



Planning &
Environment

Planning Legislation Updates

***Stakeholder
feedback
January 2017***

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1. Introduction

On 6 May 2016, the Minister for Planning announced the NSW Government would draft amendments to the *Environmental Planning and Assessment Act 1979* to help build a simpler, modern planning system. As part of this, the Department of Planning and Environment (the Department) held a series of forums around the State to discuss issues with the current planning and options for addressing them. The areas discussed included community engagement, plan making and development controls, local development, State significant projects, improving governance and review processes, enforcement and reporting and design.

This included:

- 10 roundtables discussion forums across regional New South Wales (Queanbeyan, Gosford, Newcastle, Tamworth, Griffith, Coffs Harbour, Wollongong and Dubbo) and metropolitan Sydney (including Parramatta) attended by 373 representatives from 235 key stakeholder organisations, including local councils, industry, practitioners, Aboriginal groups, the community and environmental groups; and
- Responses from 122 people and organisations to a targeted online survey.

The aim of the stakeholder discussion forums was to seek stakeholder input into a range of policy proposals, to assist the NSW Government to finalise an exposure draft amendment Bill for public release.

The consultation process was very well received and delivered valuable feedback.

Participants were invited to make further contributions following the consultation events by emailing the project inbox or contacting the Department directly.

This report describes the stakeholder feedback from each of the roundtable forums, responses from the on-line survey and from other direct input.

The report does not capture all views expressed by stakeholders but the main views that were expressed during the discussions.

In reporting on survey responses, this report uses the percentage of participants who answered a question. When a participant did not answer a question, they were removed from any calculations to avoid non responses skewing the results.

Table 1: Stakeholder breakdown

	Roundtable	Survey	Correspondence
Individual	4	40	17
Environment/Community Groups	35	21	9
Local government	193	39	10
Government Agencies	31	0	4
Industry	3	13	0
Planning practitioners	30	6	5
Peak organisation	62	3	8
Aboriginal groups	15	0	2
Member of Parliament	0	0	1
Total:	373	122	56

2. Key Issues

2.1 Enhancing community participation

Community participation is critical to good decision-making and ensuring confidence in the planning system. Community participation in the planning system can be encouraged and facilitated by ensuring the system is easy to navigate and understand. Views were sought on how best to enhance community participation in the planning system.

Discussion forums and correspondence

Stakeholder input indicated that there is broad support for the community participation principles proposed in the Planning Bill 2013. For example it was agreed:

- Community participation needs to occur early, with enough time to consider and give feedback.
- Engagement needs to be transparent, accessible and clear.
- Engagement is inclusive and representative of the community, stakeholders and industry.

The following issues were raised:

- There is difficulty in getting people engaged at a strategic level, as often people do not share concerns until construction is occurring.
- The community participation principles must be implemented to be workable and meaningful.
- Decision-makers should be held to the principles.
- Decision-makers must clearly demonstrate how community feedback was considered in decision making.
- Community consultation is resource intensive and consultation fatigue would need to be managed, especially in metropolitan and growth areas.
- Plans should include specific measures for consulting with local aboriginal groups.

Survey responses

What do you think of the community participation principles?

Almost half of respondents to the question answered 'like' and the other half of respondents to this question answered 'like but concerned about implementation or detail'. Some comments received:

- *"(Community participation) provides the opportunity for ideas, perspectives, concepts and concerns that may otherwise not be addressed by business, developers and agencies."*
- *"The principles are fine, but communities also need to accept that where development is compliant and permissible, development needs to be enabled."*
- *"Unfortunately human nature shows that people only really care when it's next door. These principles will not resolve this, but they do set a good benchmark for consultation at the right stages in the planning process."*

Does the 2013 model (charter, minimum standards, community consultation plans) remain a good approach or would like you like to see changes?

Approximately half of the respondents to this question thought the 2013 model was fine and the other half thought the model needs change. Some comments received:

- *"I think development projects should not be taken out of the hands of local council. I think the state government should fund strong, transparent local councils with robust decision-making processes that encourage and respect community consultation."*
- *"The principles above remains a good approach, however the last point is too open to interpretation and should include a right of reply, or right to challenge."*
- *"The community views are generally well represented by umbrella organisations (such as Environmental Defenders Office, Lock the Gate, etc). The input of these organisations should carry significant decision making weight."*
- *"Charter and minimum standards need to be legislated- with sufficient inclusion of language to ensure that approaches can evolve."*
- *"This is a good approach, however, expectations in relation to the role of the community in participation processes should be made clear at the start of each engagement."*

How do we help consent authorities go beyond the minimum requirements in engaging the community?

- *"Better funding so they have the proper resources to properly inform and engage the public."*
- *"Information nights with plenty of notice in many different towns that a decision is going to impact on. Surveys such as this one is (a) simple and effective way to get feedback from people who may not want to write a submission but are happy to respond to surveys."*
- *"Provision of 'standardised' consultation web pages that may be easily tailored for new projects, however small, in order to elicit feedback and comment. Provision of easily set up project specific email addresses so individuals don't think their feedback is just sinking into the ether. Active participation in social media around specific projects including provision of feedback and links to more information."*
- *"Use traditional communication techniques supplemented, but not replaced by social media... writing to neighbouring or affected properties."*
- *"Getting people involved in strategic planning is a significant challenge and even more so in regional areas. People tend only to become involved or focussed when it directly affects them (ie. their property or the property beside them). I am not sure how we try to change this focus and whether minimum requirements for example will improve things or not. If people simply aren't interested or don't see any relevance it's hard to get them involved, no matter what lengths a consent authority goes to."*

2.2 Plan making and development controls

Plan making and development controls are important facilitators of strategic planning. Strategic planning allows communities to create a shared vision and have conversations about goals and objectives for the future, including actions required to achieve the shared vision.

Planning at the local level is most effective when there is a clear line of site between regional and district plans and local implementation plans and controls.

Discussion forums and correspondence

Feedback showed there was broad agreement that:

- Local strategic planning overviews are helpful for councils, particularly as a community engagement and assessment tool.
- A strategic planning overview would provide a clear and concise line of sight between all local/regional strategic plans.
- A ground up approach to regional planning, and something like a strategic planning overview could help to serve this function through greatly informing the relevant regional plan.

The following issues were raised:

- There were divergent views about where the direct line of site between regional district plans exist as an introduction to the local environment plans (LEPs) or as a standalone document.
- Views differed as to the best review periods for LEPs – Western Division councils preferred 10 year review cycle, whereas metropolitan and coastal councils preferred a five year trigger point.
- Community involvement in local strategic planning is important.
- More detail was sought as to how local strategic planning would be reflected in the LEPs and the standardisation of development control plans (DCPs).
- There was support for preserving councils place making functions including councils' controlling content of DCPs.

- There is a need for clarity in the relationships between local strategic planning and other plans such as regional plans or district plans in Sydney and state and federal government plans including infrastructure delivery.
- There was support for a standardised template for DCPs so long as content remains local, flexible and effective.

Survey responses

Would it be helpful for councils to have a strategic planning overview at the local level?

Over 90 per cent of respondents to this question answered 'yes'. Some comments received include:

- *"Yes, people do need more help in understanding strategic planning which can be complex. People find it much easier to obsess about the "development next door."*
- *"Strategic Plans must also specify environmentally sensitive lands and Heritage areas with development limitations being enforceable."*
- *"A 'strategic overview' at a local level appears to be suggesting a bottom up approach which may be helpful in the preparation of District Plans and ensure local level planning remains robust and supported by government at other levels."*
- *"Depending on the size and ability of the Council to resource this it would be constructive. Quality strategic planning is the key to the planning system issues."*

- “This would really depend on whether there is already a strategic plan at a regional level. For example if this is a strategic plan for Greater Sydney then the LEPs below that should use that as their strategic document. If no strategic plan exists at a regional level for a large rural LGA then a strategic planning overview at a LGA level would be useful to help define the planning vision of the LGA.”

If so, should it be a standalone document such as a land use strategy, or part of the LEP?

Nearly two thirds of the respondents to this question thought the strategic plan overview should be part of the LEP. Some comments received:

- “The strategic plan should be stand alone. It should be delivered through the LEP and or DCP. In some councils, a ‘precinct’ strategy may also be relevant to provide a process to strategic plan for part of the council area under development pressure – to undertake option evaluation and community.”
- “As much as possible should go in the LEP. People dislike looking through multiple documents.”
- “I prefer a combination of both a standalone document and a consultative joint process.”
- “Could be linked to the LEP but also used as a stand alone document as necessary. The less “red tape” need the better as this slows down and confuses too many developments.”
- “Community would expect the local plan has been prepared in line with strategic plans – perhaps councils as part of their LEP document how it aligns with the strategic plans.”

How frequently should LEPs be reviewed / refreshed?

- “LEPs should be reviewed every 5 years. Preferably in line with each census.”

- “On a need basis, therefore, it’ll vary depending on the LGA.”

What do you think of the idea of creating a standard template for the content of a DCP?

Approximately three quarters of respondents to this question answered ‘good’. Some key comments include:

- “Yes, as long as it includes the natural environment and its protection.”
- “A standard template would be OK, providing it’s not too long and...too detailed.”
- “Terrible. One size does not fit all...Local DCPs should reflect the will of the local community and take into account local issues.”
- “This is a good idea as the quality of DCPs varies greatly across the state. I would suggest though that this has greater flexibility built into it than the Standard Instrument LEP in order to allow Councils to retain their local priorities.”

2.3 Local development

2.3.1 Pre-lodgement consultation with neighbours

A mechanism for improving planning outcomes and minimising conflict and disagreements about a development is to engage with people early, prior to any major design decisions being made. In this regard, practical ways to encourage proponents to consult with neighbours prior to lodging a development application were explored.

Discussion forums and correspondence

There were wide ranging discussions regarding the merit of pre-lodgement consultation with neighbours. It was agreed that it should not replace the current standard notification process. It was broadly agreed to encourage pre-lodgement consultation with neighbours, rather than a mandatory step in the development application process. There were concerns about implementation issues, especially if neighbours do not get along.

Survey responses

What do you think of encouraging pre-DA consultation between neighbours?

Over three quarters of the respondents to this question agreed encouraging pre-DA consultation between neighbours was a good idea. Some comments received:

- *"Yes, but the key word is 'encourage'."*
- *"Essential, even for complying development, with the assistance of local council for advice and information."*
- *"It should be encouraged, but should not be a required part of the DA lodgement. This approach is too dependent on personality types and differing needs. There is the potential for bullying, harassment and intimidation as well as taking advantage of people who may not be well equipped to make decisions that don't disadvantage themselves."*

- *"I am supportive of this. It would reduce the element of 'surprise'. However, if there are issues between neighbours then there needs to be an alternative."*

Can you see this approach being more appropriate for some scales / types of development than others? (eg. Residential)

Over half of the respondents to this question answered 'yes'. Some key comments include:

- *"Certainly residential, but it should also be generally for development which is potentially contentious, has significant impacts or is of a given scale for all instances."*
- *"It should be applied at all scales of development. This allows the community to better understand and have input into large-scale planning and land-use decisions, as well as localised developments that have the potential to impact directly on them."*
- *"The benefits of constructive communications are broadly understood and would apply to all scales and types of development."*
- *"Only appropriate for low-rise residential zoned areas for single dwelling DAs."*

2.3.2 Role of panels

Panels such as Joint Regional Planning Panels and Independent Hearing & Assessment Panels have been in place for some time. The use of panels is aimed at improving the quality of planning decisions through the application of expert knowledge. It also allows councils and elected officials to focus on developing and implementing strategies and policies to shape the vision and direction of the local area. Views were sought on the use of panels in the planning system.

Discussion forums and correspondence

There was a mix of opinions about the role of JRPPs and IHAPs. Some stakeholders like the expert and independent nature of the panels, that they remove politics from decision making and reduce pressure on local government and council representatives. Other stakeholders raised the following issues:

- JRPPs may face potential conflict of interest issues arising if councillors are panel members.
- JRPPs can be seen as removed from the process and the community.
- JRPPs are often under resourced and the process is time consuming and resource intensive.
- It can be difficult to find independent panel members in some regional areas.
- Accountability and conflicts of interest within panels was raised as areas for improvement.

Survey responses

What do you think of JRPPs and how they are working?

Over half of the respondents to this question answered 'working'. Some key comments include:

- *"I think they are excellent and working very well."*
- *"They are too far removed from local areas. Any panel should include members of the community and experts who have a sound knowledge and understanding of the specific area... panels should be formed according to each projects' needs, not a one-size-fits-all."*
- *"Generally these seem to work OK. However, there should be greater community representation on the panel say three community, three professional plus independent chair."*
- *"They are certainly working and have proven to reduce the pressure on Local Government planners and Council representatives."*
- *"The concept is good but the execution of the system is poor. The current system adds complexity and cost burden to Council. If the JRPP is to be retained is must be properly resourced by the state government."*

Discussion forums and correspondence

It was agreed that:

- most councils with Independent Hearing and Assessment Panels (IHAPs) felt they work well in determining local development applications; and
- the responsibility for assessing submissions was still a resource intensive process for councils.

The following implementation issues were raised:

- Regions outside of metropolitan Sydney are not resourced for IHAPs. For example, is it appropriate for councillors to determine development applications given the low volume of applications and difficulty in finding experts in regional areas.
- Planners and developers generally think expertise and knowledge of the planning system is critical when determining membership for panels, whereas community groups see merit in community membership. Should councillors be able to represent the community on panels? Or does this undermine the benefit of the panel being de-politicised?
- Incorrect information may be provided to panels.

Survey responses

Is there scope for independent panels in determining local development applications?

Almost three quarters of respondents to the question answered 'yes'. A few key comments from the survey include:

- *"There is scope if you can keep the independence of the panel by keeping local government representatives off the panel."*
- *"The concept of IHAPs for planning decisions should be encouraged but should not be mandated."*
- *"Maybe in some larger Council's that may be struggling with workloads."*
- *"Most Council's do a good job. Perhaps resources could be used to make sure all councils are performing efficiently and transparently rather than setting up independent panels."*

2.3.3 Changes to complying development

An objective of the Government is to make the planning system simpler and faster without compromising planning outcomes. One option to do this is to expand the complying development pathway where appropriate. Stakeholder views were sought on options to do this, and the forums provided valuable feedback about the challenges and benefits of the complying development pathway.

Discussion forums and correspondence

Stakeholders felt that the current complying development certificate process is too complex and that development applications (DAs) are often more cost and time effective especially in regional areas away from the coast. Other issues raised included:

- Stakeholders felt the Australian capital territory (ACT) system is easier to navigate.
- Only minor impact developments should be able to go through as complying.
- Regional councils pointed out they dealt with more development as complying before 2008.
- An inland code may be beneficial. For example, are more realistic sized shed for rural would 10,000 m² as complying. This requires further analysis on the standards and definitions for rural issues in the Inland/Rural Code.

Survey responses

Should NSW move to a system where if proposals meet the pre-determined standards and other requirements, they must be dealt with as complying and not able to be submitted as a DA?

Over half of respondents to this question answered 'no'. A few key comments from the survey include:

- *"No – I think it should still be the applicants' option which avenue they choose to go. If Complying Development was less restrictive and easier to navigate then greater take-up could be expected."*
- *"Applicants should be given a choice on whether they wish to lodge a DA or engage a private certifier."*
- *"Yes – complying development should be a mandatory pathway where the application meets criteria – councils should be using it as a viable and appropriate pathway which would then make them pay more attention to using it well and getting the code written well."*

2.3.4 Improving concurrences and referrals

Delays in the planning system can occur when multiple groups and agencies are required to provide advice on the impacts of a development. The complexity of impacts and variety of opinions can be difficult to navigate, which can lead to a lack of understanding of what is happening to an application when it is referred state and local authorities for advice. Views were sought on options to improve this.

Discussion forums and correspondence

Participants discussed a possible option for improving the concurrence and referral process. The option allows the Secretary of the Department to step in and exercise the powers of the relevant agency in circumstances where there has been a delay. The model also allows all participants to track a proposal through the system.

Overall, stakeholders commonly experienced time lags through the current concurrence and referral process. One of the most common criticisms is that the current process is slow and frustrating. Other issues raised included:

- NSW Government agencies are under-resourced to enable fast turn around and the process often depends on which department or agency and the working relationships between departments and councils.
- It is currently difficult to track a proposal through the process and it would be helpful if public tracking and a contact was made available.
- Consideration is needed as to how the proposed model would achieve a reduction of determination times and if this would lengthen the process by adding another step.
- It can be difficult to align all conditions from various agencies, and if licence requirements and other conditions were reviewed and aligned would improve timeframes.

Survey responses

What has been your experience with obtaining concurrences and referrals from State agencies?

- *"It can be a very tedious process often adding little value and only red tape and a lot of wasted time."*
- *"Mixed – some issues easily dealt with but have found it impossible to actually speak to a person about requirements as everything was done on-line or fobbed off from the local council end (they use a template and don't update the agencies after each restructure)."*
- *"Complicated but valuable. These bodies are generally the best source of complete legislative knowledge."*
- *"Generally positive but some agencies take a much longer time to respond. This should be steam lined. If agencies require further information then they should be done within the first 2-3 days of the referral. Maybe Department of Planning & Environment should take control of all referrals to various agencies instead of Council having to deal with various agencies."*
- *"It is generally a difficult and time-consuming process."*

Would the proposed model help with bringing down determination times?

There was a mix of opinions to this question. Some comments include:

- *"Perhaps, but would it improve the outcomes?"*
- *"Yes, worth trying but again would need to be clear process as could see issues during decisions on appeal."*

2.4 State significant proposals

Conditions placed on State significant development are needed to manage the environmental and social impacts of such projects. An objective of the legislative updates is to maintain effective tools for managing impacts while at the same time removing unnecessary duplication and regulatory confusion. This benefits all stakeholders and participants in the system. The Department sought views on specific proposals to achieve this.

Discussion forums and correspondence

To reduce this duplication the following opportunities to make conditions more adaptive over the life of a long project were discussed:

- better integrating development consent conditions with those of other licences; and
- allowing consent authorities to initiate amendments to conditions under limited circumstances.

The majority of feedback on these options were from community/environmental groups and industry where mining and quarrying activities are being undertaken. Views are broadly summarised as follows:

- Community and environment groups are concerned these processes are being used when a new application and EIS process should be performed.
- Industry prefers certainty whereas community and environment groups favoured a more flexible approach. For example, industry see modification processes part of the process of complex and long running projects.

Additionally, the following issues were raised:

- There is a need to improve cooperation between government agencies, and ongoing communication between departments regulating State significant proposals and local councils, especially following approvals.
- Providing more detail such as priorities and targets about State significant proposals in regional plans to assist in decision making.
- Long term projects need to consider local infrastructure.
- Some stakeholders thought that the State significant proposals are not given proper consideration in line with community expectations, as only two per cent of State significant proposals are rejected.
- There remains concern around the loss of merit appeal rights.
- Some stakeholders felt that councils are better placed to perform the compliance role for State significant project in regional areas.

Survey responses

In what ways can condition-making powers be improved to allow consent authorities to address emerging risks over the lifetime of long projects?

- *"It should be possible to address emerging risks and act to change or improve outcomes, especially for the natural environment if this is under threat."*
- *"The potential for amending conditions post-consent raises the possibility that an applicant may find themselves non-compliant at some point even if they had been fully compliant up to that point. This could be a very difficult thing to manage. I would suggest that instead licencing, such as Environment Protection Licencing, is beefed up in order to account for changing circumstances and to assist and encourage applicants to better manage emerging and unforeseeable issues during operation."*
- *"This is a difficult one. To address emerging risks suggests you are looking at the possibility of amending or imposing new conditions on a proponent retrospectively."*

Are there any other points you would like to raise in relation to State significant proposals?

- *"The thresholds for projects being designated as state significant development are too low and in some cases it could not be argued that these projects have any significance to the state. There is an apparent lack of scrutiny for SSD projects and these projects should not be able to 'turn off the local council planning controls'."*
- *"State significant proposals should be cleanly split from local. The way in which SSD and SSI were re-introduced to the act is clunky and confusing. eg New-timers don't even know what stop the clock means – Fees to be revisited – Modifications – decision one way or another as to the level of 'difference' mods can have to original DA."*
- *"State significant proposals should continue to have strong stakeholder involvement with sufficient attention to environmental sustainability and ecology."*
- *"The economic benefit emphasise often outweigh the environmental risks in these decision making processes."*
- *"For State significant projects there should be a full scale feasibility study completed which is open to scrutiny."*

2.5 Improving governance and review processes

Currently, the Land and Environment Court (LEC) is the primary avenue for appealing planning decisions. Unfortunately, this mechanism can be expensive and difficult to access, especially for small scale and regional participants in the planning system. Stakeholder views were sought on their experiences seeking review, and options to make this easier.

Discussion forums and correspondence

The majority of feedback received in both the roundtables and survey responses said cost was the major deterrent for reviews and appeals in the LEC. Other significant issues, included the process was long and overly legalistic, and there is a general lack of knowledge and understanding of the rights of review and appeal. Other issues discussed included:

- Some stakeholders felt that it is too easy for applicants to appeal an application after the 40 day period.
- Some stakeholders saw merit in a tribunal system with third party rights of appeal for planning decisions.
- The review/appeal process should be about achieving good planning, based on merit – not legal technicalities.
- Some stakeholders supported extending the Section 82A review process to integrated development to address the lack of a no review process for integrated development.

Survey responses

What barriers prevent applicants from seeking review or appeal of development decisions?

- *“Lack of clear information on pathways plus cost and time.”*
- *“I agree cost and time for small developments is a large barrier. A third party review may assist, particularly when a council planning officer has clearly erred in their application of the LEP or DCP. The only issue with this is the potential that this*

might induce an avalanche of appeals over DAs rejected on ‘grey areas’ i.e. those that are not clearly spelled out in local planning regulations. In this case the judgement call is just shifted from one official (the council planning officer) to another (the appeal officer).”

- *“Communities should have an automatic standing in Court processes. Often they are told: ‘Nothing can be done’, you have no standing in the matter. Court costs need to be waived for community groups.”*
- *“The appeal process in NSW is about achieving legal outcomes not planning outcomes. Planning decisions should be removed from the Courts and a tribunal system should be established with 3rd party rights of appeal. The review/appeal process should be about achieving good planning, based on merit – not legal decisions.”*

Do you have any views on establishing an administrative tribunal to deal with planning appeals, like they do in Victoria?

- *“I think that rights of appeal are a good thing and should be encouraged wherever possible, particularly for smaller development. An administrative tribunal approach may also act to save costs generally for some matters that would otherwise have ended up in the L&E court.”*
- *“Not sure how this system works, but any appeal or review process that doesn’t involve the court system would be a good thing. A hierarchy of tribunal appeal would be good and could be*

used to assess all application types from small to large scale, say a local tribunal at a IHAP level, Regional review at JRPP, then a state level tribunal.”

- *“The current L&E Court is the appropriate tribunal and is the equivalent of VACT in Victoria. VCAT has a terribly backlog of disputes due to third party appeal rights and is not considered a model worthy of duplicating. The NSW system is appropriate and should encourage more mediation and dispute resolution before court hearings.”*
- *“The Land and Environment Court is best placed to deal with planning appeals. There is no need for an alternative tribunal. The Land and Environment Court is also best placed to consider improvements for implementation. However it is agreed that extending mandatory conciliation to all development appeals involving project values of less than \$1 million would be valuable.”*

2.5.1 The Planning and Assessment Commission

The Planning Assessment Commission (PAC) is a critical element of the planning system in NSW, bringing independence and additional expertise to decisions about major projects. It is recognised that PAC processes could be improved to reduce duplication and improve community confidence. Ideas and options for this were discussed.

Discussion forums and correspondence

Stakeholder feedback suggested regional areas (excluding Newcastle and Queanbeyan) have much less experience with PACs than metropolitan and coastal local government areas. There was mixed views about the PAC from areas who had more to do with the process. Some stakeholders had positive experiences with the PAC and felt it is independent and had the appropriate expertise. Others wanted a more rigorous assessment process that can be open to investigation.

Survey responses

How is the Planning Assessment Commission working? What could be improved?

- *“Mixed. Accessibility and transparency would help.”*
- *“The PAC appears on the face of it to be a good thing, though I’m concerned that it appears to be just waving the majority of applications through. I am also still concerned about the lack of appeal to PAC decisions, particularly over contentious projects.”*
- *“The PAC process seems to be working well for major developments across NSW. More transparency or information availability should be provided around when decisions will be made and the status of assessments”*
- *“Everything can be improved, particularly the need for tight timeframes.”*

2.6 Enforcement and reporting

2.6.1 Reporting

Councils are required to report on their performance in assessing and determining applications. However, this requirement can be burdensome and duplicative.

As such, there may be opportunities to improve the reporting process to provide better and timely information to stakeholders and the community. These opportunities include:

- Use of clearer performance indicators and more contextual and survey data.
- A centralised building approvals data collection and management system, similar to the one in Victoria, so that councils only have to complete one report that fulfils the Department's, Office of Local Government's (OLG) and the Australian Bureau of Statistics' (ABS) requirements.

Discussion forums and correspondence

Initial roundtable feedback indicated that the majority councils broadly accept the need to collect data on development assessments. However, they would like more emphasis on qualitative performance reporting. A more streamlined and consistent approach to reporting is necessary, particularly for ABS, OLG and the Department's requirements. The type of data collected could also be broadened to include quality of life and community satisfaction.

Survey responses

Are we (NSW Government) currently collecting the right data from councils on indicators in the planning system?

Over half of the respondents to this question answered 'no'. Key comments included:

- *"No. There should be an online system whereby every council updates on a weekly basis how the entire details of all DAs received, processed and approved. This detail should encompass all relevant zoning, LEP and DCP requirements and controls."*
- *"Currently the department website shows average assessment times for councils. I would suggest that this should be expanded to show a column chart of all applications and the time since submission."*
- *"The relevancy of the data collected from councils should be reviewed...The publication of the annual data is not timely (i.e. the data is often published close to 18 months after the collection period)."*
- *"There needs to be more monitoring and reporting of the environmental condition of public lands that are environmentally protected, including the structure and health of flora and fauna communities, the condition of habitats, and the effectiveness of environmental management plans."*
- *"There is way too much data required from councils."*

- *“There should be less emphasis on timeframes and more on outcomes, including design. Data should be collected to measure performance against the implementation of strategic plans and EPIs, including housing numbers, affordability, employment, infrastructure delivery, community services, together with qualitative measure such as community satisfaction and design quality.”*
- *“Yes I think so – the annual report is very detailed.”*

What would make the process of providing this information less of a burden for Councils?

- *“A central system that has a standard format for data entry would be simple for a council’s IT department to create an input file for.”*
- *“Single reporting is a good idea however reporting will always be onerous so it must be properly staffed and resources given to councils to fulfil this requirement.”*
- *“Councils need to give honest feedback and Communities and neighbours could be given an opportunity to do the same.”*

2.6.2 Enforcement

Over recent years progress has been made in strengthening the compliance and enforcement in the planning system. However, the Department's compliance team has identified a gap in the regime, namely there are limited options, beyond court action, for improving poor behaviour or fixing harm. As such, they have requested enforceable undertaking be introduced into the planning system.

Enforceable undertakings are a common feature of modern, robust compliance and enforcement frameworks. They provide a basis for which regulators can negotiate solutions to prevent or fix environmental or community harm.

Regulators monitor the behaviour of development consent holders, and when poor behaviour is noticed they enter into an agreement to prevent or fix the issue at hand. Should the agreement holder fail to fulfil the terms of the agreement, they can be taken to court on the basis of breaking the agreement. This is a faster and cheaper prosecution option.

Discussion forums and correspondence

Initial stakeholder feedback was that enforceable undertakings are worth considering, however it was suggested this could be accompanied by a bond. Similar to reporting, councils often find resourcing for enforcement difficult.

Survey responses

Do you see a role for enforceable undertakings as a compliance tool?

Just under three quarters of respondents to this question answered 'yes'. Key responses included:

- *"Yes – there are problems with the enforcement of Orders currently which is that the remedy for breach of Order is Court is no PIN is issued and it would be great to have something in the middle."*
- *"I support the introduction of civil penalties into the EP&A Act similar to the systems used in the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and the model Work Health & Safety Act 2011. It is agreed that this would enhance the regulator's capacity to hold offenders accountable for community and environmental harm. This is due to the lower burden of proof required in civil proceedings."*

2.7 Design

Elevating design in the planning system will help to produce better outcomes for proponents and communities. The Department presented legislative and non-legislative opportunities to elevate design in the planning system's decision-making processes.

Discussion forums and correspondence

There were a range of issues raised in the roundtables and survey responses. Overall, community involvement including review and early input was by far the most common response about ensuring design was taken into account. There was mixed views on what the role of the planning system was and how design in planning should be implemented. Other issues discussed included:

- Stakeholders questioned whether good design could be defined.
- How planning should ensure the physical environment supports social, environmental and economic objectives.
- Design panels can be very effective in some circumstances and their use could be broadened.
- Incentives, controls, resources and guidelines provided to developers are good tools to promote design considerations.
- The involvement of design professionals in the planning system should be increased.
- The role of master planning at the local level, incorporating the local environment, character, future, and ecology, is important.
- Smaller proposals should be considered in the context of a broader strategy.
- There should be a pre-DA consultation meeting to discuss design considerations.

Survey responses

How can the planning system promote good design?

- *"Greater use of 'Design panels' early in the DA process – eg Pre-DA stage ... Design should also be considered at the strategic planning stage – with a design panel involved – looking at good urban design outcomes, not just building design."*
- *"Requirements of building space- green areas, outdoor space. Avoid facade only heritage development. Heritage buildings should have additions sympathetic to façade."*
- *"By local authorities working with developers to ensure that developments are in keeping with both the character of the area and meeting community needs."*
- *"It [the planning system] can't. It can promote some principles but quality in design cannot be achieved through regulation."*
- *"[The] planning system can promote better design by giving importance to merit based assessments, taking into consideration the strategic planning for the area and not looking at developments in isolation."*
- *"Planning should ensure the physical environment supports the triple bottom line – social, environmental and economic objectives. ie local character consideration and assessment; connectivity and public transport; adequate public green space... security, vibrant neighbourhoods."*
- *"By genuinely involving the community in a non-confrontational manner."*

When have you experienced good examples of design-led planning and what helped that to occur?

- *“Design-led planning focusing on urban public spaces and the encouragement participation and use by people of all ages (including children and the elderly) should be a clear focus of any reforms.”*
- *“My experience with good design led planning is when a design is the result of concerted effort of sustainability, architecture, design, engineering, landscape and character of the area.”*
- *“Getting people involved with design led planning is even a greater challenge given that good design to one person may be bad design to others. Visualisation is important – people are always keen to see what the end result could look like if proposed controls, for example, are implemented.”*



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