AlburyCity

The Way Ahead for planning in NSW?
Issues Paper of the NSW Planning System Review

December 2011

Questions:

A - Introduction

A1. What should the objectives of new planning legislation be?

- ESD
- Fair and equitable
- Orderly and planned development
- Economic use
- Proper management and development

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

No

A3. Should there be strict controls in plans?

Only limited key controls should be contained within legislated planning documents.

A4. Should applications that depart from development controls be permitted?

Yes subject to suitable justification, assessment and public scrutiny.

A5. What should the test be for a proposed variation?

Whether it meets the intent of the original control, what is the built form outcome, is there suitable need and justification for the variation.

Applications that propose significant variations (i.e. greater than 20%) from the minimum standard should be required to be in conjunction with a Planning Proposal.

A6. Should new planning legislation provide a framework for regional strategic planning processes? If so, how should appropriate regions be determined for strategic planning?

Any new planning legislation should have some regard to regional strategic planning processes with greater weight given to the regional strategies currently being prepared by the NSW Department of Planning & Infrastructure (DoPI). It is noted however, that the regional strategy for

the Murray Region has not been finalised and councils within this region have raised concerns in regard to the draft Strategy as exhibited, whilst no strategy has been prepared for Western NSW.

The draft Murray Strategy is an example of a plan that suffered from not being fully located within a single regional office as it straddles two regions within DoPI and therefore not being suitably or efficiently co-ordinated. Any future regional plans should ensure that they correlate with, and are contained within, an appropriate regional boundary.

A7. *Should strategic plans be statutory instruments with greater weight?*

Strategic plans should be given greater weight as statutory instruments (in a similar position as DCPs) due to the detailed controls contained within these documents and the significant amount of work undertaken in preparing these documents. These plans should also be given greater weight as they require public exhibition and the consideration of any submissions received ensuring a transparent and inclusive process. This is a similar approach to that used in the Victorian planning system and in particular has relevance to the preparation of structure plans, masterplans or site-specific development control plans for areas designated as Urban Release Areas under Standard Instrument LEPs. This is also seen as critical as many of these strategic plans outline important infrastructure or built form outcomes, which will have a significant impact upon council services and the public domain. By giving greater weight to these plans, this forces applicants to have greater regard to these important strategic documents.

The implementation/recognition of these strategic plans as statutory instruments should not be used as an excuse to add additional layers of complexity, external intervention, approval or concurrence into the strategic planning process.

A8. *How should implementation of strategic plans be facilitated?*

The implementation of strategic plans could be facilitated by inclusion or reference in local environmental planning instruments such as Local Environmental Plans (LEPs) or Development Control Plans (DCPs). In doing so, this would give greater weight and due consideration to particular strategic plans and policies. It is noted that strategic plans and policies are required to be publicly exhibited and are subject to public scrutiny and the consideration of any submissions received ensuring that the process is transparent and inclusive.

A9. *In a new planning system, how can we improve:*
- *Community participation opportunities;*
- *Consultation processes for plan making and development assessment?*

The current level of community consultation is considered appropriate in most instances for the preparation of strategic planning documents, however it is noted that the quality of this consultation does vary from council to council. A check of many recent public exhibitions for draft LEPs and other strategic planning policies shows an improved level of community consultation in

the use of plain English version instruments, fact sheets, powerpoint presentations and community forums or workshops to explain the complexities of such documents.

Issues regarding the top-down approach to planning are noted, however with the introduction of the Standard Instrument LEP opportunities for local input are limited due to the rigid nature of this plan. Whilst the Standard Instrument does limit the ability for local governments and communities to influence the structure of this plan, it does provide certainty and consistency across different Local Government Areas.

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

A regulated framework should be provided for infrastructure levies, however the framework should provide and encourage local variations as one size does not fit all.

State community infrastructure should be provided by and financed by the state government through existing financial mechanisms. The state government should be funding infrastructure to support growth and productivity in NSW.

The provision of infrastructure should be guided by regional strategies but those in turn must be relevant and suitably resourced when prepared. Whilst some areas of the state are high growth and therefore have higher demands for infrastructure, other areas, especially those within major regional centres, should not be ignored. Adequate resourcing to enable preparation and adoption of relevant and current regional strategies is recommended.

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

Infrastructure to cater for development still provides a benefit to the wider community and therefore the costs should be attributable to a wider portion of the community. Therefore utilisation of taxation revenue such as GST is suggested.

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

Regionally significant development should be determined by a JRPP or equivalent.

Local development applications should be determined by councils with appropriate levels of delegation granted to staff.

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

The current JRPP system is considered satisfactory and should be replicated in any new planning system. JRPPs should decided regionally significant development applications as they currently do.

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

Yes, where appropriate strategic planning has been undertaken and planning controls or guidelines are implemented such as permitted under the current system.

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

Yes the system needs to be simplified and should be able to be interpreted easily and consistently.

Since the introduction of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the main processes regarding exempt and complying development are now contained within this SEPP. Following its introduction it is noted that the level of complying development in an Albury context has since declined due to the significant complexities of this code, the metropolitan nature of the SEPP and that due to the quick turnaround times for Development Applications in Albury the cost-savings involved in doing a CDC versus a Development Application are not as strong as in metropolitan areas. In fact it has been suggested to AlburyCity that there are economic incentives to undertake a DA rather than modify plans for a CDC, especially in relation to the new home market which in our context is largely undertaken by Victorian companies.

Whilst some significant improvements have been made to the SEPP over time to expand its application and remove any ambiguities, it is still a SEPP and therefore has to be written in a legal context which makes it difficult if not impossible to use for the average person. The Codes should be contained within a format that is accessible and usable such as the Residential Design Codes in Western Australia which could be referenced or enacted by an enabling SEPP or similar.

In a simplified system, there are development types that should be governed only by a “Building Approval” such as residential alterations and additions at ground level, new single storey dwellings, swimming pools etc.

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

The private certification system needs to be created so that there is a level playing field between all parties. The same obligations, rights and responsibilities should be required of all certifying parties regardless of whether they are a Council or not. This includes the information management and record keeping and reporting responsibilities and also the enforcement responsibilities and obligations.

The private certification system is not perfect and generates more questions than it does solutions. The level of auditing and compliance checks on private certifiers needs to be improved. This is not a local authority’s role – there is currently market competition between local authorities and private certifiers. Having to regulate and police certifiers directly affects any market and places significant pressures and unrealistic expectations from the community on a local authority.

Local authorities are continually being engaged by the 20% of applicants that cause 80% of the issues. Private certifiers simply refuse their business. Alternatively where a client doesn't like a condition of consent or decision by a different area of council, they engage a private certifier. Local authorities are not at able to refuse clients and must provide the service, this is not an open and even market.

A17. How can private certifiers be made more accountable?

As noted in A16 above, a greater level of auditing and compliance checks of private certifiers is required. The local authority should not be responsible for regulating/auditing private certifiers, especially where they compete in the same market.

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

There should not be a right of review or appeal against a council decision concerning the zoning of a property (i.e. maintain the status quo). The reason for such a position is because of the current opportunities available to landowners and third parties to object to the land use zoning of a site. Currently, when a draft LEP is placed on public exhibition any member of the public can make a submission regarding the proposed zoning and following conclusion of public exhibition, council must detail why they propose to amend or retain the proposed zoning based on the information provided. This requires further council endorsement prior to referral to the NSW DoPI, who will undertake their own assessment as to the appropriateness of the zoning decision. For this reason there is already considered to be ample opportunity for persons to object to a proposed zoning.

Unlike DAs, which are of a site-by-site nature many strategic planning processes are large scale or broad brush at the local government level. By allowing reviews or appeals of zoning decisions this could compromise draft plans that have been based on sound environmental, economic and social grounds, whereas many objections are purely economic based or 'NIMBY' based. The impacts of such reviews and appeals could also add to the already lengthy timelines involved in preparing city-wide planning controls and could open the door for continual reviews of an LEP compromising the veracity and certainty of this document.

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

There should be no distinction between a council decision to change a zoning and a council refusing an application to change the zoning of a particular property as both require sound environment, economic and social consideration prior to a change in zoning taking place.

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

The NSW Land and Environment Court should act as the independent 'umpire' or arbitrator to resolve disputes regarding rights of appeal or review against council zoning decisions as they can

act as an impartial decision-maker in determining the appropriateness of council's zoning decision.

A21. *What are appropriate measures that might be implemented in a new planning system to create public confidence in the integrity of environmental impact statements (and their supporting studies) for major development projects?*

The focus should remain on the integrity of the strategic and planning assessment process as noted in later in the response to D36.

B – Key Elements, Structure and Objectives of a New Planning System

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

- ESD
- Fair and equitable
- Orderly and planned development
- Economic use
- Proper management and development

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

Yes – in regards to a definition of ecologically sustainable development that incorporates quadruple bottom line measures and outcomes.

B3. Should some objectives have greater weight than others?

No

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

Yes as objectives should be tailored to the desired outcome, however there needs to be strong integration between the objectives of the different streams of planning so as to ensure consistency and integrity within the planning system.

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

Yes

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

Definitions need updating and modernising

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

Yes – to address forms of development that do not fit the current definition – eg the creation of a building envelope.

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

Yes -

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

No – public interest is an amorphous concept which is totally dependent on the relevant issues and circumstances of a particular case and therefore not practicable nor appropriate to define in such a manner.

The definition of 'public interest' is often a hotly contested issue raised by the general public and objectors to DAs alike. Over time this definition has been vague in nature and interpreted by the court system to allow for adaption over time. One of the best examples of how the court defined public interest can be seen in the decision of Justice Pearlman in *Pata Holdings Pty Ltd v Minister for Land and Water Conservation (2001) 119 LGERA 231* and *NSW Land and Environment Court* (*Double Bay Marina v Woollahra Council [2009] NSWLEC 1001).*

For these reasons, it is considered that a definition of public interest not be included as this allows for flexibility and adaptation over time without being rigid and inflexible.

B10. Should there be one act or separate acts for different elements of the planning system?

Only one act

B11. What should be in regulations?

Detailed working provisions of the Act.

B12. Should there be a statutory requirement to review legislation periodically? If so, at what interval?

It is recommended that a requirement be inserted into the Act requiring legislation to be periodically reviewed and if required, updated every 5-10 years. This will ensure that legislation stays relevant and current with modern-day planning practices and principles.

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

Yes

B14. Should the information available about land on a central portal be able to be legally relied upon, if there is the ability for it to be certified for accuracy?

Yes

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

Potentially, however an issue is that that s149 certificates can show a point in time snapshot. This would need to be able to be regulated through a centralised system so as to resolve potential legal arguments or issues about development rights or potential at any point in time.

B16. What provisions should there be for independent decision making?

There should be some provisions for independent decision making such as JRPPs or the like. The key element relates to the true independence of the decision making body/panel which relates to its composition and powers/authority.

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

The Minister should be involved in setting of policy and direction. The Minister should not be responsible/authorised to make individual assessment as these should be undertaken by independent body or DPI however a Minister can make a determination consistent with any recommendation of such agencies.

C – Making Plans

C1. *Should there be an independent State Planning Commission to undertake strategic planning? Or should there be an independent Planning Advisory Board?*

It is agreed that a State Planning Commission could prove useful in the creation and assessment of strategic land use planning and the assessment of interaction with other plans, however it would not be an efficient use of limited resources to create two separate arms of state planning.

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

It is recommended that regional organisations of councils (ROCs) be encouraged to participate in regional strategies and a shared resource for consistency in regional decision making and planning. This does not require that they be formally recognised in any new planning legislation.

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

Whilst it is acknowledged that community *participation* can help eliminate community concern compared to community *consultation* it is noted that since the introduction of the Standard Instrument LEP, opportunities for local input are limited due to the rigid nature of this plan. Whilst the Standard Instrument does limit the ability for local governments and communities to influence the structure of this plan, it does provide certainty and consistency across different Local Government Areas.

Furthermore, the current planning process does provide opportunities for community input. Should, following the completion of this exhibition period significant changes need to be made, then the draft plan shall be re-exhibited in accordance with the Act. However there are various degrees of commitment and success with these requirements and therefore it is recommended that there should be guidelines created which outlined the minimum consultation requirements such as:

- Period of exhibition
- Extent of consultation (eg area)
- Minimum standards of accessibility eg plain English guides etc
- Minimum additional information sessions etc to explain the planning proposal.

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

When a council is preparing a new local plan or amending an existing local plan it is required to consider all relevant State Environmental Planning Policies (SEPP's), Regional Environmental Plans (REPs) (deemed SEPPs) and Section 117(2) Ministerial Directions. Many of these heads of consideration are similar to Section 79C considerations used to assess development applications. Currently Section 55 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) requires that a planning proposal include amongst others a statement of objectives of intended outcomes,

an explanation of the provisions, justification of those objectives, outcomes and provisions, as well as details of the community consultation to be undertaken.

Furthermore the NSW DoPI's *A Guide to Preparing Planning Proposals* provides further guidance on the matters that should be addressed in a planning proposal. Some of the issues to be addressed in a planning proposal as it relates to the public interest include:

- Is there a net community benefit?
- Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?
- How has the planning proposal adequately addressed any social and economic effects?

In this instance, the plan making process is considered to already address the public interest and therefore does not warrant an additional inclusion.

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

The definition of 'public interest' is often a hotly contested issue raised by the general public and objectors to DAs alike. Over time this definition has been vague in nature and interpreted by the court system to allow for adaption over time. One of the best examples of how the court defined public interest can be seen in the decision of Justice Pearlman in *Pata Holdings Pty Ltd v Minister for Land and Water Conservation (2001) 119 LGERA 231* and *NSW Land and Environment Court* (*Double Bay Marina v Woollahra Council [2009] NSWLEC 1001).* For this reason, it is considered that a definition of public interest not be included as this allows for flexibility and adaptation over time without being rigid and inflexible.

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

Similar to the response provided to question B13 above, it is recommended that a requirement be inserted into the Act requiring legislation to be periodically reviewed and if required, updated every 5-10 years. This will ensure that legislation stays relevant and current with modern-day planning practices and principles.

Some documents (such as site specific masterplans) will however remain 'static' in time and would not be further updated due to the additional workload and cost imposts this would place on local Councils.

C7. At what suggested intervals should such reviews occur?

Similar to the response provided above, these reviews should occur every 5-10 years.

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

Currently the *Local Government Act 1993* (LG Act) only covers the classification and reclassification of public land and the preparation of strategic plans (governance related) regarding community strategic plans, resourcing strategies, delivery programs, operational plans and integrated planning and reporting guidelines. For the most part, these do not deal with 'true strategic planning matters' and are governance focussed.

Recognition of new strategic community plans under the Local Government Act is important and relevant with regards to strategic land use planning and it should be formally recognised.

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

AlburyCity agrees that population data and statistics could prove a useful tool in the preparation of LEPs and other strategic planning instruments. It is noted that at the time of preparing draft ALEP 2010, AlburyCity was required to justify the extent of its Urban Release Area based on population data and existing and forecast take-up rates via the production of a demand and supply forecast report.

It is further noted that AlburyCity had previously raised concerns regarding the NSW DoPIs population statistics and forecasts for Albury and it is recommended that reference be made to the large number of councils that already produce population data and statistics for their particular local government area such as Forecast ID.

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

Yes.

AlburyCity (as like most other councils) already makes population statistics and data publicly available on its website as it can be used for a number of purposes other than just plan making. It is further noted that at the time of exhibiting a draft Planning Proposal a local council is required to exhibit any supporting material or documentation that has helped support or justify the proposed amendment. In this instance, AlburyCity was required to exhibit its' previous strategic planning documents including the Land Use Strategy, Local Environmental Study and Demand and Supply Forecast Report amongst others things.

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

Whilst the issue of climate change is still a contentious subject, the evidence points towards a long term trend of a changing climate. Due to the significant impacts that climate change can potentially have it is recommended that the precautionary principle approach be adopted with regards to climate change as a means of buffering against future impacts.

Notwithstanding, it is noted that the NSW DoPI has already prepared and used several model local clauses for Standard Instrument LEPs that address climate change issues including: *Foreshore building line & Development on the foreshore must ensure access* and issues regarding sea level rises or changes in flooding patterns.

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

Biodiversity and environmental studies are already a requirement for the preparation of most plans to justify a proposal, however obviously there will be certain instances where biodiversity and environmental studies are irrelevant and therefore it should not be mandatory for all circumstances. Nonetheless, there are a significant number of benefits to be gained from the use of these studies.

It is noted that ALEP 2010 was conferred Biodiversity Certification by the NSW Minister for Environment and Climate Change under the provisions of the *Threatened Species Conservation Act 1995* (TSC Act). This means that any development in the proposed bio-certified area (or which development consent is required under the LEP), is for the purposes of Part 4 of the EP&A Act taken to be development that is not likely to significantly affect any threatened species, population or ecological community or its habitat.

That is, biodiversity certification replaces site-by-site, development-by-development assessment of threatened species under the TSC Act with a landscape-wide strategic assessment. In general, it removes the need to undertake detailed threatened species impact assessments at the development application stage for the bio-certificated area of the LEP, reducing government regulation whilst improving or maintaining biodiversity. This approach is therefore seen as proactive and it is recommended that it be adopted by all local councils preparing city-wide planning instruments.

The process of biodiversity certification was previously governed by the former NSW Department of Environment, Climate Change and Water (DECCW) now NSW Office of Environment and Heritage (OEH), but is currently the responsibility of the individual council. Due to the lack of relevant expertise, costs and time involved in gaining biodiversity certification it is expected that few, if any councils' will decide to seek biodiversity certification due to the costs and timeframes involved. It is recommended that should biodiversity and environmental studies be included in the preparation of plans, then the NSW OEH be responsible for the preparation of these studies with the help of local councils.

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

The current approach used to identify landscapes of Aboriginal cultural heritage significance states that 'the exact location of any Aboriginal items need not be shown; however the general area should be indicated on the map to assist in identifying where consent might be required'. This broad brush approach is used due to the dispersed, scattered and sometimes "confidential" and culturally sensitive nature of Aboriginal cultural items. These items and areas are depicted by

a yellow outline or orange infill and shown on the relevant Heritage Map and listed in Schedule 5 as contained within the LEP.

This approach has proved quite useful over time and is considered appropriate for the identification and location of Aboriginal heritage items. Nonetheless, it is noted that scarred trees are currently not made public knowledge due to the possible adverse impacts (graffiti or destruction) that may result from the identification of such items and it is recommended that this remain the case.

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

New planning legislation should provide a statutory framework for strategic planning, as well as giving greater weight and recognition to the significant amount of work undertaken in preparing these strategic planning documents.

By providing a statutory framework for strategic planning, this approach will be a similar approach to that used in the Victorian planning system and in particular has relevance to the preparation of structure plans, masterplans or site-specific development control plans for areas designated as Urban Release Areas under Standard Instrument LEPs. This is also seen as critical as many of these strategic plans outline important infrastructure or built form outcomes, which will have a significant impact upon council services and the public domain. By giving greater weight to these plans, this forces applicants to have greater regard to these important strategic documents.

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

Support is given to providing strategic plans with legal status similar to statutory instruments due to the important role that these strategic plans play. This is also seen as critical as many of these strategic plans outline important infrastructure or built form outcomes, which will have a significant impact upon council services and the public domain. By giving greater weight to these plans, this forces applicants to have greater regard to these important strategic documents.

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

The implementation of strategic plans can be facilitated through adoption by a local council following public exhibition and consideration of any submissions received. These plans however could be given weight under a section in a new planning act that sets out broad brush parameters for local strategic plans such as public exhibition requirements, endorsement by council and consideration of submissions. In doing so, this provide greater weight and status to these plans.

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

There is a need for a hierarchy of geographical regions where strategic plans should apply as is currently the case. For example, a new planning system and SEPPs (if still applicable) would be state-wide, regional strategies would be catchment based, whilst LEPs and site specific masterplans would be at the local government area level.

The geographical regions where strategic plans should apply will vary depending on the type of strategic plan. As outlined above, the current approach sees strategic plans used at a number of different geographical regions and areas and it is considered that this is a similar approach that would be used in a new planning system.

C18. Should there be State environmental planning policies? If so, should they be in a single document? Or should they be provisions in a local environmental plan?

State Environmental Planning Policies (SEPPs) are seen as beneficial and play a very vital role in the NSW planning system. They help provide consistency across the state, control particular forms of development and encourage a number of positive environmental, social and economic benefits.

Either alternative approach proposed in the discussion paper is seen as beneficial in terms of rationalising the number of SEPPs applicable across the state, removing inconsistencies, placing the relevant SEPPs into a schedule to the Standard Instrument LEP or alternatively consolidating all SEPPs and remaining provisions into a single instrument, similar to that for Section 117(2) Ministerial Directions.

These approaches are seen as more flexible and allow the government to directly control planning matters of state-wide importance without the need to create an entirely new planning system.

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

It is agreed that statutory public participation be required when making SEPPs to allow for greater public participation. It is noted that the NSW DoPI does currently exhibit draft SEPPs via its website, via letter to councils and via its eNews newsletter. This provides the opportunity for interested persons or organisations to lodge a submission regarding a draft SEPP, which is seen as satisfactory in this instance. It is further noted that Section 38 of the EP&A Act currently requires consultation to occur prior to the making of a SEPP and that the Minister seek and consider submissions from the public on the matter. In this instance, ample opportunity is considered to be provided regarding public participation in the making of SEPPs.

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

Support is given to allow a SEPP to be subject to disallowance by Parliament as this approach is seen as more democratic and accountable. The best means to achieve this could be if SEPPs were characterised as regulations or the like.

C21. Should there be a review process to deal with issues arising between the Department and councils that relate to the preparation of local environmental plans?

A review process should be provided to deal with issues arising in the preparation of a LEP between the NSW DoPI and councils because of the important nature of these plans. The best means of achieving this is by utilising the recently created Local Planning Panel.

C22. Should there be legislative provisions to establish this?

Assuming that a review process is established to deal with issues between NSW DoPI and local councils arising from the preparation of LEPs, legislative provisions will need to be established to support this process. It will need to be made clear at what stage the review process should occur i.e. start, middle or end, or whether this should occur where an issue arises between NSW DoPI and a local council regarding a particular issue of a draft LEP. A more significant issue at times however is what dispute resolution mechanisms there should also be in relation to other government agencies and their input (or at times lack of) into the strategic planning processes.

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

Support is given to the current system for preparing planning proposals. At present planning proposals can be prepared by the Director-General of the Department, a relevant planning authority or an individual landowner. It is considered that the same process should be applicable to all three user groups to ensure consistency and remove issues of bias. Provisions that require an applicant to demonstrate a public benefit beyond the private benefit are noted, but are however already addressed in the planning proposal process that all applicants must address, whether it is the Director-General, a relevant planning authority or an individual landowner.

Similar to the processes used for development applications, any new planning act could address information requirements and outline the processes involved in preparing and lodging planning proposals. As part of this process, a list of information requirements could be provided stipulating what environmental studies and other considerations are necessary for the planning proposal to be furthered. It is noted however, that the current Gateway Determination process already covers most of these aspects as it stipulates whether support is given by NSW DoPI and what information (additional) needs to be provided to enable a determination of the rezoning request.

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

One of the major issues with the current plan making system is the long timeframes involved in making simple amendments to LEPs. Whilst section 73A does allow for expedited amendments to environmental planning instruments to correct minor or obvious errors, the timeframes involved in proving that a proposal satisfies the requirements of this section are onerous and long-winded and in many instances are not any quicker than the regular planning proposal process. Whilst the Department has significantly improved the turnaround times involved in determining planning proposals by stipulating a finalisation period at Gateway Determination, the process is still long-winded and excessive following public exhibition and prior to finalisation.

Planning proposals could be processed more quickly if they are categorised initially into different groups (low-impact or complex) that makes not only the exhibition period shorter but flags those proposals that the Department can expedite more quickly removing backlogs in the system or that could have assumed concurrence and publication in the GG.

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

Issues regarding a right of appeal or review for decisions about planning proposals are noted with Council of the view that there should not be a right of review or appeal against a planning proposal. The reason for such a position is because of the current opportunities available to landowners, third parties and council's throughout the planning proposal process to make representations regarding these proposals prior to a determination being made.

Prior to issuing a Gateway Determination, the NSW DoPI determines the adequacy or appropriateness of the proposal and assesses any further information requirements that need to be addressed prior to giving its support. Likewise, at the finalisation stage of a planning proposal, the NSW DoPI must take into consideration any submissions received, any relevant environmental studies and any state-wide planning directions to ensure consistency in planning across the state and provide for the wider public benefit. In this instance, it is therefore justified that no right of appeal or review be available to third parties and that only in certain tightly defined instances could a proposal by a proponent be reviewed where it addresses the original reasons for refusal as contained within the Gateway Determination.

C26. Should there be a right for a landholder to seek compensation for the consequences of a rezoning of their land?

Landowners should not have the right to seek compensation through any new Planning System as a consequence of the rezoning of their land as strategic planning addresses social rather than private or individual interests, which often neglects the public interest in regulating activities that cause polluting spill overs onto other land and into the air and waterways, which belong to the community. If each landholder were allowed to develop land according to their own wishes, there would inevitably be conflicts arising from inconsistent uses that had spill over effects.

The State government is able to regulate the use of privately owned land without paying compensation. If mere restrictions on land use were compensable then it would become either very expensive or practically impossible to implement policies and laws for environmental management and the social good of the community. It has been claimed that the progress of civilised society would effectively grind to a halt if every minor regulatory act of the state provoked an immediate entitlement to some carefully calculated cash indemnity for the affected landowner. Compensation for regulatory restrictions is sometimes justified however on grounds of equity to encourage efficient investment, or to enable transition to new standards of environmental care. The Just Terms Compensation Act allows for consideration of compensatory mechanisms and processes. It may be argued then that in such cases compensation should only be offered for a transitional period as an equitable means of bringing about a rapid and irreversible transition from unacceptable to more preferred management practices.

C27. When local environmental plans are being made or amended, how can transparency and opportunities for negotiation be improved during consultation with government agencies?

Opportunities for transparency and negotiation in the preparation of local environmental plans are considered an important component in the plan making process. It is noted that previous requirements under Section 62 of the EP&A Act required a council to consult relevant public authorities or bodies that may be affected by a draft local environmental plan. During such consultation a public authority and a local council had the opportunity to negotiate appropriate planning outcomes for the proposed LEP. The outcomes of these negotiations were then in turn forwarded to the NSW DoPI for assessment prior to the issuing of a Section 65 certificate to publicly exhibit the draft LEP. At the time of exhibiting the draft LEP, councils were required to place on exhibition a list of all public authorities consulted and any issues received by these authorities, as well as, a response to each of the issues raised. This process ensured that transparency was maintained and that the public was aware of previous negotiations between a local council and a government agency.

It is noted that a similar process of consultation and negotiation with relevant public authorities or bodies currently exists under Section 56 of the EP&A Act. It is noted however that there is no requirement to publicly exhibit a list of any public authorities consulted or the negotiations or responses to issues raised by these authorities. It is recommended that in the NSW DoPI document titled *A Guide to Preparing Local Environmental Plans* that a reference be inserted into Section 4.5 that requires a list of any public authorities consulted or the negotiations or responses to issues raised by these authorities be included as a mandatory component of any public exhibition.

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

It is agreed that certain individual rezoning proposals should not require a merit consideration at the state government level where they have been identified by a previously endorsed strategic plan. In this instance the Minister and Department should be confined to only assessing whether the proposal accords to these plans and should not result in a full blown assessment.

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

The process prior to listing a heritage item within a LEP should be the preparation of a heritage study or strategy identifying any items proposed to be listed and any items proposed to be deleted from the heritage list as contained within the LEP. When preparing this heritage study, a local council must notify affected landowners of the proposed listing/removal of heritage item status as it applies to their property and the draft strategy must be placed on public exhibition to allow interested persons the opportunity to make a submission to the proposal.

Following completion of public exhibition, a council must consider all submissions received and make where necessary any changes prior to formal adoption by council. Once this document has

been formally endorsed, the recommendations of this report can be included in any draft LEP and its subsequent public exhibition.

Based on the above information, it is considered that adequate opportunity would be given to an individual landowner to comment on the heritage status of a property. It is noted that no individual landowner should have the ability to veto the listing/removal of a heritage item as these are important historical records of a locations past that should be retained for the greater good of the community. Only in certain individual circumstances should the heritage listings proposed in a draft LEP be prevented where it can be proved that such listing/removal would be inappropriate (economic, financial or social grounds) in that instance.

C30. Should student housing be included as affordable housing?

Student housing provides a critical form of accommodation for younger persons of an often lower-income status and should therefore be included as affordable housing for the purposes of planning. Due to its location, student housing can often benefit from its proximity to readily available public transport, shopping and recreational facilities, which can reduce the need for private vehicle use and dispensation from normal parking requirements.

It is noted that the NSW DoPI currently has on exhibition a draft discussion paper regarding SEPP 65, which amongst other things seeks feedback on the inclusion of student housing as part of this SEPP. To help prevent abuse or use of designated student housing by other users, a requirement of proof of enrolment in a tertiary or higher educational degree could be used to help identify actual students that would benefit from affordable housing controls.

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

As outlined above, to help prevent abuse or use of designated student housing by other users, a requirement of proof of enrolment in a tertiary or higher educational degree could be used to help identify actual students that would benefit from affordable housing controls.

C32. What should be the legal status of a DCP?

DCPs currently do not have the same legal status as LEPs and do not require approval by the NSW Minister for Planning & Infrastructure prior to finalisation. These documents support the provisions contained within the LEP and require council endorsement following public exhibition and the consideration of any submissions received according to the *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation).

DCPs have many advantages as they help detail development controls, can address site specific issues and support the provisions contained within the LEP. Whilst some believe that DCPs need greater legal status, the current approach is preferred as it allows for the flexibility of planning controls as a DCP cannot cater for every development site and every development scenario, as well as the individual characteristics of every local government area.

It is further noted that there are extensive timeframes involved in the preparation and finalisation of LEPs and the NSW DoPI currently does not have the capacity or the ability to assess DCPs in addition to this.

C33. Should there be a standard template for DCPs?

Whilst there is merit in the adoption of a standard template DCP similar to the Standard Instrument LEP, due to the wide diversity and characteristics of local government areas, this makes it impractical to adopt such a standard template. Whilst LEPs can be standardised in terms of zones, clauses and objectives a DCP provides much more detail and can vary significantly between different local government areas and also the subject matter within the DCP. For this reason a standardised DCP template would not be effective. Notwithstanding the Department could provide some guidance in the form of planning circulars or practice notes as to how DCPs should be structured, as well as providing or encouraging the use of case-study DCPs that are best practice in how they address particular items or that are clear and logical to read and interpret.

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

The current LEP process requires that a local council consult relevant public authorities and government agencies including adjoining local government areas. In doing so, this allows for cross-border planning to occur to ensure a level of consistency in terms of zone names and the adoption and use of specific model clauses. With the introduction of the Standard Instrument LEP, this has allowed for greater consistency and cooperation between local councils and has helped remove inconsistencies in the planning system and confusion regarding planning requirements from one local council to another.

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

Support is given to the creation of a program to integrate Aboriginal reserves into any new planning system and could be incorporated into Part 5 Miscellaneous Provisions of the Standard Instrument LEP via the insertion of model local provisions. The timeframe for any such changes to be targeted for implementation could be the end of 2013 depending on the level of public interest and submissions received on the issue.

C36. Should developers of Greenfield residential land release areas be required to make provision for a registered club and associated facilities?

Developers of Greenfield residential land release areas should not be required to make provision for a registered club and associated facility as this is a commercial decision made by the subject landowner. It is noted however that as part of the master planning or structure planning of the subject site, consideration should be given to the provision and location of community and community related facilities (including clubs). An assessment at the time of planning the overall

development of the site should take into account the future population of the area to determine if a club would need to be provided based on a rule of thumb or industry standard by Clubs NSW.

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

Planning in the unincorporated area should be the responsibility of the Western region/office of the NSW DoPI. Due to the low population numbers contained within this area the unincorporated area could also be governed as part of the Broken Hill and Central Darling Local Government Areas that adjoin this area.

D – Development Proposals and Assessment

D1. How should development be categorised?

- DAF model is supported:
  - Assessable development – some different streams within dependant on complexity of development
  - Certifiable development
  - Exempt development
  - Prohibited development

D2. What development should be designated as State significant and how should it be identified? Should either specific projects or types of development generally be identified as State significant?

State Significant Development should be identified by type such as that currently identified in SEPP (Major Development) 2005.

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

The current regime in SEPP (Major Development) 2005 identifying development for assessment by JRPPs is a good starting base for identifying regionally significant development. However consideration should be given to exemption in circumstances such as that outlined in the response to A14.

D4. What development should be exempt from approval and what development should be able to be certified as complying?

Since the introduction of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* the provisions governing exempt and complying development are now contained under this Code replacing council's existing exempt and complying development provisions. Currently under this Code there are 56 exempt development types, with a number of additional development types proposed including fuel tanks and signage. Based on this list, AlburyCity does not see the need to add any further items to this list.

Similarly, complying development is now governed by the SEPP and replaces the requirements of councils local LEPs where they are inconsistent (following cessation of a transition period). It is noted that following the introduction of the SEPP the level of complying development in an Albury context has declined due to the significant complexities of this code, the metropolitan nature of the SEPP and the fact that due to the quick turnaround times for Development Applications in Albury the cost-savings involved in doing a CDC versus a Development Application are not as strong as in metropolitan areas.

There are development types that should be governed only by a “Building Approval” such as alterations and additions at ground level, new single storey dwellings, swimming pools etc.

D5. *Should councils be allowed local expansions to any list of exempt and complying development?*

Yes - councils should be allowed local expansions to any list of exempt and complying development.

D6. *Should there be a public process for evaluating complying development applications?*

No

D7. *Should there be an absolute right to develop land for a purpose permitted in the zone subject only to assessment of the form proposed?*

No as due to the Standardised Template some forms of development are permitted by default and not the choice of the local community.

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

No as some development impacts require a merit assessment and cannot be standardised as such.

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

Yes

D10. *Should a new planning system reinstate the ability to convert one non-conforming use to another, different non-conforming use?*

Yes, a new planning system should reinstate the ability to convert one non-conforming use to another different non-conforming use due to the impracticability to adapt certain non-conforming land uses back to conforming land uses and the expense involved in doing so. For example a petrol station or motor mechanics would prove unviable in most instances to be converted back to a conforming use such as residential development due to the issue of contamination and the cost of remediation involved. By allowing a less intense but still non-conforming use to be permitted with consent in a particular zone, this may allow for the site to eventually conform to the prescribed land uses of the site as the costs can be spread over a longer period of time making it economically more viable.

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

Existing non-conforming uses should be allowed to intensify on the subject site where they are appropriate for the locality and satisfy the requirements for the use and the zone, which it is located within, such as maintaining the residential amenity of an area or complying with designated setback requirements.

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

Notwithstanding the response provided above regarding the intensification of a non-conforming use on a development site, it is recommended that non-conforming uses not be permitted to expand beyond the boundaries of their present site due to the amenity and cumulative impacts that this may have on the immediate and wider surrounds.

It is noted that existing use right provisions were previously enacted to ensure equity and fairness in the ongoing operation of existing non-conforming land use types due to the large financial expenses involved in converting a non-conforming use into a conforming use. As an expansion of a non-conforming use would require the consumption of adjoining land and potentially existing conforming land use types, it is recommended that a non-conforming use not be permitted to expand beyond the boundaries of its site to ensure that any possible impacts are limited to the current level of amenity for the individual site and the wider area. Should it be deemed suitable then a Planning Proposal should be undertaken to ensure that the zoning is correct and appropriate for the site.

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

Existing non-conforming uses should be permitted to have access to exempt and complying development provisions where they can satisfy the requirements of the Codes SEPP in certain circumstances. The reason for such an allowance is because of the minor nature and impact of this form of development such as a concrete driveway, path, patio or pergola that would otherwise require a formal development application to be lodged. This form of development should however only occur where the proposed development is not at odds with the objectives of the relevant zone or surrounding land uses and would satisfy the requirements of the Codes SEPP.

D14. When there is a change in zoning of the land, should an application be able to be made to a council for a declaration of the nature and extent of an existing use?

Yes

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

It is recommended that a system of transferable dwelling entitlements not be created to allow a landowner of agricultural land to transfer a dwelling entitlement from that land to another parcel of land due to the amenity impacts and administrative issues associated with such a change.

At present, a landholder cannot transfer a dwelling entitlement from one development site to another development site and cannot subdivide land for the purposes of succession planning between different generations due to issues associated with land fragmentation in established agricultural areas. Whilst there is merit in transferring a dwelling entitlement from one site to another where there is more than one dwelling entitlement available on the subject site, the issues of such a proposal are extensive. For example, dwelling entitlements are often created or enforced on the title of the property and would therefore need to be extinguished/created, whilst the proposed development site may be inappropriate for a new dwelling entitlement and may create amenity issues or conflicts with surrounding established land uses.

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

As per the response provided for D15 above, a dwelling entitlement on an original agricultural landholding should not be extinguished as dwelling entitlements should not be allowed to be transferred from one development site to another due to the logistical and equity issues involved.

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

It should not be possible for an applicant to lodge a development application for approval for a land use type that is prohibited by a LEP. The reason why these applications shouldn't be lodged is because it removes the certainty provided to the community regarding the prohibition of these land use items. It is noted that the land use permissibilities as contained within LEPs would have been made publicly available at the time of exhibition and therefore were subject to public scrutiny and amendment (if required), which therefore represents the views of the community.

By allowing prohibited developments to be lodged, this is at odds with the rigid structure of the Standard Instrument, which in turn would need to be amended to be more flexible and merits-based to accommodate the lodgement of such prohibited applications.

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

Yes

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

Yes

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

Yes

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

They should be encouraged but not mandatory.

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

Yes there should be standard requirements for types of projects that can be expanded or altered (with reasons) to suit a particular proposal and reasons should be provided for amendments to requirements.

D23. How can the application process be simplified?

- Further removal of simple development types from the DA system
- Greater emphasis on quality of strategic planning to remove ambiguity and uncertainty'
- Consideration of DAF assessment framework and criteria

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

No however it is recommended that there be minimum requirements/standards for forms.

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

Notification requirements tailored to complexity/type of proposal eg Minimum 7 days for standard DAs with the ability to be longer should an individual council resolve so.

D26. How can the community consultation process be improved?

By proper commitment to the process of consultation. The options outlined in the discussion are not supported as they would lead to over-complication of the planning system without any additional benefit gained for any party.

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

No

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

No

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

No

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

AlburyCtiy is not aware of any significant duplication of reporting and information except in instances where multiple copies are required for dissemination to government agencies.

D31. How should State significant proposals be assessed?

By DPI or PAC or similar.

D32. Should the Crown undertake self-assessment?

Yes there are appropriate circumstances where the Crown should be able to self assess and self determine.

D33. Should the Crown undertake self-determination?

Yes there are appropriate circumstances where the Crown should be able to self assess and self determine.

D34. Should councils undertake self-assessment?

Yes there are appropriate circumstances where councils should be able to self assess and self determine.

D35. Should councils undertake self-determination?

Yes there are appropriate circumstances where councils should be able to self assess and self determine.

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

It is noted that an EIS (like any material supporting an application) is going to advocate the positives of a development and argue for its approval. Therefore the integrity and independence of any assessment process, criteria and body is integral and paramount.

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

Yes however it should not be made mandatory.

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

Overall the broad nature of the current assessment criteria does allow for substantial consideration of potential impacts of development. Additional guidance material should be provided so as to support consistency and greater understanding of the context and relevance of the assessment criteria.

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

No

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

Yes in minor contexts and it should currently be a feature of any responsible planning authority. However there are concerns if it was mandated as compulsory in any planning legislation are there are circumstances where it is not appropriate and also concerns about whether the “changes” would substantially alter the nature and form of the development.

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

No as there are significantly many factors which contribute to land value with the development of adjoining land only being one of those factors.

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

No

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

Through adequate assessment criteria and strong and robust strategic planning.

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

Yes as cumulative impacts currently a consideration however this should also be a consideration in any strong and robust strategic planning process.

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

No

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

Yes

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

Yes however there needs to be strong guidance and parameters as to the matters and extent of breaches that could be considered so as to avoid potential for abuse of power.

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

Yes

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

No

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

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

Potentially but only for high risk locations.

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

- Water quality,

- potential for capture and reuse
- water usage minimisation

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

No

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

No

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

An amended application should be readvertised/re-exhibited when there are material changes to the proposed development or significant additional information has been provided which would affect the property rights of adjoining properties.

A new application should be submitted when the development has been substantially altered where it no longer resembles the original application.

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

The current performance monitoring is supported.

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

Yes

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

Mandatory timeframes with assumed concurrence and conditions if not met

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

The existing approvals and scope within Integrated Development should be retained.

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

No

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

Yes

D62. Who should make decisions about State significant proposals?

Through an independent body such as PAC or JRPP.

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

All

D64. Should there be a model instrument of delegation?

No

D65. What decisions should the Planning Assessment Commission make? Should the Commission's processes be inquisitorial or adversarial?

The Planning Assessment Commission should undertake assessments and determinations on state significant developments. The processes should be adversarial.

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

Public Meeting

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

Yes – in regards to local representation not a local member of parliament.

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

Yes

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

Yes subject to earlier comments about different processes for different types of development.

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

Yes

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

The current composition of a Joint Regional Planning Panel is supported.

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

Public

D73. Should a council be able to refer a matter to a Joint Regional Planning Panel for determination even if the matter would not ordinarily fall within the jurisdiction of such a panel?

Yes

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

No

D75. If a proposed development is recommended for approval by council staff, has no public submission objecting to it and is not objected to by the Department, should it be determined by the council?

No

D76. Should it be possible to constitute a Joint Regional Planning Panel with a single representative of each of the affected councils to consider and determine a significant development proposal that extends across the boundary between two local government areas?

Yes

D77. If located entirely within one local government area, should a significant development proposal that is likely to have a significant planning impact on an adjacent local government area be determined by such a two council panel?

Yes

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

No

D79. Should aggregation of multiple proposals to bring them within the jurisdiction of a Joint Regional Planning Panel be banned if, separately, they would not satisfy the jurisdictional threshold?

Yes

D80. Should an elected council have the right to pass a resolution to supplement or contradict the assessment report to a Joint Regional Planning Panel?

Yes

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

No comment

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

Yes

D83. What should be the requirement for a decision making body to give reasons for decisions – in particular as to why objections to a proposal have not been accepted?

Discussion on a development (including response to any submission) should be contained within the assessment report. Where decisions are made contrary to an assessment report then the decision making body should provide a degree of justification for any variance from the assessment report.

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

Yes

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

No

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

Yes as long as they are not compulsory

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

No

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

Yes under the circumstances proposed in the question background information.

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

Yes

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

No

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

No

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

N/A

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

Yes

D94. If there is to be a more concept based development application process, should councils have the power to impose conditions on construction approvals?

Yes

D95. Should IPART be given a general reference to examine and make recommendations about how any shortfall in development contributions plans for necessary community infrastructure should be funded?

Happy for a general reference but not required to be specifically within any new planning legislation.

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

Happy for a general reference but not required to be specifically within any new planning legislation.

D97. In light of the particular circumstances that might apply to the area covered in a contributions plan, should IPART be given a standing reference to enable councils to apply for variation to the cap on community infrastructure contributions?

Happy for a general reference but not required to be specifically within any new planning legislation.

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

No but it is considered suitable for IPART to provide some benchmarking standards for Councils.

D99. Would it be preferable to give IPART a general reference to develop an appropriate plan preparation methodology and approach to construction costing for community infrastructure contributions plans?

Yes

D100. Should IPART be given a reference to make recommendations as to when community infrastructure contributions should be available? Should this include recommendations as to whether a delayed payment system should apply and, if so, at what development stages payment should be made?

No

D101. Should there be a requirement for councils to publish a concise, simply written, separate document on community infrastructure funds collected and their proportionate contribution to individual elements in the council's contributions plan?

No

D102. Should IPART be given a reference to consider whether or not guidelines and/or mandatory requirements should be set for councils about community infrastructure prioritisation and levels of community infrastructure funds permitted to be available?

No

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

Yes

D104.Should any appeal be allowed against the reasonableness of a development contribution, if it has been approved by the Independent Pricing and Regulatory Tribunal?

No

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

Yes if relevant

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

Yes

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

Existing arrangements are generally satisfactory and supported but there needs to be more clarity over incremental changes and their effects. There are concerns with the impact of numerous modifications on Council resources and community trust and participation in the planning system.

Modifications should be able to alter the approved development but should not be able to:

- add new elements
- change the nature of the proposed development

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

No

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

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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

No

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

There needs to be more clarity to what constitutes "substantial commencement" and there should be a requirement to undertake further works past substantial commencement within an appropriate timeframe – eg 12 months.

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

5 Years

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

No

D118.Should private certifiers be permitted, in effect, to delegate certification powers to other specialist service providers and be entitled to rely, in turn, on certificates to the certifier from such specialist professions?

No

D119.Should certifiers be required to provide a copy of the construction plans that they have certified (as being generally consistent with the development approval) to the council to enable the council to compare the two sets of plans?

Yes

D120.Should there be a requirement for rectification works to remove unacceptably impacting non-compliances when these are actually built rather than leaving an assessment of such non-compliances to either a modification application assessment or to the Court on an appeal against any order to demolish?

No

D121.What statutory compensation rights, if any, should neighbours have against a certifier who approves unauthorised works that have a material adverse impact on a neighbouring property?

None

D122.Should construction plans be required to be completely the same as the development approval and not permitted to be varied by a private certifier for construction purposes?

No

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

Yes

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

To monitor and inspect development which has been approved as significant development.

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

Yes – 6 months.

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

Yes

D127.What might be done to have power delegated by the Commonwealth to State authorities or councils to give approval under the Commonwealth Act?

More robust and up-front strategic planning is required such as that undertaken for the bio-diversity certification of ALEP2010.

D128.Should there be a guide prepared to explain to councillors what their roles are in the development proposal assessment and determination process and how it is appropriate that they fulfil that role?

Yes

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

Department of Local Government in consultation with Department of Planning and Infrastructure, LGSA and other relevant stakeholders.

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

Yes

D131.Should there be specific statutory obligation to require the establishment of (and the procedures for) community consultation forums to be associated with major project developments?

No

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

Yes for development valued over $5 million.

D133.What fees should councils receive for development applications?

Assessment and advertising fees.

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

Annually.

E – Appeals and Reviews; Enforcement and Compliance

E1. What appeals should be available and for whom?

Currently there are a number of avenues for appeals, which includes Open Standing (Section 123), appeals by applicants (Section 97) and appeals by objectors to designated development (Section 98). Whilst it may appear that there is a wide range of scope for appeals, open standing appellants can only bring action in the Land and Environment Court where it can be proved where a breach of the law has occurred (i.e. application not notified) and appeals by objectors only relate to 'Designated Development', that is, there are limited 'third party' appeal rights in NSW.

It is noted that Victoria has established the Victorian Civil and Administrative Tribunal (VCAT), which allows for any third party to bring action to VCAT whether or not they made a submission during the exhibition of the application. Whilst this process is inclusive to all, it has resulted in a significant number of appeals being lodged against applications, many of which have been unsuccessful. This process is seen as too broad and should not be a system used by NSW.

Based on the above, it is recommended that proponent rights of appeal remain and that third party appeals should continue to be limited to larger and more intense development applications or their equivalent under a new planning system to prevent an over abundance of appeals being lodged. It is also recommended that other Alternative Dispute Resolution (ADR) methods and techniques be pursued as an alternative to formal court proceedings as this can reduce pressures on the court system and often result in outcomes that better suit all parties. Such techniques include:

- Section 82A reviews or equivalent
- Mediation
- Independent assessment

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

No – these rights should only be for those who a direct interest in the development

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

Matters of law and procedure only. See comments in relation to E1 above.

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

Yes

E5. What should be the time limit for any appeal about local environmental plan provisions?

Notwithstanding that it is noted earlier in this submission that no appeal rights should be available in relation to zoning decisions (which would also translate to LEP provisions). It is suggested that a maximum of 6 months should be allowed to appeal against an LEP provision as this would be

consistent with appeal rights in relation to a DA and also limits any impact upon the validity of an LEP.

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

No the discretion should be limited to cases where the amendments relate to agreed outcomes or unknown facts prior to the appeal.

E7. Should any appeal be allowed against the reasonableness of a development contribution if it has been approved by the Independent Pricing and Regulatory Tribunal?

No

E8. What sort of reviews should be available?

The current S82A review process has been reasonably successful in allowing for a reconsideration of the decision of a consent authority. This process or similar should be incorporated into any new planning system. It should be mandatory that any application for a review either:

a) Is amended from the original application; or
b) Contains additional information from that on which the original decision was based.

E9. Who should conduct a review?

Any review should ensure that there is a degree of impartiality and independence in the assessment and decision making. AlburyCity has a process whereby s82A reviews in relation to Council decisions are independently assessed by an external consultant and this permits Councillors to obtain an independent view of the amended application (see E8 for amendments). Whilst an independent body may suit metropolitan circumstances, reviews are infrequent in a regional and rural context and therefore it would be difficult to set up an independent body to undertake such reviews.

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

Third parties should not have the right to initiate a review, however they should have the right to be involved in any review including being notified and the opportunity to make a submission. The cost of a review should be attributed to the entity that is initiating the review.

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

By a process similar to that currently permitted under s82A.

E12. Do some present penalties need to be increased?

Yes the range of some penalties such as unauthorised work or work substantially inconsistent with any consent should be increased.

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

The ability to serve an order requiring the “cleaning up” of an unsightly property is required and supported.

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

The creation of standardised order templates and accompanying correspondence would be of assistance.

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

Yes

E16. Should monitoring and reporting conditions be reviewable?

Yes

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

Yes

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

No

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

Yes

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

Yes

F – Implementation of the New Planning System

F1. *What should be the role of the Department in implementing a new planning system? Should the role and resourcing of regional offices be embraced? And, if so, in what respects?*

The Department should play the leading role in the implementation of a new planning system and the role and resourcing of the regional offices of the Department should be embraced to ensure a smooth transition as they will be liaising with local councils within their particular regional areas. This could be achieved via the running of workshops and information sessions with local councils and the general public, updates via the Enews component of the NSW DoPI website and the use of LEP Practice Notes, Planning Circulars and other material to inform persons of the changes.

There should be far greater delegation on routine and procedural matters to the regional offices of DPI. The creation of a regional trainee program and increased resourcing of regional offices would be a significant improvement in not only the capacity of DPI to undertake their tasks efficiently and equitably but also as a sign of commitment to the new planning system. It will also allow for greater partnership building with regional offices which would allow for increased resource sharing and improved planning outcomes.

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

Councils should be utilised as a conduit and as the closest government sector to their local community. They need to be given the resources and tools to be able to inform their community of the new system and how to use it. Sufficient time is also required to ensure that the implementation of any new planning system is undertaken in a co-ordinated and co-operative manner.

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

Clear, concise and relevant explanation of the system.

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

Community engagement and participation plays one of the most important roles in the preparation of strategic plans and other policies. It is noted that the current statutory requirements usually only require a relevant planning authority to publicly exhibit a draft plan for a period of 28 days during which an interested person can lodge a submission prior to adoption by council. Many people see this current approach as being reactive and not proactive, as well as, being 'tokenistic'. Whilst this process may be seen as superficial, it is also noted that extensive community consultation and engagement can be lengthy and delay routine strategic planning processes.

Notwithstanding, it is noted that the level of community engagement and participation varies from council to council based on individual organisational values. AlburyCity for example, takes a very

proactive approach to community engagement and participation beyond the superficial public exhibition requirements outlined above. In doing so, this gives the community greater participation, greater input and a sense of ownership and certainty into important strategic planning processes.

Currently, AlburyCity is preparing a Precinct Structure Plan for its Urban Release Area in Thurgoona/Wirlinga catering for a future population of an additional 30,000 residents over a 30+ year time horizon and as part of these investigations have decided to undertake extensive community engagement and consultation. This process involves conducting initial scoping workshops to ascertain any issues, concerns or ideas raised by residents about how this area should be planned and will involve further workshops at the draft and final structure plan stages prior to formal public exhibition.

Some of the actions undertaken by AlburyCity during this process have included the running of community workshops, placing information on council's website, publishing public adverts and notices in the local newspaper and sending individual invite letters to affected and adjoining landowners. Several of the techniques used in this process could consequently be used by other bodies when preparing strategic plans (of a larger nature) as a way of increasing community engagement in the planning system.

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

A system that is focussed on outputs as well as processes and a system that requires integration and focuses on strategic planning.

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

- Peer review within delegations
- Review processes such as Section 82A
- Clear, early and upfront identification and determination on any potential conflict of interest

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

Technology can be used in all facets of the establishment of a new planning system including:
- consultation and engagement
- can be used to disseminate information and encourage interaction

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

Yes

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

- Plain English guides
- Variety of languages and formats
- Variety of media eg websites, written, verbal etc