

Where is Plan *first* Up To Now?

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Subjects: *Planfirst*, objectives, strategic planning and development controls, integration of development controls

March 2003

Introduction

This is an article about Plan *first*. Sometimes it's difficult to tell where these reform movements are up to. Everything is so controlled. There is plenty of vacuous spin, but little real information and discussion.

So where is Plan *first* really up to? We know from the spin it will bring about sustainable development and huge cost savings, but what about the hard-core details?

What we do know is:

Plan *first* has two separate and unrelated objectives

The first objective is to do some regional planning.

The second objective is to rationalise those thousands of pages of unintegrated controls that apply to each parcel of land in NSW. These thousands of pages are the result of one of the fundamental flaws of the NSW Planning system, and it is gratifying that the State Government has recognised that something needs to be done about this particular flaw at least.

These two objectives do not have to be linked. One can rationalise the multitude of documents without changing the policy content. Indeed, it confuses the public to be reformatting and making new policy at the one time.

When South Australia and Victoria integrated their layers of control documents in the 1980's they merely rewrote existing policy into a new format, rather than make new policy. Much the same thing happened with the Approvals and Orders part of the *Local Government Act* in 1993.

One should not oversell the integration exercise. Creating a single set of integrated controls out of the existing mess is essentially about improving the transparency and efficiency of the development control system and helping to restore some community faith in it.

These are important aims. Once the exercise is done, especially if a place rather than a land-use format is used, there can be substantial improvements in the outcomes achieved from development control. But that can be a separate exercise and may indeed flow from some regional planning work.

Legislation has been shelved

We also know that, after an expensive and time-wasting process, the idea of legislation to implement Plan *first* seems to have been shelved. Why?

Probably because new legislation was never needed anyway. And as conceived, it was always a fantasy.

It is the case that every few years, all Planning departments have a rush of blood to the head. This often has something to do with having a senior minister who hopefully can wield influence. This then seems like the time for “Planners to Rule”.

But Planners will never be allowed to rule the professionals that make up the other departments.

No, Planners have to do more to gain respect than get Parliament to pass a law demanding it. They have to actually do it, and do it well – Strategic Planning that is. And they don’t need legislation to plan.

The most effective regional planning of recent years has been in South-East Queensland – all done without new legislation, or new statutory bodies, or even tame, regional advisory committees. Just getting on and, in a non-threatening manner, doing intelligent, cooperative work useful to all concerned. This has sustained an effective regional planning exercise for over ten years. The key is to get the right process for the problems and institutions of the area and the day, rather than setting out to produce a series of ‘Regional Plans’ using a standard processes and institutions, regardless of what is really needed.

Anyway, we only need legislation for development control

So, while new legislation and new institutions are not needed to do State and Regional planning, legislation is needed if, in the course of implementing plans, we need to affect the development rights and obligations of landowners.

The existing Act has plenty of words in it to do this job and a single set of controls for each parcel of land is possible under the existing legislation. The Warringah LEP in 2000 demonstrated that. Nothing in the legislation really needs to change to achieve Plan *first* objectives, although a couple of minor amendments might make it a bit easier.

What is really needed is some tough intellectual minded work to prepare a draft set of detailed proposals for how a single set of integrated controls will work and what the performance measures will be. Instead of exhibiting these proposals and asking for submissions that can be ignored, they should be workshopped widely (and not just with the usual suspects), so that officers from Planning NSW have to engage and justify.

In the meantime, the following suggestions are offered:

How to integrate the controls

Design the system from the point of view of the users

Planning controls are accessed by thousands of people daily. These people do not really care who *made* the controls, they just want to know what they are. The primary performance measure for anything the Department does in its management of the development control system should be how the new system works for the users, not what is convenient for the Department.

Digital cadastral data bases provide us with wonderful tools to collect, manipulate and deliver data about land parcels. They can revolutionise how we think about land. By bringing together ownership details and the rights and obligations that attach to separate parcels of land, a land information system can greatly increase the sophistication with which we manage the environment.

The integration of the South Australian and Victorian controls of the 1970s and 1980s were preparing them for digitisation on a parcel basis. The designers of the NSW system at the time seemed to have no such vision.

It is now the opportunity for the managers of the State's development control system (that is, Planning NSW) to remedy this. If they can do it right, they could finish up with a system that is in advance of all the other States.

The key is for the Department to take responsibility for ensuring the controls are integrated. It should not, for example, leave it to every user to have to work out how a SEPP 51, for example, modifies or overrides or does not affect a council's signs controls. As a body with authority, the Planning Department should do that job once and then it is done for everyone. This will add enormously to the value of the data and would lead to huge improvements in productivity.

However, delivering this vision carries with it certain disciplines.

Any amendment must specifically amend what exists

An integrated set of controls will require the officers of the Department (and in councils) to understand the effect of any proposed change on those controls that already exist.

If there is to be an integrated set of controls then the rule *must* be that '*any amendment must specifically amend what exists*'; the new cannot just be layered over the existing.

The luxury of coming to work on a Monday morning and responding to the issue of the week with a new SEP, or DCP will be gone. In its place will be serious policy and statutory planning work. 'What is the issue? What is the solution? Does the solution need a change to any of the existing controls? What are the exact amendments required??'

The understanding of the existing controls by the officers will be easier with a single set of place-formatted controls.

For example, in improving the controls applying to the coastline it would be a relatively easy task for the State officers to go through each council's integrated control document (such as Warringah's LEP) and work out what change is needed to achieve the new coastal objectives.

Instead of being layered over existing legislation and documentation, a new coastal SEPP would specifically amend each council's single document of controls. On 'day one' of the new SEPP, the authoritative version of the effect of the new controls for the relevant places in each of the coastal councils would appear on our screens. We would not have to go off to our lawyers to try to work out how this fits with that and what process we now have to use.

And the discipline of working out the actual amendments would significantly reduce the amount of dross in new policies. Most SEPPs have a lot of words that do no real development control work (as do DCPs for that matter, especially in those councils that produce a new DCP as the answer to whatever is the problem).

Working out what needs to change often would lead to the conclusion that not much does, in fact.

Strategic plans should not be part of the control document

Plans do not need to be statutory to be effective. Indeed, plans that are not statutory are likely to say much more than those that are.

The only words that need to be statutory are those that affect people's property rights and obligations. However, development control is only one means to an end. It is one strategy for achieving planning objectives. Therefore the source of the controls should be documented. A Strategic Plan documenting the complementary means to achieve the outcomes for the area should accompany any new controls. But a Strategic Plan should be non-justiciable. It should justify the controls politically or legislatively, but only the actual words in the development control document should be used for the assessment or put in evidence on an appeal.

Part of the present confusion about the inclusion of the Strategic Planning documents in the statutory control document stems possibly from vestiges of the 'Planners Rule' fantasy. Part would also seem to come from confusion about the role of policy documents in interpreting control documents.

The rule should be that, if words do development control work (and this includes criteria for the exercise of discretions), then into the development controls they go. If they don't, then why clutter up the control document with unnecessary words and provide lawyers with virgin fields to plough (as well as waste paper in assessment reports)?

Detailed controls are still part of the document

An integrated document must contain all the controls. There is concern that the Department's workload will be too great if it has to process all the changes to the single document.

With an integrated set of controls, the same process for approving the big control changes has to be used for making the detailed changes. It is difficult to define what is of State significance and what is of local significance. The devil can be in the detail. We have the example of the boiling frog - the tyranny of small decisions.

Also, if the integrated controls are to be put on a central land information system, they have to be brought together at a central place.

Therefore, in the end, the Department as the operator of the LIS, or at least the gatekeeper of the integrated information going onto the LIS, has to sign off on all the controls. Users will rely on the information so someone in authority has to certify it.

With the new format controls, the Department's new regional structure and, hopefully, a much closer working relationship between staff at the two levels, I believe that it will be possible for the State to devise processes to give centralised approval to the type of controls that previously were to be found in DCPs.

The whole point of the integrated controls is that the format is not based on who wrote or approved the controls. The controls are the controls and they are in one integrated document, regardless of where they originated from. Therefore there cannot be two types of control documents that depend on which level of government approved them. State officers will have to process the detailed as well as the general, as they should, if they are planning the State.

Conclusion

Plan *first* is important and it has some important objectives to achieve, even though it has been oversold.

We need less spin, and more focused conceptual work. After a couple of years of talking about it, there should not be fundamental issues left unresolved.

Let's not have the regional planning initiatives getting in the way of reformatting controls into an integrated document. Let's make sure that regional planning work deals with regional issues in a manner useful for the region and does not just produce some standard product produced by a standard process – another Planning 'point-outable' to be shelved.

Understand that regional planning and reformatting controls can be, and probably should be, quite separate tasks. Let's get agreement on the key principles and performance measures for integrated controls. Then let's get on with the important work of writing development rights and obligations the users can understand, and access in an integrated form on their screens.

*A similar version of this article was published in the March 2003 issue of **New Planner**, the official publication of the NSW Division of the Planning Institute of Australia.*