

## **‘Fantasies of Consensus:’<sup>1</sup> Planning Reform in Sydney, 2005-2013**

### **Abstract**

This paper examines the battle to reform and streamline the planning system in Sydney, Australia, between 2005 and 2013. It analyses the strategies the State of NSW has pursued to manage ongoing conflicts over development, and reflects on the challenges the State has encountered in its attempt to redefine democratic engagement, justify decisions, claim legitimacy, and forge a consensus around a more pro-development planning system. While New South Wales’ planning reform strategies have pursued an apparently ‘post-political’ agenda (Swyngedouw 2010), using policy solutions to depoliticise difficult decisions, the reform process has exacerbated rather than defused conflicts. The story raises questions about the extent to which the new governing strategies of a post-political era can offer effective forums to forge consensus, or to stage-manage agreement over metropolitan development conflicts.

Planning must, increasingly, do more with less: encourage economic development and accommodate population growth, while also limiting state spending, responding to a diverse set of social needs, and reducing environmental impacts. New approaches to planning attempt to resolve these conflicts by developing consensus-based decision processes, to defuse the conflicts that hard choices precipitate. Decision making must incorporate private as well as public and community sectors, and thus increasingly relies on bargaining and negotiation rather than the exercise of clear lines of bureaucratic authority. In this sense, theorists argue that planning has entered a post-political era, where public decision making aims at forging (or imposing) consensus rather than addressing conflicts (Swyngedouw 2010; Allmendinger and Haughton 2012; Inch 2012).

This paper examines the complex multifaceted problem posed by the battle to reform and streamline the intensely bureaucratic (and also highly democratic) planning system in Sydney, Australia. It analyses the strategies the State of NSW has pursued to manage ongoing conflicts over development, and reflects on the challenges the State has encountered in its attempt to redefine democratic engagement, justify an economic growth agenda, claim legitimacy, and forge a consensus around a more pro-development planning system. The case is interesting because it highlights the difficulty of driving change when legitimacy is questionable, and the equal difficulty the State has faced in managing a permeable and dynamic political environment with multiple vocal stakeholders. While NSW's planning reform strategies have pursued a post-political agenda, using policy solutions to depoliticise difficult decisions, the reform process has exacerbated rather than defused conflicts. The story raises questions about the extent to which the new governing strategies of a post-political era can offer effective forums to forge consensus, or to stage-manage agreement over development conflicts.

Sydney has been engaged in a continuous process of "planning reform" since 2005, under both Labor and Liberal-National Coalition governments (Freestone and Williams 2012). The reform process has been framed around resolving increasingly intense conflicts over densification and

redevelopment, which were played out in a planning system which gave considerable veto power to local governments and to the neighbours of development sites. Initially, the State attempted to resolve these conflicts by concentrating decision making power in the hands of the Minister for Planning (advised by the independent Planning Assessment Commission), and by appointing expert panels to depoliticise local planning decisions by taking them out of the hands of elected Councils (McFarland 2011; Freestone and Williams 2012). These efforts precipitated significant opposition, and a second era of planning reforms attempted to streamline development by negotiating agreement on the need to redefine the role of citizen participation, of experts and expert systems, and the ultimate goal of planning regulation. But these post-political strategies failed to forge consensus or to still conflict. Conflicts focused around fundamental questions about the appropriate extent and role of local democracy, the purpose of the planning system, and around the legitimacy of the State's attempts to deregulate development. Sydney's story of planning reform thus offers an interesting perspective on the post-political condition in planning, echoing questions raised elsewhere about the extent to which governments can successfully defuse political opposition (Inch 2012; Allmendinger and Haughton 2011; 2013; Deas 2013).

The paper addresses three principal questions:

- What are the major conflicts over development and the planning process in Sydney?
- How did planning reform proposals during the period 2005 to 2013 attempt to defuse conflict?
- What accounts for the successive failure of these efforts over the period studied? What do these outcomes suggest about the nature of planning in the post-political era?

The following section of this paper reviews key debates around the new governing strategies adopted by neo-liberal states in a post-political era. Section three introduces the case study, briefly explaining how planning is structured in Sydney, and why planning reform has moved to centre stage in recent years. The following section offers a more detailed analysis of the planning reform process,

analysing how it attempted to redefine the basis for legitimacy, the purpose of the system, and the role of local democracy, in order to forge consensus. The conclusion reflects on what this story tells us about the potential to resolve complex conflicts over development. The story suggests that while post-political strategies may seek to depoliticise difficult decisions, they may also stimulate a backlash that empowers new sorts of actors (at least temporarily). In an increasingly dynamic and permeable policy environment, the distribution of power is fluid, and consensus-building strategies have limited potential to co-opt opposition.

### **New governance strategies and the post-political condition**

The governance strategies that have emerged in neo-liberal democracies over the past three decades have emphasised the role of permeable and fluid multi-level institutions incorporating public private partnerships, citizen participation, and civil society institutions in forums for collaboration, in place of hierarchical bureaucratic structures (Jessop 1998; Stoker 1998). In the absence of clear lines of authority, in a “fuzzier” (Stoker 1998) and more permeable policy environment, legitimacy becomes both more important and more difficult to establish. Without legitimacy, governments are unlikely to succeed in orchestrating the multi-layered relationships, the collaborative decision making, and efficiency of outcomes that “good governance” requires. The delicate task of establishing and maintaining legitimacy hinges on the ability to “talk the language of social inclusion... [for] government [to] be open and accountable...raising the quality of local democracy” (Kearns and Paddison 2000, 848-9).

Olsen (2006) argues that our understanding of legitimacy has been transformed with the emergence of the neo-liberal state, reflecting the different state-society relationship that envisions, mediated by deregulated and competitive provision of the services the public demands. Thus, “[m]anagement by contract and result replaces management by command... Citizens are a collection of customers with a commercial rather than a political relationship to government, and legitimacy is based on substantive performance and cost efficiency and not on compliance with formal rules and

procedures” (Olsen 2006, 6). Pierre (2009) argues that this customer-service version of accountability (closely associated with stakeholder models of participation) is an unsatisfactory basis for the trust that underpins legitimacy. Thus, the shift away from clear bureaucratic lines of responsibility has undermined the quality of democracy (Olsen 2006; Pierre 2009).

While claims to the openness and inclusiveness of networks appear to advance democracy, they may do the opposite (Peters and Pierre 2004). Informal decision fora are unlikely to challenge entrenched power relations, and rather than solving problems through collaborative decision making, networks may instead make it easier to exercise power, in the absence of bureaucratic controls to enforce due process and accountability (Olsen 2006; Swyngedouw 2005; Pierre 2009). Examining the U.K. Coalition government’s current planning reform agenda, Deas argues that “the potency of neo-liberal consensus ... limit[s] the scope for meaningful debate and genuine choice about the direction of policy” (Deas 2013, 79). The consensus that emerges from flexible and permeable decision making institutions may be illusory, masking conflict by imposing a solution favoured by more powerful actors, or one forged through pork barrel agreements (Peters and Pierre 2004). Thus,

...democratic accountability ... may be inimical to compromise-seeking which is necessary in differentiated and fragmented societies, and which may require negotiation behind closed doors. ...”informalisation” strategies may be preferred by policy-makers to avoid public and media scrutiny (Papadopoulos 2010, 1032-1033).

Close partnerships between government and industry also raise questions about collusion and corruption which are exacerbated by the opaque nature of “closed door” decision making. Permeable and apparently inclusive policy networks extending beyond government may also be actively used to legitimise decisions that states are unwilling to take full responsibility for (Swyngedouw 2005). In a post-political era, the focus on consensus appears to privilege democracy through citizen participation. But as Allmendinger and Haughton (2012) argue,

...the resulting planning system is not so much an empowering arena for debating wide-ranging societal options for future development, as a system focused on carefully stage-managed processes...[that]... gives the superficial appearance of engagement and legitimacy, whilst focusing on delivering growth expedited through some carefully choreographed processes for participation which minimise the potential for those with conflicting views to be given a meaningful hearing (Allmendiger and Haughton 2012, 90).

Conflicts over planning, development, environmental, and other policy areas, suggest the elusiveness of consensus building efforts in practice. Inch examines the case of planning reform in England, arguing that rather than defusing conflict, post-political strategies displaced conflicts over economic growth to conflicts over NIMBYism (Inch 2012). Thus, "...the reform agenda can be interpreted as a search for a systemic fix that will eliminate conflict without disturbing the prevailing model of spatial development...covering over the underlying causes of conflict with fantasies of the consensus that a fit-for-purpose planning process will create" (Inch 2012, 532). In Allmendiger and Haughton's view, the 'new localism' may represent merely a systemic correction within an evolving set of neo-liberal strategies aimed at sustaining a "market-enabling approach" (Allmendiger and Haughton 2013, 8) by maintaining legitimacy. England, in contrast to other European states, may go through more volatile 'planning reform' episodes in the effort to manage this delicate balance (Waterhout, Othengrafen and Sykes 2103).

This paper explores how comparable neo-liberal processes in Australia have sought to manage this delicate balance in a spatially and temporally specific context, and reflects on the extent to which post-political strategies have effectively de-problematized the pursuit of development. The paper examines the case of the continuing process of planning reform in Sydney, NSW. The case offers further evidence (and some new perspectives) on the challenges states face in redefining democratic process through new models of participatory planning, in re-establishing legitimacy through a customer service model of "good governance," and in stage managing the consensus that is

necessary to streamline development and economic growth. The following section explains the context within which planning reform emerged as a continuous State strategy to resolve complex conflicts.

### **Conflicts over Planning in Sydney**

In Australia, states have primary responsibility for land use and strategic spatial planning, but the NSW Environmental Planning and Assessment Act (EPAA) of 1979 delegated substantial powers to local governments. In principle, strategic metropolitan plans are implemented through local plans, which rezone land in order to accommodate the housing and jobs targets set at the metropolitan scale. But in practice, most local plans have articulated local preferences, retaining the low density footprint, open space, and small scale retail centres that characterise much of Sydney's suburbs. The EPAA set explicit environmental protection goals to be weighed in considering development applications. It outlined a statutory process through which localities would prepare zoning plans to provide sufficient land for local shares of housing or jobs targets, and a process through which they would control developments of different types and levy the charges (exactions) needed to provide the infrastructure these necessitated (Farrier and Stein 2006).

Over the past decade however, the State Planning agency and its Ministers have been engaged in a constant battle to control and direct local governments' implementation of metropolitan strategies. The EPAA included extensive provisions for public involvement, rights of appeal through the Land and Environment Court, and an evaluative framework to guide decision making on development applications, with a heavy emphasis on environmental impacts (McFarland 2011). NSW's planning legislation was a sophisticated and progressive document for its time, but is increasingly reviled as the source of the sclerosis attributed to the planning system (PIA 2011; UDIA 2012). Because of the Act's focus on development assessment (and the labour intensive nature of that assessment), few localities have had the time or inclination to frame proactive plans to pursue a shared vision of the community's future (with some notable exceptions, such as the City of Sydney's *Sydney 2030*

*Strategy: Green, Global, and Connected*). Instead, local governments managed change through their effective veto power over development proposals.

The development assessment process is further complicated by the powers that other State agencies (mining, infrastructure, environmental and heritage protection, and emergency services), have to undermine or contradict State metropolitan planning priorities by rejecting development applications. Those agencies answer to different constituencies whose priorities are often sharply opposed to the priorities of the State Planning agency's most identifiable client group, the property development sector. An array of State quasi-governmental agencies such as Urban Growth, the Sydney Harbour Foreshore Authority, and privatised infrastructure providers such as Sydney Water, represent another layer of authority backed by the powers of land ownership and resources (Acuto 2012). The public-private partnerships responsible for most new large scale infrastructure are driven by their own assessments of risk and return, and the projects those entities choose to fund (such as the Harbour Tunnel) are not necessarily those that strategic plans prioritise (Hodge 2004; Siemiatycki 2010; Toon and Falk 2003).

At the local level, 43 local elected governments answer to their own well organised constituencies. Some are anxious to protect property values and quality of life from the densification and infill that State strategic priorities emphasise. Others are concerned with the investment potential of property, and are more accommodating to development. Lacking constitutional recognition, local elected governments may be dissolved by the State, and in some cases have been replaced by temporary appointed bodies more compliant to State agendas (Stillwell and Troy 2000; Punter 2005; Kubler 2007). Despite the constitutional (and financial) weakness of local governments, they are protected by a strong tradition of local democracy. Popular democratic movements have played an important role in Sydney's evolution, most notably in the "Green Bans" initiatives of the 1960s and 1970s that joined construction labour unions with heritage advocates and low-income residents to oppose high-rise redevelopment and highway construction that would have decimated historic



neighbourhoods (Karskens 2009). More recently, vocal opposition has coalesced in groups such as “Save Our Suburbs,” aimed at resisting state efforts to impose higher density redevelopment targets on affluent suburbs (Ruming, Houston, and Amati 2012). The Better Planning Network, a coalition of more than 460 community groups, local governments, and environmental advocacy groups (<http://betterplanningnetwork.good.do/nsw/pages/about-us/>), emerged in response to the most recent round of planning reforms; it is discussed in more detail below.

But much of the real business of urban development occurs outside the bureaucracy in a proliferating number of special purpose development authorities (Acuto 2012). For example, the Barangaroo Delivery Authority (BDA) was established to drive the redevelopment of the CBD’s last remaining harbourfront site, a 22 ha area vacated by Sydney Ports in the late 1990s. While the City Mayor sits on the Authority’s board, her voice is usually overwhelmed by those of the corporate and development interests that back the vision articulated in Richard Rodgers’ master plan for the site (Moore 2010). Concerns about a second casino, a 40 storey hotel tower jutting into the harbour, and the traffic impacts on an already overburdened city transport system have been over ridden, offering a classic example of how “consensus” can be imposed in fluid, permeable institutions that mask substantial differences in power (McKenney 2013a). However, opposition to the redevelopment plans has united elderly public housing tenants and affluent waterfront property owners of the adjacent City neighbourhood (Miller’s Point), with residents of the gentrified suburbs that overlook the site across the harbour (Barlass 2013). The contentious process of approving a second casino for Sydney has renewed conflicts between the City of Sydney and the State (McKenny 2013a; Hasham 2013b; Nicholls 2013b).

Metropolitan-wide conflicts have focused on the State’s failure to manage the region’s growth. A prolonged slowdown in residential development since the mid-2000s (despite continuing housing value appreciation and economic and population growth) dragged on until 2013, strengthening arguments that the complexity of regulation was responsible for stalling development (despite

ample evidence for a complex array of factors, including a spike in land prices and worldwide contraction in credit, as summarised by Hsieh, Norman and Orsmond 2012). Housing supply deficits estimated at approximately 89,000 homes have resulted in worsening affordability, with Sydney ranked fourth least affordable city, well below London and New York (but outdone by Vancouver, San Francisco, and Hong Kong) (Demographia 2013; National Housing Supply Council 2012, 25). Lagging public expenditure on infrastructure has exacerbated the effects of continued population growth and intensifying infill development (Engineers Australia 2011). A recent study by Price Waterhouse Coopers rates Sydney's transportation and infrastructure worse than that of Mumbai, Beijing, or Istanbul, placing it fourth worst in a list of 27 "influential cities" studied (PWC 2012, 10). While the city ranks high on liveability, sustainability, and health and safety, business groups argue that Sydney's longer term prospects as a competitive location for business investment are weakened by the increasingly high cost of doing business in NSW (Ferguson 2013).

Developers claimed over-regulation and a lack of political will ("too much democracy") deter the development that could grow Sydney out of its affordability crisis. Local residents claimed that planners, perceived increasingly as the agents of corrupt politicians, pursue densification without considering the capacity of a frayed and strained local infrastructure, or of fragile ecological systems. Politicians claimed that NIMBYism, bureaucratic sclerosis, developer intransigence, and the incompetence of other levels of governments, undermine the achievement of the housing targets and infrastructure investments needed to accommodate growth.

### **Planning Reform**

The State's initial response to this apparently intractable conflict was to introduce systemic reforms to simultaneously streamline development and depoliticise decision making, by centralising powers and introducing expert panels to take planning decisions in place of local Councillors (McFarland 2011; Freestone and Williams 2012). The public backlash this precipitated (exacerbated by ongoing corruption scandals) contributed substantially to the electoral defeat of the incumbent Labor

government in 2011, and its replacement by a conservative coalition government that emphasised local autonomy and promised to roll back Ministerial powers to approve larger developments. This would be achieved through systemic reforms based on broad participation in a transparent process that would forge a sound consensus over how development should occur while protecting residents' quality of life (NSW 2012, 3). This section sets the context for this process by briefly explaining the conflicts emerging from the first round of reforms, then examining the second round of reforms in more detail, focusing on three main sets of strategies: how to reshape local democracy, how to redefine the purpose of planning, and how to re-establish the State's claims to legitimacy, in order to achieve consensus.

### **First round planning reform (2005-2011)**

The first round of planning reforms responded to developers' increasing dissatisfaction with a growth-limiting regime that had emphasised environmental protection and assigned a significant role to public participation. Writing in 2003, Pauline McGuirk describes a planning system "promoting the practice of consensus politics through increasing stakeholder and community participation in strategic policy making," using multi-level institutions to achieve the "...state's responsibility to mediate the tensions between the demands of accumulation and... the popular control of the state" (McGuirk 2003, 216). But behind this vision of a stable consensus were increasingly strident calls from developers for a streamlined and predictable planning process (delivering 'accumulation' more effectively), and equally strident opposition from community groups to metropolitan strategic priorities aimed at accelerating infill development to economise on new infrastructure investments and reduce Greenfield development.

A succession of reforms introduced between 2005 and 2011 responded to this dilemma, through three sets of strategies – centralising economically significant development decisions, professionalising and standardising the development assessment process to offer greater predictability and reduce opportunity for local opposition, and privatising compliance certification to

speed up the process. All three sets of strategies had significant impacts on the role of local democracy and the definition of legitimacy. Rather than depoliticising conflict and forging a consensus, they contributed to intensified conflict and concentrated opposition to the Labor government, contributing to its defeat in 2011. Dissatisfaction with Labor's planning performance was exacerbated by a series of scandals related to land deals, in which the Minister for Planning was implicated (NSW ICAC 2011).

Shifting development assessment responsibilities from local Councillors to the Minister for Planning, with much more limited potential for residents to oppose proposals, posed a significant challenge to local democracy. While in principle these powers were only applicable to large scale proposals of significance to adjacent local governments, the benchmark for consideration was set low enough (at AU\$50m) to include most redevelopment projects. While the Minister was required to "consider" both public comments and environmental impact statements, he or she had considerable discretion, and could decide that economic (or other factors) outweighed local and environmental concerns (McFarland 2011). To reduce the potential for arbitrary decisions, the independent Planning Assessment Commission was established in 2008 to advise the Minister. Decisions could also be referred to expert panels (Joint Regional Planning Panels) that offered "depoliticised" decision forums insulated from local politics, and from the potential for corruption. Local government's autonomy was further reduced by standardising the zoning and local planning framework, and by capping development levies (O'Flynn 2011). Some (very limited) categories of development were exempted from detailed review and public comment during this round of reforms (Park 2010). Building code enforcement and development certification were privatised, to speed up the development process which had become bogged down in administrative delays in some Councils. "Name and shame" lists were published of the average periods Councils took to assess development applications.

But the outcomes of these efforts were patchy. Some proved quite disastrous, with substantial evidence that private code enforcement had resulted in a sharp deterioration of building standards (Building Professionals Board v Cohen (No 2) [2010] NSWADT 266; Dix v Building Professionals Board [2010] NSWADT 160). Public opposition to the centralisation of development authority under the State was reinforced by the Independent Commission Against Corruption (ICAC) finding that the legislation (Part 3A) entailed a substantial potential for corruption, even if no actual decisions had been found to be corrupt (NSW ICAC 2010). The Commission pointed to three key issues –

- “...the existence of a wide discretion to approve projects that are contrary to local plans and do not necessarily conform to state strategic plans creates a corruption risk and a community perception of a lack of appropriate boundaries” (NSW ICAC 2010, 9)
- the complexity and length of time to approval, which “...also increases the likelihood that applicants will feel it necessary to engage lobbyists, and contributes to perceptions of undue influence by lobbyists,” (NSW ICAC 2010, 9) and
- the use of the major projects approvals process as a “shortcut to rezoning,” enabling developers to take advantage of delays in finalising local plans to obtain approval for developments that would not be approved under proposed plans (NSW ICAC 2010, 10).

Several high profile scandals around politicians’ role in development decisions, exacerbated the appearance that Planning Ministers were likely to use their wide discretion to approve developments that would violate environmental and other local quality of life protections (NSW ICAC 2011). Public land scandals further undermined not just the Labor party’s, but also the State’s, legitimacy in the eyes of the public.

Joint Regional Planning Panels did little to allay discontent with the politicisation of decision making, given that their composition (three State appointees and two Council appointees) appeared to ensure that State, rather than local, priorities would prevail. Critics pointed out that unelected JRPPs

assumed the decision making powers of elected Councils (Mant 2009; Piracha 2010; McFarland 2011). Local governments responded to blanket caps on development levies by slowing approvals or rejecting development applications, arguing they were unable to provide adequate infrastructure (IPART 2012, 15). The improved accountability intended by publishing Councils' development approval times, had the perverse (but predictable) consequence of some councils refusing to accept development applications if they were judged incomplete, to avoid the additional time involved in requesting further information (PIA 2010, 3).

Meanwhile, developers and industry groups continued to complain that a complex and unpredictable regulatory regime was making it increasingly impossible to develop in the state. The Property Council of Australia argued that despite some progress, significant problems persisted with "...the assessment process and its handling by local government, although the interaction of state agencies with this process was also a concern" (PCA 2010, 17). The solution, the Urban Development Institute of Australia (UDIA) argued, was to "... streamline[d] decision making on the merits of a proposal and its consistency with broader strategic planning documents (such as the Regional and Metropolitan Strategies) rather than promote the detailed assessment of the potential impacts" (UDIA 2010, 3). The Planning Institute of Australia framed the problem as one inherent in "the culture of planning," pointing to an entrenched anti-development stance not only among residents but also within the ranks of local government planners (PIA 2012).

Efforts to solve the development-democracy impasse by asserting State control and undermining the local democratic process exacerbated rather than depoliticised conflict. Consensus had not been a significant goal of this first round of reforms: but without consensus, systemic reform would clearly fail. Public trust had been alienated, and the legitimacy of the State government undermined (a situation worsened by a series of corruption scandals involving the Minister for Planning and other senior Labor Party members). Developers were intensely critical of the failure to streamline what continued to be a cumbersome bureaucratic process involving considerable public input, outside of a

few high profile developments insulated from public scrutiny. The opposition platform claimed both planning reform and local government empowerment as its priorities.

### **A new era of reform?**

Planning reform was thus a key issue in the 2011 state election, with the incoming Liberal-National Coalition government initiating an independent review of the planning legislation and promising system-wide revisions to the planning process. One of the new government's first initiatives was to revise the unpopular Part 3A process, expanding the role of the independent Planning Assessment Commission to take responsibility for decisions about development applications involving a political donor, where Councils opposed the project, or where considerable opposing submissions had been received. While this addressed some of the key concerns raised with Ministerial discretion, the PAC's objectivity has itself been suspect (MKenny 2014).

More fundamental reforms were clearly needed. An extensive two year consultation process sought to bring the sharply opposed factions together in a broad based group including developers, community groups, local governments, and industry representatives. The new government's stated intention was that a broad based and open process was needed to forge the consensus for fundamental reform that would depoliticise the process and provide greater "transparency" and "certainty" to developers, while empowering local government (NSW 2012, 3).

Reforms sought to rebuild trust and re-establish legitimacy, but they did so by redefining legitimacy according to a much narrower customer-service-based concept. Reforms also aimed to streamline and professionalise the development approval process, but to do so they had to simplify decision criteria to emphasise the primacy of economic growth. Most dramatically, the reforms sought to redefine the nature and role of local democracy, substantially reducing participation at the point of development assessment but expanding requirements for participation in strategic and sub-regional planning. The proposed expansion of the category of "code-complying development" was a

particularly contentious instrument for this, aiming to insulate 80 percent of development applications from public scrutiny and legal challenge. Each of these aims is examined in more detail below.

**1: Redefining legitimacy.** The centrepiece of the State's claim to re-establish legitimacy was that development decisions would now be guided by evidence-based strategic planning at the local, sub-regional, and metropolitan scales (NSW 2013, 63). "Decision making under the new system will be transparent and accessible," (NSW 2013, 15), based on ePlanning forecasts of future needs, and in particular ensuring that planning decisions reflected an understanding of "market conditions." Re-scaling plan making in this way (and asserting a clear hierarchy of plans, with each level required to demonstrate how the targets of higher level plans would be met) would ensure that narrow local interests would have to be moderated by considering broader public interests in economic growth. Thus, the legitimacy claimed by local politicians as representatives of their constituents' interests, would be outweighed (in principle) by the legitimacy the State could claim as the representative of a more broadly defined "public interest".

The Independent Commission Review with which the process began concluded that "... public confidence in the system has been eroded by the perception that politics can determine decision-making, and a lack of community confidence in the integrity of the planning system over decisions about larger developments" (NSW 2013, 13). Legitimacy would also be re-established by introducing clear accountability standards, with performance reporting required at all levels of government. The culture change that would transform this historical distrust was one that "... will promote cooperation and participation, the delivery of positive and pragmatic outcomes and ... an outcome focussed, problem solving attitude. Regular and mandatory performance reporting for strategic planning at all levels will also support the transition to greater transparency and accountability" (NSW 2013, 34).



Local government would have clear performance benchmarks (which the State would enforce through its constitutional authority over localities). Although State government too would be held to similar performance standards it would not be overseen by a similar higher level authority, given the Commonwealth government's very limited role in land use planning. Public trust would be rebuilt by a customer-service approach to rating government performance. The taint of corruption that had undermined support for the previous government's exercise of centralised authority would be eliminated by this new transparency, and by an expanded role for expert panels.

**2: Redefining sustainability.** Reforms aimed to replace NSW's complex planning process with one that would be simpler and more predictable. In place of the environmental protection goals framed in the existing legislative guidelines for evaluating development proposals (Farrier and Stein 2006), the proposed reforms asserted a new hierarchy of decision criteria: "[t]he main purpose of the planning system is to promote economic growth and development in NSW for the benefit of the entire community, while protecting the environment and enhancing people's way of life" (NSW Department of Planning and Infrastructure 2013, 14). Planning reform was justified as a necessary strategy to resolve the State's failures in delivering housing growth, economic productivity and job growth, and to control the cost of living (NSW Department of Planning and Infrastructure 2013, 13).

Reforms proposed to dispense with multiple agency approvals for most development applications, and establish a "one stop shop" for the remainder – a benign sounding customer-service improvement. Similarly, expert panels would be used more widely to ensure politics no longer undermined the predictability of decision making on which efficient development relied. Expert panels would apply the new simplified decision criteria impartially, informed by sound evidence, ensuring a streamlined process stripped of local political activism around environmental protection, quality of life, and opposition to densification.

**3: Redefining Democracy.** The most immediately contentious aspect of the reforms was the proposal to change the timing and scale of citizen participation in development decisions. The

reforms proposed that most development would be assessed administratively (by expanding the scope of 'code-complying' development); residents would have no opportunity to comment on any but the most contentious developments. The proposals encourage participation at the local and sub-regional strategic planning stage, where plans would be formulated to deliver on the objectives and targets of metropolitan plans. Given the limited potential of residents to influence the higher order plans, this represents tokenism rather than empowerment. While residents were promised a Community Participation Charter, they would lose significant legal rights of due process: development opponents would be able to appeal only a limited range of decisions in court (on procedural rather than merit grounds), while unsuccessful development proponents would have a streamlined and low cost appeals process.

A significant element of the 'cultural change' claimed for the proposals appears to be a reduction in local democracy; the limitations on participation, combined with the reduced authority and autonomy of local elected governments, transforms the political context within which planning and development decisions are made, to one where expert panels, rather than elected Councillors, have the most powerful voice. The priority assigned to economic growth (with the ritual but subsidiary acknowledgement of the need to minimise environmental and social impacts) clearly situates the systemic reforms in response to the interests of the property development industry in streamlining development, rather than the (sometimes narrowly focused and self-regarding) interests of residents in liveability and environmental quality.

### **Consensus and dissent**

Managing this attempt to forge consensus around "achieving change in the culture of planning" proved impossible. At a stakeholder workshop held to present the initial Liberal-National Coalition reform recommendations, the debate on the reforms was deflected by attacks on the process:

'We are concerned that the community and the environment are being cut out of the new legislation ... [i]t is ironic that a Government claiming to champion community participation restricted community representation to 7% of this important workshop. We are also concerned that the issues discussed at the workshop were very much those selected by the organisers. There was no opportunity to raise and discuss other aspects of the planning reforms that are important to the community' (Better Planning Network 2012).

Community groups claimed that 'consultation' over reform represented merely a new form of collusion between developers and the State government (Better Planning Network 2013a). More than 2000 submissions on the proposed reforms offer a rich source of evidence for how the conflicts were articulated. The summary presented below (Table 1) is based on a purposive sample of submissions from key stakeholders (developers, industry, local governments, state agencies, and professional associations). Other studies have examined a broader cross-section of submissions, the bulk of which came from individuals (NSW Department and Planning and Infrastructure, 2013b; Hamm, 2013).

[Table 1 here]

There is little evidence on either side that the reforms (or the process) successfully legitimised State proposals to streamline planning. Opponents of the Bill (including an assortment of local governments, state agencies, and professional associations) focused their comments on the hollowness of claims to evidence-based planning, and the lack of essential checks and balances on executive power. Supporters (broadly, developer and industry groups) expressed concerns about the continued limitations on executive power, and the resulting "lack of policy certainty" that would continue to constrain the State's growth. Further anxieties about the State's ability to lead cultural change are expressed in recommendations to tie performance metrics to explicit punishment and reward, that would (clearly) further erode any legitimacy the State might claim for itself as a defender of local autonomy.

There is also little evidence that the reform process forged any consensus around a new vision of the 'public interest' in 'sustainable development.' Both opponents and supporters point to the lack of clarity in the redefined aims of the planning system, and agree that it would be likely to decrease certainty and increase court challenges. Rationalising decision making through centralising executive authority raised questions about not just probity, but also the quality of analysis that would inform defensible and transparent decisions, both in the "one-stop shop" of state approvals, and in the expert panels. The abandonment of detailed assessments of development impacts by specialist regulatory agencies, reform opponents argued, would weaken the evidence base for decisions. The appointment of individual experts to panels would not adequately substitute for the role these agencies played in ensuring a consistent, institutional approach to important public concerns.

Finally, the proposals clearly failed to forge any consensus around a new vision of democracy. Supporters argued the provisions did not go far enough to require (or oblige) citizens to accept the primacy of growth over 'narrow self-interest' (Hasham 2013). Opponents pointed to the dramatic reduction in due process, and the Better Planning Network used these limitations on appeal rights as a banner to mobilise an ever-wider range of allies (BPN 2013b). Local governments too used the issue to illustrate how the legislation would re-write their powers.

Faced with increasingly vocal opposition and coordinated lobbying, the Minister retreated on some points, reinstating the right of appeal against development approvals, and limiting the contentious use of "code complying" development to new growth centres, and to what were designated "urban activation precincts," infill locations suitable for increased densities (NSW Department of Planning and Infrastructure 2013a). Developers protested that the reforms were now toothless, and that the reform process had been undermined by self-interested residents (Hasham 2013a; Jewell 2013).

But even these watered down proposals failed. Responding to the vocal Better Planning Network alliance, three parties in the Upper House of the State Parliament (Labor, the Greens, and the Shooters and Fishers Party) allied to amend the bill to remove any provision for the streamlined

consideration of code-complying development, forcing the Minister to retract the legislation and humiliating the Coalition government (Nicholls 2013a; Better Planning Network 2013a). After some months of attempts to broker a compromise, the Coalition government abandoned attempts at legislative change, arguing instead that “the government would ‘look after the people of NSW by continuing to reform the current planning process through existing laws” (Hasham 2014).

Administrative redefinition of the types of development covered by the “exempt and complying” category introduced in the pre-2011 round of reforms would accomplish the streamlining around which the participatory process had failed to forge agreement. Ministerial discretion would be used to offer the predictability and certainty developers claimed as essential for economic growth.

This is clearly not a partisan issue (although it offers a rich forum for party political posturing): the government advocating the proposals came to power based on intense dissatisfaction with the previous government’s efforts to centralise control and streamline the development process. But this outcome represents a substantial failure to depoliticise the development and planning process. Delivering consensus-based planning reform, and protecting the rights of local government, were key points in the coalition platform. Between 2005 and 2013, neither party has managed to move the state forward from local development control by veto. Development industry lobbying groups have described the impasse as “a disaster” (Hasham 2013a). Clearly, the State of NSW has failed to mediate the tensions between “the demands of accumulation” (McGuirk 2003), and a revitalized populist movement.

A two year participatory process aimed to build consensus for the fundamental reforms the development industry demanded. This appeared as if it would be a relatively straightforward story about a powerful developer lobby (backed by a revenue-hungry State government) capturing a nominally collaborative process in order to streamline and simplify development for its own benefit. Claims to transparency, to ensuring a voice for all stakeholders, and a substantial public investment in consultants, marketing, and events, were intended to demonstrate the new State government’s

commitment to re-establish legitimacy. But the trust that had been lost during the first round of planning reform diminished further. The widely held perception that “reform” was primarily intended to benefit developers was further confirmed when the draft proposals included significant erosions in democratic process (and both bureaucratic and legal protections of due process). The backlash forged an unexpectedly powerful alliance among a wide range of community and local government groups, who were able to derail both the government’s agenda and the reform process. One of their central aims was to re-entrench bureaucratic process – the cumbersome and time consuming development assessment and approval process that ensures local residents have an effective veto over development they oppose.

## **Conclusions**

The story of planning reform efforts in Sydney raises an interesting set of questions about the nature of the post-political era in planning, and the likelihood that states will be able to forge consensus, and stage-manage agreement to defuse conflict (Allmendinger and Haughton 2011; Swyngedouw 2007). New South Wales encountered three main sets of problems in this attempt.

First, the State’s claim to establish “open transparent processes” in order to “change the culture of planning,” was undermined by its failure to explicitly address questions of who the stakeholders were, and what was on the reform agenda. In practice, the reform effort aimed to treat resident organisations as just one among many stakeholder groups, alongside developers, financiers, employers, planners, infrastructure providers, and local governments. Defining stakeholders in this way implicitly supported the State’s argument that narrowly local interests undermined the development and associated economic growth that was in some broader “public interest.” As Pierre (2009) argues, the construction of participants as “stakeholders” also emphasised a client-like business relationship rather than a voter-based political relationship.

Second, the reform agenda exacerbated the problem by focusing on a particular construction of ‘the public interest,’ as identical with economic growth. A new definition of ‘sustainable development’ as a primarily economic goal, with subsidiary considerations of environmental and social factors, became a lightning rod for conflict over planning reform. This was an agenda within which only some sort of answers (how to enable economic growth) would make sense, a classic example of a post-political strategy (Deas 2013, 79). Reform supporters also rejected this formulation, pointing to its lack of clarity and its vulnerability to legal challenges.

Third, the effort to use public forums with invited stakeholders to define what was wrong with the planning system and how it could be fixed, resulted not in an effective manufacturing of consensus by the imposition of the powerful voices of the development industry and its allies, but in a sudden redistribution of power. Framing their alliance in the (de-politicised) language of ‘Better Planning,’ an apparently weak and marginalised group of resident organisations, environmental advocates, and local government groups, gained substantial credibility through a well-coordinated social and conventional media campaign. In the process, State expectations about stage-managing or choreographing agreement were disappointed, highlighting the fluid and unpredictable nature of political power. The well-connected development industry alliance, which might have been expected to effectively deploy the rhetoric of the need to guarantee continued economic growth as a rationale for cutting back local democratic process (devalued as NIMBYism), lost this battle. Instead, the Better Planning Network alliance turned the State’s efforts to restrict resident involvement in development decisions, and to redefine the aims of planning, to its own advantage. The BPN effectively framed the threat of the apparent priority the reforms assigned to developers’ interests, in order to coalesce opposition around its own platform. The limitations of the State’s efforts to re-establish legitimacy, to redefine a more limited local democracy, and to assert economic growth as the purpose of planning, were easily exploited organising points (BPN 2013a; 2013b).

There may be nothing inevitable about this outcome; had Sydney been at a different point in the economic cycle, with more visible unemployment, greater recognition of spatial inequality, and more fragile growth potential, the BPN may not have succeeded in mobilising the wide range of groups it did. Conflicts around mining expansion on the metropolitan periphery also likely increased the intensity of opposition to prioritising economic return over environmental safety. Nevertheless, this story suggests that post-political governing strategies may be particularly vulnerable to precisely such shifts in the balance of political power. A cynical and distrusting public may be more easily organised around alternative configurations of conflicts; it may be far easier to choreograph opposition than support.

The broader question raised by this story is whether we are in a post-political era where states can effectively defuse conflicts and forge consensus around a rhetoric of growth, or instead in an era of increasing un-governability, where states are decreasingly able to manage diffuse processes and negotiate any sort of consensus. New efforts to establish permeable, flexible governing strategies to do more with less may be worse (or no better) at defusing political conflict than traditionally bureaucratic institutions relying on command and control, within a broader framework of representative democracy and accountability. Redefining the basis for the State government's legitimacy around expert voices and performance metrics did little to re-establish the trust needed to drive cultural change in this particular example.



## References

- Acuto, M. (2012) Ain't about Politics? The Wicked Power-Geometry of Sydney's Greening Governance, *International Journal of Urban and Regional Research*, 36(2), pp. 381–399.
- Allmendinger, P., & Haughton, G. (2011) Post-political spatial planning in England: a crisis of consensus? *Transactions of the Institute of British Geographers*, 37, pp. 89-103.
- Allmendinger, P., & Haughton, G. (2013) The evolution and trajectories of English spatial governance: 'Neoliberal' episodes in planning, *Planning, Practice and Research*, 28(1), pp. 6-26.
- Barlass, T. (2013). Barangaroo a plague on all their houses, *Sydney Morning Herald*, 25 August, available at <http://www.smh.com.au/nsw/barangaroo-a-plague-on-all-their-houses-20130824-2sied.html>
- Better Planning Network. (2013a) Media release: Can we trust them? 25 November, available at <https://docs.google.com/file/d/0B1phj5J6584wWnFtUGITYUdpVm8/edit>
- Better Planning Network. (2013b) Media Release: Developers dictate metropolitan strategy, 21 March, available at <https://docs.google.com/file/d/0B1phj5J6584wUkloUWRUMUtHYOU/edit?pli=1>
- Better Planning Network. (2012) Media release: Planning Reform needs Comprehensive and Genuine Community Engagement, 11 October, available at <https://www.dropbox.com/s/i6nqfij0ylbn74d/Media%20release%2011%20October%202012.docx>
- City of Sydney (2013) NSW Planning System White Paper and Draft Exposure Bills: Submission to the Department of Planning and Infrastructure, 28 June, available at <http://archive.sydneyyoursay.com.au/document/show/304>
- Deas, I. (2013) Towards post-political consensus in urban policy? Localism and the emerging agenda for regeneration under the Cameron government, *Planning, Practice and Research*, 28(1), pp. 65-82.
- Demographia (2013) 10<sup>th</sup> *Annual Demographia International Housing Affordability Survey: 2014 Ratings for Metropolitan markets*, available at: <http://www.demographia.com/dhi.pdf>
- Engineers Australia (2010) *NSW Infrastructure Report Card 2010*, available at: <https://www.engineersaustralia.org.au/infrastructure-report-card>
- Farrier, D. & Stein, P. (2006) *The Environmental Law Handbook: Planning & Land Use in NSW*, 4<sup>th</sup> ed. (Sydney: Thomson Reuters).
- Ferguson, A. (2013) Australia: The costs are spiralling. *Sydney Morning Herald*, 23 April, available at <http://www.smh.com.au/business/australia-the-costs-are-spiralling-20130422-2ian3.html>
- Freestone, R., & Williams, P. (2012) Urban planning, in: D.Clune & R. Smith (Eds) *From Carr to Keneally: Labor in office in NSW, 1995-2011*, pp. 193-206 (Sydney: Allen & Unwin).

- Hamm, S. (2013) NSW Planning Reforms: an analysis of stakeholder submissions on the NSW Government's White Paper and Draft Exposure Planning Bills 2013, Better Planning Network, available at <https://docs.google.com/file/d/0B1phj5J6584wMUlsUU5sT1N5S2M/edit>
- Hasham, N. (2013a) Planning laws overhaul blocked by upper house. *Sydney Morning Herald*, 28 November, available at <http://www.smh.com.au/nsw/planning-laws-overhaul-blocked-by-upper-house-20131127-2yaea.html>
- Hasham, N. (2013b) Packer wants to skip green targets at Barangaroo, *Sydney Morning Herald*, 3 August, available at <http://www.smh.com.au/business/property/packer-wants-to-skip-green-targets-at-barangaroo-20130802-2r4ul.html>
- Hasham, N. (2014) NSW set to deliver radical changes to planning under existing laws, *Sydney Morning Herald*, 28 February, available at <http://www.smh.com.au/nsw/nsw-set-to-deliver-radical-changes-to-planning-under-existing-laws-20140228-33oss.html>
- Haughton, G., & Allmendiger, P. (2013) Spatial planning and the new localism, *Planning, Practice & Research*, 28(1), pp. 1-5.
- Heritage Council of NSW (2013) Submission to the White Paper and Draft Planning Bills 2013, 27 June, available at <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/heritagecouncil/submissions/HCPaperJun13.pdf>
- Hodge, G. (2004) The risky business of public-private partnerships, *Australian Journal of Public Administration*, 63(4), pp. 37-49.
- Hsieh, W., Norman, D., & Orsmond, D. (2012) Supply side issues in the housing sector, *Reserve Bank of Australia Bulletin*, September, pp. 11-20.
- Inch, A. (2012) Creating 'a generation of NIMBYs'? Interpreting the role of the state in managing the politics of urban development, *Environment and Planning C: Government and Policy*, 30, pp. 520-535.
- Independent Pricing and Regulatory Tribunal of New South Wales (IPART). (2012) NSW Planning System Review: IPART Submission on the Green Paper, available at [http://www.ipart.nsw.gov.au/files/6ccedbe2-f8ea-4c38-8f5a-a0cf00e28c92/IPART\\_Submission\\_-\\_NSW\\_Planning\\_System\\_Review\\_-\\_September\\_2012.pdf](http://www.ipart.nsw.gov.au/files/6ccedbe2-f8ea-4c38-8f5a-a0cf00e28c92/IPART_Submission_-_NSW_Planning_System_Review_-_September_2012.pdf).
- Jessop, B. (1998) The Rise of Governance and the Risks of Failure: the Case of Economic Development, *International Social Science Journal*, 50(155), pp. 29-45.
- Jewell, C. (2013) NSW planning changes draw ire from all sides, *The Fifth Estate*, 30 September, available at <http://www.thefifthestate.com.au/archives/55454/>
- Karskens, G. (2009) The Rocks, *Sydney Journal*, 2 (1), pp. 117-123.
- Kearns, A., & Paddison, R. (2000) New Challenges for Urban Governance, *Urban Studies*, 37(5-6), pp. 845-850.

Kubler, D. (2007) Metropolitan Governance in Sydney: A Case of 'Joint Decision-Making', *Australian Journal of Political Science*, 42(4), pp. 631-647.

Law Society of NSW. (2013) A New Planning System for NSW: White Paper, available at <http://www.lawsociety.com.au/cs/groups/public/documents/internetpolicy submissions/752431.pdf>

Local Government NSW (2013) Submission to the Planning White Paper and Exposure Bills, June, available at [http://www.lgnsw.org.au/files/imce-uploads/90/LGNSW%20Submission%20to%20Planning%20White%20Paper\\_Final%20web.pdf](http://www.lgnsw.org.au/files/imce-uploads/90/LGNSW%20Submission%20to%20Planning%20White%20Paper_Final%20web.pdf)

MacDonald, A. (2013) Cross City tunnel headed for second fatality, *Australian Financial Review*, 10 September, available at: [http://www.afr.com/p/australia2-0/cross\\_city\\_tunnel\\_headed\\_for\\_second\\_3oU4qVEoHdjZuGkgXvIZkM](http://www.afr.com/p/australia2-0/cross_city_tunnel_headed_for_second_3oU4qVEoHdjZuGkgXvIZkM)

Mant, J. (2009) The Institutional Design of the NSW Planning System - Councils, Panels and the Minister, Address to Australian Centre for Climate and Environmental Law, University of Sydney, 23 September, available at: [http://www.johnmant.com/gallery/pdf\\_125757531061220.pdf](http://www.johnmant.com/gallery/pdf_125757531061220.pdf)

McFarland, P. (2011) The best planning system in Australia or a system in need of review? An analysis of the New South Wales planning system, *Planning Perspectives*, 26 (3), pp. 403-422.

McGuirk, P. (2003) Producing the capacity to govern in Global Sydney: a multiscaled account, *Journal of Urban Affairs*, 25(2), pp. 201-223.

McKenny, L. (2013a) New Barangaroo proposal shuffles public space to make way for James Packer's casino, *Sydney Morning Herald*, 6 November, available at <http://www.smh.com.au/nsw/new-barangaroo-proposal-shuffles-public-space-to-make-way-for-james-packers-casino-20131105-2wzqx.html#ixzz2ngtM818I>

McKenny, L. (2013b) Scorn from lawyers on reforms to planning, *Sydney Morning Herald*, 13 July, available at <http://www.smh.com.au/nsw/scorn-from-lawyers-on-reforms-to-planning-20130712-2pvly.html>

McKenny, L. (2014) Planning Assessment Commission decried as 'rubber stamp' after high approval rate, *Sydney Morning Herald*, 25 February, available at <http://www.smh.com.au/nsw/planning-assessment-commission-decried-as-rubber-stamp-after-high-approval-rate-20140224-33d0g.html>

Moore, M. (2010) Moore quits over Barangaroo 'railroading', *Sydney Morning Herald*, 22 September, available at <http://www.smh.com.au/nsw/moore-quits-over-barangaroo-railroading-20100921-15ldg.html>

National Housing Supply Council (2012) *Housing Supply and Affordability – Key Indicators*, 2012, available at: <http://nhsc.org.au/publications/2012-housing-supply-affordability/>

NSW Department of Planning and Infrastructure. (2013a) *Summary of Bill Changes*, October, available at [http://www.planning.nsw.gov.au/Portals/0/planning\\_reforms/Summary\\_of\\_Bill\\_Changes\\_Oct2013.pdf](http://www.planning.nsw.gov.au/Portals/0/planning_reforms/Summary_of_Bill_Changes_Oct2013.pdf)

NSW Department of Planning and Infrastructure. (2013b) White Paper Feedback Report, available at [http://www.planning.nsw.gov.au/Portals/0/planningsystem/White\\_Paper\\_Feedback\\_Report.pdf](http://www.planning.nsw.gov.au/Portals/0/planningsystem/White_Paper_Feedback_Report.pdf)

NSW Government. (2013) *A New Planning System for New South Wales: White Paper*, April, available at: <http://www.planning.nsw.gov.au/a-new-planning-system-for-nsw>

NSW Government. (2012) *A New Planning System for New South Wales: Green Paper*, July, available at [http://www.planning.nsw.gov.au/Portals/0/PolicyAndLegislation/A\\_New\\_Planning\\_System\\_for\\_NSW\\_low\\_res\\_web.pdf](http://www.planning.nsw.gov.au/Portals/0/PolicyAndLegislation/A_New_Planning_System_for_NSW_low_res_web.pdf)

NSW Independent Commission Against Corruption. (2011) Investigation into the unauthorized purchase of property at Currawong by the Chief Executive of the land and Property Management Authority, December, available at <http://www.icac.nsw.gov.au/publications-and-resources>

NSW Independent Commission Against Corruption. (2010) The exercise of discretion under Part 3a of the Environmental Planning and assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005, December, available at <http://www.icac.nsw.gov.au/publications-and-resources>

NSW Independent Commission Against Corruption. (2013) Submission regarding a new planning system for NSW (White Paper and accompanying bills), June, available at <http://www.icac.nsw.gov.au/publications-and-resources>

NSW Minerals Council (2013) NSW Planning System Review: White Paper and Draft Legislation Submission, June, available at [http://www.nswmining.com.au/NSWMining/media/NSW-Mining/Publications/130628\\_NSWMC-Submission-and-PwC-Report\\_Planning-System-Review\\_White-Paper\\_FINAL-docx-%281%29.pdf](http://www.nswmining.com.au/NSWMining/media/NSW-Mining/Publications/130628_NSWMC-Submission-and-PwC-Report_Planning-System-Review_White-Paper_FINAL-docx-%281%29.pdf)

Nicholls, S. (2013a) Brad Hazzard, Labor fight over planning bill, *Sydney Morning Herald*, 28 November, available at <http://www.smh.com.au/nsw/brad-hazzard-labor-fight-over-planning-bill-20131128-2ybt2.html>

Nicholls, S. (2013b) Call to close Barangaroo walkway, *Sydney Morning Herald*, 12 March, available at <http://www.smh.com.au/nsw/call-to-close-barangaroo-walkway-20130311-2fwgh.html>

O'Flynn, L. (2011) History of development contributions under the NSW planning system, *eBrief 3/2011*, NSW Parliamentary Library Research Service.

Olsen, J.P. (2006) Maybe It Is Time to Rediscover Bureaucracy, *Journal of Public Administration Research and Theory*, 16, pp. 1–24.

Papadopoulos, Y. (2010) Accountability and Multi-level governance: more accountability, less democracy? *West European Politics*, 33(5), pp. 1030-1049.

Park, H. (2010) NSW Planning Framework: History of Reforms, *E-Brief 10/2010*, NSW Parliamentary Library Research Service.

Peters, B.G. & Pierre, J. (2004) Multi-level Governance and Democracy: A Faustian Bargain? in: I. Bache & M. Flinders (Eds). *Multilevel Governance*, pp. 75-89 (Oxford: Oxford University Press).

Pierre, J. (2009) Reinventing governance, reinventing democracy? *Policy & Politics*, 37(4), pp. 591-609.

Piracha, A. (2010) The NSW (Australia) Planning Reforms and their Implications for Planning Education and Natural and Built Environment, *Local Economy*, 25(3), pp. 240-250.

Planning Institute of Australia (NSW Division). (2010) Submission on Draft Environmental Planning and Assessment Regulation 2010, available at <http://www.planning.org.au/documents/item/2225>

Planning Institute of Australia (NSW Division). (2011) *The NSW Planning System: a way forward*, available at: <http://www.planning.org.au/documents/item/3404>

Planning Institute of Australia, NSW Division. (2012) From Green Paper to a New Culture: Supplementary Submission on the NSW Planning Review Green Paper, September, available at: <http://www.planning.org.au/documents/item/4335>

Planning Institute of Australia (NSW Division). (2013) Submission on A New Planning System for NSW: White Paper, June, available at <http://www.planning.org.au/documents/item/5305>

Price Waterhouse Coopers (2012) *Cities of Opportunity 2012*, available at: <http://www.pwc.com/us/en/cities-of-opportunity/2012/pdf-download.jhtml>

Property Council of Australia. (2010) *A Plan Worth Delivering: Managing Sydney's growth*. A submission to the Metropolitan Strategy review – Towards Sydney 2036 discussion paper and the Draft Metropolitan Transport Strategy, April, available at: <https://www.propertyoz.com.au/library/Metro%20Sub.pdf>

Property Council of Australia. (2013) Delivering on the Promise: Submission to the NSW Government's White Paper — A New Planning System for NSW, June, available at <http://www.propertyoz.com.au/nsw/Article/Resource.aspx?p=21&submission=897>

Punter, J. (2005) Urban design in central Sydney 1945–2002: Laissez-Faire and discretionary traditions in the accidental city, *Progress in Planning*, 63, pp. 11-160.

Ruming, K., Houston, D., & Amati, M. (2012) Multiple Suburban Publics: Rethinking Community Opposition to Consolidation in Sydney, *Geographical Research*, 50(4), pp. 421-435.

Siemiatycki, M. (2010) Delivering transportation infrastructure through public-private partnerships, *Journal of the American Planning Association*, 76(1), pp. 43-58.

Southern Sydney Regional Organisation of Councils (SSROC) (2013) Submission on a New Planning System for NSW --- White Paper, 28 June, available at <http://www.ssroc.nsw.gov.au/PDF/130628%20SSROC%20Planning%20WP%20Submission.pdf>

Stoker, G. (1998) Governance as theory: five propositions, *International Social Science Journal*, 50(155), pp. 17-28.

Stilwell, F., and Troy, P. (2000) Multilevel Governance and Urban Development in Australia, *Urban Studies*, 37(5-6), pp. 909-930.

Swyngedouw, E. (2005) Governance Innovation and the Citizen: The Janus Face of Governance-beyond-the-State, *Urban Studies*, 42(11), pp. 1991–2006.

Swyngedouw, E. (2010) Apocalypse forever? Post-political populism and the spectre of climate change, *Theory Culture and Society*, 27(2-3), pp. 213-232.

Sydney Coastal Councils Group Incorporated (SCCG). (2013) Submission: A New Planning System for NSW White Paper and draft Planning Bills, June, available at: [http://www.sydneycoastalcouncils.com.au/sites/default/files/sccg\\_submission\\_on\\_the\\_white\\_planning\\_paper.pdf](http://www.sydneycoastalcouncils.com.au/sites/default/files/sccg_submission_on_the_white_planning_paper.pdf)

Toon, J., & Falk, J. (eds) (2003) *Sydney: Planning or Politics. Town Planning for Sydney Region since 1945* (Sydney, NSW: Planning Research Centre, University of Sydney).

Urban Development Institute of Australia (UDIA). (2012) *Building a better NSW: getting our Act together*, available at: [http://www.udiansw.com.au/uploads/docs/Getting\\_Our\\_Act\\_Together.pdf](http://www.udiansw.com.au/uploads/docs/Getting_Our_Act_Together.pdf)

Urban Development Institute of Australia NSW (UDIA NSW). (2013) The next act: response to the planning White Paper, available at [http://www.udiansw.com.au/uploads/docs/UDIA\\_NSW\\_Response\\_to\\_White\\_Paper\\_130621.pdf](http://www.udiansw.com.au/uploads/docs/UDIA_NSW_Response_to_White_Paper_130621.pdf)

Urban Taskforce. (2010) Media release: Another NSW Government report demands planning reform, 17 September, available at: [http://www.urbantaskforce.com.au/index.php?option=com\\_content&view=article&id=1157:another-nsw-government-report-demands-planning-reform-&catid=71:media-releases&Itemid=17](http://www.urbantaskforce.com.au/index.php?option=com_content&view=article&id=1157:another-nsw-government-report-demands-planning-reform-&catid=71:media-releases&Itemid=17)

Urban Taskforce Australia. (2013) Delivering a better planning system for NSW: White Paper, available at [http://www.urbantaskforce.com.au/index.php?option=com\\_phocadownload&view=category&id=2&Itemid=141&limitstart=10#.Uye-woXInKc](http://www.urbantaskforce.com.au/index.php?option=com_phocadownload&view=category&id=2&Itemid=141&limitstart=10#.Uye-woXInKc)

Waterhout, B., Othengrafen, F., & Sykes, O. (2013) Neo-liberalization processes and spatial planning in France, Germany, and the Netherlands: an exploration, *Planning, Practice and Research*, 28(1), pp. 141-159.

Table 1: Summary of Issues and Responses

Issue	Supporters	Opposers
Ministerial discretion and probity	“Concerns about a lack of policy certainty ...have become startlingly evident as the PAC and Land and Environment Court have made a number of decisions in contradiction of the recommendations of the Department of Planning and Infrastructure” (NSW Minerals Council 2013, 5)	<p>“[T]he breadth of the Ministerial discretions raises legitimate concerns in terms of perceptions of probity...” (Law Society of NSW 2013, 4)</p> <p>“Statutory safeguards for transparency and probity are needed, given the extent of discretionary decision-making to be granted to the Minister and the possible financial benefits gained by those inappropriately exploiting privileged information about such decisions” (City of Sydney 2013, 9)</p> <p>“...expert members serving on panels should only</p>

		do so on a 'pool' or rotational basis, to avoid the potential for regulatory 'capture' in favour of frequent applicants or adverse bias against frequent applicants" (PIA NSW 2013, 25)
One stop shop	<p>"To deliver an integrated whole of government strategic planning system, the Act must be given primacy above all other legislation impacting or relating to the planning system" (PCA 2013, 26)</p> <p>"To deliver state significant infrastructure and projects of regional significance, the 'One Stop Shop' for concurrences requires statutory authority in decision-making processes" (PCA 2013, 37)</p>	<p>"Under the draft Bill the Minister stands in the shoes of the relevant authority. ...what certainty is there that the Minister ...will have the necessary expertise in the relevant area (heritage, water management etc.) to adequately and properly fulfil the requirements of the relevant authority under the relevant Act?" (PIA NSW 2013, 23)</p> <p>"The proposed replacement of the Office of Environment and Heritage's (OEH) role ...through a proposed 'one stop shop' referral for concurrences and approvals, by a non expert bureaucracy within the Department of Planning, is a serious threat to informed decision making." (Heritage Council NSW 2013, 7-8)</p>
Transparency and evidence	<p>"decision making is prone to being heavily politicised and does not promote transparency or good planning outcomes. This has created uncertainty and angst for the community and industry in particular. UDIA NSW believes that robust strategic planning based on clear and readily available information, which also incorporates upfront community consultation, will help achieve better planning outcomes" (UDIA 2013, 9)</p>	<p>"[The draft Bill]... gives public authorities discretion to withhold from public inspection any part of an EIS whose publication would be contrary to the public interest. Guidelines on the exercise of this discretion should be provided and the circumstances in which it is used closely constrained to ensure the principles of the Charter are respected... This is also important for transparency and information availability online (ePlanning)" (PIA NSW 2013, 13)</p> <p>"Hazard information must be updated at intervals according to the nature of the hazard and risks, made publicly available and incorporated into Strategic Plans as soon as practicable thereafter" (SSCG 2013, 5)</p> <p>"The incompleteness of heritage schedules of local environmental plans and the State Heritage Register has significant implications for development assessment and strategic planning in the new planning system. Resources must be committed to establish the "evidence" base that will underpin the strategic plans in the new system." (Heritage Council NSW 2013, 7)</p>
Local Government's role	<p>The proposed composition of Subregional Planning Boards means that all councils will have a seat at the table – out-numbering state-appointed or independent chairs. This risks unbalanced representation" (PCA 2013, 33)</p> <p>"...the Boards outlined in the White Paper seem overly weighted with government representation, with no mention of industry, community or</p>	<p>"...the concept of a 'partnership' needs to be more than just words – it must be reflected in the processes and frameworks in the new planning system and become embedded in the new culture. It is also important that the NSW Government recognise that Local Government is an elected autonomous sphere of government and not an agency of the NSW Government" (LGNSW 2013, 5)</p> <p>"...the system is designed to deliver the State government's priorities, not those of the local community. Far from 'depoliticising' the system, it</p>

	business involvement”(UDIA 2013, 6)	appears to be more open to political interference than ever from State politicians” (SSROC 2013, 6)
Performance metrics	“Performance monitoring must also include a system that will reward excellent performance and penalise underperformance. There must be clear repercussions for underperforming planning authorities” (Urban Taskforce 2013, 7)	<p>“...the development industry also needs cultural change and needs to perform better in terms of the quality of development applications” (LGNSW 2013, 6).</p> <p>“Performance monitoring of the planning system should include qualitative measures such as amenity and liveability” (City of Sydney 2013, 11).</p>
Changing culture and depoliticising planning	<p>“Reinforcement of the primacy of depoliticised development assessment is a stand out feature of the draft legislation. It confirms that independent decision-making can:</p> <ul style="list-style-type: none"> <li>• give the community comfort in the integrity of decisions</li> <li>• provide investors with confidence in the objectivity of assessments, and</li> <li>• reduce the angst which has recently riddled the system” (PCA 2013, 38)</li> </ul>	<p>“Cooperation implies equal power, which is not the case: Councils will not have control of very much, and will be required to ‘cooperate’ in the delivery of decisions with which they do not agree. This is not cooperation but obedience.” (SSROC 2013, 5)</p> <p>“[T] broad Ministerial discretions proposed... allow the Minister to make plans overriding local and subregional plans...without any requirement for the Minister to consult and no requirement for the Minister to have regard to the relevant strategic planning” (Law Society of NSW 2013, 4)</p>
Redefined citizen participation	<p>“The community must be educated about the planning system and the necessity to balance personal aspirations with overall community good” (UDIA 2013, 4)</p> <p>“The more detailed local community participation plans must:</p> <ul style="list-style-type: none"> <li>• acknowledge that growth must be provided for.</li> <li>• clearly state that the community has a responsibility to accept growth and make provision for the growth.</li> <li>• must acknowledge that the landowner has rights to develop land” (Urban Taskforce 2013, 8)</li> </ul> <p>“Ensure community participation plans and processes also place an obligation of participants to work towards pre-agreed outputs. ...Caveats around rational involvement are needed to manage expectations. Community participation must be proportionate” (PCA 2013, 30)</p>	<p>[The draft Bill]...significantly restricts the ability of the community to challenge plans and some decisions even in the case of legal error” (Law Society of NSW 2013, 2)</p> <p>“This disconnect is also apparent in such fundamental areas as community participation, strategic plans and State significant development approvals where significant rights of review have been removed...” (Law Society of NSW 2013, 6)</p> <p>“The limited availability of third-party appeal rights ...means that an important disincentive for corrupt decision-making is absent” (ICAC 2013, 4)</p>
Redefining the public interest	“Under the draft legislation, a clear definition of ‘sustainable development’ is absent. ...The lack of a definition of ‘sustainable development’ removes certainty and this would arguably increase the potential for disputes” (PCA 2013, 26-27)	<p>“The concepts of sustainability, sustainable growth and sustainable development are undefined which creates uncertainty, lack of consistency and can lead to disputes, ultimately leaving it to the courts to interpret” (SCCG 2013, 14)</p> <p>“the requirement for consideration during a merit assessment of ‘public interest’ is modified... by the</p>



	<p>“If criteria for public interest assessment is to be developed, we recommend the criteria and underlying definitions are carefully devised and assessed in concert with industry for a balanced approach”(PCA 2013, 41)</p> <p>“The Planning System Review provides the opportunity to ensure that NSW is able to attract investment in the major projects that are significant to the State’s economy and generate jobs, investment that flows through to the broader business community and direct revenue to government” (NSW Minerals Council 2013, 1)</p>	<p>inclusion of the words ‘in particular whether any public benefit outweighs any adverse impact of the development’...intergenerational equity, the precautionary principle and other environmental benefits will be outweighed by perceived public benefit in economic and social terms” (Law Society of NSW 2013, 9)</p> <p>“A system that does not provide one clear rational choice for development determinations will create inconsistency. Corrupt conduct can also be difficult to prove where any number of possible outcomes can be justified...” (ICAC 2013, 1)</p>

Source: Author’s analysis of selected Submissions to the NSW Planning Reform White Paper and Draft Bills.

---

<sup>i</sup> The phrase “fantasies of consensus” is used by Andy Inch (2012, 532).