and specific (particular development projects/infrastructure projects); and

- Expressions of community values and desired longer term outcomes together with clearly defined actions and responsibilities for implementation.

- Directed at avoiding irreversible environmental damage and distribution of land and natural resources for future generations;

- Concerned about the equitable distribution of facilities and services and the necessary transport infrastructure as a conduit to equity and fairness;

- Regarded as multi-tiered extending local to global with polices and powers appropriate to each level;

- Enabling of “quality decisions” for development assessment by foundation upon strategic planning. This means strategic planning policies that are tested for "implementation capability and connection". Data needs to be reviewed and updated regularly to ensure up to date information and analysis as the foundation for strategic plans;

- Adaptive to the continuously changing environment (social, economic, natural, community values, customer definition and governance) – explicitly recognising the uncertainties of that environment.

All of the above discussion begs the question of comparison with the plans and strategies produced in NSW. These Plans and strategies tend to be generally static and non-adaptive. For example the regional strategies that apply through to 2031 do not recognise climate change or the potential dynamics of change, do not coordinate the range of agencies involved in the decision fields involved and do not anticipate, or indeed have any solid basis in the expression of community values.

There needs to be a very strong ground swell of effort and advocacy therefore – particularly by the planning profession itself – to reassert the role and value of the strategic planning as a base for long term decision making as distinct from having particular sectoral interests at the point of development assessment decision making.
WHAT SHOULD THE COMMONWEALTH GOVERNMENT DO?

The Business Case for an Enhanced role of the Commonwealth Government in Planning

Future population growth in Australia, climate change, water management and effective public expenditures on infrastructure make a compelling case for the Commonwealth Government to lead the national planning of the future of our cities, major regional centres, environment and infrastructure. Politically, population debate and the future of our cities and resources were in the crossfire of the recent Commonwealth election campaign. Immigration proved to be an unfortunate distraction to that debate. The next decade is crucial for the proper planning for the inevitable growth that will be experienced in Australia. There is no national vision for our cities and regions and there is no coordinated process in place to achieve one any time soon.

While not constitutionally enabled to legislate or directly plan the future of our cities and regions, the Commonwealth Government can and must fulfill vital roles in national coordination and leadership of planning policies and practice.

Never more than now has there been such a crucial need for Commonwealth focus on planning. The Commonwealth Government has historically had some forays into planning matters - decentralisation in the Whitlam era and the Better Cities Program of the 1980’s that resulted in good development such as Honeysuckle in Newcastle. The Commonwealth Government has also initiated and managed key funding programs like the National Heritage Program and Caring for Country. The Commonwealth Government holds the money strings for provision of major infrastructure that must interrelate with sound planning of urban, regional and coastal growth and settlement and has made infrastructure funding contingent upon the States having Plans in place for capital cities and regional cities.

Australia is projected to increase in population from 22 million to 36.5 million by 2050. Sydney is projected to grow from 4.5 million to 7 million. Hence significantly more new houses, more job locations and more cars, etc. will be needed. Never more has the need for strong planning nationally in Australia been more needed or of greater value with the projected increase of 14.5 million people in the next 40 years. Currently, approximately 85% of Australia’s population live on the coast - 18.7 million out of 22 million. If this proportion continues, 31.5 million will seek
to live in that coastal sector – an increase of 12.8 million over the next 40 years. Australia is one of the world's most urbanised nations with over three quarters of our population living in our 17 largest cities. Somewhat contradictory is the fact that our cities are by no means densely populated on any global comparison. However our Capitals, especially Sydney, cannot hope to maintain present globally low density levels yet pretend that well over half of new housing will be in brown field areas. Metropolitan plans have prepared for only some of our cities.

Australia is already a country that has major loss and degradation of its biodiversity and environmental assets – and this has consequently attracted international criticism for doing so. Rural and regional areas have lost much of their economic strengths. There are water supply shortages and major limitations in many cities – notably Adelaide and Perth. There are also some growing social tensions and inequities around the immigration program. Australia needs a Commonwealth level strategic planning forum - politically and professionally - to respond and deliver a National Settlement Policy.

In New South Wales, projected growth is from 6.5 million to 9 million by 2036 – in 3.7 million additional households. Of the 2.5 million population growth, 1.7 million is projected for the Sydney metropolitan area – 40% more population, 46% more homes needed. The population over the age of 65 will grow by 111%. The current Metropolitan Strategy plans for 770000 new homes and 760000 new jobs by 2036 – aligned with a projected population of 6 million. Actual supply over recent years as analysed in the NSW Metropolitan Urban Development Program has been well below pro-rata delivery of needed residential land.

Nick Greiner commented that "a big Sydney, and indeed a big Shell Harbour to Hexham conurbation, are already a fact of life – inescapable. The conurbation, on median projections on ABS and NSW Department of Planning, will grow from just over 5 million in 2006 to 7 million in 25 years from now. Whether it's a little more or a little less makes no substantive difference. The challenge is to manage the growth far better than we have not to pretend the political leaders can be demographic Canutes, even if they wanted to be". The way planning and infrastructure delivery happens in Sydney is significantly outdated. Development in the Metropolitan area is financed and is operated under the significantly outdated State Government coordination and State Tax Systems. There have been many transport/infrastructure plans in NSW over the last 10 or 15 years without any real consequence or implementation. This could be partly why our community is cynical about future planning of our cities and the government's capability to deliver anything resembling good planning and infrastructure outcomes?

Between June 2000 and June 2010, Australia had an average growth in jobs of 200,000 -- an average of 2.1% per annum. 88% of that
employment growth derived from immigration. The remaining 12% is attributed to the increase in labour force participation. In future, the potential to increase labour force participation is highly relevant. To continue historical rates of economic growth, 2.5 million jobs are needed over the next decade. The potential to increase the domestic labour force is essentially zero because of baby boom retirement. 2011 will be the first year in which more retire out of the workforce ban than new workers enter it. The major economic drivers and projects in the future will create major needs for a highly skilled and diverse workforce. Peter MacDonald estimates that 4.36 million workers will be required in Australia over the next 15 years -- representing an annual growth of 2.2%. On that basis, it is estimated that net migration needed in Queensland will be 91,000 per annum -- Queensland had 76,000 net in migration in 2008/2009. In the views of many commentators (Macdonald, Greiner and others): wealth creation generated by net immigration may be essential to environmental enhancement and conservation.

Very interesting comparisons can be made between historical and projected population growth for Canada and Australia. Canada has grown to a population of 35 million now from 22 million approximately 40 years ago. Most of the growth in Canada during that period has been in the second tier regional cities/centres.

The debate about 35 million in the year 2050 and about a “Big Australia” is essentially a waste of time. We need to stop pretending that Australia cannot grow or can grow to a lesser extent and still perform strongly in economic terms. Growth will be what it will be -- the essential lesson is to plan for the growth that occurs. Australia’s population was about 8 million people in 1947 and 12 million people in 1970. Again let us stop pretending that Australia cannot accommodate more growth -- the acceptability of that growth depends more on how we plan for it rather than the numbers/scale of that growth.

There may well be resistance and populist politics around reducing this increase in population but the projection is substantially based on extrapolated trends. In any case, Australia probably has a global responsibility to accept growth at least at this kind of level.

Commonwealth Treasury has demonstrated that even with the most minimal levels of net overseas migration, Australia’s population will grow to 29 million by 2050 – although higher growth is inescapable. Treasury also states that: "there should be considerable concern about the evident lack of forward planning, refusal to make appropriate use of price signals and chronic under investment in infrastructure" - leading to poor infrastructure and environmental outcomes but the strong population growth "need not adversely affect the environment, liveability of our cities, infrastructure and service delivery provided the right plans and policies are put in place now in anticipation of it." There is also high
relevance here of the Commonwealth Governments Inter-Generational report regarding many factors that provide the research base and context for sound Commonwealth planning for the future of our cities and our regions. Each Inter-Generational Report should include a comprehensive CSIRO report on "Carrying Capacity" every 5 years.

The Grattan Institute’s recent report "Cities: Who Decides?" identifies common elements of success in 8 global cities which they studied and primary amongst those elements were: good public engagement; consistent strategic direction; cross-sectoral collaboration; and vertical governance alignment across regions. The Institute made particular mention of early and deep public engagement – certainly of an order of magnitude greater than that which currently happens anywhere in Australia. These pillars of good Governance must also be founded on multi partisan political willpower – which again is rarely experienced in Australia.

There are major planning issues at the national level therefore which should be responded to by leadership by an enhanced Commonwealth approach to planning - recognising the constitutional parameters for such involvement. These are:

- The need for meaningful community engagement and commitment to city and regional planning;
- Climate change, water management, sea level rise and coastal management;
- Growth management and infrastructure provision for major cities – limitations on existing and future water supply, road capacities etc. There is a critical need for a nationally strategic approach to integrating infrastructure planning, delivery and funding;
- Planning for, and implementing infrastructure improvements that increase the efficiencies of transport in major cities, notably in Sydney –thereby alleviating some of the economic losses incurred by congestion/infrastructure inefficiencies and better supporting productivity, sustainability and liveability in those cities;
- The continuing demand for growth on the coastline and the related deterioration of social and economic positions of inland towns and rural and regional areas;
- Housing affordability is a major issue in urban and regional centres;
- The ageing population and the implications of housing demographics, supply and demand;
Planning for the Sydney metropolitan residential demand and supply with related infrastructure provision, particularly insofar as it relates to economic implications and the effects of the immigration program managed at the Commonwealth level;

Environmental management of the Murray Darling basin and its implications – particularly the social and economic effects on townships and employment – that are intricately related to that environmental management and the viabilities of rural industries.

There has been a collective failure of leadership at the Council of Australian Government's level that has started to be addressed, but has fallen away over the last 12 months or so.

What are the Issues involved in establishing such an enhanced Commonwealth role?

The Commonwealth Government is not mandated by the Constitution to legislate for, and implement, urban and regional planning policies. Planning functions are the roles of the State and Territory Governments which, in turn, legislate for planning responsibilities to be the domain of local government. The only Commonwealth statute of direct relevance is the Environmental Protection and Biodiversity Conservation Act, 1999. Even this presents some issues of duplication with responsibilities of States and Territories.

There is extremely low likelihood of changes to the Constitution to enable a direct Commonwealth role for planning matters exclusively to any wider reform of Federal and State governments. That requires long term political and public debate with a national referendum being fundamental to any mandate to pursue such reform. The need for enhanced Commonwealth involvement in planning is more urgent than any prospect of constitutional change enabling that enhanced role to be formalised.

Any prospect of short or medium term Constitutional reform in the direction of an enhanced Commonwealth role is also realistically impeded by the different political persuasions and structures of Commonwealth, State and Territory governments. There is also a diversity of legislation and organisational structures between States and Territories to untangle - compounded by varying levels and complexities of local government responsibilities endowed in the State and territories.

Hence, in political and technical terms the legislative foundation for the enhanced role of the Commonwealth Government in planning is not going to take place in the short and medium terms. That enhanced role
therefore must, realistically, take place within the current constitutional framework and by strong political leadership.

**How should the Enhanced Role of the Commonwealth Government be achieved?**

The inevitable growth in Australia must be seen as an opportunity. The tone and messages of the Commonwealth Government’s response to Australia’s growth challenge is vital. If our political masters paint a picture of growth as a problem – then it will become one! The cohesion between political leadership and bureaucratic delivery is so critical to the health, liveability and sustainability of our future cities.

There is a compelling case for the Commonwealth Government to respond on four counts:

- Appoint a Commonwealth Minister of Planning, Local and Regional Development and Infrastructure. He/she would incorporate the responsibilities of the recently appointed Minister for Sustainable Population – and other relevant responsibilities currently within other Commonwealth Ministerial portfolios. Alternatively, there could be formalised arrangement involving the three Ministers currently responsible for these portfolios;

- Prepare a National Settlement and Infrastructure Strategy – establishing a pattern of managed growth of capital cities, major regional centres and coastal settlement – fundamentally based upon infrastructure capacities, planning, prioritisation of need, funding and delivery to support that growth pattern;

- Take a strong leadership role in coordinating, advocating and directing consistent planning legislation and practices across the States and Territories. The existing governance model of the Council of Australian Governments (COAG) and the Local Government Planning Ministers Council (LGPMC) could be enhanced, and lead by, for this purpose, the new Commonwealth portfolio(s) responsible for Sustainable Population, Planning, Local Government, Regional Development and Infrastructure. A support network of senior management in planning and infrastructure delivery from all States and Territories would be essential – and valuable to build the working relationships, break down State and Territory government “silos” and provide essential information. The integrated involvement of Local Government in both political and professional capacities would be crucial as would the role of the Major Cities Unit and the continuing support of the Development
Assessment Forum. This governance approach and the composition of political and professional/management roles would fulfill the task crucial to the national interest of preparing and implementing the National Settlement and Infrastructure Strategy in a sustainable manner. The senior State and Territory managers would be responsible for translation of national directions to State and Territory planning and implementation. These policies and initiatives would provide the essential national perspective on population distribution and all its implications, guide the allocation of funding for infrastructure, ensure more compatibility within and between, planning by States and Territories. The Ministerial Council would be responsible for strategic planning of the future of the nation’s cities and regions in the context of the projected increase of population and all of its implications – socially, economically and environmentally.

• COAG, the Ministerial Council, the Major Cities Unit and the Development Assessment Forum should increasingly lead consistent and good practices across the states and territories – for strategic planning/policy making and development assessment.

Some Conclusions

• In the context of projected national population growth, there is a compelling case for the Commonwealth Government to take a lead role in the integrated planning of the nation’s cities, regions, environment and delivery of infrastructure;

• This can be done by building upon existing political and bureaucratic structures – also progressing to achieve far more meaningful and action-oriented governance structures that are cohesive between the three levels of government;

• Urban and regional planning may not be the biggest priority of the Commonwealth Government but it should be a lot bigger priority than it is.
WHAT SHOULD THE NSW STATE GOVERNMENT DO?

In this chapter, I shall seek to present a compelling case for comprehensive reform of planning legislation and practice in NSW. That reform comprises of: comprehensive overhaul of legislation, reform of practices by State agencies and local government, and responding to the challenge of the need for a major shift in culture by the customers, practitioners and stakeholders in planning. For a clever, innovative country, we deal with our issues of city and regional planning in ways which are outdated and, by international comparisons amateurish. In my view, planning in New South Wales is outdated in many ways, an impediment to good outcomes and overly politicised. The NSW planning system is unsuitable to meet the needs of modern day Sydney and New South Wales to contribute as the “Premier State” to future growth of Australia – (Sydney provides for about one third of Australia’s gross domestic product). The needs of modern society and managing Sydney growth in particular, demand new models and new ways of doing business in planning.

My proposed changes are aimed at raising the debate during the State election Campaign – leading to the election on 26 March 2011. Planning is emerging as a hot issue for this State Election. This is driven by substantive planning issues – increasing urban congestion, intensification of residential developments in Sydney and the general inadequacies of infrastructure planning and delivery in Sydney and the State generally. It is also driven by the loss of community trust in the planning system over recent years. High level publicity regarding political donations and corruption and increasing centralisation of power by the State Minister for Planning have all taken their toll. That loss of trust has progressively undermined the credibility and positivity of impacts of planning at both State and local levels. It has also been debilitating to the effectiveness of the profession. Specific and significant changes are needed to remedy this loss of community trust and is an essential part of enabling planning to achieve the positive results for government and the community generally that it should be delivering.

Planning legislation and planning practitioners need also in my view to shift the culture – from a rather purist and reactionary approach that dominates to one that is flexible, visionary and pragmatically and progressively facilitates good development aligned with longer term strategies and desired outcomes. At the end of the day planning, through broad community engagement, is about defining the longer term outcomes and managing the means to achieve those end results. There are currently disconnects in the system - planning emphasises the long term and the big picture, whereas politicians and the community generally focus more on the short term and the micro. Planning needs to
be adaptive. Planners can be overly purist in taking rational planning approaches and seeking to dictate outcomes to a detailed level. Society doesn't work that way. Society is an aggregation of individuals with self interests, vested interests and emotional reactions to development and environmental issues. Planners need to be stronger in being advocates of the long term vision but reconciling the professional approaches to the realities of politics, short term political and community interests and the diverse range of motivations of stakeholders who are engaging with the planning system.

Planning in NSW tends to be dominated by political and planning reactions at the micro level. Politicians tend to react to the media and place too much emphasis on "telling the electorate what it wants to hear" rather than showing leadership in sustaining decision making in directions of achieving the bigger picture, public interest - and for the long term as well as the medium and short term.

This also means that significant institutional and governance changes need to be made – including the establishment of a Sydney Metropolitan Planning and Infrastructure Delivery Agency that is directed at achieving the longer term bigger picture outcomes.

**Why Is Planning So Hard in NSW?**

In broad summary:

- The legislation and practice is overly complex, fragmented, legalistic and cumbersome. The NSW planning is driven by multiple pieces of legislation such as the Threatened Species Conservation Act, the Native Vegetation Act and a number of other pieces of legislation that directly govern planning outcomes in addition to the Environmental Planning and Assessment Act;

- Each piece of legislation has independent status and each responsible State Agency must satisfy the Act that it is responsible for. Indeed it is entrenched in the system that one agency can frequently seek to prevail over another and over the Council responsible at the end of the day at the local level for the planning policies and the development assessment decision-making;

- Planning is about balance and reconciling conflicting objectives and issues. There is no overriding State Government legislation, plan or set of strategic directions in seeking to balance the social, economic and environmental costs and benefits of planning policies and development applications at macro and micro levels;
• Rather than strategic planning being the dominant activity and practices by State and local governments and profession in NSW, the focus of limited professional resources and political attention is on individual development applications. Outcomes on specific sites therefore tend to set de facto policies and precedents. There is an over emphasis on process and inefficiency of approvals to the detriment of good outcomes. The legislation encourages reactive processes and working relationships rather than being enabling legislation such as, arguably, exists now in Queensland and South Australia;

• In the view of many advocates of local government, the NSW State Government has over its last term progressively undermined local democracy as an integral part of decision making on planning, development and environmental matters at the local level. There has been a strong trend for the centralisation of planning powers and responsibilities into the State Government and in particular under the jurisdiction of the State Minister for Planning. This has not been based upon any legally established criteria or agreed foundation between State and local levels of government, but has been imposed by the State Government. There have been, and still are, significant levels of discretion and arbitrary approaches on what development proposals are called in for State decision making. These discretions and relatively arbitrary approaches have generated widespread community opinion that there have been political rather public interest motivations to call in such development proposals for Ministerial decisions;

• The increasing lack of trust and credibility has increased the tendency for aggrieved stake holders to question decisions and processes in planning – thereby seeking to undermine credibility of those making those decisions and their integrity. This trend has been contributed to, and exacerbated by a very receptive media – making the planning system even harder to operate. This has had flow-ons to the local government level;

• There is a lack of coordination of planning, funding and budgeting for infrastructure associated with growth. The State Infrastructure Plan is a list of items by different agencies not integrated with development planning and policies;

• The State Government is overly influenced by the development industry and there is a lack of balance accordingly. With the NSW Government priority to respond to improve the economic positioning of the state, make the State open for business and comparatively more attractive for investment - and more recently, to respond to the global economic crisis - this is
understandable. However, to make system work properly, there should be strong engagement with all stakeholders - and this is not happening, particularly for local government;

- Much of the above represent some of the important triggers that have lead to progressive, piecemeal and ad hoc changes to seek to improve the system. In many ways this approach has made the system more complex and more infused with conflict. Much political expediency has driven the changes. There has been a lot of moving the proverbial “moving chairs on the Titanic” but not tackling the root causes. It has been one add-on and ad hoc fix after another in order to try to beat the State’s own system. It would seem that much of what the State Government has done has reflected its own frustration with its own legislation;

- There has been an adversarial working relationship between local and State government not a collaborative one. This is part of the blame game - including State government wanting to maintain its attempted portrayal to the voters as doing the right thing and that the problems and non-performance of the planning system are the problems of local government.

- The resources of the State Department of Planning are overly consumed by reworking and policing tasks completed by local government – Local Environmental Plans in particular.

Hence what are the key issues that need to be addressed and responded to with significant government driven change? I propose the following ten broad domains of change and initiatives:

1. Overhaul the legislation

2. Reform the governance and institutional frameworks for planning

3. Rebuild community trust and engagement in the planning system through different processes and community engagement mechanisms (including the public education and professional advocacy of bigger picture and longer term desired outcomes);

4. Overhaul the coordination of State Agencies to deliver for the planning system – including clear mechanisms for the Minister for Planning or subcommittee of Cabinet, to make the decisions that balance the conflicting social economic and environmental factors and advices involved with major planning issues and decisions;
5. **Produce a "real State Plan"** – including the integration of state planning for settlement pattern and infrastructure delivery with national planning and needs as explained in the recommendations for what the Commonwealth Government should do presented above;

6. **Change the culture** – this will be significantly driven by overhauling the legislation and the related institutional and governance frameworks within which planning operates but has other components;

7. **The NSW Department of Planning becomes a leader of strategic planning policies and practices** – making a shift from the current high level intervention on re-zonings of land and assessment of development;

8. **Establish new models for strategic planning policy making at the regional and local levels**

9. **Establish new models for Development Assessment at the State and Local Government levels**

10. **Enhance the contribution of academia** to professional practice and performance monitoring;

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**1. Overhaul the Legislation**

The Environmental Planning and Assessment Act was excellent at the time that it was enacted. Some of the fundamentals are still right but it is now 30 years old and, arguably, very outdated for the social, economic and environmental times. The complex needs of society of the planning legislation, practice and profession are very different today compared to the 1970’s and 1980s.

One of the political agreements to enable the Upper House of State Parliament passing of the major amendments to the Environmental Planning and Assessment Act in 2008 was that an Upper House Inquiry be conducted into the NSW planning framework. The resulting Standing Committee handed down its report, after extensive research and consultation, in late 2009. Its primary recommendation is for there to be a major overhaul of the Environmental Planning and Assessment Act.

The legislation can be compared to a 1979 car. Parts have been added to, replaced and extracted so that the model today is relatively unrecognisable and unworkable compared to the original. Even finding
professionals who can drive it properly can be difficult! There is a history of continuously added layers, ad hoc, piecemeal and detrimental changes - particularly over the last twelve years. These changes have been driven as much, if not more, by political expediency and pragmatism as any intentions to improve professional practice. It has become a sclerotic labyrinth of tunnels, which applicants have to squeeze through, often having to go off on tangents, and very often backtrack, before getting to the opening at the end. Since 1998, we have had a number of ad hoc changes and particularly in the last term of government which, with a very strong “NSW is open for business” agenda, has essentially been one of development facilitation rather than integrated, well thought through legislative amendments. I have no argument with the need, particularly over the last few years, of economic development taking precedence, but the ad hoc legislative change has been one of moving barriers and overcoming the government’s own system rather than an approach that enables varying emphases over time being given to economic development, social matters and/or environmental issues within an overall sustainability framework. Since 1998, there have been a number of new Acts of Parliament – the Threatened Species Conservation Act, the Native Vegetation Act, the Bushfire Protection Act etc. etc. that have increasingly fragmented legislation that all go to essential issues around planning development and environmental management. This reinforces the fragmented and ineffectual approach of the overall government resolution of planning, development infrastructure and environmental issues.

How can we realistically overhaul the legislation? There are a number of vital ingredients to this.

   a) The overhaul must have clear, explicit and sustaining political support and momentum. This will require clear understanding and mandate from the broader community and stakeholders. What it will require more than anything else, however, is leadership from the next (from March 2011) governing political party in NSW - and an adherence to the cause by key Ministers and particularly, of course, by the Premier. There needs to be a commitment by the NSW State Government to this legislative overhaul – acknowledging that it may take 4 or 5 years to achieve;

   b) The political and Director-General linkages must be made to be the Commonwealth level of government at which the increased role and leadership in planning is also vital. Hence through the Council of Australian Governments (COAG), the Local Government and Planning Ministers Council, the Major Cities Unit and the Development Assessment Forum, leadership is crucially needed of nationally consistent practices which translate into drafting of new and revised legislation in New
South Wales. This is vitally important for the strategic planning, development assessment and environmental management responsibilities of planning;

c) It would require leadership with a mandate, authority and capability in the NSW government to champion the cause. There will be persistent and almost irresistible pressures to make short term, expedient changes to the legislation in response to potent, current issues. Therefore sustained persistence to the cause and adherence to the fulfillment of the desired outcome of improved legislation at the end of the day will be essential. Logically, this champion would be the Minister of Planning and/or his/her authorised delegate;

d) The NSW Minister for Planning should convene a broadly based group of major stakeholders who are consistently and highly dedicated to the task of preparing legislation - with of course for support from relevant professionals and an audience from Parliamentary Counsel;

e) Fundamentally important is the need for the government and major stakeholders to agree a foundation of strategic principles/directions to underpin the drafting of the legislation and provide a clear framework for that to proceed. There should be an attempt to be clear what results are sought to be achieved by overhauling the Act and to achieve a concerted vision based upon broad engagement with stakeholders. The first step of a new government should be to convene a broadly based and well facilitated structured process of engagement of all stakeholders in a new planning system. This should develop vision and purposes of what the new planning legislation should seek to achieve and how it should encompass various components of other environmental and development legislation.

The principles could be described as:

- Good governance - positive and formally agreed working relationships between state and local government; state agencies with each other and with local government;

- The integration of development planning, infrastructure planning and programming and environmental conservation and management;

- Sustainability - balancing and integrating these social, economic, environmental and governance factors. This approach is consistent with that of the NSW Integrated Planning Framework initiated for local government in 2009. It also enables the State Government to give
priority to any of the pillars of sustainability at any time - such as the State Government has sought to do to economics during the global financial crisis;

- Inclusive of these financial and resource capabilities of local government to play its rightful role in planning and deliver on the system;

- Increase clarity and certainty in the system and increase transparency and accountability of decision-making authority within the system;

- Improve user-friendly legislation and the enabling of more user-friendly legal and policy plans;

- Giving strategic planning legal status at regional and local levels;

- Integration with the national directives and research and contributing to nationally consistent legislation, policies and practices across Australia;

- Increase the extent to which development proposals are Exempt and Complying (with adequate standards and safeguards) – thereby enabling the shift of emphasis of limited professional resources responsible for implementing the planning system from the development assessment to strategic planning/policy-making i.e. real planning by seeking to “reverse that the triangle". This would include the crucial shift that is needed here’s a “reversal of the triangle” so that instead of development assessment be the dominant activity in planning and the dominant consumer of resources, that dominance switches to strategic planning and policy making. The more that strategic planning policy can be properly engaged upon with communities and subsequently endorsed by government, then the greater clarity all stakeholders have about outcomes and the more efficiency that can be injected into development assessment processes and decision-making. One of the greatest advocates of this “reversal of the triangle” is Gary White, Director-General of the Queensland Department of Local Government and Planning;

f) The overhaul of the legislation needs to give very strong emphasis therefore to strategic planning and make local strategic plans mandatory. These are, after all, the products of “real planning” and in the simplest form represent the desired outcomes by the State government and the Council on behalf of
the local community for a local area and the means by which to achieve those desired outcomes. A Local Environmental Plan (LEP) is a legal Plan that zones all properties in a Council area, what developments and land uses can occur on those properties and under what criteria. This should be seen simply as a legal mechanism to implement a local planning strategy - rather than the cumbersome, highly legalistic and therefore adversarial document that it generally is. As a result of its highly legalistic nature the lead times to prepare, consult the community and gain stakeholder approval of each LEP takes many years. Many LEP’s have taken over 10 years to gain State government approval. Hence the Council that initiated that Plan has been and gone – not in the previous term of Council, but the one before that! This frequently leads to the legal Plan of the day being pretty much “out of whack” with the desired outcomes sought on behalf of the community of the local and democratically elected Council and its approach. The "snail mail" approach to LEP preparation and making is incompatible with the rapid change in modern society. This is nonsense and an indictment on the planning system that there is so much incongruence between the Local Environmental Plan and the strategic directions of the current local Council. The planning system must be continuously adaptive not static for long periods of time.

Again, it must be a commitment that resists political expediency and one that looks to fully implement new legislation within a 4 or 5 year time period. However, we need to be politically realistic and acknowledge the difficulties that may exist for this to be achieved - particularly as there will be another election within the likely timeframe of achieving the new legislation. There may need to be "early runs on the board" - hopefully compatible with the subsequent complete suite of legislative reform. If it is done properly and resonates with sound purposes and is framed in such a way that has wide community and industry endorsement – then that achievement of new draft planning legislation will be a strong platform for potential re-election at the next election.

**Land and Environment Court – Legislation and Practices**

The NSW planning system works within an overly legalistic system where projects of planning merit can be overturned because of legal technicalities. The Court is moving towards greater emphasis on mediation and issues conferencing. Many cases are overly prolonged and unjustifiably consuming of local government resources and costs.

Initiatives that, I submit, should be taken are:
• Strongly support the Court to discontinue proceedings if the DA is substantially changed/equivalent of a Section 96 application/new DA;

• If the Court judges that information is inadequate to support a DA subject of appeal in legal and/or policy terms, then the DA should be returned to the Council for assessment and potentially determination;

•Legislate to establish State and/or regional Tribunals of professional, independent experts who make judgements on DA determinations on appeal on merit grounds and not predominantly on legal grounds. The role of Joint Regional Planning Panel could be changed to fulfill this need.

2. Reforming the Governance and Institutional Frameworks

The importance of new, and significantly improved, governance and institutional frameworks around the planning system cannot be over emphasised. There are three underpinning reasons for this crucial importance – restoring community trust in the planning system, greatly improving the working relationships between state and local government and the crucial need for metropolitan and regional coordination of planning and implementation.

Community Trust

As emphasised above, community trust in planning, the decision-making for development and rezoning has been, significantly eroded over the past five years or so. The primary causes of this erosion in community trust are perceived connections between favourable development decisions and political donations; instances of corruption (notably at Wollongong City Council); indiscriminate calling in of development proposals for Ministerial decisions, State government decision-making processes; more general centralisation of planning powers in the State government; the and the predominantly negative reporting in parts of the media about planning. Also, Court decisions such as that relating to Catherine Hill Bay have given some level of formal endorsement by the Judiciary to the community view those political steps were taken outside of legal and professional parameters to achieve results for certain developments – and developers. (The relevant Land and Environment Court judgement by Justice Lloyd referred to be Memorandum of Understanding, which embodied a transfer of land from developers to state government ownership, as a land "bribe" and as meaning that the Minister had an "apprehended bias" for subsequent decisions about
rezoning and development applications. (Whether this at the end of the day is correct or not, it does represent a very unhealthy perception of a state government in carrying out its planning responsibilities in a legal and ethical manner).

There are many in the planning profession who believe that professional practices and policies of planning to have become overly politicised. This is a difficult conclusion to reach and make judgement upon the course, at the end of the day, professional planners in state and local government are accountable to, and take direction from, their political masters of the day. It is also complicated by, and reinforced by, there being no transparency, certainly at the State government level, about advice given and recommendations made by senior managers in planning to the Minister and his/hers political advisers and media minders.

This erosion of community trust has had a significant and negative influence on the planning professions. Such factors have tended to cascade down into attitudes of other stakeholders towards planning.

**Working relationships between State and Local Government**

The last five years or so have also been characterised by predominantly adversarial working relationships between state and local government rather than the collaborative relationships that are fundamental to achieving good delivery of service to community and stakeholders. The Local Government Shires Association and representatives of the planning profession have been frequently frustrated by the imposition of changes and reforms to planning legislation and practice rather than up front consultation being conducted that in the end would lead to better content in those changes and reforms together with, most importantly, joint ownership of those changes and reforms for implementation.

There has to be community trust in the political and professional decision makers. Good policy and its effective implementation relies upon sound structures collaborative working relationships between the agencies involved, notably state government agencies and local government. With all its inherent conflicts, major amounts of money to be won or lost on proposals and the diversity of values that underpin planning, there is a crucial need for transparency, openness and respect for the professionals engaged in the processes. A new approach to governance surrounding planning is vital.

An underlying principle for planning system in any state or territory should be for decision making to be at the level at which the results are closest to those affected by the decision – the principle of “subsidiarily”. Also, those affected should have to be engaged in the process of policy making and /or decision making. State legislation is the mechanism by which this authority is devolved to local government and also by which...
the State Government exercises its reserve powers to enable State directions (policies) and Ministerial intervention (policies or development application determinations) for matters of State and/or regional significance e.g. to enable the State Government to override local councils’ resistance to increased density when this is deemed necessary to provide for demographic and housing demand reasons on a metropolitan wide basis. Also, development proposals may need multiple approvals form a number of state agencies and the reserve powers need to provide for this.

State reserve powers therefore extend to state sign off of local planning instruments to ensure that State and regional strategies and policies are fulfilled (or departure acceptably justified) – again on the basis of ensuring that matters of State and regional significance are properly addressed in those local planning instruments. This is different from current practice in which the State department of planning re-checks much of what local government has already done of a local nature.

Joint Regional Planning Panels have, arguably, been “imposed upon” by local government as enabled by the legislation of June 2008. These Panels comprise of five “independent experts” who make decisions on applications for development valued at between $10M and $100M if they are private development proposals and applications valued at $5M or more if they are Crown and/or Council applications. The five independent experts are legislated to comprise three State representatives and two representatives of the local Council in which the development proposal is located. The Chair and Deputy Chair must be State Government representatives and essentially the local government representatives are always “outnumbered”. This is arguably undermining local democracy and passing development decision making onto a majority of Panel representatives who, arguably, do not necessarily have the adequate grounding in the local area needed for proper decision making.

The Integrated Planning Framework promoted by the Minister for Local Government and which became state legislation in late 2009 is an important initiative that should have been taken collaboratively with the Minister and Department of Planning. This Framework embodies an approach to local government planning and reporting based upon the four pillars of sustainability and social, economic, and environmental and governance. It does not however embody a collaborative process to achieve outcomes at local levels by local government with state agencies. It does, however, present a huge opportunity to enhance governance at the local level and be a basis for collaborative working relationships between councils and state agencies.
Coordination of Metropolitan and Regional Planning

Planning for a modern city like Sydney that purports to attract international capital and be a global city needs a different institutional structure at the metropolitan level than 45 councils and fragmented approaches by State Government agencies.

Regional strategies are a crucial element of the planning framework in NSW. Regional strategies are characterised by a lot of generalities and the decision making process not adequately including engagement with local Councils. This is a significant variation of approach compared to other States. For example, the Lower Hunter Regional Strategy was initially advertised in 2005 and following formal public exhibition was endorsed by the NSW Cabinet in October 2006 with confidential lead up processes which did not involve engagement with the constituent Councils of the Lower Hunter.

Reform of the Governance and Institutional Framework

Hence, what are the main initiatives needed for reforming the governance and institutional framework for planning in NSW? Again, there has to be commitment at the highest political level, that is, have the Premier and key state ministers. Given that planning will be a focal state election issue, it would be beneficial for the major parties to announce steps to establish such a reformed governance structure.

That governance structure might contain the following.

a) An ethical framework for politicians and senior management and professionals in state and local government which is established by a collaborative process involving the Minister for Planning, the NSW Auditor General, the Director-Generals of the Planning and Local government departments, the NSW Ombudsman, the Independent Commission Against Corruption and some stakeholder and community interest group representatives. This process would need to be integrated with the Reference Group referred to above for the overhaul of the legislation;

b) A Memorandum of Understanding or Inter-governmental Agreement be negotiated and established between state and local government that provides for:

- defines respective responsibilities for planning, infrastructure planning and delivery and environmental conservation and management;

- establishes clear criteria for Ministerial direction as to what projects are of State and regional significance and therefore are appropriate for decision making by the
Minister or by the NSW Planning Assessment Commission and clarify therefore which development proposals can be dealt with by the local Council and/or Joint Regional Planning Panels in a more logical, structured manner. This should also include fee structures that go with the process of the issuing of certificates, implementation of the consents and compliance monitoring that are generally passed on to the local Council for their action.

c) Structures should be initiated at state and regional levels to improve the collaborative practices and processes between state agencies and between state agencies and local government;

d) Stronger support for professionals engaged in planning at both state and local level to retain their independence of approaches in providing fearless and open advice. This is in part covered by the model Code of Conduct produced by the NSW Department of Local Government. However many Directors of Planning in NSW are subject of inappropriate political attacks by Councillors without sufficient ability for redress all action taken in response by the Mayor, General Manager or Department of Local Government;

e) The Role of Joint Regional Planning Panels.

- Systems and accountabilities can be devised to enable Councils to retain local decision making on Development Applications currently going to the Joint Regional Planning Panels. It would be my proposal that applications not dealt with by the Minister or Planning Assessment Commission are dealt with by the local Council, but if decision making is delayed for a certain, reasonable time or the applicant wishes to appeal a local Council decision - then a Joint Regional Planning Panel or its equivalent can be the backstop to ensure appropriate local government performance for development application decision making. This will also place an expert Panel in the position that is currently taken by the Land & Environment Court in terms of deciding appeals on Council decisions. This would mean that the initial appeal at least would be dealt with on a professional and merit based approach rather than leading to the legalistic and adversarial approach that is generally triggered by appeals to the Land & Environment Court and thereby on many occasions losing sight of the necessary emphasis on the merits of the proposal as distinct from the legal issues.
f) Metropolitan Plan and Institutional Structures.

- There have to be some major new initiatives taken towards better financing of Australia’s cities and regions – particularly with respect to infrastructure funding and its integration with settlement and infrastructure planning. In line with this, a renewed and innovative approach to decentralisation is needed – and this has been foreshadowed to some extent by the NSW Coalition for NSW;

- Establish a Sydney Metropolitan Delivery Authority and a Sydney Metropolitan Plan that projects Sydney’s growth to the year 2050 – based upon sound, deeper and extensive public engagement;

- Establish new governance structures that expedite rezoning that are clearly consistent with the adopted Metropolitan Plan, and as Mr Greiner suggests, a Minister for Sydney is well worth considering to manage the implementation of Metropolitan plans and infrastructure delivery;

- Establish Infrastructure NSW – a body modeled on Infrastructure Australia (and as put forward by Barry O’Farrell the Leader of the Opposition);

g) Establish NSW State Government capability for compulsory resumption to enable the delivery of contiguous parcels of land to the market place in both urban and urban fringe areas. Such compulsory acquisition at fair market value would enable greater urban density around public transport modes and give complex but high potential urban renewal a chance. This is an essential mechanism to achieve greater sustainability and enhanced public transport facilities – particularly in the context of rising energy costs and increasing limitations on oil for fuel supply of general motorised transport;

- Achieve the political leadership that is critical to make decisions in the public not sectional interests and sustain those decisions. In Mr Greiner’s view, there is a complete loss of community trust in the planning process that an NSW Coalition Government must reverse.

h) Regional Plans and Institutional Structures.

- The preparation of regional strategies should, in my submission, be based upon a more open, transparent process involving regional committees which would be
lead by the NSW Department of Planning (Regional Office) and comprise of relevant State agencies and constituent Councils.

- These regional committees would be responsible for:
  
  I. preparing, implementing and monitoring the regional strategies; and

  II. evaluating the compatibility of draft LEP’s with the regional strategy and State policies – thereby enabling them to proceed in a timely manner without reference to the Head Office of the Department of Planning

- It probably would have to be accepted that the Regional Committees are advisory only. The State Government would need to have overriding ability for decision making on the content of the Regional Strategy given that local Council representations regarding locations, scale and densities of development etc. may well be in variation with the State government’s intended strategic approach. However, there would at least be an open and transparent process founded in a proper governance framework for such regional strategies – and the local Councils should feel that they have been engaged in due process rather than excluded from a confidential process of developing regional strategies.

3. Rebuild Community Trust and Engagement in the Planning System

Community engagement can be difficult and resource hungry. As reflected in reports by the Development Assessment forum, community engagement as a practice has diminished over recent times. This has been driven by many factors. The NSW State government has been disinclined to conduct effective community engagement, with political activity dominating in decision making. Development assessment has dominated over strategic planning – leading to micro single issue driven consultation rather than engagement to formulate strategic policies. Engagement on planning issues produces conflict and this deters many stakeholders. The media has exacerbated loss of trust in sound community engagement – often resulting in “trial by media” rather than a sound conflict resolving process of engagement.

As Nick Greiner observed in his excellent address to the NSW Property Council “Great Debate” on population growth on 5 November 2010, cities
that achieve highly on “liveability” and good planning outcomes (e.g. Portland, Oregon in the United States) have greater levels of cohesion between government, business, professional and community leaders based upon good engagement.

Planning in NSW needs new and innovative mechanisms to achieve better community engagement, including:

- Sydney metropolitan level committees involving representatives of each constituent council that bases its positions of consultation with its local community;
- Enhanced educational programs about planning as a profession and major projects;
- Mechanisms for members of the community to get involved in debates and receiving information about macro projects.

4. Coordination of State Agencies

As reflected above, the multiple Acts of Parliament that are relevant to the planning system in NSW, each have their own responsible agency acting relatively independently under the directions and parameters of their particular piece of legislation. This causes significant fragmentation of legal responsibilities and practices and indeed reinforces the multiple territories that comprise the attempts to coordinate an overall planning approach.

It has to be acknowledged that the realism of subsuming the multiple pieces of legislation into an Act that gives say the Minister for Planning or a new position of Coordinator General in NSW gives the ultimate decision making power (having considered social economic and environmental factors) is one of non likelihood of coming to fruition. However, the benefits of such a proposal are manifest, and the new government in March 2011 should pursue this option.

Enhanced coordination of State Agencies should be the objective of the newly elected State Government and seek to be implemented through the following initiatives:

a) The continuation of the Chief Officers (Director General's Committee of those agencies responsible for Development Infrastructure and Environmental Outcomes in the State. This committee should potentially be chaired by a newly established position of a Coordinator General seeking to enhance that coordination and cohesion in the approaches to such issues;
b) the Regional Directors of the Department of Planning work with the Regional Directors / managers of other state agencies relevant to development Infrastructure and Planning & Development - Infrastructure and Environmental issues – plus the constituent local Council's to achieve protocols of dealing with policy making and referrals / advices / concurrences pertinent to Development Applications being dealt with by Councils and Joint Regional Planning Panels for that particular Region / Sub Region;

c) State Government Agencies should be required to draft policies and strategies – similar to those prepared by Council's in the planning system – to enable greater certainty around those policies & strategies (particularly those relevant to the responsibility of the dept of Environment, Climate Change and Water) – have those draft policies and strategies placed on exhibition and then adopted. These policies / strategies should then provide a much more substantiated basis for Councils and Joint Regional Planning Panels to be given delegations for making decisions without referrals to those state agencies.

5. A State Plan for Development Infrastructure and Environmental Management

The current State Plan is a very positive step that was originally undertaken the Iemma Government but is more “motherhood and spin” than containing really actionable content. The content in the main does not connect well with actions by state agencies, local government or other organisations.

A NSW State Plan for development infrastructure and environmental management should derive from and translate national directions for growth infrastructure and environmental management to the state level. Neither is the content particularly “SMART” – specific, measurable, actionable, realistic and timed.

A State Plan should:

- Derive from, and translate, the national directions for growth, infrastructure and environmental management to the state level;
- Establish population projections for the next say 40 years (to coincide with the nationally published projections of 36 M population by the year 2050) and then propose the locational distribution of that growth in the short to medium term (say up to 10-15years);
• Plan the pattern of development and related infrastructure to support that growth;

• Establish directions as to where social economic and environmental factors should override the other factors involved in implementing the plan i.e. provide some semblance of a sustainability framework for planning the future, infrastructure and delivery for environmental management in the State as a whole;

• Establish how environmental offsetting and bio-banking can be better implemented - including the use of some of the Crown Land resources available in the State;

• Be based upon higher level resources and policies than currently produced by the state agencies e.g. the Department of Environment Climate Change and Water should be provided with the funding and resources to strategically identify the scale and locational distribution of conservation lands due to significant flora and fauna etc and to identify lands where priority should be given to using the financial outcomes of offsetting and bio-banking negotiations;

• Incorporate policies for the conservation of prime agricultural land based upon research and analysis as to the scale and locations of such land which should be conserved as an integral part of NSW farmland providing adequate levels of food production into the long term;

• Connects strongly with how implementation should flow and the local and regional levels; and

• Consolidate all existing State Environmental Planning Policies and Ministerial directions that are relevant to the framework of such a State Plan.

6. Culture

Planning is seemingly immersed in a blame game amongst stakeholders - mainly around why development doesn't happen, why the development application process is so complicated etc. In that mix, planners are often portrayed as barriers to development and being overly negative in responses. However, in many ways, planners are the messengers of a broken system. There are frequent criticisms and assertions from the development industry and applicants for development proposals that there is a negative culture pervading local government planning.
Planning is also characterised by micro level conflicts about specific developments within which self interests tend to prevail to the detriment of the public interest at the macro level. Examples are the resistance to increased densities in Sydney suburbs and Councillors responding to the 'loudest voices' about a specific proposal and consequently not adhering to policies or consistently applied planning controls.

Generally speaking, there has been a loss of traction and credibility for planning professionals in terms of being enabled to consistently implement policies and decisions in line with the strategic directions. Planning is inherently conflictual and there is a lot of money to be won or lost, and a lot of emotion generated in terms of the self interests and group interests that operate within the system.

Many of the cultural issues are exacerbated by the fragmented legislation and fragmented responsibilities and practices amongst stakeholders. This is most apparent with the state legislation relevant to planning comprising multiple Acts of Parliament administered by multiple agencies, with multiple agendas and responsibilities. Again, there is no cohesive enacting legislation that vests authority in a single agency or Minister that leads to a decision 'taking the entire social, economic, development infrastructure and environmental issues into account'.

There is a debate as to whether the major difficulties making planning so hard in NSW is because of culture or because of legislation. It is somewhat of a “Catch 22” situation. If major changes in legislation, governance and Institutional Frameworks do not happen, then the culture will not change. The legislation itself is reactive – triggering a development assessment response in having to question a complex range of factors and whether the development proposal adequately meets those factors and controls. More enabling legislation such as exists in Queensland would put emphasis on strategic planning and policy making and enable development assessment planners to be more facilitators and promoters of good development.

How do we change this culture, this blame game? I make the following points:

- The need to significantly shift culture is an endorsement of the need to overhaul legislation. This overhaul of legislation should be aimed at reducing the complexity, adding clarity, reducing fragmentation by having a single authority enabled in the legislation to make decisions to take into account the various submissions and factors from multiple agencies and advisors;

- The overhaul of the legislation also creates legislation that is more enabling and is much less litigious than is currently the case. This should include reduced emphasis on the Land & Environment Court and more emphasis on Joint Regional
Planning Panels as the recourse when applicants wish to appeal decisions by Local Government;

- Change the Governance Framework as stated above in terms of having a very clear explicit ethical framework and Codes of Practice - particularly focusing upon the interactions of professional planners with politicians;

- Establishing Institutional Frameworks at metropolitan and regional levels that significantly improve the coordination and working relationships amongst state agencies and between state agencies and local government;

- Enhance the public education endeavours to more widely disseminate the importance of planning, the 'bigger picture' reasons for planning policies and how that translates to the importance of certain decisions and actions at the local levels;

- Shifting the content of academic courses in planning to enhance these changes in culture as younger planners go forward into their careers.

7. Department of Planning Leadership

There is a large pool of very talented and skilled staff within the NSW Department of Planning. However, there is a major misuse and misdirection of those talents and skills. There are major gaps between 'where the department is at, and where the department should be' in terms of its effective leadership of the planning system and planning practice in NSW. I do wish to emphasise that the gap is more attributable to politically driven factors than any lack of performance by senior management in the Department.

The major issues are

- A high percentage of the department’s resources are allocated to Development Assessment, major projects, Part 3A applications, supporting Joint Regional Planning Panels etc;

- The very extensive and misuse of professional resources directed at reworking and policing work already completed by local government professional staff – notably draft Local Environmental Plans;

- The very apparent situation where the Minister and Department treat Local Government very much in terms of "do as we say, not
do as we do" – there are significant inequities in terms of performance monitoring, fee structures and the like;

- There is politicisation of output of the Department of Planning in terms of what is prioritised and how statements are provided to the media, by Ministerial and departmental staff about issues and about the performance - including comparative performance of the Department of Planning and Local Government.

The initiatives that should be taken in response are:

- The Department of Planning in progressing terms to take on an explicit shift in leadership, in terms of their declared objectives, roles and responsibilities, to become more policy making and strategic planning oriented at the State and regional levels;

- A Memorandum of Understanding/Memorandum of Understanding between the State Minister for Planning and the local Government Association / Local Government Shires Association to provide greater clarity on what are major projects and Part 3A Applications to be assessed by the Department and determined by the Planning Assessment Commission or the Minister and in doing so, establish criteria for such projects which should be of State and or regional significance. The result should be a significant proportion of projects currently dealt with by the state government being reverted back to Local Government for assessment and determination.

- A major review be undertaken of the whole system around Local Environmental Plans. Why is each and every Local Environmental Plan (LEP) subject of gateway review by a higher resourced LEP Review Panel at State Department Level? Why is every draft LEP subject of reporting to the Minister, reviewed by Parliamentary Counsel and publication in the Government Gazette? More emphasis should be given to Regional and Local Strategies and if draft LEP's are referred to the Regional Office of the Department Of Planning and are in accordance with those Local and Regional Strategies – then the local council should take full control of management of the draft LEP including legal review by accredited lawyers and its formal endorsement by the local council. There should be no need to incur the major delays so detrimental to development viability and professional representation that are incurred because of the role of Parliamentary Counsel and the Department of Planning in many aspects of LEP management.

- The ethical framework referred to above should provide for much more publically accountable and transparent declarations about
the working relationship between senior management in the Department of Planning and Ministers and other politicians to support the independence and fearlessness of advice to be provided by senior management;

- The Department becoming more engaging with the other major stakeholder in delivering the planning system – particularly local government. This should include the appointment of an office/Executive Director responsible for the working relationships and improvement of practices with, local government;

8. New Models for Regional and Local Plan Making

My purpose here is to propose reforms to the ways in which regional strategies / plans and local strategies and local environmental plans (LEP’s) are prepared and endorsed. Regional Strategies / plans and local strategies and LEP’s could be much more effective and efficient in their preparation and endorsement.

At present regional strategies are characterised by

- Being non-statutory documents and are given formal legal implementation status by Ministerial Directions, LEP's and other mechanism;

- Generalised, 'static' policies with a lack of connection between vision, translation into local plans and overall implementation;

- Inadequate connection / integration with local strategies and Local Environmental Plans;

- Uncertainty about what will be the State Government / Ministerial determinations for projects supported by Regional Strategies i.e. what proposals within regional strategies are of State and regional significance warranting Ministerial or Planning Assessment Commission determination;

- Non collaborative working relationships between Minister for Planning, the State Department for Planning, other state Government agencies and local government in the preparation of, and implementation of, the regional strategy/ plans;

- An increasing disparity between the completion and effectiveness of regional strategies east and west of the dividing range.
• The lack of integration between settlement planning, environmental consolation management and infrastructure planning and delivery.

Regional planning is increasingly high on the State political agenda (both current government and opposition Coalition) and given, declarations by both the current Government and the Coalition in NSW that more emphasis will be given to facilitating growth of regional centres, then the importance of Regional Planning is also increasing.

The issues with Local Environmental Plans are:

• The overly prescriptive, standardised LEP gazetted by the State Government – which does not allow for different local characteristics and localised planning;

• The lack of differentiation of the scale and impacts of different rezoning proposals;

• The persistent lack of regard for strategic rationales to underpin draft LEP’s;

• The unacceptable time delays incurred in processing draft LEP’s through the detailed reworking conducted by the Department of Planning and because of the role of Parliamentary Counsel (there was one council in the Hunter Region that had 28 prior versions of its Draft Comprehensive LEP before endorsement by the Minister and it's Gazettal);

• The LEP panel comprised of senior management of the Department of Planning plus a local Government representative which is always based in Sydney and lacks connection with the local issues and contexts of the proposals being considered.

In terms of Regional Strategies / Plans, my proposals are:

• The integration of development / settlement planning, infrastructure planning and environmental consolation / management.

• That every Regional Strategy / plan be prepared under the auspices of a Regional Committee comprising of the Department of Planning (Chair) other advisory and service providing State Agencies and the constituent Council’s in the relevant region;

• That a clear implementation framework be an outcome of those Regional Strategy / Plans that integrates with the policies works programs and budgeting infrastructure providing agencies (all of
which should be on the regional committee responsible for the preparation of and implementation of that regional plan);

- Integration of settlement patterns, infrastructure, planning and delivery and environmental conservation/management;

- Include of more meaningful statements on sustainability, climate change, sea level rise and coastal management;

My proposals for Local Plan making are:

- To make local strategic plans mandatory in the revised legislation subject to endorsement of the office of regional Department of Planning and that such local strategies also be given legal status within each Local Environmental Plan. Hence assessment of development proposals and facilitation of good development can be managed by local planners with stronger foundation in terms of fulfilling that local strategic plan;

- That some relevant draft Local Environmental Plans are fully processed by the local Council – including the utilisation of local, accredited solicitors – so long as such draft LEP's are concluded to be consistent to the local Strategic Plan by the Council and the Department of Planning (regional office);

- Increase the status of Development Control Plans as the local Councils’ policy expressions for development and environmental outcomes in their local government areas. Any development applications /proposals that are considered to be sufficiently at variation from such Development Control Plans would result in a reference to the local Council for potential acceptance to variation of policy in that particular instance and/or decision to adopt new draft policy in relation to the matter at hand;

- That the responsibility be given to the Regional Offices of the Department of Planning to determine the acceptability of Draft Local Environmental Plans relative to the State Plans / Directions, the applicable Regional Strategy / Plan and the applicable local Strategic Plan.
9. New Models for Development Assessment in Local Government

Development Assessment in NSW is cumbersome and overly complex. It is argued by some professional commentators that the system is almost unworkable and is ridden by major uncertainties and unnecessary delays. One of the key factors is of course the deficiencies in legislation and policy making, the latter being at both State and Local Government Levels.

As stated above, the current State Government has chosen to persistently add on new policies and ‘ways of doing development assessment’ in a predominantly ad hoc, piecemeal manner as distinct from looking at a more comprehensively integrated review of the legislation to more effectively improve development assessments. Until recently, a lack of engagement with Local Government has lead to a real lack of partnership approach and collaborative working relationships between State and Local Government for planning which has exacerbated the issues undermining effective development assessment.

Those adversarial working relationships also extend to the way in which the State Government has taken a very ‘do as we say, not do as we do’ approach. There are clear inequities in the reporting of performance management in State Government compared to Local Government and in terms of the fees which the State Government is able to require for Development Applications with which it deals compared to the statutory fees that apply to Local Government.

The main issues for development Assessment in NSW can be summarised as:

- The deficiencies and gaps in the legislation and the policy framework;

- The fragmented, overly complex legislative and policy approach which has created many uncertainties and has been a piece meal ad-hoc approach by the State Government making the system increasingly fragmented and cumbersome;

- The same processes, requirements of assessment and legal accountabilities go with Development Applications of varying levels of impacts. In this regard, the well conceived structure of the approach and different categories of applications adopted by the national Development Assessment Forum has not been applied in NSW;

- The Exempt and Complying Development Code for single dwellings issued by the State Government is very detailed and
specific – also not able to encompass areas which are flood prone and bush fire prone – so the take up rate has been very limited and way below the Government’s declared targets for exempt and complying development as stated in 2006 – 2008;

- The system is overloaded at the ‘front end’. Since 1998 all specific design and working drawing requirements have to be satisfied with the development application instead of the preceding process by which the development application could be conditionally approved before the level of detail in working drawings and design was required for a building application which also could be conditioned. Now the single application leads to a Construction Certificate which is not enabled to be conditioned;

- The extent of preparation and investment in preparing a development application makes in increasingly unlikely that an applicant will back track and undertake the rework and additional cost of preparing a substantially revised application if the local Council or the State Government considered that such substantial revision is warranted. The all too common reaction – certainly at Local Government level – is for applicants to lobby politically for the acceptance of an application for which the professional staff considers to be inadequate or containing unacceptable variation from policies and/or professionally considered better outcomes;

- The limited resource capacity of Local Government in NSW generally, to deal adequately and efficiently with development assessment. This is underpinned by the general State Government’s approach to rate pegging, percentages (without special approval of the Minister) that are below general staff annual salary increases in Local Government. This together with the retention of development applications fees at levels that fall far short of any real cost measure of delivering the development assessment service at Local Government level – also underpinning the resource capacity limitations in Local Government;

- The State Government focus has been administrative efficiency of delivering development approvals rather than focusing on delivering better social, environmental and economic outcomes.

Therefore NSW needs a new set of business models to undertake the service delivery of Development Assessment and some of the responses to the above issues are put forward as being:
• Reinstate a two stage Development Application system essentially being the Development Application and building application process that existed until 1998 – together with increased formal emphasis on concept plan consideration at pre-lodgement stage;

• NSW Government should adopt the Development Assessment Forum categories of Development Applications and in particular the ‘Code – Assess’ category which would enable development proposals of relatively small impacts such as single storey dwellings to be subject of a lower range of criteria and assessment requirements than is currently the case and as would be compared with industrial / commercial or residential unit developments. Section 79C of the Environmental Planning and Development Assessment Act could be amended to reflect this initiative;

• Formal risk management approaches to development assessment be initiated and practiced through academic training and Department of Planning/Local Government leadership;

• Enable accredited practicing planners to submit and endorse assessment reports to reduce assessment by Council planners with certain classes of development;

• Review the fee structure for development applications to better reflect the capital value of the proposal, third party impacts and the real costs of the consent authority – including, as appropriate a community service obligation calculation which might, say, be 30% of the real cost of assessing different classes of assessment;

• Implement the Memorandum of Understanding / Intergovernmental Agreement referred to above (in the section: Governance and Institutional Frameworks) so that there are consistent criteria differentiating the development applications that are of state and regional significance and therefore for Ministerial or Planning Assessment Commission determination – with the remainder being dealt with by local government (with rights of appeal / review to joint regional planning panels as put forward above);

• Increase policy and criteria output by state agencies – with related protocols of assessment – to enable significantly increased delegated concurrence and decision making by consent authorities – and particularly by Local Government;
• The integrated development assessment provisions in the Environmental Planning Assessment Act be modified to encapsulate all the proposals and also including proposals that currently sit outside integrated development but which should be encompassed by that category – notably developments having impacts which require concurrence of the Director General of the Department of Environment Climate and Change and water under the Threatened Species Development Act and also certain developments that are complicated by the Native Vegetation Act;

• Enable a much higher proportion of minor developments to be dealt with as "Code Assess" (DAF term) and be subject a far more limited a range of criteria. e.g. individual dwellings. This would lead to levels of legal assessment and resource commitment more commensurate with the potential impacts of these developments. In addition, enable more such low impact development proposals to be exempt and complying development and suggested in more detail below.

Enhance the use of Exempt and Complying Development

70% of development applications are for residential purposes – mainly single dwellings. Far too high a proportion of these are dealt with as development applications with levels of legal complexity and resource commitment disproportionate to their potential impacts.

Issues arising with the currently limited use of the exempt and complying approach are:

• Significant resource constraints in local government;

• The "other side of the coin" is that whilst exempt and complying development can inject more certainty and reduce costs and a resources for low impact development, it can place new demands on compliance by Councils;

• Minor developments caught in the same legislation as major development with significant impacts;

• The Commonwealth Development Assessment Forum Model encourages a higher level of utilisation;

• Accountability of private certifiers.

• State government guidelines/requirements about what constitute exempt of complying development developments are too complicated, too limited in scope and are too "one size fits all";
• The need to enable some local discretion for ‘locality and place making’ to respond to local and diverse character and design factors;

• The need for clear policies and criteria to enable accredited Council Health & Building Surveyors/private certifiers to manage complying development.

• To respond to these issues, the State Government should:

  • Have local private certifiers be made accountable to a local or regional board comprising director(s) of Council(s), professional association representatives and an independent auditor, e.g. drawn from ICAC or Ombudsman’s Office – rather than rely on a central, state-based Building Professionals Board;

  • Ensure local research on potential Exempt and complying provisions, and have Council practitioners evaluate impacts before enactment.

  • Enable Exempt and Complying developments to be in Development Control Plans, not statutorily contained in LEPs as is being required by the State Government through the standard LEP;

  • Establish enhanced accreditations with the Rural Fire Service to substantially reduce single dwellings that are local rather than complying development because of bushfire prone designation. (It is understood that amendments are to be made on 25 February 2011 by the State Government to the SEPP for these Codes to include clauses relating to bushfire and flood prone land).

10. The Contribution of Academia

There is a shortage of qualified planners in NSW and nationally, in part due to reduced numbers of graduates form universities running planning courses over the last ten years or so and the discontinuation of some courses. Also, many university courses have become more misaligned with realities of planning practice.

Academia could improve its contribution to planning as a profession, and in turn the contribution of the profession to the community, by:

  • Providing higher levels of research capability and support towards preparation of plans by State and Local government;
• Conducting research around “what’s working and what’s not working” in planning practice;

• Peer reviewing many draft plans and proposals in an independent manner;

• Better aligning contents of courses with the content of “planning in the real world”.
CONCLUSIONS

Planning as a government activity contributing to community benefit and as a profession is somewhat at a crossroads – maybe a precipice in NSW!! It could become increasingly marginalised or it can gain increased relevance and potency.

It is time for some crucial re-evaluation of the profession and the practice.

Planning is not the Commonwealth Governments’ biggest issue but it certainly should figure in a much bigger way than it does. Never has there been a more important time for the Commonwealth Government to step up and deal with the issues of our cities and regions – to improve productivity, sustainability and liveability. Climate change needs a national approach. With the national population projected to rise from 22 million to 36 million in the next 40 years – planning is essential at the national level and to integrate infrastructure delivery and funding with planning for urban, coastal and regional development.

NSW is about to go the polls. Planning is a hot issue for the election. The Coalition is likely to win and traditionalists might say that planning is likely to be more marginalised under the Coalition than Labour. Actually, there is the opportunity for planning to increase its value and contribution under the Coalition. There are the declared intents of the Coalition to overhaul the legislation, reform Part 3A, work at partnerships with local government, hand some planning powers back to local government and to formally establish Infrastructure NSDW with integrated planning of development and infrastructure delivery. Certainly the coalition has a huge opportunity to achieve heightened community trust in the planning system, make the system clearer and more efficient – and thereby achieve some positive political results!! The need for such broadly based reform is compelling.

I hope that this paper leads to significant shifts in paradigms about planning in the Commonwealth and NSW State governments and the profession can thereby live up to its potential as a contributor to broad community benefits.
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