A submission in response to the

Review of the NSW Planning System Issues Paper,  
*The way ahead for planning in NSW?*

by the NSW Premier’s Council for Active Living (PCAL)

February 2012
Executive Summary

This brief submission has been prepared by the NSW Premier’s Council for Active Living (PCAL) in response to the Review of the NSW Planning System Issues Paper. PCAL supports the comprehensive review of the NSW Planning System and has prepared the following submission to help inform the process.

To assist preparation of this submission, PCAL in collaboration with UNSW’s Healthy Built Environment’s Program (HBEP) convened a forum on January 31st 2012 of relevant healthy built environment stakeholders to identify the key issues that need to be addressed. A selection of government, non-government and industry representatives attended the forum and a list of agencies represented is provided at Attachment 1. The content of this submission draws upon the previous PCAL Submission to the Planning Review and a compilation of suggestions and recommendations that emerged from the forum.

The body of this submission provides background and the rationale for the recommendations to 11 key questions within the Issues Paper related to health and wellbeing. PCAL has also taken the opportunity to comment on three additional matters that were not highlighted in the Issues Paper.

PCAL’s key recommendations include;

1. The promotion of health and wellbeing should be a key objective for a new-look Planning System.

2. A hierarchy of instruments elaborating on the principles and qualities that support community health and wellbeing should be prepared under the new planning system.

3. Internationally accepted definitions of health and wellbeing should be included within the new planning system documents.

4. Health and active living related data should be utilised to inform plan making at the local and regional level.

5. A state – level instrument on health and wellbeing should be developed to consolidate existing fragmented provisions.

6. Regional level planning strategies or instruments should continue to address health matters, including future orientated structure plans, identifying regional open space, transport networks and higher density centres.

7. Guidance should be provided on the appropriate use of precinct level structure plans and place-based / masterplan DCPs, as well as specific health and safety related content.

8. Lodgement requirements for DAs should cover consideration of impacts on community health and well-being, including formal Health Impact Assessment (depending on the nature and scale of projects).

9. Social and health impacts in the locality should be included as a statutory matter for consideration in the assessment of Development applications (DAs).
1. Purpose of the Submission

This brief submission has been prepared by the NSW Premier's Council for Active Living (PCAL) in response to the Review of the NSW Planning System Issues Paper. The Submission commences with a re-iteration of the strong body of evidence for acknowledging public/human health and well-being as a planning matter. Answers are then provided to 11 key questions relating to health and wellbeing matters selected from more than 200 included within the Issues Paper. Where relevant, the submission also addresses other related questions within the answers. The submission concludes by listing three additional questions and answers not included within the Issues Paper.

2. Reiterating the case for health as a planning matter

Infrastructure Australia in its State of Australian Cities Report\(^1\) highlights that ‘the design of urban environments can contribute to the health and well being of communities by supporting active living, physical activity through walking, cycling and using public transport and opportunities for social interaction’. COAG’s National Criteria for capital city strategic planning systems includes addressing health, liveability and community well-being.\(^2\)

Characteristics of urban environments that have demonstrated links to increased physical activity include:

- Mixed land use and higher density
- Footpaths and cycleways and facilities for physical activity linking key destinations
- Street connectivity and design
- Transport infrastructure systems, linking residential, commercial and business areas
- Neighbourhood aesthetics, including access to public open space.\(^3\)

There is widespread agreement that there are benefits in providing a built environment that encourages healthy, active and more liveable communities.\(^4\) The growing body of evidence relating to the potential of the Planning system to facilitate more supportive physical and social environments for health and wellbeing has recently been summarised in a systematic review by UNSW’s Healthy Built Environments Program (HBE).\(^5\)

In addition, there is specific State Government acknowledgement of public/human health priorities and support for an enhanced role for the Planning system in the NSW Government’s State Plan ‘NSW 2021’ document, which includes several targets such as reducing population obesity levels and increased active travel. This is further supported by the Department of Planning and Infrastructure’s Active Living Position Paper, acknowledging the role of supportive environments.\(^6\)

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2. Council of Australian Governments Communiqué from meeting 7 December 2009
3. National Heart Foundation of Australia, 2009. *The built environment and walking*, Position Statement prepared on behalf of the National Physical Activity Program Committee (Chief authors: Gebel, K., Bauman, A., Owen, N., Foster, S., Giles-Corti, B.)
4. National Heart Foundation of Australia, 2009. *The built environment and walking*, Position Statement prepared on behalf of the National Physical Activity Program Committee (Chief authors: Gebel, K., Bauman, A., Owen, N., Foster, S., Giles-Corti, B.)
6. NSW Department of Planning Position Statement – Planning for Active Living, 2010
3. Responses to questions in the Issues Paper

3.1 Question A1: Objectives of the Act?

(Related questions: A2 (B3); B2; B4; B5)

The Issues Paper does not include recommended fundamental ‘principles’ to underpin the legislation (despite inclusion in the initial consultation paper). PCAL continues to recommend that the health and well-being of communities be acknowledged as such a primary goal - communities in their diversity (of life-cycle stage, socio-economic status, culture and gender), and embodying other first principles such as equity, security, community participation and flexibility. Furthermore, PCAL believes that health and wellbeing is a matter of public interest and should be included in any definition of that term (see Question B6: Definitions).

PCAL endorses public/human health and well-being as an objective of the legislation. At present the objectives include ‘promoting the social … welfare of the community’. PCAL recommends that ‘promoting the health and well-being of the community’ and/or ‘provision of supportive environments for community health and well-being’ be specifically included as an objective of the act.. Within the current objectives, ‘social’ does not explicitly address health and wellbeing matters while ‘welfare’ implies service provision in certain contexts.

Similar objectives are included in the Planning and Development legislation in other States (ie. Victoria, Queensland, South Australia and Tasmania). For example, an objective of the Victorian Planning and Environment Act 1987 is ‘to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria’. Furthermore Queensland’s Sustainable Planning Act (2009) identifies that advancing the Acts purpose includes ‘applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the public benefit.’

The planning system had its genesis in a concern for public/human health, at the height of industrialisation, prompting key elements of the current system, such as separation of incompatible land uses and siting of buildings to require adequate health safeguards (such as sunlight, ventilation, action on contaminated lands). While such concerns have continued to underpin many planning policies, a range of other issues have been prioritised, displacing public health as a principal planning concern, eg. provision of housing and employment opportunities, environmental protection, heritage preservation.

Key Point

The promotion of health and wellbeing should be a key objective for a new-look Planning System.
3.2 Question A8: How to facilitate strategic plans/ coordinate with LG Act? (C8)

(Related questions: C1; C2; C14; C15; C16; C34; F4)

PCAL acknowledges that there will be a need for delegated legislation, in the form of Planning 'instruments' at both the State and local government levels, and for an enabling provision in the Act to define the scope of matters that can be addressed. Such a provision should reiterate the recommended 'health and well-being' objective, enabling State and local instruments to more thoroughly address planning strategies and actions.

PCAL also acknowledges the need for long-term strategic planning and investment, with a hierarchy of 'instruments' from State through regional to local and precinct level to translate the detail into practice. PCAL recommends that the hierarchy should include:

- A State Plan as the overarching coordinating document, similar to the Community Strategic Plan (CSP) at the local government level (see below). (Of note, the current State Plan addresses health-related issues and targets).
- State level policies, such as State Environmental Planning Policies (SEPPs).
- Formalised Regional, Metropolitan and sub-regional strategies, based on more rigorous structure planning that deal with cross-border issues. Existing coverage of health related matters should be reinforced, eg. active transport, protection of prime agricultural land.
- Local Environmental Plans.
- Local level/ precinct or locality based Development Control Plans.

In terms of implementation and administration, PCAL support a role for an independent body (or bodies) to establish and oversee State and regional strategic planning initiatives. This could be a newly created 'Planning Commission' or a revamp of the current 'other planning bodies' ie. Planning Assessment Commission (PAC) and Joint Regional Planning Panels (JRPPs). In addition, there should be a strengthened role for the Regional Organisations of Councils (ROCs) that could include formal consolation requirements.

There continues to be confusion about the ownership of 'strategic planning'. At the local government level, strategic land-use planning is a sub-set of whole of council 'Community Strategic Plans' (CSP), the higher order element of the Local Government Act's (LG Act) Integrated Planning and Reporting (IP&R) Framework. An 'engagement strategy' underpins the CSP and should include state level stakeholders. The CSP is currently a matter for consideration in 'gateway determinations' for Planning Proposals indicating that the IP&R Framework should provide the overall framework for local planning action. This connection should be strengthened and supplemented by more detailed land-use planning action.

At the precinct level, working with the LG Act (and the Roads Acts) will also assist in strengthening planning’s role in ‘place making'. To attract people out of doors, to quality locations that encourage active living and greater community interaction, increased focus is required on clear connections between private and public spaces. The Planning System should promote a coordinated approach to public domain planning and works by:
encouraging councils, in renewal and new release planning, to continue the Metro-strategy approach of including civic improvement/public domain plans in the suite of local Planning control documents.

- providing advice on the coordination of place-based DCPs and public domain plans (eg. urban centres)
- integrating (or ensuring consistency of) legislation governing the planning and management of public land
- providing advice on the role of the DA process in implementing public domain plans
- including active living principles as matters for consideration in assessment of appropriate infrastructure proposals, and activities under a new Act.

**Key Point**

A hierarchy of instruments elaborating on the principles and qualities that support community health and wellbeing should be prepared under the new planning system.

### 3.3 Question B6: Definitions

(Related questions: B9: C5; C4)

PCAL agrees that definitions are an essential element of a statutory planning system and recommend the inclusion of definitions embodying the following:

- **Health**: a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.\(^7\)
- **Healthy Design**: the aesthetic, physical and functional qualities of the built environment (relating to both land use patterns and the transportation system) that are supportive of human health as part of everyday living.\(^8\)
- **Healthy Planning**: the systematic integration of healthy design into the planning system: legislation, controls, policies, plans, guidelines and assessment of development proposals.
- **Public interest**: refers to when the well-being of the general population is at stake. PCAL recommends that any definition of public interest include the social, economic, health and well-being of the general population
- **Ecologically Sustainable Development**: any definition of ecologically sustainable development should include the social, economic, health and wellbeing of the general population
- **Liveability**: any definition of liveability should include the social, economic, health and wellbeing of the general population

**Key Point**

Internationally accepted definitions of health and wellbeing should be included within the new planning system documents.

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\(^7\) WHO, 1946

\(^8\) Kent J; Thompson SM and Jalaludin B (2011) Healthy Built Environments: A review of the literature, Sydney: Healthy Built Environments Program, City Futures Research Centre, UNSW
3.4 Question C9: Information/data for plan making (C9)

(Related question: F8)

PCAL recommends basic health and physical activity-related data should continue to inform plan making at the local and regional level. In addition, PCAL’s work on Key Performance Indicators (KPIs), featured in the Division of Local Governments (DLG’s) Integrated Planning and Reporting (IP&R) Guidelines9, addresses basic data relevant to active living including:

- Pedestrian access and mobility
- Public transport location and patronage
- Open space provision and location.

The inclusion of health and active living related data would assist in prompting coverage of such matters as well as in evaluating performance against a healthy planning/active living based objective.

**Key Point**

Health and active living related data should be utilised to inform plan making at the local and regional level.

3.5 Question C18: The role of State-level plans/policies (eg. SEPPs)?

The body of established research linking planning to health and wellbeing10 provides a strong evidence based argument for the development of a State-level instrument on health and wellbeing. The instrument would require plan making and development assessment (DA) by State and local governments to address such matters and would assist current planning processes by consolidating current Ministerial Directions and previous draft SEPPs. Current precedents within the current system include:

- SEPP BASIX, requiring action at the DA level on environmental sustainability
- SEPP 65, Design Quality of Residential Flat Development, with its principles, legal requirements, Design Review Panels and Guidelines
- The ministerial S117 (2) direction requiring consideration of active transport at the plan making and DA stage; the direction replaced former draft SEPP 66 provisions relating to plan-making (the provisions requiring consideration of active transportation at the DA stage have not been replaced).

**Key Point**

A state-level instrument on health and wellbeing should be developed to consolidate existing fragmented provisions.

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10 Kent J; Thompson SM and Jalaludin B (2011) Healthy Built Environments: A review of the literature, Sydney: Healthy Built Environments Program, City Futures Research Centre, UNSW
3.6 Question A6: A Regional Framework: boundaries and processes?

(Related question: C17)

The introduction of Regional and Sub-regional Strategies into the Planning system has had a positive influence on the coverage of active living matters within the planning system.

PCAL recommends that regional level strategies and planning instruments should include future-oriented structure plans to identify higher density activity centres, regional open space and transport (including pedestrian and cycling) networks and higher density activity centres. Such regional plans would acknowledge the significance of broad scale hard and soft infrastructure for promoting active living, community connectedness and the production and distribution of fresh food. When determining boundaries for regional plans, consideration should be given to walking, cycling and public transport catchments.

Key Point

Regional level planning strategies or instruments should continue to address health matters, including future orientated structure plans, identifying regional open space, transport networks and higher density centres.

3.7 Question C33: A template for Development Control Plans (DCPs)?

(Related question C32)

PCAL recommends that detailed guidance should be provided for precinct level structure plans, relevant specific issues and place-based / masterplan DCPs. The latter should address both the private and public domains, identifying fine-grained pedestrian and transport networks and quality urban space and help inform Councils’ Delivery Programs (under the IP&R framework), Development Contribution Plans and conditions of consent. Most physical activity takes place in the public domain – in parks and reserves, plazas, along streets, cycle-ways and footpaths. Rather than treating private and public domains as separate matters, renewed emphasis should be given to planning’s role in place-making.

In addition, issue-based DCPs should continue to address health-related matters eg. ‘Healthy by Design’, ‘Crime Prevention through Environmental Design’ (CPTED) and requirements or criteria in other existing guidelines.

There are a range of guideline documents prepared by the health and planning sector to inform the preparation of health and wellbeing DCP related matters including:

- Planning Guidelines for Walking and Cycling (NSW Government)
- Healthy by Design (Heart Foundation)
- The Healthy Urban Design Checklist (NSW Health)
- Development and Active Living (PCAL)
- Healthy Spaces, Healthy Places (PIA/Heart Foundation/ALGA).

These documents provide a comprehensive resource to inform council DCP level controls, and could be considered for inclusion on Department of Planning and Infrastructure’s (DP&I’s) Development Guidelines Register.
While there is a case for a standard format for DCPs, PCAL believes care should be taken not to standardise content, threatening local variation and circumstances, and promoting a checklist mentality (more appropriate to complying development).

**Key Point**

Guidance should be provided on the appropriate use of precinct level structure plans and place-based / masterplan DCPs, as well as specific health and safety related content.

3.8 Question D22: Lodgement requirements for Development Application (DAs) at the State and local level?

(Related questions: A21; D21; D23; D36)

PCAL also recommends that continued attention should be paid to lodgement requirement for DAs, tailored to the location, nature and scale of particular project proposals. For all DAs, the required content of any ‘Statement of Environmental Effects’/ Environmental Impact Statement should include the health-related matters listed in the previously highlighted health and well-being documents - with the onus on the applicant to address such guidelines. Pre DA meetings should be encouraged (with an appropriate level of involvement from the health / active transport / urban design sectors).

In principle, provision should also be made for the preparation and lodgement of a formal Health Impact Assessment, as a stand-alone document or part of a broader Social Impact Assessment. The circumstances where this would be required and content would be covered in detailed regulations.

**Key Point**

Lodgement requirements for DAs should cover consideration of impacts on community health and well-being, including formal Health Impact Assessment (depending on the nature and scale of projects).

3.9 Question D38: Assessment criteria for DAs (s.79C)?

(Related questions: D31; D44; D49; D9; D69)

A framework of State, regional and local government instruments that incorporates health and wellbeing principles and objectives would assist in the timely preparation and assessment of DAs. However, there would still need to be examination of individual DAs addressing specific health and wellbeing issues such as;

- the public-private domain interface; active streets
- pedestrian access
- on-site end-of-trip facilities
- safety and crime prevention (eg. CPTED).
PCAL recommends that the new NSW Planning Act should continue to list statutory matters for consideration (applicable to all DAs - State and local; council or other planning bodies) and that the list should continue to include social impacts in the locality. Guidance on the scope of matters for consideration should authorise the specific issues identified above (e.g. public domain interface, CPTED etc).

While it is acknowledged that ‘social impacts in the locality’ is currently a required consideration, PCAL recommends that the list should be extended to social and health impacts. The tone of the list could also be reworded to promote positive social and health impacts of a development proposal. Such positive outcomes are addressed by the current legislation (e.g. CPTED, on-site facilities) but need to be more explicitly acknowledged.

**Key Point**

| Social and health impacts in the locality should be included as a statutory matter for consideration in the assessment of Development applications (DAs). |

### 3.10 Question D59: Integrating other approvals in the DA process

PCAL recommends that integration of LG Act and Roads Acts approvals into the DA process will assist in improving healthy design outcomes. Integration of other approvals in the DA process would especially facilitate improvements to public/private interface and related community infrastructure on public land. Current provisions in the EP&A Act allow applicants to integrate LG Act approvals with development consents.

### 3.11 Question D96: Scope of development contributions? IPART’s (Independent Pricing and Regulatory Tribunal) role in determining what is community infrastructure? Conditions of consent beyond the ‘nexus’ test?

(Related questions: A10; D87; D86; D100; D103; D106)

PCAL supports the role of the IPART in defining community infrastructure and recommends that consideration be given to broadening the definition to cover activity based public domain facilities. The PCAL Development and Active Living Development assessment resource would provide guidance as to examples of active based public domain facilities. Council’s Contribution Plans could identify additional specific healthy / active living elements to be funded from the contributions.
4. Additional Questions

4.1 Question: Content of the Standard Instrument?

PCAL recommends that should the standard LEP Instrument be retained that the objectives of the plan should cover 'health and well-being' and be amended as follows:

- To require achievement of healthy planning/ active living principles as an objective of the LEP
- To extend the active transport objective in the business zones to other relevant standard zones, to authorise detailed guidelines/DCPs, local pedestrian and bicycle plans and public domain/ civic improvement plans
- To include a list of active living criteria (similar to those in the previous draft SEPP 66) as a special provision (for consideration with specified DAs).

At the local government level, structure plans should underpin local plan provisions. Whether plans are linked to a Standard Instrument or separate and council-area specific local instruments, objectives of the plan and zones (if they remain) should address supportive environments for active living. Such objects would translate into enhanced land-use and transport integration, informed land release and redevelopment location decisions, and would require consideration of detail at the DA stage.

4.2 Question: Make-up of Panels?

On the assumption that 'other Planning bodies' (such as the PAC and JRPPs) will remain, it would be appropriate for a member to have experience and qualifications in matters of public health.

4.3 Question: Future role of Ministerial Directions?

There is no mention of a role for Ministerial Directions in local plan-making in the Issues Paper. If the intent is not to retain such a power, PCAL recommends that current directions relating to land-use/transport integration be addressed via a SEPP and/ or in the Standard (LEP) Instrument.
Attachment 1: Agencies representation at the PCAL/HBEP Supportive Environments Forum 31st January 2012

| Australian Institute of Architects         |
| Australian Institute of Landscape Architects |
| Centre for Health Equity Training Research and Evaluation, University of New South Wales |
| Council on the Ageing                       |
| Danny Wiggins Planning, Facilitation and Education Services |
| Healthy Built Environments Program, University of New South Wales |
| Heart Foundation                            |
| Hunter New England Local Health District    |
| Local Government and Shires Association of NSW |
| South Western Sydney and Sydney Local Health Districts |
| Northern Sydney Local Health District       |
| NSW Premier’s Council for Active Living     |
| Office of Environment and Heritage          |
| Planning Institute of Australia             |
| Transport for NSW                           |