Hawkesbury City Council

Attachment 1 to item 15

Copy of Responses to the Questions Contained in Issues Paper of the NSW Planning System Review

date of meeting: 14 February 2012
location: council chambers
time: 6:30 p.m.

Responses to Issues Paper Questions
Planning Review System

INTRODUCTION

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

The objectives of the current Act are satisfactory as they cover most situations. However, the inclusion of an objective relating to overall Sustainability should be considered.

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

No. All objectives of the Act should be given an equal standing so that the situation can be appropriately assessed.

A3. Should there be strict controls in plans?

- Flexibility and rigid controls are both possible in current Act. Similar ability should be retained in any new legislation.
- Flexibility has been removed somewhat in Standard Instrument LEP which will have the impact of tempering innovation in the planning Instruments.

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

There should always be an ability to vary certain development controls under certain circumstances as it is impossible to draft some development controls to deal with all situations. The ability should be restricted and should be stated in the governing Policy or controlling development Instrument rather than left up to the consent authority at the time of determination. This would provide more certainty for the applicant and greater transparency for the consent authority.

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

See comment in A4. There should be more responsibility for justification of the variation on the applicants and the consent authority should also have responsibility for giving clear reasons for any variations granted. (Albeit that this is currently done via an assessment report, however, there should be a clear reason for that variation indicated in the determination notice or meeting minutes.)

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

A regional strategic planning framework should be set in the legislation but the regional plans, whilst being statutory, should not be rigid in their application. The definition of a region would vary depending on the matters dealt with in the strategic plan (and that region could vary within a strategic plan). In this regard, regions based on catchments (geographic, economic and Local Government) should be used.

A7 Should strategic plans be statutory instruments with greater weight?

Strategic plans and planning should be a statutory process, at least at a Local Government level, i.e. National, State and Local should all be consistent (similar to Division of Local Government Integrated Planning and Reporting framework)

A8 How should implementation of strategic plans be facilitated?

By making the plans statutory there will be a mandate to prepare. However, resourcing would need to be guaranteed, e.g. % of income or via specific grant funding.

A9. In a new planning system, how can we improve community participation opportunities? How can we improve consultation processes for plan making and development assessment?

- Lack of community involvement in Plan making is often a perceived problem rather than an actual problem. This is due to the inexperience of the general community in the understanding of strategic plans, i.e. there is no specific development plans to comment on.
- There is a real need for better education of the general community in the process and also for the plans and legislation to be written in plain English with clearer indications of the implications of the plan. (Similar to the current Gateway process but improved)
- The introduction of the Standard Instrument Policy has been 'top down" and this has not helped with community participation perception.

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

The current Section 94 Plan system uses a satisfactory way of calculating the required infrastructure costs and contribution rates. However, it would appear that the system is the wrong way around.

There is the need for a statutory approach to strategic planning on a State, Regional and Local level to ensure that the true cost of development is understood before the decision to proceed is made. Development should NOT occur unless the ultimate size of the locality is known and the overall infrastructure needs are defined. This would then allow the decision to be made whether it is economic/affordable for the development to proceed in the first place.

If the above system is used then all residents, rather than just new residents, should contribute to the costs as all will ultimately benefit from the infrastructure.

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

In most cases, due to incremental growth in a locality, there is a deficit of infrastructure. In these cases all residents should make some contribution via land rates with some additional contributions from new development.

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

The current Act, or the processes that have developed from the numerous amendments, is too focused on individual development decisions and has lost the focus of "big picture" strategic issues. If more focus is placed on strategic planning, the individual development proposal, if consistent with strategy, would not be an issue and the determining Authority would not be an issue.

There should be provision for the majority of development decisions to be made by the local Council, particularly where the proposal is consistent with the strategic planning. There should be a provision for an additional determining Authority where the development crosses over local Council boundaries or where the local Council cannot agree on an outcome. In these cases there should still be representation on that panel from the local authority.

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

The current JRPP process could be retained for larger proposals, of true regional or State significance (not necessarily based on Capital Investment (CI) value that are consistent with an approved strategy. If there is a need for a variation to the local strategy then the local Council should have representation on the strategy review.

The determining authority, including Councils and Councillors, should have more responsibility for justification of strategy variations than current, i.e. basing a decision solely on objector numbers when a proposal is consistent with the Council adopted control/strategy that has been developed with community input is not enough.

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

Yes. However, the process would need to be specific as to the justification for such applications, i.e. well developed strategic directions that have been developed with community engagement.

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

The principle of Complying Development is sound. However, a State wide complying development code should be amended to set some minimum standards that can then be tailored to local conditions rather than the current standards that become very complex in an attempt to suit all conditions and localities. In this regard if the correct processes are used in the zoning of land, complying codes are then able to be set with more local input.

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

The Building Professionals Board needs greater input into the system development and the powers and freedom to enforce controls.

A17. How can private certifiers be made more accountable?

If a Private Certifier is to undertake work then they should be fully responsible for all aspects of the work and not have the option of passing the difficult parts, enforcement etc, on to Local Councils, i.e. they must be responsible for the remedying breaches or at least responsible for the costs of remedying those breaches. Also, the conditions under which a Private Certifier operates should be the same as Local Government, i.e. Local Government has no option to refuse work or must advertise fees in a less competitive manner than a Private Certifier.

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

No. Introduction of such rights would simply introduce additional delays to the development system. It is better to have sound strategy in place and rezoning to be consistent with that strategy. This extends the need to have significant public consultation with the preparation of that strategy.

The discussion of rights of appeal is generally raised by proponents that do not get the decision that they want and then state that their land is devalued. However, if it is decided that appeal rights are warranted then there is a need to include issues such as “betterment” (increase in land value due to planning decision) as well so that the entire issue is more balanced. This is still not desirable as the likely appeals would be time consuming and costly and not necessarily result in an improved outcome.

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

No, both are decisions that would be based on good strategy. (See Comments in A.18)

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

To avoid the inclusion of betterment, compensation and other emotive or political issues, these reviews should be undertaken by a separate technical body such as PAC or JRPP.

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?

This issue is based on the premise that the proponent creates a bias on the person preparing the EIS and also that those undertaking the assessment of the EIS do not know what they are doing or do not have the expertise. This issue is generally raised by those that simply do not agree with the decision.

To improve this perception an improvement to the planning system that specifically requires the consent authority to have all or parts of the documents peer reviewed at applicant's expense. Whilst this will not eliminate the issue it should improve the perception by including an additional review of the documents.

KEY ELEMENTS, STRUCTURE AND OBJECTIVES

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

The current objectives of the Act are adequate and should be retained. The consideration of Climate Change matters should be included in the objectives.

Many of the suggested additions included in the Issues Paper either currently exist in the objectives or do not seem to relate to overall objectives for an Act. In these cases the suggestions are matters best addressed via strategic planning or other planning instruments. The inclusion of some of the suggested specific objectives, such as urban forests, tourism, agricultural land, etc, rather than under a parent objective as is the case currently, would focus the Act on development issues and would loose the focus on the greater system.

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

This is already included in the objectives of the Act. However, giving greater weight to one objective over another would not be in the interests of a better planning system and would result in a biased overall system and the principles of Ecologically Sustainable Development.

B3. Should some objectives have greater weight than others?

No. See comments in B2.

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

No. If Plan making is done properly, i.e. robust Strategic planning, then development assessment essentially looks after itself if it is consistent with that strategy. The danger of having a separate set of objectives would be that development assessment could then become the driver for the development or change of Strategy, i.e. should not do strategic planning via development assessment.

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

No. That is a procedural matter that the Regulations can address.

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

Generally OK. Definitions should always be reviewed/updated regularly as part of regular Act review.

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

Yes. The definition should incorporate the provisions of:

- S.68 of the Local Government Act 1993;
- The Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulations 2005.

The definition should also clarify what is a "work".

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

No. 'Minor' is a relative concept and a definition could not deal with all situations. The revised Act should allow 'minor' to be defined in a Local or Regional Plan context.

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

No. Similar to above.

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

A Single Act is preferred as a single Act can be more holistic and cohesive for an entire system. However, the revised Act should retain Parts for clarification. Parts, e.g. Development assessment, Plan making etc, can be standardised nationally for consistency. This would relate to process matters with the provisions being able to be localised.

B11. What should be in regulations?

Act should not be too specific (see comments (B1 to B5) on objects) but should define parameters and powers. The regulations can then provide the details of those parameters and powers.

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

Some Acts currently have 5 years. Review is supported, but needs to be properly resourced and not result in "tack on" provisions that plague the current Act. Should consider having different review timeframes for different Parts of the Act to assist with the resourcing of any review.

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

Yes, but again resourcing is a problem particularly for Local Government. The revised system should give consideration to the introduction of a minor development levy, similar to the current planning reform levy but on a defined local scale, to have administrative review regularly and periodic wholesale reviews.

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?

The concept of providing this information in this way is supported. However, the implementation of this would be an enormous task. It is technically possible to do this in stages but the first task is to decide on the following:

- What system to use (needs to be the same protocol across the State or Nationally)?
- How to resource, as if it is relied upon legally then adequate resources would be needed.
- Get all NSW data (Local Government and State Agencies) to same accuracy and format. The Standard Instrument has uncovered some of these significant holes in the data between Authorities.
- All Local Governments have different systems and resources that need standardising.

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

Much of the S149 process is currently automated. However, the replacement of these Certificates is a long way off.

B16 What provisions should there be for independent decision making?

The new system should provide the provisions for decision making, regardless of which body, in the same Act. The current Act provisions are generally suitable, however, some aspects need to be improved, e.g. appointments (independence), inquisitorial process, etc. The provisions should be expanded to allow consent authority to refer a matter, in a simple process, to an independent decision making body.

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

If there is concern about "political influence" then ALL decisions should be delegated to non political, independent decision makers. If there is a desire to retain elected (local or State level) decision makers, then similar appeal rights and processes should apply to all levels and not be different for a local government body or the Minister.

MAKING PLANS

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

Decisions should remain with elected local Authority (Council) and then Minister as a second "check" if required.

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

No. ROC's are voluntary organisations that provide advice and assistance on regional matters and should remain as such.

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

If the Strategic Planning had statutory weight in the new system then the "community participation" can be at that level and then Plan making should be consistent with strategy. This would result in a more flexible and streamlined Plan making process. If the Plan is proposed to be inconsistent then it is referred back to the Strategic Planning process for amendment of either the Plan or the Strategy.

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

Yes, this is currently undertaken in the existing process.

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

Same as comment to B9.

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

Same as comment to B13.

C7. At what suggested intervals should such reviews occur?

Same as comment to B13.

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

The general concept of the Integrated Planning Model in the Local Government Act would work well with strategic planning, plan making, assessment, etc, in a revised planning system. The use of mandatory guidelines in Integrated Planning model could assist with regular Planning Act and Regulation reviews, etc. All approval provisions in the Local Government Act should be transferred from that Act and be incorporated into one Act (Revised Planning Act).

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

The best available at the time. The discretion as to what is best would be up to the relevant planning authority.

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

As the data would be obtained from a variety of sources it is not agreed that it should be mandatory to make the information public. However, it is agreed that it should be properly referenced. There may be legitimate reasons why data cannot be made public and the referencing would allow separate investigations with the data owners whether the information can be publically available.

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

Yes, but there needs to be a consistent State Policy in place as a basis.

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

Yes, where there is an intensification of development proposed. Similar to existing system provisions but needs to be more clearly defined.

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

Current difficulty in identifying and obtaining relevant information as it is currently confidential. Need to better develop a system that allows mapping of landscapes with potential and actual significance that can also access this confidential information.

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

Yes. But, final decision/adoption of local and regional strategy should remain with the local Council or Regional Council.

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

Yes, but strategic plans should have greatest weight/impact at LEP/DCP stage and SHOULD NOT be used as a provision for DA assessment.

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

Strategic planning could use a similar process to the Integrated Planning and Reporting (IPR) system that was recently introduced in the Local Government Act. This would need to be appropriately tailored to the planning process via the cascading and flexible system used in the IPR system.

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

The strategic planning should use a similar system to the Metropolitan Strategy for Sydney and Sub Regional Plans. This provides a hierarchy where subsequent strategies (State, Regional, and Local) are consistent with the higher order plans but provide more detail than the earlier Plans.

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?

If there is proposed to be SEPPs then they should be in a single document so they are consistent, up to date and easy to identify. The Standard Instrument provides a mechanism for incorporating these into LEP's, but some SEPPs (Policy based) do not work well in LEP).

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

Yes, but separate provisions that do not require that participation for minor amendments. There should be a mechanism (such as temporary 117 Directions) that can halt certain development until the SEPP is finalised. This would prevent opportunistic applications being submitted during SEPP exhibition.

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

Yes, this would provide more transparency and accountability.

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?

Yes. Currently there is an informal process that generally works. However, particularly with the Standard Instrument implementation, this informal arrangement is not suitable.

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

Yes.

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

As per the current process, i.e. via the Relevant Planning Authority or an applicant.

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

The process currently available via Section 73A of the current Act should be expanded so that Councils can deal with not only minor house keeping plan amendments, but other larger plan amendments that are consistent with adopted strategies, without the need for referral to State Agencies if infrastructure provision is not required. The existing “Gateway” system with the setting of timeframes is adequate. From the comments in the Issues Paper it seems that this is being confused with the previous system. Any new system should follow a strategic planning model and NOT development assessment model.

This suggestion does not imply that there will be any less public consultation.

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

No, see A18-A20 comments.

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

No, all planning decisions affect land values and rights. If there is a feeling that compensation is appropriate then the reverse in the form of a "betterment" payment should be made by the landowner. A compensation system would be more prone to actual or perceived corrupt conduct throughout the system.

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

- Require comments from Agencies to be made public
- Provision for the opportunity to respond to submissions
- A formalized process of dispute resolution and review. (An informal process has occurred previously with Department of Planning & Infrastructure acting as a facilitator)
- Require Authority comments to be restricted to relevant matters for that Authority and not of a general nature.

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

Yes, see comments provided at C.24. This is particularly if they are consistent with an adopted Strategy that does not require infrastructure. The State should have input into infrastructure matters if the rezoning requires. This is not to suggest that the process should be undertaken without adequate public consultation.

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

The existing process of proposal exhibition, submission consideration and council decision is currently adequate. However, the landowner should have, rather than a veto of that decision, a significant part in that decision.

C30. Should student housing be included as affordable housing?

Yes.

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

Development of a similar process as currently exists for Seniors Living where there are conditions on the occupancy and, in this case, sale of the property.

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

The Development Control Plan should be a plan prepared under the Act but by, or on behalf of, Council and Council should have the ability to amend that plan without the need for external concurrence. This is similar to the current system.

C33. Should there be a standard template for DCPs?

The format of a DCP can be standardised in relation to compulsory and non-compulsory headings and format. However, the content should not be standardised and the provisions, including definitions, should be able to be tailored to suit local conditions.

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

In a similar way that occurs now, whether inside or outside the legislation, i.e., with DP&I or other Authority set up for that purpose as co-ordinator/facilitator.

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

These reserves could be dealt with by the relevant Local Council or in a similar manner to the current "Special Use" provisions in an LEP. However, this would then need to be controlled by a relevant owner and for this to occur there would need to be an appropriate body set up for each of those Reserves.

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

No. However, there should be a requirement in Greenfield developments to make provision for a range of uses, not restricted to clubs, similar to a Masterplan. Specific provision for a Registered Club is not necessary as these uses are permitted in a variety of zones.

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

This should be undertaken either by the Department of Infrastructure & Planning or the formal planning powers be specifically granted to the Western Lands Commissioner or similar body.

DEVELOPMENT PROPOSALS AND ASSESSMENT

D1. How should development be categorised?

Development should be categorized broadly as:

- Assessable development
- Certifiable development
- Exempt development
- Prohibited development

However, within these categories there should be provision for sub-categories as required.

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?

Identifying State Significant development by using Capital Investment Value (CIV) alone is unsuitable for many developments. Often the CIV is irrelevant to the economic significance that development may have on the State economy. Some development types, regardless of CIV or impacts, could be listed as State Significant.

The review should consider introducing criteria to "test" state significance, e.g., economic (not only employment or turnover) social and environmental impacts and benefits of the development to determine if it is truly State Significant.

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?

Should consider a similar system as noted in question D2. This system should also include provision to allow discretion to Councils to refer matter for Regional consideration.

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

Similar to current identification used in SEPP or Local DCPs. However, the system of “one size fits all” for Exempt and Complying Development should be reconsidered. In this regard there could be some minimums standards and even a template format set with the ability for Local Councils to tailor the provisions to suit the locality.

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

Yes. State could set minimum with council ability to increase via LEP addition.

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

No, if the criteria for complying are set in a similar way to adopting a strategy (including participation) then there is no need for individual notification. This would also defeat the purpose of Complying development by introducing a merit assessment in a codified assessment regime.

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 “absolute right” should be considered. However, Complying Development is close to this suggestion.

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

No. See response to D7. This is essentially what Complying Development is. However, development standards set in LEP or DCP cannot be expected to cater for all situations and there is a need to ensure some flexibility to address these situations.

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

Yes, similar to approach in old Part 3A Concept approvals then project approvals to sort out technical/construction matters with consistency to concept. This would be particularly useful for large projects where, in the current economic climate, financing is difficult. The concept approval would give some certainty to the community and financial institution that the development can conceptually proceed.

D10. Should a new planning system reinstate the ability to convert one nonconforming use to another, different nonconforming use?

No, existing system works. There should not be a right to expect that non conforming uses can remain in perpetuity when localities changes.

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

No.

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

No.

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

No.

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. Council should be given the ability to set the scope and nature of the declaration as well as the fee for this service. The investigations for these matters could vary considerably and the fee for the provision of this declaration, which is essentially an approval to remain, should be based on an hourly rate for that investigation.

D15. Should there be a system of transferable dwelling entitlements to permit owners of an agricultural holding to:

– transfer a dwelling entitlement from that land to another parcel of land?

Yes, as long as the outcome results in less fragmentation and no land use conflicts.

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

If the dwelling entitlement is transferred to another parcel of land the original dwelling entitlement should be extinguished.

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

No. This would by-pass the strategic process, increase uncertainty and may result in less community participation and has potential corruption outcomes.

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

Yes. The current system can permit a Building Certificate to be issued without an approval for the use of that structure. A single application would be similar to the existing Integrated Development provisions.

However, there MUST be disincentives to the building of or use of authorised structures as the current system can, at times, encourage unauthorised works. The development application fee structure and Building Certificate Fees for applying post-construction should be amended to act as a deterrent. The role of private certification needs to be considered e.g. partial Occupation Certificates issued for approved works but other works ignored and left to Council to resolve.

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

It is poor Policy to vary matters such as EIS requirements on an individual basis. It would be better to modify the criteria to cater for these situations rather than allow for exclusions.

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

No. The number of connections that are provided should be consistent with the number of dwellings approved on the site. If an additional dwelling is approved on the site then an additional connection can be made.

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

The Act could make provisions to permit a Relevant Planning Authority to set mandatory pre-lodgments as required, but those provisions and requirements should be determined by the Relevant Planning Authority.

There should be two pre-lodgement streams codified in the Act for major development. Firstly, a planning "focus" meeting (as per DP&I style) to identify key issues prior to preparation of documentation for major developments. Secondly a certification to lodge (complete DA) meeting that checks all basic forms, fees and owners consent are provided. There should be a fee structure in EPA Regulations for both processes.

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

As per the existing system.

D23. How can the application process be simplified?

It was assumed that the current review of the system would investigate these questions as part of the overall brief for the review. This question seems to assume that the existing processes will remain and seems to be questioning the symptom rather than the problem. However, if this question relates to the existing system then the following points are made:

- See comments in D9.
- Use a more formal pre-lodgement process tailored to local Authority requirements
- More stringent certification process with additional monitoring and penalties as required.
- The Act, unlike the current situation, could allow construction information to be submitted and assessed with the DA to further streamline assessment.

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

The current Act sets out the information that is required in an application and the DA forms for each Council generally follow that format. Usually the layout of the forms is customised by each local Council to suit the systems that each Council runs. A standardised form will only work if the protocol and system is the same in all Councils. It is not necessary to standardise the layout of an application form as many applications that would be lodged electronically would be undertaken by consultants that should have the capacity to understand the requirements in the forms. One-off applicants can be assisted by Council staff as required.

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

Minimum exhibition periods could be set in the system for minor and major proposals with provisions for individual Authorities to extend this where required. Some additional exhibition time may be appropriate, however, that could be seen to be contrary to the desire to speed up the process.

Usually complaints about short exhibition times are from community groups that feel they need to, as an individual community group, personally assess entire application. This is hampered by lack of expertise to do that assessment and perceived lack of trust in Council or Agency assessment staff.

Any new system should make provisions for:

- Community education of processes
- Clear assessment criteria
- Current information is easily available
- Clear requirement for applicant to provide "Plain English" description of proposal and impacts and mitigation measures proposed. This could be done via a standard submission requirement for all development applications.
- Notification costs and processes should be mandatory where the proposal seeks a variation of more than 10% to the standard within the DCP and/or LEP controls. If minor variation notification should not be necessary.

D26. How can the community consultation process be improved?

- Clear engagement policy that distinguishes between consultation, notification and engagement. Whilst this is currently available in most Councils there is a lack of understanding that this Policy is in place.
- Improved understanding of process can lead to better trust in assessment process and less need for community to DIY assessment.
- For major developments - Require prescribed developer consultation to occur with owners/occupers (within a certain radius) prior to lodgment of a DA.
- Require councils to provide an exhibition “register” in a prescribed manner that specifies the documents to be included (e.g. site plan).
- Online DA trackers, Privacy, GIPAA & Copyright Legislation - Need to provide a broader exemption, for development matters, to the Copyright legislation for council and certifiers that follow processes required for DA, CDC, CC, appeals.

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

No. If such a provision was in place:

- It would not change processing times,
- Consent authority would simply refuse the application before the deemed time period if not all information submitted or if assessment not completed. This would result in more appeals to those refusals.
- The provision would simply highlight the lack of Council resources available for assessment.

The issue of timeframes for assessment procedures is a quality of application issue. Many applications are either unclear or lack appropriate detail for full assessment and this leads to delays. Any new system would need to expand and clarify the equivalent to the existing Schedule 1A of the Regulations.

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

No as fast track fees are inequitable. These only benefit those with the money to pay for this service and the applicants that cannot pay will suffer. This proposal also assumes that there are sufficient resources sitting idle waiting for the payments to be made. This is not the case and the reality is that other work is sidelined to meet those additional deadlines. This proposition does not consider the scenario where all applications pay a fast track fee. In this case the lack of general resources means that the work is not done within that timeframe.

Money does not guarantee speed when the delay may be lack of information. A different incentive (see below) may be a better outcome than an urgency fee. An accredited lodgment process would be similar to the 'tax agent' assisted approach for income tax lodgment.

Example: See RiskSMART "is a simple and fast way to get low-risk development proposals approved by Brisbane City Council. Applications must be prepared, lodged, and certified by a Council accredited RiskSMART consultant. In return, Council guarantees that the application will be decided on quickly. RiskSMART applications receive a 30% discount on Council application fees for applications lodged between 1 July 2010 and 30 June 2011."

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

In certain circumstances the DA process could be utilized that only considers the non-conforming areas in the assessment.

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

Get information correct at the start of the process and then reference that information at later stages. However, this would only be successful if all the application and approval provisions were within the one Act and not disbursed across a number of Acts.

D31. How should State significant proposals be assessed?

All proposals should be submitted and assessed under the same provisions, regardless of the approval body, with appropriate weight given to various controls depending on the type of development.

D32. Should the Crown undertake self-assessment?

Should use a process similar to the current Part 5 process but with a "peer review" (not a DA assessment) to keep process transparent.

D33. Should the Crown undertake self-determination?

See comment in D32.

D34. Should councils undertake self-assessment?

See comment in D32.

D35. Should councils undertake self-determination?

See comment in D32.

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

The integrity of the current process is satisfactory if the assessment is undertaken by appropriate persons. This issue is more a perceived, rather than an actual problem. However, the following points could be considered to improve this perception:

- Establishment of an accreditation system for consultants preparing the EIS (This would be similar to the process that previously existed in the Act but with improved processes to the accreditation and monitoring of that accreditation),
- A funding mechanism for peer review, in certain circumstances, that is commissioned by the Consent Authority as required,

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

Whilst this is possible now under the current system, this could be strengthened by legislation making provision to appoint these Panels and, where appointed the advise be considered. This would need to be at the discretion of the relevant Consent Authority. SEPP 65 provides for this option for a limited type of development and this could be expanded for some categories of development or in agreed locations e.g., State Significant sites, city gateway locations. The more appropriate question is should urban design be an assessment criteria.

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

The current Section 79C criteria are adequate. In this regard the broad reference to the matters to be assessed allows the flexibility to deal with a broad range of matters in a way that is appropriate for the application. A system that attempted to deal with every specific assessment criteria (similar to the old S90 matters in the Act) would become cumbersome and slow the assessment process, i.e., the more detailed the list of assessment criteria the more open to challenges that an issue was not adequately considered in the assessment. A process with broad criteria allows assessment that is appropriate to the scale of a proposal.

However, with the broad criteria the assessment process can be complex and, at times, difficult to ensure that all relevant matters are considered. To assist the process there needs to be DP&I/Council managed guidelines containing a matrix of considerations based on the adopted LEP (local) objectives (and the NSW State Plan and the Federal environment policies). It should include Australian Standards that apply to measuring impacts.

For example:

- Safer by Design/CPTED - Australian Risk Management Standard 4360:1999.
- Healthy Cities
- Urban Design
- Heritage (Aboriginal and European)/Archeological
- Accessibility (including universal design)
- Solar Access

- Intergenerational equity
- Biodiversity/Sustainability/Vegetation/Threatened Species
- Economic – where is the planning policy on that????
- Public interest – where is the planning policy on that????
- Social Impact analysis/ Economic Impact Analysis/Cost Benefit Analysis/Triple Bottom Line
- Sea level change/climate change
- acid suplhate soils

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?

Economic impact should always be considered when assessing. However, a consent authority should only consider impacts of the relevant controls or approval conditions on the viability of a proposal and not the fundamental viability of a proposal. It is not the Consent Authorities role to determine whether a private venture will be profitable or not. However, if an applicant is using an argument of "economic viability" for justifying non-compliance or variations to the planning Instrument, then it should be the applicant's responsibility to provide appropriate details to support that argument. Economic impact versus economic viability needs to be defined.

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?

No, this should not be mandatory. Current processes, Code of Conduct and delegations mean that Councillors and staff cannot give "amber or green light" to a proposal until the assessment has been completed. This approach is also contrary to certification principle where designer (in this case the Consent Authority suggesting changes) is also issuing approval.

However, in reality, the pre-lodgment process and assessment discussions usually, without compromising transparency and probity, identify areas where amendments would be considered more favourably than others.

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. In the majority of cases this consideration is too subjective to be a mandatory consideration. However, the current system allows the impacts on property values, e.g., view loss or gain, to be considered where the appropriate valuation information is submitted.

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. Whilst design is a subjective consideration, consistency with existing character does not mean it needs to be the same design, and should not be to the exclusion of these other important design considerations.

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?

The current Act (Section 79C) requires consideration of "Cumulative Impact" of a development. The stated case in the Issues Paper is generally only relevant to very large developments and this could be considered via EIS requirements.

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, usually done in S79C assessment. However, this is an issue that is best addressed in strategic planning and not development assessment.

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?

Need to address the broader question of carbon accounting on a National and State level before considering in development assessment. Only after having national standards on carbon accounting could this be done. Then those standards could be applied to larger development.

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. However, how broad or narrow does the Public Interest test apply? See previous comments on Public Interest.

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?

This is speculating what "may" happen and seems to be encroaching into criminal matters. This issue could be considered in relation to the wording of consent conditions but should not be considered as a reason to refuse an application. Past behaviour could be a relevant consideration when dealing with compliance matters or for the Court in judgment sentencing. This would also contravene the 'double jeopardy' principle.

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

Yes as controls cannot be expected to deal with all circumstances. A secondary "peer review" check as per existing system, whether by the Director General or via a secondary internal process within the Consent Authority, makes the consideration of variations more robust and reduces corrupt activity.

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

Yes. In these cases a particular issue could be nominated so that the proposed development must at least maintain the condition of that issue or the development would result in an improvement to that issue. However, in these cases the application of this test is only relevant to a limited number of issues that can be adequately measured and the "improve or maintain" test criteria must be clearly set as part of any consent.

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

Environmental (natural) issues, Flora and Fauna, riparian areas, waterways, drainage, etc. Impacts of a very subjective nature, such as character, are very subjective and more difficult to quantify.

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

Yes, but the assessment criterion would need to be measured against a Regional, State or National standard, relevant to the local conditions, rather than solely a local occurrence, e.g., climate change.

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

Cumulative impacts on supply, treatment, disposal, reuse, impacts that urban development use of water may have on river systems and agriculture, etc.

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. Usual assessment criteria should apply with varying weight given in the assessment depending on circumstances.

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, the assessment report should not be available until the report is completed. This is addressed in other Acts, e.g., LGA & GIPA. All parties should have same access rights.

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

This is not a specific matter for the Planning Act to address. However, the Act can make provision for individual Authorities to make guidelines for this to be done (as the provisions of the current Act allow). This is a DCP issue that can be undertaken by the individual Authority.

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

Whilst there is a need for the Act to set timeframes, these need to be relevant and realistic. Some current timeframes in the Act are impacted, rightly, by the need for openness, transparency, consistency, etc, which all affect processing times. Whilst performance measurement is relevant, the variety of development types and the issues raised by these make it difficult. Rather than solely focusing on processing days, performance measures should also use resident satisfaction.

Development assessment performance measures should not only focus on councils and should also include performance of applicants, government authorities, objectors etc. Development application assessment time should be measured AFTER a complete application is lodged – Lodgment process should be 2 step process – certified as complete (administrative) then lodged for assessment. Also the performance measures should be both quantitative and qualitative.

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

Yes, but only if the performance measures are broad as outlined in D56.

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

The existing process could be simplified where council or agency issue "in principle" letter that can be used with DA conditions and these are addressed at the Construction Certificate stage. The system could also make clearer provisions that can encourage the applicant to submit agency approvals with the Development Application.

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

All approvals, consents or permits in the Local Government Act, e.g., S68, etc and all other development related matters in other Acts. If incorporation is proposed then the process needs to be co-ordinated at State Government level and not Local Government level with clear responsibilities for each party addressed in the legislation.

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

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?

No. There are already timeframes specified in the Act/Regs. However, two days is very restrictive when these referrals are often delayed due to information missing from application or concurrence authority do not want referral until Council has determined the matter. These factors can be measured via a performance monitoring procedure.

D62. Who should make decisions about State significant proposals?

If the system retains panels, such as JRPP or PAC, then these independent panels can determine these matters. However, the definition of these matters, as mentioned previously, should be more related to the actual State significance rather than a simple CIV. In these cases Local Council representation on these panels should be equitable, i.e., same number of State and Local members, and input from the Local Council/community must be mandatory.

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

All.

D64. Should there be a model instrument of delegation?

Yes. The model should have a range of options and wording that are not mandatory, but would assist to guide the preparation of those delegations.

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

All decisions that the Minister can now make should be capable of delegating to an independent panel. Membership of the PAC should be clearly outlined in guidelines and that membership should be appropriately qualified, independent and not subject to Ministerial direction. The processes of the Commission (and all decision making bodies, including local Councils) should be inquisitorial.

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

The required processes should have Code of Meeting Practice and other similar processes to all other decision making bodies. These include open meetings with ability for all to have time limited access to address. (Time limited as the address is a supplement to submission). All meetings should be publically accessible.

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

No. If all meetings and decisions are open and transparent and the membership is qualified and independent then there is no need for additional political input. PAC should be independent as this would be an intermediator to a Court.

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

See D67.

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

Yes, however PAC should also, as with other processes, have the ability to vary controls if warranted.

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

Any new system should consider simplifying the number of decision making bodies. If the majority of matters remained with a Local Authority and only the truly State significant matters considered by a PAC then there may not be a need for the JRPP, i.e., there appears to be only the need for one of these bodies whether it be the PAC or the JRPP.

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

If there is a need to continue with a JRPP then the number of State and Local representatives should be equal so that there is no perception that the State members override the local representation.

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

The hearing processes for all decision making bodies should be the same so that it is clearly understood by all parties and transparency and probity is ensured.

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, in cases where the Council feels that there is a conflict or where there is difficulty coming to a majority decision.

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?

Conflict and pecuniary interest provisions that currently apply to councillors and council staff should also apply to JRPP and PAC members.

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

Yes, or under Council delegation.

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?

No. The representation from each Council area and the State representation should be equal so that there is no perception of bias from one area.

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?

Yes. The terms for exemption should be clearly expressed and achievable, e.g., past record of dealing with larger proposals, clear strategy and planning Instruments, etc.

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. Aggregation should only be considered where they form integral parts of one overall proposal.

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. This is currently possible for a Council to resolve in contradiction to an assessment report and for that resolution to be expressed to the JRPP via a submission.

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?

The legislation should make provision for this Committee and other similar Committees to be established at the discretion of the relevant local Authority.

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

Yes. However, development decisions should not make substantial changes to Policy or develop Policy where there is no Policy. (Policy, in this regard, also includes strategy and all development standards/controls). Development assessment should not be the avenue to revisit the basis for, or develop, planning controls. Decisions regarding Policy, whilst should remain with the Council, should be made separately to development decisions.

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?

Objections are usually addressed in the assessment report and the reasons for support or non-support are evident in that report. If the decision making body, including a Local Council, makes a decision contrary to the assessment report (including approval where report recommends refusal) then the reasons for that decision should be expressed to the applicant, objectors and made public.

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

Yes. See comments in D83.

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

No. (See comments in A.12) If the quarry is deemed to be State Significant and another body is the consent authority, the local Council should have equal representation, to ensure appropriate local input, on that approval body. (See comments D.62 & D.71)

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

For the majority of technical/statutory matters, yes. However, need ability to tailor conditions to locality and individual developments.

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?

Yes, but still needs a reasonable NEXIS TEST similar to S94 contribution Plans. Possibly a public interest contribution plan for specific types of major developments. "Newbery tests" should be codified into policy supporting development assessment

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

Yes. Greater flexibility in applying reviewable conditions would reduce the need for multiple Section 96 amendment applications and would simplify that process.

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. However, as previously mentioned, these standards and issues need to be fully developed and agreed at a State or National level before this would be successful.

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?

Yes. Some consents, especially larger subdivisions, can be lost over time by subsequent consents etc. Positive Covenants can assist in providing a message to prospective property owners.

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

Yes.

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

Yes. Need to use the "Newbury" test so that there is some consistency in this application.

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?

It is agreed that there is a need to examine how to make up the shortfall between the actual cost of infrastructure and development contributions. In this regard the tight restrictions on income generation need to be considered very closely. This is a matter for the relevant planning authority and options should be kept open to use a variety of methods and references. Locking the planning system into using one body (IPART) would not provide that flexibility. The use of IPART in these matters is supported.

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?

Yes. However, IPART should not be given the final approval role in these matters. This is a matter for the local community and the relevant planning authority.

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?

Yes.

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

Not all but may be random sampling/audits.

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. However, the local cost variations for different localities should be included in this costing. This costing reference must also apply to developers and contractors as well as all infrastructure providers.

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. Once the contributions are calculated and agreed upon, the application of that contributions plan should be under the control of the relevant planning authority (in this case the local Council). Involving a third party in these matters would slow the process of determining development proposals.

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?

The provisions in the current planning system are adequate. Could include a provision to publish any discounts or waivers granted.

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. See comments to D100.

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

The current provisions for Planning Agreements are satisfactory.

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. The time for input by all parties is during the plan making process where all submissions can be considered prior to the making of a contributions plan. At the time of making this Contributions Plan there needs to be a requirement that there has been appropriate public consultation throughout the process.

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

Yes, if the modification warrants additional contributions.

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

Yes. However, this is difficult to proportion where adjoining Councils have very different growth and development rates.

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

Defining the scope of permitted modifications for all possibilities within an Act would be almost impossible. However, the Act could list what "is not" a modification e.g., no more than 5% larger, addition or subtraction of number of lots or units, etc. The decision as to whether an application is a modification or a new application can then, as it is now, be decided by the consent authority.

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

No. However, the proposal should still be substantially the same as the original approved proposal.

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

Yes, as long as it is substantially the same development. However, there should also be a penalty or some disincentive in place that makes retrospective approvals less attractive to applicants.

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?

If retrospective approvals are to be permitted then they should apply to all matters equally. It is then up to the consent authority to decide if the works should be approved. Again, there should be more substantial fines/repercussions for retrospective works.

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?

The test should be related to physical commencement and this test should remain.

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

See comment in D114.

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

Consents should last a maximum of 5 years before commencement. The existing system should remain.

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

No, certification should remain as per the current system and no expansion of this role in the building or any other area of the development process is required.

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

Yes. However, that certifier, essentially the Principle Certifying Authority, should be responsible for that certification as they have chosen to accept the certificate from another specialist.

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?

Yes

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?

Same rights as a person would have against council. If the Private Certification system is to remain then the same responsibilities should apply to both Council and the certifier.

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?

Construction plans should be the generally the same as the development approval plans. A revised Act could include a provision for an application to be made to council, or the consent authority, for confirmation that the plans are consistent with the development approval. However, this should also attract an appropriate fee for this service that covers the true costs of undertaking such a check.

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

Yes

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

The Department should undertake compliance inspections for projects that have been approved, and conditioned, by the State. The Department should also undertake random compliance audits.

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

Yes, up to one year with no automatic approval of final occupation certificate. There should be a penalty for not obtaining a final occupation certificate.

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 for all aspects of the development consent and not just the structure being certified.

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

The delegation of these matters is not supported. The Federal and State Governments need to make the various relevant legislations more consistent so that the planning system can more easily apply the multitude of legislation that can apply to a development.

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 fulfill 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?

DP&I, DLG & ICAC should all have input in the preparation of the guide. Local Councils could facilitate the training that is undertaken by an independent provider.

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?

Yes.

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

Yes, for defined larger projects only. This could be defined in the Act and then relevant planning authorities can add to this list if required.

D133. What fees should councils receive for development applications?

The fees should be calculated on a full cost recovery basis with a minimum, rather than a maximum, fee set in the legislation. Deregulation of the fees would allow each council to set the appropriate fee and a provision can be included in the Act that is the application fees are proposed to be greater than 10% of the minimum fee then an independent check (IPART?) is required prior to adoption.

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

2-3 years if regulated, 1 year if not.

APPEALS AND REVIEWS; ENFORCEMENT AND COMPLIANCE

E1. What appeals should be available and for whom?

Generally the existing appeal system is satisfactory with the following comments:

- Retain the system of NO appeals against zoning decisions (See comments A.18),
- Third party appeals should be only on procedural matters and not on the merits of the decisions
- Deemed refusal appeals should be required to be mediated first before any Court hearing,
- Costs should be able to be awarded for all matters.

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

No. Only those with a direct or pecuniary interest in the matter and then only via the consent, or relevant planning, authority.

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

Where submission made and development standards varied and the assessment of the proposal did not consider these matters and provide reasons for the support or non-support of those submissions or variations.

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?

Appeal rights against these matters are not supported at all, see comments in A.18 – 20.

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?

- If plans are amended by the applicant during a Court matter then the applicant should pay all costs, regardless of whether the amendments minimise impacts,
- If plans are amended with the consent of both parties then costs could be shared with the applicant paying larger proportion,

However, there should be a disincentive for amending plans, etc; during a Court matter so that these amendments can be discussed by both parties prior to a Court Hearing and time and money savings can be achieved.

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?

All decisions except zoning matters, but only once by independent body (Court).

E9. Who should conduct a review?

Council for matters determined under delegation and a JRPP, or other independent body, for decisions made by council.

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

Third party objectors should have a right to be heard and to make submissions during a review, Objectors could have limited rights to initiate a review of a decision but should only be on procedural grounds and not on merit grounds.
There is a need for an intermediary body, other than Court, that can consider decision reviews prior to a matter being heard at Court.

In all the above cases the initiator of the review should be liable for all costs.

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

The reviews should only be undertaken by the Court and not the Minister.

E12. Do some present penalties need to be increased?

Yes. Current penalties are too modest and some persons see the penalty as a cost for a proposal that is less than the cost (time and money) of obtaining consent or the proposal. Penalties need to be a strong disincentive to bypassing the planning system.

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

Create an order that would allow Council to take action against inappropriate storage of material on a property that cause unsightly conditions when viewed from a public place and also private properties regardless of health or structural implications.

A prohibited activity is an activity that cannot occur with an area. There is currently no penalty notice offence for such matters limiting Councils actions to the courts. (There is currently only an Order provision). This is both time consuming and an expensive exercise and in most instances the matter will continue until the last moment before Court action where the proponent concedes to compliance

Consideration should be given to the creation of a penalty notice offence for “Prohibited Use” and the penalty amount should reflect the difference between “Prohibited use” & “Development without consent”.

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

A tribunal, similar to the tenancy tribunal, could be set up to deal with enforcement actions. This could ensure that the matter is heard by an arbitrator who hands down a decision that is binding on both parties, after hearing both sides of the matter, without legal representation. If either party is dissatisfied with the outcome it could then go to a court appeal at the applicant’s cost.

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

Yes. Currently a Private Certifier can issue a Notice of Intention to Issue an Order but it is then left to Council to follow up that matter to resolution. If this is related to a matter that was approved or certified by a Private Certifier there should be a mechanism for the Council to recover the costs for dealing with this matter from the Certifier.

E16. Should monitoring and reporting conditions be reviewable?

Yes, as there may be information that was either not available or changes with time that could lead to changes in the wording of a condition. This can also arise with changes to technology or environmental changes that would change the outcome that the condition originally tried to achieve. Any of these reviewable conditions should not be permitted to change the intent or make the condition more or less onerous for the applicant.

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

Yes, but the appeal rights should be the same as for any other certifier or consent authority.

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

Yes, but under very strict justification conditions.

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

Yes, similar to the Local Government Act protection. Where the Act and Regulations currently says "shall" or "must" these words could be changed to "should" or "may".

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, power of entry provisions need to be clarified so that "technical" breaches do not void evidence. A clear definition of "premises" is needed.

In relation to Rights of Entry the current legislation is very restrictive and confusing and prevents authorised officers being able to gain evidence to support their actions.

Definitions within the Act should be reviewed and made clear to reflect the intentions as suggested in the following:

Dwelling "An approved structure used for habitation at the premises"

i.e.: Consent of the occupant or a search warrant is required for entry"

The premises "Any land or structure not approved for habitation"

Under current circumstances premises include any building or land, and the habitable area includes any out door area, shed or building, whether approved or not, used in relation to the habitable area.

This has created significant difficulty for investigating officers and rights of entry and has resulted in wasted time and money in the Courts attempting to clarify this matter.

The only prohibition of access to a parcel of land, or premises, should be to an "approved" dwelling .i.e., the building used for human habitation, not the land surrounding the building.

In relation to access to official databases for compliance and enforcement the planning legislation should be brought in line with other legislation. Authorised Council officers should have access to such information and the use of such information in evidence. Breaches of the Act are becoming more technical and "loop holes" that exist in the current legislation are being exploited and are frustrating the process for compliance with the Act.

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 have the facilitating role in the implementation of any new system. In this regard the resources in the regional offices would need to be adequate for the implementation of that system. Councils and other Consent Authorities would also require additional resources to adequately implement and educate the community and other uses of the new system. Perhaps the funds collected via the "Plan First" levy could be utilised for this project.

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

If Act is limited to decision/process focus only then the role of Councils should be:

Assessment and determination of local and regional development proposals
Preparation of local environmental plans and development control plans
Compliance and enforcement functions.

However, as mentioned previously in this submission, the Act should have a greater focus on Strategy preparation. In this regard the strategy preparation, at a local and regional level, should be primarily undertaken by the local Council.

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

Community education and guides from all State Authorities, the Court and Councils to assist councillor and staff training. System needs to move away from current adversarial to more inquisitorial/co-operative model.

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

The preparation of a standard model code for engagement should be considered for use as a guide to community engagement. However, it is very difficult to get participation in strategic issues as community, and many in industry, do not think or understand strategic or policy concepts. Engagement should also include education for the community and all users so that the concept of strategic thinking can be better explained and translated into outcomes.

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?

Development of a shared strategic vision, adherence to that strategic vision, recognition of the specific, specialist roles of Councils, agencies, developers and the community play. Establish protocols, between Councils and government agencies. The introduction of "Duty to co-operate" is a consideration that should be taken seriously.

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

The current system used by the EP&A Act, LG Act, ICAC are generally adequate but need significant additional effort for improvement. All Councils follow a code of conduct prepared under Local Government Act. A similar Code of Conduct should apply to all State agencies and decision making bodies. The Code of Conduct is not well understood by the community and industry and better education is required.

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

Through the points listed in the Issues Paper being:
Integration of the publically held databases so that the maximum amount of information concerning any parcel of land is available through a simple-to-use internet portal,
Maximising the use of electronic lodgment of (and public accessibility to) applications seeking approval for development.

Many Councils already have systems that implement the above points. However, these are in various formats and, at times, difficult to share information. There is an urgent need for standard protocols for information sharing between State and Local Government.

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

Yes, provided objectives are measurable and all government agencies and councils use the same method of measurement.

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

In the same way other legislation is communicated.