

OUR ENVIRONMENT OUR COMMUNITIES

INTEGRATING ENVIRONMENTAL
OUTCOMES AND COMMUNITY ENGAGEMENT
IN THE NSW PLANNING SYSTEM



This report was prepared by the Nature Conservation Council of NSW (NCC), Total Environment Centre (TEC) and EDO NSW.

About our organisations:



The Nature Conservation Council of NSW (NCC) is the peak environment group for New South Wales. NCC represents more than 100 member societies from across the state. NCC's members have a strong interest in planning and development issues, and are strongly committed to securing positive environmental outcomes in their local area.
www.nccnsw.org.au



EDO NSW is a community legal centre specialising in public interest environmental law. The office was specifically created to perform this function after the passage of the *Environmental Planning and Assessment Act 1979* and the *Land and Environment Court Act 1979*.
www.edo.org.au



The Total Environment Centre (TEC) has been campaigning for environment protection in the city and country, changing government policy, advising the community and challenging business for over 30 years. TEC has been working to protect this country's natural and urban environment, flagging the issues, driving debate, supporting community activism and pushing for better environmental policy and practice.
www.tec.org.au

This report was funded by the Department of Planning and Infrastructure, as part of an agreement to encourage input and advice from environmental and community groups, and public interest environmental law specialists, into the planning system review.

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Citation: Nature Conservation Council of NSW, Total Environment Centre and EDO NSW (2012) *Our Environment, Our Communities: Integrating environmental outcomes and community engagement in the NSW planning system*.

Available from: Nature Conservation Council of NSW
2/5 Wilson Street, Newtown NSW 2042 Phone: 02 9516 1488
Email: ncc@nccnsw.org.au
Website: www.nccnsw.org.au

FOREWORD

The review of the New South Wales planning system presents an opportunity to develop a modern planning system that is consistent with contemporary community expectations. We welcome the government's action in initiating the review and note the significant loss of community confidence in the current system.

Our planning system can play an important role in helping us to address many of our most pressing environmental challenges, including:

- loss and fragmentation of native vegetation and wildlife habitat,
- conversion and loss of strategic agricultural land,
- degradation of rivers, wetlands and water catchments,
- urban sprawl, traffic congestion, air pollution and waste, and
- carbon pollution and impacts of climate change.

This report recognises the intrinsic link between environment protection and planning; the benefits of using modern technology to facilitate the sharing of environmental data and to support objective decision making methodologies; and the benefits of public participation and the expectation of the community to be involved in decisions that affect the environment in which they live.

The findings and recommendations of this report highlight new opportunities for a modern planning system that integrates the environment and community in planning for a sustainable future. It does not accept that the only measure of an effective and credible system is how fast a development receives consent. Rather the quality of the data, assessment and community participation are the hallmarks of a best practice decision making process.

The report calls on the NSW Government to demonstrate leadership by delivering a planning system that maintains or improves environmental outcomes and supports innovative and effective community engagement processes.

Chief Executive Officer
Nature Conservation Council

Director
Total Environment Centre

Executive Director
EDO NSW

CONTENTS

EXECUTIVE SUMMARY	7
PART 1 INTEGRATING ENVIRONMENTAL CONSIDERATIONS IN THE NSW PLANNING SYSTEM	9
1.1 Planning and the Environment	9
1.2 Ecologically Sustainable Development	9
1.3 Integrating environmental outcomes through effective strategic and land use planning	10
1.4 Key elements for integrating environmental considerations into strategic planning processes	10
1.5 Achieving environmental outcomes in development assessment	20
1.5.1 An objective decision making framework	20
1.5.2 Interagency approach to development assessment	22
1.6 Ensuring the effective operation of a system that integrates environmental considerations	23
1.7 Conclusion	24
PART 2 INTEGRATING COMMUNITY CONSIDERATIONS IN THE NSW PLANNING SYSTEM	25
2.1 Putting the community back into planning	25
2.2 Emerging trends in public participation and community engagement	30
2.2.1 International Association for Public Participation	30
2.2.2 Engage – Getting on with Gov2.0	30
2.2.3 Local Government and Community Engagement in Australia	31
2.2.4 Local Council Community Engagement Policies	32
2.2.5 Queensland and Victorian initiatives	32
2.2.6 International case studies	36
2.2.7 ePlanning	37
2.2.8 Social Media	39
2.3 Requirements for public participation in planning legislation	41
2.4 Conclusion	43
ANNEXURE 1 PROPOSED LEGISLATIVE MODEL FOR INTEGRATING ENVIRONMENTAL CONSIDERATIONS IN THE NSW PLANNING SYSTEM	44
ANNEXURE 2 PROPOSED LEGISLATIVE MODEL FOR COMMUNITY CONSIDERATIONS IN THE NSW PLANNING SYSTEM	52
ANNEXURE 3 KEY RECOMMENDATIONS FOR COMPLIANCE AND ENFORCEMENT IN THE NEW PLANNING SYSTEM	60

EXECUTIVE SUMMARY

BACKGROUND

When it was introduced in 1979, the New South Wales *Environmental Planning and Assessment Act* (EP&A Act) was celebrated as being one of the most progressive in the world. It was described as a:

“system of environmental planning under which decisions on land use and resource management are made within the physical capacity of the environment in order to promote the economic and social welfare of the people of NSW”.¹

The EP&A Act recognised the value of genuine public participation as an essential component of good governance and democracy which leads to better decisions. It also introduced a robust system of environmental impact assessment that provided a mechanism for identifying and assessing the potential environmental impacts of a development before determining development applications. Since then, some of the key features of the Act have been weakened and the planning system has become, in some instances, complicated and uncertain.²

The current review of the NSW planning system provides an opportunity to build on the strengths of the 1979 legislation while looking at new opportunities for a modern planning system that integrates the environment and community in planning for a sustainable future.

THIS REPORT

In this context, this report aims to identify best models for integrating environmental and community considerations in the NSW planning system. It is intended to complement the views expressed in *Planning for Ecological Sustainable Development*, a joint response to the NSW Planning System Review Issues Paper, prepared by NCC, EDO and TEC.³

¹ *NSW Parliamentary Debates*, Legislative Assembly, 17 April 1979, Hansard p 4278, Hon Mr Haig, Minister for Corrective Services

² For example: Amendments to the EP&A Act now see the Minister with wide ranging discretion when it comes to making environmental planning instruments; Public consultation with respect to State environmental planning policies is at the discretion of the Minister (s 38, EP&A Act); With respect to LEPs, there is no longer a requirement to prepare a local environment study for the preparation of LEPs. Instead the level of environmental assessment is at the discretion of the Minister (s54, EP&A Act); Public consultation occurs at the ‘gate-way’ stage but is not required on the draft LEP; There are now several approval bodies (JRPPs and PACs) and a wide range of different type of development (exempt and complying, advertised, designated, integrated, State significant development, State significant infrastructure).

³ *Planning for Ecological Sustainable Development - Opportunities for improved environmental outcomes and enhanced community involvement in the planning system* Prepared jointly by NCC, EDO and TEC. Available at: <http://planningreview.nsw.gov.au/LinkClick.aspx?fileticket=sUBZr1b4fU%3d&tabid=119&mid=569>

The NSW Government has identified amongst its key goals:

- protecting the environment,
- restoring confidence and integrity in the planning system, and
- involving the community in decision-making on government policy, services and projects.⁴

A planning system that genuinely integrates environmental and community considerations, within a framework that has the overarching objective of achieving ecologically sustainable development (ESD), has a critical role to play in achieving these goals.

Part 1 of this report highlights the intrinsic link between land use planning and development, environmental protection, nature conservation and natural resource management.

The report reviews a range of initiatives and literature from NSW and other jurisdictions on mechanisms for integrating environmental considerations into strategic planning processes. Having considered these initiatives, the report identifies a number of key elements for effective strategic planning, including:

- a whole-of-Government approach to strategic and land use planning,
- baseline studies of environmental and natural resource values to underpin strategic and land use planning,
- strategic environment assessment that includes mandatory consideration of prescribed environmental criteria,
- sharing of data across sectors,
- consistency with other government strategies, including, for example, in the areas of NRM, transport, infrastructure and health,
- identification of competing land uses and values and mechanisms for achieving environmental outcomes,
- early, sustained and genuine community engagement in strategic and land use planning processes,
- appropriate statutory weight for, and hierarchy, between planning instruments.

Part 1 also outlines an objective decision making framework for development assessment that ensures environmental outcomes are being achieved. This

⁴ Refer to the NSW 2021 goals. Available at: http://2021.nsw.gov.au/sites/default/files/NSW2021_Plan%20Goals_10.pdf

proposed model would operate in place of the existing discretionary framework currently prescribed by section 79C of the EP&A Act.

While there is a general recognition that planning processes need to be improved, the efficacy of the planning system should not be judged solely on its ability to achieve assessment processing timeframes or development approval rates. More fundamental to the planning system's effectiveness is its ability to produce ecologically sustainable outcomes. Fast approvals that deliver poor quality, high risk or unsustainable development are not in the public interest. An objective decision making framework can assist to reduce uncertainty, ensuring that decisions are transparent and helping to restore community confidence in the planning system.

Broadly the model involves two steps. First, a new provision would require decision makers to ensure that certain objective environmental criteria are met before development approval can be given (for example, a rigorous 'improve or maintain' environmental outcomes test). These environmental criteria could ultimately be part of a single methodology covering biodiversity, native vegetation, catchment health and water quality, energy and water use, climate change and pollution. The criteria would also link to agreed NRM targets, such as the state wide goals developed by the Natural Resources Commission.⁵ In the meantime, suitably strengthened existing methodologies – such as BASIX, SEPP 65⁶ and those applying to biobanking and native vegetation – could operate as proxies while the single methodology is developed.⁷

Second, once the objective environmental criteria are met, a more subjective, values-based approach can be used for assessing matters such as the suitability of the site, form and design, and it is appropriate for the decision-maker to consider aesthetic and other planning considerations, such as overshadowing, bulk, and set-backs.⁸

A recommended legislative model for integrating environmental considerations into the planning system is set out in the table at Annexure 1 of this report.

Part 2 of this report looks at emerging trends in community engagement, including:

- the 2009 report of the Government 2.0 Taskforce,
- the *Local Government and Community Engagement in Australia Working Paper No 5*,

- initiatives for community engagement by the Queensland and Victorian governments,
- the Grattan Institute's report *Cities – Who Decides?*,
- the use of social media in community engagement,
- the National ePlanning Strategy.

In NSW, there has already been some positive action in engaging communities in planning processes. For example, the NSW Department of Planning iPlan Community Engagement project won the Australian Institute of Planners 2004 National Award for Planning Excellence in the Community Based Planning Field.⁹ This program and also the more recent *Guidelines for Major Project Community Consultation* (October 2007)¹⁰ reflect core values of public participation by encouraging community engagement that is accessible, inclusive and recognises the diversity among stakeholders. Additionally, a number of local councils have developed community engagement strategies that are being used to improve community engagement in planning processes, and other aspects of council operations.

The report also outlines the work of the Total Environment Centre (TEC) and Environmental Defender's Office (EDO) as part of the *Reconnecting the Community with the Planning System* project.¹¹ This project saw the TEC and the EDO undertake research and community surveys, and develop recommendations on how to re-engage the community with the planning system. TEC and EDO, together with the Department of Planning and Infrastructure (the Department), subsequently developed an Action Plan which sets out commitments of the Department for improving community engagement in the planning system.¹² Since the publication of the Action Plan, the Department has made progress, for example through plain English courses for communication champions, a new website, publication of submissions, and a willingness to extend consultation times beyond the minimum statutory requirements. TEC has now drafted a 'public participation charter' for consideration by the department and other NGOs – which could be an integral part of the new planning legislation. The proposed public participation charter is set out in Table 2.

Part 2 of this report concludes that while some government agencies and councils have been innovative in the way in which they consult communities,

⁵ Available at <http://www.nrc.nsw.gov.au/WorkWeDo/StandardAndTargets/State-wideTargets.aspx>

⁶ *State Environmental Planning Policy 65* (SEPP 65) relates to design quality for residential flat development.

⁷ The development of this methodology is obviously an issue of some complexity and would need to be done in close consultation with the community, developers and agencies within Government.

⁸ Regulation of these planning considerations would take place through local development control plans.

⁹ The iPlan services of the former Department of Planning were decommissioned on 30 July 2008. For further information see *Community Engagement in the NSW Planning System* (Elton Consulting, 2003).

Available at: http://www.communitybuilders.nsw.gov.au/community_engagement_handbook_part_1.pdf

¹⁰ NSW Department of Planning, available at <http://www.planning.nsw.gov.au/assessingdev/pdf/Dr3%20DOP%20GuideMajProjComConsult%20BRO.pdf>

¹¹ The final report for this project is available at <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=flsozHVCRQo%3D&tabid=490&language=en-US>

¹² Available at <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=Z6wpTNgyUa0%3D&tabid=490&language=en-US>

mandatory requirements for community consultation under planning legislation do not reflect best practice community engagement. The new planning system must improve on current processes, by ensuring consultation requirements are underpinned by core values and achieve prescribed outcomes. Further, improving engagement in the NSW planning system should be part of a wider initiative of the NSW government to improve community engagement across Government.¹³

A recommended legislative model for integrating community considerations into the planning system is set out in Annexure 2 of this report.

PART 1 – INTEGRATING ENVIRONMENTAL CONSIDERATIONS IN THE NSW PLANNING SYSTEM

1.1 PLANNING AND THE ENVIRONMENT

Land use planning and development is intrinsically linked with environmental protection, nature conservation and natural resource management (NRM). This is because actions that may affect the environment and our natural resources are regulated, either directly or indirectly, through the planning system. The impact of planning and development on the environment is therefore a key consideration for decision makers in preparing planning instruments and determining development applications. Conversely, land use planning has the potential to support the achievement of environmental outcomes including the protection and sustainable management of water resources, biodiversity, agricultural land and basic raw materials.¹⁴

The *Environmental Planning and Assessment Act 1979* (EP&A Act) has failed to successfully integrate land use planning and development with environmental protection and NRM. The result is a planning system that undermines the ability of the State to effectively manage natural resources and protect the environment for present and future needs. For example, the EP&A Act:

- does not provide a mandatory framework for long term strategic planning that integrates NRM goals,

environmental protection and conservation, public health, transport and infrastructure,

- does not support a whole-of-Government approach to planning as interagency collaboration is limited and is often overridden by Department of Planning prerogatives, and
- relies on discretionary decision making processes that have historically failed to deliver ecologically sustainable development outcomes, with environmental considerations losing out to development and economic interests.¹⁵

A new planning system must recognise the relationship between planning and the environment and mandate processes that ensure environmental outcomes are achieved.

1.2 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Ecologically sustainable development (ESD) needs to become the overarching objective of a planning system that seeks to effectively integrate environmental considerations and achieve sustainable social outcomes. In brief, ESD aims to provide for the needs of present generations without compromising the ability of future generations to meet their own needs. ESD is “not a factor to be balanced against other considerations; ESD is the balance between development and environmental imperatives”.¹⁶

Under the current system, where encouraging ESD is one of ten equally-weighted objects, environmental considerations are often set aside for economic outcomes.¹⁷ Properly applied, ESD recognises that ecological integrity

¹⁵ See for example, *Minister for Planning v Walker* [2008] NSWCA 224. In that case the Court of Appeal, held that although the planning minister must make decisions in the public interest, not having regard to ESD principles does not necessarily constitute a breach of that obligation. Hodgson J found that “(t)he ‘mandatory’ requirement that the Minister have regard to the public interest does not of itself make it mandatory ... that the minister have regard to any particular aspect of the public interest, such as one or more of the principles of ESD”. The Court gave approval of a joint concept plan application to subdivide the site into approximately 180 residential dwelling allotments, 3 super-lots for future apartment or townhouse development, up to 250 seniors living units and a residential aged care facility,

¹⁶ Bates, G. *Environmental Law in Australia* (5th ed. LexisNexis. 2002), para [5.19]-[5.20], cited by Farrier D, et. al. (2007) *Biodiversity offsets and native vegetation clearance in New South Wales; The rural/urban divide in the pursuit of ecological sustainable development* 24 EPLJ 427

¹⁷ For example, the former Minister for Planning premised the introduction of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005*, which introduced the former Part 3A, with these words: “the wellbeing of our economy depends on business being able to work with certainty, a minimum of risk, low transaction costs, and appropriate levels of regulation. This bill demonstrates the Government’s determination to take decisive action to achieve these objectives. By establishing greater certainty in the assessment of projects of State significance and major infrastructure projects, the bill further assists in the Government’s desire to afford opportunities for the private sector to participate in the delivery of our infrastructure programs”. Part 3A has been criticised for weakening integration with natural resource legislation and restricting public participation and accountability through merits appeals.

¹³ In this respect we note Goal 32 of NSW 2021- Involve the community in decision making on government policy, services and projects. Available at: http://2021.nsw.gov.au/sites/default/files/NSW2021_Plan%20Goals_0.pdf

¹⁴ *Directions Paper on the Integration of NRM into Land Use Planning* Published by the Western Australia Planning Commission as part of the EnviroPlanning project initiated in late 2005 through a partnership between the Western Australian Planning Commission, the former Department for Planning and Infrastructure, and the Western Australia Local Government Association (WALGA) with the aim of improving the integration of NRM into land use, planning across the State. Available at: http://www.planning.wa.gov.au/dop_pub_pdf/NRM_report.pdf

and environmental sustainability are fundamental to social and economic wellbeing, particularly when considering the needs of both present and future generations. It is therefore imperative that all decisions made under the planning system are underpinned by the concept and principles of ESD.¹⁸

Further, a genuine commitment to ESD requires legislative mechanisms that mandate consideration of environmental matters and set minimum environmental standards, so that planning and development is carried out within the physical capacity of the environment.

1.3 INTEGRATING ENVIRONMENTAL OUTCOMES THROUGH EFFECTIVE STRATEGIC AND LAND USE PLANNING

The current planning system attempts to plan for future land use through State plans, metropolitan and regional strategies, Local Environmental Plans (including the Standard Instrument¹⁹), State Environmental Planning Policies and other policies and strategies.²⁰ These are often developed in isolation and, in the case of State environmental planning policies and regional strategic plans, are not prepared within a clear legislative framework that requires mandated environmental assessment or public participation. The system fails to provide a suitable basis for long term strategic planning, including the proper consideration of vital long term issues such as ESD, biodiversity and connectivity, access to green space and infrastructure, climate change and population planning.

The new planning system must endeavour to provide a clear and structured framework for long term strategic planning (for example, through a State plan or regional plans), that subsequently sets the direction and outcomes for land use planning policies at a local level. In the context of this report, strategic planning is used as an overarching term to describe planning for anticipated development and growth taking into consideration key factors, such as the environment, health, transport, and infrastructure for healthy, liveable and sustainable communities.²¹ Strategic planning frameworks should underpin the development of planning instruments. That is, all planning instruments or planning strategies (for example, State plans, regional plans, State environmental

planning policies and local environment plans) should be developed within a strategic planning framework.

Case studies 1-4 outline various initiatives within Australia that are aimed at improving integration between strategic and land use planning, environmental protection and natural resource management.

1.4 KEY ELEMENTS FOR INTEGRATING ENVIRONMENTAL CONSIDERATIONS INTO STRATEGIC PLANNING PROCESSES

A general review of the initiatives outlined in case studies 1-4 identifies a number of key elements for integrating environmental considerations into strategic planning processes. These key elements are outlined below.

A WHOLE-OF-GOVERNMENT APPROACH TO STRATEGIC AND LAND USE PLANNING

A whole-of-Government approach is required to effectively integrate environmental considerations into strategic and land use planning processes. Planning systems should not be concerned solely with development. Rather, consideration must be given to the complete range of interests that need to be managed for the future, including transport, infrastructure, resources, environment, public health and community. In the context of integrating environmental considerations into strategic planning, the NSW Local Government and Shires Association identifies nine agencies that are responsible for the environment and NRM in NSW.²² Further, it is recognised that regional agencies (such as catchment management authorities) “provide an invaluable source of data and expertise, particularly to assist in translating the natural resource science into workable planning schemes”.²³ It is therefore important that a framework for strategic planning facilitates interagency collaboration.

¹⁸ ESD principles include, for example, the precautionary principle; inter-generational equity; conservation of biological diversity and ecological integrity; and improved environmental valuation, pricing and incentive mechanisms. See further the *Protection of the Environment Administration Act 1991* (NSW), s 6.

¹⁹ *Standard Instrument (Local Environmental Plans) Order 2006*

²⁰ See, for example, the *NSW Coastal Policy* (1997) (available at <http://www.planning.nsw.gov.au/PlansforAction/Coastalprotection/NSWCoastalPolicy/tabid/173/language/en-US/Default.aspx>)

²¹ See also the explanation of strategic planning in the NSW Planning System Review Issues Paper – *The way ahead for Planning in NSW*, December 2011, p 19.

²² *Integrating Natural Resource Management into Local Government Operations - Volume 2: Land Use Planning*, prepared by UTS Centre for Local Government, Gibbs Consulting, Walsh Consulting, (principal author Planning Volume Walsh Consulting), pp8-10. Available at: http://www.lgsa.org.au/resources/documents/NRM_Guidelines_Land_Use_Planning_020709.pdf The following agencies are identified as having a role in NRM in NSW: Natural Resources Commission, Department of Environment and Climate Change (now the Office of Environment and Heritage), Catchment Management Authorities, Department of Planning (now the Department of Planning and Infrastructure), Department of Primary Industries, Department of Water and Energy (now the NSW Office of Water and the Division of Minerals and Energy within Industry & Investment NSW), Department of Lands (now abolished and functions split between Department of Finance and Services and Department of Primary Industries), Sydney Catchment Authority and Rural Fire Service.

²³ *Integrating Natural Resource Management into Planning Schemes materials - A guideline for Queensland Local Governments*, Local Government Association of Queensland, 2007 Available at: https://www.lgaq.asn.au/c/document_library/get_file?uuid=21fd58f8bad67e8435d933489732c3df&groupId=10136

CASE STUDY 1: DIRECTIONS PAPER ON THE INTEGRATION OF NRM INTO LAND USE PLANNING, WESTERN AUSTRALIAN PLANNING COMMISSION, FEBRUARY 2011ⁱ

The Western Australia Planning Commission's *Directions Paper on the Integration of NRM into Land Use Planning* is premised with the recognition that the “*land use planning system is integral to achieving NRM outcomes in Western Australia. Land use planning can protect natural resources from incompatible uses, locate development away from sensitive environments and require sustainable management of natural resources through change in land use*”.ⁱⁱ

The paper identifies key opportunities for improving the integration of NRM into land use planning, including:

- clarification of the roles and responsibilities of the Western Australian Planning Commission and the Environmental Protection Authority in the consideration of NRM in land planning and decision making;
- incorporation of NRM considerations as early as possible in the land use planning process;
- consideration of the natural extent and possible cumulative impacts of individual planning proposals on natural resources through strategic planning at the regional scale;
- integration of NRM into local planning strategies and schemes to achieve NRM outcomes at the local level
- improvements to the State Planning Framework to address contemporary NRM issues, and provisions of guidance for implementation of NRM policies; and
- whole-of-Government involvement in strategic planning and improved efficiency of statutory referral processes.ⁱⁱⁱ

The recommendations and actions to improve the integration of NRM into land use planning as outlined in the paper are summarised in Table 1 of the paper, which is reproduced below.^{iv}

Table 1: Recommendations and actions to improve the integration of NRM into land use planning

NRM land use planning theme	Recommendations and actions	Report reference
Clear policy direction for integrating NRM into land use planning	1. Consider comments and recommendations of EnviroPlanning's review of the State Planning Framework when undertaking review and update of the state planning strategy, state planning policies and development control policies.	4.2.3
	2. In conjunction with DEC and the Office of the EPA, investigate the need for additional policy guidance on the protection of native vegetation through land use planning.	7.4.6
	3. Support statutory planning processes to address NRM: <ul style="list-style-type: none"> a. Develop model scheme text provisions to address NRM issues where consistent across the state. b. Review and update standard subdivision conditions relevant to NRM to ensure wording reflects intent. 	4.4.1 4.7
Whole-of-government involvement in NRM and land use planning	4. Establish agreement between the WAPC and the EPA on the roles and responsibilities for NRM matters through land use planning and decision-making. <ul style="list-style-type: none"> a. Prepare a memorandum of understanding. b. Establish priorities for strategic environmental planning (eg EPA section 16 advice). c. Develop and support delivery of projects which seek to address information and policy gaps, identified through the annual review of priorities for integrated environmental planning, in consultation with EPA/WAPC, NRM agencies and local government. d. Develop environmental conditions and advice for planning proposals, schemes and amendments. 	3.3.2
	5. Integrate environmental planning expertise into the Perth, Peel and South-West planning directorates of DoP.	3.1.2
	6. Continue DoP involvement in the State NRM program, including representation on the Council of Natural Resource Agency Chief Executives and the NRM Senior Officer's Group.	3.1.2
	7. Improve State agency engagement in land use planning: <ul style="list-style-type: none"> a. Prepare an agreement with relevant state agencies that defines the roles and responsibilities of state NRM agencies at different stages of the planning process (eg strategies, schemes, amendments, subdivisions). 	3.10.4
	<ul style="list-style-type: none"> b. Prepare and maintain a list of key agency contacts to correspond with the relevant roles and responsibilities for NRM through land use planning. 	3.10.4
	<ul style="list-style-type: none"> c. Encourage DEC and the Office of the EPA to promote and allocate resources for implementation of EPA Guidance Statement No. 33. 	3.10.4
	<ul style="list-style-type: none"> d. Identify NRM data requirements to support development of local planning strategies. 	4.4.3
	<ul style="list-style-type: none"> e. Assist the integration of NRM into regional and sub-regional planning strategies and structure plans, through the identification of priority natural resources and recommendations for protection and management. 	4.3.4
	<ul style="list-style-type: none"> f. Facilitate consultation between state NRM agencies and local governments in the absence of a contemporary regional strategy that identifies priority NRM issues and areas, in order to provide regional guidance for local level planning. 	4.3.4
	<ul style="list-style-type: none"> g. Clarify the roles of DEC and the EPA in supporting local biodiversity conservation, including formal consideration and possible endorsement of local biodiversity strategies. 	7.5.2

NRM land use planning theme	Recommendations and actions	Report reference
	8. Raise the awareness of state NRM agencies, the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC), local governments, regional NRM groups and DoP staff, of the integration of NRM into land use planning.	3.10.4
Local government support for integration of NRM into land use planning	9. Provide support to local governments to improve the integration of NRM into land use planning: <ul style="list-style-type: none"> a. Prepare case studies and practice notes to support local government integration of NRM into local planning strategies, local planning schemes, local planning policies and local structure plans. 	4.4.3, 4.5.2, 4.6.3
	<ul style="list-style-type: none"> b. Explore opportunities for regional cooperation across local governments to share planning resources. 	3.2.2
	<ul style="list-style-type: none"> c. Continue to seek funding through the State NRM program and the Commonwealth Government's Caring for our Country program, and administer funding to support local government projects that address the integration of NRM into land use planning. 	3.2.2
	<ul style="list-style-type: none"> d. Provide technical planning support to local governments for the integration of NRM into land use planning. 	3.2.2
	<ul style="list-style-type: none"> e. Provide support to WALGA and local governments for the integration of local biodiversity strategies into local planning strategies, schemes and structure plans. 	7.5.2

**CASE STUDY 2: INTEGRATING NATURAL RESOURCE MANAGEMENT INTO PLANNING SCHEMES
MATERIALS – A GUIDELINE FOR QUEENSLAND LOCAL GOVERNMENTS, LOCAL GOVERNMENT
ASSOCIATION OF QUEENSLAND, 2007***

The *Integrating Natural Resource Management into Planning Schemes materials - A guideline for Queensland Local Governments* is intended to guide a more effective relationship between local government planning schemes and regional NRM plans prepared by regional NRM bodies in Queensland. Of particular interest is section 4 of the Guideline, which provides examples of opportunities for integrating NRM in planning process.

At a general level, the report identifies typical components of planning schemes and how NRM matters can be addressed and supported for each of these components:

TYPICAL SCHEME COMPONENTS	HOW PLANNING SCHEMES MAY RESPOND TO NRM MATTERS
DESIRED ENVIRONMENTAL OUTCOMES	State planning policies, regional plans under IPA and aspirational targets in regional NRM plans will provide substantial guidance.
OVERLAYS	Zones and overlays work together. In some cases (eg acid sulphate soils) overlays may provide the most effective means of addressing an NRM issue – eg where the resource is compatible with development.
ZONES	In others, it may be better if the underlying zone reflected the actual land use suitability - to avoid creating development expectations for uses inconsistent with the resource or value present.
CODES	NRM targets may provide a basis for establishing the purpose and specific outcomes (performance criteria) in codes. In addition, the science/data in NRM plans may provide a basis for devising effective acceptable solutions.
ASSESSMENT TABLES	Appropriate assessment levels can be established for development which has the potential to adversely impact on natural resource values.
DEFINITIONS	Definitions may be required to support new NRM policies
SUPPLEMENTARY MATERIAL	HOW PLANNING SCHEMES MAY RESPOND TO NRM MATTERS
POLICIES	Policies support planning scheme measures and typically can identify information required of an applicant to enable the local government to adequately address NRM issues.
CONDITIONS	Standard conditions could be devised to adequately manage the likely effects of development on a natural resource.

The Guideline then outlines some specific possibilities for planning schemes with respect to water, flora and fauna, land, coasts and marine, landscapes, indigenous cultural heritage, pests and weeds, fire, flooding and climate change. For example:



Water

POTENTIAL SCOPE

Water Management: water quantity, water flows, demand management, consumptive uses, water supply, stormwater

Rivers, lakes, wetlands and groundwater: protection of inland rivers, catchment management aquatic habitat (wetlands, rivers, lakes), water quality, riparian buffers, sustainable use of aquifers.

POSSIBILITIES FOR PLANNING SCHEMES

- Establish policy based on the philosophy of **integrated water cycle management**, addressing water demand, wastewater, stormwater, reuse, flooding, water quality and natural drainage lines and hydrological regimes in an interrelated manner.
- Protect waterways, wetlands and groundwater resources by identifying:
 - waterbodies and appropriate buffers
 - appropriate and inappropriate forms of development in and near these areas
 - development standards to apply in and near these areas.
- Protect vegetation cover in at-risk catchments to maintain water quality.
- Incorporate water sensitive design solutions into planning scheme codes (and supporting policies, including engineering development manuals).



Flora and Fauna

POTENTIAL SCOPE

Representative ecosystems, significant ecosystems, threatened species, habitat for native fauna species, corridors, linkages and connectivity

POSSIBILITIES FOR PLANNING SCHEMES

- Build planning scheme policy around a comprehensive local biodiversity or nature conservation strategy (supported by non-scheme measures) which identifies:
 - significant areas, corridors and species (integrating regional ecosystem data and based on a common classification system)
 - possible areas for rehabilitation or establishment of compensatory habitat
 - development that is compatible with the maintenance of biodiversity values and supporting ecological processes
 - particular outcomes sought for particular areas
 - suitability for development and how the effects of development should be managed (including buffers).
- Regulate clearing of state, regional and locally significant vegetation (ie over and above the Vegetation Management Act).
- Develop standard conditions to deal with the protection and management of flora and fauna.



Land

POTENTIAL SCOPE

Good quality agricultural land, acid sulfate soils (ASS), landslip and erosion potential, salinity (natural and accelerated), land capability/ suitability, soil health

POSSIBILITIES FOR PLANNING SCHEMES

- Identify areas of:
 - actual or potential acid sulfate soils
 - good quality agricultural land and other rural use capability
 - salinity risk
 - landslip hazard.
- Determine:
 - appropriate and inappropriate forms of development in and near these areas
 - buffering to address potential conflicts and nuisance issues
 - development standards (including lot sizes) to apply in and near these areas.
- Develop standard conditions to deal with erosion control and acid sulfate soil management.
- Develop specific policies for areas in which values / risks are less critical (but still important), for example: non-GQAL with other specific capabilities or control of land form modification in sloping areas not subject to landslip.



Coasts and Marine

POTENTIAL SCOPE

Coastal erosion and deposition, water quality in estuarine and marine areas, maintenance and dredging, recreation, tourism and access, development in coastal catchments

POSSIBILITIES FOR PLANNING SCHEMES

- Ensure scheme measures support:
 - protecting the erosion prone area free of additional development
 - avoiding new development (or applying appropriate standards) in areas subject to storm tide risk
 - the protection of coastal wetlands, dunes and areas of significance (natural resources including buffers)
 - continued public access to and along foreshore areas
 - stormwater/runoff and waste water standards that protect coastal water quality
 - protecting key scenic coastal landscapes, cultural values and areas of significance.

Refer also to the water, flora and fauna and climate change pages in this guideline



Landscapes

POTENTIAL SCOPE

Nature based recreation, tourism, scenic amenity, livability

POSSIBILITIES FOR PLANNING SCHEMES

- Identify:
 - major scenic amenity and landscape character values (including key viewsheds, features and interurban breaks) and landscapes of cultural heritage value
 - appropriate and inappropriate forms of development in and near these areas
 - development standards to apply in and near these areas.

Refer also to the water, flora and fauna and land pages in this guideline



Climate Change

POTENTIAL SCOPE

Role of energy use, energy efficiency, extreme weather/storm events - storms, cyclones, drought and heat waves, rainfall, temperature changes, impacts on biodiversity, agriculture, human health.

POSSIBILITIES FOR PLANNING SCHEMES

- Adopt energy efficient settlement patterns which:
 - minimises demand for vehicle trips and supports public transit
 - retain areas of significant vegetation and ecological value
 - avoid areas of potential risk from climate change impacts.
- Establish development standards which seek:
 - energy efficient urban design and building design
 - improved accessibility for public transport, walking and cycling
 - appropriate levels of car parking
 - water sensitive urban design
 - building standards appropriate to possible storm/cyclone events.
- Adopt policies that incorporate a precautionary approach to the risks associated with climate change (including flood, bushfire, storm surge and sea level rise).

Additionally, see the following publications, also by the Local Government Association of Queensland:

- *Generic Code Provisions for Queensland Local Governments*^{vi}
- *Implementing SEQ Regional NRM Plan Targets through Planning Schemes: A Decision Support Tool for South East Queensland Local Government Planners*^{vii}

CASE STUDY 3: INTEGRATING NATURAL RESOURCE MANAGEMENT INTO LOCAL GOVERNMENT OPERATIONS - VOLUME 2: LAND USE PLANNING, NSW LOCAL GOVERNMENT AND SHIRES ASSOCIATION, NOVEMBER 2009 ^{viii}

The NSW Local Government and Shires Association's *Integrating Natural Resource Management into Local Government Operations - Volume 2: Land Use Planning* won the President's Award for Best Overall Project at the Planning Institute of Australia's (NSW) Awards for Excellence in Planning. The document provides a detailed analysis of the existing NRM framework in NSW, case studies of existing integrated NRM and planning practices, and recommendations for improvement in the integration of NRM and planning in NSW, particularly in local government practices. It highlights the initiatives of local councils to incorporate NRM and environmental protection into local planning processes.^{ix}

In setting the scene for the report, the LGSA identifies some thoughts for integrating NRM and land use planning, as follows:

Higher order NRM and related provisions will inform the local contextual decisions	➡	Mindful of State policies, Ministerial s117 directions, and regional strategies.
Local priorities and targets for water, land and biodiversity conservation.	➡	Consider initiating "improve or maintain" target for all significant natural resource features. Statements about avoiding damage to natural assets
New land release sensitive to NRM priorities and targets	➡	Development directed away from environmentally sensitive areas, and areas identified for investment in buffering or as space for reconnection of remnant vegetation
Development as a means of restoring degraded land or other NRM-related gains	➡	Targeting suitable locations with high potential water, land or biodiversity – and particularly, multiple benefits
Incidental development on environmentally sensitive lands	➡	Developments on environmentally sensitive land subject to maintenance of integrity and function of the present natural ecosystems.

Figure 16: Some thoughts on NRM principles for a Strategic Land Use plan

CASE STUDY 4: LANDSCAPE PRINCIPLES OF THE AUSTRALIAN INSTITUTE OF LANDSCAPE ARCHITECTS (AILA)

The *Landscape Principles* of the Australian Institute of Landscape Architects (AILA) provide a practical focus on the social, economic and environmental values of “green infrastructure” in increasing the liveability of our cities and towns.^x Green infrastructure is a term used to describe “an interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides a wide array of benefits to people and wildlife”.^{xi}

The AILA principles are summaries below:

- **Value Our Landscape:** The quality of the landscape underpins the viability of life on earth. Regardless of scale, every landscape embodies a range of complex, multidimensional and interdependent values and these values must be comprehensively articulated before they can be accurately assessed.
- **Protect › Enhance › Regenerate:** the hierarchy of decision-making for any landscape design/ intervention should incorporate innovative, measurable strategies to:
 - protect existing environmental features and ecosystems
 - enhance existing resources in a creative, sustainable manner
 - regenerate lost or damaged ecosystem services
- **Design With Respect:** all values of landscape deserve respect, and should be given equal consideration when design/intervention is proposed.
- **Design For The Future:** design with regard to the possibility of future change. Accept the moral and ethical responsibility of adopting decision making processes which enhance resilience in terms of environmental, socio-cultural and economic outcomes for future generations
- **Embrace Responsive Design:** our knowledge of natural and cultural environmental processes is incomplete, and the full potential significance or value of the landscape remains unknown because of this uncertain state of knowledge.

These principles call for:

- collaborative mapping of opportunities for green infrastructure networks,
- establishing environmental limits to development, and enhancing environmental connectivity,
- designing and planning infrastructure ahead of development,
- drawing on science, theory and broad expertise to inform urban design and management strategies, and
- providing leadership and capacity-building to inspire local participation.

There are various suggestions as to how this could be achieved, for example:

- establish a centralised agency to manage strategic planning and interagency collaboration between agencies and with local councils (see, for example, the activities of the Western Australian Planning Commission)²⁴
- require (through legislative provisions) the relevant planning authority to seek the concurrence of prescribed agencies,
- develop agreements (for example, through memoranda of understanding) between agencies to clarify the expectations and role of each agency in addressing environmental issues in strategic planning processes²⁵
- establish working groups, with agency representatives.²⁶

CARRYING OUT OF BASELINE STUDIES AND STRATEGIC ENVIRONMENTAL ASSESSMENT

Best practice strategic and land use planning must be underpinned by scientific, factual and up-to-date data. It is impossible to effectively develop long term strategic plans without a clear understanding of the existing state of the environment and an assessment of the impacts of planned future growth and development.

Strategic environmental assessment aims to provide for a high level of protection of the environment and contributes to the integration of environmental considerations in the preparation and adoption of plans and programs with a view to promoting sustainable development.²⁷ This outcome is achieved through setting minimum requirements for environmental assessment processes alongside plan preparation, including:

- an assessment of the existing state of the environment,
- identification of the likely environmental impacts of the development envisaged in a plan (including cumulative impacts), and the consideration of reasonable alternatives,
- consultation on an environmental report on the plan at the same time as on the plan itself, and

²⁴ For more information visit the website of the Western Australian Planning Commission: <http://www.planning.wa.gov.au/>

²⁵ *Directions Paper on the Integration of NRM into Land Use Planning*, above no. 14

²⁶ For example, NRM Senior Officer Groups have been used to ensure interagency coordination during the recent review of Catchment Action Plans; The LGSA suggests establishing Planning Forum Meetings to coordinate engagement with agencies and key stakeholders, above no.22, page 20

²⁷ See for example, Sadler, B. and R. Verheem, 1996, *Strategic Environmental Assessment: Status, Challenges and Future Directions*, Ministry of Housing, Spatial Planning and the Environment, The Netherlands. See also UNECE Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (commonly referred to as the SEA Protocol) (available at: http://live.unece.org/env/eia/sea_protocol.html)

- ongoing monitoring of the significant effects of implementation of the plan.²⁸

The current planning system does not provide a clear and mandatory framework for strategic environmental assessment. In the past, draft LEPs were required to be accompanied by a local environmental study, however this varied in practice and was not required for amendments to LEPs. More recent changes to the Act have left the issue of environmental assessment almost entirely at the discretion of the Minister.²⁹ There is no specific environmental assessment required for making a SEPP, although there are consultation (not concurrence) requirements with respect to threatened species.

In order to effectively integrate environmental considerations into the planning system, there must be a mandatory requirement to undertake environmental assessment as part of the strategic planning framework.

SHARING OF DATA ACROSS SECTORS

Strategic planning would benefit from a centralised system of information in order to collate, share and publish data across sectors in ways that promote accuracy, transparency and evidence-based decision making.

An extensive set of data already exists in NSW and Australia that can be utilised to support strategic and land use planning processes, including carrying out baseline studies. For example, the Spatial eXchange (SIX) is set up as the official source of spatial data for NSW.³⁰ Other information sources could include:

²⁸ See also the Hawke report, which makes recommendations as to the framework for strategic assessment, Hawke, A. (2009), *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009, see in particular 3.43 – 3.50. In summary, such a framework should:

- require an assessment of the extent to which a plan, policy or program:
- protects the environment promotes ESD
- promotes the conservation of biodiversity
- provides for the protection of heritage
- set minimum standards of acceptable environmental impacts (including and assessment of cumulative impacts) and
- set of higher level considerations, for example for any subsequent development approval

²⁹ See, for example, EDO factsheet, 'LEPs and SEPPs', 2.1.3a, available at http://www.edo.org.au/edonsw/site/factsheet/fs02_1_3a.php.

³⁰ See <https://six.nsw.gov.au/wps/portal/>. Other information sources could include:

- information accumulated by catchment management authorities, particularly as part of their work in preparing regional catchment action plans,
- information held by the various divisions of the Office of Environment and Heritage, with respect to water, threatened species, endangered ecological communities,
- statistics and projections held by transport and infrastructure agencies,
- state and Federal State of the Environment Reports,
- statistics and projection from the Australian Bureau of Statistics.

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- statistics and projections held by transport and infrastructure agencies,
- state and federal State of the Environment Reports,
- statistics and projection from the Australian Bureau of Statistics.

According to the federal State of the Environment (SoE) report (2011), “Australia is positioned for a revolution in environmental monitoring and reporting”.³¹ The challenge is to create and use systems that allow efficient access to environmental information. The SoE report notes a range of new technical and policy innovations to address these challenges. These include more intelligent monitoring, increased standardisation and data-sharing, better data management and modelling, and national benchmarks for environmental and sustainability indicators.

An improved system for monitoring and reporting of environmental quality and NRM data would also assist with establishing a baseline for measuring progress towards, and achievement of, specified outcomes.³²

In developing an effective framework for strategic planning there is an opportunity to develop processes and systems that allow efficient use of and access to environmental information. This could also be an impetus to review how the Government deals with information generally, and how information systems can support an improved ‘whole-of-Government’ approach to governing in NSW.

INTEGRATION OF ENVIRONMENTAL POLICY AND LEGISLATION

In order to further ensure a whole-of-Government approach to strategic and land use planning, strategic plans and planning instruments should attempt to align with other Government strategies, or else there is a risk of the planning system undermining work being done by other areas of Government.

The NSW Natural Resources Commission has found that because NRM policy is not sufficiently integrated into

the planning system, it is difficult for CMAs to effectively implement Catchment Action Plans (CAPs).³³ LEPs and planning policies can often undermine initiatives in CAPs, as there is no legal requirement to consider CAPs when making LEPs or when assessing development applications.

The importance of linking NRM plans with planning processes is recognised in the *Integrating Natural Resource Management in Planning Scheme – A guideline for Queensland local governments*.³⁴ The guidelines recognise that “regional NRM plans can assist local government planning processes by providing the science to support the identification of values that require protection, the threats affecting them and the means by which they may be best protected” and suggest that planning schemes should be built around NRM policy.³⁵

In order to better integrate environmental considerations, the NSW planning system must require planning instruments to be developed having regard to or in conjunction with key environmental and NRM policies. For example, the new planning system should include:

- a legislative requirement to consider Catchment Action Plans when preparing planning instruments and strategies,
- a legislative requirement to develop regional strategic plans together with regional conservation plans.

IDENTIFICATION OF COMPETING LAND USES AND VALUES AND MECHANISMS FOR ACHIEVING ENVIRONMENTAL OUTCOMES

An effective strategic planning framework should identify competing land uses and values, and provide mechanisms for assigning appropriate land uses. Strategic environmental assessment, particularly at a regional level, can help to identify significant habitat corridors, assess land use capacity and potential cumulative impacts and plan for climate change adaption and mitigation. The outcomes of strategic environmental assessment can then inform plan making processes so that land is appropriately zoned for the most appropriate use. Mechanisms to achieve environmental outcomes that could be supported by planning instruments include:

³¹ Australian Government, State of the Environment (2011), ‘Future reporting’. Available at: <http://www.environment.gov.au/soe/2011/report/future-reporting.html>

³² See, for example, COAG RC, *Review of capital city strategic planning systems* (December 2011), Available at: <http://www.coagreformcouncil.gov.au/agenda/cities.cfm>

³³ Natural Resources Commission, *Progress Report on Effective Implementation of Catchment Action Plans*, November 2008. Available at: <http://www.nrc.nsw.gov.au/content/documents/Progress%20report%20on%20effective%20implementation%20of%20CAPs.pdf>

³⁴ Above no, 23

³⁵ Above no. 23 page 13 and Chapter 4 – Opportunities for Integrating NRM in Planning Schemes

- Identification of high level protection zones, being sensitive areas of NSW where certain kinds of development (such as mining) are prohibited, based on an assessment of environmental, water supply, social and agricultural value criteria and risk; and recognition that 'management of impacts and monitoring' is not a sufficient risk avoidance strategy,
- Appropriate categories of zoning. For example, the Land Use Matrix that supports the *Standard Instrument (Local Environmental Plans) Order 2006* (the Standard Instrument) uses several categories of environment protection zones.
- Identification of areas to which prescribed controls would apply (for example, coastal protection zones),
- Model provisions to address NRM issues. For example, the Standard Instrument provides some model NRM provisions. These should be reviewed and improved in the context of developing a strategic planning framework in the new planning system,³⁶
- Caps on certain types of development to manage cumulative impacts, for example pollution and carbon emissions,
- Requirement that planning instruments (including regional strategic plans) achieve prescribed environmental thresholds (such as a rigorous 'improve or maintain' test). For example, the Local Government and Shires Association suggest that consideration be given to initiating an "improve or maintain target for all significant natural resource features in strategic land use planning".³⁷

APPROPRIATE STATUTORY WEIGHT FOR AND HIERARCHY BETWEEN PLANNING INSTRUMENTS

Strategic and land use planning should operate in a framework that ensures local land use planning is consistent with long term strategic planning. That is, local environmental plans must be required to be consistent with longer term strategic plans that aim to set the direction for future growth.³⁸ This can be achieved through a legislative requirement that requires all local environmental plans to be consistent with regional

strategic plans or a State plan (or the appropriate equivalent).

Currently there is no statutory framework for the preparation of regional strategic plans in NSW. Given the importance of strategic planning at a regional level, it is recommended that the new planning system set out a statutory framework for the preparation of regional strategic plans.

COMMUNITY ENGAGEMENT IN STRATEGIC AND LAND USE PLANNING PROCESSES

Genuine and meaningful public participation in strategic and land use planning is imperative for assisting decision makers in identifying public interest concerns, utilising local knowledge and ensuring community 'buy-in'. Community engagement is discussed further in Part 2 of this report.

Appendix 1 incorporates these key elements into a proposed legislative model for achieving environmental outcomes in the NSW Planning System.

1.5 ACHIEVING ENVIRONMENTAL CONSIDERATIONS IN DEVELOPMENT ASSESSMENT

While good strategic planning has the benefit of filtering out land use conflicts at an early stage, it does not remove the need for individual site assessment at the development assessment phase, once the details of a proposal are known. It is therefore important that there is mandated consideration of environmental matters in the development assessment process.

1.5.1 AN OBJECTIVE DECISION MAKING FRAMEWORK FOR DEVELOPMENT ASSESSMENT

While there is a general recognition that planning processes need to be improved, the efficacy of the planning system should not be judged solely on its ability to achieve assessment processing timeframes or development approval rates. More fundamental to the planning system's effectiveness is its ability to produce ecologically sustainable outcomes. Fast approvals that deliver poor quality, high risk or unsustainable development are not in the public interest. As the Productivity Commission noted in its benchmarking report on Australian Planning Systems:

"...a combination of several benchmarks is often needed to reflect system performance. For example, while longer development approval times may seem to be less efficient, if they reflect more effective community engagement or integrated referrals, the end result may be greater

³⁶ For example, the model natural resource management clauses in Standard Instrument only require **consideration and minimisation** of environmental impacts, not avoidance of impacts. Model clauses should implement minimum mandatory standards.

³⁷ *Integrating Natural Resource Management into Local Government Operations*, LGSA, above no 22, p 26 and p 35

³⁸ J. Kelly, *Cities: Who Decides?* (2010), Grattan Institute, pp 14 and 42. The Ontario government has developed a regional initiative for land use – 'Places to Grow' – which establishes a legal framework for the Province's long-term growth, including Toronto, and requires municipalities to make their official plans consistent with the growth plan.

community support and preferred overall outcome".³⁹

As identified above, the EP&A Act is heavy with discretionary decision making processes that have historically led to environmental considerations losing out to development and economic interests.⁴⁰ These discretionary processes have also contributed to inefficiencies in the system as a result of uncertainty and lack of transparency.

The new planning legislation must seek to redress this with robust, objective decision making tools that ensure environmental standards are met at the approval stage, for example:

- requiring development to meet threshold tests (such as a rigorous 'improve or maintain' test) for key environmental values such as biodiversity, native vegetation, catchment health and water quality, energy and water use, climate change and pollution, and
- prescribing mandatory standards in codes or guidelines that reflect best practice (for example, BASIX, which requires certain development to meet standards for energy and water use⁴¹). Other areas in which regulation by mandatory codes may be suitable include:
 - coastal development,
 - climate change adaptation,⁴² and
 - building and operational standards.⁴³

Once these objective standards are met, a more subjective, values-based approach can be used for assessing matters such as the suitability of the site, form and design, and

it is appropriate for the decision-maker to consider aesthetic and other planning considerations, such as overshadowing, bulk, and set-backs.⁴⁴

This two-stage approach is consistent with an overarching objective of achieving ecologically sustainable development and ensures that development is undertaken within the physical capacity of the environment. Further, this objective approach has the benefit of reducing uncertainty, ensuring that decisions are transparent and that decision makers are accountable, and helping to restore the community's confidence in the planning system.⁴⁵

This proposed model would operate in place of the existing evaluation framework under s 79C. A new provision would provide that the decision maker must ensure that certain environmental criteria are met. These criteria could ultimately be part of a single methodology covering biodiversity, native vegetation, catchment health and water quality, energy and water use, climate change and pollution. In the meantime, suitably strengthened existing methodologies – such as BASIX, SEPP 65⁴⁶ and those applying to biobanking and native vegetation – could operate as proxies while the single methodology is developed.⁴⁷

The proposed model could be supported by an ePlanning system. For example, the proposed ePlanning framework set out in the National ePlanning Strategy proposes that "decision rules (are) integrated into application lodgment to automate low risk applications and identify critical issues relating to higher risk applications".⁴⁸

Objective decision making processes are already being used in NSW to ensure that proposed development satisfies prescribed criteria. For example:

- The *Native Vegetation Act* 2003 (NV Act) establishes an 'improve or maintain environmental outcomes' test with respect to broadscale clearing of native vegetation on rural land. The NV Act adopts an

³⁹ Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* (April 2011), Vol. 1, p xxviii.

⁴⁰ For example, section 79C of the EP&A Act prescribes matters for consideration by the decision maker in determining a development application. Section 79C does not prescribe how the matter is to be considered by the decision maker (for example, it does not prescribe weight to be given to each matter, or any level of satisfaction that the decision maker must reach in considering a certain matter)

⁴¹ While we generally support the BASIX system as a method for achieving energy and water reduction targets for house and units, we recognise the following shortcomings:

- It only requires a 50% reduction for energy and water use in new houses and small blocks of units, and a weaker 20% for multi unit housing.
- It does not allow LEPs or DCPs to impose improved standards for energy or water consumption.
- Auditing and monitoring can be improved, to ensure that commitments made in a BASIX certificate continue to met.

⁴² See, for example, the draft Australian Standard for Climate Change Adaptation for Settlements and Infrastructure, available at http://www.asbec.asn.au/files/DR_AS_5334_Draft_Adaptation_Standard_8Sept2011.pdf

⁴³ For example, most industries would have some type of Code or Best Practice Guidelines in place for development or operations. The planning system should facilitate integration with industry standards by requiring industry codes to be put in place and development to be compliant with such codes.

⁴⁴ Regulation of these planning consideration would take place through local development control plans.

⁴⁵ In a similar vein, and consistent with the desire for more objectivity is ICAC's recommendation that the NSW Government ensures that discretionary planning decisions are made subject to mandated sets of criteria that are robust and objective *Anti-Corruption Safeguards And The NSW Planning System* Independent Commission Against Corruption February 2012

⁴⁶ *State Environmental Planning Policy 65* (SEPP 65) relates to design quality for residential flat development.

⁴⁷ The development of this methodology is obviously an issue of some complexity and would need to be done in close consultation with the community, developers and agencies within Government.

⁴⁸ See page 12 of the *National ePlanning Strategy*. Available at <http://www.eplanningau.com/wp-content/uploadsold/2011/07/National-ePlanning-Strategy-2011.pdf>

Environmental Outcomes Assessment Methodology that underpins any approvals and property vegetation planning under the NV Act.⁴⁹ The tool requires an objective assessment to determine if prescribed environmental indicators are improved or maintained.⁵⁰ The application of the assessment tool is mandatory and is based on objective scientific criteria. It has helped overcome problems associated with subjectivity and inconsistent decision making under the previous regime.

- *The State Environmental Planning Policy (Sydney Drinking Water Catchment)* 2011⁵¹ provides that a consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.⁵² The SEPP is underpinned by the methodology prescribed in the *Neutral or Beneficial Effect on Water Quality Assessment Guideline* prepared by the Sydney Catchment Authority.⁵³
- The Building Sustainability Index (BASIX) methodology requires proponents to meet certain energy and water targets in order to obtain a BASIX certificate. The consent authority can then rely on the BASIX certificate for that aspect of the development.⁵⁴

It is noted that in Western Australia, the Environmental Protection Authority has proposed a 'net environmental benefit' standard in its discussion of biodiversity offsets, stating that 'this policy position recognises that the environment has been significantly compromised in the past and that halting and reversing the decline of the

environment is now a priority'.⁵⁵ A similar test has been proposed in Victoria.⁵⁶

Appendix 1 incorporates an objective decision making framework into a proposed legislative model for achieving environmental consideration in the NSW Planning System.

1.5.2 INTERAGENCY APPROACH TO DEVELOPMENT ASSESSMENT

In order to effectively integrate environmental considerations at the decision making stage, an interagency approach is needed. Decision makers must be required to consider all potential impacts of a proposed development and seek advice from other Government agencies where appropriate. Further, any requirement to obtain permits or approvals under other legislation should be facilitated, not overridden.⁵⁷ An integrated interagency approach is important because it:

- draws on expertise from other agencies and assists to identify developments that are inappropriate on environmental and technical grounds,
- ensures that appropriate conditions are attached to any consent for development, and
- streamlines the process for proponents who may otherwise have to approach each agency individually.

There is an important role for interagency collaboration in the new planning system in order to achieve the effective integration of environmental considerations. The new planning system should require consultation with relevant agencies, and the concurrence of agencies in circumstances where permits or approvals are required under other legislation.

While there is the need for an efficient approval system, this should not come at the cost of decision making integrity, quality and efficacy. The adoption of an

⁴⁹ See the *Native Vegetation Regulation* 2005 and the *Environment Outcome Assessment Methodology* available at <http://www.environment.nsw.gov.au/resources/vegetation/110157eoam.pdf>

⁵⁰ The *Environmental Outcome Assessment Methodology* applies the improve or maintain test with respect to water quality, salinity, biodiversity and land degradation (soil).

⁵¹ *State Environmental Planning Policy (Sydney Drinking Water Catchment)* 2011 satisfies section 34B(2) of the EP&A Act which requires provision to be made in a State Environmental Planning Policy requiring a consent authority to refuse to grant consent to a development application relating to any part of the Sydney drinking water catchment unless the consent authority is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on the quality of water.

⁵² See clause 10 of *State Environmental Planning Policy (Sydney Drinking Water Catchment)* 2011.

⁵³ Available at: http://www.sca.nsw.gov.au/_data/assets/pdf_file/0007/4300/NorBE-Assessment-Guideline.pdf

⁵⁴ See our general concerns about BASIX, above no 41

⁵⁵ See Environmental Protection Authority Western Australia (January 2006) *Environmental Offsets*, Position Statement No 9, available at http://www.epa.wa.gov.au/docs/1863_PS9.pdf

⁵⁶ Environment Protection Authority Victoria, *Discussion Paper: Environmental Offsets* (June 2008), available at [http://epanote2.epa.vic.gov.au/EPA/Publications.nsf/2f1c2625731746aa4a256ce90001cbb5/cfa2d441a0e31fb7ca2574670004b739/\\$FILE/1202.3.pdf](http://epanote2.epa.vic.gov.au/EPA/Publications.nsf/2f1c2625731746aa4a256ce90001cbb5/cfa2d441a0e31fb7ca2574670004b739/$FILE/1202.3.pdf)

⁵⁷ See for example, section 91 of the EP&A Act, which sets out the permits and approvals that are required as part of the current integrated development process. Former Part 3A and the new State Significant Development and Infrastructure regime override a range of legislative authorisation and agency concurrence requirements. Acknowledging the need for efficient processes (including for significant public infrastructure), this is contrary to the principle that projects with the greatest potential impacts should be subject to the greatest scrutiny.

objective environmental criteria based approach, as outlined above, has the real potential to deliver a better approvals process. Providing established assessment methodologies will assist both the decision maker and the concurrence authority. It also provides a higher level of predictability for proponents. Decision making tools should be transparent and open source. ePlanning processes (discussed in Part 2 of this report) can assist in providing more efficient assessment processes and there is no reason why concurrence processes cannot be supported by such an ePlanning system.

1.6 ENSURING THE EFFECTIVE OPERATION OF A SYSTEM THAT INTEGRATES ENVIRONMENTAL CONSIDERATIONS

While this report has outlined mechanisms for integrating environmental considerations into the planning system, just as important are mechanisms for ensuring that the system operates effectively.

MECHANISMS FOR ENSURING THE INTEGRITY OF ENVIRONMENTAL ASSESSMENTS

One of the most effective ways of ensuring the integrity of environmental impact assessments is to break the pecuniary nexus between the developer and the environmental consultant. So long as developers continue to directly pay the consultants there is the risk of bias, undue influence and unethical practices.

One way of doing this is to provide an improved system for engaging environmental consultants. Such a system could be implemented by the following steps:

- a central register of consultants is created (potentially managed by the Department of Planning, Office of Environment and Heritage or an independent body),
- proponents pay a fee (based on a percentage of the estimated construction investment value) into a designated fund,
- a consultant(s) is allocated to the proponent's project from the register of consultants,
- the consultant prepares an independent public environmental study of values, development alternatives and potential impacts, and
- the developer then finalises its proposal and preferred course of action.

While there may be potential issues with respect to liability and competition these issues could be appropriately managed. For example, registered consultants could be allocated through an open tender process, which

would allow consultants to set their own fees.⁵⁸ Any such framework would need to be developed in consultation with industry and community stakeholders.

For further information, please refer to the joint submission *Planning for Ecologically Sustainable Development*.⁵⁹

MECHANISMS FOR ACCOUNTABILITY, COMPLIANCE AND ENFORCEMENT

A new planning system will need to include robust checks and balances to ensure that decisions are lawful, impartial and based on best practice planning principles; and that laws are properly enforced. There are well documented benefits of having court-based review rights in the planning system – including for example participatory democracy, executive accountability, institutional integrity, improved decision making and rational development of the law.⁶⁰

NSW is fortunate to have a specialist court, the Land and Environment Court (LEC), to deal with land, planning and environmental law matters. A key theme to the reforms that created the Court and the EP&A Act was the general public's right to participate in environmental planning processes – particularly through appeal rights and 'open standing' to enforce the law.

The LEC has been an innovative model for environmental protection, and a model for other similar courts in Queensland and South Australia. The LEC has also been an important source of Australian environmental jurisprudence, including on the precautionary principle and ecologically sustainable development.⁶¹

Notwithstanding these advances, there is still room to improve accountability, access to justice and the quality of citizen participation in environmental decision-making, including through the LEC.

Appendix 3 outlines key recommendations for compliance and enforcement in the new planning system.

⁵⁸ We note that public interest exemptions can be sought from the ACCC regarding competition issues, if necessary. See, for example, *Competition and Consumer Act 2010* (Cth), Part VII (Authorisations, Notifications, and clearances in respect of restrictive trade practices).

⁵⁹ Nature Conservation Council, Environmental Defender's Office and Total Environment Centre (March 2012), above no 3, pp. 20-23.

⁶⁰ See, for example, the Hon Justice B. Preston, Chief Judge of the NSW Land and Environment Court, *The role of public interest environmental litigation* (2006) 23 *Environmental and Planning Law Journal* (EPLJ) 337; The Hon Justice Paul Stein AM, *The Role of the New South Wales Land and Environment Court in the Emergence of Public Interest and Environmental Law* 13 EPLJ 179.

⁶¹ For further information and references on these matters, see EDO NSW, Submission to the Review of the NSW Planning System (Stage 1), November 2011, pp 32-33 available at http://www.edo.org.au/edonsw/site/pdf/subs/111104review_nsw_planning_stage_1.pdf.

For further information, please refer to the joint submission *Planning for Ecologically Sustainable Development*.⁶²

GUARANTEED AND MEANINGFUL PUBLIC PARTICIPATION

The right and legitimate expectation of the community to participate in environmental decision making has long been recognised.⁶³ Mechanisms for integrating community considerations in the planning system is explored further in Part 2 of this report.

1.7 CONCLUSION

Effective integration of environmental considerations can be achieved through a planning system that mandates processes for achieving environmental outcomes. As outlined above, this would require:

- ESD to be the overarching objective of the new planning system,
- a legislative framework for strategic and land use planning with mandated requirements for integrating environment considerations,
- development assessment and decision making that is supported by objective decision making tools that ensure environmental standards are met at the approval stage.

It would also require:

- an inter-agency approach to development assessment,
- mechanisms for ensuring the integrity of environmental assessments,
- appropriate accountability, compliance and enforcement mechanisms, and
- guaranteed and meaningful public participation.

A detailed model for integrating environmental considerations into the planning system is set out in the table at Appendix 1.

⁶² Nature Conservation Council, Environmental Defender's Office and Total Environment Centre (March 2012), above no.3, pp, 26-30, and 75-99.

⁶³ See further *Planning for Ecologically Sustainable*, Nature Conservation Council, Environmental Defender's Office and Total Environment Centre (March 2012), above no.3.

PART 2 – INTEGRATING COMMUNITY CONSIDERATIONS IN THE NSW PLANNING SYSTEM

2.1 PUTTING THE COMMUNITY BACK INTO PLANNING

Putting the community back into planning was a key election promise of the Liberal and National Parties. They have promised ‘to again restore the community – and public interest – at the centre of government in New South Wales’⁶⁴ and restore confidence and integrity in the planning system.⁶⁵

Genuine and meaningful public participation has the benefit of empowering local communities, utilising local knowledge and improving decision making by assisting decision makers to identify public interest concerns. It also promotes community ‘buy-in’ of decisions which can reduce potential disputes and can help to ensure fairness, justice and accountability in decision making.

A 2010 study by the Grattan Institute entitled *Cities: Who Decides?* drew comparisons with eight cities comparable to Australia and found that “where hard decisions had been implemented, there was early, genuine, sophisticated and deep public engagement... [and that]... if we want to face our hard decisions in a way that makes our cities better places to live, including residents is not optional”.⁶⁶

The community must therefore be encouraged and able to participate in a genuine and meaningful manner in relation to all aspects of the planning system, from strategic planning, development assessment and post-approval monitoring. Impediments to public participation that have been introduced by legislative changes over the last decade should be removed, and public participation should be reinstated as a central feature of the new planning system.⁶⁷ The public interest value and benefit of these processes must not be sacrificed simply to increase the speed of development assessment. While it is important for the community to be engaged in the strategic assessment phase, communities are more likely

to be engaged in the planning process when they have clear details about proposed development.

On a more general level, there is also a need to ensure active public participation in law reform processes. The *Reconnecting the Community with the Planning System* report makes a number of key recommendations on this point.⁶⁸

RECONNECTING THE COMMUNITY WITH THE PLANNING SYSTEM

Environmental groups and communities support genuine public participation in planning, both to improve the democratic input to complex decisions and allow the voice of the environment and future generations to be heard alongside conventional economic interests.

Effective public participation needs to do the following:

1. **Inform** – the information provided should be transparent, accurate and easy to understand.
2. **Engage** – the process is not simply the passive supply of information but seeks to encourage views and engage informed opinion.
3. **Interrogate** – information can be complex but resources should be provided to allow interrogation and translation.
4. **Facilitate dialogue** – there should be attempts to bring various stakeholders together to devise solutions on a level playing field.
5. **Evaluate** – the success or otherwise of the effort is reviewed and lessons learnt.

In recent years, the planning system has fallen into disrepute against these benchmarks. Consequently TEC and the EDO undertook research and community surveys, supported by the Department of Planning, to develop recommendations to re-engage the community with the planning system. A large number of recommendations were made and consequently the two groups met with the department to develop an Action Plan – see Table 1.⁶⁹

⁶⁴ *Putting the Community Back Into Planning – The NSW Liberal and National Parties’ plan to reform the State’s planning system*, September 2009. Available at: <http://www.nswnationals.org.au/images/stories/pdf/1%20rewrite%20the%20states%20planning%20laws.pdf>

⁶⁵ Goals 29-32 of NSW 2021 – A plan to make NSW Number One, Available at <http://2021.nsw.gov.au/>

⁶⁶ Kelly, J., 2010, *Cities: Who Decides?*, Grattan Institute, Melbourne, above no 38

⁶⁷ For example, under the current LEP process, the community is to be consulted on the original planning proposal but it is in the Minister’s discretion as to whether further community consultation is required if a planning proposal is varied (section 58(3), EP&A Act); we note also that for SEPPS, community consultation is at the discretion of the Minister (section 38, EP&A Act)

⁶⁸ Above, no 11, see in particular, recommendations 9-12.

⁶⁹ Available at <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=Z6wpTNGyUa0%3D&tabid=490&language=en-US>

TABLE 1: THE COMMUNITY AND THE PLANNING SYSTEM – ACTION PLAN

THE COMMUNITY AND THE PLANNING SYSTEM ACTION PLAN

In 2009 the NSW Department of Planning agreed to fund the Total Environment Centre (TEC) to prepare a report that would provide an informed assessment of how the community viewed the planning system and recommend ways to reconnect them with it.

TEC commissioned the Environmental Defender's Office (EDO) to assist with workshops, research and the report-writing component of the project.

In August 2010, TEC delivered its report, 'Reconnecting The Community With the Planning System'.

The Department welcomes the report and its recommendations, and has prepared this action plan in consultation with the TEC and the EDO.

A number of recommendations relate to legislative reform which would best be considered in the context of any future review of the *Environmental Planning and Assessment Act 1979* (EPA Act) and other legislation which may relate to, or impinge upon, processes under the EPA Act.

While law reform is a matter for government, the Department will ensure the Government is aware of concerns expressed in the report in any future reviews.

Some reforms are already underway as part of the broader planning reform process address other issues raised by the report, for example:

- the *Planning Appeals Legislation Amendment Act 2010* introduces a conciliation-arbitration scheme for merit reviews in the Land and Environment Court. This will make it easier and cheaper for home owners to have local council decisions on development applications and modification applications reviewed
- a review of development control plans (DCPs) was announced in the 2010-11 budget – to address inconsistencies and overlaps between council DCPs and local environmental plans
- reforms to strengthen decision-making and community confidence through processes of the Planning Assessment Commission and Joint Regional Planning Panels
- initiatives to support ethical planning principles and transparency across the planning system including the Lobbyists Code of Conduct; Codes of Conduct for decision-making bodies addressing conflicts of interest; and publication of decisions and documentation.

In addition, the Department has committed to a number of actions, which include:

- Working with TEC to develop a new plain English fact sheet to provide guidance to interested members of the community on how they can participate in the planning process – to distributed widely via electronic and other means
- Producing a plain English guide to explain how the planning system works, and publishing it on the Department's website
- Expanding the existing range of fact sheets and community information resources progressively, particularly in relation to issues of broad community interest.
- Continuing to actively promote public exhibition (beyond the minimum requirements outlined under existing legislation where there is significant community interest) through advertising, media

publicity, the Department's website and direct engagement with stakeholders, communities and community organisations.

- Continuing to build linkages between policy and communication, so that policy development is supported as appropriate by robust communication strategies including a range of consultation options (e.g. addressing the question of information vs consultation); early consultation; feedback; and provision of 'user-friendly' implementation advice to the community.
- Continuing to add to and update internal guidelines, skills and protocols on communication and consultation, to increase emphasis on opportunities for improved planning outcomes through community participation, and recommending extended consultation timeframes where it is practical to do so.
- Reviewing the Department's website periodically, based on input from users, to guide its content and design.
- Expanding the range of submissions that are published online (subject to the consent of the person making the submission), and publishing reports summarising submissions and responses where appropriate.
- Making large documents available either in hard copy or on CD on request from the Department's Information Centre, to those people who do not have internet connections or who have difficulty accessing large documents.
- Continuing to respond to telephone, email and in-person enquiries and requests for information, through the Department's Information Centre.
- Providing communication training for departmental staff to promote a communication culture and encourage the use of 'plain English' for community information and consultation documents and publications.
- Providing new resources for staff to promote the use of plain English and provide alternatives to planning jargon.
- Promoting the Department's subscriber based monthly e-bulletin (currently around 7,000 subscribers), which contains plain English summaries of major planning initiatives and issues; and reviewing the e-bulletin, taking into account the recommendations of the report. The review will look at content and the Department will investigate more sophisticated software that allows users to nominate specific issues of interest and manage their own contact details.
- Developing a social media policy to provide a basis for online engagement by Departmental staff, as well as a social media strategy, which will focus on seeking ways to engage more dynamically and directly with interested stakeholders.
- Continuing to coordinate meetings of reference groups that have a role in the planning system, in particular local government and peak organisations. Through those reference groups the Department will continue to seek opportunities to involve and engage the organisations and their members more actively in communication and consultation about the planning system.
- Seeking opportunities to strengthen the consultation requirements tailored to the significance of the project from a community perspective that are (always) listed under the Director General's requirements for Part 3A projects and update guidelines as appropriate.
- Supporting TEC in approaching the Planning Institute of Australia (PIA) to discuss the role of PIA's code of conduct in addressing some of the points about ethics in the report.

- Building capacity in the Department's community and stakeholder engagement team so its staff can provide improved corporate-wide support such as strategic communication advice and training to build internal capacity.
- Investigate the establishment of a fund to assist research and coordinated submissions by community groups to major, complex developments.
- Keep up to date with best practice in communication and public consultation.

TABLE 2: PROPOSED PUBLIC PARTICIPATION CHARTER

COMMUNITY PARTICIPATION – IMPLEMENTATION PRINCIPLES

The following principles are proposed as a schedule to the Act, and set out the general community participation obligations under the Act. They apply to all decision makers under the Act who are required to take all reasonable steps to ensure consultation is in accordance with these principles. Decision makers are also obliged to prepare a community participation strategy which is subject to biennial evaluation.

1. It is recognised that the community expects and has a right to participate in plan making, development assessment and related decisions. As a consequence these principles will be implemented in good faith and community participation methods should go beyond the minimum standards in the legislation.

2. Community participation should be undertaken independently of the proponent and facilitated to ensure its processes and results have credibility.

3. The decision maker should recognise the diversity of interests and specifically identify and tailor information for:

- those individuals and organisations likely to have an interest in the proposal, including those who may be directly impacted,
- those likely to have an interest in the local and regional implications of the project, and
- those organisations with a state or national interest.

4. Notification and participation opportunities should not be impeded by the timing, location and style (for example, avoid holiday periods or sites not near public transport).

5. The information provided should be transparent, accurate and easy to understand via a variety of methods including letters, social media, websites and events.

6. Participation is not simply the passive supply of information but seeks to encourage and record views and engage informed opinion. Methods of engagement include surveys, submissions, drop-in centres, community group and local meetings, and briefings with key organisations. Providing feedback will also encourage the further development of views towards possible alternatives and solutions.

7. Assistance is provided to the community and those with limited resources to interrogate and understand complex information. For example by the provision of funds to obtain independent advice; meetings with panels of experts; or commissioning of further research by consent authorities and made public prior to a decision.

8. Facilitate dialogue to bring together recognised representatives of stakeholders to allow the opportunity to devise solutions on a level playing field.

9. A public report outlining the issues, responses and further research undertaken is made available prior to the decision.

10. It is recognised that the community should be re-engaged with respect to amendments to a proposal (other than minor amendments), rather than rely on existing information.

11. Community engagement strategies (general or project specific) will be evaluated according to pre-set key performance indicators such as range of groups contacted; surveys of satisfaction with information provided and engagement methods; accurate recording of views; accessibility of information and events.

Since the publication of the Action Plan, the Department has made further progress, including plain English courses for communication champions, a new website, publication of submissions, and a willingness to extend consultation times beyond the minimum statutory requirements.

TEC also agreed to prepare a 'public participation charter' for consideration by the Department and other NGOs – which could be an integral part of the new planning legislation. This proposed public participation charter is set out Table 2.

2.2 EMERGING TRENDS IN PUBLIC PARTICIPATION

An increasing emphasis on improving public participation in Government processes throughout Australia has seen a shift in community engagement away from the traditional inform and consult to more collaborative and involving processes.⁷⁰ In recent years:

"there has been growing recognition that the 'conventional' formal methods of representation and consultation (such as public exhibition of plans) have limitations. In particular, they tend not to engage communities in an active or deliberative way, they often do not attract a large number of participants, and those community members who do respond to such processes are rarely representative of diversity of the community".⁷¹

This shift in community engagement has seen:

- an increase in activity in the area of public participation (for example, there are a greater number of Government agencies and local councils that have developed modern and innovative community engagement strategies),
- a greater number of people working in community engagement roles, with Government agencies and councils now employing more people to carry out this work,
- an increase in the use of technology in community engagement,
- an increased range of community engagement 'tools' (for example, toolkits developed by the Queensland and Victorian Governments that identify and explain a wide range of mechanisms that can be used for community engagement).⁷²

⁷⁰ See for example the International Association for Public Participation Spectrum, available at <http://www.iap2.org.au/sitebuilder/resources/knowledge/asset/files/36/iap2spectrum.pdf>

⁷¹ Herriman, J. 2011. *Local Government and Community Engagement in Australia. Working Paper No 5*. Australian Centre for Excellence for Local Government, University of Technology, Sydney

⁷² See below no 84 and 85

Due to the increased momentum for improved community engagement practices in all areas of Government throughout Australia, there is a large range of material and case studies available on community engagement practices. While these initiatives are not limited to engagement in planning processes, they are useful in demonstrating the trend in community engagement practices throughout Australia. It should also be noted that emerging trends, in particular engagement through electronic means, are not intended to replace traditional existing and effective means of consultation, but to supplement them. This report provides an overview of a number of these initiatives.

2.2.1 INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION (IAP2)

The International Association for Public Participation (IAP2) promotes the values and leading practices associated with involving the public in decisions that impact their lives. IAP2 is regularly cited as capturing the core values of public participation. These core values are outlined in Table 3.⁷³

2.2.2 ENGAGE – GETTING ON WITH GOV2.0

In 2009, the Commonwealth Government established the Government 2.0 Taskforce to prepare a report on:

- leadership, policy and governance to achieve necessary shifts in public sector culture and practice,
- the application of Web 2.0 collaborative tools and practices to the business of government, and
- open access to public sector information (PSI).⁷⁴

Web2.0 moves away from the historical use of the internet as a 'one-way' information distribution system to a 'two-way' interactive system. Examples of Web2.0 include social networking sites (such as Facebook and Twitter), blogs, wikis, video sharing sites, hosted services, and web applications.

The report of the Taskforce describes Government 2.0 as a:

"a public policy shift to create a culture of openness and transparency, where government is willing to engage with and listen to its citizens; and to make available the vast national resource of non-sensitive public sector information (PSI). Government 2.0 empowers citizens and public servants alike to directly collaborate in their own governance by harnessing the opportunities presented by technology."⁷⁵

⁷³ Available at <http://www.iap2.org.au/resources/core-values>

⁷⁴ <http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>

⁷⁵ Ibid, page 1

TABLE 3: INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION (IAP2) CORE VALUES

INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION (IAP2) CORE VALUES

As an international leader in public participation, IAP2 has developed the “IAP2 Core Values for Public Participation” for use in the development and implementation of public participation processes. These core values were developed over a two year period with broad international input to identify those aspects of public participation which cross national, cultural, and religious boundaries. The purpose of these core values is to help organisations, decision makers and practitioners make better decisions which reflect the interests and concerns of potentially affected people and entities.

1. The public should have a say in decisions about actions that could affect their lives.
2. Public participation includes the promise that the public’s contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

The report provides a series of recommendations for an open system of Government with improved community consultation. In May 2010, the Commonwealth Government responded to the Taskforce’s report and agreed with the majority of recommendations made.⁷⁶

2.2.3 LOCAL GOVERNMENT AND COMMUNITY ENGAGEMENT IN AUSTRALIA WORKING PAPER NO 5.

This working paper was commissioned by the Australian Centre of Excellence for Local Government (ACELG) to provide a national update on what is taking place across the local government sector in relation to community engagement, and identify the ongoing challenges and questions for councils in engaging communities.⁷⁷

The document is particularly useful as it considers factors

shaping community engagement in local government and provides numerous case studies of emerging engagement practices as well as useful resources.

In considering the various approaches to community engagement by councils the paper indicates that the most frequently used methods of communication used by councils include:

- local media (including advertisements in state-wide newspapers, regular columns in local newspapers, media articles and editorials, local TV and community radio),
- direct mail (including letterbox drops or personalised addressed correspondence to the householders and targeted community groups),
- internet and website, and
- public signage (including noticeboards in the council foyer and library, and through committees and interest groups).

It also identified the most commonly used engagement tools, including:

- public meetings,
- written submissions,

⁷⁶ <http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf>

⁷⁷ Above no. 71

- surveys/questionnaires, and
- displays/workshops.⁷⁸

The paper also looks specifically at four emerging approaches to public participation, including:

- *Deliberative methods*: facilitates deliberation about issues, rather than just soliciting comments, and allows dialogue between participants as well as between participants and officials. Deliberative democracy forums involve selecting, at random, ordinary citizens of the population.⁷⁹
- *Futures methods*: involves putting forward possible, probable and preferred futures as a way of 'visioning' alternative futures and putting these alternatives to the community.⁸⁰
- *Appreciative inquiry*: is an approach to introducing change that is used for organisational planning purposes. It works at identifying and encouraging what an organization is doing right.⁸¹
- *Social Media and online engagement*: is the use of Web2.0 technologies to facilitate connections between people online.⁸² The use of social media to facilitate community engagement is discussed further below.

2.2.4 LOCAL COUNCIL COMMUNITY ENGAGEMENT POLICIES

As outlined above, councils are taking the initiative to adopt modern and innovative communication practices, with a number of NSW councils adopting formal community engagement strategies.⁸³ The case studies 5-7 outline some of the work being done by councils in engaging local communities.

2.2.5 VICTORIAN AND QUEENSLAND INITIATIVES

The Queensland Government has developed a series of guides designed at supporting best practice community

engagement in Queensland. The *Engaging Queenslanders* series of guides are designed to provide practical advice and information for community engagement practitioners, including:

- Introduction to community engagement,
- Community engagement methods and techniques,
- Improving community engagement across the Queensland public sector,
- Community engagement in the business of government,
- Engaging with rural and regional communities,
- Engaging people with a disability,
- Working with Aboriginal and Torres Strait Islander (ATSI) communities,
- Working with culturally and linguistically diverse (CALD) communities,
- Working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) communities,
- Evaluating community engagement.⁸⁴

The Victorian Government has developed a series of resources for effective community engagement. These include:

- The eGovernment Resource Centre, which provides access to the Victorian Government body of knowledge on eGovernment, government 2.0, government use of social media and information and communications technology (ICT) and government website best practices, with Australian and international examples.⁸⁵
- The three volumes of the *Effective Engagement Kit* of the Department of Sustainability and Environment:⁸⁶
Book 1 - An Introduction to Engagement
Book 2 - The Engagement Planning Workbook
Book 3 - The Engagement Toolkit

Both the Queensland and Victorian material provide detailed 'toolkits' that outline various mechanisms for community engagement. For example, Table 4 shows Engagement Tool Classifications taken from the *Engagement Toolkit* and shows that wide range of tools are being used to engage the community. This report does not intend to provide a detailed explanation of each of these tools, rather simply highlight the range of established tools available. A detailed explanation of these tools can be found in *Effective Engagement Kit of the Department of Sustainability and Environment, Book 3 - The engagement toolkit*.

⁷⁸ Ibid, p 26

⁷⁹ Ibid, pp 37 - 40. See also the work on Deliberative Democracy by the Nature Conservation Council: *Beyond the Usual Suspects - Involving your community in decision making through deliberative democracy* (October 2009)

⁸⁰ Ibid, pp 40 - 41

⁸¹ Ibid, pp 41-42

⁸² Ibid, pp 42-45

⁸³ See, for example Community Engagement Strategies of Mosman Council (Available at: <http://mosmanroundtable.net/ces/>), Rockdale City Council (Available at: http://www.rockdale.nsw.gov.au/Pages/pdf/AboutCouncil/comm_engagement_strategy_jun06.pdf), Maitland City Council (Available at: <http://www.maitland.nsw.gov.au/UserFiles/File/Community%20Engagement%20Strategy%20-%20May%20200912.pdf>), Willoughby City Council (Available at: <http://www.willoughby.nsw.gov.au/community/community-planing/>)

⁸⁴ The *Engaging Queenslanders* material is available at <http://www.qld.gov.au/web/community-engagement/guides-factsheets/>

⁸⁵ Available at: <http://www.egov.vic.gov.au/index.html>

⁸⁶ Available at: <http://www.dse.vic.gov.au/effective-engagement>

CASE STUDY 5: CITY OF CANADA BAY COUNCIL^{xii}

In developing its *FuturePlan 2020*, Canada Bay council has used a number of methods for engaging with the local community. For example, Council has:

- Put together a Community Panel to provide valuable feedback, opinions and ideas on issues that face the City and help determine the best way to tackle them. The Panel will also be asked to consider options to fund ongoing maintenance of the City's \$256 million worth of community infrastructure. This includes discussing rate adjustments and budget priorities in order to properly maintain these assets.
- Commissioned a telephone survey of six hundred residents demographically selected to represent a valid sampling of our City. Participants were asked about council performance and services as well as Council's vision and future objectives.
- Commissioned an online survey to review its progress in achieving *FuturePlan 2020*, and to see how satisfied communities are with the services provided as part of the plan.

CASE STUDY 6: COFFS HARBOUR COUNCIL^{xiii}

In March 2009, Coffs Harbour Council adopted its *Coffs Harbour 2030 Plan*. In developing the *2030 Plan*, Council prepared a specific community engagement strategy which identified a range of community engagement techniques to be used to engage the community in the process of developing a community vision which would inform the plan. These included:

- internal workshops with Councillors and staff,
- workshops with government agencies,
- community workshops across the local government area,
- an on-line community survey,
- community survey using printed questionnaire,
- independent phone poll of 300 randomly selected residents,
- art competition,
- photographic competition,
- shopfront displays at community markets and Coffs Living Sustainability Fair,
- electronic newsletter,
- media and website communications

In 2011 the council established a community advisory group to:

- advise Council on how to maximise community participation in undertaking the *2030 Plan*.
- promote the *2030 Plan* within the community, to encourage the community to participate in existing and new community projects that contribute to achieving the objectives of the plan.
- assist Council to monitor and report on the progress of community participation in projects that contribute to the achievement of the *2030 Plan*.
- endeavour to faithfully represent the interests and preferences of the Coffs Harbour community, rather than those of individual stakeholder organisations. This will ensure that the 2030 community vision remains relevant to the whole community.

Other initiatives of the council include:

- the establishment of community working groups in the areas of arts and culture, education for prosperity, looking after our community, looking after our environment, places for living and 'walk run ride'.
- an online forum to assist council in development of its cultural policy

CASE STUDY 7

The *Local Government and Community Engagement in Australia Working Paper No 5* also identifies a number of case studies:^{xiv}

Box 4: Example: engagement process in developing the Wagga Wagga strategic plan

The process for creating the strategic plan commenced with Council's community survey conducted in 2006 and continued with input from rural village meetings and various Council committees (Wagga Wagga 2011). To build on the background information, further consultations took place with a broad cross section of the community to create both council's *Social Plan* and *Community Strategic Plan* during 2007, including:

- Focus groups to target specific demographic categories including older people, children and families and people from cultural and diverse backgrounds
- Local institutions: Defence, Charles Sturt University, Riverina Institute of TAFE
- Targeted business representatives
- NSW Farmers' Federation
- Council committees, progress associations and organised community groups.

Source: *Wagga Wagga 2011*

Box 7 – Example: Warringah Council Community Engagement Review

Warringah Council in NSW is well known for its commitment to community engagement and innovative approaches to community involvement in planning and decision-making. Its *Community Engagement Policy*, the *Community Engagement Matrix* and the *Community Engagement Toolkit* (for staff) are available on the council website. In 2010 the Council undertook a comprehensive review of its community engagement to better understand the needs of their local community. The review involved:

- Five hundred telephone interviews of residents from the Warringah local government area, achieving a completion rate of 60%
- Two focus groups with residents randomly selected from the residents who had participated in the telephone survey
- Internal meetings with staff and Councillors.

The survey sought feedback on the level of interest in personal involvement in council decisions, methods for hearing about council decisions, methods for contributing to council decisions, satisfaction with community consultation by Warringah Council in general, and main sources of council information. The results of the review are available on the council website.

For more information contact Warringah Council's Community Engagement and Research Coordinator.

TABLE 4 - ENGAGEMENT TOOL CLASSIFICATIONS ⁸⁷

Engagement Tool Classifications							
Tool	Inform	Consult	Involve	Collaborate	Empower	Diverge	Converge
Backcasting	✓	✓	{✓}	{✓}	{✓}		✓
Brainstorming		✓	{✓}	{✓}	{✓}	✓	
Briefings	{✓}	✓					✓
Citizen committees		{✓}				✓	✓
Citizen juries		✓	{✓}	{✓}		✓	✓
Civic journalism	✓	✓				✓	✓
Community fairs	{✓}					✓	
Community indicator			✓	{✓}	✓	✓	✓
Community profiling	✓	{✓}	✓	✓	✓		✓
Conference	{✓}	✓	✓	✓	✓	✓	✓
Consensus conference		{✓}	✓	✓		✓	✓
Deliberative opinion polls	✓	{✓}					✓
Delphi study		✓	{✓}	✓	✓	✓	✓
Design charrettes	✓					✓	✓
Displays and exhibits	{✓}	✓				✓	
Electronic democracy		{✓}	✓			✓	
Expert panel	✓	✓	{✓}	✓	✓		✓
Field trips	{✓}	✓				✓	
Fishbowl	✓	{✓}	✓			✓	
Focus groups		✓				✓	
Future search conference		✓	{✓}	✓	✓	✓	✓
Information contacts	✓					✓	
Information hotline	✓					✓	
Information repository	✓					✓	
Interactive TV	✓	{✓}				✓	
Interactive video display kiosks	✓					✓	
Key stakeholder interviews		✓				✓	
Kitchen table discussion	✓	{✓}	✓	✓	✓	✓	✓
Media releases	{✓}	✓	✓	✓	✓	✓	
Mediation and negotiation			✓	{✓}	✓	✓	✓
Mind mapping	✓	{✓}	✓	✓	✓	✓	
Multi Objective Decision Making Support (MODSS)			✓	✓	{✓}	✓	✓
Newspaper inserts	✓	{✓}	✓			✓	
Nominal group			✓	✓	{✓}	✓	✓
Open house	✓	{✓}	✓	✓		✓	
Open space technology			✓	✓	{✓}	✓	✓

⁸⁷ Ibid, pp 8 and 9

Engagement Tool Classifications							
Tool	Inform	Consult	Involve	Collaborate	Empower	Diverge	Converge
Participant observation		✓	✓	✓		✓	
Photovoice		✓	✓			✓	✓
Planning4real			✓	✓	✓	✓	
Poster competitions	✓	✓	✓			✓	
Printed information	✓	✓				✓	
Prioritisation matrix		✓	✓	✓	✓	✓	✓
Public conversation	✓	✓	✓	✓		✓	
Public involvement volunteers	✓	✓	✓	✓		✓	✓
Public meeting	✓	✓	✓	✓		✓	✓
Questionnaires and responses	✓	✓				✓	
Role plays	✓	✓				✓	
Samoan circles	✓	✓	✓	✓	✓	✓	
Scenario testing	✓	✓	✓	✓	✓	✓	✓
Search conference		✓	✓	✓		✓	✓
Shopfront	✓	✓				✓	
Simulation (electronically generated)	✓	✓	✓	✓	✓	✓	✓
Sketch interviews	✓	✓	✓	✓		✓	
Snowball sampling		✓	✓				✓
Speakout (version 1)	✓	✓				✓	
Speakout (version 2)			✓	✓	✓	✓	✓
Stakeholder analysis (CLIP)	✓	✓	✓	✓	✓	✓	✓
Stakeholder analysis (Stakeholder matrix)	✓	✓	✓	✓	✓	✓	✓
Stakeholder analysis (Venn diagrams)	✓	✓	✓	✓	✓	✓	✓
Study circles		✓	✓	✓	✓	✓	
Submissions	✓	✓	✓				✓
Surveys	✓	✓				✓	
Technical assistance	✓	✓	✓	✓	✓		✓
Technical reports and discussion papers	✓	✓				✓	
Telephone trees	✓	✓				✓	
Visioning		✓	✓	✓	✓	✓	
Websites	✓	✓	✓	✓		✓	✓
Workshops		✓	✓	✓	✓	✓	✓

2.2.6 INTERNATIONAL CASE STUDIES

The Grattan Institute's *Cities: Who Decides?* report investigates decision making in eight of the world's most successful cities, and asks what governance arrangements

accompanied their broad-based improvement.⁸⁸ The report highlights international examples of community engagement in city planning (see Table 5).

**TABLE 5 – INTERNATIONAL EXAMPLES OF
COMMUNITY ENGAGEMENT IN CITY PLANNING**

DEEP COMMUNITY ENGAGEMENT – INTERNATIONAL EXAMPLES ^{xv}

- In Vancouver, Canada, residents worked with developers and builders, and the City Council engaged directly with people to develop a CityPlan. The benefits of this structure included: quick action on behalf of Council to implement the changes; strong feedback and response from the community on a series of issues; immediate implementation built credibility in the process.
- Seattle, USA established a Neighbourhood Planning Office in 1995. The Seattle Planning Budget placed a strong emphasis on public engagement; funding for resources for neighbourhoods to develop their vision and values; and particular effort on communication (language and technology used). This resulted in a high level of neighbourhood acceptance towards the plan recommendations.
- Portland, USA developed a Regional Framework Plan with the assistance of public meetings, household surveys, and collaboration across a broad range of sectors – including activists, city officials, retailers, property owners, neighbourhood groups, and civic organisations. One expert interviewee contrasted the approach to engagement in Portland with that in cities in the UK and Australia, where “there seems to be a culture that consultation is about telling people what the planners have decided”.

2.2.7 EPLANNING

WHAT IS EPLANNING?

The *National ePlanning strategy* is designed to put in place technology services that support more efficient, accessible, innovative, and open processes in planning throughout Australia. ePlanning encompasses “business process models, methodologies, specifications, systems, services and technologies that support the planning industry in Australia in delivering efficiencies to its stakeholders”.⁸⁹

The *National ePlanning strategy* operates as a strategic alignment document that combines a series of umbrella concepts that will inform each jurisdiction to prepare a ‘roadmap’ for its own ePlanning solutions. For example, the Strategy is based on five key components (Plan, Know, Decide, Confirm and Improve) with specific technology services designed to support processes for each of the key five components (See Table 6).⁹⁰

⁸⁹ National eDA Steering Committee *National ePlanning Strategy – The Future of ePlanning in Australia* (June 2011), available at <http://www.eplanningau.com/wp-content/uploadsold/2011/07/National-ePlanning-Strategy-2011.pdf>

⁹⁰ Ibid.

TABLE 6: THE VISION FOR EPLANNING AS SET OUT IN THE NATIONAL EPLANNING STRATEGY

2.2. Future of ePlanning services

This is a small example of what the reasonably envisioned future for each component of the planning and development framework if the vision and principles in this document are achieved:

Plan	Know	Decide	Confirm	Improve
Support for delivery of quality strategic planning and development instruments through application of innovative consultation and participation processes	Access to planning and development data and information in a consistent user-friendly manner for all participants	Support for transparent, accountable and streamlined decision-making processes	Support for simple and effective ways to monitor and resolve issues within the planning and development framework	An informed and responsive business model that adapts with the changing needs of planning and development framework participants
<ul style="list-style-type: none"> • Omnipotent social media and web 2.0 approaches used for plan making and engagement activities • Wiki-style technology used for collaborative plan development • Augmented reality, 3D models, visualisations are provided by plan makers that can be interrogated and manipulated by interested parties • There is ongoing and continuous engagement with all stakeholders on plans and the plan making process. 	<ul style="list-style-type: none"> • Information is accessible and 'open' (such as planning requirements and other application history) to be mashed up by private organisations and collaboratively developed by the community • Interactive planning information online when determining appropriate development (eg. place a development type / design onto a lot and it brings up relevant issues) • Learning application preparation tools (like wizards) ensure application process is user centric and end product is 'well made' 	<ul style="list-style-type: none"> • Interactive forms for application with common look and feel regardless of jurisdiction with online lodgement of all documentation • Decision rules integrated into application lodgement to automate low risk applications and identify critical issues relating to higher risk applications • Dynamically integrated knowledge base for better decision making • Automated referrals to other organisations / experts and responses • Standard conditions are assigned which are consistent across a jurisdiction with some local variation • Detailed tracking of applications through assessment process, all touches are recorded and published in real time 	<ul style="list-style-type: none"> • Compliance systems where notification, registering issues and resolution for users is a simple click on a location and submitting details process • Compliance systems are connected to plan making systems for rapid feedback on planning instrument efficacy • Outcomes of enforcement activities are published in real time 	<ul style="list-style-type: none"> • Automated reporting provides key metrics and feeds back into all parts of planning process, public results and statistics are published when relevant • Managers have automated reporting systems to assist with managing assessment priorities and staff workload • The data extracted through reporting tools is linked seamlessly into the plan making process

The NSW Department of Planning and Infrastructure has prepared a draft roadmap for ePlanning in NSW. The draft roadmap has not been made publically available and the Department advises that review and implementation of the NSW ePlanning Roadmap recommendations will need to be considered in the context of the state government's priorities and the comprehensive review of the planning system announced by the Minister in July 2011. It is our understanding however that the NSW draft ePlanning roadmap generally reflects the framework of the National ePlanning strategy set out in the diagram above.

EPLANNING AND THE NEW PLANNING SYSTEM

In our view, the new planning system could be supported through an appropriately designed ePlanning system. In this respect we make the following observations:

- ePlanning could support the better coordination of general administrative processes. For example:
 - The development assessment process could

generally be managed through a development assessment tracking system, similar to the system currently used by the Department of Planning and Infrastructure. This model could be extended to all types of development in NSW,

- Such a system would allow for the standardisation of administrative processes, such as applications forms, which may reduce complexity and improve efficiency.
- An ePlanning system could allow for the improved sharing of information:
 - Firstly, an ePlanning system could ensure that all information relevant to planning processes is available in one space. This could range from environmental studies carried out during strategic planning, environmental planning instruments, draft policies that are open for public comment, fact sheets, development applications, environmental assessment reports supporting development applications,

- decisions and reasons for decisions,
- ePlanning technology could also be used to consolidate all information about a particular parcel of land,
- Such a system could potentially be extended to support an improved ‘whole-of-Government’ approach to planning. For example, relevant information from other agencies and other agency processes could also be managed through a similar system.
- ePlanning technology could be used to support objective decision making methodologies:
 - For example, BASIX uses an online methodology that requires proponents to meet certain energy and water targets in order to obtain a BASIX certificate.⁹¹ The proponent enters data about the proposed development into an online program that calculates whether the proposed development satisfies the energy and water criteria. The consent authority can then rely on the BASIX certificate for that aspect of the development.

Part 1 of this report proposes an objective decision making process for ensuring environmental considerations are integrated into the planning system. Our organisations propose an objective framework that would support a decision maker in determining whether a development proposal meets certain criteria (for example, whether development improves or maintains biodiversity and ecosystem function, improves or maintains catchment health and water quality and meets specified criteria for energy and water, cumulative impacts, climate change and pollution). There is potential for an ePlanning system to support this proposed objective decision making framework. For example, the proposed ePlanning framework proposes that “decision rules (are) integrated into application lodgement to automate low risk applications and identify critical issues relating to higher risk applications”.⁹² The objective environmental criteria and supporting methodologies could be incorporated into an ePlanning system.

LIMITATIONS OF EPLANNING

While we have not had the benefit of seeing the NSW draft road map, we make the following observations about the

⁹¹ The Building Sustainability Index (BASIX) is a methodology that ensures homes are designed to use less potable water and be responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for house and units. The methodology relies on an online program that is accessible to anyone. The user (usually the building designer) enters data relating to the house or unit design - such as location, size, building materials etc - into the BASIX tool. BASIX analyses this data and determines how it scores against the Energy and Water targets. The design must pass specific targets (which vary according to location and building type) before the user can be issued with a BASIX Certificate (which is required for particular classes of development).

⁹² See page 12 of the National ePlanning Strategy, above no. 104

proposed National ePlanning strategy generally:

- While it is suggested that there would be consultation at the ‘plan’ phase, it does not envisage consultation at the ‘decide’ phase. This is in clear contradiction to a system that integrates best practice community engagement. We note that while good strategic planning has the benefit of filtering out land use conflicts at an early stage, it does not remove the need for individual site assessment at the development assessment phase, once the details of a proposal are known. Additionally, while it is important for the community to be engaged in the strategic assessment phase, communities are more likely to be engaged in the planning process when they have clear details about proposed development.
- ePlanning should not replace traditional forms of consultation but complement them (in order to ensure members of the community who do not have access or ability to use the internet are not excluded).

2.2.8 SOCIAL MEDIA

Historically, the internet was used as a ‘one-way’ process for distributing information. Web 2.0 refers to the ‘second wave’ of internet use that has seen a rise in interactive internet use, and in particular, social media.⁹³

The Local Government and Community Engagement in Australia – Working Paper 5 reports that:

- Most, if not all, Australian councils are using websites to provide information to their local community.
- Councils, along with other public and private sector organisations, are increasingly using social media tools to communicate with a greater diversity of people about a broader range of issues.⁹⁴

As a result, there is a growing amount of material that considers the use of social media in community engagement processes.⁹⁵

⁹³ Examples of web 2.0 include ‘Fix My Street’ initiatives, eg see ACT Government, https://www.contact.act.gov.au/app/answers/detail/a_id/1146/~/-/fix-mystreet; MySociety (UK NGO), at <http://www.mysociety.org/projects/fixmystreet/>; FixMyStreet NZ, at <http://fixmystreet.org.nz/>; and consultations on a national cultural policy, eg see Digital Culture Public Sphere wiki page, <http://digiculture.wikispaces.com>

⁹⁴ *Local Government and Community Engagement in Australia – Working Paper 5* (November 2011), above no. 77, page 43.

⁹⁵ See for example:

- Victorian eGovernment Resource Centre. Available at: <http://www.egov.vic.gov.au/index.html>
- *Promising Practices in Online Engagement* (Bittle et.al 2009) UK Centre for Advances in Public Engagement. Available at: <http://www.publicagenda.org/pages/promising-practices-in-online-engagement>
- Local Government Web Network. Available at <http://lgweb-network.org/>
- The Community and Social Engagement practice of the Innovation and Knowledge Exchange Network. Available at: <http://www.iken.net.au/communities-of-practice/community-engagement-and-social-media>

TABLE 7 – CASE STUDY: MOSMAN SOCIAL MEDIA EXPERIENCES AND BIG IDEAS

MOSMAN SOCIAL MEDIA EXPERIENCES AND BIG IDEAS^{xvi}

Mosman Council was an early adopter of web technologies for communication and engagement. The council uses blogs, forums, participation in social networks, and had the first local government Twitter account in Australia. Together, these form an integral part of the way the council does business. Council's Community Engagement Strategy adopted in April 2009 won the Gov 2.0 Innovators Award in the Small Agency category from the Government 2.0 Taskforce.

Council's latest move to actively engage residents in planning for Mosman's future is the Big Ideas online forum. The forum acknowledges that great ideas for Mosman's future are not necessarily formulated at a particular point in time (e.g. during Community Strategic Plan consultations), rather that these ideas can come at any time. Launched in March 2011, Big Ideas seeks to harness the creativity and innovative thinking of Mosman residents. It allows people to log their own 'big idea' for Mosman's future, as well as vote and/or comment on others' ideas. Big Ideas is an ongoing community conversation that will provide a continual feed into Council's planning processes. As an engagement tool it is available during other community engagement processes, and importantly 24 hours a day, 7 days a week, 365 days a year.

Mosman Council's Community Engagement Strategy advocates open licensing and open formats for non-private, non-personal data. In April 2011, data.mosman.nsw.gov.au was launched. The Mosman Council DATAstore makes data available for reuse by Council, other government and public sector agencies, business and the community. The DATAstore is evidence that the development of local authority information infrastructures enable web developers to innovate new products of real value to the community.... By making its development application (DA) data available for reuse, Council makes it possible for local residents to receive email alerts from planningalerts.org.au when a planning application is made near them. The same data enables an augmented reality iPhone app.

In November 2011, Council's community consultation for the draft Local Environmental Plan (LEP), MosmanLEP.net won the year's Urban Planning Achievement Award from the Planning Institute of Australia. The Award recognised the comprehensive and varied nature of the consultation, which included new and traditional media.

Engage - Government 2.0 recognises that while social media may have a role to play in assisting community engagement:

"Government 2.0 is not specifically about social networking or technology... It represents a fundamental shift in the implementation of government – toward an open, collaborative, cooperative arrangement where there is (wherever possible) open consultation, open data, shared knowledge, mutual acknowledgment of expertise, mutual respect for shared values and an understanding of how to agree to disagree. Technology and social tools are an important part of this change but are essentially [just] an enabler in this process".

The use of social media has been changing the way that Governments engage with communities in all processes including planning. See, for example, the work being done by Mosman Council set out in Table 7.

It is necessary to recognise that there are some limitations to the use of social media as an engagement tool:

- Online community engagement should not be viewed as a replacement for traditional methods of engagement – used in isolation it can exclude

sectors of the community and may not provide a definitive representation of the community. Online engagement should be balanced with other community engagement methods.⁹⁶

- Managing social media as a form of community engagement requires "a lot of time and commitment from organisers and the right incentives to keep people engaged".⁹⁷
- It is not simply enough to set up an online community engagement forum. The forum needs to be regularly monitored. It is important that agencies provide timely and appropriate feedback. Given the 'immediacy' of internet communication, expectations of a timely response may be increased.

⁹⁶ *Online Community Engagement Guideline* (December 2010), Queensland Department of Public Works. Available at: <http://www.qld.gov.au/web/community-engagement/policy-guidelines/guidelines/documents/online-community-engagement-guideline.pdf>

⁹⁷ Brittle et. al *Promising Practices in Online Engagement* (2009), cited in *Local Government and Community Engagement in Australia – Working Paper 5* (November 2011), above no. 82

2.3 REQUIREMENTS FOR PUBLIC PARTICIPATION IN PLANNING LEGISLATION

Despite the recognition of the benefits of community engagement in decision making, and the efforts being made to improve community engagement practices, Australian planning legislation in general prescribes traditional, and what would now be seen as minimum, requirements for community engagement.

A preliminary review of the planning legislation across Australia⁹⁸ confirms that the general legislative requirements for community engagement involve:

- For the preparation of planning instruments (in their various forms):
 - notification to be provided through a notice published in the Government Gazette, a relevant newspaper, and in specified circumstances, adjoining landowners,
 - opportunity to provide a written submission in the indicated time period,
 - obligation for the relevant authority to consider submissions (and in some cases respond to submissions in a report).
- For the assessment of a development application (in their various forms):
 - notification to be provided through a notice published in the Government Gazette, a relevant newspaper, and in specified circumstances, adjoining landowners,
 - opportunity to provide a written submission in the indicated time period,
 - in some instances, the right to be heard at hearing,
 - obligation for the relevant authority to consider submissions.
- In more limited circumstances, there is a legislative requirement to:
 - put information on a website,
 - hold a public hearing.

When comparing the decision making arrangements in eight international cities comparable to those in Australia, the Grattan Institute found that the level of public

engagement needs to be “an order of magnitude different from what we have seen in Australia”.⁹⁹ Similarly, a recent report of the COAG Reform Council assessed whether capital cities’ strategic planning systems effectively implement and support consultation and engagement with external stakeholders, experts and the wider community (among other things). The Council made the following key findings for Sydney:

- a focus on upfront consultation with little evidence of ongoing consultation during implementation and review,
- no clear indication of how consultation affects plan-making, implementation and review.¹⁰⁰

Despite the shortcomings of existing planning legislation, a growing number of planning authorities are going beyond the minimum requirements for community and engagement. The impetus behind this improvement is often a community expectation to be involved in decisions that affect the communities in which they live and dissatisfaction with decision makers that exclude the community. These agencies are taking the initiative to develop community engagement strategies and incorporate practices that better engage the community in planning processes. See, for example:

- the community engagement strategies of numerous councils across NSW,¹⁰¹
- the NSW Department of Planning iPlan Community Engagement,¹⁰²
- *Guidelines for Major Project Community Consultation* (October 2007),¹⁰³
- *A Guide for Engaging Communities in Environmental Planning and Decision Making*.¹⁰⁴

A new planning system in NSW needs to drive the much needed improvements in community engagement by incorporating legislative provisions that facilitate genuine and meaningful participation. The provisions should be underpinned by core values of public participation and

⁹⁸ See:

- *Environmental Planning and Assessment Act 1979* (NSW)
- *Planning and Development Act 2005* (WA)
- *Planning and Development Act 2007* (ACT)
- *Planning and Environment Act 1987* (Vic)
- *Sustainable Planning Act 2009* (Qld)
- *Land Use Planning and Approvals Act 1993* (Tas)
- *Development Act 1993* (SA)

⁹⁹ Above no.38

¹⁰⁰ COAG Reform Council, Review of capital city strategic planning systems (December 2011), available at <http://www.coagreformcouncil.gov.au/reports/cities.cfm>, Part D, Chapter 8: ‘Sydney’.

¹⁰¹ See above no. 83

¹⁰² The iPlan services of the former Department of Planning were decommissioned on 30 July 2008. For further information see Community Engagement in the NSW Planning System (Elton Consulting, 2003). Available at: http://www.communitybuilders.nsw.gov.au/community_engagement_handbook_part_1.pdf

Then the Department of Planning, Infrastructure and Natural Resources

¹⁰³ NSW Department of Planning. Available at; <http://www.planning.nsw.gov.au/assessingdev/pdf/Dr3%20DOP%20GuideMajProjComConsult%20BRO.pdf>

¹⁰⁴ Former Department of Environment and Conservation. Available at: http://www.environment.nsw.gov.au/resources/warr/2006288_engagingcommunities.pdf

ensure that consultation processes achieve prescribed outcomes (Table 8). A Charter of Public Participation

should be adopted to guide community engagement activities across Government (Table 2).

TABLE 8: SUMMARY OF KEY OUTCOMES FOR PUBLIC PARTICIPATION

UNDERLYING PRINCIPLE	POSSIBLE WAYS TO IMPLEMENT
Inform: the information provided should be transparent, accurate and easy to understand	<ul style="list-style-type: none"> • Make information available through a range of means – hard copy (in different locations), hard disc, on website • Develop plain English, easy to read fact sheets • Provide information in different ways, for example make use of visual plan information for those people who are illiterate or who process visual information better than written information • Allow information to be made available to the public prior to consultation sessions (so that there is a distinction between information giving and consultation processes)
Engage: the process is not simply the passive supply of information but seeks to encourage views and engage informed opinion	<p>Use a variety of methods, in which people feel comfortable, to obtain opinions. For example:</p> <ul style="list-style-type: none"> • Use workshops in lieu of written submissions • Use an independent facilitator for public consultation sessions • Provide opportunities for consultation through social media
Interrogate: information can be complex but resources should be provided to allow interrogation and translation.	<ul style="list-style-type: none"> • Facilitate community groups to engage independent consultants to provide advice on information • Facilitate an experts panel to which the public can ask questions
Facilitate dialogue: there should be attempts to bring various stakeholders together to devise solutions on a level playing field	<p>Use methods that bring people together to discuss issues, for example:</p> <ul style="list-style-type: none"> • Roundtables • Workshops • Opportunities for people to offer alternatives to a proposal and to which council or developer needs to respond
Evaluate: the success or otherwise of the effort is reviewed and lessons learnt.	<ul style="list-style-type: none"> • Include performance indicators in legislation (see for example, the proposed public participation charter set out in Table 2) • Require reporting on engagement practices

2.4 CONCLUSION

A review of emerging trends in community engagement shows increasing efforts to move away from only using traditional methods of engagement to more inclusive and collaborative methods. The problem is that while some agencies have been innovative in the way in which they consult communities, mandatory requirements for community consultation under planning legislation do not reflect best practice community engagement. The new planning system must improve on current processes, by ensuring consultation requirements are underpinned by core values and achieve prescribed outcomes. Further, improving engagement in the NSW planning system should be part of a wider initiative of the NSW government to improve community engagement in all Government areas.¹⁰⁵

A general framework for achieving improved community engagement in the planning system would require:

- A legislative right of public participation in all key processes, including:
 - law reform processes
 - preparation of planning instruments and strategies,
 - development assessment, and
 - review, compliance and appeals.

- Maintaining traditional public participation processes including notification, exhibition and consultation on planning instruments and development proposals (to ensure this minimum standard of community consultation continues). These processes should be improved to reflect modern and current practices, such as providing information online, and holding public hearings.
- A statutory obligation to ensure that community consultation is carried out in accordance with prescribed implementation principles. For example, the planning system should adopt a public participation charter which sets out key implementation principles (Table 2), and require all consultation to be carried out in accordance with the adopted Charter.¹⁰⁶
- A requirement that all agencies and councils develop Community Engagement Strategies that are consistent with the Charter for Public Participation.

A detailed model for integrating community considerations into the planning system is set out in the table at Appendix 2.

¹⁰⁵ In this respect we note Goal 32 of the State Plan NSW 2021: Involve the community in decision making on government policy, services and projects. Available at: http://2021.nsw.gov.au/sites/default/files/NSW2021_Plan%20Goals_0.pdf

¹⁰⁶ As outlined above, the idea of a Charter for Public Participation follows the work done by the Total Environment Centre and the Environmental Defender's Office as part of the Reconnecting the Community with the Planning System project. Adopting this approach would leave it open to the person undertaking community consultation to develop the most appropriate strategy for consultation (for example, which social media technologies would be suitable, how to conduct community workshops). The obligation would lie in meeting the implementation principles (for example, recognising the diversity of the community and ensuring that information was accessible and easy to understand).

APPENDIX 1 – PROPOSED LEGISLATIVE MODEL FOR INTEGRATING ENVIRONMENTAL CONSIDERATIONS IN THE NSW PLANNING SYSTEM

Proposed legislative mechanism/s	Underlying principles	Additional comments
OBJECTIVES		
Make Ecologically Sustainable Development (ESD) the overarching objective of the new planning system.	ESD should underpin all decisions made under the new planning system, and decision makers should be required to act in accordance with the principles of ESD. ⁱ	<ul style="list-style-type: none"> A proper application of ESD recognises that environmental integrity underpins social and economic health and takes full account of environmental costs and externalities.ⁱⁱ While ESD has obvious environmental benefits the economic and social benefits are also significant.ⁱⁱⁱ
STATUTORY BODIES		
Legislative provisions that establish a State Planning Commission	An independent State Planning Commission (or similar agency) may assist in implementing a 'whole-of-Government' approach for strategic planning. There would be potential for such a body to coordinate the preparation of strategic plans and environmental planning instruments, manage collaboration between Government agencies and maintain a central system of information. ^{iv}	<ul style="list-style-type: none"> Any proposal to introduce a State Planning Commission would need to be developed in consultation with industry and the community.
Legislative provisions to establish a central information agency to audit existing data sources, and coordinate collection and sharing of information. *Note: Provisions for a central information agency may sit outside planning legislation	Efficiency and an improved 'whole-of Government' approach to planning would be facilitated by sharing of data across sectors	<ul style="list-style-type: none"> An extensive set of data already exists in NSW and Australia, that can be utilised to support strategic and land use planning processes.^v Consideration would need to be given as to how to improve processes for sharing data across sectors and how to build on data, with a commitment to utilise new technologies as they become available.

STRATEGIC PLANNING		
<p>Legislative framework for strategic and land use planning</p> <p>The new planning system must set out a legislative framework for strategic and land use planning. Key elements for this framework are outlined below. These key elements should apply to all processes, including:</p> <ul style="list-style-type: none"> the preparation and making of regional strategies (or their equivalents),^{vi} the preparation and making of environmental planning instruments including, for example of local environment plans and state environmental planning policies (or their equivalents). 		
Legislative requirement to carry out robust baseline studies of environmental and NRM values.	Best practice strategic and land use planning must be underpinned by scientific, factual and up-to-date data.	<p>This could be supported by:</p> <ul style="list-style-type: none"> a State Planning Commission that coordinates the carrying out of baseline studies, the use of existing data sets and sharing of information, coordinated by a central agency.
Legislative requirement to seek the concurrence of prescribed agencies.	Planning systems should not be concerned solely with development. Rather, strategic and land use planning requires that consideration be given to the complete range of interests that need to be managed for the future – including, for example, transport, infrastructure, resources, environment, health and community.	<ul style="list-style-type: none"> It is noted that section 34A of the EP&A Act requires that before an environmental planning instrument is made, the relevant authority must consult with the Director-General of the Department of Environment, Climate Change and Water (now Office of Environment and Heritage) if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument. Consultation with the Office of Environment and Heritage should not be restricted to these limited circumstances, and that consultation with all relevant agencies must be mandatory in the strategic planning processes and with respect to the preparation of planning instruments.^{vii}
Legislative requirement to undertake strategic environmental assessment, including assessment of prescribed environmental criteria.	Strategic environmental assessment aims to provide for a high level of protection of the environment and contributes to the integration of environmental considerations in the preparation and adoption of plans and pro-	<ul style="list-style-type: none"> The Hawke report recommends a framework for strategic assessment which would: require an assessment of the extent to which a plan, policy or program:

Proposed legislative mechanism/s	Underlying principles	Additional comments
	grams with a view to promoting sustainable development. ^{viii}	<ul style="list-style-type: none"> - protects the environment - promotes ESD - promotes the conservation of biodiversity - provides for the protection of heritage - set minimum standards of acceptable environmental impacts, and - set of higher level considerations, for example for any subsequent development approval.^{ix} <ul style="list-style-type: none"> • Key criteria could include, for example: <ul style="list-style-type: none"> - biodiversity and ecosystem function - catchment health and water quality - assessment of cumulative impacts - climate change impacts and opportunities for adaptation - impacts on coastal processes • Mandatory provisions could be supported by methodologies that assist in meeting essential criteria.^x
Legislative requirement that strategic plans and planning instruments are developed having consideration to existing strategic documents, including for example, regional conservation plans and Catchment Action Plans (CAPs).	Effective strategic planning would require planning instruments and strategies to be aligned (as best as possible) with environmental protection and conservation strategies.	<p>In order to ensure that environmental considerations are appropriately integrated the provisions should require strategic planning and planning instruments to be consistent with CAPs and to be prepared in conjunction with regional conservation plans.</p> <p>Legislation should prescribe other information that must also be considered, including, for example:</p> <ul style="list-style-type: none"> • bushfire risk mapping, • Aboriginal land use plans, • coastal strategies.
Legislative requirement that planning instruments identify competing and complementary land uses and values.	An effective strategic planning framework should identify competing land uses and values, and provide mechanisms for assigning appropriate land uses.	<p>This process would support, for example:</p> <ul style="list-style-type: none"> • identification of high level protection zones, being sensitive areas of NSW where

Proposed legislative mechanism/s	Underlying principles	Additional comments
		<p>certain kinds of development (such as mining) are prohibited, based on an assessment of environmental, water supply, social and agricultural-value criteria and risk and recognition that ‘management of impacts and monitoring’ is not a sufficient risk avoidance strategy</p> <ul style="list-style-type: none"> • a land use matrix that provides for appropriate environmental protection zones • identification of areas to which prescribed controls would apply (for example, coastal protection zones) • caps on certain types of development to manage cumulative impacts
A legislative requirement that planning instruments (including regional strategic plans) achieve prescribed environmental thresholds (such as a rigorous ‘improve or maintain’ test).	<ul style="list-style-type: none"> • NSW 2021: Goal 22 - Protect our natural environment (including protect and conserve land, biodiversity and native vegetation) ^{xi} • Natural Resources Commission State Wide Goals. ^{xii} 	For example, the Local Government and Shires Association suggests that consideration be given to initiating an “improve or maintain target for all significant natural resource features in strategic land use planning”. ^{xiii}
Legislative provisions for community engagement in strategic and land use planning processes.	Effective and genuine public participation in strategic and land use planning is imperative for assisting decision makers in identifying public interest concerns, utilising local knowledge and ensuring community ‘buy-in’	See further Part 2 of this Report – Community Engagement in the NSW Planning System, and Annexure 2
Provisions that give appropriate weight to planning instruments.	Any framework for strategic planning should provide local land use planning that is consistent with long term strategic planning. ^{xiv}	Further consideration should be given the weight to of regional strategic plans and other key policy documents.
Legislative provision to report on and review strategic plans and environmental planning instruments at regular intervals.	Regular review clauses should be required for planning instruments and related maps, to consider whether the relevant aims are being achieved.	The EP&A Act requires authorities to ensure SEPPs, LEPs and DCPs are kept ‘under regular and periodic review’. This is subject to an ability for the Minister to make orders for staged repeal and review of environmental planning instruments. ^{xv} The new planning system should mandate clear minimum review periods that are appropriate to the significance and intended period of application of the plan or instrument. ^{xvi}

Proposed legislative mechanism/s	Underlying principles	Additional comments
DEVELOPMENT ASSESSMENT		
Integrity of Environmental Impact Assessments		
Legislative framework for the independent appointment of environmental consultants. ^{xvii}	The most effective way of ensuring the integrity of environmental impact assessments is to break the nexus between the developer and the environmental consultant. So long as developers continue to directly pay the consultants there is the risk of bias, undue influence and unethical practices. ^{xviii}	Further measures to ensure the integrity of environmental impact statements include: <ul style="list-style-type: none"> • accreditation of environmental and planning consultants, • ensuring assessment and scrutiny is commensurate with potential impacts, • requirements to reject reports that are unsatisfactory, • external auditing of environmental assessment reports • annual reporting requirements, and • strengthening penalties for providing inaccurate information beyond false and misleading to include negligent or reckless inaccuracies.^{xix}
Objective decision making framework: The new planning system should include legislative provisions that require the decision maker to ensure that development achieves prescribed objective environmental criteria before granting approval to a development proposal. These criteria could ultimately be part of a single methodology covering biodiversity, native vegetation, catchment health and water quality, energy and water use, climate change and pollution. This will help to ensure development which is ecologically sustainable, while providing for economic and social wellbeing. Each of these objective environmental criteria is further discussed below.		
The decision maker must ensure that development improves or maintains biodiversity and ecosystem function.	Implementing an improve or maintain test will help address the very real issue of declining biodiversity in NSW ^{xx} and achieve the goals ^{xxi} set by the Natural Resources Commission State Wide Goals and the NSW 2021 State plan. ^{xxii}	This could be support by a methodology (similar to that used under the Native Vegetation Act ^{xxiii}) that allows a decision maker to make an objective assessment of whether a proposed development improves or maintains bio-diversity and ecosystem function.
The decision maker must ensure that development improves or maintains catchment health and water quality.	<ul style="list-style-type: none"> • NSW 2021: Goal 22 - Protect our natural environment (including protect rivers, wetlands and coastal environments)^{xxiv} • Natural Resources Commission State Wide Goals.^{xxv} 	This provision could be supported by a methodology that allows a decision maker to make an objective assessment of whether a proposed development improves or maintains catchment health and water quality. See for example, the <i>Neutral or Beneficial Effect on Water Quality Assessment Guideline</i> prepared by the Sydney Catchment Authority for the <i>State Environmental Planning Policy (Sydney Drinking Water Catchment)</i> 2011).

Proposed legislative mechanism/s	Underlying principles	Additional comments
Proposed development must comply with energy and water efficiency standards (for example, a BASIX type model).	The new planning system must support improved urban sustainability outcomes, including reduction in energy and water usage.	<p>While we generally support the existing BASIX system as a method for achieving energy and water reduction targets for house and units, we recognise the following shortcomings:</p> <ul style="list-style-type: none"> • It only requires a 50% reduction for energy and water use in new houses and small blocks of units, and a weaker 20% for multi-unit housing. • It does not allow LEPs or DCPs to impose improved standards for energy or water consumption. • Auditing and monitoring can be improved, to ensure that commitments made in a BASIX certificate continue to be met. <p>The existing BASIX model should be improved and its application extended to ensure improved urban sustainability outcomes.</p>
The cumulative impacts of proposed development must not exceed prescribed environmental thresholds. ^{xxvi}	Cumulative impacts must be properly accounted for in development decisions, so that development occurs within environmental limits (based on identified environmental thresholds and outcomes)	We note that the Namoi Catchment Management Authority has recently been involved with developing a methodology for assessing cumulative impacts from mining. ^{xxvii} The work being done by the Namoi CMA could be continued and developed for application in the planning system.
Proposed development must comply with prescribed standards for climate change adaption and mitigation.	<p>Climate change is a real and present concern for the State of NSW. Climate change will have significant impacts on our natural environment and resources, with:</p> <ul style="list-style-type: none"> • rises in sea levels, • increased bushfire activity, • decreased rainfall, • increased ocean temperatures and acidification, • increased storm activity, and • loss of biodiversity. ^{xxviii} 	This would require an appropriate regime to deal with coastal threats, environment rehabilitation, other climate change mitigation and adaptation mechanisms. ^{xxix}

Proposed legislative mechanism/s	Underlying principles	Additional comments
Proposed development must comply with prescribed pollution laws and standards. ^{xxx}	The new planning system must support reduced environmental impact from pollution and regulate pollution based on environmental limits.	<ul style="list-style-type: none"> Pollution limits should be set based on the receiving environment's ability to maintain ecosystem health and biological processes in light of the pollution. Need to consider point and diffuse sources plus transport of contaminants within the system and the contaminants ability to move between receiving environments post release
Interagency approach to development assessment: There is an important role for interagency collaboration in the new planning system in order to achieve the effective integration of environmental considerations. The new planning system should require consultation with relevant agencies, and the concurrence of agencies in circumstances where permits or approvals are required under other legislation.		
Legislative requirement to consult with agencies	An interagency approach to development assessment is essential to integrating environmental considerations in the planning system. Decision makers must be required to consider all potential impacts of a proposed development and seek advice from other Government agencies where appropriate	An interagency approach is important because: <ul style="list-style-type: none"> it draws on expertise from other agencies and assists to identify developments that are inappropriate on environmental and technical grounds, ensures that appropriate conditions are attached to any consent for development, and streamlines the process for proponents who may otherwise have to approach each agency individually.
Legislative requirement to obtain the concurrence of agencies in circumstances where permits or approvals are required under other legislation.	Any requirement to obtain permits or approvals under other legislation must be facilitated by the planning system (not overridden). ^{xxxi}	An efficient concurrence system could be assisted by: <ul style="list-style-type: none"> an objective environmental criteria based decision making process (outlined in this report) ePlanning systems that support interagency collaboration

**APPENDIX 2 – PROPOSED LEGISLATIVE MODEL FOR INTEGRATING
COMMUNITY CONSIDERATIONS IN THE NSW PLANNING SYSTEM**

Stage in the process	Proposed legislative mechanism/s
<p>STRATEGIC PLANNING PROCESSES</p> <p>The following framework would apply to all processes for strategic planning, including the preparation of LEPs, SEPPs, regional strategic plans and other key policy documents.^{xxxii} While the terminology used is comparable to the existing LEP making process, the framework can and should be applied to other processes.</p>	
<p>Preliminary stage (e.g. pre-gateway) – early engagement</p>	<p>All planning authorities should be required to prepare a community engagement strategy that makes provision for early engagement with the community in strategic planning processes.</p>
<p>Obligation to consult</p>	<p>Legislative requirement for public consultation on planning proposals.</p>
<p>Notification of planning proposal</p>	<p>Legislative requirement to give notification. This provision should mandate:</p> <ul style="list-style-type: none"> • That notice is to be given: <ul style="list-style-type: none"> - in Government Gazette, and - in appropriate newspaper, and - on the website of the relevant planning authority.^{xxxiv} • That the planning authority take other reasonable steps to ensure notification is in accordance with the implementation principles of the public participation charter (Charter)^{xxxv} (Table 2). • That the notice is to include the following information: <ul style="list-style-type: none"> - the matter being consulted on - where information is available - process for making a submission - closing date for making submission
<p>Provide information</p>	<ul style="list-style-type: none"> • Legislative requirement that the planning authority make the following information available: <ul style="list-style-type: none"> - the planning proposal - all reports and environmental studies that are required by legislation to be prepared^{xxxvi} • Legislative requirement that the information be made available: <ul style="list-style-type: none"> - at the office of the planning authority - on the website of the planning authority • Legislative requirement that the planning authority take other reasonable steps to make information available in accordance with the Charter implementation principles

Underlying principles	Additional comments
Early engagement of the community can create community 'buy-in' by having community involved in shaping a project.	In Part 2 of the report we propose that all agencies and councils be required to prepare a community engagement strategy that is in accordance with an adopted Charter of Public Participation.
<p>Genuine and meaningful public participation has the benefit of:</p> <ul style="list-style-type: none"> • empowering local communities, • improving decision making by assisting decision makers in identifying public interest concerns and utilising local knowledge, • ensuring community 'buy-in' of decisions which can reduce potential disputes,^{xxxiii} • helping to ensure fairness, justice and accountability in decision making. 	The obligation to consult should not be discretionary. A framework for community consultation should be clearly prescribed in legislation.
All persons that will be affected by a planning proposal should be notified	Other reasonable steps may include alerts to those people who have signed up through an electronic system, notification through local library displays, EDO bulletin, Council newsletters, community notice boards, TV advertisements, radio, other media (including the 'blogosphere'), letter drops, and brochures given to new residents.
Best practice community engagement would require the information to be easily understood and accessible.	<p>To ensure information is easily understood and accessible, the planning authority could:</p> <ul style="list-style-type: none"> • make the information available in various locations and formats (for example, in hard copy at various locations, electronically on CD, or on website), • provide plain English explanations (for example, through facts sheets), • establish a secretariat who would be available to respond to enquiries, • facilitate community groups to engage independent consultants to provide advice on information.

Stage in the process	Proposed legislative mechanism/s
Consultation on planning proposal – making submissions	<ul style="list-style-type: none"> Legislative right for the public to make a submission during the appointed consultation period Legislative requirement that the planning authority take reasonable steps to facilitate consultation in accordance with the Charter implementation principles
Right to be heard	Legislative provision that facilitates the right to be heard
Consideration of submissions	Legislative requirement for the appropriate planning authority to consider submissions
Respond to submissions	Legislative requirement that requires the planning authority to respond to submissions
Further consultation - including consultation on draft instrument	Mandatory requirement to consult the community on the draft planning instrument

Underlying principles	Additional comments
<p>Best practice community consultation recognises the diversity within the community and seeks to ensure consultation methods are inclusive and accessible.</p> <p>Time must be sufficient to allow public scrutiny, including where documents are large or complex.</p>	<p>As outlined in Part 2 of this report, there are emerging examples and opportunities to move beyond the traditional ‘inform and consult’ methods of engagement, to more inclusive and collaborative forms of engagement.</p> <p>In addition to receiving written submissions, a planning authority can, for example:</p> <ul style="list-style-type: none"> - facilitate contributions through social media - conduct community workshops (run by an independent facilitator) - undertake surveys - establish drop-in centres <p>Contributions arising through these engagement mechanisms must be recorded and form part of the submissions that must be considered by the planning authority.</p>
<p>Providing the community with the opportunity to be heard can help assure the community that their views have been considered, facilitate dialogue between the community and the planning authority and supports genuine and meaningful participation</p>	<p>The right to be heard (either as part of a public hearing, or by an established Commission) is a feature of several jurisdictions. See, for example:</p> <ul style="list-style-type: none"> - Section 57(5)-57(8) of the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> ^{xxxvii} - Section 46 of the <i>Planning and Development Act 2005 (WA)</i> ^{xxxviii} - Sections 23- 25 of the <i>Planning and Environment Act 1987 (Vic)</i> ^{xxxix}
<p>Including a legislative requirement that the decision maker must consider submissions made during the consultation period can assure the community that their views have been considered, and supports genuine and meaningful participation</p>	<p>See, for example:</p> <ul style="list-style-type: none"> - Section 57(8) of the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> ^{xl} - Section 22 of the <i>Planning and Environment Act 1987 (Vic)</i> ^{xli} - Section 118 of the <i>Sustainable Development Act 2009 (Qld)</i> ^{xlii}
<p>Effective public participation communicates to participants how their input affected the decision.</p>	<p>See, for example,</p> <ul style="list-style-type: none"> • Section 118C(iv) of the <i>Sustainable Development Act 2009 (Qld)</i> ^{xliii} • Section 30J of the <i>Land Use Planning and Approvals Act 1993 (Tas)</i> ^{xliiv}
<p>Just as it is important for the community to be consulted on planning proposals (this early engagement ensures community buy-in by allowing the community to shape the proposal) it is also important that the community be consulted on a draft planning instrument. This is because:</p> <ul style="list-style-type: none"> - there may be significant changes in what was originally proposed and what the final instrument looks like - it is difficult to envisage how an LEP will look from the planning proposal – once drafted, the LEP may vary markedly or operate differently to how it was envisaged (in public’s mind). - drafting is complicated and undertaking further consultation on the draft instrument is a good opportunity for open scrutiny 	<p>Under the existing LEP making process of the EP&A Act, it is within the Minister’s discretion as to whether further community consultation is required if a planning proposal is varied (section 58) and there is no requirement to consult on the draft instrument. The new planning system should require consultation not only at the planning proposal phase, but also on the draft instrument.</p>

Stage in the process	Proposed legislative mechanism/s
<p>DEVELOPMENT ASSESSMENT PROCESS</p> <p>The following framework can be applied to development assessment processes under a new planning system. It could be modified to suit different classes of development. The underlying premise would be that development that is likely to have the greatest impact would be subject to the highest level of community consultation.</p>	
Pre – Development Application – early engagement	Requirement that projects of State, regional or local significance that will impact most on the community, and which are appropriate, be developed in consultation with community.
Notification of Development Applications	<p>Legislative requirement to give notification. This provision should mandate:</p> <ul style="list-style-type: none"> • That notice is to be given: <ul style="list-style-type: none"> - in Government Gazette, and - in appropriate newspaper, and - by direct mail to all adjoining/affected land owners, - by signage on the proposed site, and - on the website of the consent authority. • That the planning authority take other reasonable steps to ensure notification is in accordance with the Charter implementation principles^{xlvi} • That the notice is to include the following information: <ul style="list-style-type: none"> - the matter being consulted on, - where information is available, - process for making a submission, and - closing date for making submission.
Provision of information	<ul style="list-style-type: none"> • Mandatory requirement to make all documents relating to a development application (as prescribed by the legislation, for example, development application, DG requirements, environmental impact assessment or other supporting documentation) publically available • Legislative requirement that the information be made available: <ul style="list-style-type: none"> - At the office of the planning authority, and - On the website of the planning authority.^{xlvii} • Legislative requirement that the planning authority take other reasonable steps to make information available in accordance with the implementation principles
Consultation	<ul style="list-style-type: none"> • Legislative right for the public to make a submission during the appointed consultation period • Legislative requirement that the planning authority take reasonable steps to facilitate consultation in accordance with the implementation principles

Underlying principles	Additional comments
Early engagement of the community can create community 'buy-in' by having community involved in shaping a project.	Encourage developers of significant projects to undertake early community engagement (e.g. sustainable design competitions, WA's Enquiry-by-Design workshop model). ^{xlv}
All persons that will be affected by a planning proposal should be notified.	Other reasonable steps may include alerts to those people who have signed up through an electronic system, notification through local library displays, EDO bulletin, Council newsletters, community notice boards, TV advertisements, radio, other media (including the 'blogosphere'), letter drops, and brochures given to new residents.
Participants should be provided with the information they need to participate in a meaningful way.	<p>This could be achieved by:</p> <ul style="list-style-type: none"> • making the information available in various locations and formats (for example, in hard copy at various locations, electronically on CD, or on website), • providing plain English explanations (for example, through facts sheets), • establishing a secretariat who would be available to respond to inquiries, • facilitating community groups to engage independent consultants to provide advice on information.
<p>Best practice community consultation recognises the diversity within the community and seeks to ensure consultation methods are inclusive and accessible.</p> <p>Time must be sufficient to allow public scrutiny, including where documents are large or complex</p>	<p>As outlined in Part 2 of this report, there are emerging examples and opportunities to move beyond the traditional 'inform and consult' methods of engagement, to more inclusive and collaborative forms of engagement.</p> <p>In addition to receiving written submissions, a consent authority can, for example:</p> <ul style="list-style-type: none"> - facilitate contributions through social media - conduct community workshops (run by an independent facilitator) - undertake surveys - establish drop-in centres

Stage in the process	Proposed legislative mechanism/s
Consideration of and response to submissions	Legislative requirement to consider and respond to submissions.
Continued engagement throughout the process	Legislative requirement to make information publically available as it becomes available through the assessment process (this could be facilitated through an ePlanning system).
Give reasons for decisions	Mandatory requirement for decision makers to give reasons for decisions, including reasons as to why input from the community was adopted, or not adopted, in the final decision.
Adequate rights of review and appeal	<p>Legislation must retain and improve third party merits appeal rights for the community, on a more equitable footing with developers, for example:</p> <ul style="list-style-type: none"> • continue to allow third party merits appeals for designated development, • allow merits appeals for third party objectors where an approved (non-‘designated’) development exceeds local development standards, • expand third party appeal rights in other areas to reduce corruption risks and improve decision making, as per ICAC’s 2007 and 2012 recommendations,¹ • reintroduce merit appeal rights for objectors in relation to State Significant Development without restriction, • make merits appeal and judicial review rights available for critical/ State significant infrastructure projects, and remove ‘Ministerial consent’ requirements to appeal, • reduce cost barriers to civil enforcement through an ‘own costs’ jurisdiction, and/or mandatory use of public interest costs orders for relevant proceedings, • provide more equitable time periods (3 months) for objectors to bring merits appeals – still half the time currently available to developers to lodge an appeal.

Underlying principles	Additional comments
	Contributions arising through these engagement mechanisms must be recorded and form part of the submissions that must be considered by the consent authority.
Including a legislative requirement that requires a response to submissions can assure the community that their views have been considered, and supports genuine and meaningful participation.	<p>It should be mandatory for an applicant to be provided with copies of all written submissions made during the consultation period (as opposed to a summary only)</p> <ul style="list-style-type: none"> • If other consultation techniques are used (other than traditional written submissions) then it must be mandatory to provide the applicant with summary of the outcomes of additional consultation (for example, a summary of any public meeting, social media campaign etc). • The applicant must be required to provide a public response on submissions and input received during the consultation processes.
Community members and the ICAC have criticised the current planning system for not updating communities and stakeholders where appropriate (eg modifications; other agencies' input or decisions). ^{xlviii}	<p>This could be facilitated by:</p> <ul style="list-style-type: none"> • Developing interactive websites where users can give their email address and be provided with further information during the process. • Having an appropriate secretariat ("someone on the end of the phone") to respond to community inquiries and supply information.
Effective public participation should provide feedback to participants as to how their input affected the decision	For example, ICAC recommends a protocol to deal with situations where the Planning Minister disagrees with a departmental recommendation – to "ensure that any decision to adopt an alternative approach, and the reasons for such a decision, are clearly documented and made publicly available." ^{xlix}
<p>As participants in the decision making process and as people affected by decisions made in the planning process, the community should have recourse to a legislative decision review process</p> <ul style="list-style-type: none"> • Members of the community should have no lesser rights of review and appeal than development proponents • Inequitable appeal rights can reduce accountability, increase corruption risks and undermine public trust in the planning system • Barriers which inhibit access to justice for community members seeking to protect the public interest, including undue costs risks, should be removed. 	<ul style="list-style-type: none"> • The new planning system must also broaden mechanisms for community involvement in conciliation, mediation and neutral evaluation within the LEC framework.

**APPENDIX 3 – KEY RECOMMENDATIONS FOR COMPLIANCE
AND ENFORCEMENT IN THE NEW PLANNING SYSTEM**

Proposed legislative mechanism/s	Underlying principles	Additional comments
OPEN STANDING PROVISION AND ACCESS TO JUSTICE		
Maintain open standing provisions for enforcement of planning and environmental laws. Remove barriers to access to justice.	<ul style="list-style-type: none"> The community has robust rights to enforce planning laws Access to justice for public interest environmental cases Open standing for enforcement: <ul style="list-style-type: none"> enables public interest litigants to protect the environment by bringing breaches before the Court. improves public confidence that laws will be adhered to and are able to be enforced;ⁱⁱ ensures that limited resources are directed to resolution of substantive issues; has not led to a ‘flood’ of litigation or vexatious proceedings; and is a widely supported feature of the system.ⁱⁱⁱ 	<p>The new planning system must further improve access to justice by:</p> <ul style="list-style-type: none"> reducing costs barriers for third party enforcement and public interest matters^{liii} ensuring that administrative orders to enforce environmental laws^{liv} are available to both public authorities and third parties in relation to all State significant projects (including critical infrastructure), and allowing successful applicants for civil enforcement to have a say in how the penalty revenue is applied for environmental or community benefit.^{lv}
MERITS APPEAL RIGHTS		
<ul style="list-style-type: none"> Where (non-‘designated’) development is approved that exceeds local development standards, allow merits appeals for third party objectors. Where a development is refused that exceeds local development standards, remove developers’ automatic right to merits appeal (thereby giving better effect to local development standards) expand third party appeal rights in other areas to reduce corruption risks and improve decision making, as per ICAC’s 2007 and 2012 recommendations^{lvi} reintroduce merit appeal rights for objectors in relation to State Significant Development without restriction,^{lvii} as the greatest impacts deserve the greatest scrutiny, make merits appeal and judicial review rights available for critical/State significant infrastructure projects, & remove ‘Ministerial consent’ requirements to appeal. 	<p>The new planning system must retain and improve third party merits appeal rights for the community, on a more equitable footing with developers.</p> <p>There are well documented benefits of having court-based review rights in the planning system – including for participative democracy, executive accountability, institutional integrity, improved decision making and rational development of the law.^{lviii}</p>	<p>Complementary protections related to merits appeals include the following:</p> <ul style="list-style-type: none"> ensure mandatory consultation on LEPs and rezoning rather than merits appeal rights do not give proponents new merits appeal rights in relation to rezoning refusals (if such rights were granted, equity would require corresponding merits appeal rights for objectors wherever zoning is changed), and provide more equitable time periods (3 months) for objectors to bring merits appeals – still half the time currently available to developers to lodge an appeal.

Proposed legislative mechanism/s	Underlying principles	Additional comments
PENALTIES, ORDERS AND SENTENCES		
<p>With respect to penalties (among other things):</p> <ul style="list-style-type: none"> • Adopt a tiered penalty system in the Act, setting a range of penalty categories relative to seriousness. <p>With respect to orders and offences (among other things):</p> <ul style="list-style-type: none"> • a new, flexible range of orders should be made available to enforcement authorities • and courts, with corresponding remedies for non-compliance. 	Greater flexibility and use of penalties/ enforcement tools.	<p>See also Recommendation 35 of the joint response to the NSW Planning System Review Issues Paper: ^{lix}</p> <p><i>“The new planning system must improve mechanisms for compliance and enforcement, including by way of strengthened penalties, a tiered penalty framework, a broader range of innovative enforcement tools and orders, improved resourcing, and more transparent enforcement policies, monitoring and reporting obligations”.</i></p>
TRANSPARENCY AND ACCOUNTABILITY		
<p>The new planning act should require enforcement authorities (councils and departments) to:</p> <ul style="list-style-type: none"> • adopt and publish enforcement policies, • publish data on complaints received and investigated, and • report on the exercise of their enforcement powers (with appropriate support and re-sourcing). 	Increased transparency, public confidence and awareness – leading to improved compliance and enforcement.	

CASE STUDY FOOTNOTES

i *Directions Paper on the Integration of NRM into Land Use Planning* Published by the Western Australia Planning Commission as part of the EnviroPlan-ning project initiated in late 2005 through a partnership between the Western Australian Planning Commission, the former Department for Planning and Infrastructure, and the Western Australia Local Government Association (WALGA) with the aim of improving the integration of NRM into land use, planning across the State. Available at: http://www.planning.wa.gov.au/dop_pub_pdf/NRM_report.pdf

ii Ibid, p iii

iii Ibid, p iv-v

iv Ibid, p ix-x

v Available at: https://www.lgaq.asn.au/c/document_library/get_file?uuid=21fd58f8bad67e8435d933489732c3df&groupId=10136

vi Available at: https://www.lgaq.asn.au/c/document_library/get_file?uuid=e59879034cb077002b3e627b44611742&groupId=10136

vii Commissioned by the Queensland Department of Infrastructure and Planning (DIP), Department of Environment and Resource Management (DERM), Burnett Mary Regional Group, Brisbane and Logan City Councils and Lockyer Valley Regional Council, with SEQ Council input facilitated by the Council of Mayors (SEQ), SEQ Catchments and LGAQ. Available at: http://www.lgaq.asn.au/c/document_library/get_file?uuid=a2124bc02a9232a90dc0d0ea847be226&groupId=10136

viii *Integrating Natural Resource Management into Local Government Operations - Volume 2: Land Use Planning*, prepared by UTS Centre for Local Government, Gibbs Consulting, Walsh Consulting, (principal author Planning Volume Walsh Consulting) Available at: http://www.lgsa.org.au/resources/documents/NRM_Guidelines_Land_Use_Planning_020709.pdf

ix See, for example, the case studies identified by the Local Government and Shires Association in *Integrating Natural Resource Management into Local Government Operations - Volume 2: Land Use Planning*, ibid, page 28 and 42: the work done by Great Lakes Council in integrating natural resource management plans into Councils planning and decision making framework, establishing local approaches suitable to the particular sensitivities of the Wallis and Myall lake systems; Ku-ring-gai Council's Sustainability Planning and Reporting framework project; the work done by Randwick Council on its Biodiversity Strategy.

x See Australian Institute of Landscape Architects, *Landscape Principles*, available at <http://www.aila.org.au/landscapeprinciples>.

xi This definition was first used by Mark Benedict and Edward T. McMahon (2006) *Green Infrastructure, Linking Landscapes and Communities*, Washington, D.C. Island Press.

xii Information sourced from the City of Canada Bay website: www.canadabay.nsw.gov.au

xiii Information sourced from the Coffs Harbour Council website: <http://www.coffsharbour.nsw.gov.au/Pages/default.aspx>

xiv Above no 71

xv Summary taken from the EDO Submission to the Review of the NSW Planning System (November 2011), available at http://planningreview.nsw.gov.au/LinkClick.aspx?fileticket=7i-98R_42Zo%3d&tabid=105&mid=516

xvi Excerpts taken from the Innovation and Knowledge Exchange Network website: <http://www.iken.net.au/communities-of-practice/community-engagement-and-social-media/case-studies/profile-mosman-social-med>

APPENDIX FOOTNOTES

i Refer to Part 1 of this report, and see also *Planning for Ecological Sustainable Development - Opportunities for improved environmental outcomes and enhanced community involvement in the planning system*, above no 3. Stakeholders as diverse as the Urban Taskforce Australia, NSW Minerals Council and the Local Government Association of NSW have recognised the value of ESD to varying degrees. See, eg, "Making it Work- Identifying the problems in and proposing solutions for the NSW planning system", Submission to the Planning System Review by the Urban Taskforce, August 2011, p32; NSW Minerals Council, Submission to the NSW Planning Review, November 2011, p6; Local Government Association of NSW, Draft Submission Regarding Preliminary Comments on Review of NSW Planning System, November 2011.

ii See, for example: *Australia's National Strategy for Ecologically Sustainable Development* (1992), available at <http://www.environment.gov.au/about/esd/index.html>; Dovers, S. (2008) 'Policy and Institutional Reforms', in D. Linenmayer, S.Dovers, M. Harriss Olson & S. Morton (Eds.), *Ten Commitments: Reshaping the Lucky Country's Environment*, p 216; Hawke, A. (2009), "Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999", October 2009

iii For example, ESD is important in protecting biological diversity and ecological integrity, managing environmental risk (by encouraging caution when an activity has a suspected risk of causing harm to the public or to the environment, including where impacts are uncertain), encouraging full accounting of environmental costs, and encouraging sustainable outcomes that reduce pollution and consumption. ESD also provides long term social and economic sustainability by:

- putting the needs of people and our environment first, for present and future generations,
- engaging citizens in the decisions that shape our towns, cities and society,
- promoting healthy, liveable and long-lasting communities and development,
- assisting decision makers by properly assessing the true costs and benefits of particular development through full-cost accounting,
- driving innovation and encouraging use of new technologies, which can improve efficiency and reduce production costs,
- encouraging cleaner production and less pollution, which reduces 'polluter pays' costs,
- encouraging use of sustainable building design, which can lead to reduced consumer costs (for example, reduction in spending on electricity and water), and lowering the incidence of disputes, and the associated legal and court costs.

iv See for example, the Western Australian Planning Commission established under the *Planning and Development Act 2005* (WA). Further information about the Western Australian Planning Commission is available at <http://www.planning.wa.gov.au/651.asp>

v For example, the Spatial eXchange (SIX) is set up as the official source of spatial data for NSW See <https://six.nsw.gov.au/wps/portal/>. Other information sources could include:

- information accumulated by catchment management authorities, particularly as part of their work in preparing regional catchment action plans.
- information held by the various divisions of the Office of Environment and Heritage, with respect to water, threatened species, endangered ecological communities
- statistics and projections held by transport and infrastructure agencies.
- state and Federal State of the Environment Reports
- statistics and projection from the Australian Bureau of Statistics

vi Currently, there is no statutory framework for the preparation of regional strategic plans in NSW. We recommend that the new planning system set out a statutory framework for the preparation of regional strategic plans. Environmental assessment at the regional level can help to identify significant habitat corridors, assess land use capacity and potential cumulative impacts and plan for climate change adaption and mitigation.

vii Collaboration with agencies could be facilitated by setting up partnership arrangements with CMAs (for example, NRM Senior Officer Groups have been used to ensure interagency coordination during the recent review of Catchment Action Plans); or establishing working groups with agency representatives (for example, the LGSA suggest establishing Planning Forum Meetings to coordinate engagement with agencies and key stakeholders,

above no.33, page 20)

viii Mandatory strategic environmental assessment is a feature of several other pieces of NSW legislation, for example:

- an impact statement is required for preparing a Protection of the Environment Policy (PEP) under the Protection of the Environment Operations Act 1997, and
- an environmental impact assessment is required when preparing a Fishery Management Strategy under the Fisheries Management Act 1994.

ix Hawke (2009) *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, see in particular 3.43 – 3.50

x For example, Namoi Catchment Management Authority has recently been involved with developing a methodology for assessing cumulative impacts from mining. See *Proposed Framework for Assessing the Cumulative Risk of Mining on Natural Resource Assets in the Namoi Catchment*, available at http://www.namoi.cma.nsw.gov.au/namoi_risk_assessment_final_v5_14sept11.pdf. The work being done by the Namoi CMA could be continued and developed for application in the planning system.

xi See <http://2021.nsw.gov.au/environment-communities>

xii <http://www.nrc.nsw.gov.au/WorkWeDo/StandardAndTargets/State-wideTargets.aspx>.

xiii Integrating Natural Resource Management into Local Government Operations, LGSA, above no 26, p 26 and page 35

xiv J. Kelly, *Cities: Who Decides?* (2010), Grattan Institute, pp 14 and 42. The Ontario government has developed a regional initiative for land use – ‘Places to Grow’ – which establishes a legal framework for the Province’s long-term growth, including Toronto, and requires municipalities to make their official plans consistent with the growth plan.

xv EP&A Act, s 73 and s 33B.

xvi Former cl 15 of the SEPP (Major Development) 2005 included a review after 12 months of operation and then at 5 yearly intervals. However, this clause was recently repealed by the SEPP (State and Regional Development) 2011, which does not contain a mandatory review clause.

xvii Such a framework could be implemented by the following steps:

- a central register of consultants is created (potentially managed by the Department of Planning, Office of Environment or Heritage or an independent body),
- proponents pay a fee (based on a percentage of the estimated construction investment value) into a designated fund,
- a consultant(s) is allocated to the proponent’s project from the register of consultants,
- the consultant prepares a public environmental study of values and potential impacts, and the developer then finalises its proposal and preferred course of action

xviii See for example the joint submission *Planning for Ecological Sustainable Development - Opportunities for improved environmental outcomes and enhanced community involvement in the planning system*, above no 4.

xix Ibid.

xx See for example, the NSW State of the Environment Report 2009, overview, part 7, available <http://www.environment.nsw.gov.au/soe/soe2009/>; Federal State of the Environment Report 2011, summary p 4, available at <http://www.environment.gov.au/soe/2011/index.html>

xxi <http://www.nrc.nsw.gov.au/WorkWeDo/StandardAndTargets/State-wideTargets.aspx>.

xxii See <http://2021.nsw.gov.au/environment-communities>, specifically Goal 22 - Protect our natural environment (including protect and conserve land, biodiversity and native vegetation)

xxiii See, for example, the explanation of the native vegetation environmental outcomes assessment methodology on the Office of Environment and Heritage website: <http://www.environment.nsw.gov.au/vegetation/eoam/index.htm>

“One of the key objectives of the Native Vegetation Act 2003 is to end broadscale clearing except where the clearing will improve or maintain environmental outcomes. The *Native Vegetation Regulation* 2005 sets out an *Environmental Outcomes Assessment Methodology* (EOAM) that the Catchment Management Authorities (CMAs) must use to assess whether clearing proposals for Property Vegetation Plans (PVPs) and Development Consents meet this criteria. The EOAM is applied using objective, computer-based decision support software known as the Native Vegetation Assessment Tools (NVAT). This software weighs up the positive and negative benefits of different management actions, helping assessment officers to make practical decisions based on the best scientific information available. The methodology and software has evolved as a result of extensive field trials, public submissions and review by panels of independent scientists, farming and environmental interests”.

xxiv Ibid.

xxv Available at: <http://www.nrc.nsw.gov.au/WorkWeDo/StandardAndTargets/State-wideTargets.aspx>.

xxvi This would go beyond a mere consideration of the cumulative impacts and require the decision maker to undertake an assessment in accordance with a prescribed methodology and be satisfied that the cumulative impacts of the development does not exceed a prescribed threshold.

xxvii See *Proposed Framework for Assessing the Cumulative Risk of Mining on Natural Resource Assets in the Namoi Catchment*, available at http://www.namoi.cma.nsw.gov.au/namoi_risk_assessment_final_v5_14sept11.pdf.

xxviii For example, the Federal Government’s State of the Environment Report 2011 predicts that “Climate change is expected to lead to increases in sea level, with projection of a sea level rise of up to 1.1 metres by 2100. [...] Such a sea level rise, with an allowance included for a modelled high tide event, could potentially expose 157 000 - 247 600 existing residential buildings to inundation; the 2008 replacement value of these buildings is estimated at \$41-63 billion” available at <http://www.environment.gov.au/soe/2011/report/index.html>, p 825; see also p 322 “Weather conditions favouring more severe bushfires appear to be becoming more frequent. The past 30 years have seen an upward trend in the cumulative forest fire danger index [...] This reflects the effects of both progressively increasing temperatures and, in the latter period, the millennium drought. This trend is expected to continue under predicted climate change conditions; the average number of ‘extreme’ fire danger days in 2020 is predicted to increase”; see also p415 “The most important changes deriving from climate change that will affect marine ecosystems are gradually increasing water and air temperatures, sea level rises and acidification. Near-shore, the increased frequency of storms and associated run-off of fresh water, nutrients and suspended sediments will also be very important”.

xxix For example, Standards Australia (<http://www.standards.org.au>) has exhibited a draft *Principles-based Climate Change Adaptation Standard for Settlements & Infrastructure* (2011).

xxx Including for example standards set by the Environmental Protection Authority. See also for example: ANZECC and AMRCANZ water quality guidelines; National Pollution Protection Council standards for ambient air quality; Land based contamination can be considered under the National Framework for Chemicals Environment Management and the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). See further, EDO NSW, *Clearing the Air: Opportunities for improved regulation of pollution in New South Wales* (2012), prepared at request of NCC, at <http://www.nccnsw.org.au> or http://www.edo.org.au/edonsw/site/policy_discussion.php.

xxxi As generally is the present case with State significant development and infrastructure

xxxii Some very minor amendments (for example minor administrative amendments to correct errors) would not be require consultation

xxxiii Gleeson notes that the 2008 reforms to the EP&A Act excluded the involvement of a substantial proportion of the community from the decision-making and decision review processes, and this led to a greater incentive for members of the excluded public to seek judicial review of planning decisions Grant Gleeson *Whose Neighbourhood is it anyway?* FIG Congress 2010, Facing the Challenges - Building the Capacity, Sydney 11-16 April 2010, available at http://www.fig.net/pub/fig2010/papers/ts03e%5Cts03e_gleeson_4368.pdf

xxxiv Notification by notice in the Government Gazette and in a newspaper remains the most common way of providing notification of proposed planning instruments (see for example, *Sustainable Development Act* 2009, sections 60 and 118; *Planning and Environment Act* 1987 (Vic), section 19); *Land Use Planning and Approvals Act* 1193 (Tas), section 30H 4. Best practice community engagement would encourage notification to be provided through wider channels – for example, on the website of the Department and relevant local council, or through other established communication channels.

xxxv This provision would require a planning authority to comply with the Charter for Public Participation, and the authority’s community engagement strategy (developed having regard to the Charter) and take additional steps to ensure that there has been effective notification.

xxxvi See Appendix 1, which proposes a mandatory requirement for the preparation of environmental studies

xxxvii Section 57(5)-57(8) of the *Environmental Planning and Assessment Act 1979* provides that if a person making a submission requests, and the relevant planning authority considers that the issues raised in a submission are of such significance that they should be the subject of a hearing, the relevant planning authority is to arrange a public hearing on the issues raised in the submission. The relevant planning authority may also arrange a public hearing on any issue whether or not a person has made a submission concerning the matter.

xxxviii Section 46 of the *Planning and Development Act 2005* (WA) provides that planning commission is to give each person making a submission on a region planning scheme or amendment (or the person's agent) the opportunity of being heard on the submission by the Commission or by a committee established under Schedule 2 of that Act.

xxxix Specifically, section 24 of the *Planning and Environment Act* (Vic) provides that with respect to an amendment of a planning scheme the panel must consider all submissions referred to it and give a reasonable opportunity to be heard to any person who has made a submission referred to it, the planning authority and any responsible authority or municipal council concerned.

xl Section 57(8) of the *Environmental Planning and Assessment Act 1979* (NSW) provides that consultation is finished when the relevant planning authority has considered any submissions made concerning the proposed instrument and the report of any public hearing.

xli Section 22 of the *Planning and Environment Act 1987* (Vic) requires a planning authority to consider all submissions made on or before the date set out in the notice, and that the planning authority may consider a late submission and must consider one if the Minister directs.

xlii Section 118 of the *Sustainable Development Act 2009* (Qld), which requires the decision maker to consider all properly made submissions about the proposed planning scheme or planning scheme policy

xliii Section 118C(iv) of the *Sustainable Development Act 2009* (Qld) which requires the local government to advise persons who make a properly made submission about how the local government has dealt with the submission

xliv Section 30J of the *Land Use Planning and Approvals Act 1993* (Tas) which requires a planning authority to provide a report to the Commission (decision maker) containing a statement of the planning authority's views as to the merit of each representation made to the authority under section 30I in relation to a local provision in the interim planning scheme.

xlv For further information see Western Australian Department for Planning and Infrastructure, at <http://www.planning.wa.gov.au/publications/832.asp>. See further EDO Submission to NSW Planning Review (Stage 1), pp 17-18.

xlvi This refers to the proposed public participation charter outlined in Table 2 of Part 2 of this report

xlvi This could link into ePlanning processes. See further the comments on ePlanning in Part 2 of this report.

xlvi NSW Independent Commission Against Corruption (ICAC), *Anti-corruption safeguards and the NSW planning system* (February 2012). See recommendation 15: "That the NSW Government ensures that planning authorities are required to provide regular information and updates to the public about development applications under assessment, including any significant changes made to an application."

xlvi ICAC, *Anti-corruption safeguards and the NSW planning system* (February 2012). See recommendation 8.

l See Independent Commission Against Corruption, *Corruption Risks in NSW Development Processes* (2007); See also Independent Commission Against Corruption, *Anti-corruption safeguards and the NSW planning system* (2012), both available at: www.icac.nsw.gov.au. For example, see ICAC's 2012 report recommendation 16: "That the NSW Government considers expanding categories of development subject to third party merit appeals to include private sector development that: is significant and controversial; represents a significant departure from existing development standards; [or] is the subject of a voluntary planning agreement."

li See, for example, F. Millner, *Open standing and Enforcement, Australian Environment Review* (2011) Vol 26 No 7, 185-187.

lii Planning System Review Issues Paper (2011), p 101.

liii For example: allow civil enforcement cases to be brought in an 'own costs' jurisdiction; amend the LEC rules to provide for a range of mandatory public interest costs orders where civil enforcement action is brought in the public interest.

liv Such as stop work orders, interim protection orders and notices regarding threatened species, heritage and pollution (cf EP&A Act, s 115ZG, which removes these orders for critical state infrastructure). This perpetuates a failing of former Part 3A of the EP&A Act. See EDO NSW, Submission on corruption risks and the regulation of lobbying in NSW, (June 2010), at www.edo.org.au/edonsw

lv See NCC, TEC and EDO submission to NSW planning review, above no 3, 'Reducing costs barriers to civil enforcement' (response to question E2, pp 77-78).

lvi See Independent Commission Against Corruption, *Corruption Risks in NSW Development Processes* (2007); See also Independent Commission Against Corruption, *Anti-corruption safeguards and the NSW planning system*, (2012), both available at: www.icac.nsw.gov.au. See also ICAC's 2012 report recommendation 16: "That the NSW Government considers expanding categories of development subject to third party merit appeals to include private sector development that: is significant and controversial; represents a significant departure from existing development standards; [or] is the subject of a voluntary planning agreement."

lvii For example, regardless of whether the development would otherwise be designated development, or whether a public hearing has been held by a Planning Assessment Commission.

lviii See, for example, The Hon Justice B. Preston, Chief Judge of the NSW Land and Environment Court, *The role of public interest environmental litigation* (2006) 23 Environmental and Planning Law Journal (EPLJ) 337; The Hon Justice Paul Stein AM, *The Role of the New South Wales Land and Environment Court in the Emergence of Public Interest and Environmental Law* 13 EPLJ 179.

lxi Above no. 3. Available at: <http://planningreview.nsw.gov.au/LinkClick.aspx?fileticket=sUBZr1lb4fU%3d&tabid=119&mid=569>

