Planning agreements: towards better integration of land-use planning with infrastructure planning

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*Planning processes are under review. The Department of Infrastructure, Planning and Natural Resources (**DIPNR**) is conducting a review of developer contributions through s 94 of the Environmental Planning and Assessment Act 1979 (NSW). On 18 November 2003, the Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003 was introduced to NSW State Parliament but was withdrawn on 29 June 2004. This article will argue that planning agreements are possible even in the absence of legislation, but that legislation should be introduced to provide consistency in application or alternatively to explicitly make such common law agreements illegal. In May 2004, DIPNR placed on public exhibition proposed amendments to State Environmental Planning Policy No 1 (**SEPP 1**), that provide for a consistent approach when departing from development standards and requiring that, for example, social or community benefits be achieved in exchange for such departures. It is suggested that such an exchange of benefits should be documented in a planning agreement.*

INTRODUCTION

Planning agreements, otherwise referred to as developer agreements, are not a new phenomenon. Negotiations between councils and developers, especially of large sites, to achieve such outcomes as community facilities, halls, libraries and the like appear to be relatively common. This is usually a negotiated contractual arrangement that provides a positive outcome for the city. The purpose of this article is to investigate these arrangements from both a legal and planning merit perspective. For example, whether both parties have entered into such contracts voluntarily and whether any illegality exists in the administrative process will be considered. The transparency and general perception of these arrangements will also be considered, as well as whether the best planning outcome has been achieved.

It is not considered appropriate to assess specific examples. It is intended rather to review how such negotiations would sit within the existing legislative and common law framework within which local government must operate. Further, some comments will be made with regard to infrastructure, asset and land-use planning, specifically relating to other mechanisms employed to finance and deliver outcomes. This commentary is necessary to determine the contribution that any planning agreements process can make.

This article is not intended to advocate regular departures from development standards, nor does it suggest that planning agreements should be seen solely as an alternative infrastructure funding tool. The purpose here is to articulate a process by which any departures from development standards, consistent with good planning, translate in a fair, equitable and transparent way to provide appropriate

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sharing of benefits between the developer and the community. It is the author's view that, given the increased tendency to enter into such agreements, legislation is necessary, either to standardise and make these arrangements transparent in every instance, or alternatively to make them explicitly illegal.

Note that in this article, the term "public assets" is a reference to "properties", "facilities", "infrastructure", "services" and the like.

LEGAL FRAMEWORK AND RELATED ISSUES

The authority for councils to enter into contracts or agreements is provided in s 22 of the *Local Government Act 1993* (NSW), which refers to s 50 of the *Interpretation Act 1987* (NSW). This provides that:

> (1) A statutory corporation:
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> …
>
> (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions.

A local government authority is a statutory corporation and so may enter into a contract; while the delivery of public assets is a necessary function of the council.

On its own, a contractual arrangement with another party is not a concern. Issues arise when the contract is negotiated in conjunction with the assessment of a development application. In *Meriton Apartments Pty Ltd v Minister for Urban Affairs and Planning* (2000) 107 LGERA 363; [2000] NSWLEC 20 (18 February 2000), South Sydney City Council had imposed a condition requiring the provision of affordable housing. Meriton Apartments had challenged this on a number of grounds that could be used as a starting point for the concerns that arise with any innovative funding or asset delivery system. It should be noted that with regard to affordable housing, subsequent enabling legislation has made this decision redundant. The principles and issues though, remain.

Exclusivity of s 94 for the provision of public assets

Other conditions cannot require the provision of public assets

In the *Meriton Apartments* case, Cowdry J, at [42], having referred to other cases, states that: "These decisions recognised that if s 94 was not the sole source of power for requiring contributions, s 80 could be utilised to circumvent the requirements of s 94 thus rendering such section a nullity." At [44]: "It follows that the challenged provisions, seeking a contribution, either in kind or in money, are otherwise than in accordance with s 94(1) of the Act. They are accordingly invalid."

Section 80 provides for the determination of an application and s 80A relates to the imposition of conditions on development consents. Therefore, at the time of this judgment, there would have been no opportunity to apply conditions of a determination that circumvent the provisions of s 94. "Exclusivity", as referred to in the *Meriton Apartments* case, refers to s 94 being the only means of applying a condition of development consent that requires the provision of public assets. There is no suggestion that s 94 is the only means of obtaining these assets elsewhere through the development process.

Other legislation providing for the funding and delivery of public assets

The *Local Government Act 1993* (NSW) challenges the exclusivity of s 94 with respect to the provision of public assets through the development process by allowing an alternative method of levying new developments to provide for public assets.

Section 306 of the *Water Management Act 2000* (NSW), which is applied through s 64 of the *Local Government Act 1993* (NSW) provides that a council:

> may impose certain requirements before granting certificate of compliance.

> (1) This section applies to such kinds of development as are prescribed by the regulations[1] for the purposes of this section.
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> (2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:
>
> (a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works[2] as are specified in the notice, being existing works or projected works, or both,
>
> (b) to construct water management works to serve the development.

It can be argued that drainage and flood work could include, apart from specific stormwater infrastructure, kerb and guttering, roads used as overland flow paths, and parks used for stormwater retention or detention.

Given that an entire program can be funded by means other than s 94, and that the scheme does not require that the burden be specified at the time of granting consent but rather prior to the issue of a certificate of compliance,[3] the burden on the development industry is no longer limited to that imposed through s 94.

The parliament has provided at least one alternative to s 94 for the funding of public assets through the development process. Perhaps parliament intends that s 94 is the exclusive means of obtaining public assets within the development assessment process (between lodgment of an application and its determination); but not exclusive within the broader development process (between creation of a planning instrument and issue of an occupation certificate).

Where, and how, within this broader process are planning agreements made?

Clearly it is important to ensure that planning agreements are made prior to the submission of a development application. This is possible only if the contract "offer" terms are built into the development controls and associated policy statements. This will allow for a contract to be made prior to, or upon, the submission of a development application rather than during assessment.

To allow for planning agreements to be made, flexibility must be available in the planning controls.[4] These must stipulate that to vary the designated control, a commensurate public benefit must be provided. This ensures that the contract is effectively made when the private benefit is accepted. For example, if the private benefit represents a variation in the allowable floor space to that provided in the development controls, the submission of an application that incorporates a variation represents an acceptance of the terms of the contract.

The provision of private benefits is another important characteristic that planning agreements must have. The provision of private benefits ensures that both parties are entering into the agreement voluntarily. Each party is receiving a benefit. A private benefit must be offered otherwise there is no motive for the developer to participate. If the consent authority is simply withholding consent subject to provision of public benefits there is a clear abuse of administrative power.

Thirdly, to ensure transparency and equity in the process, it is considered that the value of public benefits being sought in exchange for the private benefits must be clearly articulated in relevant

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[1] Section 58B of the *Water Management (Water Supply Authorities – Finance) Regulation 1996* (NSW) lists the prescribed developments as "the erection, enlargement or extension of a building…. The subdivision of land, … the change of use of land"

[2] *Water Management Act 2000*, s 283 provides that " 'Water management work' means a water supply work, drainage work, sewage work or flood work."

[3] In the Sydney region these have, in the past, been issued solely by Sydney Water but this section provides entitlements to councils with regard to drainage and flood mitigation assets.

[4] At the time of writing, DIPNR was exhibiting a proposed amendment to SEPP 1. This is entitled *State Environmental Planning Policy (Application of Development Standards) 2004,* and provides specifically that an applicant may propose to depart from the development standards but must illustrate for example, that the departure would allow for a commensurate social or economic benefit to the community.

publications and policies of council. These form part of the "offer" presented by the council, and in fact, represent the terms of the offer including the price.

A planning agreement between the consent authority and the developer, in which the latter agrees to provide a public benefit (or funding for a public benefit), must clearly have the following characteristics:

(a) The private benefit must be clearly articulated in the development controls (the offer);

(b) The exchange measure of public benefits against private benefits must be clearly articulated in council's policy documents (the offer terms and price);

(c) The private benefit should only be offered in exchange for a public benefit (the latter being the "consideration"); and

(d) The public benefit may only be accepted as consideration for a private benefit (acceptance of offer, "promise" made in exchange for "consideration").

In combination, these characteristics ensure a legal contract is made and provide assurance and certainty to developers, the community and the council as to the promise being made, and the expected consideration.

For the purpose of providing further clarity a planning agreement should be seen as two conjoined contracts. The first is the exchange of private benefits for a calculated value of public benefits. For the purposes of this article, this could be called the "Contract for the Departure from Development Standards". This is entered into when the developer opts to accept stipulated private benefits in response to the council's promise outlined in the planning scheme. It is important to note that the council is simply promising to assess the development against a different standard because there will follow commensurate public benefits that will address the impacts of the varied standard. This contract should be considered as completed once a development application has been lodged that proposes a variation of the relevant development standard.

The second contract should be explicitly outlined in the form of a deed. This deed should express the specific scope of works to be provided for the calculated value of public benefits. This could be called the "Deed for Allocation of Public Works". This should specifically state in the recitals that the previous agreement has been reached. That is, to the extent of the departure from the relevant development standards, a proportionate allocation to public assets will be made. The scope of works, specifications and attributed valuation of each of these assets will be outlined in this deed.

Therefore, it is argued that the exclusivity of s 94 has not been breached within the assessment process as a separate contractual arrangement has been made external to, and prior to, that process.

As an aside, the use of deeds to document the scope of public works to be delivered need not be limited to situations where there have been departures from development standards. For example, in urban redevelopment areas, significant public assets may be required as a direct consequence of the development. A deed would be valuable to articulate the full scope of these public assets, illustrating how that scope is divided according to the various obligations of the developer. The package may, for example, be partitioned into three portions. The first of these would be that part that is required as a direct consequence of the development, such works to be also reflected in the conditions of consent. The second is the part of the package that is provided as an offset for contributions required under s 94, where these works are also reflected in the relevant s 94 plan. The third and final part may be those arising from departures from development standards.

Does it prevent the consent authority from exercising its discretionary power, or fetter that discretion?

The assessment of any development application is carried out in accordance with the discretion of the council, taking into consideration only the matters provided under s 79C of the *Environmental Planning and Assessment Act 1979* (NSW). Other activities of the council should not be permitted to hinder the exercise of that discretion. A previous contractual arrangement may be considered a fetter on the discretion in that should consent not be granted, council would be in breach of the agreement.

This can quite easily be overcome by expressly stating that the obligations of the contract apply only, and are subject, to the granting of development consent. It should also be stated that the extent

of any obligation is proportionate to the extent of the approved departure from any standard. The planning agreement has not fettered the discretion; it has simply provided a different development standard for the application of that discretion.

There could also be an argument that the existence of a contract was an irrelevant consideration for the purpose of determining any development consent. This simply enhances the argument for providing the terms of the contract within published council documents as well as the development control plan or local environmental plan. The applicant accepts prior to the submission of an application that public benefits to a certain value must be provided. The contract has been made.

Is it a tax?

Returning to the *Meriton Apartments* case, Cowdry J at [46] states that:

> It is obvious that the Act was not intended to operate as a statute for the purpose of taxation. It follows that any condition or provision of a planning instrument that imposes a tax will be ultra vires.

Subsequent discussion considers the question of what constitutes a tax, with the general conclusion being that, at [51]:

> the distinguishing feature of a tax being in fact that it is a compulsory contribution, imposed by the sovereign authority on, and required from, the general body of subjects or citizens as distinguished from isolated levies on individuals.

There is no compulsion in a planning agreement. There is only a mutually beneficial exchange of benefits. More importantly it is not applied generally, but rather in isolated cases with the agreement of both parties.

Is it an unlawful interference of private and propriety rights of land-owners?

In the *Meriton Apartments* case at [54], Cowdry J states that:

> Whilst the challenged provisions do not constitute a tax they impose a financial burden of a kind not envisaged by the Act. Such Act contemplates contributions of the kind referred to in s 94, namely a quantifiable contribution confined to the amelioration of the impact of development.

Although in a planning agreement there is a "financial burden of a kind not envisaged by the Act", it is only applied if the developer receives a private benefit. As such there is no net burden.

The "Deed for Allocation of Public Works" may provide for specific work on private land such as a new road, park, stormwater management measures or through-site links. Such works would restrict the manner in which a site can be developed and it could be argued that these are an interference of private rights of land-owners. Any urban design assessment may similarly guide development on a particular site. Further, the planning agreement provides for compensation for those works and it is reiterated that there is no net burden. More importantly, it allows the council to move away from a directive approach to planning and begins to engage the development industry in providing outcomes for the benefit of the broader community.

Is the provision discriminatory?

Cowdry J refers to *Mixnam's Properties Ltd v Chertsey Urban District Council*:[5] "Mixnam's is authority for the proposition that the exercise of delegated authority must be free from 'arbitrariness or partiality' ". The discrimination argument, in reference to planning agreements, would rest on the questions of whether the amounts of private benefits offered are consistent and whether the exchange measure is consistent:

> That such criteria differ depending on the exact locality and nature of a proposed development is not indicative of partiality or arbitrariness but rather reflects that the LEP is a planning instrument. A planning scheme necessarily acknowledges that different localities may require diverse planning treatment.

[5] [1964] 1 QB 214 at [69] and [70].

It is imperative that there is a clear articulation of the planning motive for offering private benefits, including the public assets that will be derived from the process. It is this issue that begins to illustrate the value to all participants of the development by council of public domain plans, a documented long-term vision for the city.

PLANNING ISSUES

To engage the development industry in the provision of public benefits beyond their statutory obligations, the consent authority must, as stated earlier, provide the developer with a private benefit in exchange.

The only private benefits a local authority can grant are changes in zoning, variation in development controls or the alleviation of statutory obligations such as the payment of contributions pursuant to s 94 of the *Environmental Planning and Assessment Act 1979* (NSW).

To vary any aspect of the development control framework has a number of implications and raises a number of questions. Some of these issues are addressed below.

Compromising certainty

The most significant issue with planning agreements that involve the variation of controls is the potential for compromising the certainty of those controls for the development industry, the community at large and even the consent authority. It is important therefore that they can only be varied in a specified, consistent and transparent way.

To retain certainty, the relevant planning instruments or Development Control Plans must identify clear trigger and stop mechanisms. That is, a trigger for instigating the need for a planning agreement, and a stop device to limit the extent to which planning controls can be varied.

If the private benefit being offered is a variation in the Floor Space Ratio (**FSR**), then the controls must stipulate the FSR from which the system applies and the maximum FSR permissible. If consent is granted allowing the FSR to exceed the maximum on any particular site certainty has again been compromised. This, though, is a reflection of the rigidity of the *application* of controls. It does not reflect, either positively or negatively, on whether a planning agreements system or a flexible control system encourages over-development or reduces the certainty of any controls.

Any developer will be clear as to the maximum floor space available on a particular site, and the total cost of achieving that floor space. The controls should be written in such a way that any member of the general community can clearly interpret the maximum allowable floor space.

What is the development potential of a site?

The immediate question that arises then, is why can't the controls be clear about the development potential of a site? For example, with flexible floor space controls, the development industry will argue that if the allowable floor space is within a range, then council is acknowledging that the maximum permissible is the top of that range.

This is simply what the development industry has grown used to. Every planning instrument currently acknowledges that different sites and localities can sustain different uses and different densities. One of the key matters that differentiates localities is the public assets that service the sites in that area.

It must firstly be stated that few would suggest that the level of accuracy that development controls imply always reflects the development potential of a site. Secondly, and perhaps more importantly, the level of demand or need for public assets depends on the zoning, density *and location*. Location should therefore be built into the asset financing tools that are linked to the development process. The amount of contribution provided through s 94 depends on the scale and use of a building, but not its location. Development controls can be more site-specific and a public asset funding system that also employs these controls to evaluate the value of a contribution is better able to respond to the needs of a specific location.

For example, two sites may both have a maximum FSR of 3:1, but for one of them there is a trigger at 2.5:1 for a planning agreement for the provision of public assets. This simply acknowledges that substantial capital works must be carried out to achieve the urban design potential of the site. To

realise the maximum floor space achievable on the latter site, a contribution towards, or provision of, public assets is necessary. A clearer nexus is provided between the impacts or demands of a site, the applicable controls and the assets being provided. The development controls have been enhanced to allow a distinction to be made between the urban design capacity of a site and the civil infrastructure capacity of a site.

What public assets should be provided?

The purpose of planning agreements is to engage the development industry in the provision of infrastructure and assets consequential to the development of their site, but beyond that which would be reasonable to request as conditions of consent. In the redevelopment of large industrial sites, or more generally in urban renewal areas, it is necessary to provide significant new infrastructure on the site and require it to be dedicated to the community. Again in the *Meriton Apartments* case Cowdry J, on the issue of interference with propriety rights, states:

> 59. Reliance was also placed upon the decision the decision of *Hall & Co Ltd v Shoreham-by the Sea Urban District Council* [1964] 1 WLR 240 in which the condition of development required dedication of a roadway without compensation. The owner of the road was required to provide the use of such road to the public at large and not just to those connected to the development. The Court of Appeal found that the condition of consent requiring the construction of the roadway was a radical departure from the rights of ownership and unreasonable in the *Wednesbury* sense.[6]

There are clearly certain public assets that cannot be delivered by the local authority, are also unreasonable to request as conditions of consent, but which must be provided at the time of development of the site or on privately owned land. The public assets, however, need not be on the site. The higher quality demanded of existing roads and parks, and the higher standards required of stormwater infrastructure in an urban renewal area are all public assets triggered by development but beyond the reasonable request of any consent.

This illustrates the need for a better integration of land-use planning with public asset planning.

Why can't these all be paid for through s 94?

Theoretically they can. One could develop a master plan for the city that evaluated all transport and traffic management issues, stormwater issues, demands for open space and facilities and other like issues that influence public asset development. From this a detailed s 94 plan could be developed identifying every possible public asset that would be built and include it in a works program. Section 94 levies would be significantly higher but if there was any work to be done on site this could be offset against the contribution.

Of course theory is different to practice. A city is always a work in progress and can never be master-planned to that degree of accuracy. The time required to develop such a master plan would see hundreds, if not thousands of applications submitted and with their determination, many opportunities will be lost. Further, the order in which developments occur may trigger the need for temporary assets. Also, the timing of development influences the cost of public assets and contributions levied will rarely match actual costs, especially of land acquisitions.

Apportionment

Section 94 establishes apportionment as a key principle, and it is one that flows from the issue of reasonable burden in connection with the impacts of development activity. This ensures that local government does not require more of the development industry than the level of impact of development.

Planning agreements, however, should not be interpreted as a developer contribution scheme. As stated earlier, they represent an exchange of benefits and therefore impose no net burden on the developer. Apportionment should only apply to the obligations *imposed* on developers. If a developer contracts to provide additional public benefits, then there should be no argument that those benefits

[6] (2000) 107 LGERA 363; [2000] NSWLEC 20.

could not relieve the burden of the existing community or alternatively increase the total scope of the works program.

This could be better stated with the following simplified example:

Say a local authority has a works program of $10 million per annum for 10 years. We are required to apportion the obligations of the existing community and the future community that will arrive as a result of development activity in that time. For simplicity, let us assume that this assessment tells us that overall the obligations of the existing community are $7 million, and those of the development industry are $3 million for each of those years. Imposed developer contributions can appropriately be calculated to match that $3 million annual burden because this is the burden imposed by the development activity.

Suppose then that developers agree, through planning agreements, to contribute more than their statutory obligation, say in total $1 million per annum. Now, that figure can be allocated in one of four general ways:

1. The $1 m is subsumed into the developer contribution portion to reduce s 94 obligations to $2m.	Total paid by development industry is three-tenths (3/10) of the total and the integrity of the proportions are maintained.
2. The $1 m is added to the s 94 obligations and the works program is grown proportionately to approximately $13.33 m.	Total paid by development industry is three-tenths (4/13.333 = 3/10) of the total and the integrity of the proportions is maintained.
3. The $1 m is allocated to relieve the burden of the existing community by reducing their $7 m obligations	Total paid by development industry is four-tenths (4/10) of the total.
4. The $1 m is added to the total works program, increasing it to $11 m.	The total paid by the development industry is four-elevenths (4/11 = 3.6/10) of the total.

The only reason for retaining the integrity of the nominated proportions, in this case three-tenths development industry, seven-tenths existing community, is to ensure the burden on the development industry *reasonably* reflects the impacts of development activity. As planning agreements represent no net burden on the developer, there can be no argument that they increase the burden on the development industry with regard to funding of public assets.

It is argued therefore, that although either of the first two options may be adopted, there is no compulsion by the principle of apportionment to do so.

Options one and three raise a concern from the perspective of accountability. It could not be argued that private benefits have been delivered to developers while there is no increase in the value of public assets delivered to the community. The total works program must grow to reflect the greater burden imposed on public assets by the provision of private benefits.

Option four, then, is the most transparent and robust model for allocation of resources. That is, three-elevenths provided through the obligations of developers under s 94, seven-elevenths provided through the existing community and one-eleventh through planning agreements. It is very important that the public assets derived through planning agreements are in addition to those arising from a capital works program. The very reason for having planning agreements, as identified under the heading "What public assets should be provided?" above, is that some assets cannot be delivered by the council and are unreasonable to request as conditions of development consent. The capital works program must grow to reflect the achievement of these extra assets. Furthermore, planning agreements can never be considered a guaranteed source of funds. They are purely a mechanism for delivering a specific kind of asset.

It is acknowledged that this model is very simplistic. It is intended only to illustrate how assets derived through a planning agreements system should relate to other assets.

Consistency in application

The provision of a trigger in the development controls and attribution of a cost to achieve the maximum floor space on a site explicitly fixes the required value of public domain works required. However it is not possible at the time of setting the controls to precisely establish the cost of those works that can be achieved. Nevertheless, the value of the required public domain works is fixed through the "Contract for the Departure from Development Standards" as outlined above, under the heading "Where, and how, within this broader process are planning agreements made?".

Generally, sites that were provided with flexible controls to allow for the potential of making a planning agreement were identified as a result of the need to obtain certain public assets. If these works are not located on the site, or if they must be carried out in the future, then both parties must still honour the terms of the first contract to ensure consistency of application and certainty in the developers' obligations. To reiterate, the "Contract for the Departure from Development Standards" is the exchange of private benefits for *an agreed value* of public benefits. When the "Deed for Allocation of Public Works" is drafted identifying the scope of works it may be difficult to oblige the developer to carry it out. For example, a developer may dedicate land for part of a future road. They may provide a temporary upgrade but the final works should be carried out when all the pieces of that future roadway are obtained.

In some instances it may be necessary to obtain a monetary contribution toward future works rather than delivering public assets. There should be no distinction between monetary contributions and works-in-kind. The latter is always preferable, but the former is sometimes required to ensure consistency in the valuation of the departure from any development standard.

Can we have confidence in the Development Standards?

Another issue that requires consideration is the concern that councils may reduce the density proposed by their development standards, and then allow departures so as to ensure that most public assets are delivered through planning agreements. This may be addressed by providing specific guidelines in the regulations. For example, urban renewal areas that require significant infrastructure to be provided on private land would be permitted the greatest departures. Existing town centres that good planning suggests should have increased populations may have measured departures calculated to provide specific facilities or open space that further attracts workers, residents and other users. Regulations should also provide the value of departures as a fixed percentage of land value in the designated area.

When there are regulated or legislated guidelines for the application of any system there will always be far greater confidence of all participants.

Transparency

It is necessary to address the perception that developers are able to pay for floor space. The best approach to presenting flexible development controls, and perhaps the most transparent to the community, would be to specify the maximum control in the relevant planning scheme and in the same table identify the lower control that triggers the requirement for a planning agreement.

This would show that councils are not giving more to developers but rather demanding more of them.

By far the most important aspect of the issue of transparency is that with which this article commenced. Common law planning agreements already exist. Without clear measures and mechanisms, the outcomes achieved will not only be haphazard, they are less likely to provide outcomes consistent with a stated vision for the city, offers are unlikely to be consistent across all applications, and they will always be questionable with respect to whether there is abuse of administrative power.

CONCLUSION

Together with the employment of planning agreements, s 94 of the *Environmental Planning & Assessment Act 1979* (NSW) and s 64 of the *Local Government Act 1993* (NSW) constitute a suite of mechanisms for delivering public assets through development activity. These must be considered and applied collectively so that the burden is explicit and the long-term outcomes are compatible and consistent. Once there is more than one public asset funding tool, though, the approach to the programming for the delivery of outcomes must be reviewed.

It is the author's opinion that amendments are required to the *Local Government Act 1993* (NSW) and the *Environmental Planning and Assessment Act 1979* (NSW) to formalise the process by which public assets are delivered. This would require that strategic planning and public asset planning are better integrated. To achieve such integration would require the preparation of a vision for the city, articulated preferably in map form, from which a long-term works program is derived. Current map-based information management systems allow for the presentation, as a series of overlaying maps, of all the controls, constraints and opportunities in a city. Such a transparent presentation of corporate information promotes firstly that obligations imposed or negotiated with developers are consistent with outcomes being delivered by the council itself. Secondly, the community has continuous and easily understandable access to the long-term plans for their city. Public consultation can become community involvement in the development of that vision. Finally the activities of other authorities, such as bus routes and utilities, incorporated as further map layers, encourages information sharing and ultimately the development of the City as a coherent whole.

It is the author's opinion that the generation of a long-term works program should be a statutory requirement but should be extracted from the s 94 plan. Section 94, along with each of the other funding tools, including s 64 of the *Local Government Act 1993* (NSW), planning agreements, special and ordinary rates, grants and any others should each make reference to the same long-term works program. The management plan could then also make reference to this separately articulated program.

The issues raised above illustrate the complexity not only of maintaining a sound planning agreements system, but also of strategic planning generally. This article is simply an attempt to identify and respond to the issues that may be of concern to the courts and the community. Any proposed amendments to legislation should aim to address each of these issues.