

# **Planning for People**

## ***A Community Charter for Good Planning in NSW***

### **Companion Document**

This document is the Companion Document to *Planning for People: A Community Charter for Good Planning in NSW* (the Charter). It details the principles and expected outcomes of a good planning system, as well as the mechanisms through which the Charter could be implemented.

#### **1. More about the principles governing good planning:**

- The well-being of the whole community, the environment and future generations across regional, rural and urban NSW
- Effective and genuine public participation in strategic planning and development decisions
- An open, accessible, transparent and accountable, corruption-free planning system
- The integration of land use planning with the provision of infrastructure and the conservation of our natural, built and cultural environment
- Objective, evidence-based assessment of strategic planning and development proposals

#### **2. More about the expected outcomes of a good planning system:**

- Respects, values and conserves our natural environment and the services it provides.
- Facilitates world-class urban environments with well-designed resource-efficient housing, public spaces and solar access that meet the needs of residents, workers and pedestrians.
- Provides housing choice, including affordable housing and sufficient housing for the disadvantaged, in a diversity of locations.
- Celebrates, respects and conserves our cultural (including Aboriginal) and built heritage.
- Protects and sustainably manages our natural resources, including our water resources, fragile coastlines and irreplaceable agricultural land for the benefit of present and future generations while maintaining or enhancing ecological processes and biological diversity.
- Retains and protects our Crown lands, natural areas, landscapes and flora and fauna for the benefit of the people of NSW.
- Gives local and regional communities a genuine and meaningful voice in shaping their local area and region, its character and the location, height and density of housing. Provides certainty and fairness to communities.

#### **3. Possible Mechanisms for Implementation**

- Establishment of a Unit of Strategic Planning and Policy
- Establishment of an independent Spatial Data Authority
- Establishment of a Unit of Development Assessment
- Establishment of a Statutory Development Assessment Commission
- Establishment of a Statutory Community Board
- Access to Information

# 1. More about the principles governing good planning

## The well-being of the whole community, the environment and future generations across regional, rural and urban NSW

This principle is captured by the internationally-recognised concept and principles of Ecologically Sustainable Development (ESD).

Ecologically Sustainable Development is a framework for evaluating human activity based on the knowledge that our technological capacity to use resources and alter our environment may have unintended consequences, such as pollution, loss of biodiversity and resource depletion. Development that is unsustainable may also reduce the economic capacity of our environment, alter its natural beauty and reduce its spiritual and social value.

In 2011 the NSW Government commissioned a review of the NSW planning system by the Hon. Tim Moore, a former Liberal Minister and then Commissioner of the Land and Environment Court, and the Hon. Ron Dyer, a former Labor Minister. The report resulting from this review recommended that ESD be the overarching object of the new planning legislation<sup>1</sup>.

The concept and principles of ESD were elaborated through a series of documents and legal instruments at the 1992 Earth Summit held in Rio de Janeiro, Brazil. The Rio declaration enunciated the key principles of sustainability as the principle of integration of environmental considerations and development objectives, the precautionary principle, the conservation of biological diversity, intergenerational equity and the promotion of improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

In NSW legislation, ESD is defined in section 6(2) of the *Protection of the Environment Administration Act 1991* (NSW), as follows:

*“ ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:*

*(a) the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, public and private decisions should be guided by:*

*(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*

*(ii) an assessment of the risk-weighted consequences of various options,*

*(b) inter-generational equity-namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*

*(c) conservation of biological diversity and ecological integrity-namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

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<sup>1</sup> Moore T and Dyer R (2012), *The Way Ahead for Planning in NSW: Recommendations of the NSW Planning System Review*.

*d) improved valuation, pricing and incentive mechanisms-namely, that environmental factors should be included in the valuation of assets and services, such as:*

- (i) polluter pays-that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.'*

### **Effective and genuine public participation in strategic planning and development decisions**

Politicians and public officials are not the only people who should be involved in making decisions. Every person has the right to participate in decisions that affect their lives and people affected by a planning or development proposal have a right to comment and suggest solutions.

Strategic planning is about engaging communities to set a broad vision for and shape the character of their local area. It includes but is not limited to deciding what type of development should be allowed where in their neighbourhood.

Development affects more than those who propose it. Even development of a single dwelling on a suburban lot can affect the character of its street and developments that have an impact on biodiversity, water quality or traffic generation, for example, have much wider flow-on effects.

Strategic planning or developments that do not meaningfully engage communities can only ever be second best as they cannot presume to understand or address community wishes and needs.

Good strategic plans combine the best elements of local requirements and higher level concerns. The role of planning authorities includes facilitating community input into the preparation of strategic plans prior to public exhibition and promoting genuine, open dialogue between stakeholders. The role of consent authorities is to consider public comments on development proposals and ensure compliance by developers.

A Minister should not amend or refuse to make a local plan unless it is inconsistent with a State or regional plan. Further, the Minister's decision to amend or refuse to make a plan should be legally challengeable. Also, the Minister should not have the power to appoint an administrator to take over a Council's planning functions except where a finding of corruption against the Council or its staff has been made by the Independent Commission Against Corruption (ICAC).

Consultation must start at the community level and include genuine, open dialogue between stakeholders. For example, effective participation can begin with precinct committees or equivalent existing organisations that provide an effective forum for community involvement on an ongoing basis. Effective participation should also consider innovative and accessible techniques such as surveys, community juries and shopping centre drop-in forums.

Whichever techniques are used, a good planning system must provide a legislated minimum mandatory scheme for public participation. It must also ensure that the assessment process is appropriate to the level of likely environmental impact of the planning or development proposal.

The greater the likely environmental impact of a proposal, the greater scrutiny it should receive from both the public and the authority assessing it.

Public participation has been curtailed significantly with respect to some of the largest and most potentially environmentally damaging proposals such as State Significant Developments and critical infrastructure proposals. This has led to public scepticism that major developments are not being adequately assessed.

The following principles are proposed as mandatory community participation requirements. They would apply to all decision makers under the Act who would be required to take all reasonable steps to ensure that consultation is carried out in accordance with these principles.

1. Community expects and has a right to participate in strategic planning, development assessment and related decisions. As a consequence these principles must 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 meeting sites that are not near public transport).
5. The information should be provided in a way that is transparent, accurate and easy to understand via a variety of methods including letters, social media, websites and events.
6. Participation should not be limited to the passive supply of information and should encourage and record views and 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 should be provided to the community and those with limited resources to interrogate and understand complex information. This may include, for example, the provision of funds to obtain independent advice, meetings with panels of experts or commissioning of further research by consent authorities, to be made public prior to a decision.
8. Dialogue between stakeholders should be facilitated, bringing 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 should be made publicly available prior to the decision.
10. The community should be re-engaged with respect to amendments to a proposal (other than minor amendments).
11. Community participation strategies (general or project-specific) should be evaluated in line with pre-set key performance indicators such as the range of groups contacted and levels of satisfaction with the information provided, the choice of engagement methods; the recording of views and the extent to which information and events were made accessible to the public.

Decision makers would be obliged to prepare a community participation strategy subject to biennial evaluation.

### **An open, accessible, transparent and accountable, corruption-free planning system**

Whether it is urban development, transport, public asset management, coal mines or coal seam gas, public confidence in NSW planning is at an all-time low.

We therefore call for:

- Implementation of all [recommendations](#) of the ICAC report *Investigation into corruption risks involved in lobbying*, November, 2010
- Implementation of all [recommendations](#) of the ICAC report *Anti-corruption safeguards and the NSW planning system*, February 2012
- Implementation of all [recommendations](#) of the 2013 ICAC operations Jasper and Acacia (investigation of the allegations concerning mining exploration licenses)
- Creation of a Unit of Strategic Planning and Policy and a Development Assessment Commission (refer to Section 3 for detail).
- Introduction of a low cost (no costs jurisdiction), third party merit review process for all development applications in the NSW Land and Environment Court.
- Limiting discretionary power available to the Minister for Planning.

The position of the Charter and this Companion document is that the ability for all parties to challenge the factual basis (ie- access a merits review) of all development decisions in the Land and Environment Court reduces the incentive to inappropriately influence politicians and/or public officials.

This is an important corruption safeguard and goes further than Recommendation 16 in ICAC's 2012 report *Anti-corruption safeguards and the NSW planning system*, which recommends that third party merit appeals be limited to development that is significant and controversial; represents a significant departure from existing development standard; and/or is the subject of a voluntary planning agreement.

According to the Australian Productivity Commission:

*Third party (that is, non-applicant) appeals may improve the quality of decisions by reducing the scope for deals between developers and regulators and by catching poor*

*decisions. Furthermore, the ability to appeal an unpopular development can protect neighbourhood amenity and enhance community trust in the system<sup>2</sup>.*

It has been claimed that the availability of third party merits review slows down development approval<sup>3</sup> and in NSW, third party merits appeals are only available for Designated Development (ie- development requiring an Environmental Impact statement and listed in Schedule 3 of the *Environmental Planning and Assessment Regulations 2000*).

In contrast to this argument, Victoria, which has approximately six times the number of merit appeals relative to population compared to NSW<sup>4</sup>, is often held up as having a more efficient planning system than NSW. Examples of this can be seen in recent comments by Chris Johnson, Chief Executive Officer of the developer lobby group the Urban Taskforce:

*Melbourne has also done a much better job of building sufficient housing for its growing population, particularly in the inner city ...<sup>5</sup>*

Justice Stuart Morris, then President of the Victorian Civil and Administrative Appeals Tribunal, has noted that *the existence of third party appeal rights discourages corrupt behaviour between developers and local government<sup>6</sup>.*

The extent to which corruption can distort good planning and destroy the public's confidence in the planning system was illustrated graphically by the 2008 ICAC investigation into Wollongong City Council. This investigation recommended the revocation of an approval for a large development named the 'Quattro', the vacation of all civic offices of the Council and corruption findings with regard to ten individuals.

In addition to third party merits review, open standing to bring judicial review proceeding is an important mechanism to ensure statutory compliance by authorities with the legislation.

### **The integration of land use planning with the provision of infrastructure and the conservation of our natural, built and cultural environment**

Generally, decisions relating to urban development, infrastructure, energy and natural resources are made by single-issue agencies in the absence of adequate coordination between these agencies and little reference to broad, longer-term goals for NSW. This silo mentality is a major impediment to achieving the kind of strategic planning needed in the 21<sup>st</sup> century.

More attention needs to be given to mechanisms through which land use planning decisions can be effectively integrated with other key Government decisions relating to infrastructure and natural resource management.

In other countries, the integration of land use planning with infrastructure and natural resource management is implemented to a greater degree than in NSW. Particular priorities include the integration of land use planning with:

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<sup>2</sup> Productivity Commission (2011), *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Chapter 3, Regulatory Framework, p.86

<sup>3</sup> Judge Christine Trenorden (2009), *Town Planning Law – Past Present and Future*

<sup>4</sup> Productivity Commission (2011), *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Chapter 3, Regulatory Framework, p.83

<sup>5</sup> <http://www.smh.com.au/comment/why-melbourne-has-planned-better-for-growth-than-sydney-20140601-zru54.html#ixzz39aMSmG4Y>

<sup>6</sup> Justice Stuart Morris (2005), *Third Party Participation in the Planning Permit Process*, p.6

- transport policy (to improve accessibility to employment and services and reduce energy dependence)
- infrastructure policy (to improve sustainable resource use and provide facilities to communities)
- biodiversity conservation and natural resources management (to promote settlement patterns and activities that support the long-term integrity of natural areas and processes)

In order to address the lack of coordination between various agencies, we call for the establishment of a Unit of Strategic Planning and Policy (see Section 3 for detail).

### **Objective, evidence-based assessment of strategic planning and development proposals**

The foundation stone of a good planning system is a sound knowledge base that is accessible to all stakeholders and is maintained and updated by Government in the public interest.

We call on the NSW Government to commit resources towards good quality and objective data to be used as a basis for planning and development decisions at state, regional and local levels. At the very least, such data would need to include detailed studies of planning constraints such as flood mapping, mine subsidence, biodiversity and vegetation mapping, acid sulphate soils, coastal risk and fire prone lands, as well as demographic information.

We also call for the establishment and funding of an independent Spatial Data Authority (or the adaptation of an existing body) that would be responsible for maintaining and updating data in the public interest (see Section 3 for more detail).

Reliable data is essential to sound strategic planning, however, it must be recognised that it can only be accurate to a certain scale. Moreover, information about some matters, such as threatened species, is likely to be incomplete. In such cases, it is important that further studies be undertaken to assess the actual and cumulative impacts of specific proposals.

In relation to development assessment, the current system in which proponents select and pay their own consultants to prepare reports, including environmental impact statements, creates obvious conflicts of interests.

Although it is equitable for the developer to pay for such reports, the objectivity of these reports must be ensured by keeping the appointment of consultants at arm's length from the proponent. This could be achieved by the establishment of a panel of accredited consultants with consultants appointed by a body other than the proponent (for example the Unit of Development Assessment-see Section 3).

To ensure the quality and reliability of the information contained within consultants' reports, provisions that make it an offence to include deceptive or misleading information in these reports should also be strengthened.

We call for an improved system for engaging consultants designed to achieve the following outcomes:

- annually reviewable professional accreditation of consultants
- provisions that make it an offence, as well as an act of misconduct, to include deceptive or misleading material in consultants' reports
- breaking the financial nexus between developers and consultants
- provision for arm's length allocation of consultants to projects

We note that these outcomes would require a detailed set of administrative criteria and regulations to be implemented. The dot points below are suggestions as to how such a system could operate.

- A central register of consultants with expertise in various areas is created and managed by a Unit of Development Assessment or other body.
- Proponents pay a fee (based on a percentage of the estimated construction investment value) into a designated fund.
- One or more consultant(s) are allocated to the proponent's proposal from the register of consultants via a process of rotating selection and paid for by the fee contributed by the proponent.
- The consultant(s) prepares a publicly available study of values and potential impacts associated with the proponent's proposal.
- The proponent then finalises and lodges the proposal.

To be eligible for placement on the central register, we suggest that consultants should be accredited annually on the basis of ongoing professional development and the quality of reports they produce.

It is important that the people of NSW have confidence in the integrity and objectivity of consultants' reports. With respect to the provisions for deceptive and misleading conduct mentioned above, it is imperative that a complaints process be made available to the public so that allegations of misleading or less than rigorous reporting can be addressed. The assessing authority must be given a positive duty to pursue matters where there is prima facie evidence that misleading or deceptive conduct has occurred with regard to a planning or development proposal.

This Companion does not support the direct employment of private certifiers by developers. Where private certifiers are used we call for a system that breaks the financial nexus between developer and certifier in the same way the nexus between proponents and consultants needs to be broken.



## 2. More about the expected outcomes of a good planning system

### **Respects, values and conserves our natural environment and the services it provides.**

In order to prevent the death of our environment by a thousand cuts and ensure that our bushland, water and wildlife can be enjoyed by future generations, our planning system must:

1/ ensure that detailed strategic level planning is undertaken in an integrated manner. Good strategic planning considers environmental constraints along with conservation priorities.

2/ ensure that, where there isn't adequate environmental data, or there is new information, the potential for cumulative impacts of developments is adequately assessed.

3/ ensure that environmental impacts are adequately assessed by using an objective 'improve and maintain' test based on available data.

### **Facilitates world-class urban environments with well-designed resource-efficient housing, public spaces and solar access that meet the needs of residents, workers and pedestrians.**

Urban design is concerned with the arrangement, appearance and function of our streets, suburbs and cities. It is less about buildings and more about the public spaces between them. There is a particular focus on the creation of a civic or social realm in which people interact. Consequently, urban design must have strong regard to human needs, both physical and social.

Urban design involves many different disciplines including planning, real estate, architecture, landscape architecture and engineering. It operates from the macro scale of planning, the structure of the wider urban region to the micro scale of street furniture and lighting. Integration between these different spatial scales is very important to achieving the desired character and quality of particular places.

*Urban design can significantly influence<sup>7</sup>:*

- the economic success and socio-economic composition of a locality – whether it encourages local businesses and entrepreneurship; whether it attracts people to live there; whether the costs of housing and travel are affordable; and whether access to job opportunities, facilities and services are equitable;*
- the physical scale, space and ambience of a place. As such, it affects the balance between natural ecosystems and built environments, and their sustainability;*
- the social and cultural nature of a locality: how people interact with each other, how they move around, and how they use a place. Although urban design is often delivered as a specific 'project', it is in fact a long-term process that continues to evolve over time.*

*It is this layering of building and infrastructure types, natural ecosystems, communities and cultures that gives places their unique characteristics and identities.*

The planning system must ensure that walkability and public transport, as well as public spaces that foster community are an integral part of local neighbourhoods.

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<sup>7</sup> The Urban Design Protocol: <http://www.urbandesign.gov.au>

Further, the aim of delivering a long-term protection policy and plan for urban parklands, public spaces and remnant bushland on private and public land should be enshrined in regulation. The current system has seen green corridors destroyed at the hands of developers and successive ministers, an action that accords private profits higher value than our environmental and open space assets. The protection of remnant natural areas and sufficient green spaces in higher density areas should be top priorities.

The best available scientific and planning expertise can deliver an environment that meets a variety of human and environmental needs, including protecting native flora and fauna, maintaining and improving connectivity, linking the community in a caring way to bushland and delivering clean air, opportunities for interaction and communal activity and relaxation.

Good urban planning should also provide for a co-ordinated approach and a variety of funding opportunities that assist local government to deliver the objectives above and improve the resources available to the large number of community groups involved in the protection of urban green spaces and natural areas.

Lastly, good urban planning should involve Social Impact Assessments for communities impacted by proposed development especially when those communities are disadvantaged, vulnerable or resource-poor.

**Provides housing choice, including affordable housing and sufficient housing for the disadvantaged, in a diversity of locations.**

Local and state planning frameworks are only one of many influences to affect housing affordability. Housing purchase or rental is strongly influenced by State and Federal taxation and charges, as well as incentives the stated intent of which is to increase housing stock and affordability.

The planning system has a key role in facilitating the provision of housing by zoning land for housing and allowing planning authorities to collect contributions for infrastructure, such as roads, local drainage works, open space and community facilities. It also sets standards for the design and construction of dwellings. Some of these standards promote environmental outcomes (e.g. environmental sustainability) and social outcomes (e.g. disability access).

Where the system allows for land to be used for housing rather than for other purposes, it can also contribute to greater supply of dwellings, which in turn can contribute to reducing the cost of provision and the price paid by homebuyers. Allowing housing to be developed only in this way would have negative impacts if there were an unacceptable loss of land used for other worthwhile activities, such as agriculture or land that is conserved as natural habitat. It could also have negative social impacts if new housing estates were built far from centres with services like hospitals and schools or were not linked to jobs by public transport.

The mainstream housing market doesn't cater to everyone equally, which is why our planning system should retain an objective of provision and maintenance of affordable housing. Affordable housing means housing that is specifically targeted to lower-income and moderate-income households. This sort of housing could be 'start up' housing for homebuyers entering the housing market for the first time, housing for 'key' workers employed on lower wages or for people who cannot participate in the workforce because of age, disability or family responsibilities.

The planning system can and should allow for a diversity of dwelling types and densities. It should be able to conserve areas of low-rise, low-density housing, as well as allow for medium-rise, medium-density housing in areas where this fits in, for example around railway stations and

shopping centres. While recognising the over-consumption of energy of high-rise towers, some communities may also elect this form of housing in their local area.

Inappropriate development controls that prevent a diversity of housing types from being developed, such as secondary dwellings, should be removed. Planning authorities should also require apartment buildings over a certain size (e.g. 10-20 units) to contain units with a range of bedroom sizes, to accommodate small and large families. As far as possible, all buildings should be designed in line with Universal Design principles to cater for people of all ages and abilities. As a minimum, all unit buildings should also be built with a proportion of units that are accessible for aged people and those with disabilities in accordance with the Liveable Housing Design Guidelines<sup>8</sup>.

In some cases, developers of private housing should be asked to contribute towards dedicated affordable housing, where their development leads to a loss of existing affordable housing, creates a need for affordable housing, or is only allowable because there has been a change in zoning or development controls.

### **Celebrates, respects and conserves our cultural (including Aboriginal) and built heritage.**

*Places of cultural significance enrich our lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. These places are historical records that are important as tangible expressions of our Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious.*

*People strongly value the quality of their local historic environment, the distinctive look and feel of the places in which they live and work. It is interesting to note that, in Australia, ...there are more than 2000 local historical societies in Australia who run local historical museums and archives, and are involved in local heritage conservation.*

*Not only does the historic environment define identity and enhance our daily lives, it also provides a tangible and direct link with the past. This is an experience that historic documents or a record of a long gone place cannot replace.<sup>9</sup>*

This Charter and Companion document call on our planning system to respect and conserve our heritage- cultural and built, and integrate the stand-alone Aboriginal Cultural Heritage legislation currently in development.

### **Protects and sustainably manages our natural resources, including our water resources, fragile coastlines and irreplaceable agricultural land for the benefit of present and future generations while maintaining or enhancing ecological processes and biological diversity.**

Land use planning and development is intrinsically linked with environmental protection, nature conservation and natural resource management (NRM). This is because actions that affect the environment and our natural resources are regulated, either directly or indirectly, through our 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.

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<sup>8</sup> <http://livablehousingaustralia.org.au/>

<sup>9</sup> Australia ICOMOS, Submission to the Australian Productivity Commission (122), p. 6

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.

Our 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 the Charter, 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, local food production and infrastructure for healthy, liveable and sustainable communities, as well as planning on a precautionary basis for future sea level rise and extreme weather events.

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.

**Retains and protects our Crown lands, natural areas, landscapes and flora and fauna for the benefit of the people of NSW.**

*‘The NSW Crown Estate is large and diverse – making up about 42 percent of the State – and holds tremendous importance for the social, environmental and economic health of NSW<sup>10</sup> .*

These lands remain in public ownership after over two centuries of divestment since the original Crown possession of Aboriginal country by Governor Phillip in 1788, and are of significant and irreplaceable value to the people of NSW.

Reserved under public authorities for a range of public purposes, including roads, waterways and protected areas to cemeteries, and sports grounds, or leased for pastoral activities, these public lands provide the people of NSW with vital recreational, community development, tourist and heritage values.

An assessment of the conservation values of all NSW Crown reserves, leases and waterways was conducted between June 2013 and June 2014 by the National Parks Association of NSW and the Nature Conservation Council of NSW<sup>11</sup>. This assessment revealed that these lands offer a range of important conservation values, ranging from providing remnant vegetation and habitat for threatened species in highly cleared landscapes, to habitat connectivity and irreplaceable coastal values.

Recreational space in particular is rapidly assuming greater importance in our increasingly densified and privatised cities, where shortages are likely to occur in older, inner-city communities now subject to increased populations through urban consolidation.

Public lands belong to the people of NSW. Because of their significant and irreplaceable values we do not support their sell-off or use for exclusive commercial purposes. We also note the interest of the Aboriginal community in Crown lands.

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<sup>10</sup> NSW Trade and Investment (2014), *Crown Lands for the Future - Crown Lands Management Review Summary and Government Response (Introduction: Our Crown Land)*

<sup>11</sup> The full results of this assessment are available as Attachment 1 to the Nature Conservation Council of NSW Submission on the Crown Lands Legislation White Paper dated 20 June 2014.

**Gives local and regional communities a genuine and meaningful voice in shaping their local area and region, its character and the location, height and density of housing.**  
**Provides certainty and fairness to communities.**

Engaging communities in strategic planning to set a vision for and shape the character of their local area must involve public participation. This must be a two-way process with the community giving input to Council, as well as Council educating the community about strategic planning and options for planning controls and future types of development in the area.

This process could begin with a survey (both written and on-line) to find out what the local community thinks is important in determining the vision and character of their area and identifying what aspects of their area they would like to maintain and those that they would like to change. As part of the survey, the community could also be asked about what features of amenity, such as solar access or public space, are most important to them.

Local community workshops could also be undertaken to inform the public about the strategic planning process and the purpose of the survey, and relevant information could be posted on the Council website.

While the survey was underway, Council could undertake the environmental, transport and infrastructure studies necessary for the preparation of a local strategic plan and planning controls.

Having collated the results of the survey, Council could then prepare a draft vision and character statement to be provided to the local community for further comment. Once Council has finalised the vision, character statement and other studies, it could then commence the formal process of preparing a strategic plan and planning controls involving public participation as discussed earlier in this document.

### **3. Possible Mechanisms for Implementation**

#### **Establishment of a Unit of Strategic Planning and Policy**

A planning system works best when the functions of strategic planning and development assessment are separated at both State and Local Government levels.

Strategic planning is a multi-disciplinary, multi-agency process that is broader than simply determining what development should occur where. As such, it is important that it be separated from the development assessment process.

There are many examples of strategic plans (including conservation plans) being made *after* development approval has been given or indicated. The infamous Lower Hunter Regional Strategy, the Lower Hunter Regional Conservation Plan and the series of court cases surrounding the Catherine Hill Bay and Huntlee developments are a case study in why strategic assessment and development should be separated.

The Australian Productivity Commission recommended the institutional separation of assessment and regulatory functions from those of policy setting in its November 2013 report *Major Project Development Assessment Processes*<sup>12</sup>.

The role of a dedicated Unit of Strategic Planning and Policy would be to ensure the co-operation of all State agencies in strategic planning by facilitating consultation and technical input into the development, monitoring and evaluation of state, regional and local plans. This Unit could also take on the role of policy development and law reform.

#### **Establishment and funding of an independent Spatial Data Authority**

A key input into strategic planning is the availability of good data, including flood studies, vegetation mapping, acid sulphate soils mapping, coastal risk assessment, traffic data and population data.

An option that could improve the availability and compatibility of data is to create an independent Spatial Data Authority or, alternatively, to adapt an existing authority to fulfil a similar role.

There is no Authority currently charged with producing spatial data to a common standard and with adequate resources. Development proponents often produce studies that focus on their particular proposal and Councils produce data that may not be compatible with a neighbouring Council or State Agency.

By establishing and funding an independent Spatial Data Authority, NSW would produce more informed and robust strategic plans.

#### **Establishment of a Unit of Development Assessment**

A Unit of Development Assessment could replace the current NSW Department of Planning and Environment. Its primary functions would be to:

- provide a secretariat to the Development Assessment Commission (see Section 3 of this document)

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<sup>12</sup> Productivity Commission (2013), *Major Project Development Assessment Processes*, Recommendation 6.5, p.34

- provide assessment assistance to smaller regional Councils in the form of experienced planners who can assist in the assessment of developments which a Council does not have the in-house expertise to assess
- co-ordinate and allocate consultants at arm's length from the proponent
- ensure adequate monitoring, compliance and enforcement.

A planning system should set professional standards for planners governed by a statutory professional body. The body could be tasked with renewing the accreditation of planners on an annual basis. The planning system could stipulate that only accredited planners can conduct the assessments of development applications.

### **Establishment of a Statutory Development Assessment Commission**

In order to improve the processes and independence of decisions relating to the determination of the largest developments in NSW, Moore and Dyer suggested that a 'Planning Commission', chaired by a full-time judge of the Land and Environment Court, determine State Significant Development and infrastructure.<sup>13</sup>

The Charter and this Companion document support consideration of this model (with some differences) as a way of restoring public confidence in the planning system and removing suggestions of political patronage in the appointment of Commissioners and members of Joint Regional Planning Panels.

A NSW Development Assessment Commission (the 'DAC' - that is, Moore and Dyer's 'Planning Commission'), chaired by a judge of the Land and Environment Court, could be tasked with determining large developments, including State Significant Development and infrastructure, on the basis of existing state, regional and local plans, as well as the objectives of the Act.

A judge seconded as Chair of the DAC would bring political independence to the DAC and ensure rigour in its determinations. They could not sit as a judge while chairing the DAC.

Moore & Dyer note that both the NSW Workers Compensation Commission and the Administrative Appeals Tribunal use this model currently<sup>14</sup>.

The DAC would operate as a panel, not as a tribunal or court. Parties would be self-represented (unless special leave was granted for professional representation for public interest reasons) and the rules of evidence and cross examination would not apply. There would be access to third party merit appeals on DAC determinations through the Land and Environment Court, unlike Moore and Dyer's Planning Commission.

The establishment of a DAC would remove the Minister from determining large developments while retaining elected representation in determining strategic plans and local development approvals.

The members of the DAC would be recruited by public advertisement and be required to state why their qualifications and experience make them suitable applicants. Moore and Dyer suggested that

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<sup>13</sup> Moore T and Dyer R (2012), *The Way Ahead for Planning in NSW: Recommendations of the NSW Planning System Review*. Vol 1 p. 30 and Vol. 2 p. 120

<sup>14</sup> See the *Administrative Decisions Tribunal Act (1979)*, section 17 and the *Workplace Injury Management and Workers Compensation Act (1998)*, section 369

the preferred appointees should be recommended by a panel to the Minister<sup>15</sup>. Another method could be to require that the Minister seek endorsement of the nominees by the NSW Parliament, a process that would allow a level of public scrutiny of the appointments.

### **Establishment of a Statutory Community Board**

The NSW planning system has long been criticised for being susceptible to sustained lobbying by the property and mining sectors.

Our planning system could create a statutory board of community representatives who must be consulted by the Minister prior to strategic planning decisions being made.

This Community Board would represent urban, regional and rural stakeholder bodies from various sectors, including peak associations for social needs, environment, community, transport, as well as resident groups.

### **Access to information**

The availability of and timely access to supporting documents is vital for public participation in the planning system and all information relating to a strategic planning proposal or development should therefore be available to the public.

On this basis, all proponents should be required to sign a waiver of copyright and indemnify both the planning/consent authority and the public.

Further, claims for commercial-in confidence should only be allowed where the consent authority has applied a test that has established a real possibility of commercial damage occurring.

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<sup>15</sup> Moore T and Dyer R (2012), *The Way Ahead for Planning in NSW: Recommendations of the NSW Planning System Review*, Vol. 2 p.31