Department of Planning (Submission 69 – NSW Govt)

Additional questions from Members

Latest reforms

Question 1

Page 4 of the government submission says that further work is required to see the 2008 reforms implemented efficiently and effectively to strengthen and clarify administrative procedures and to address the implementation of strategic plans. Can you provide detail on, and a timeline for, the remaining implementation actions?

Answer:

Please refer to the attached schedule (tabbed 'A') which indicates target dates for the initiatives under the planning reforms.

Question 2

The government submission included in each section a number of recommendations for future action. Is there a plan for when these actions should or could be undertaken, and by whom?

Answer:

The recommendations presented in the NSW Government's submission are for the Committee's consideration as part of the Parliamentary Inquiry process.

Question 3

A number of witnesses at the first hearing raised the issue of exactly What development matters would be assessed by the Planning Assessment Commission. Some stakeholders have suggested that there should be explicit provisions outlining the matters to be considered by the PAC.

Can you confirm which matters will be assessed by the PAC, and where this information is stated?

Answer:

The type of matters which are being determined by the Planning Assessment Commission is outlined in the instrument of delegation (tabbed 'B'), gazetted on 5 December 2008. The Instrument of delegation can be found on the Department's website:
http://www.planning.nsw.gov.au/planningsystem/pac.asp

The Department has recently drafted a fact sheet on the *Role of the Planning Assessment Commission in Part 3A Projects* which is also attached for the Committee's information (tabbed 'C').

Question 4

Can you advise on the relationship between, and the distinct roles of, the Office of the Coordinator General and the Minister for Planning and the PAC, in terms of assessing major projects?

Answer:

The Office of the Coordinator General has statutory powers to determine projects being funded under the Commonwealth's Government $42 billion stimulus package such as school and social housing projects where the Coordinator-General has used a direction under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

The Minister for Planning determines projects listed in the Major Projects State Environmental Planning Policy or by an order published in the NSW Government Gazette.

The role of the Planning Assessment Commission is outlined in Question 3.

Overall strategic planning

Question 5

A number of submissions made the point that the planning framework is more than just legislation. Others have said that legislation is simply the tool used, when regulation is necessary, to achieve the desired outcomes of our planned strategic vision for the future.

Can you provide a brief overview of the hierarchy of non-legislative elements that comprise and influence the planning framework?

Answer:

There is a large number of 'non-legislative elements' that are part of the planning framework but there is no particular hierarchy. Each one is relevant depending on the situation. The Department of Planning's website (www.planning.nsw.gov.au) contains:

- Sydney Metropolitan Strategy and sub-regional strategies;
- Regional strategies;
- Land supply and management;
- National policies and agreements;
- Circulars and practice notes on the planning system, building system and local planning;
- Planning policies such as housing, coastal protection, hazards, biodiversity and many others;
- Section 117 Directions.
- Environmental assessment policies; and
- Register of Development Assessment Guidelines.

Question 6

The need to integrate planning and delivery of infrastructure with land-use planning is well acknowledged. Page 9 of the submission states that it would be worth exploring the option of expressly including provisions in the Act

regarding strategic planning for infrastructure to inform and be informed by land use strategies for the better integration of land use planning and delivery of infrastructure and services.

Can you expand on what including such provisions would achieve?

Answer:

Appropriate implementation of land use planning proposals depends in substantial measure on delivery of necessary infrastructure at the right time. This is especially the case in contexts where the land use plan proposes a fundamentally different set of uses to those which may currently exist. At present, administrative processes have been developed to achieve infrastructure implementation in line with land use planning - for example in Sydney's North West and South West Growth Centres. Legislation incorporating the requirement to specifically recognise the linkage between land use planning and infrastructure planning and delivery would serve to strengthen those processes by clearly mandating to all agencies involved in land use and infrastructure planning and development their responsibility to adequately resource the planning process and have a clear focus on future infrastructure needs and timing to meet the challenges of growth and change.

Question 7

In evidence a number of witnesses cited the Western Australia Planning Commission as an excellent model for involving all agencies in integrated planning for specific areas. They suggest the creation of a State Planning Commission supported by the Department of Planning.

Has the Department considered this model in terms of its applicability to NSW?

Answer:

In the development of the 2008 planning reforms the Government considered the Western Australian Planning Commission (WAPC) model. The WAPC is a forum comprised of government agencies, an independent Chair and other stakeholder representatives.

The Government was concerned that an added layer of bureaucracy and inflexibility might be generated by the introduction of a WAPC equivalent in NSW. The WAPC model also raises certain governance issues by the fusion of independent advisers, departmental CEOs and stakeholder or sectoral representatives into one forum.

With the 2008 reforms the Government opted for a model which maintained a clear distinction in the roles of Government agencies, stakeholders and independent technical experts, first by establishing the Planning Assessment Commission as a source of independent technical expertise, secondly by establishing the Implementation Advisory Committee of stakeholders, which meets monthly, and thirdly by maintaining a number of Government agency CEO groupings covering agencies with planning responsibilities.

Reform to EP&A Act

Question 8

Page 7 of the government submission notes there may be opportunities to promote risk-based assessment for development proposals under the EP&A Act, including development applications under Part 4 and project proposals under Part 5 of the Act. It says that this approach could be applied to Part 4 with the consent authority issuing a single approval across a range of legislation or conversely removing the need for multiple approvals where there is a comprehensive development approval?

Could you expand on this, including the difference between development applications and project proposals?

Answer:

Under Part 4, there is a high level of duplication since approval conditions are granted by councils as well as the relevant government agencies. A risk-based assessment approach would reduce duplication for low risk development applications by removing the requirement of seeking approval from government agencies.

Question 9

A number of stakeholders have suggested the development of two Acts to replace the EP&A – one Act to deal with the plan making process and one Act to deal with all development controls that apply to land; others suggested just the one Act for development control and no Act stipulating the plan making process.

In your view what are the pros and/or cons of these proposals?

Answer:

One of the strengths of the Act is the integration of planning and development control. It is important to link strategic planning with day to day decision making so that longer term visions for the State can be implemented and those longer term vision have a statutory force.

Question 10

The Environmental Defender's Office suggested to the Committee that ecologically sustainable development should now become the overriding objective of the Act and of the planning system, instead of being one of a number of unweighted considerations.

Do you see any practical merit in positioning ESD above the other objects of the Act?

Answer:

One of the strengths of the EP&A Act is the integration of sustainability and environmental factors with social and economic factors at every step. By not

having an Act to stipulate the process it would lead to inconsistencies and greater introduction of red tape. It would also undermine the importance of the strategic framework and sustainability.

The objects of the Act are as follows:

(a) to encourage:
  (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
  (ii) the promotion and co-ordination of the orderly and economic use and development of land,
  (iii) the protection, provision and co-ordination of communication and utility services,
  (iv) the provision of land for public purposes,
  (v) the provision and co-ordination of community services and facilities, and
  (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
  (vii) ecologically sustainable development, and
  (viii) the provision and maintenance of affordable housing, and
(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

All objects of the Act are equally important and it would not be appropriate to have one object positioned above the rest.

Question 11

In evidence on 9 March, Mr John Mant discussed what he called an integrated, parcel-based control system. In which all the controls that apply to an area or a parcel are consolidated into the one centralised document, and that if new controls are introduced that document must be amended. During the hearing some witnesses argued that it was unachievable while others argued that it was a goal that should be pursued.

Are you familiar with this concept, which Mr Mant says exists in South Australia? Do you think it could be achieved in NSW?

Answer:

The Department is familiar with the concept of an integrated, parcel based system and supports initiatives that will lead to users of the planning system being able to access all the planning controls applying to an individual parcel of land. Currently, and since 1980, much of this information is provided by councils to applicants through a certificate under section 149 of the EP&A Act.

The Standard Instrument for Local Environmental Plans introduced in 2006 is a significant step towards the delivery of an integrated parcel based system.

By standardising some provisions and the types of zones across all LEPs it does become possible to amend standard provisions and the land uses permitted or prohibited in the standard zones. At the same time, the Standard Instrument does allow for considerable variation in local provisions where appropriate.

However, the more the plans are standardised the easier it becomes to make the same amendment across all the plans, to give effect to a change in policy. As there are 152 councils in New South Wales, if provisions and/or the format of plans are not standardised then the administrative resources needed to ensure consistency, both within plans and across plans, is prohibitive. In this context the Department is encouraging councils to use model provisions where appropriate, both to assist the task of councils in making their new plans, and also to ensure consistency across local plans.

Ultimately, with this level of standardisation, it will be possible to align more State planning controls with the standard zones in LEPs in order to integrate the system further. This is the approach adopted by both the *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

On the other hand the Department is not convinced that the level of standardisation required by the Standard Instrument is appropriate for the range of planning controls that are dealt with in councils' Development Control Plans [DCPs]. The DCP controls are made by councils without reference to the Department, and provide that more fine grained local planning detail that councils, with their knowledge of their local areas, are better placed to develop. However, since 2006 the Department is encouraging councils to consolidate all of these controls in one DCP for the local government area. In the future the Department may look at standardisation of the DCP format, rather than particularly controls.

The Department no longer supports single planning documents, like the Warringah LEP 2000 is that they become very long: 439 pages – without maps, and are therefore present difficulties for users. In South Australia the Barossa Valley Plan runs to more than 500 pages. If such plans have place based controls rather than zonings then they also require substantial administrative resources to amend: one change may have to be made to the desired future character statements for 20 different areas, rather than to one or two zones that apply across the local government area.

Consequently the Department is now of the view that integrated parcel based planning system is more likely to be delivered through a combination of initiatives: the Standard Instrument for LEPs, rationalising and standardising the format of State Environmental Planning Policies, together with a variety of 'e-planning' iniatives. In this way controls applying to parcels can be accessed by web based tools from different documents, rather than by relying on having the controls in a single planning document. Such a system would then also remove the need for a separate section 149 certificate.

The Committee may not be aware but the *Liverpool LEP 2008* is available on the NSW legislation website www.legislation.nsw.gov.au in its entirety, both text and maps. The maps are linked to the cadastre and clearly show property boundaries, and the application of zones, and particular clauses to particular lots.

Question 12

In evidence the Planning Institute of Australia advocated creating two pieces of legislation – one to deal with strategy and the other half to deal with simple development control.

They described it as being "a simple system where the local authorities know what they are supposed to be doing, in terms of the use of land. Because all of the departments that have been involved in deciding how things should develop have had their arguments before the event, not after the event, as happens now. So one finishes up with a development control system where local government authorities are able to confidently set up a framework to administer it without it being always problematic and always likely to lead into court."

How realistic is it for the requirements of government agencies to be identified for a parcel of land so that individual development applications do not need to be referred to them?

Answer:

Refer to response to Question 9.

Consolidation of environmental planning instruments (SEPPs etc)

Question 13

It was suggested to the Committee by representatives from the City of Sydney that it would be ideal if all SEPPs were consolidated and published in the one document and that document was updated as new information came.

Is this a practical achievable goal? If not, what are the practical reasons that would preclude it?

Answer:

This is not a practical suggestion due to the number and range of topics covered by the different SEPPs, however, the Department is heading towards the reduction of the number of State Environmental Planning Policies. For example, the introduction of the Infrastructure SEPP, in January 2008, consolidated and updated the provision of 20 separate infrastructure related SEPPs into one instrument.

The recent planning reforms will lead to the removal of Regional Environmental Plans (REPs) and a planning layer. Without REPs, there will be an only 2-tier system:
- State Environmental Planning Policies (SEPPs); and
- Local Environmental Plans (LEPs).

The existing REPs are being reviewed. Many will be deleted. The remaining relevant provisions will be incorporated into the SEPPs and relevant LEPs.

Referrals and concurrences

Question 14

The Property Council have suggested a single point of government agency assessment and approval. They say the goal should be a single point of assessment, where for instance the Department of Planning coordinates with the relevant state agencies, receives their advice, and makes the determination on behalf of the government. Is such a proposal feasible?

Answer:

The Property Council proposal has been implemented in the introduction of the Part 3A of the Environmental Planning and Assessment Act. Part 3A provides the Department of Planning with the legislative framework for the lodgement, assessment and approval of major projects.

During the assessment of major projects, the Department coordinates the consultation process with the relevant government agencies and councils. Following the assessment of the project, the Minister or the Planning Assessment Commission determines the project. Further approvals from other agencies are no longer required.

The Department is currently investigating whether Part 3A principles can be extended to Part 4 development application for low risk environmental DAs.

Question 15

Can you advise how much time/effort is spent by other agencies on assessing development/proposal applications. Is it a significant element of work for any agencies?

Answer:

The Department through its commitments made as part of the Jobs Summit is contacting other agencies seeking their advice on this matter.

Question 16

When other agencies assess applications/proposals - is in-depth examination of individual applications generally required. Is there scope for a form of bi-lateral agreements between agencies and local councils and or the Department in some circumstances?

Answer:

The level of assessment taken by agencies is dependent on the level of risk associated with the application or issue and also on the type of approval, concurrence or referral required.

The Department has been investigating a number of options and particularly the need for secondary approvals and the removal of requirements under certain circumstances when there are adequate provisions in the Local Environmental Plan.

Local Environment Plans

Question 17

Ideally, how long should an LEP take to be completed? Why do some councils take so long to finalise them?

Answer:

The November 2007 discussion paper "Improving the Planning System" gave some indicative timeframes for the preparation of LEPs:
"In a survey of some 110 LEPs gazetted between 5 May 2006 and 20 April 2007, even the simplest LEPs correcting minor errors (Section 73A) took an average of 196 days to make. At the other extreme, the survey found that comprehensive LEPs covering entire council areas took an average of 1721 days (almost 5 years) to make."

The Minister for Planning has announced in Parliament (29 October 2008) that the current planning reforms would see an overall reduction in the timeframes of LEPs by 50 percent. This would be achieved by streamlining the plan making process so that major land release or urban renewal rezonings are completed within 12 months and minor spot rezonings are completed in three months.

In addition to these targets the government has recently mandated a 24 month target for completion of the Standard Instrument LEPs that apply to a whole council area. The progress in implementing the Standard LEP program has not been as quick as initially anticipated. Unfortunately there is no single reason for the delays, although the overwhelming majority of Standard Instrument plans are giving effect to strategic planning outcomes and policy changes that require extensive community consultation. The State Government has also provided significant funding to Councils for preparation of local strategies, and this work has taken longer to complete than anticipated.

The Department is currently re-prioritising the Standard Instrument program, in consultation with Councils, to focus resources on a list of priority LEPs to be progressed to gazettal over the next two years.

Question 18

We note that sections of some sub-regional strategies are being reviewed and that some model clauses for the Standard Instrument (SI) LEP template are being developed. Ideally do these instruments that sit above and inform LEPs need to be finalised in order for new LEPs to be completed?

Answer:

In short, there is no need for the Subregional Strategies to be completed in order for the new Standard Instrument LEPs to be completed.

All ten Draft Subregional Strategies are to be finalised by the end of 2009. These Subregional Strategies provide a broad framework for the long term

development of an area. Even in draft form they provide sufficient detail to guide the preparation of Standard Instrument LEPs. During the LEP process, Councils in the Sydney Metropolitan Area are required to demonstrate their consideration of State Government policy, including the Draft Subregional Strategies.

Development Control Plans

Question 19

Page 48 of the government submission states that there is a tendency of some councils to adopt an over-regulatory approach to reduce the scope of private certification. Page 49 notes that councils also regulate building standards that are already addressed by the Building Council of Australia.

The submission from the Australian Property Institute argues that many Development Control Plans *unlawfully* extend beyond the parameters of LEPs – and suggests that DCPs should be scrutinised to the same level as LEPs.

Is the extent and breadth of control exercised by DCPs across the State an issue of concern for the Department?

Answer:

The role of DCPs is set out in Section 74C(1) of the Environmental Planning and Assessment Act and their purpose is generally limited to:-

- Providing more detailed provision with respect to development to achieve the purpose of an environmental planning instrument;
- Advertising or not advertising certain types of development applications; and
- Matters specifically identified in the Act to which a development control plan can apply.

Further, Section 79C(5) of the Act states that a provision of a DCP will have no effect if it:-

- Is substantially the same as a requirement of a environmental planning instruments; or
- is inconsistent with a provision of an environmental planning instrument or its application prevents compliance with a provision of any such instrument.

As stated above, a DCP is limited to providing detail to achieve the purpose of an environmental planning instrument. The purpose of an environmental planning instrument seeks to control development by setting standards in relation to the design and siting of the structure, but not the detailed building standards already detailed in other legislation such as the Building Code of Australia.

Although the Department encourages councils to prepare LEPs and DCPs together to ensure that the DCP and LEP have integrated controls there have been some circumstances where DCPs have not generally conformed to the

provisions of an LEP. Provisions that do not generally conform to the LEP are not authorised by the Act.

The Department also discourages local councils from duplicating or reiterating controls such as the Building Code of Australia, which are called up through the certification provisions of the Act and regulations, the Department acknowledges that in some cases councils do adopt an over-regulatory approach.

In each of these circumstances a review of the DCP is warranted and councils should be undertaking that review and amending their DCP accordingly.

Question 20

The submission from the Institute of Architects suggests that a limit should be set on the extent of detail able to be demanded by a consent authority when it is dealing with a development application.

Do you think there should be standard requirements for the detail required to accompany a development application?

Answer:

The Planning Reform work currently being undertaken by the Department will clarify the information to be contained in a Statement of Environmental Effects in a Best Practice and Development Assessment Guideline. A Direction issued by the Director General pursuant to amended Regulations will clarify that the information in the Guidelines for preparing Statements of Environmental Effects are the only relevant matters for the submission and assessment of a development application.

As there are many issues that may potentially apply to the assessment of a development application (depending on land use, type and scale), the guidelines will provide a "road map" so that applicants can more easily identify which matters are required to be addressed and the levels of information required to address them.

Bi-lateral agreements with the Commonwealth

Question 21

Pages 25 and 26 of the government submission discuss the potential for extending bilateral agreements with the Commonwealth through the use of strategic assessments or conservation agreements to provide upfront the parameters for allowable development.

Can you provide some detail on what is required to develop such assessments or agreements and who would be responsible for their development?

Answer:

The requirements are set out in the Commonwealth Government's *Environmental Protection and Biodiversity Act 1999* (EPBC Act). The agreements would be developed to implement the provision developed as a result of the Strategic Assessment. The agreement would be signed by the relevant State and Commonwealth Minister.

Strategic approaches are being pursued in sites such as the growth centres. In this case, the Department of Planning is undertaking the biodiversity assessment which will inform the development of a conservation agreement. Under section 37M of the EPBC Act, subsequent development on the growth centres sites, which comply with the agreement provisions, do not require an approval under Part 9 of the EPBC Act.

Climate change and natural resources

Question 22

With respect to climate change and natural resource issues in planning and development controls – it has been a common call from submissions made by local councils that they are seeking guidance and resources from the State government to allow them to adequately take account of these issues. Page 32 of the government submission lists the initiatives that should be undertaken to provide this guidance. When will councils have sufficient guidance material to be able to confidently consider these issues?

Answer:

The Natural Resources Management (NRM) Working Group has been established with representatives from the Department of Environment and Climate Change, Department of Water and Energy, Department of Primary Industries, Natural Resources Advisory Council, Local Government and Shires Association and more recently the Sydney Catchment Authority to discuss NRM issues and in particular to progress model NRM clauses for use in Standard Instrument LEPs. Drafts of the clauses have now been prepared, with a view to finalising the clauses and accompanying guidance shortly.

An 'Environment Protection Zone LEP Practice Note' to provide guidance to councils on the use and application of the Standard Instrument environment protection zones will be released shortly.

There are also many NSW Government guidelines that have over the years been developed specifically to assist councils in assessing particular environmental and natural resource policy issues associated with proposed developments. These guidelines are now available on a public directory called the Register of Development Assessment Guidelines hosted on the Department of Planning's website. The Register provides a single point-of-reference to access NSW government guidelines and other relevant documents covering various aspects of development assessment and plan-making.

A similar register to the DA Guidelines Register is being set up to host guidelines to assist in the preparation of LEPs. The Department is currently

consolidating all LEP related information to be published in one central location on the Department of Planning website. This will include a *Making LEPs: Resources Register* which provided councils with baseline information/mapping and guidance on issues to consider prior to and to assist with zoning and land-use considerations including NRM issues.

In relation to climate change and sea level rise, the NSW Government released for consultation a Draft Policy Statement on Sea Level Rise. Once finalised, the Statement will provide a consistent approach to addressing sea level rise to assist the NSW Government and local councils in the preparation of land use strategies, local environmental plans and in development assessment.

Question 23

Page 17 of the submission notes that in the development of major urban projects, the use of trigeneration and cogeneration are being encouraged.

What incentives are being used to encourage this use?

Answer:

Incentives to encourage the use trigeneration and cogeneration in major urban projects are being identified by an interagency taskforce, with a preliminary review expected to be soon.

Question 24

In its submission the Local Government and Shires Associations argue there is a requirement for an integrated and spatially expressed natural resource plan produced by the State Government in which all interagency issues have been resolved. The LGSA say that the regional strategies perform this function at a broader strategic scale. However, they believe that plans at a scale consistent with LEP development are required.

Can you comment on this need as expressed by the LGSA?

Answer:

Natural resource management issues are addressed at a regional level in a number of ways including the regional strategies/regional conservation plans approach for the high growth areas of the state and catchment action plans which are prepared by all catchment management authorities. It is not considered necessary or desirable to create a new form of natural resource management plan.

When preparing new Comprehensive LEPs, councils seek advice on key natural resource issues at the local level from State agencies. The Department is also currently finalising model natural resource management clauses which will be used by councils to address key natural resource management (NRM) issues in their LEPs.

It is considered that the building blocks are in place for councils to effectively manage their natural resources through their LEPs.

Rezoning

Question 25

With respect to competition issues page 35 of the submission states that a key consideration is to provide a robust, practical and flexible mechanism for rezoning additional sites when insufficient have been provided through strategic plans.

Can you provide any detail on what form this mechanism might or could take?

Answer:

An approach similar to that being undertaken in the Draft Centres Policy, currently on exhibition, is recommended. The Draft Centres Policy provides a planning framework for the development of new and existing retail and commercial centres in NSW. The approach taken is to have a policy which is based on six key principles:

1. Retail and commercial activity should be located in centres to ensure the most efficient use of transport and other infrastructure, proximity to labour markets, and to improve the amenity and liveability of those centres.

2. The planning system should be flexible enough to enable centres to grow, and new centres to form.

3. The market is best placed to determine the need for retail and commercial development. The role of the planning system is to regulate the location and scale of development to accommodate market demand.

4. The planning system should ensure that the supply of available floorspace always accommodates the market demand, to help facilitate new entrants into the market and promote competition.

5. The planning system should support a wide range of retail and commercial premises in all centres and should contribute to ensuring a competitive retail and commercial market.

6. Retail and commercial development should be well designed to ensure they contribute to the amenity, accessibility, urban context and sustainability of centres.

Where there is adequately zoned land, the planning system will allow for competition between and within sectors, with the potential to provide the community with access to a wider variety of services and goods. The planning authority should ensure that only legitimate planning and infrastructure issues

along with matters of public interest are considered in evaluating planning or development proposals.

Question 26

A number of stakeholders have argued that there should be an appeal process with respect to applications for rezonings. The Australian Property Institute in evidence cited Queensland as an example whereby if a council decides against an approach for a rezoning the matter is referred to the relevant court for decision.

What is the Department's view on this proposal?

Answer:

Zoning in environmental planning instruments is the result of a high level strategic planning exercises carried out in by the State, in the case of State Environmental Planning Policies, or the State and the local council, in the case of Local Environmental Plans, that set out the bundle of land uses that are appropriate for a site or locality and the bundle of land uses that are not, and are therefore prohibited. The Government and local councils exercise a very broad policy discretion in making those choices for their communities.

It is the Government's view that decisions on these matters, by their very broad nature, are most appropriately determined by the elected representatives of the people: either the Government of the State, responsible to Parliament, or the Council of a local government area, responsible to their residents.

Zoning in environmental planning instruments is a policy decision that establishes a balance between the range of land uses that are permissible, compatible with each other, and which are suitable for a merit assessment, and those that are not. Elected representatives are best placed to determine the balance between flexibility and certainty provided by zoning for the people they represent.

This is clearly different to the situation that arises in relation to decisions on development applications. For development applications clear criteria have already been established in an environmental planning instrument for the assessment of that application. These applications are amenable to review by bodies like the Land & Environment Court because of the clear criteria already set out: an objective review can take place.

The broad discretion exercised on rezoning is not constrained in this way, and the decisions are made more subjectively. In these circumstances, appeals on rezoning would enable the Court to substitute its views on policy issues for those of the elected representatives. It is difficult to justify such a substitution given the broad nature of the discretion involved.

At the same time, the Committee might note that it is the Department's policy in the roll-out of the new Standard Instrument for councils to provide for the broadest possible range of compatible permissible uses in rural, residential, commercial and industrial zones to minimise the need for future rezonings

and to only allow the prohibition of land uses that are clearly incompatible with the objectives of the zone. As well as reducing the need for rezonings this encourages innovative responses over time.

Question 27

The submission from Ashfield Council notes that many other States have a non-complying development category which allows a similar process of approval without the need to amend a planning instrument such as an LEP. In this system the development of the site is then tied to a specific redevelopment proposal rather than allowing a site to be rezoned to a new generic classification.

Do you see any merit in this system?

Answer:

Yes, this is demonstrated in the introduction of specific provision in the *State Environmental Planning Policy (Major Project) 2005* which allow the Minister for Planning to declare an area to be a State significant site.

When declaring a site to be of State planning significance, the Minister will also establish the planning regime for that site. Depending on the site, the planning provisions may relate to:

- zoning and permitted land uses possibly accompanied by a map with layout of subsequent land uses on the site;
- core planning controls and/or performance criteria;
- list of exempt or complying development with any relevant performance criteria; and
- list of any major projects or development to be determined by the Minister and/or local development to be determined by council.

The State significant site declaration is tied to a specific major project proposal.

Regulation of land use on or adjacent to airports

Question 28

With respect to the regulation of land use on or adjacent to airports. The submission at page 45 lists the recommendations the NSW Government is \advocating as part of the development of a comprehensive national aviation policy. These recommendations reflect the concerns expressed in the majority of submissions made to the Inquiry that addressed this term of reference.

Are you able to advise how receptive the Commonwealth is, or is likely to be to, these recommendations?

Answer:

The Commonwealth Government is currently developing a White Paper on the development of a comprehensive national aviation policy. The Paper will guide the aviation industry's growth over the next few decades.

Once the White Paper is released, the Department will be in a position to provide the Committee with further comments.

Question 29

Page 42 of the submission notes that following the release of the Metropolitan Strategy some inner-city local government areas are reliant on the ability to locate additional housing in aircraft noise affected areas to achieve their additional housing numbers. The submission notes that the section 117 Direction No 3.5may need to be amended to cater for increased residential development in areas adjoining, and in proximity, to brownfield airports.

Is this ideal, is this a choice of amending either the Metropolitan Strategy or sec 117? Can you elaborate on the required amendment to Direction 3.5 and its implications?

Answer:

The Metropolitan Strategy requires that councils provide additional housing. The additional housing can be located anywhere in their council areas. Neither the Metropolitan Strategy nor s.117 Direction 3.5 would need to be amended.

Interrelationship of planning and building controls

Question 30

A number of submissions have called for a return to the pre 1998 system. Page 51 the government submission notes that there is a decision to be made as to whether the integrated planning and building system should continue in its current form and whether this model is the most effective means of regulating the built environment in NSW?

Is it a decision between the current system and the old system? If not, what are the alternative model or models?

Answer:

It is not necessarily a matter of returning to the pre-1998 system with its two completely separate and independent assessment approval processes, there is room for improvement under the current integrated planning system to more effectively regulate the built environment.

There can be clearer separation between strategic and operational controls. For example, development concept approvals could be granted without the need for the submission of detailed building information at this stage of the approvals process.

There could also be more clarity on the roles and responsibilities of consent and certifying authorities in relation to development control.

The type of approval required should match the level of complexity of the proposal. This is, in part, being addressed by the new housing and commercial building codes.

Also, improvement is required in the areas of documentation retention, communicating important building information to end users, the regulation of building changes, the regulation of the maintenance of safety measures and increasing confidence in approval and built outcomes.

There does not appear to be one specific alternate model applied elsewhere in Australia that could be applied in NSW. However, there are elements of other systems that could be considered for adoption to improve aspects of the NSW system.

Question 31

The government submission notes that the Building Code of Australia despite being Australia's national building code, does have variations which are specific to each State/territory.

Are these variations state-wide or location-specific within a State?

Will the National Construction Code also allow for State variations?

Answer:

The Building Code of Australia (BCA) is produced in conjunction with the States and Territories by the Australian Building Codes Board (ABCB) – a body established by Inter-Government Agreement. The ABCB includes representation from each State and Territory government, the Federal Government, the Australian Local Government Association and from the building and construction industry.

The BCA does make provision for variations specific to each State and Territory. This is a reflection of the manner in which building control is administered in Australia. The control and regulation of buildings is a constitutional responsibility of the individual State and Territory governments, not the Federal Government.

The variations in the BCA generally have state-wide application and are often a reflection of a specific circumstance (for example, climatic, geographical, geological) or policy relative to a particular State or Territory, which in certain situations are not practical or cost effective to apply on a national basis.

It is anticipated that the National Construction Code, should it proceed, will also provide for State and Territory variations.

Question 32

The government submission notes that councils do regulate building standards that are already addressed by the BCA via their planning instruments. The submission notes there are benefits and costs arising from this situation.

Do the benefits referred to in the submission arise because some of the standards set in the BCA are inappropriate or deficient?

Answer:

The standards set in the BCA are subject to a transparent, rigorous and due process before they are incorporated. This includes public consultation on the proposed standard or amendment and hence the opportunity for stakeholders to influence the standards expressed. It may also include a cost/benefit analysis depending on the nature and impact of the reform.

The standards expressed in the BCA are minimum acceptable standards for the purposes of achieving the goals of the BCA. These standards are applied nationally after rigorous public consultation.

Standards expressed by councils in development control plans (DCPs) may not always be subject to similar processes and their development may not always be transparent or subject to cost/benefit analysis. Inclusion of standards in DCPs also creates confusion for end users as to which standards must be met.

Question 33

The submission at page 16 notes that discussions were held as part of the Development Assessment Forum on whether a single development control system could be introduced across Australia. The submission noted that jurisdictions need to be able to maintain flexibility to address any locality specific issues that they may face and that NSW should strive to meet the best planning practice identified by the DAF while maintaining flexibility to meet local demands.

Can you expand on what you mean by local demands?

Answer:

Local demands vary based on the interrelationship of the planning and development control system with other resource allocation, conservation, community expectations and infrastructure controls systems. As a result, it would be difficult to have a single development control system across Australia, without significant changes being made to all other legislation and controls which affect aspects of development.

The Development Assessment Forum has provided principles for a risk based approach for development control which can be adapted and applied in each State taking into consider the other controls in that State. In NSW, the current system is well aligned with DAF principles with exempt development, complying development, local development (merit assessment), regional development (including designated development), and State development (Part 3A).

Question 34

The government submission notes that the introduction of the integrated planning and control system has resulted in the loss of the old system of concept approval prior to detailed consideration of building matters.

Can the department advise – what type of applicant used to, and now would, seek to make use of staged approvals. Particularly are typical families seeking

to build a new home or extend/renovate their existing home likely to consider staged approvals an attractive option, or are they more likely to prefer the least amount of approval stages?

Answer:

Before the 1997 amendments single dwelling houses, and alterations and additions to those dwellings, did not generally require development consent in residential zones under environmental planning instruments, so that typical families would often only need to obtain a building approval in those cases. Outside of residential zones, or where issues of environmentally sensitive land or heritage were involved development consent would be additionally required.

This is now reflected in the integrated planning system by complying development, where only one approval is required: the complying development certificate, with its 10 day assessment time.

The recently introduced Housing Code will expand the range and number of single dwellings or alterations and additions that can be authorised by complying development certificates, issued by councils or accredited certifiers.

The introduction of the Housing Code puts typical families in a better position than that which they were in before 1997 as the 10 day assessment time is significantly less than the 40 day deemed refusal period for building approvals.

It is the Department's view that typical families prefer the simplest approval process possible commensurate with appropriate assessment of amenity and health and safety impacts, and a staged approval process will rarely advantage the typical family in building their home. The Department believes that it is important that any separate assessment process for alterations and additions to the typical family home is adequate and proportionate, and the Housing Codes are a good example of this approach.

NSW Housing Code

Question 35

The Housing Code came into effect on 28 February this year. The aim is to have between 40 to 50% of residential development to be dealt with as complying development over the next four years.

In evidence the City of Sydney said that their exempt development provisions were more generous than the Code's exempt provisions.

The Committee also heard that in one particular shire 90 per cent of its land is flood prone and that under the Code every single application in that 90 per cent region must now have a full merit assessment, because the Code has effectively replaced their standard complying process that they had in place.

Do you think councils should be given the ability to add to the code?

Answer:

The exempt development provisions contained within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the 'Codes SEPP') are based on existing development types and standards contained within council planning documents. For the most part these standards are as generous or even more generous than those in council documents. There are some instances where a council allows exempt development types in areas (environmentally sensitive land) where the Codes SEPP excludes exempt development. Over the next 12 months the Department of Planning, based on feedback received, will review exempt and complying development requirements under the Codes SEPP to ensure the maximum possible uptake across the State.

For complying development, until the 27 February 2010, an applicant can use a council's planning document to lodge a complying development certificate in line with the council's requirements where it cannot be lodged under the Codes SEPP. In time for the 27 February 2010 deadline, the Department of Planning will work with councils to allow, where appropriate and achievable, complying development under the Codes SEPP in exclusion areas such as flood control lots.

Question 36

Page 31 of the government submission notes that councils will continue to address solar access for domestic households and solar-sharing arrangements when assessing development proposals. How does the new Housing Code for complying development provide for protection of solar access?

Answer:

The General Housing Code provides for a conservative building envelope where the maximum height and bulk of a building is restricted and generous side and rear setbacks are required. The envelope therefore minimises the likely extent of a shadow to be cast over neighbouring properties.

Question 37

Page 14 of the submission mentions the NSW Electronic Housing Code – the pilot project is to target up to 12 councils in high growth areas. Can you advise which councils will be part of the project, and will the project include the capacity for local variations to the Housing Code?

Answer:

The Department of Planning is in the early stages of developing a project outline for the delivery of an electronic Housing Code. It is proposed that expressions of interest will be sought for high growth councils to be involved in the project as "trial councils". At this stage no specific councils have been identified.

The Department of Planning is currently calling for councils to nominate for local exclusions and local variations, these local variations, once

approved and gazetted, will form part of the Codes SEPP and therefore will be incorporated into an electronic version of the Code

Question 38

The submission from Sutherland Shire Council noted that if a proposed development failed to meet just one criterion on the exempt and complying code then the whole proposal is subject to a merit assessment, rather than just that one criterion.

Can you confirm that this is the case?

Answer:

To be a complying development certificate a proposal must meet exactly all of the requirements of the Codes SEPP. There cannot be any merit assessment associated with the issuing of a complying development certificate. If a development proposal does not satisfy one of the requirements of the Codes SEPP then the development can only be approved via a development application. A council in its development control plan (DCP) establishes the merit controls. A development application is assessed on its merits and a council can chose whether or not to apply their merit controls or to assess the development in line with the envelope established under the Codes SEPP.

Question 39

In evidence on the 9 March 2009, representatives from the Environmental Defender's Office argued that the new Housing Code has "left the door open in future for complying development in environmentally sensitive areas (see transcript of evidence, pp24-25).

Can you provide comment on this assertion?

Answer:

Any future amendments to the Codes SEPP, including any change to the general exclusions (environmentally sensitive land) will be the subject of discussions with key stakeholders including local government and agencies who are responsible for the identification of environmentally sensitive land.

Question 40

In evidence on 30 March (see pp15-16 of transcript) the LGSA advised that on 20 February that councils were advised of new information requirements for section 149 certificates – seven days prior to the commencement of the Housing Code.

Can you provide some detail/advice on this matter and the impact on council business procedures?

Answer:

The Codes SEPP was gazetted on the 12 December 2008 and commenced on the 27th February 2009. This long lead time gave councils time to familiarise themselves with the content of the Codes SEPP and to ensure

their systems and processes were in order in time for commencement. Councils were advised of the new Planning Certificate requirements 11 weeks prior to commencement of the Codes SEPP.

Most councils have an electronic system for the issuing of planning certificates, and the electronic systems needed to be updated in time for commencement of the Codes SEPP on the 27th February 2009 drawing on data contained in councils existing Geographic Information Systems.

Following the gazettal of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* ('the Codes SEPP') on 12th December 2008, the Department sent all Councils in NSW a copy of the NSW Housing Code Information Pack comprising a copy of the Codes SEPP, the *Guide to complying development for detached housing*, and Facts Sheets. The *Guide to complying development for detached housing* includes a section on the new Planning Certificate under *Implementation of the Code* on Page 24. This section notes that a Planning Certificate will identify '*whether complying development can be carried out on their lot*'. In addition the 'Your step by step process' diagram on Page 27 included '*obtain a Planning Certificate (Complying Development Requirements) from your local council*'.

On 23 January 2009 the Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009 was gazetted (Government Gazette 23 January 2009) to require amongst other matters, for information about land excluded from complying development to be included in planning certificates. Specifically the Regulation inserts under 'Schedule 4 Planning certificates', a new Clause 2 which states that:

"3 Complying development
Whether or not the land is land on which no complying development may be carried out under the State Environmental Planning Policy (Exempt and Complying Development Codes)2008 and, if no complying development may be carried out on that land under that Policy, the reason why complying development may not be carried out on that land."

On 20 February 2009, the Department issued Planning Circular (PS 09-005) further clarifying the exact wording for Planning Certificates as a result of requests from many local councils during the NSW Housing Code Implementation Workshops presented from early February 2009. These Workshops explained in detail the implementation requirements of the Codes SEPP and the Regulation amendment, including the new s149(2) planning certificate. A total of 53 Implementation Workshops were presented in 16 locations across NSW with over 5000 attendees including 1600 council participants throughout February and March 2009.

The new Planning Certificate requirements constituted a business process change for councils, and some councils may not have been in a position to change their systems by 27 February 2009. But many councils have advised the Department that they were able to respond to the new Planning Certificate requirements by updating their automated systems for commencement of the Codes SEPP on 27 February 2009. These councils advised that they had reviewed various information sources including the Department's Information Pack from 12th December 2008, the Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009 included in the Government Gazette of 23rd January 2009, information from the

Implementation Workshops, and Planning Circular (PS 09-005) issued on 20th February 2009.

Private certification

Question 41

The LGSA provides the following proposed solution to the problems of certification, namely:

Private certifiers should provide their certificates to government (councils), which can then issue the construction certificates (really a 'consent' under Part 4 or Part 3A) relying on the quantitative matters certified in the certificate

Government can then judge any qualitative matters, such as whether the details substantially conform to the previous consents for the development (eg. the concept or sketch plans) or, if they do not, whether consent should be granted for the amendments. If the application is for a single-stage consent, then the use, urban design and construction matters can be dealt with at the one time.

Are you familiar with this proposal from the LGSA? Do you see any merit or failures with the proposal?

Answer:

The LGSA previously raised this proposal with the Department in February 2008. A similar response to below was provided.

It is not clear in respect of which types of certificate (i.e. Part 4A certificates or complying development certificates) the LGSA proposes to implement this "certificate of compliance" regime.

The proposal would create an additional administrative layer and more red tape which will delay home owners getting approval to commence building work even where an accredited person with relevant expertise has signed off on the commencement.

The proposed extra step in the approval process is also considered unwarranted given the number of complaints received against accredited certifiers relative to the number of certificates issued by them each year. In 2007/2008 the Board received 104 complaints against accredited certifiers. In the same period certifiers issued over 35,000 Part 4A certificates.

The planning reforms have introduced tougher sanctions and a greater oversight by the Building Professionals Board of accredited certifiers which will address the perceived lack of accountability of accredited certifiers.

Council's enforcement and investigation powers have also been strengthened to allow the issue of increased penalty infringement notices and stop work orders against people who undertake works that are unauthorised. Regulations will shortly put in place mechanisms to encourage communication between councils and accredited certifiers regarding non-compliances so that councils have all the available information to enable them

to make properly informed, timely decisions regarding appropriate enforcement action.

The use of these enforcement mechanisms will penalise people who carry out unauthorised works and discourage others from following the same course. The EP&A Amendment Act also introduced measures to clarify the consistency test for the issue of a construction certificate, and enable a certifier to seek council advice where appropriate. The regulations will also provide greater guidance as to what may or may not generally be considered to be consistent with a development consent.

There are already mechanisms in the Act which require a certifier to provide a council with a certificate within 2 days of the issue of that certificate. In addition to this, councils have been given new enforcement and investigation powers which they can use where it appears that a certificate has been issued that is not in accordance with the relevant legal requirements.

Affordable housing

Question 42

What is the Department's view on local government areas instituting affordable housing levies?

Answer:

- The objects of the *Environmental Planning & Assessment Act 1979* include the provision and maintenance of affordable housing.
- The Act makes provision for local councils to levy affordable housing contributions, subject to a SEPP identifying a need for affordable housing in the area and the adoption by a local environmental plan or regional environmental plan of a local affordable housing contributions scheme.
- There are three such contributions schemes currently in operation under *SEPP70 – Affordable Housing (Revised Schemes)*: the City West Affordable Housing Program in Ultimo-Pyrmont and the Green Square Affordable Housing DCP (both within City of Sydney LGA) and the Willoughby Local Housing Program (in Willoughby LGA).
- The Department considers that the current economic downturn is not an appropriate time to expand the areas in which affordable housing contributions can be levied due to the subdued state of the development sector and low housing construction.
- The Department considers that in the current economic circumstances, incentive measures have greater potential to encourage the development of more affordable housing and to capitalise on the availability of funding for affordable housing through Federal Government programs such as the *National Rental Affordability Scheme* and the *Nation Building and Jobs* stimulus package.
- To this end, the Department is preparing an Affordable Housing SEPP which provides incentives for affordable housing developments.
- The SEPP will also incorporate existing provisions of the Infrastructure SEPP which provide for social housing near centres without the need for rezoning, and enable Housing NSW to self-approve public housing projects of up to 2 storeys or 20 units.

Design quality

Question 43

Representatives from the City of Sydney said that an issue they had with higher density development was convincing people that higher density can be a terrific outcome for quality of living. They said that to achieve this, higher levels of design quality was required.

There is a tension between encouraging or mandating better quality of design and associated cost.

How can better design quality, incorporating ESD principles, be achieved for higher density living without increasing costs at a prohibitive level?

Answer:

The Planning system already incorporates two policies through State Environmental Planning Policies to ensure reasonable design quality and environmental sustainability.

The first one is SEPP 65 for the design quality of residential flat buildings that requires only architects to design residential flat buildings over two stories and sets down a number of design guidelines and principles. Since SEPP 65 was introduced in 2002, there is a consensus that the design quality of residential flats has improved significantly.

Second is the Building Sustainability Index SEPP which introduced BASIX in 2004 – an environmental sustainability tool that all residential properties including high density living must comply with. In Metropolitan Sydney, BASIX requires savings of 40% of previous energy usage and 40% of water usage. Again there is consensus from environmental groups and industry that BASIX has been very successful.

Question 44

Can you advise the Committee – does SEPP 65 set mandatory standards that must be met for residential flat buildings or are they guidelines?

Answer

Some standards in SEPP 65 are mandatory but those contained in the Building Code of Australia and the standards are set as minimum.

The remainder of the standards are contained in design guidelines that set standards for the percentage of units that get cross ventilation or solar access. While these are guidelines, they have been interpreted by the Land Environment Court as standards which the NSW Government expects.

Question 45

The institute of Architects propose that a SEPP 65 type design quality approach should be developed for all categories of buildings.

In the Department's views what are the pros and cons of this proposal?

Answer:

SEPP 65 was introduced by Premier Carr in 2002 due to concerns about the quality of residential flat buildings in NSW. This was to correct a market failure.

There have not been concerns expressed about commercial buildings in the community. Most commercial buildings do use architects and many cities now require limited design competitions to achieve design excellence.

In 2007, the Department of Planning undertook new city centre plans for 6 regional cities – Parramatta, Penrith, Liverpool, Gosford, Newcastle, Wollongong and required architecture competitions for buildings above certain heights in each city.

It is not considered that commercial buildings are that poor in design quality that a special SEPP be introduced but rather a focus on design competition for key sites.

For other building types detached housing up to 2 stories should not be regulated in terms of design. SEPP 65 applies to these houses. Industrial and retail buildings are very responsive to their function and it is not considered necessary to regulate their designs. Most councils have DCP's that determine key public domain interfaces i.e. active street edges.

Planning arbitrators

Question 46

With respect to independent arbitrators introduced in the latest reforms. Will arbitrators be assigned to a specific local government area, or will they rotate from one area to another?

Answer:

The details regarding the administrative arrangements for the Planning Arbitrators are currently being developed by the Department.

Development applications

Question 47

An issue that was raised in a number of submissions was the poor quality of information provided in development applications and the resulting effect of lengthening the process. People have the choice of completing and lodging their own applications or engaging professionals to undertake that task for them.

Does the Department have access to figures on the percentage of self-prepared and lodged applications compared to those who engage professional assistance?

Answer:

The Department does not have figures detailing the number of applications which are self prepared and those applicants who engaged professional assistance.

In many respects, criticism of poor quality information should be balanced against the lack of advice available to applicants which clearly articulates what information is required to assess a specific application. The work being carried out as part of the Planning Reform Package has highlighted the need to better articulate Council and Government agency requirements to the applicant upfront and to engage in pre-DA meetings to confirm that the information to be submitted will be sufficient to assess the proposed development and measures to mitigate its impact.

Question 48

How will the issue of quality of information within development applications be addressed in the push towards electronic lodgement of applications?

Answer:

The Best Practice and Development Assessment Guidelines being developed by the Department as part of the Planning Reform work will include a checklist of matters that each type of application should address before it is submitted to Council. If the Statement of Environmental Effects and accompanying documents address this information it must be accepted by Council.

The Council and any Government agency which has a role in assessing components of that application will then determine whether the information provided is sufficient to assess the impacts of the application. If it is, the application gets notified and assessed; if not, the application is returned to the applicant with advice that clearly identifies what aspects of the information submitted are deficient to enable its assessment, and a contact person in Council or a Government agency as relevant to help the applicant address the issue.

The electronic lodgement of applications in the future will simply require the checklist to be completed and submitted with the DA form and Statement of Environmental Effects. This information will be then be checked for adequacy.

Question 49

The Register of Development Assessment Guidelines is a resource available via the Department of Planning website.

Does the Department of Planning make a judgement as to what documents are added to the Register, and does it have a system in place to ensure out of date documents are removed?

Is the Department intending to measure user feedback?

Answer:

The Register of Development Assessment Guidelines was a first step in assembling a range of documents from different Government authorities relevant to the assessment of certain types of applications.

The next step being considered as part of the Planning Reform process is to link these documents to help inform applicants when preparing applications under Part 4 of the Act.

Best Practice and Development Assessment Guidelines are being prepared to assist applicants preparing development applications seek to articulate to an applicant:-

1. When a requirement is triggered,
2. What information is required to address that requirement,
3. Any guidelines, policies, or best practice that exist which help an applicant understand what considerations apply when Council or Government agencies undertake their assessment.

The documents referenced through this process must be live, thereby ensuring out of date documents are removed and feedback provided as to their usability/helpfulness in preparing development applications.

Question 50

The LGSA and Mr John Mant both provided the Committee with a schematic for the DA decision making process (attached). Can you review the diagram and confirm/comment on whether it is an accurate depiction of the process?

Answer:

The schematic diagrams provided by the LGSA and Mr John Mant are not an entirely accurate depiction of the decision making process for development and major project applications.

The Department has provided the Committee with a number of schematic diagrams depicting the steps in the development approval processes under Part 4 and Part 3A of the Environmental Planning and Assessment Act.

Consultation prior to the Planning Reforms

Question 51

The Department undertook considerable consultation prior to the finalisation of the *Environmental Planning and Assessment Amendment Bill*. Can you provide detail on the changes/amendments that were made as a result of the input of the consultation/exhibition phase?

Answer:

Following wide community consultation, the NSW Government has made a number of changes to the proposed planning reform package. These changes deal with issues raised during the consultation process and include:

- Deleting a proposal to clarify council powers to compulsorily acquire land for the purposes of urban renewal.

- Deleting a proposal to allow accredited certifiers to approve minor non-compliances to complying development.

- Clarifying that local environmental plans (LEPs) cannot be made if required community consultation has not happened.

- Ensuring applicants can not 'forum shop' appeals by going either to an independent panel or the Land and Environment Court. Applicants must go to the court.

- Maintaining protections to prevent new developments in Sydney's drinking water catchment unless they have a neutral or beneficial water quality effect.

- Broadening the range of people who may be appointed as Planning Assessment Commission (PAC) members to include legal, engineering, traffic and transport or tourism skills.

- The Department of Planning, not councils, will now appoint a planning arbitrator to review a council determination, to avoid a potential or perceived conflict of interest.

- Expanding provisions to allow more than one arbitrator to be appointed for reviews of complex matters.

- Clarifying that libraries and community centres, along with volunteer rescue and emergency services, are "key community infrastructure" that councils can automatically fund through local infrastructure levies.

- Ensuring councils can no longer 'double dip' by levying both at subdivision stage and on the approval of a dwelling house development application envisaged in the subdivision.

NSW GOVERNMENT
Department of Planning

PLANNING REFORMS – TARGET DATES

Part A – Environmental Planning Matters Reform	Commencement date
Planning Assessment Commission established to provide independent review of contentious planning matters and determination of major projects where a conflict of interest may exist	3 November 08
Exempt & complying SEPP Stage 1 - Ten day approvals for new homes on lots greater than 450 sq/m if they comply with the NSW Housing Code	27 February 2009
Exempt & complying SEPP Stage 2 - Release of code allowing fast-tracked internal approvals for retail, commercial and industrial development	July 2009
Streamlining development assessment system, under Part 4 of the EP&A Act	July 2009
Implementation of Joint Regional Planning Panels to provide a regional determination body for projects which are of regional significance.	July 2009
Streamlining creation of new local plans in 'gateway' reform – replacing 'one size fits all' system for such plans to get better upfront State agency input and remove unnecessary roadblocks	July 2009
Exempt & complying SEPP Stage 3 - Fast-tracked code approvals for housing on lots under 450 sq/m, attached housing and rural lots	End 2009
Exempt & complying SEPP Stage 4 - Release of code for fast-tracked approvals for external changes to commercial, retail & industrial development	Early 2010
New developer contribution approach: Implement Part 5B to create consistency and transparency with developer contributions	Post July 2009, to be determined
Introduction of planning arbitrators	Post July 2009, to be determined
New statutory system to resolve long-standing paper subdivision issues	End 2009

Part B – Building Professionals Board (BPB) matters Reform	
Increasing fines against certifiers ten fold and additional investigation powers to councils to require certifiers and others to answer questions	1 September 2008
Allowing corporate bodies to operate as accredited certifiers	3 November 2008
New enforcement measures including mandatory inspections, fines and new council powers to issue stop work orders for unauthorised works	March 09
Further certification and enforcement powers including requiring a certifier to issue a notice after becoming aware of consent breaches	July 2009
Additional mandatory inspections for fire separating construction and acoustic insulation in certain buildings	September 2009
New fire safety engineer accreditation category	September 2009
New council building surveyor accreditation category and accreditation processes for council officers	Post July 2009, to be determined
Miscellaneous provisions including "income limit" and "Prescribed Persons" list	Post July 2009, to be determined

Department of Planning 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39, Sydney NSW 2001
Tel: 02 9228 6333 Fax: 02 9228 6555 Email: information@planning.nsw.gov.au

Department of Planning

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Instrument of Delegation

I, the Minister for Planning and the Minister administering the Environmental Planning and Assessment Act 1979 ("EP&A Act"), pursuant to section 23 of the EP&A Act, delegate to the Planning Assessment Commission ("the Commission"), the powers and functions listed in Schedule 1 to this Instrument in relation to project applications specified in Schedule 2 of this Instrument, subject to the terms, limitations and restrictions specified in Schedule 3 to this Instrument.

Dated this 18th day of November 2008.

The Hon. KRISTINA KENEALLY, M.P.,
Minister for Planning

SCHEDULE 1

My powers and functions under section 75J and 75JA of the EP&A Act.

SCHEDULE 2

Project applications lodged before or after the date of this Instrument:

1. in relation to which a statement has been made disclosing a reportable political donation; or
2. that relate to the carrying out of development within the boundaries of the State electoral district represented by the Minister for Planning (where the Minister is a member of the Legislative Assembly); or
3. that relate to the carrying out of development in which the Minister for Planning has a pecuniary interest;

other than a project application for an infrastructure project where the proponent is a public authority, other than a local authority.

SCHEDULE 3

Where the Commission proposes to impose a condition on an approval which would require a proponent to enter into a voluntary planning agreement to which the Minister for Planning or the Corporation is a party, the Commission must consult with the Minister for Planning in relation to any such condition before determining the project application.

Definitions:

Corporation is the corporation sole incorporated under section 8 of the EP&A Act.

Electoral district is the relevant district as proclaimed under section 15 of the Parliamentary Electorates and Elections Act 1912.

Major infrastructure development has the same meaning as in section 75A of the EP&A Act.

Pecuniary interest is an interest that the Minister is required to, or otherwise discloses in a primary, ordinary or discretionary return made under the Constitution (Disclosures by Members) Regulation 1983.

Project applications are applications made under section 75E of the EP&A Act.

Proponent has the same meaning as in section 75A of the EP&A Act.

Public authority has the same meaning as in section 4 of the EP&A Act.

Statement is statement of a disclosure required to be made under section 147(3)(a) of the EP&A Act required to be made in accordance with section 147(6) of the EP&A Act.

Note:

This instrument of delegation does not apply to:

- concept plan applications, or
- project applications for project that has been declared to be a critical infrastructure project, as provided by section 23(8) of the EP&A Act.

Role of the Planning Assessment Commission in Part 3A projects

Major projects assessment system: fact sheet 5

The Planning Assessment Commission (PAC) plays an important role providing an additional level of expert scrutiny reviewing some development proposals. It also determines some development proposals, including those where a potential or perceived conflict of interest exists.

The PAC is independent of the Government, the Minister and the Department of Planning.

While the PAC members are appointed by the Minister they are not subject to the direction or control of the Minister, except in relation to its administrative procedures.

The PAC is a statutory body under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and commenced operation on 3 November 2008.

FUNCTIONS

The functions of the PAC are detailed under Section 23D of the EP&A Act. For development proposals being assessed under Part 3A of the EP&A Act, the PAC has two key roles as outlined below.

Review

If requested to do so by the Minister, the PAC may review any aspect of a project or a concept plan under Part 3A. The PAC is required to provide a copy of its findings and recommendations to the Minister. The Minister in deciding whether or not to approve the carrying out of a project or a concept plan will consider the findings or recommendations of the PAC along with the Department's assessment report.

As part of this review role, the Minister may also direct the PAC to conduct a public hearing. Notice of the public hearing will be provided and a call for submissions from interested parties will be made.

This review role is similar to the function previously carried out by the Independent Hearing and Assessment Panels.

The Minister may call on the PAC to carry out a review and/or a public hearing at any stage of the assessment process prior to determination.

Determination

The Minister has issued a general delegation to the PAC (gazetted on 5 December 2008) by which the Minister has delegated the power to determine a specified class of project applications lodged under Part 3A. Specifically, the general delegation applies to the following classes of project applications under Part 3A:

- Those in relation to which a statement has been made disclosing a reportable political donation; or
- Those that relate to the carrying out of development within the State electoral district represented by the Minister for Planning; or
- Those that relate to the carrying out of development in which the Minister has a pecuniary interest.

However this delegation does not apply to those proposals that are:

- Infrastructure projects where the proponent is a public authority, other than a local authority;
- Concept plan applications; or
- Critical infrastructure projects.

In the cases where the PAC is the determination body the normal major projects assessment process will take place, wth the application submitted to and assessed by the Department of Planning. The PAC will take the Minister's place as the determination body.

The Minister may also refer Part 3A and Part 4 development proposal matters to the PAC for determination on a case-by-case basis outside the general delegation, however the Minister cannot delegate the function of determining whether to approve the carrying out of a critical infrastructure project or a concept plan for a critical infrastructure project.

MEMBERS

Members of the PAC have been selected from a broad range of disciplines with experience in planning, architecture, urban design, environmental management, engineering, law, and government and public administration.

The following eight persons are currently appointed by the Minister as members of the PAC:

- Gabrielle Kibble (Chair) – current chair of the Heritage Council and administrator of Wollongong Council, former head of the Department of Planning;
- Donna Campbell – former director of Legal Services at the Environmental Protection Authority with 25 years of government experience in environmental planning law;
- John Court – chemical engineer and environmental expert with extensive experience in the planning system;
- Lindsay Kelly – former NSW Government architect;
- Neil Shepherd – former head of the Environment Protection Authority, Ministry for the Environment and National Parks and Wildlife Service;
- Garry Payne – former Director-General of the Department of Local Government;
- Janet Thomson – respected planner with more than 30 years experience at all levels of government;
- Richard Thorp – leading architect and current president of the NSW Architects Registration Board.

The Minister may also appoint casual members to the PAC to exercise specific functions of the PAC. A casual member with specific expertise may be appointed to assist in the review of a particular aspect of a project application.

FURTHER INFORMATION

- Department of Planning website: www.planning.nsw.gov.au

T 02 9228 6333 F 02 9228 6555 E information@planning.nsw.gov.au W www.planning.nsw.gov.au

DOP 09_020 ISBN 978 0 7347 5648 0