

Item ##

Adelaide City Council on 08/10/2015

Status: Public

Planning, Development and Infrastructure Bill [2013/00519-5]

Strategic Outcome:

Outcome 1 - City of Great Places

Program & Value Proposition:

City Planning and Development - The City Planning and Development Program will create a City of outstanding places that meets the aspirations of the community

Program Contact No:

Mike Fisher, PM City Planning and Development
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Approved:

David Chick, GM, City Planning and Design

RECOMMENDATION

That Council:

- 1. Notes the introduction of the Planning, Development and Infrastructure Bill 2015 into State Parliament. The Council embraces reform that delivers efficiencies and benefits to business and the community, but finds that the lack of detail on the associated bodies of work and an implementation plan has made it difficult to reach a comprehensive position on the Bill.**
- 2. Having been an active contributor to the Planning Reform agenda by the submission of formal feedback and discussion papers throughout the various stages of the Expert Panel, its final report, the State Government's response, welcomes the opportunity to put forward its comments and concerns on the Bill. The Council notes what has been reported as the Minister's openness to consider improvements to the Bill and therefore trusts that this submission will be given due consideration in the interest of the City, its broad community sectors, its future tourism potential linked to heritage values, and ultimately sustainable economic prosperity.**

3. Expresses concern that many aspects of its previous submissions appear to have gone unheeded, including maintaining local community input and the role of councils as a source of local knowledge and input to the planning system. These concerns appear to be compounded by the Bill's seemingly increased powers to the Minister with reduced local input, and the lack of adequate independence of the State Planning Commission.
4. Shares the concerns of stakeholders regarding the lack of time to consider the Bill. Council calls on the State Government and members of Parliament to provide all stakeholders more time to fully consider the Bill before it progresses through Parliament, particularly given the importance of the Bill and the long implementation phase of 3-5 years.
5. Notes the Objects and Intent (clause 12) and the Principles of Good Planning (clause 14) of the Bill, however considers that:
 - 5.1 The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the state.
 - 5.2 Clause 12(1)(b) should include reference to community participation in development assessment matters as appropriate.
 - 5.3 The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment.
 - 5.4 Not only the Principles of Good Planning, but also the ODASA Principles of Good Design Review, should reinforce the development of the Planning & Design Code, design standards, practice directions and other instruments.
 - 5.5 The role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan for Greater Adelaide, be expressed in the Objects and Principles of Good Planning.
 - 5.6 The Objects and Principles of Good Planning should serve as a benchmark to the efficacy of the proposed bodies of work associated with the Bill (such as the Community Engagement Charter, Planning & Design Code, and design standards).
6. Urges the State Government to appoint the State Planning Commission as a priority action to develop in stages or concurrently the following packages of work, in a collaborative manner with key stakeholders:
 - 6.1 Package 1 – a detailed implementation plan that includes the programming of future regulations and associated documents (including the Planning & Design Code and design standards);
 - 6.2 Package 2 – develop and introduce the Community Engagement Charter;
 - 6.3 Package 3 – the bodies of work involved in implementing the Bill (including the expected 'second' Bill), engagement on those bodies of work consistent with the Community Engagement Charter; and
 - 6.4 Package 4 – report to the Minister and Parliament on the proposed legislative changes and other reforms, with ongoing monitoring and review of outcomes.
7. Holds discussions through the Capital City Committee on the specific planning requirements for the City given the unique and distinctive circumstances of the capital City. The Council holds the firm position that the planning system for the City should:

- 7.1 recognise the city as a 'region' in its own capacity (as reflected in the 30-Year Plan) given its role and primacy in the state;
 - 7.2 balance the number of multiple roles as a capital city, both as the centre of business, culture/leisure/entertainment, and retailing for the state but also as a set of local communities and localities;
 - 7.3 strengthen the coordination/integration of strategic planning between the Bill and the City of Adelaide Act and Park Lands Act;
 - 7.4 recognise the importance of heritage as a significant contributor to the identity, character and economic vitality of the City; and
 - 7.5 reinforce through the statutory instruments, the delivery of achieving carbon neutrality for the City.
8. Seeks amendments to the Bill through Parliament as contained in (Attachment C) to Item **XX** on the Agenda of Council held on 8 October 2015 that includes the following key components:
- 8.1 Greater empowerment for the State Planning Commission to operate independently from the Minister based on long term goals and strategies set by the State Government.
 - 8.2 The State Planning Commission should not include the Executive Officer of the Department, even in an *ex officio* capacity, noting that it was not a recommendation of the Expert Panel's final report. The existing arrangement of the LGA nominating a person with extensive local government knowledge and experience on the DAC should apply to establishing membership of the Commission.
 - 8.3 Opposition to the provisions relating to the Park Lands in terms of Impact Assessed Development and Essential Infrastructure. Current arrangements of exemptions under the Development Act should remain to ensure the on-going protection and value of the Park Lands.
 - 8.4 Refinements to the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review/evaluation as a means of instilling greater confidence in the community of consultation mechanisms and outcomes.
 - 8.5 Regional planning mechanisms should reinforce and place due weight on Council and local community input.
 - 8.6 As previously submitted to the Expert Panel, and in accordance with COAG and National Productivity Commission recommendations, development assessment should be devolved to the lowest possible level of government. This principle should strongly influence the designation of planning powers to the Commission, and regional and local panels.
 - 8.7 Retention of elected member representation (as currently exists) from councils in the region on local or regional assessment panels in recognition of the local context, robust and efficient decision-making arrangements already in place under the current Act. An accreditation system for elected members on panels could complement the accredited professionals scheme under the Bill.

- 8.8 That existing local heritage items be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is willing to consider (as part of the 'second' Bill that is understood to deal with heritage), new listings of local heritage items being subject to appeal rights if it can be shown that criteria, community consultation and expert assessment are adequate components of the process.
- 8.9 Opposition to the Minister having powers to impose council contributions to infrastructure funding. Essential infrastructure needs should remain the responsibility of the state government, without councils acting as contributors (other than in a voluntary and negotiated manner) or collectors of levies or other charges for the State.
- 8.10 The Planning & Design Code, and other design instruments, should include consideration of local context, as recognised in the Principles of Good Planning of the Bill.
- 8.11 Opposition to the ability of applicants to defer referral to government agencies until receiving planning consent. Existing arrangements of the Development Act, that require referrals to be completed prior to consent, should remain in force.
- 8.12 Opposition to the provisions that would allow applications to be 'deemed to be approved' if timeframes (as yet unset) are not met. Existing arrangements of the Development Act, that means an application out of time is refused by default, should remain in force.
- 8.13 Minor encroachments (to be defined in the Planning & Design Code to the requirements of local government) may avoid the need for an Encroachment Permit under the Local Government Act but other encroachments should require the permit of councils in recognition of public land, impact on services, public realm design and coordination, and preservation of National Heritage values of the City layout.
- 8.14 Concern at provisions relating to 'access neighbouring land' whereby Council (or possibly a private certifier) would grant those constructing a development to access neighbouring property for the purpose of facilitating construction (without that owner's agreement). The implications of the provisions would seem to contradict laws of trespass.
- 8.15 New enforcement options and sanctions be made available to councils rather than only to the State Planning Commission, given local government's role in inspection and compliance. This would maintain the current situation under the Development Act.
9. Forwards to the Minister the report 'Principles for Engagement in a new Planning System' as contained in (Attachment E) to Item XX on the Agenda of Council held on 8 October 2015, to assist in the development of the Community Engagement Charter.
10. Authorises the Chief Executive Officer to forward Council's submission on the Bill to the Minister, all members of Parliament, the Local Government Association and other stakeholders with a key involvement in the planning and development of the state.
11. Requests Administration to approach the Local Government Association to undertake analysis of the likely impacts of the Bill on the resourcing, administration, and financial obligations on councils.

BACKGROUND

1. In February 2013 the State Government announced its intention to review the current planning system to create a new planning system that meets South Australia’s future challenges; this review being the first comprehensive review of the statutory planning system since 1993.
2. An Expert Panel on Planning Reform was established to undertake an independent review of the State’s planning system, consult with stakeholders and advise the State Government and Parliament on potential reforms. The Expert Panel operated a review project under the banner Think Design Deliver.
3. Council has been an active contributor to the Planning Reform agenda by the submission of formal feedback and discussion papers throughout the staged process of Expert Panel, its final report, the State Government’s response and now the Bill. Up to the stage of the Bill, Council submissions covered the major stages of review as illustrated in the table below:

Expert Panel	ACC Submission & Documents
Listening and Scoping What we have Heard (July – Dec)	<ul style="list-style-type: none"> • Planning System Guiding Principles • Research & Observations Papers: <ul style="list-style-type: none"> ○ Statutory Planning Systems ○ City Planning & Governance ○ Historic Heritage and Character • ACC Experience’s & Questions Paper (Oct 2013) • ACC Submission on Planning Reform No.2 (April 2014)
Exploring and Discussion Our Ideas for Reform (Aug 2014)	<ul style="list-style-type: none"> • ACC submission to Expert Panels Our Ideas for Reform (Sept 2014)
Proposing and Recommending The Planning System We Want on Planning Reform (Dec 2014)	<ul style="list-style-type: none"> • ACC submission to Final Report of Expert Panel on Planning Reform (16 Feb 2015)
Transforming our Planning System: SA Government Response to the Final Report and Recommendations of the Expert Panel on Planning Reform (March 2015)	<p><i>*Note: on 12 May 2015 Council resolved to wait on the draft legislation before making any further submission to the State Govt. The following documents were noted by Council on 8 September 2015 in preparation for the release of a bill:</i></p> <ul style="list-style-type: none"> • <i>“What Kind of Plan for the City? Draft Discussion Paper” (relates to a new Planning & Design Code)</i> • <i>“Draft Principles for Engagement in a New Planning System” (relates to a new Community Engagement Charter)</i> • <i>“Low Risk Applications Study” (relates to new assessment pathways)</i>

4. While many of its previous submissions appear to have gone unheeded in matters such as local communities maintaining input into the planning system and the role of councils as a source of local knowledge and input, the main purpose of this report is again to enable Council to form a position and make a further submission in respect to the *Planning, Development and Infrastructure Bill 2015*.

The Bill

5. On 9 September 2015 the *Planning, Development and Infrastructure Bill 2015* proposing changes to the State planning system was released by the State Government. The Bill has been presented to the Lower House of Parliament. Indications are that the Minister is seeking to have the Bill passed this year and with the few remaining sitting dates of Parliament, this report has been prepared to inform the government, members of Parliament and other key stakeholders of Council's concerns and suggestions for improvements.
6. The Bill is to repeal the Development Act, 1993, in its entirety and replace it with the *Planning, Development and Infrastructure Act 2015*. It is therefore a major piece of legislative reform that is complex and its implications on local government extensive with a wide range of matters for Council to consider. Once the Bill is passed, there will be a long implementation phase over a period up to 3-5 years (probably commencing with a second implementation bill) where it is expected that Council will have further opportunity to comment and be involved.
7. Much of the detail for the future operation of the scheme will be set out in the regulations of the Bill and in a variety of statutory instruments (including the Planning & Design Code and design standards). These documents are not available at this time and will be developed through the implementation program. The lack of detail has made it difficult to fully comprehend the Bill and its implications.
8. While these details are still to follow, the Bill supports role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan for Greater Adelaide, by some of the mechanisms outlined in the Bill (such as the urban growth boundary).
9. The State government has outlined that the purpose of the Bill is to lead to a new planning system that will;
 - 9.1 *provide certainty to applicants and communities through streamlined, digitally enabled processes*
 - 9.2 *promote high quality design for the built environment and public realm*
 - 9.3 *require a coordinated approach to planning and delivering infrastructure*
 - 9.4 *require decision makers to possess relevant professional qualifications or experience*
 - 9.5 *promote a culture of collaboration and community engagement in the planning and development of our State*
10. Key information published by DPTI about the new planning system is available on the DPTI website http://dpti.sa.gov.au/planning/planning_reform. The information outlines that the new system will:
 - 10.1 *include a single set of planning and design rules across the State*
 - 10.2 *reduce the burden of red tape for smaller scale development proposals through the introduction of a simpler assessment process*

- 10.3 *establish an online planning portal that will provide easy, real time access to planning and development information, documents and approvals, enhancing accessibility and accountability*
- 10.4 *enable communities to play a greater role in setting planning policies through the establishment of the Community Engagement Charter*
- 10.5 *integrate infrastructure development with the planning process*
- 10.6 *consider design in every assessment*
- 10.7 *include additional and stronger sanctions for planning breaches and better enforcement mechanisms*

- 11. To assist Council Members with an understanding the full scope of the Bill, (**Attachment A**) to this report provides DPTI summary of key elements of the proposed new planning systems and some flowcharts on processes will operate.

Consultation on the Bill

- 12. The Minister for Planning has invited comments on the Bill whilst it is being debated and progressed through State Parliament. It can be expected that wide variety of stakeholders will consider the Bill and make submissions.
- 13. Administration have sought to raise awareness of the Bill through provision of information to city stakeholders and those groups and individuals who have engaged with Council through the Expert Panel process. Once Council has adopted a position on the Bill, this position will be communicated to key stakeholders and interested persons.
- 14. The LGA is seeking comments from local government across South Australia by 9 October to then form a consolidated position to put to the State Government on any necessary amendments to the Bill. The LGA has released a consultation paper that outlines some potential key issues for local government. This paper has been separately distributed to Members and is available at <http://www.lga.sa.gov.au/planning>.

SUPPORTING INFORMATION

Analysis of the Bill

- 15. **Attachment B** to this report provides an analysis of the Bill in comparison to the Expert Panel's final report (Dec 2014) and the State Government's response (March 2015), as well as providing comment in relation to Council's past submissions.
- 16. The Bill incorporates a number of Objects and Intentions that the Bill is aimed at achieving, as well as a set of Principles of Good Planning (**Attachment D**). Such objects, intentions and principles are reasonably well founded but it is considered that a number of additions should be incorporated, namely:
 - 16.1 The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the state.
 - 16.2 Clause 12(1)(b) of the Objects should include reference to community participation in development assessment matters as appropriate.

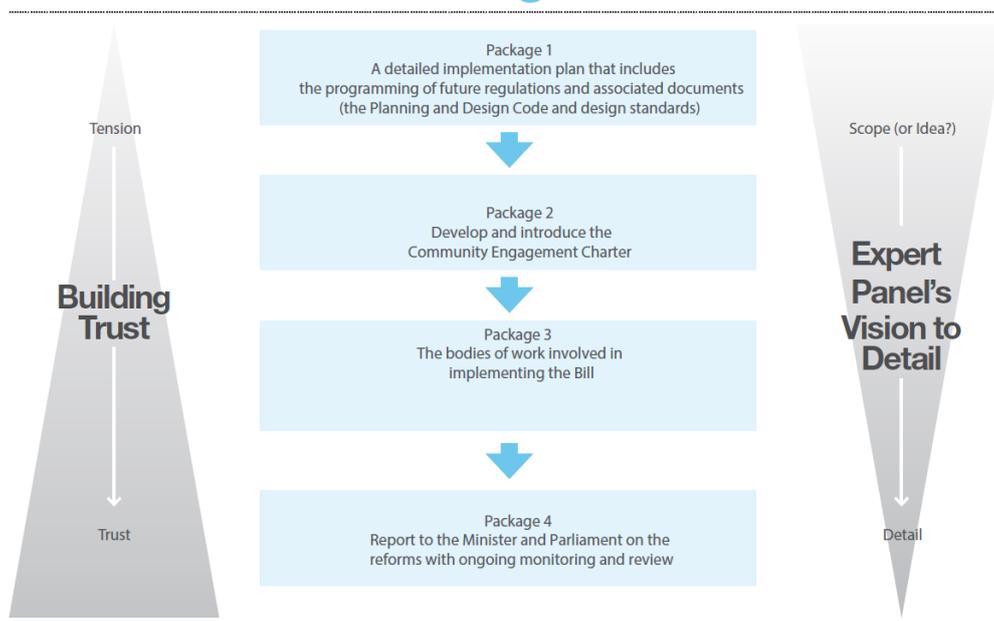
- 16.3 The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment.
- 16.4 not only the Principles of Good Planning, but also the ODASA Principles of Good Design Review, should reinforce the development of the Planning & Design Code, design standards, practice directions and other instruments.
- 16.5 the role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan, should be expressed in the Objects and Principles of Good Planning.
17. In respect to the preparation of a Community Engagement Charter, the Council recently received (7 September 2015) the report, prepared by Donna Ferretti, *Principles for Engagement in a new Planning System*. It is recommended that the report be included in the package of information forwarded to the Minister on the Bill to assist in the development of the Charter.
18. It is also important that the Objects and Principles of Good Planning play a part in the development of material associated with the Bill. It is recommended that the objects and principles serve as a benchmark the efficacy of the proposed bodies of work such as the Community Engagement Charter, Planning & Design Code, and design standards.
19. **Attachment C** provides a recommended list of detailed amendments to the Bill based on input from the LGA, legal advice, Council workshops, and staff analysis. Key elements of the attachment are outlined below:
- 19.1 Greater empowerment for the State Planning Commission to operate independently from the Minister based on long term goals and strategies set by the state government.
- 19.2 The State Planning Commission should not include the Executive Officer of the Department, even in an *ex officio* capacity. The existing arrangement of the LGA nominating a person with extensive local government knowledge and experience on the DAC should apply to establishing membership of the Commission.
- 19.3 Opposition to the provisions relating to the Park Lands in terms of Impact Assessed Development and Essential Infrastructure. Current arrangements of exemptions under the Development Act should remain to ensure the on-going protection and value of the Park Lands.
- 19.4 Refinements to the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review / evaluation as a means of instilling greater confidence in the community of consultation mechanisms and outcomes.
- 19.5 Regional planning mechanisms should reinforce Council and local community input.
- 19.6 Retention of elected member representation (as currently exists) on local or regional assessment panels in recognition of the robust and efficient decision-making arrangements already in place under the current Act. An accreditation system could be implemented for elected members on panels to complement the accredited professionals under the Bill.

- 19.7 Confirmation that existing local heritage items will be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is willing to consider new listings of local heritage items being subject to appeal rights if it can be shown that community consultation and expert assessment is maintained in the process.
- 19.8 Opposition to the Minister having powers to impose council contributions to infrastructure funding. Essential infrastructure needs should remain the responsibility of the state government, without councils acting as contributors (other than in a voluntary and negotiated manner) or collectors of levies or other charges for the State.
- 19.9 The Planning & Design Code should include consideration of local context, as recognised in the Principles of Good Planning of the Bill.
- 19.10 Opposition to provisions relating to the ability of applicants to defer referral to government agencies until a decision is reached. Likewise, the 'deemed to be approved' provisions if timeframes (as yet unset) are not met are opposed. Existing arrangements of the Development Act should remain in force.
- 19.11 Minor encroachments (that could be defined in the Planning & Design Code to local government requirements) may avoid the need for an Encroachment Permit under the Local Government Act but other encroachments should require the permit of councils in recognition of use of public land, impact on services, public realm design and coordination, and preservation of national Heritage values of the City layout.
- 19.12 Concern at provisions relating to 'access neighbouring land' whereby Council (or possibly a private certifier) would grant those constructing a development to access neighbouring property for the purpose of facilitating construction (without that owner's agreement). The implications of the provisions would seem to contradict laws of trespass.
- 19.13 New enforcement options and sanctions are not available to councils but rather only to the State Planning Commission. This would reverse the current situation where a council is entitled to all fines ordered by the courts and would limit this to circumstances only provided for by regulations.
- 19.14 In accordance with National Productivity Commission recommendations, development assessment should be devolved to the lowest possible level of government. This principle should influence the designation of planning powers under the Bill.
- 19.15 That existing local heritage items be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is however willing to consider (as part of the second Bill) new listings of local heritage items being subject to appeal rights if it can be shown that criteria, community consultation and expert assessment are adequate components of the process.
20. It is recommended that Council's position on the Bill be communicated in an appropriate manner to all State Parliamentarians, the LGA and metropolitan councils, key professional and community groups and other interested persons. This position will also be made available on Council's website and other appropriate communications will be undertaken to support Council's position.

Implementation of a new planning system

21. Council, and many stakeholders and industry groups, have on a number of occasions asked for the State Government outline a time-table for reform with ample opportunity for effective engagement of the public and stakeholders, including issuing draft legislation for comment before it is introduced into Parliament. As noted earlier, the extent of opportunity comment on the draft legislation is not considered adequate and is reaffirmed in the recommendations to this report.
22. The report puts forward a suggested pathway to implementation of reforms that could resolve many of the tensions and lack of faith that exists with the current system (as evidenced by the submissions to the Expert Panel) and build trust in a new system. There is significant risk that a poor implementation process that does not adequately and meaningfully involve all key stakeholders will result in a continued low level of confidence in a new planning system. A preferred approach is illustrated in the diagram below and involves the State Government appointing the State Planning Commission as a priority action to develop, in stages or concurrently, the following packages of work, in a collaborative manner with key stakeholders:
 - 22.1 Package 1 – a detailed implementation plan that includes the programming of future regulations and associated documents (including the Planning & Design Code and design standards);
 - 22.2 Package 2 – develop and introduce the Community Engagement Charter;
 - 22.3 Package 3 – the bodies of work (including the ‘second’ Bill) involved in implementing the Bill, engagement on the bodies of work consistent with the Community Engagement Charter; and
 - 22.4 Package 4 – report to the Minister and Parliament on the implementation of the reforms with ongoing monitoring and review.

Phased Implementation of Planning Reform



23. There is also an opportunity for Council to hold discussions on the specific planning requirements for the City of Adelaide at the Capital City Committee. The City plays a unique and distinctive role for the state and metropolitan area, reflected in part by the City of Adelaide Act and the Park Lands Act. There may be opportunities that can be explored in respect to:
- 23.1 Recognising the city as a region in its own capacity given the 30-year plan and the city's role and primacy in the state.
 - 23.2 Strengthening the coordination/ integration of strategic planning between the Bill with the City of Adelaide Act and Park Lands Act.
 - 23.3 Balancing the number of multiple roles as a capital city, both as the centre of business, culture, leisure, entertainment, and retailing for the state but also as a set of local communities and localities.
 - 23.4 Recognising the importance of heritage as a significant contributor to the identity, character and economic vitality of the city
 - 23.5 Reinforcing through the statutory instruments, the delivery of achieving carbon neutrality for the city.

Cost Impacts to Council

- 24. The State Government released a Regulatory Impact Statement that is available on the DPTI website that provides some analysis of the potential financial consequences arising from implementation of the Bill. The statement does not provide sufficient information to understand the full cost implications for local government generally.
- 25. Accordingly, this report recommends that the LGA be approached to undertake analysis of the potential impact on resourcing, administration, and financial position of councils in the implementation and then ongoing operation of the new planning system.

IMPLICATIONS

Implication	Applicable	Comment
Policy	YES	As a consequence of the Bill, a number of existing policy documents will be replaced, including the Adelaide (City) Development Plan.
Business Plan Objectives / Outcomes or Services	YES	Preparation for implementation of a new planning system is a key project in the 2015/16 Business Plan.
Consultation	YES	The Minister has outlined a willingness to consider submissions on the Bill through the parliamentary process. Measures are being taken to inform key stakeholders of Council's position on the Bill.
Resource	YES	Further analysis will be undertaken of the resource, service and cost implications of implementation of a new planning system
Risk / Legal / Legislative	YES	The Bill proposes to replace the existing Development Act, 1993, in its entirety and makes consequential amendments to a number of other existing Acts.

Budget / Financial Implications

15/16 Budget Allocation	15/16 Budget Reconsideration	Proposed 16/17 Budget Allocation	Ongoing Costs (eg maintenance)	Life of Project / Life Expectancy of Asset
NO	YES	YES	YES	YES
	TBD	TBD	TBD	2-5 years

ATTACHMENTS

Attachment A – DPTI advice; New Planning System & Flowcharts

Attachment B – Comparison of Bill + Expert Panel Report + State Government March Position

Attachment C – Legal - Amendments to Bill

Attachment D – Objects, intents and Principles of Good Planning

Attachment E - Principles for Engagement for a new Planning System