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2 May 2016

The Director
Standing Committee on State Development
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Sir/Madam

**NSW UPPER HOUSE INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW –
LOCAL GOVERNMENT PLANNING DIRECTORS GROUP, POST HEARING RESPONSE**

I refer to the previous submission provided by the Local Government Planning Directors Group (LGPDG) to the Committee on State and Regional Development in respect of the NSW Upper House Inquiry into Regional Planning Processes in NSW and the email correspondence received on 11 April 2016.

On behalf of the Group, thank you for the opportunity provided for Mr Michael Keys, Director Planning and Environment, Albury City Council and myself, to address the Committee Hearing in Dubbo on 5 April 2016.

As reiterated at the Hearing, the LGPDG believes in the benefits and opportunities that a strong, reliable and agile Planning System can offer the State and especially our regional areas. However, the LGPDG maintains that a stand-alone Regional Planning Act will not facilitate this outcome. The LGPDG remains of the view that significant opportunities exist to improve existing planning practices to facilitate outcomes that achieve overall State objectives and deliver economic development benefits to regional areas including business and industry. To that end, the LGPDG supports a 'Whole of Government' approach to facilitating and creating further development and investment opportunities for regional areas.

The LGPDG maintains that recommencement of the stalled planning reform process for NSW will offer one of the best mechanisms in which to promote regional planning and development in the delivery of a simplified and streamlined planning system. In addition, the planning reform process could also deliver the following key advantages:

- Create further certainty for all parties involved in the NSW Planning and Development System.
- Recognise and plan for the distinct differences between metropolitan and regional areas and further, plan for differences in regions.
- Recognise and reinforce community engagement and inclusion in the NSW Planning and Development System.

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- Provide a robust structural system that supports strategic focus and outcomes for all persons involved in the NSW Planning and Development System.

In respect of the further questions included in the transcript with notice, the following information is provided:

1. Queensland Planning System (Page 16)

The Queensland Integrated Development Assessment System includes the key role of the State Assessment and Referral Agency (SARA), which has the role of delivering and managing a delivering a Whole-of-Government approach to the assessment of any development application where a State Government Agency would ordinarily provide input during regular assessment processes.

Under this system currently, all development assessment referrals are collected and distributed back through one government web portal, or alternatively via the mail. The Agency also has the role of ensuring such assessment processes are undertaken in a timely manner. Actions of the Agency are guided by key performance indicators, which are focused on four (4) key areas:

- Customer satisfaction.
- Development Assessment timeframes (to ensure Development Applications are assessed and determined in accordance with statutory timeframes).
- To ensure requests for information are provided in a timely manner.
- To reduce the incidence of legal appeal in the planning process.

It is also understood that the Queensland Government has developed a new planning system. One of the key changes to the new system will be to allow development proponents to refer their own development application to the State Assessment and Referral Agency rather than await an individual Council to refer such an application.

2. Planning Reform Processes (Page 18)

The Local Government Planning Directors Group have provided a number of submissions to government in respect of planning reform processes and initiatives over a considerable period of time and has been supportive of any initiatives by government to further improve and stream line the planning system.

Attached for the information of the Committee is a copy of a submission prepared by the Local Government Planning Directors Group in March 2012 titled 'Reform of the NSW Planning Legislation and System.' This submission was prepared by the Group in response to the Issues Paper for the Planning Reform Process and sets the general direction the Group has recommended government undertaken in respect of the Planning Reform Agenda.

For further context, I have also provided copies of Dubbo City Council submission made in respect of the White Paper and the Green Paper on Planning Reforms. The issues and concerns

raised in the submissions are consistent with the suggested direction in intent for the Planning System from the Local Government Planning Directors Group.

If the Committee would like any further information or clarification in respect of the items raised above and/or any issues raised in the submission provided by the Local Government Planning Directors Group, please contact me on (02) 6801 4000.

Yours faithfully

Melissa Watkins

Director Environmental Services

- Attachments:
1. Reform of the NSW Planning Legislation System, Submission from the Local Government Directors Group, March 2012.
 2. Dubbo City Council Submission, Green Paper, A New Planning System for NSW, October 2012
 3. Dubbo City Council Submission, Planning System White Paper, June 2013

REFORM OF THE NSW PLANNING LEGISLATION AND SYSTEM

**Submission by the

Local Government
Planning Director's Group**

March 2012

General Comments

2.1. Moving forward to the Green Paper.

Planning needs a major "paradigm shift" but the "Issues Paper" is highly grounded in "what we have had / what we have" - and the "rights and (particularly) the wrongs" of the historical and current legislation and system. The program for the Planning Review Team would have benefited from this first stage also including some draft directions regarding "where we want to be" and "what we want the legislation and system to look like" leading to debate and drafting of the Green Paper. The latter process would have been more akin to the process for 'Destination 2036' regarding the future of NSW Local Government;

2.2. Integration of other Legislation.

The "planning system" cannot be fixed without integrating other key legislation and decision making authorities – Threatened Species Conservation Act, Native Vegetation Act, Bushfire Protection Act etc. with the related authorities and concurrences attributed to other Ministers and Director Generals. The new legislation therefore should integrate relevant components of other fragmented legislation to achieve significant improvements to the system.

2.3. Timing.

Given the above and the crucial need for the review to "get it right" for the long term, the Review Team and the Minister should consider staging reform – addressing key issues first and then subsequently committing to major reforms (such as legislative integration referred to above) being undertaken within a certain time period. (It is acknowledged that this could be fragmented but is still recommended as the best option).

Principles, Key Elements, Structure & Objectives of a new planning system. (Refer Chapters A and B in Issues Paper)

2.4. Include Objective for Sustainable Development.

This should be an additional objective to enable judgement making to balance the social, economic, environmental development and infrastructure outcomes for policy making and development assessment. (This would enable for example, higher priority to be given at certain times and/or places for example economic development because of high unemployment or example higher emphasis on environmental conservation because of local ecological values). This should also embody reference to planning for future generations and short term decisions being in line with longer term desired outcomes;

2.5. Simpler, clearer legislation which is less legalistic and communicated in improved "plain English";

2.6. Legislation and System needs to become more outcome-focused.

2.7. Local Government to control more of its own destiny within clear State Plan and Regional Strategy frameworks.

2.8. Clarify Roles: State and Local Government; PAC; JRPP's and Councillors.

- Establish, through an improved Inter-Governmental Agreement between State and Local Government, clarify roles in relation to plan making and

development assessment and decision making by State and Local Government;

- A State Plan and Regional Plans to identify what development proposals should be Ministerial, PAC, JRPP or Councils' decisions according to relative significance – with the principle applying of empowering Local Government;
- Provisions to give certainty for the roles of Councillors in policy making and development assessment.

2.9. Community Engagement

- Shift the emphasis to plan making;
- State Government should issue guidelines for improved consistency but not be too prescriptive.

Principles, Key Elements, Structure & Objectives of a new planning system

Item	Question	Response	Comment
A1	What should the objectives of new planning legislation be?	Should have objective for ecological sustainable development to create balance of social, economic and environmental factors.	7
A2	Should any overarching objectives be given weight above all other considerations?	No	
A3	Should there be strict controls in plans?	Yes, but balanced with performance based controls in the interests of generating good outcomes and enabling appropriate levels of discretion.	
A4	Should applications that depart from development controls be permitted?	Yes – based upon explicit criteria for exercise of discretion.	
A5	What should the test be for a proposed variation?	-	
A6	Should new planning legislation provide a framework for regional strategic planning processes? If so, how should appropriate regions be determined for strategic planning?	Yes, absolutely – to reaffirm the crucial foundation a State Plan and Regional Strategic Planning provides for state directions to Local Council's for preparation of local strategies. Regional Strategies should be statutory documents.	
A7	Should strategic plans be statutory instruments with greater weight?	Yes – absolutely.	
A8	How should implementation of strategic plans be facilitated?	Through better content; through consequences that are actionable with associated timeframes and identification of responsibilities for implementation for the short, medium and long terms. This needs to provide for an enhanced governance structure encompassing Council's Regional bodies and State Government Agencies.	

A9	In a new planning system, how can we improve community participation opportunities? How can we improve consultation processes for plan making and development assessment?	-	
A10	How should levies to pay for local and state community infrastructure be set?	Through enhanced infrastructure plans that combine the responsibilities of State Government Agencies, Councils and developers to provide that infrastructure and hence, coordinate State infrastructure levies with local developer contributions. All this should be done in the context of the limited financial capacity of Local Government to provide capital expenditure towards facilities and to maintain them on the basis of lifecycle costing.	
A11	What alternatives to – or additional funding sources for – such infrastructure should be considered?	This goes to the wider issue of Local Government financial capacity (and even Local Government recognition of the Constitution) for enhanced allocation of National and State Finances by the Federal and State Governments to Councils.	
A12	Who should decide regionally significant development and local development applications?		
A13	Should Joint Regional Planning Panels decide development applications? If so, which applications should the panels decide? Who should identify these?	Yes, but with better thresholds and criteria embodied in a state plan and regional strategies as to what really are developments of state and regional significance that trigger determination by the Minister or the Planning Assessment Commissioner or Joint Regional Planning Panels.	

A14	Should councils be able to apply to be exempt from the Joint Regional Planning Panel process?	Yes – on the basis that the development proposal is completely compatible with State, Regional and Local policy directions and it has a clear pathway to determination.	
A15	Should any changes be made to complying development and the process of approving it?	Yes, major changes are required to simplify and implement the very worthy concept of enhanced complying development. These should be based upon the National Development Assessment Forum provisions relating to categories of development based upon potential impacts.	
A16	What changes should be made to the private certification system?	Increase accountability and "comeback" in the events of private certifier incompetence or inappropriate judgements.	
A17	How can private certifiers be made more accountable?	Through an enhanced set of mechanisms by the Building Professionals Board to bring more private certifiers to account when needed.	
A18	Should there be a right of review or appeal against a council decision concerning the zoning of a property?	No	
A19	Should there be any distinction between a council decision to change a zoning and a council refusing an application to change the zoning?	No	
A20	If there is to be a right of appeal or review of a council zoning decision, who should decide that appeal or review?	No – see above	
A21	What are appropriate measures that might be implemented in a new planning system to create public confidence in the integrity of environmental impact statements (and their supporting studies) for major development projects?	For community confidence in the preparation of environmental impact statements proponents would have to provide funding to Councils for Council to go through their process of procurement and have such EIS's	

		prepared by the Council not the proponent.	
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Item	Question	Response	Comment
B1	What should be included in the objectives of new planning legislation?	<ul style="list-style-type: none"> • Ecologically Sustainable Development; • Outlook focus; • Reference to climate change and sea level rise policies and objectives; • Relationship of State Planning to National Urban Development Policies. 	
B2	Should ecologically sustainable development be the overarching objective of new planning legislation?	No, but should be one of the objectives.	
B3	Should some objectives have greater weight than others?	No	
B4	Should there also be separate objectives for plan making and development assessment and determination?	No	
B5	Should the objectives address the operation of the new planning legislation?	Yes, in terms of certain procedures that would benefit from being legislated.	
B6	Are the current definitions in the Act still relevant or do they need updating?	Most are still relevant, some may need review.	
B7	Does the present definition of 'development' need to be rewritten? If so, in what respect?	No	
B8	Should there be a definition of 'minor'? If so, what should it say?	Yes – to be an integral part of categorising development according to potential impacts in line with the National Development Assessment Forum recommendations.	
B9	Should 'public interest' be defined? If so, what should it say?	-	
B10	Should there be one act or separate acts for different elements of the planning system?	There should be one single Act to deal with environmental and planning matters. Not the fragmented approach that is currently the case.	
B11	What should be in regulations?	-	

B12	Should there be a statutory requirement to review legislation periodically? If so, at what interval?	Yes – definitely and this should negate ad-hoc fragmented change over time that responds to specific issues that can undermine the effectiveness of the overall legislative approach.	
B13	Should there be requirements to periodically review other planning instruments and maps?	Yes – with potential alignment of the review of Local Plans and LEP's with the Integrated Planning Framework prescribed for Council's in the Local Government Act.	
B14	Should the information available about land on a central portal be able to be legally relied upon, if there is the ability for it to be certified for accuracy?	In theory, yes, but there are huge software incompatibility, funding and pragmatism issues to be addressed for this to be achieved.	
B15	Would this be able to replace section 149 Planning Certificates?	Potentially, yes.	
B16	What provisions should there be for independent decision making?	-	
B17	What should be the role of the Minister in a new planning system?	-	

Plan Making – Main Contents And New Provisions ***(Refer Chapter C in Issues Paper).***

2.10. Hierarchy of meaningful integrated plans at State, Regional and Local levels - all such strategic plans being attributed statutory weight;

2.11. Establish a State Plan.

- This should encompass policy directions at State level; contain a consolidated range of rationalised State Environmental Planning Policies (SEPP's), and estimates of population, its distribution and the development and infrastructure implications as significant directions / data bases for regional strategies.
- The State Plan should be integrated with content of the National Urban Policies.

2.12. Regional Planning and Definitions of Regions.

- Redefine regions to have consistency of regions by rationalising currently differently defined regions for planning, catchment management etc. This would include review of the validity and rationalisation of the currently defined Lower Hunter, Upper Hunter, Central Coast and Mid-North Coast regions;
- State agencies be required to have policies at regional level and as part of Regional Plans – to resolve biodiversity issues at the regional level (rather than putting it back on local government to seek to resolve them with OEH) and enable greater levels of delegation to local government based upon State policies;
- Have reference groups / advisory committees comprising State Agencies, constituent Councils (Mayor's, General Manager's/Director's of Planning) in the preparation, implementation and review of Regional Strategies – thereby enabling higher levels of coherent information, ownership and commitment to implementation;
- Achieve better connection with preparation, monitoring and review of local strategic plans and LEP's.

2.13. Integration in regional and local plans of planning for development, environmental and infrastructure outcomes.

- Integration of development, environmental and infrastructure planning at State, Regional and Local levels – a particularly potent point for the Lower Hunter Regional Strategy Review.
- Integration of State Plan, Regional Strategies and Local Plans – potentially over time also to enable higher level of integration with national urban policies;
- Far greater integration of State Agencies involvements in plan making and development assessment – including the engagement of State Agencies in the preparation, implementation and review of Regional Strategies leading to a level of commitment by State Agencies to infrastructure delivery (forward budget estimates etc.) and policy adherence.

2.14. Local Strategic Planning - Increase the emphasis and attribute statutory weight.

- LEP's are simply an implementation mechanism to implement Local Planning Strategies);
- Make part of the Integrated Planning Framework in the Local Government Act and therefore integrate development, environmental and infrastructure planning with the Community Strategic Plans, Delivery Programs and Operational Plans for which Local Government is responsible;

- Give increased emphasis to the monitoring and review of regional and local strategic plans in a coordinated manner;
- Legislate that there should be no ad-hoc re-zonings / draft LEP amendments and these should only be subject of formally periodic reviews undertaken in a consolidated manner unless for "anomalies" based upon stringently defined criteria;
- Local Strategic Plans should be reviewed every four years – (in a similar manner as required by the provisions of the Integrated Planning Framework) to better reflect the policy directions of the majority of the elected Council "of the day" and to be more responsive and adaptive to change over time.

2.15. Local Planning and the Standard Local Environmental Plan.

- Retain some level of standardisation for State consistency but this standardisation should relate to structure and format – not to content, with the exception of State directions. Much higher levels of flexibility should be enabled (in legislation and practice) to connect with local issues, local character and other local factors;
- Whilst the Gateway Process has been relatively successful, the delays in producing Comprehensive LEP's and LEP amendments are unacceptable;
- Empower Local Government to determine some LEP's - Council's should be able to self-determine LEP's when those LEP's are compatible with Local and Regional Strategic Plans and have an endorsement from the Regional Office of the Department of Planning and Infrastructure.

2.16. Contributions Planning.

- Remove the current confusion between State Infrastructure levies and local development contributions planning;
- Infrastructure planning by State agencies to be integral to regional planning (Lower Hunter, Upper Hunter, Central Coast and mid-North coast regional strategies)– with commitment to include infrastructure proposals in Forward Estimates for the State budget;
- This needs to be reviewed to reflect the cumulative effects of rate capping on the greatly eroded capacity of Hunter Councils (and NSW local government generally) to fund and maintain new infrastructure associated with development growth.

EXPEDITING THE PROCESSING OF MINOR AMENDMENTS TO LOCAL ENVIRONMENTAL PLANS

This submission has been prepared in response to an invitation from the Minister to present suggestions about how the processing of minor rezonings can be expedited. While appreciating that the focus is on minor amendments to LEPs, this submission has sought to present a solution that deals with all amendments in a consistent manner according to an established framework.

WHAT IS MEANT BY "REZONING"?

"Rezoning" is a generic term that is applied to the process of amending a local environmental plan. Sometimes this may involve a change to the zoning of land but there are numerous other changes that are covered by the same process. At present there is no distinction between correcting a few words in an LEP clause or releasing large tracts of land for development. The outcome may be vastly different but the process is the same.

WHAT IS A MINOR REZONING?

For clarity it is appropriate to distinguish between a major and a minor amendment to a local environmental plan. This also illustrates that minor amendments address more than zone changes.

- A. a minor amendment is:
- consistent with local and regional strategies
 - without significant policy implications
 - subject to little community concern
 - often limited in its spatial extent.
- A minor amendment requires no State government review and includes:
- correcting the wording of a clause to remove uncertainty or ambiguity
 - amending a schedule such as heritage listing a property
 - reclassifying community land
 - making a minor map adjustment, such as realigning a foreshore building line.
- B. could have minor policy implications that may require State Government review and includes:
- amending a development standard that applies to a site, beyond the extent of SEPP No. 1
 - allowing an additional use of a site or within a zone.

SHOULD MINOR AMENDMENTS BE TREATED AS PLANNING PROPOSALS?

The full planning proposal process should be limited to amendments that are inconsistent with local or regional strategies, have significant policy implications or necessitate considerable community consultation. Minor amendments should be processed by the relevant council and forwarded to the Department of Planning & Infrastructure to be made. As there may be concerns from the Department that a category B minor amendment should be processed as a planning proposal a simple administrative procedure is required to allow the Department to certify that it is a minor amendment.

WHAT OBJECTIVES ARE TO BE SATISFIED?

The proposal seeks to:

- expedite the processing of minor amendments with no strategic or policy implications
- reduce the administrative role of the Department of Planning & Infrastructure so it can concentrate on comprehensive LEPs and major rezonings
- establish a process for applicants and councils to obtain a review to overcome obstacles
- institute a transparent process that allows appropriate community scrutiny
- introduce a process for poorly prepared or unjustified proposals to be rejected more quickly
- reduce the need for the Parliamentary Counsel to draft every minor amendment.

SHOULD THERE BE A REVIEW AUTHORITY?

Central to this proposal is the replacement of the LEP Review Panel that has an advisory role, with an independent panel. As well as examining the merits of all planning proposals this new panel will undertake a review role. Any party seeking a review of how rezoning is proceeding can request the panel to review the proposal and its processing. Authority should be given to the panel to make recommendations to the Minister or Director General, as well as decide how the planning proposal should be completed.

Under s23D of the Act, the Planning Assessment Commission can be requested to advise the Minister or the Director General as to the environmental planning instruments, or any related matters, as can a Joint Regional Planning Panel. Essentially, the provisions of s56(5) of the EP&A Act should be activated, not on a case by case basis but as a permanent process. Alternatively, a separate replacement body could be established with responsibilities only for reviewing planning proposals and examining applications for review.

Ideally, the new Zoning Review Board should be an independent technical body consisting of professionals experienced in strategic planning and policy formulation.

HOW WOULD THE REVIEW PROCESS OPERATE?

- a minor amendment can be initiated by a council or an individual property owner/applicant
- prior to the matter being reported to the relevant council a request is submitted to the Department for it to certify that the proposal is a minor amendment
- after a period of 100 days from when the minor amendment is initiated, the property owner/applicant or the council can request the Zoning Review Board to hear submissions from interested parties
- the Zoning Review Board will hear submissions in a manner similar to a JRPP
- after hearing submissions the Zoning Review Board can:
 - make a recommendation to the Director General
 - inform the General Manager of the relevant council that a planning proposal is to be presented to the Gateway within 21 days or other time period it considers appropriate
 - inform the landowner/applicant that the planning proposal is deficient in its current form and specify what additional action is required
 - inform the landowner/applicant and council that the minor amendment lacks merit and does not warrant further consideration
 - when necessary the Zoning Review Board can make a recommendation to the Minister.

WHAT WOULD BE THE PROCESS FOR A MINOR AMENDMENT?

When the Planning Proposal/Gateway process was established it was expected that LEP amendments would be streamed so that minor amendments could be assessed through a faster but more appropriate system. In part, this has been achieved but principally after the planning proposal has been through the Gateway. for minor amendments a more efficient process is required prior to the proposal coming to the Gateway.

A more efficient alternative would be:

- planning proposal initiated by council or land owner/applicant
- council officers assess the proposal as being consistent with local and regional strategies and, therefore, a minor amendment
- a request is submitted to the regional office of the Department of Planning & Infrastructure for the planning proposal to be certified as a minor amendment
- upon receipt of confirmation from the Department the minor amendment is finalised and approved by the council
- the minor amendment and an explanatory report is forwarded to the Gateway for
 - the minor amendment status to be noted
 - approval for the planning proposal to be exhibited for 14 days
 - the completed planning proposal to be forwarded to the Department to be made.

Chapter C

MAKING PLANS

Feedback Question	Comments
C1. Should there be an independent State Planning Commission to undertake strategic Planning? Or should there be an independent Planning Advisory Board?	<p>It is recommended that a Regional Coordination Group be established that oversees the development of Regional Strategies. This group could be similar to the Regional Directors Groups that are currently established across the state under the Coordination of the Premiers Office for instance with an expanded membership.</p> <p>A narrowly focused State Planning Commission or Advisory Board would not have sufficient autonomy or authority to ensure input and outcomes from all of the government agencies.</p> <p>Figure 1 illustrates how this could occur.</p>
C2. Should regional organisations of Councils be recognised in new planning legislation?	No. The arrangements of ROC's vary from region to region with very different memberships and objectives.
C3. Should new legislation prescribe a process of community participation prior to the drafting of a plan?	No. Each community will engage differently. Councils are required to prepare Engagement Strategies as a critical part of the new Integrated Planning Framework, thus once all Councils have developed theses the Community Strategic Plan (CSP) should be the framework for community consultation and engagement.
C4. Should there be required consideration of the 'public interest' in the plan making process?	Yes, however there would need to be a framework for consideration of the public interest.
C5. Should there be a definition of what constitutes the 'public interest'? And what should that say?	A Practice Note would assist more than a definition as it is considered that this is largely an understood term. The application of a 'Public Interest Test' may assist, however that test may vary from community to community depending upon the values of that community.

Feedback Question	Comments
C6. Should plans and associated maps have prescribed periodic reviews?	No. Council's should be talking with their communities in the development of CSP and seeing what their priorities are. If the LEP is to be integrated into the new Integrated Planning Framework then this is the idea opportunity.
C7. At what suggested intervals should such reviews occur?	Refer response to question C5 above.
C8. How can new planning legislation co-ordinate with Council planning under the Local Government Act?	<p>Refer to Figure 1. Under the Integrated Planning Framework all Councils are required to prepare a Community Strategic Plan along with a Delivery Program and Operational Plan.</p> <p>The Community Strategic Plan must be developed and endorsed by the council.</p> <p>The Community Strategic Plan is to identify the main priorities and aspirations for the future of the local government area.</p> <p>The Community Strategic Plan must cover a minimum timeframe of 10 years.</p> <p>The Community Strategic Plan must establish strategic objectives together with strategies to achieve those objectives.</p> <p>It must address social, environmental, economic and civic leadership issues in an integrated manner.</p> <p>Council must ensure the Community Strategic Plan is adequately informed by relevant information relating to social, environmental, economic and civic leadership issues.</p> <p>It must be based on the social justice principles of equity, access, participation and rights.</p>

Feedback Question	Comments
	<p>The Community Strategic Plan must give due regard to the State Plan and other relevant state and regional plans.</p> <p>This new framework recognises that communities do not exist in isolation – they are part of a larger natural, social, economic and political environment that influences and, to a large extent, shapes their future direction.</p> <p>Neither do council plans exist in isolation – land use and infrastructure planning produces social, environmental and economic outcomes, and vice-versa – they are connected.</p> <p>This framework encourages councils to draw their various plans together, to understand how they interact and to get the maximum leverage from their efforts by planning holistically for the future.</p> <p>It recognises that most communities share similar aspirations: A safe, healthy and pleasant place to live, a sustainable environment, opportunities for social interaction, opportunities for employment, reliable infrastructure, etc. The difference lies in how each community responds to these needs. That is what shapes the character of individual towns and cities.</p> <p>The new framework opens the way for councils and their communities to have important discussions about funding priorities, service levels and preserving local identity and to plan in partnership for a more sustainable future. Accordingly, this process provides the perfect opportunity for Council's to ask their communities what their priorities are in terms of local planning within their Local Government Areas.</p> <p>This feedback can then be reflected in Local Strategies and ultimately the Local Plan (currently the LEP).</p>

Feedback Question	Comments
C9. What information and data should be used in preparing plans?	<ul style="list-style-type: none"> • Population data including projections • Economic Analysis • Land supply and demand data • Real Estate Data • Tourism data • Transport and traffic • Flooding
C10. Should there be a requirement to make it publically available?	Yes and updated and reviewed regularly.
C11. Should there be a requirement for plans to address climate change?	Yes for coastal Plans, however, in respect of inland councils the likely impacts of climate change are very different. Any requirement needs to be flexible as emphasis to date has been on sea level rises with no impacts on inland Australia.
C12. Should biodiversity and environmental studies be mandatory in the preparation of plans?	No. The requirement for these studies should be based on characteristics of the area affected. Regional Strategies should include regional flora and fauna and Local Strategies should include environmental studies based on the regional data.
C13. How should landscapes of Aboriginal cultural heritage significance be identified and considered in plan making?	This should be mapped similar to heritage.
C14. Should new planning legislation provide a statutory framework for strategic planning?	Yes. Standard Templates could be developed for Metropolitan, Coastal, Regional and Rural areas along with some guidelines for preparing these plans.
C15. Should strategic plans be statutory instruments that have legal status?	Yes. This would provide more certainty and reduce the opportunities for political decisions or developer pressure to override the strategic direction on an ad hoc basis.
C16. How can the implementation of strategic plans be facilitated?	Refer to Figure 1. The Local Strategies can be developed by Council's with input from Government, stakeholders and the community and they can be signed off or certified at a regional level by a Regional

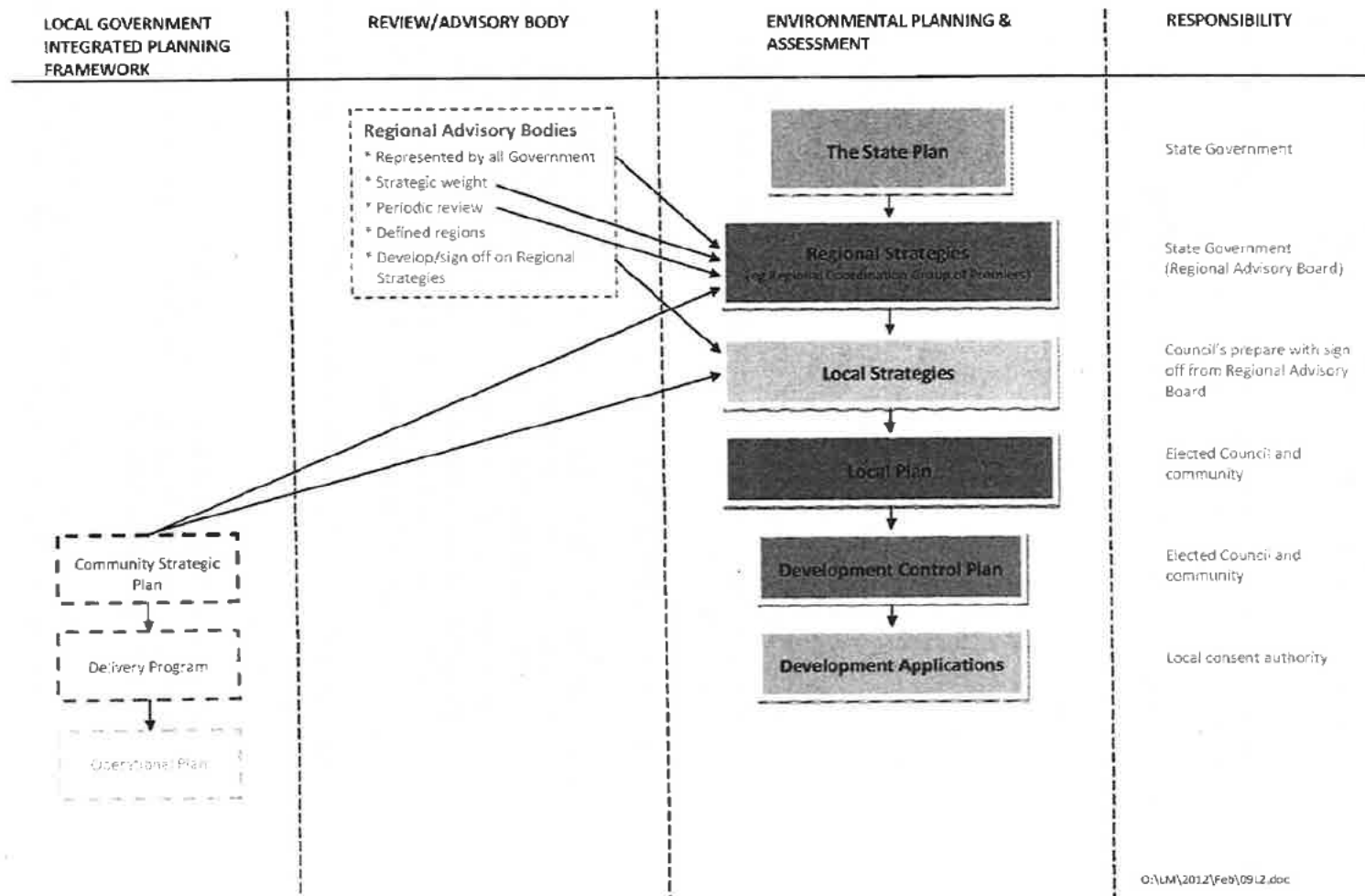
Feedback Question	Comments
	Advisory Body who represents all of Government.
C17. To which geographical regions should strategic plans apply?	Regional Strategies should be regional based this could be CMA or catchment, however most if not all areas identify with a single region. Local Strategies should be based on Local Government Areas (LGA's) but could also apply to a number of LGA's for efficiencies and resourcing purposes.
C18. Should there be State Environmental Planning Policies? If so, should they be a single document? Or should they be provisions in a Local Environmental Plan?	No. Strategic issues should be incorporated into the Regional Strategies and Local matter could be included in Local Strategies or Plans whichever is relevant. The SEPP's add a further level of uncertainty and confusion for the community, applicants and consent authorities.
C19. Should there be statutory public participation requirements when making SEPPs?	Yes if they remain as part of the planning framework.
C20. Should a SEPP be subject to disallowance by Parliament?	No.
C21. Should there be a review process to deal with issues arising between the Department and council's that relate to the preparation of Local Environmental Plans?	Yes. The recently established Local Planning Panel is an idea vehicle to deal with issues arising between councils and the Department.
C22. Should there be a legislative to establish this?	The Local Planning Panel is already established, however to ensure that it continues legislative provisions should be established.
C23. How should rezonings (Planning Proposals) be initiated?	Should be established as an application process similar to development applications.

Feedback Question	Comments
C24. How can amendments to plans be processed more quickly?	<p>Rezoning/Planning Proposals could be categorised based on level of impact and/or complexity or compliance or otherwise with an approved/adopted Strategy so that minor ones can be expedited.</p> <p>Attach or refer to submission to the Minister re Minor rezoning JB's submission</p>
C25. Should there be a right of appeal or review for decisions about planning proposals?	<p>No as this takes away the decision making power from local Council's. They should be able to determine what is appropriate in their LGA, given they also have to include state and regional matters in their LEP's.</p> <p>It is a different matter if timely determinations of Planning Proposals are not being made, however. These matters could be referred to the JRPP for review.</p>
C26. Should there be a right for a landholder to seek compensation for the consequences of a rezoning of their land?	No.
C27. When Local Environmental Plans are being made or amended, how can transparency and opportunities for negotiation be improved during consultation with government agencies?	Refer to Figure 1. There should be a central body to coordinate the responses from government agencies.
C28. Should some individual rezoning not require any merit consideration at a state level?	Yes. If the proposal is consistent with the Regional Strategy there should be no requirement for input from the state level.
C29. What should be the process prior to listing an item of local heritage in a Local Environmental Plan?	<ol style="list-style-type: none"> 1. Nominations sought/received or 2. Heritage Study undertaken (could be community based) 3. Draft Heritage Study and inventory placed on public exhibition and owners notified; 4. Study revised and adopted; 5. Heritage Study submitted to NSW Heritage Office for endorsement; and

Feedback Question	Comments
	6. Items included in the LEP via the normal LEP process.
C30. Should student housing be included as affordable housing?	Yes.
C31. How can abuses of student housing be prevented?	Development consent could include restrictions on the title to restrict use as student housing or require certification similar to Affordable Housing .
C32. What should be the legal status of a DCP?	Same as existing.
C33. Should there be a standard template for DCP's?	There should be a standard template for the Comprehensive DCP but not site/issue specific DCPs.
C34. How should new planning legislation facilitate cooperative cross-border planning between Councils?	Regional Strategies should be developed to identify common issues, threats and opportunities as well as the strategic direction of the region.
C35. Should a program be developed to integrate Aboriginal reserves properly into a new planning system and if so, how should that program be developed and what timeframes could be targeted for its implementation?	No comment.
C36. Should the developers of Greenfield residential land release areas be required to make provision for a registered club and associated facilities?	No. This is a commercial decision for a developer. Release Areas can be identified in the Local Plan and a club developer could approach the owner/developer to be included in the release/development.
C37. Who should be responsible for planning in the unincorporated area of the state?	The relevant regional office of the Department of Planning and Infrastructure in partnership with the local councils of the adjoining towns and villages should develop the regional strategy for these areas. The process should follow that required for the incorporated

Feedback Question	Comments
	areas and the community of these areas should be consulted on the proposals in line with the Community Strategic Planning consultations.

Figure 1 (C16)



MAJOR POINTS – SECTION D

- a. **Match assessment to complexity, scale and the impacts of the proposal**
 - i) Legislate for a hierarchy of development categories/types, assessment criteria and processes to complexity, scale and impacts – categories as recommended by the National Development Assessment Forum.
- b. **Distinguish between concept plans, development applications and building applications/construction certificates**
 - ii) Enable greater certainty by enabling Concept Plans to have a level of endorsement before the investment and time is invested in the preparation of a full DA.
 - iii) Separate the technical building approval processes from development assessment.
- c. **Existing Use Rights Issues**
 - a) No change should be made to the existing provisions. The current approach is necessary to ensure, over time, that land uses become compatible with those permitted in the zone.
 - b) Expansion beyond their current sites without following the rigour associated with a Planning Proposal process would serve to undermine the integrity of the applicable LEP.

Joint Regional Planning Panel System

- c) The use of value in determining what is referred to the JRPP does not necessarily reflect regional development. Determination on what is referred to JRPPs should be done on the basis of categories of development having regard to the scale and nature of development, similar to the process used to determine designated development. It is considered criteria for referral to a JRPP should be developed at a regional level between regional officers of the Department of Planning and representatives from Local Government.
- d) Many Councils have efficient and timely processes in the determination of applications and should be able to seek exemption from the Minister for Planning.
- e) Council should be able to refer applications to the JRPP, even if they are below the value threshold, particularly if developments have cross boundary impacts or are highly controversial.
- f) The operations of JRPP meetings often give rise to confusion to applicants and objectors, as there are no formal procedures for their input.

JRPPs need to ensure procedural fairness and have formal meeting procedures to ensure input by stakeholders and explanation of the Panel's determination by the Panel Chair.

- g) It needs to be recognised that Councillor representatives on the Panel cannot in reality bring an independent view to the Panel and should be able to reflect the views of their Council in any determination made by the Panel.
- h) The present operational procedures require one of the local representatives to have specific technical skills. This often results in conflicts of interest with the staff involved, particularly in small Councils. Why do the local representatives need these skills when the Panel is provided with a planning report from Council staff.

Complying Development

- i) There continues to be poor take up of Complying Development with CDCs comprising only 18.5% of all development approvals in 2010/2011 (Local Government performance monitoring (2010-11)).
- j) The current system is:
 - k) **Too complicated** – to attract the high level of usage that was originally envisaged and required to reduce the assessment resource burden of more complicated and elaborate DA assessment process such as those associated with JRPP and PAC determined applications.
 - l) **Fragmented** – in that not all exemptions and complying criteria are contained within a single policy document (i.e. additional exclusions in infrastructure SEPP).
 - m) **Inflexible** – too few local variations have been accepted, such that the generic criteria does not relate well to many different locations and are therefore often more restrictive than local Council's own DCPs.
 - n) **Incompatible** – the generic "one size fits all" approach often leads to significantly different standards being applied in residential neighbourhoods, especially in regional and rural locations, which are in contrast and often incompatible with existing development. This leads to neighbour and community unrest and criticism of the system.
- o) Improvements could be made as follows:
 - p) Local variations need to be embraced, within a rational format, so that standards and requirements are far better suited to different geographical locations and therefore far more compatible with the existing character of established neighbourhoods.
 - q) A "Pre-lodgement certificate" should be introduced as a mandatory precursor for Complying Development. The certificate would facilitate far greater certainty at the entry level, ensure that local variations could be easily identified as well as pick up other critical Council requirements such as location of sewer lines and restrictions as to user over titles. The net result would be that the existing complexity and legality of the current statutory system is de-mystified, providing a simple mechanism to enable

entry to the complying system. The applicant has certainty and the Council has confidence that all its requirements will be met. Councils would be required to provide the certificate within a two (2) day turnaround (with five (5) days for small rural Councils) and for a limited fee.

- r) All exempt and complying development criteria need to be consolidated within a single policy document.
- s) The use of the e-code is recognised as an important innovation which will become far more important over time. However, at this stage it does not address the totality of the concerns outlined above. Specifically it does not easily accommodate local variations and provide the certainty of entry that is essential if uptake rates are to be increased. Anecdotally, model Councils advise that while the e-code has attracted a lot of enquires its use has been far more limited. Many Councils throughout the state, for varying reasons, are not in a position to partner with the state government and provide this facility for their ratepayers. In this respect the e-code does not provide a comprehensive solution to the issues identified.

ISSUES AND POSSIBLE IMPROVEMENTS TO JOINT REGIONAL PLANNING PANELS

This submission has been prepared in response to issues raised by members of the Local Government Planners Group at the February meeting with the Minister for Planning. The Minister requested views on the issues and how the JRPP process could be improved.

NEED FOR THE JOINT REGIONAL PLANNING PANELS (JRPP)

It is considered that there is a role for JRPP so that the following objectives are met:

- decisions made consistent with State and Regional Plans and Objectives
- there is timely assessment and determination of regional scale development applications
- to overcome delays in determination of applications by some Councils which may in part be due to the Councils having to make difficult decisions on highly controversial applications, often with significant community concern.

ISSUES WITH THE CURRENT JRPP PROCESS

The Local Government Planners Group acknowledged the improvements that have been made to the system as a result of the changes that occurred in October 2011.

There are however some concerns in relation to the criteria used to determine what goes to the JRPP as well as other issues. These are as follows:

- a. There is concern that the value of development does not necessarily reflect that a proposal is clearly a regional development. A warehouse complex in an industrial area in Sydney valued over \$20m is not necessarily regional development whereas a rural industry with a value far less than \$20m often is.
- b. Developments that are below the value threshold may also have cross boundary impacts with neighbouring Councils or are politically difficult for Council's to determine.
- c. Many Councils have efficient and timely processing the applications and could deal with applications more quickly than the JRPP.
- d. The operations of JRPPs meeting often give rise to confusion to applicants and objectors, as there is no formal procedures for their input. This is in contrast to Council's Committee and full Council meetings. This can give rise to the perception that the decision has already been made.

OPTIONS FOR CHANGE

- Allow Councils to seek exemptions from the JRPP process, where they can demonstrate efficient and timely assessment and determination.
- Allow Councils to refer applications to JRPP:
 - i. Where the proposal involves 2 Council areas or has impacts on neighbouring Councils; or
 - ii. Where it is difficult for Councils to determine the application, due to them being highly controversial and/or involving significant community concern.
- Use categories of development similar to the way that designated development is determined, rather than the value of the development to determine what needs to be referred to JRPP's. In this regard it is recommended the examination be on a regional approach to determine what is clearly regional development.
- Establish standard procedures for JRPP meetings, so stakeholders understand the operations of the meetings and their involvement.

SUGGESTED STEPS

1. Allow Councils to refer applications to JRPP outside the established criteria.
2. Ask Councils to identify areas/types of development that could be exempt i.e. industrial development in the industrial areas of Sydney.
- 3(a) Grant time limited exemptions (12 months) to Councils who can establish timely determination of applications but monitor their performance.
- 3(b) Establish criteria for exemption such as:
 - a) Consistent with State and Regional Plans and their objectives
 - b) That there are no planning objections or the objections can be addressed by a condition of consent.
 - c) Council's staff recommend approval
 - d) Referral to JRPP if not determined after 120 days, except in circumstances where the delays are caused by the applicant.
4. Have the Regional Department officers' work with Senior Council Planners in their region to identify potential areas for exemption by value and/or category and location. Use of this information to further refine the process and applications that must be referred to the JRPP.
5. The DP&I need to establish meeting procedures to ensure a number of essential aspects to the meeting agenda including:

- i. Presentations from staff on the details of the application and the findings of their assessment report.
- ii. Opportunity for both the applicant and objectors to present their position.
- iii. The Panel Members or the Chair explain the Panel's position and reasoning for their determination.

Complying Development

Draft Submission to Minister for Planning and Infrastructure

Background

The Complying Development SEPP (Codes SEPP) has been in place for approximately 4 years and the system has not delivered the expected results; specifically a simple system that can be used by large developers and "mum and dad" applicants alike, for the vast majority of straight forward residential development applications. The uptake rate has been far less than anticipated and therefore there has not been a substantial reduction in DA assessment times. As noted by Kristian Ruming (Australia Planner vol.48, Dec 2011) in her recent review of the Planning reforms:

"...it is important to recognise that applicants challenge the extent to which the Codes SEPP would improve overall assessment times given the difficulty in meeting the requirements. Thus applicants claim that a significant proportion of their developments are unable to be assessed under the Codes SEPP which potentially limits its overall impact on assessment times...."

"...Somewhat contrary to the intentions of the DoP....applicants identify the Codes SEPP as being of most benefit to large developers operating in Greenfield locations, where it becomes the new design guideline for large development companies..."

"...However applicants recognise the difficulty and work required prior to lodging an application to establish which assessment stream is the most appropriate, resulting in some instances in a level of confusion over which assessment stream is likely to have the best outcome..."

The current system has been modified many times but remains:

- **Too complicated** - to attract the high level of usage that was originally envisaged and required to reduce the assessment resource burden of

more complicated and elaborate DA assessment processes such as those associated with JRPP and PAC determined applications.

- **Fragmented**- in that not all exemptions and complying criteria are contained within a single policy document (i.e. additional exclusions in Infrastructure SEPP)
- **Inflexible**- too few local variations have been accepted, such that the generic criteria does not relate well to many different locations and are therefore often more restrictive than local Council's own DCPs.
- **Incompatible** – the generic "one size fits all " approach often leads to significantly different standards being applied in residential neighbourhoods, especially in regional and rural locations, which are in contrast and often incompatible with existing development. This leads to neighbour and community unrest and criticism of the system.

Improvements

The existing approach needs to be modified to increase its accessibility to a broader range of applications and thereby increase the uptake rate. Other issues outlined above also need to be addressed. This can be achieved through three fundamental modifications:

- 1) Local variations need to be embraced, within a rational format, so that standards and requirements are far better suited to different geographical locations and therefore far more compatible with the existing character of established neighbourhoods. This would also provide greater accessibility for those areas where Council policy controls are more generous than those in the Codes SEPP. Such an approach would lead to Complying Development that is virtually indistinguishable from development permissible under Councils DCPs. However, the Complying Code would provide a quicker and cheaper system that could be utilised without needed to lodge a DA with Councils.
- 2) A "Pre-lodgement certificate" should be introduced as a mandatory precursor for Complying Development. The certificate would facilitate far greater certainty at the entry level, ensure that local variations could be easily identified as well as pick up other critical Council requirements such as location of sewer lines and restrictions as to user over titles. The net result would be that the existing complexity and legality of the current statutory system is de-mystified, providing a simple mechanism to enable entry to the complying system. The applicant has certainty and the Council has confidence that all its requirements will be met. Councils would be required to provide the certificate within a 48hour turnaround and for a limited fee.
- 3) All exempt and complying development criteria and requirements need to be consolidated within a single policy document. Guidelines (such as

those existing) need to be modified to reflect the resultant full suite of controls and illustrated in a user friendly graphical format.

The use of the e-code is recognised as an important innovation which will become far more important over time. However, at this stage it does not address the totality of the concerns outlined above. Specifically it does not easily accommodate local variations and provide the certainty of entry that is essential if uptake rates are to be increased. Anecdotally, model Councils advise that while the e-code has attracted a lot of enquires its use has been far more limited. Many Councils throughout the state, for varying reasons, are not in a position to partner with the state government and provide this facility for their ratepayers. In this respect the e-code does not provide a comprehensive solution to the issues identified.

Chapter D - Development Proposals and Assessment

Feedback Question	Comments
D1 How should development be categorised?	Based upon categories and types in relation to potential impacts as per National Development Assessment Forum recommendations.
D2 What development should be designated as State significant and how should it be identified? Should either specific projects or types of development generally be identified as State significant?	
D3 What type or category of development, if any, should be identified as regionally significant and be determined by a body other than the council?	This should be identified in Regional Strategies based upon rationales for regional significance and if regionally significant, should be potentially determined by a JRPP.
D4 What development should be exempt from approval and what development should be able to be certified as complying?	De-complicate the existing Exempt & Complying development. Again follow National DAF recommendations and categorise minor and code assessed as per those recommendations. A simplified code should include a requirement for Councils to issue certificates as to what is complying development. Greater flexibility for local variations should be provided to enhance uptake rate.
D5 How should councils be allowed local expansions to any list of exempt and complying development?	Yes, by locally submitted rationales based upon more flexible approach to complying development. This should include the ability to accredit local professionals, based upon policies and criteria, to determine such complying development within flood liable, bushfire prone and aircraft noise affected areas.
D6 Should there be a public process for evaluating complying development applications?	No, consultation should be at the local plan/code preparation stage, not thereafter.
D7 Should there be an absolute right to develop land for a purpose permitted in the zone subject only to assessment of the form proposed?	No, impacts extend beyond the form of development. Complying development is similar to this concept.
D8 Should there be an automatic approval of a proposal if all development standards and controls are satisfied?	No, there can be impacts over and above those to which standards and controls directly relate.

Feedback Question	Comments
D9 Should conceptual approvals be available for large scale developments with separate components?	Yes
D10 Should a new planning system reinstate the ability to convert one nonconforming use to another, different nonconforming use?	No. If more flexibility is to be given then there should be a "step down" principle whereby new use is more compatible with zone than existing use.
D11 Should existing nonconforming uses be permitted to intensify on the site where they are being conducted (subject to a merit assessment)?	Yes, subject to rigorous merit assessment.
D12 Should existing nonconforming uses be permitted to expand the boundaries of their present site (subject to a merit assessment)?	No
D13 Should properties with existing nonconforming uses have access to exempt and complying development processes?	No, needs proper evaluation.
D14 When there is a change in zoning of the land, should an application be able to be made to a council for a declaration of the nature and extent of an existing use?	No, the onus should be with the landowner not put onto Councils.
D15 Should there be a system of transferable dwelling entitlements to permit owners of an agricultural holding to transfer a dwelling entitlement from that land to another parcel of land? D16 – extinguish that dwelling entitlement on the original agricultural landholding?	Yes but this needs to be carefully controlled, very complicated and open to abuse. Yes
D17 Should it be possible to apply for approval for development that is prohibited in a zone?	No, could be used to circumvent proper strategic planning assessment and the "planning proposal" process.

Feedback Question	Comments
D18 Should there be a single application to the council to obtain permission to use an unauthorized structure?	Yes, but needs to be at increased cost to the applicant to discourage illegal development and building.
D19 Where a small scale proposal requires an environmental impact statement, should it be possible to seek a waiver?	Environmental statement should relate to the nature and extent of proposed development, needs to be flexibility.
D20 Should dual service connections be permitted for residences in greenfield residential developments?	Yes
D21 What provisions, if any, should be made for pre-lodgement processes?	Not binding provisions, but incentivised and enable for local Councils to do this. Councils should be able to adopt pre-lodgement policies or DCPs which can outline process for different scales of development. Non compliance with DCP or policy can then be used as a reason for rejection.
D22 How should Director-General's requirements fit in the planning process?	
D23 How can the application process be simplified?	
D24 Should there be standard development application forms that have to be used in all council areas?	Regulations should outline minimum essential requirements. Councils should have some discretion to tailor forms to local conditions.
D25 What public notification requirements should there be for development applications?	Depends upon categories and types of development referred to and as per the National DAF recommendations.
D26 How can the community consultation process be improved?	Greater focus on additional involvement at policy or strategic level. At DA stage, submissions should primarily relate to design considerations and for very straight forward applications no notification.
D27 Should deemed approvals take the place of deemed refusals for development applications?	No. Would only result in Councils refusing application rather than working through the issues with the applicant to achieve an acceptable outcome.
D28 Should councils be able to charge a higher development application fee in return for fast-tracking assessment of a development proposal?	No. Concern is raised about equity issues. Poorer applicants would be disadvantaged in what is a public service.

Feedback Question	Comments
D29 If an application partially satisfies the requirements for complying development, should it be assessed only on those matters that are non-complying?	No, too complicated. Complying development needs to be straight forward process to encourage uptake.
D30 How can unnecessary duplication of reports and information seeking be eliminated from the development process?	This is not a legislative issue, relates to better planning practice.
D31 How should State Significant proposals be assessed?	By independent expert panel.
D32 Should the Crown undertake self-assessment? D33 Should the Crown undertake self-determination?	Only for straight forward applications, complicated proposals should be determined by independent expert panel.
D34 Should councils undertake self-assessment? D35 Should councils undertake self-determination?	This would depend on the scale of development and community concerns. ICAC have suggested guidelines for Council applications. For major or controversial developments, referrals should be made to IHAP in those Councils who have one or to JRPP.
D36 How can the integrity of an environmental impact statement be guaranteed?	
D37 Should new planning legislation make provision for councils to appoint architectural review and design panels?	Only for landmark buildings as defined through regional strategies or local plans.
D38 What changes, expansions or additions should be made to the present assessment criteria in the Planning Act?	The add on sections to 79c such as threatened species and bushfire should be rationalised and integrated into one list of relevant considerations. This would enable more balanced decision making.
D39 Should the economic viability of a development proposal be taken into account in deciding whether the proposal should be approved or in the conditions for approval?	This is a complex question and there are significant risk components attributed to the development and investment industries into which Council planning assessment should not intrude. There is also potential for misleading submissions and subsequent undermining of proper consideration. Current legal "tests" for conditions work well.

Feedback Question	Comments
D40 Sometimes there are changes that would rectify problems with a proposal and thus permit its approval. Should it be mandatory during an assessment process for the consent authority to advise of this?	No, this should not be mandatory. Clearly, there is far greater opportunity for Councils to negotiate and facilitate good development in similar situations.
D41 Should a new planning system permit adverse impacts on the value of properties in the vicinity of a proposed development to be taken into account when considering whether a development should be approved?	This is the role of strategic planning and values of properties fluctuate and cannot be a significant reason or factor in development application assessment. This matter is partly addressed through amenity impact consideration.
D42 Should local development controls be allowed to preclude high-quality, environmentally sustainable, residential designs on the basis that they are inconsistent with the existing residential development in the vicinity?	Planning policies need to articulate desired future character as well as existing character.
D43 How can the planning system ensure that the impact of development that is remote from but directly affecting a community is taken into account in the assessment process?	Relevant considerations need to clearly outline that impacts need to be considered even if they relate to remote communities. There is no easy way to make these complex judgements.
D44 Should a consent authority be required to consider any cumulative impact of multiple developments of the same general type in a locality or region? Should this be a specific requirement in assessment criteria?	Guidelines on how best to evaluate cumulative impact would be useful. Catchment or precinct monitoring over time needs to also be investigated and better tools developed.
D45 As part of the assessment process for some classes of development projects, should there be a mandatory requirement in a new planning system for full carbon accounting to be considered?	No, too complicated and uncertain.
D46 Should the broader question of the public benefit of granting approval be balanced against the impacts of the proposal in deciding whether to grant consent?	Yes, this should be the basis of public interest considerations.

Feedback Question	Comments
D47 Should a consent authority be able to take into account past breaches of an earlier development consent by an applicant in considering whether or not it is reasonable to expect that conditions attached to any future development consent would be obeyed?	No. This issue would be very difficult to police and monitor and there would need to be a very complex system of monitoring and recording all breaches to avoid ad-hoc decision making, together with appropriate appeal and review mechanisms. However, where an applicant has a history of non-compliance, Councils should be able to impose performance bonds to ensure future compliance.
D48 Should objections to complying with a development standard remain?	It has been assumed that this refers to retention of SEPP No. 1. If so, yes. Development standards are often broad in terms of their nature and policy objectives. Consequently, they may not provide the best planning outcome for a specific site. Providing the mechanism to consider a variation request is transparent, it is a sound practice.
D49 Should an 'improve or maintain' test be applied to some types of potential impacts of development proposals?	This is a complex question, such tests if applied too literally have the effect of stopping all development. Most developments have some impact even if minimal.
D50 If so, what sorts of potential impacts should be subject to this higher test?	
D51 Should there be a specific assessment criterion that requires risk of damage as a consequence of either short-term natural disasters or long term natural phenomenon changes to be included in development assessment?	Yes
D52 What water issues should be required to be considered for urban development projects?	
D53 When development is proposed that has an impact on an existing, nonconforming residential use, should any special assessment criterion be required to take account of the residential use?	No.
D54 Should new planning legislation fix a time at which a council assessment report concerning a development application is to be made available for access? If so, when should that be?	Current appeal rights for neglect and delay are sufficient. These types of controls seldom encourage better planning outcomes.

Feedback Question	Comments
D55 When should an amended application be re-exhibited and when is a new application required?	Current case law provides adequate direction.
D56 What are appropriate performance standards by which council efficiency can be measured in relation to development assessment?	This needs to shift substantially from indicators based purely upon administrative efficiency and speed of determinations to a system that embodies quality of outcomes as an indicator.
D57 Should there be random performance audits of council development assessment?	No, should not be necessary if Councils are performing well in their own right.
D58 How should concurrences and other approvals be speeded up in the assessment process?	Concurrences should be rationalised; state departments and agencies should focus input into regional strategies and local plans.
D59 What approvals, consents or permits required by other legislation should be incorporated into a development consent?	All other approvals/consents from State agencies should be embodied in a development consent. This relates to an ability to issue consent at concept stage, which can precede all other approvals from State agencies. There will be some other details, building, traffic management and the like, which should be subject of being to the satisfaction of a Principal Certifying Authority before a Construction Certificate is issued.
D60 Should a council be able to delegate to a concurrence authority power to impose conditions on a development consent after the council approves the proposal?	No
D61 Should there be some penalty on a council if a referral to a concurrence authority has not been made in a timely fashion?	This should not be a legislative matter, relates to better planning practice.
D62 Who should make decisions about State significant proposals?	Independent expert panel.
D63 What concurrence decisions should be able to be delegated?	
D64 Should there be a model instrument of delegation?	

Feedback Question	Comments
D65 What decisions should the Planning Assessment Commission make? Should the Commission's processes be inquisitorial or adversarial?	PAC process should be inquisitorial.
D66 What should be the processes required for hearings of Planning Assessment Commission panels?	Current process should be modified to be more like that used by JRPP. Individual sessions with applicants, then Council is not conducive to good outcomes.
D67 Should a local member be on any Planning Assessment Commission panel considering a proposed development?	No, not local political representative, but the General Manager or Director of Planning from the Local Council(s) affected by the local proposal.
D68 If so, should this be mandatory for all commission panels?	No
D69 Should the development assessment criteria for the Planning Assessment Commission be the same as for any other development assessment process?	Yes, although the public interest consideration may reflect state priorities.
D70 Should a new planning system include Joint Regional Planning Panels?	Yes, but with modified threshold/criteria and operational approaches.
D71 What should be the composition of a Joint Regional Planning Panel?	Need to clarify the acceptability of Councillors, staff and/or community representatives. It is unrealistic to expect they will have the same degree of independence that external consultants will have.
D72 What should be the hearing processes for a Joint Regional Planning Panel?	Current process has been effective and well received.
D73 Should a council be able to refer a matter to a Joint Regional Planning Panel for determination even if the matter would not ordinarily fall within the jurisdiction of such a panel?	Yes
D74 Should State nominated members of a Joint Regional Planning Panel be precluded from taking part in any decision concerning the local government area in which they reside?	Panel members should be subject to the same conflict of interest provisions as others who make DA determinations.

Feedback Question	Comments
D75 If a proposed development is recommended for approval by council staff, has no public submission objecting to it and is not objected to by the Department, should it be determined by the council?	Yes
D76 Should it be possible to constitute a Joint Regional Planning Panel with a single representative of each of the affected councils to consider and determine a significant development proposal that extends across the boundary between two local government areas?	
D77 If located entirely within one local government area, should a significant development proposal that is likely to have a significant planning impact on an adjacent local government area be determined by such a two council panel?	Yes
D78 Should a council be able to apply to the Minister to be exempt from a JRPP?	Yes. Many Councils provide timely determination of applications consistent with the objectives and requirements of State and Regional Plans.
D79 Should aggregation of multiple proposals to bring them within the jurisdiction of a Joint Regional Planning Panel be banned if, separately, they would not satisfy the jurisdictional threshold?	Consideration needs to be given to how the system could be manipulated.
D80 Should an elected council have the right to pass a resolution to supplement or contradict the assessment report to a Joint Regional Planning Panel?	Yes, and would need to be presented to the JRPP meeting by the General Manager or Governance Officer/equivalent of the subject Council.

Feedback Question	Comments
D81 Should the Central Sydney Planning Committee be established under legislation for a new planning system or should it remain established by a provision of the City of Sydney Act?	
D82 Should elected Councillors make any decisions about any development proposals?	Yes, but not straight forward proposals or those of regional and/or state significance.
D83 What should be the requirement for a decision making body to give reasons for decisions – in particular as to why objections to a proposal have not been accepted?	There should be a requirement for consent authorities to explain, in a concise form, the basis of their decision but only for more significant applications, not straight forward DAs.
D84 If a council resolves to approve a development proposal where the assessment report recommends rejection, should the council be obliged to provide reasons for approval of the development?	Yes
D85 Should approval of development proposals for quarries be removed from councils?	No, if they only have local impacts.
D86 Should there be a range of standard conditions of consent to be incorporated in development approvals?	Guidelines would be useful but they should not be prescribed.
D87 Should new planning legislation make it possible for public interest conditions to be imposed that go beyond the conditions that immediately relate to a particular development?	Yes, if relevant.
D88 Should nominated conditions of consent be able to be reviewed at regular, specified intervals?	
D89 Should it be possible to grant a long-term time-limited development consent for developments that are potentially subject to inundation by sea level rise caused by climate change?	Yes, potentially, but only if it is grounded in a local strategic policy that has endorsement from the State Department of Planning & Infrastructure/OEH.

Feedback Question	Comments
D90 Should consent authorities be prohibited from requiring public positive covenants as part of development approvals, if the matter could be dealt with by a condition of consent?	No
D91 Should new planning legislation make it possible to impose performance bonds or sureties unrelated to the protection of public assets?	Yes and to ensure compliance with conditions of consent.
D92 If so, should there be any restrictions on the reasons for which such bonds or sureties could be required?	Yes, there should be some restrictions. Bonds should be used if applicant has a history of non-compliance or where the development has a significant potential to cause major environmental impacts.
D93 Should a new planning legislation system permit a council to impose a condition that requires payment of charges that would fall due under the Local Government Act?	Possibly if relevant, especially in terms of infrastructure charges.
D94 If there is to be a more concept based development application process, should councils have the power to impose conditions on construction approvals?	Yes
D95 Should IPART be given a general reference to examine and make recommendations about how any shortfall in development contributions plans for necessary community infrastructure should be funded?	No, this should be subject of decision making by the Department of Planning & Infrastructure upon formal and structured variations sought by the local Council. Some other forms of funding need to be established outside developer contributions and local Council roles increases to fund Greenfield releases.
D96 Should IPART be given a reference to make recommendations about what should be the extent, standard and nature of community infrastructure works that should be included in contributions plans?	
D97 In light of the particular circumstances that might apply to the area covered in a contributions plan, should IPART be given a standing reference to enable councils to apply for variation to the cap on community infrastructure contributions?	Yes, current politically driven caps are totally unrealistic in some locations.

Feedback Question	Comments
D98 Is it reasonable to require IPART to undertake a detailed analysis of each contributions plan developed by councils?	No
D99 Would it be preferable to give IPART a general reference to develop an appropriate plan preparation methodology and approach to construction costing for community infrastructure contributions plans?	Yes
D100 Should IPART be given a reference to make recommendations as to when community infrastructure contributions should be available? Should this include recommendations as to whether a delayed payment system should apply and, if so, at what development stages payment should be made?	
D101 Should there be a requirement for councils to publish a concise, simply written, separate document on community infrastructure funds collected and their proportionate contribution to individual elements in the council's contributions plan?	
D102 Should IPART be given a reference to consider whether or not guidelines and/or mandatory requirements should be set for councils about community infrastructure prioritization and levels of community infrastructure funds permitted to be available?	
D103 Should new planning legislation make provision for voluntary planning agreements to permit departure from numerical limits that would otherwise apply to a development?	VPA's should be used cautiously. They should focus on the provision of infrastructure that relates to the development being considered but which otherwise would not be permitted under the terms of the contributions plan in place that applies to the site. When VPAs extend beyond this framework, there is the perception that it is simply a mechanism to buy a consent that would otherwise not be granted. The VPA process should not result in DA's

Feedback Question	Comments
	that under a merit assessment are not suitable for approval being approved because the applicant has provided some unrelated public benefit. SEPP No. 1 is available for variations in numerical standards.
D104 Should any appeal be allowed against the reasonableness of a development contribution, if it has been approved by the Independent Pricing and Regulatory Tribunal?	No
D105 Should developer contributions apply to modifications of approved development?	Yes, but only if reasonably grounded in the original consent and conditions relating to developer contributions.
D106 Should regional joint facilities funded by developer contributions shared between councils be encouraged?	Yes
D107 What should be the permitted scope of modification applications?	Current case law provides adequate direction.
D108 Should there be a limit to the number of modification applications permitted to be made?	Yes, this would make the system more efficient.
D109 Should any modification be able to be approved retrospectively after the work has been done?	There needs to be a pragmatic approach adopted for unauthorised works. Mechanisms such as modified approvals may provide the most feasible approach as long as there is no advantage to the applicant, otherwise it will encourage more unauthorised works.
D110 If so, should retrospective approval be confined only to minor changes and not more substantial ones? Should this be the case even if major changes leave the development substantially the same development as the one originally approved?	
D111 Should minor modification applications made to the Planning Assessment Commission or Joint Regional Planning Panel approvals be decided without a public hearing?	Yes, this should be an option.
D112 Should councils be able to deal with minor modification applications to major projects?	Yes

Feedback Question	Comments
D113 Development applications that propose breaches to (or increases in breaches to) numerical limits in local environmental plans are subject to special tests. Should modification applications be subject to these same special tests?	Yes
D114 Should the 'substantially commenced' test for ensuring the ongoing validity of development consent be retained?	Yes, but this needs a significant tightening up with clear and actionable criteria.
D115 If the present test was not retained, what new test should replace it?	
D116 How long should development consents last before they lapse?	Current 5 years is reasonable, but crystallised consents should not last forever, should be a maximum period for a development to be completed.
D117 Should private certifiers have their role expanded and, if so, into what areas?	No
D118 Should private certifiers be permitted, in effect, to delegate certification powers to other specialist service providers and be entitled to rely, in turn, on certificates to the certifier from such specialist professions?	Certifiers should be accredited and accountable to the Building Professionals Board or any other related State Government generated formal body. It is the Principal Certifying Authority that must be accountable and be able to call upon other certifiers to "sub consult" with to ensure the range of specialised expertise is brought into the equation of the certification assessment.
D119 Should certifiers be required to provide a copy of the construction plans that they have certified (as being generally consistent with the development approval) to the council to enable the council to compare the two sets of plans?	Yes

Feedback Question	Comments
D120 Should there be a requirement for rectification works to remove unacceptably impacting non-compliances when these are actually built rather than leaving an assessment of such non-compliances to either a modification application assessment or to the Court on an appeal against any order to demolish?	Yes
D121 What statutory compensation rights, if any, should neighbours have against a certifier who approves unauthorised works that have a material adverse impact on a neighbouring property?	Should have the ability to take action against a certifier to force compliance.
D122 Should construction plans be required to be completely the same as the development approval and not permitted to be varied by a private certifier for construction purposes?	Yes, Councils (or other consent authorities) should also be able to specify conditions (subject to strict criteria) that cannot be signed off by a private certifier. Conditions such as those directly related to potential significant environmental impacts.
D123 Should developers be permitted to choose their own certifier?	Yes, but with restrictions.
D124 What should the Department's compliance inspection role be?	To seriously enforce state approvals and ensure certifiers are doing their job properly.
D125 Should Interim Occupation Certificates have a maximum time specified and, if so, how much should this be?	Yes, up to 12 months.
D126 Should a certifier issuing a Final Occupation Certificate be required to certify that the completed development has been carried out in accordance with the development consent?	Absolutely.
D127 What might be done to have power delegated by the Commonwealth to State authorities or councils to give approval under the Commonwealth Act?	Relevant agreements should be struck to avoid the need for duplication in assessment and approvals.

Feedback Question	Comments
D128 Should there be a guide prepared to explain to councillors what their roles are in the development proposal assessment and determination process and how it is appropriate that they fulfil that role?	Yes
D129 If there were to be such a guide prepared, who should have the responsibility for its preparation and what participation and consultation processes should be undertaken in its development?	The Department of Planning & Infrastructure together with the Division of Local Government and in consultation with the LGA/LGSA. This might also involve other organisations such as the Local Government Centre at the University of Technology, Sydney.
D130 Is it appropriate to consider, in legislation for a new planning system, providing a statutory basis for spreading the cost of a necessary rehabilitation or stabilisation measure across all property ownerships benefited by such a measure?	Yes
D131 Should there be specific statutory obligation to require the establishment of (and the procedures for) community consultation forums to be associated with major project developments?	No, not always relevant.
D132 Should a quantity surveyor's report be required to accompany applications for large projects?	Possibly.
D133 What fees should councils receive for development applications?	Fees that relate to the real cost (including overheads) of Councils undertaking the development assessment for certain categories/types (and as measured by the previous financial year costings) and these costs should be recoverable up to say 70% with a 30% component refunded from general revenue on the basis on community obligation.
D134 When and how should council development application fees be reviewed?	Every 3 years by IPART.

CHAPTER F

IMPLEMENTATION

The Issues Paper states that significant budget increases to support implementation of the new planning act are unlikely and the implementation of *E Planning* and any major changes to administrative processes will be a staged.

Council's and particularly regional Councils support regional departmental planning staff to have more autonomy and delegations to allow fluid decision making. Council's also strongly support the shift of the Planning department from nuts and bolts development applications to a more strategic level setting directions via instruments such as regional plans.

At this time, Council's are not in a position to make definitive comments on implementation of the new Act without knowing its form and structure and the administrative requirements to implement new legislation. Therefore the following general issues require consideration and should be addressed in the forthcoming 'Green Paper'.

A *Phasing*

- Council requests clarification on whether the Act will phased and implemented in stages or whether the 1979 Act will cease to operate on an appointed date. Transition provisions should be provided in the Policy Options paper.
- A reasonable lead in time to any start date is requested to enable local government to make the necessary resourcing and operational changes.

B *Education and Training*

The local community are struggling to comprehend the existing Act and how its successive amendments affect them. Councillors and practitioners face the same hurdles. Implementation of the new Act should incorporate education and training resources. A dedicated on-line resource and workshops would benefit council staff and decision makers. Education should focus on the 'public interest' and positive outcomes of the new Act in order to instigate the shift away from the perception of planning as reactive and complex. This should include but not be limited to culturally and linguistically diverse (CALD) information.

C *Media and Publicity*

A media campaign which focuses on the benefits of the new Act would help with community engagement and practitioner commitment to a new system. Publicity should focus on the new role of planners as visionaries and decision makers who act in the publics' interest and interests of future generations.

E *E Planning*

The use of information technology will drive the successful implementation of the Act and make the planning system more open and accessible to the public and practitioners. Financial resourcing will be required to implement the *E Planning* initiative and should be addressed in the Green Paper

The Issues Paper is silent on matters of privacy and copyright which are integral to the operation of an efficient electronic framework. Accordingly the Green Paper should address the legal, resourcing and operational requirements of the new system.

F *Budget Resources*

The Issues Paper notes that budget increases are unlikely however some form of financial support will be necessary for local government to satisfy any *E Planning* requirements.

Successive tranches of monies based on performance criteria are recommended to ensure the timely rollout of *E Planning* and other administrative processes associated with the new Act. Performance based plans are recommended for all stakeholders including state and local government agencies. All parties should be held accountable delivery targets.

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4 October 2012

Mr S Haddad
Director General
NSW Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001



Via email: newplanningsystem@planning.nsw.gov.au

ATTENTION: New Planning System Team

Dear Mr Haddad

RE: GREEN PAPER – A NEW PLANNING SYSTEM FOR NSW

Thank you for the opportunity to make comment on the Green Paper reform package released by the Department in July 2012. Dubbo City Council considered the Green Paper at its Ordinary Meeting in August 2012 and endorsed the attached submission to the Green Paper.

Council, in considering the matter, also determined that the State Government should be commended for the independent, well-researched and consultative program to date that has underpinned the Green Paper, including some of the more notable initiatives, including:

- Good analysis of the problems of the existing planning system, informed by a comprehensive consultation with stakeholders;
- Extensive efforts to review current best-practice, both nationally and internationally;
- Priority given to developing a clearer, simpler and more-integrated strategic planning framework;
- Mandating early consultation with the community;
- Emphasis on transparency and certainty in decision-making; and
- Greater use of e-Planning.

The attached submission reflects the views of Dubbo City Council and is submitted for your consideration. Council notes that the submission includes discussion of some of the issues identified with the Green Paper noting that, at this stage, the Green Paper does not form the substantive legislation and that it is anticipated that the detail will be included in the White Paper when it is released.

Council looks forward to working with the Department on the development and introduction of a new Planning System for NSW.

All communications to:
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T (02) 6801 4000 F (02) 6801 4259 E dcc@dubbo.nsw.gov.au
CIVIC ADMINISTRATION BUILDING CHURCH STREET DUBBO NSW 2830 ABN 77 296 185 278

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Should you wish to discuss any matters arising from this submission, please do not hesitate to contact me.

Yours faithfully

Melissa Watkins
Director Environmental Services

General Comments

From an observation of the initial industry feedback on the Green Paper, there appears to be broad support for the general approach and principles of the new system. However, there are a number of areas which still lack detail at this stage. It is hoped that this approach will however provide Local Government with the opportunity to apply its experience and practical knowledge to assist the State Government in shaping a more workable system through the upcoming White Paper process.

The following provides discussion on some of those areas which have been identified where there may be concern however, it must be reiterated that these are simply comments in respect of a Green Paper and at this stage there is insufficient detail for Council to form a firm view on the impacts of the new legislation at this stage.

Issue 1 – Potential Reduction in the Role of Elected Councillors

The role of elected Councillors has traditionally provided the most direct form of democratic representation and influence on local government decision-making, particularly in respect of planning and development assessment matters. The Green Paper proposes a fundamental shift of the role of Councillors.

Since the initial public release of the Green Paper, the State Government has produced an additional publication titled '*Frequently asked questions for Councils*' that clarifies some of the elements of the proposed role of elected Councillors.

In terms of the proposed role of Councillors, this publication includes the following:

"WHAT IS THE ROLE OF COUNCILLORS IN THE NEW PLANNING SYSTEM?"

The new planning system will engage councillors in strategic planning so they are involved in setting the broad direction for both their council area and its communities as well as the surrounding region.

Councillors' roles in making decisions on local development applications remains unchanged. However, the Green Paper strongly encourages councillors to consider the option of delegating their decision-making powers for local development applications to council staff or Independent Hearing and Assessment Panels established by Council.

This approach is already being used by many councils in NSW including around a quarter of all councils in the Sydney area."

On a broader level, one of the key objectives outlined in the Green Paper is to 'depoliticise' the new planning system, particularly in respect of decision-making on development assessment matters. With the proposed co-existence of Joint Regional Planning Panels and Independent Hearing and Assessment Panels designed to manage larger local development applications, it would appear that it is the State Government's objective to provide the opportunity for councils to determine these applications but to ultimately exclude elected councillors from participating in development assessment processes and establishing a role that focuses more on input to regional and local strategic planning processes. It is noted however, that it is understood that this will be a

matter for each council to determine, this will be critical to maintain local context in planning decisions.

The proposed reduction in the role of elected Councillors may be considered to threaten the extent of local representation of local communities on major development and policy decisions. This loss of community representation has already been experienced in some areas through the creation of Joint Regional Planning Panels (JRPP) to determine major development applications. However, Dubbo has not experienced adverse impacts as all matters are referred to the elected Council before the JRPP to seek any input and of the four development applications that have been determined by the Western JRPP since its establishment, all four have been determined in accordance with Council's recommendations. In addition, two Councillors are members of the Western JRPP.

The reform will require a significant shift in the culture of planning and, given the complexity of the proposed cultural change in the NSW Planning System, it is considered that there would be merit in all newly elected Councillors being provided with mandatory training on relevant planning legislation and decision-making.

Issue 2 – The Ability of the Community to Effectively Influence the New Planning System

The Green Paper provides a range of good mechanisms for community groups and individuals to participate in the new planning system, particularly through the proposed Public Participation Charter and the emphasis on an earlier input at a strategic planning stage.

However, the Green Paper does not sufficiently outline how local community members will be given the necessary incentive and education to have effective input and representation on high order strategic planning processes, a process which has proven to date to be very difficult to gain participation and engagement and broader representation at such an early stage of the development planning cycle.

This concern is heightened by the lack of detail in the Green Paper regarding the resourcing and future management of the Regional Plans and Regional Board proposals.

Issue 3 – Strategic Focus

The State Government's commitment to a comprehensive, integrated and evidence-based strategic planning hierarchy is commended.

However, there appears to be some 'gaps' in the processes within the Green Paper surrounding the timing, sequencing, resourcing and administration of the Regional Plans and the Regional Boards.

There may be some expectation that councils will provide the main financial and staff resourcing for the regional processes which is a major concern given the expected reduction in income that councils will be able to derive from the fees for the new, streamlined development approvals processes and the other responsibilities of councils in the development of their Local Strategies and Local Land Use Plans.

The potential resourcing implications not only from a local government perspective but that of the Department needs very careful consideration in the development of the White Paper. Additional cost impost on Local Government is not supported.

There is also further uncertainty in respect of the future role and operations of these regional planning processes in relation to the emerging local government reforms of the State Government's Destination 2036 Action Plan. In this regard, the State Government needs to provide clearer direction on the criteria and timing for formulating new regional administration and growth areas beyond those identified in the Green Paper. Without that direction it is difficult for Council to begin to appreciate how this new regional process will be implemented.

The State Government has a major task in seeking a collegiate and integrated approach from other government agencies and other levels of government in implementing the new State and Regional Plans. The lack of co-ordination of the other agencies on major planning policies/matters has long been a significant problem in both strategic planning and development assessment.

The effectiveness of any regional planning process will also be influenced by the ability to resolve at a high level, the very technical and complex development issues relating to other relevant legislation such as the conflicts and overlap between Commonwealth and State legislation, for instance. The assessment of these legislative instruments currently generates a major time and resource burden at the lower level DA stage. Priority must be given in any higher order regional planning process for relevant Commonwealth and State Government agencies to work closely and co-operatively with Regional Boards in providing a more certain path for new development to proceed and thereby reduce the extent of assessment required in the later DA stage.

Issue 4 – Simplifying Local Land Use Plans

The Green Paper's proposal to move away from rigid development controls to Local Land Use Plans (LLUP) that provide first and foremost a strategic vision and context, which is then reflected in the actual zoning scheme, is also commended in terms of its 'best practice' approach.

The LLUPs, it is understood, are proposed to comprise of four discreet but interconnected parts whereby the strategic context embodying the planning and development outcomes is to be underpinned by an outline of the supporting infrastructure servicing flexible development guidelines that are desirable to the market. Performance monitoring indicators for ascertaining the achievement of the strategic objectives are also proposed.

While the approach is supported, it is considered that the Green Paper has not adequately articulated how previous local planning such as the work involved in preparing existing strategies (which have been endorsed by the Department), the new LEP and the Comprehensive DCP will be incorporated in any new planning system, if at all.

Issue 5 – Streamlined Approvals

The Green Paper's principle of creating a much clearer hierarchy of strategic planning to provide greater certainty in the development assessment process is also applauded. However, it is considered that the Green Paper presents an imbalanced view of the ability of local government to deliver a more efficient and transparent development assessment system.

Much of the proposed 'streamlining' of current assessment processes fails to acknowledge that it is not only local government that needs to improve upon its performance but that it is also the private sector that needs to perform better in terms of the preparation of quality application submissions and the certification of new developments. The State Government therefore has a major role in terms of seeking a higher standard of professional practice and performance among both local government and private sector operators.

In terms of the Green Paper's reliance on a greater use of 'code assessable' systems to reduce the amount of merit-based development applications, a fundamental issue that the State Government needs to address is the complexity of the current Exempt and Complying SEPP Codes which have proven to date to be a major inhibitor to the take-up of non-DA processes. In order to achieve the more affordable and timely assessment times that the Green Paper aspires, there will need to be a roll-back on the extent of technical assessment required, particularly for smaller scale developments.

The different streams of code assessable developments proposed through the Green Paper are currently quite confusing and complicated and appear to have conflicting objectives. In particular, the State Government needs to better explain the relationship between the proposed code assessable controls of State Plans, a Regional and Sub-regional Delivery Plan, as well as any Local Land Use Plan development guidelines. The Green Paper purports to establish a greater degree of certainty by the predominant use of code assessable development but then also allows for merit-assessed variations from the Code, the introduction of more flexible zones and performance-based Local Land Use Plan controls. These apparent conflicts need to be reviewed as part of the White Paper process.

Another concern in the greater emphasis given to code assessable development is the potential to erode the local and diverse character of existing communities through the imposition of more generic development standards. It is considered that the State Government needs to provide some compromise to allow local councils to retain some form of control over the scale and form of developments within its more sensitive, local character areas.

The proposed use of an 'Amber Light Approach' to enable applicants to take a time-out in considering how to move forward on a potentially problematic application is considered to be a good proposal.

Dubbo City Council has traditionally applied a development assessment practice of working with applicants to reach good development outcomes, particularly on larger, more complex applications. However, in applying this practice, Council has been penalised under the State Government's Local Development Performance Monitoring (LDPM) reporting system for allowing applicants to take additional time to provide additional information and amended plans. The current 'stop the clock' monitoring is currently skewed against local councils as the annual

reporting provides a substantial focus on Gross Determination Days and a much lesser recognition of the Net Determination Days which is, in fact, a measurement of the applicant's performance in achieving a complete and technically-adequate application. It is therefore recommended that the State Government should consider reviewing its current LPDM reporting system to provide a more balanced performance monitoring in any advancement of the 'Amber Light Approach'.

The Green Paper proposals for a greater role of Joint Regional Planning Panels in development assessment processes needs further clarification in the White Paper. The current support for the JRPPs from Council officers to development assessment processes is already quite substantial and any proposal for the JRPP to have closer input throughout the entire development assessment process raises the question of the increasing impact upon the resources of Council's assessment officers and the JRPP and a duplication of roles. Similarly, any proposal to introduce Independent Hearing Assessment Panels for local councils particularly in rural and regional area also needs to be evaluated in terms of their potential impact on application processing times and the additional resources that are needed to service these Panels. The resourcing of these independent panels has even more significance in more isolated, rural and regional areas.

The Green Paper fails to acknowledge that one of the principle causes of time, effort, cost and delay in the development assessment process is the interaction of the different pieces and levels of legislation. Untangling the relationship of the various Acts with a new planning Act will be necessary to achieve the Government's objective of providing more speed and certainty in the development approval process.

Issue 6 – Provision of Infrastructure and Development Contributions

The financial sustainability of the current system of infrastructure changes for new developments is a major issue for regional areas.

The Green Paper's proposals to introduce a clearer hierarchy and system for infrastructure charges and delivery are supported.

Despite these favourable elements, the Green Paper also proposes a reduction in the infrastructure that could be provided by developers of new urban areas and subdivisions who will only provide the land for parks, sporting fields and community buildings. It is implied that the financial burden for embellishment of raw land to create parks and sporting fields and construction of community buildings will be transferred to councils. This is not such an issue for Dubbo at present, as the existing S94 Contribution Plans only relate to parks and recreation areas, urban roads, car parking in the CBD and drainage; however, it may preclude Council being able to prepare other Plans in the future for important community infrastructure as the City grows.

Under this system, developers may be levied by councils in 'Local Infrastructure Plans' for contributions for local roads, local drainage works and land for community facilities only. It is unclear how land for local parks and sporting fields would be delivered, presumably through the 'Regional Open Space Levy'. What is clear is that the developer would no longer be responsible for the works/costs required in transforming raw land into parks and sporting fields, or buildings

associated with community facilities, parks and sporting fields. It is therefore presumed that these costs will be transferred to Council.

This is a major departure from the current 'user pays' system where the developer provides for these facilities and passes on the cost to land/home buyers. In the new system it seems likely that these costs will be borne by the general ratepayer or that new subdivisions will be released without any of the basic community, sporting and local open space facilities.

With the exception of 'Regional Roads', the Green Paper proposes to further restrict the range of community facilities to be provided by developers and transfer the cost of providing these facilities to the general ratepayer.

Issue 7 - Voluntary Planning Agreements

The Green Paper also identifies a need for Voluntary Planning Agreements (VPA) to be phased out or significantly modernised and simplified. Although not presently in operation in the Dubbo Local Government Area, this approach, is understood to be about the intention of VPAs being linked to larger precinct development that typically arise for negotiation between developers and the State and possibly the council, which it envisages will occur in the future in a way that is tailored to suit the parties. In doing so, they are to be qualified by established benchmarks aimed at:

- Defining infrastructure performance outcomes;
- Defined negotiation timeframes that recognise holding costs; and
- Enable more developer contributions in-kind and innovations to improve cost effectiveness.

Planning agreements like any substantial contract preparation involves a high degree of negotiation and careful drafting that responds to the complexity of the issue which also takes time. It is agreed that mechanisms should be in place to standardise aspects of the process where possible. However, it is unclear what standardised inducements or shortcuts can be applied to a process where no two issues or VPA are exactly the same. More importantly, whilst it is acknowledged that VPAs are frequently found to relate to very large scale development where councils may neither be the consent authority nor infrastructure provider, the use of VPAs by developers/councils, particularly in growth and mining areas, is increasing and, in many instances, it is the only real and affordable mechanism for the developer/landowner to proceed with a proposal that would not otherwise occur. Accordingly, they afford councils with greater certainty and financial protection against potentially higher risk development.

Given that VPAs are there as an inducement or process that can bring greater opportunity for development than previously existed, and are premised on ensuring that the additional opportunity to the landowner, which is voluntary, is not at the expense of the broader community, there seems to be no clear explanation as to why they should be phased out or what additional procedure or standardisation can be deployed to reduce delays and cost.

Issue 8 – The Review and Reform Process

The Green Paper is identified as the third of four steps in the process of reforming the NSW planning system. In practice, there are four steps in the process given that many of the detailed provisions of implementation are contained in delegated legislation by way of regulations.

The significance of the procedural changes advanced through the Green Paper is likely to give rise to a significant response from councils, industry and the community that will likely raise issues not addressed and options not considered. It is therefore considered appropriate for the State Government to include a further step in the process prior to drafting a White Paper and exposure bill which involves the production of a detailed response to the submissions made in respect of the Green Paper, to give all stakeholders the confidence that the best alternatives have been analysed and commented upon.

Issue 9 – Regional Boards

Council supports the concept of a Regional Planning Board, although the Green Paper contains no detail as to how these boards will be chosen. Council considers that any such structure should be representative of the bodies affected and the communities or regions within which they operate and should also include an appropriate level of professional expertise.

Conclusion

Council's submission has sought to provide comments in response to the broad concepts, framework and transformational changes proposed in the Green Paper. In doing so, Council welcomes reform to the planning system, but would reiterate that many proposals need further explanation of detail to enable Local Government to fully consider and assess how this new planning framework could work.



DUBBO
CITY COUNCIL

REPORT: Review of the Environmental Planning and Assessment Act 1979 - 'A New Planning System for NSW' Green Paper

AUTHOR: Director Environmental Services

REPORT DATE: 9 August 2012

FILE: 11/58

EXECUTIVE SUMMARY

This report outlines the background to the NSW Government's review of the NSW Planning System and provides an overview of the major changes proposed within the Green Paper – 'A New Planning System for NSW'. The report also includes some discussion of some of the issues identified with the Green Paper noting that at this stage the Green Paper does not form the substantive legislation and that it is anticipated that the detail would be included in the White Paper when it is released later in the year.

A copy of the Green Paper can be downloaded at:

<http://haveyoursay.nsw.gov.au/newplanningsystem>

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report. However, there are likely to be significant financial implications for the funding of future strategic planning processes, the ability of Council to gain income from future development assessment processes and a major review of the current developer contribution systems.

POLICY IMPLICATIONS

There are likely to be major implications for Council's corporate and strategic planning processes and development assessment practices. However, until the details of the White Paper are released, the extent of these impacts is not known.

RECOMMENDATION

That Council endorses the issues raised in this report to form the basis of a submission to the State Government on the 'A New Planning System for NSW' Green Paper.

Melissa Watkins
Director Environmental Services

BACKGROUND

The legislation which provides the overarching framework for the planning system in NSW, the Environmental Planning and Assessment Act (EP&A Act) was gazetted in 1979. This legislation is the legislative framework upon which all land use decisions, including those relating to preparation of State Environmental Planning Policies (SEPPs), Regional Environmental Plans (REPs), LEPs, DCPs and the preparation, assessment and determination of development applications and certification.

The EP&A Act has been modified over 150 times since its gazettal to keep up with changes in the community. The State Government is now of the view that the existing Act has reached a point where a new planning system is required.

The main problems identified by the State Government include:

- The current planning system has become too complex and difficult to understand for many users of the system;
- Business and community members have also expressed their frustration about the red tape and delays that impact on development applications for minor and major development proposals; and
- Environmental and biodiversity conservation issues and the protection of high-value agricultural lands are managed in a piecemeal way and are not proactively and appropriately catered for in current planning processes.

In July 2011 the NSW Government began a comprehensive review of the NSW Planning System. This review commenced with the establishment of an independent panel to undertake a review of the planning system in NSW with the aim of creating a new planning system in consultation with stakeholders and the community that meets today's needs and priorities.

The Minister for Planning and Infrastructure, the Hon Brad Hazzard, appointed Joint Chairs to carry out the Review; namely:

Tim Moore, a former NSW Minister for the Environment; and

Ron Dyer, a former NSW Minister for Public Works and Services.

The review process commenced with an extensive listening and scoping phase, first meeting with a wide range of peak interest groups – across the spectrum – in Sydney. The Panel then completed a two month listening and consultation phase, meeting with interested participants in over 40 locations across the State. The Panel sought the community's views on what should be the broad underpinning principles for new legislation to replace the Environmental Planning and Assessment Act 1979.

Submissions under this phase of the review were accepted until 4 November 2011.

On 14 July 2012 the Minister released the Independent Panel's Review Report, '*The Way Ahead for Planning in NSW Volume 1 (Major Issues)*' and '*Volume 2 (Other Issues)*', together with the Government's initial response to the Review, '*A New Planning System for NSW - Green Paper*' released on 14 July 2012. The release of these Papers marks the end of the work by the Independent Panel.

REPORT

A New Planning System for NSW

On 14 July 2012, the NSW Government released the document '*A New Planning System for NSW – Green Paper*'.

The 23 recommendations of the Green Paper is the NSW Government's initial response to the report '*The Way Ahead for Planning in NSW*' undertaken by the Independent Review Panel which contained 374 recommendations.

The Green Paper has now been released for community consultation following which the Government will release a White Paper and Exposure Bill for further public consultation. The Government intends to present new planning legislation to the Parliament in early 2013.

A copy of the Green Paper can be downloaded at:

<http://haveyoursay.nsw.gov.au/newplanningsystem>

The Green Paper sets out a blueprint for change based on four main themes:

1. Community participation
2. Strategic focus
3. Streamlined approval
4. Provision of infrastructure

Further details on the contents of the Green Paper are provided below. It is understood that the Government intends the new legislation to be an 'enabling Act', establishing the broad framework of the planning system. Detailed controls will be contained in guidance and good practice advisory notes.

The submission period on the Green Paper has been extended for local government until 5 October 2012.

Outline of the Main Features of the Green Paper

The Green Paper includes the following summary of the main objectives of the new planning system:

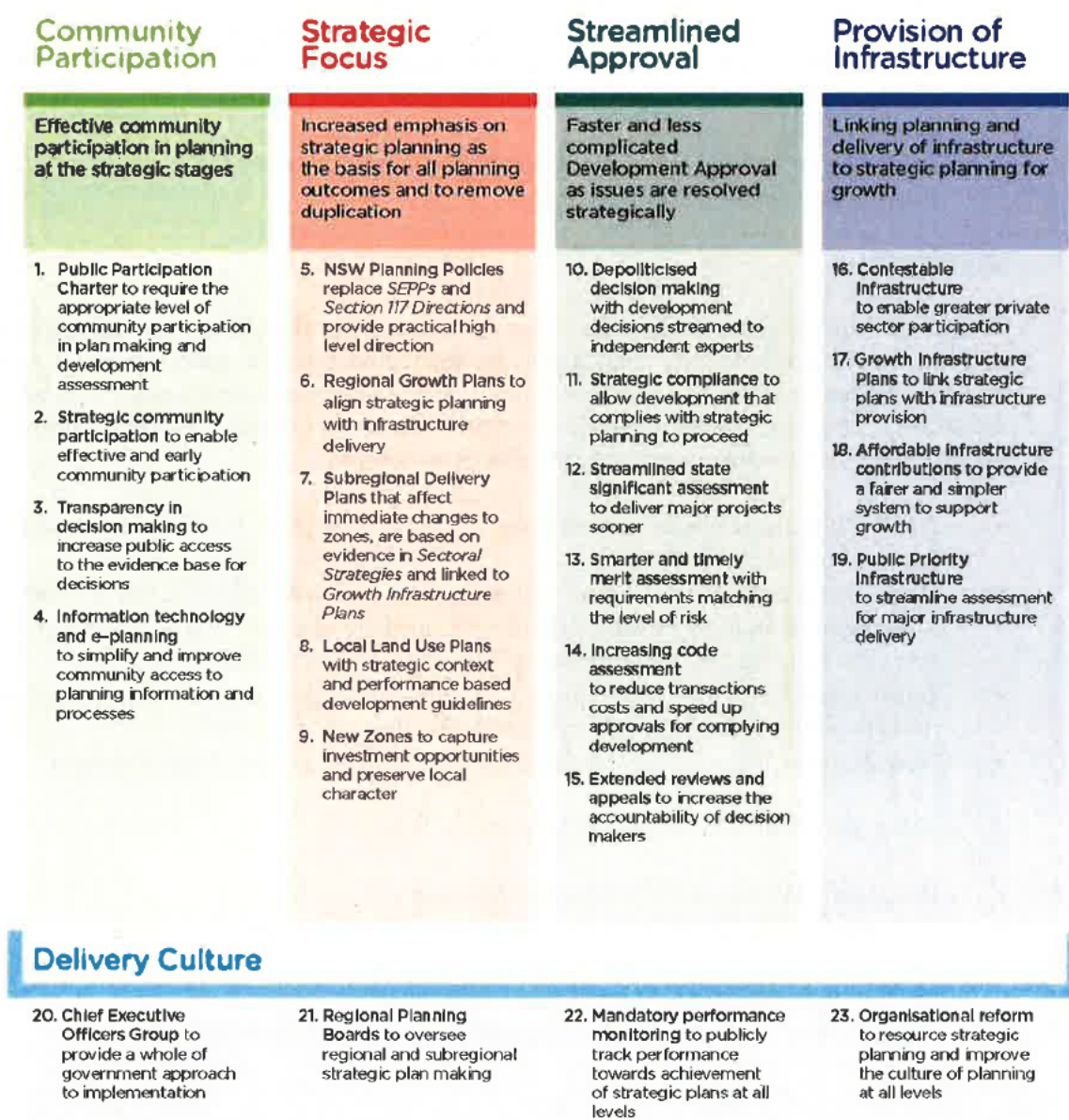
- Involving the community early in guiding the planning decisions that will shape the growth and future of cities, towns and neighbourhoods;
- Placing much more emphasis on preparing good policies upfront to guide growth and development;
- Reducing red tape and delay for the assessment of development applications for all types of proposals;
- Ensuring that infrastructure is planned and delivered to support new and existing communities;
- Promoting a 'can do' culture in the planning system and ensuring that councils and the government are accountable for delivering the results they have committed to; and

- Providing greater access to information about planning policies, planning decisions and people's rights in the planning process.

Blueprint Themes

A summary of the details of the four main blueprint themes are provided below (also refer to Figure 1 for a diagrammatic summary):

FIGURE 1 BLUEPRINT FOR CHANGE: A NEW PLANNING SYSTEM FOR NSW



Community Participation

The major shift in the new Planning System is to engage communities as an integral part of making key planning decisions that will affect the growth of their communities. The State Government is seeking earlier community involvement at the strategic stage.

To improve community participation in planning, the Green Paper proposes:

- **A Public Participation Charter** to require the appropriate level of community participation in plan-making and development assessment;
- **Strategic community participation** (with a focus on public input at the strategic planning phase instead of the individual project application phase);
- **Transparency in decision-making** to increase public access to the evidence base for decisions; and
- **Information technology and e-Planning** to simplify and improve community access to planning information and processes.

Strategic Focus

The Green Paper seeks to facilitate a major shift to evidence-based strategic planning in terms of planning effort, community and stakeholder engagement and decision making. Essentially it is proposed that more decisions on land use, zoning and development control will be made in the strategic stages of the planning process rather than at the DA stage as is the current practice and planning instruments are proposed to change as follows:

- **NSW Planning Policies** will replace SEPPs and Section 117 Directions and provide practical high-level direction;
- **Regional Growth Plans** will align strategic planning with infrastructure delivery;
- **Sub-regional Delivery Plans** will affect immediate changes to zones, and will be based on evidence in Sectoral Strategies and linked to Growth Infrastructure Plans;
- **Local Land Use Plans** will replace LEPs and will be put in a strategic context and will provide performance-based development guidelines; and
- **New Zones** will capture investment opportunities and preserve local character.

All of these plans will have common elements, including:

- Integrated land use and infrastructure planning;
- Operational components to deliver infrastructure and services;
- Incorporation of all government agency requirements – so no concurrence or referrals at the zoning or development application stage; and
- Opportunities for streamlined decision-making at development stages.

Streamlined Approvals

The third major reform area is a shift to a performance-based system in which duplicative layers of assessment have been removed, decisions are fast and transparent and code complying development is maximised. Key streamlining features include:

- **Depoliticised decision-making** through the increased use of independent experts in development decisions;
- **Strategic compliance** to allow development that complies with strategic planning policies to proceed;
- Streamlined State-significant assessment to deliver major projects sooner;
- **Smarter and timely merit assessment** with requirements matching the level of risk;
- **Expanding the scope of complying development and code-based assessment** to reduce transaction costs and speed up approvals for simpler, more standardised forms of development; and
- **Extended reviews and appeals** to increase the accountability of decision-makers – it appears that avenues for review and appeal will be expanded rather than reduced.

Provision of Infrastructure

The fourth area for major reform is in the provision of infrastructure. The intention of the Green Paper is to link planning and delivery of infrastructure to strategic planning for growth via:

- **Contestable infrastructure** to enable greater private sector participation in infrastructure delivery;
- **Growth Infrastructure Plans** to link strategic plans with infrastructure provision;
- **Affordable infrastructure contributions** to provide a fairer and simpler system to support growth; and
- **Public Priority Infrastructure** to streamline assessment for major infrastructure delivery.

Comments and Issues

It is considered that the State Government should be commended for the independent well-researched and consultative program to date that has underpinned the Green Paper, including some of the more notable initiatives:

- Good analysis of the problems of the existing planning system, informed by a comprehensive consultation with stakeholders;
- Extensive efforts to review current best-practice both nationally and internationally;
- Priority given to developing a clearer, simpler and more-integrated strategic planning framework;
- Mandating early consultation with the community;
- Emphasis on transparency and certainty in decision making; and
- Greater use of e-Planning.

From an observation of the initial industry feedback on the Green Paper, there appears to be broad support for the general approach and principles of the new system. However, there are a number of areas which still lack detail at this stage. This approach will however provide Local Government with the opportunity to apply its experience and practical knowledge to assist the State Government in shaping a more workable system through the upcoming White Paper process.

The following section provides some discussion of some of those areas which have been identified by staff where there may be concern, however it must be reiterated that these are simply comments in respect of a Green Paper and at this stage there is insufficient detail for Council to form a firm view on the impacts of the new legislation.

Issue 1 – Potential Reduction in the Role of Elected Councillors

The role of elected Councillors has traditionally provided the most direct form of democratic representation and influence on local government decision-making, particularly in respect of planning and development assessment matters. The Green Paper proposes a fundamental shift of the role of Councillors.

Since the initial public release of the Green Paper, the State Government has produced an additional publication titled '*Frequently asked questions for Councils*' (which is provided as **Appendix 1** to this report) that clarifies some of the elements of the proposed role of elected Councillors.

In terms of the proposed role of Councillors, this publication includes the following:

"WHAT IS THE ROLE OF COUNCILLORS IN THE NEW PLANNING SYSTEM?"

The new planning system will engage councillors in strategic planning so they are involved in setting the broad direction for both their council area and its communities as well as the surrounding region.

Councillors' role in making decisions on local development applications remains unchanged. However the Green Paper strongly encourages councillors to consider the option of delegating their decision-making powers for local development applications to council staff or Independent Hearing and Assessment Panels established by Council.

This approach is already being used by many councils in NSW including around a quarter of all councils in the Sydney area."

On a broader level, one of the key objectives outlined in the Green Paper is to 'depoliticise' the new planning system particularly in respect of decision-making on development assessment matters. With the proposed co-existence of Joint Regional Planning Panels and Independent Hearing and Assessment Panels designed to manage larger local development applications, it would appear that it is the State Government's objective to provide the opportunity for councils to determine to ultimately exclude elected Councillors from participating in development assessment processes and establishing a role that focuses more on input to regional and local strategic planning processes. It is noted however, that it is understood that this will be a matter for each council to determine.

The proposed reduction in the role of elected Councillors may be considered to threaten the extent of local representation of local communities on major development and policy decisions. This loss of community representation has already been experienced in some areas through the creation of Joint Regional Planning Panels (JRPP) to determine major development applications. However, Dubbo has not experienced this as all matters are referred to Council before the JRPP to seek any input and of the four development applications that have been determined by the JRPP since its establishment all four have been determined in accordance with Council's recommendations. In addition, two Councillors are members of the Western JRPP.

The reform will require a significant shift in the culture of planning and, given the complexity of the proposed cultural change in the NSW Planning System, there would be merit in all newly elected Councillors being provided with mandatory training on relevant planning legislation and decision-making.

Issue 2 – The Ability of the Community to Effectively Influence the New Planning System

The Green Paper provides a range of good mechanisms for community groups and individuals to participate in the new planning system, particularly through the proposed Public Participation Charter and the emphasis on an earlier input at a strategic planning stage.

However, the Green Paper does not sufficiently outline how local community members will be given the necessary incentive and education to have effective input and representation on high order strategic planning processes, a process which has proven to date to be very difficult to gain participation and engagement and broader representation at such an early stage of the development planning cycle.

This concern is heightened by the lack of detail in the Green Paper regarding the resourcing and future management of the Regional Plans and Regional Board proposals.

Issue 3 – Strategic Focus

The State Government's commitment to a comprehensive, integrated and evidence-based strategic planning hierarchy should also be commended.

However, there are some 'gaps' in the processes within the Green Paper surrounding the timing, sequencing, resourcing and administration of the Regional Plans and the Regional Growth Boards.

There may be some expectation that councils will provide the main financial and staff resourcing for the regional processes which is a major concern given the expected reduction in income that councils will be able to derive from the fees for the new, streamlined development approvals processes and the other responsibilities of councils in the development of their Local Strategies and Local Land Use Plans.

There is also further uncertainty as to the future role and operations of these regional planning processes in relation to the emerging local government reforms of the State Government's Destination 2036 Action Plan. In this regard, the State Government needs to provide clearer direction on the criteria and timing for formulating new regional administration and growth areas beyond those identified in the Green Paper. Without that direction it is difficult for councils to begin to appreciate how this new regional process will be implemented.

The State Government has a major task in seeking a collegiate and integrated approach from other government agencies and other levels of government in implementing the new State and Regional Plans. The lack of co-ordination of the other agencies on major planning policies/matters has been a significant problem in the past.

Other pertinent matters that need to be explained in the White Paper are the life span, the owners of the process and the expected review periods of the proposed regional plans.

The effectiveness of any regional planning process will also be influenced by the ability to resolve at a high order, the very technical and complex development issues relating to other relevant legislation such as the conflicts and overlap between Commonwealth and State legislation, for instance. The assessment of these legislative instruments currently generates a major time and resource burden at the lower level DA stage. Priority must be given in any higher order regional planning process for relevant Commonwealth and State Government agencies to work closely and co-operatively with Regional Growth Boards in providing a more certain path for new development to proceed and thereby reduce the extent of assessment required in the later DA stage.

Issue 4 – Simplifying Local Land Use Plans

The Green Paper's proposal to move away from rigid development controls to Local Land Use Plans (LLUP) that provide first and foremost a strategic vision and context, which is then reflected in the actual zoning scheme, is also to be commended in terms of its best practice approach.

The LLUPs are proposed to comprise of four discreet but interconnected parts whereby the strategic context embodying the planning and development outcomes is to be underpinned by an outline of the supporting infrastructure servicing flexible development guidelines that are desirable to the market. Performance and monitoring indicators for ascertaining the achievement of the strategic objectives are also proposed.

While the approach is supported it is considered that the Green Paper has not adequately articulated how previous local planning such as the work involved in preparing the new LEP and Comprehensive DCP will be incorporated in any new planning system, if at all.

Issue 5 – Streamlined Approvals

The Green Paper's principle of creating a much clearer hierarchy of strategic planning to provide greater certainty in the development assessment process is to be commended. However, it is considered that the Green Paper presents an imbalanced view of the ability of local government to deliver a more efficient and transparent development assessment system.

Much of the proposed 'streamlining' of current assessment processes fails to acknowledge that it is not only local government that needs to improve upon its performance but that it is also the private sector that needs to perform better in terms of the preparation of quality application submissions and the certification of new developments. The State Government therefore has a major role in terms of seeking a higher standard of professional practice and performance among both local government and private sector operators.

In terms of the Green Paper's reliance on a greater use of 'code assessable' systems to reduce the amount of merit-based development applications, a fundamental issue that the State Government needs to address is the complexity of the current Exempt and Complying SEPP Codes which have proven to date to be a major inhibitor to the take-up of non DA processes. In order to achieve the more affordable and timely assessment times that the Green Paper aspires to, there will need to be a roll-back on the extent of technical assessment required, particularly for smaller scale developments.

The different streams of code assessable developments proposed through the Green Paper are currently quite confusing and need to be clarified and appear to have conflicting objectives. In particular, the State Government needs to better explain the relationship between the proposed code assessable controls of State Plans, a Regional Growth and Sub-regional Delivery Plans, as well as any Local Land Use Plan development guidelines. The Green Paper purports to establish a greater degree of certainty by the predominant use of code assessable development but then also allows for merit-assessed variations from the Code, the introduction of more flexible zones and performance-based Local Land Use Plan controls. These apparent conflicts need to be reviewed as part of the White Paper process.

Another concern in the greater emphasis given to code assessable development is the potential to erode the local and diverse character of existing communities through the imposition of more generic development standards. It is considered that the State Government needs to provide some compromise to allow local councils to retain some form of control over the scale and form of developments within its more sensitive, local character areas.

The proposed use of an 'Amber Light Approach' to enable applicants to take a time-out in considering how to move forward on a potentially problematic application is considered to be a good proposal.

Dubbo City Council has traditionally applied a development assessment practice of working with applicants to reach good development outcomes, particularly on larger, more complex applications. However, in applying this practice, Council may have been penalised under the State Government's Local Development Performance Monitoring (LDPM) reporting system for allowing applicants to take additional time to provide additional information and amended plans. The current 'stop the clock' monitoring is currently skewed against local councils as the annual reporting provides a substantial focus on Gross Determination Days and a much lesser recognition of the Net Determination Days which is, in fact, a measurement of the applicant's performance in achieving a complete and technically adequate application. It is therefore considered that the State Government should consider reviewing its current LDPM reporting system to provide a more balanced performance monitoring in any advancement of the 'Amber Light Approach'.

The Green Paper proposals for a greater role of Joint Regional Planning Panels in development assessment processes needs further clarification in the White Paper. The current support for the JRPPs from Council officers to development assessment processes is already quite substantial and any proposal for the JRPP to have closer input throughout the entire development assessment process raises the question of the increasing impact upon the resources of Council's assessment officers and the JRPP. Similarly, any proposal to introduce Independent Hearing Assessment Panels for local councils also needs to be evaluated in terms of their potential impact on application processing times and the additional resources that are needed to service these Panels. The resourcing of these independent panels has even more significance in more isolated, regional areas.

The Green Paper fails to acknowledge that one of the principle causes of time, effort, cost and delay in the development assessment process is the interaction of the different pieces and levels of legislation. Untangling the relationship of the various Acts with a new planning Act will be necessary to achieve the Government's objective of providing more speed and certainty in the development approval process.

Issue 6 – Provision of Infrastructure

The financial sustainability of the current system of infrastructure changes for new developments is a major issue for regional areas.

The Green Paper's proposals to introduce a clearer hierarchy and system for infrastructure charges and delivery is supported.

Despite these favourable elements, the Green Paper also proposes a reduction in the infrastructure that could be provided by developers of new urban areas and subdivisions who will only provide the land for parks, sporting fields and community buildings. It is implied that the financial burden for embellishment of raw land to create parks and sporting fields and construction of community buildings will be transferred to Councils. This is not such an issue for Dubbo at present as the existing S94 contribution plans only related to parks and recreation areas, urban roads, car parking in the CBD and drainage; however it may preclude Council being able to prepare other plans in the future for important community infrastructure as the City grows.

The following table from the Green Paper summarises the contributions process:

FIGURE 20 OPTION FOR FOR DEVELOPMENT CONTRIBUTION REFORM

INFRASTRUCTURE	LOCAL INFRASTRUCTURE PLAN	REGIONAL OPEN SPACE FUND	GROWTH INFRASTRUCTURE PLAN	RESPONSIBLE DELIVERY AUTHORITY*
LOCAL ROADS	•			LOCAL COUNCIL
LOCAL DRAINAGE WORKS	•			LOCAL COUNCIL
LAND FOR COMMUNITY FACILITIES	•			LOCAL COUNCIL
LOCAL OPEN SPACE		•		LOCAL COUNCIL
LOCAL AND REGIONAL DRAINAGE LAND		•		LOCAL COUNCIL
REGIONAL OPEN SPACE		•		NSW GOVERNMENT
NEW AND UPGRADED REGIONAL ROADS			•	NSW GOVERNMENT
LAND FOR HEALTH AND EDUCATIONAL FACILITIES			•	NSW GOVERNMENT
LAND FOR EMERGENCY SERVICE FACILITIES			•	NSW GOVERNMENT

* MAY BE DELIVERED
BY PRIVATE SECTOR

Under this system, developers may be levied by Councils in 'Local Infrastructure Plans' for contributions for local roads, local drainage works and land for community facilities only. It is unclear how land for local parks and sporting fields would be delivered, presumably through the 'Regional Open Space Levy'. What is clear is that the developer would no longer be responsible for the works/cost required in transforming raw land into parks and sporting fields, or buildings associated with community facilities, parks and sporting fields. It is therefore presumed that these costs will be transferred to Council.

This is a major departure from the current 'user pays' system where the developer provides for these facilities and passes on the cost to land/home buyers. In the new system it seems likely that these costs will be borne by the general ratepayer or that new subdivisions will be released without any of the basic community, sporting and local open space facilities.

With the exception of 'Regional Roads', the Green Paper proposes to further restrict the range of community facilities to be provided by developers and transfer the cost of providing these facilities to the general ratepayer.

Issue 7 - Voluntary Planning Agreements

The Green Paper also identifies a need for Voluntary Planning Agreements (VPA) to be phased out or significantly modernised and simplified. Although not presently in operation in the Dubbo Local Government Area, this approach speaks about the intention of VPAs being linked to larger precinct development that typically arise for negotiation between developers and the State and possibly the council, which it envisages will occur in future in a way that is tailored to suit the parties. In doing so they are to be qualified by established benchmarks aimed at:

- Defining infrastructure performance outcomes;
- Defined negotiation timeframes that recognise holding costs; and
- Enable more developer contributions in-kind and innovations to improve cost effectiveness.

Planning agreements like any substantial contract preparation involves a high degree of negotiation and careful drafting that responds to the complexity of the issue. It is agreed that mechanisms should be in place to standardise aspects of the process where possible. However, it is unclear what standardised inducements or shortcuts can be applied to a process where no two issues and consequently the agreements are exactly the same. More importantly, whilst it is acknowledged that VPAs are frequently found to relate to very large scale development where councils may neither be the consent authority nor infrastructure provider, the use of VPAs by developers/councils, particularly in growth and mining areas, is increasing and in many instances it is the only real and affordable mechanism for the developer/landowner to proceed with a proposal that would not otherwise occur and correspondingly they afford councils with greater certainty and financial protection against potentially higher risk development.

Given that VPAs are there as an inducement or process that can bring greater opportunity for development than previously existed, and are premised on ensuring that the additional opportunity to the landowner, which is voluntary, is not at the expense of the broader community, there seems to be no clear explanation as to why they should be phased out or what additional procedure or standardisation can be deployed to reduce negotiating time and cost.

Issue 8 – The Review and Reform Process

The Green Paper is identified as the third of four steps in the process of reforming the NSW planning system. In practice, there are four steps in the process given that many of the detailed provisions of implementation are contained in delegated legislation by way of regulations.



FIGURE 4 PLANNING REVIEW AND REFORM PROCESS

The significance of the procedural changes advanced through the Green Paper is likely to give rise to a significant response from councils, industry and the community that will likely raise issues not addressed and options not considered. It is therefore considered appropriate for the State Government to include a further step in the process prior to drafting a White Paper and exposure bill which involves the production of a detailed response to the submissions made in respect of the Green Paper, to give all the stakeholders the confidence that the best alternatives have been analysed and commented upon.

SUMMARY

On 14 July 2012, the NSW Government released the document '*A New Planning System for NSW – Green Paper*'.

The 23 recommendations of the Green Paper are the NSW Government's initial response to the report '*The Way Ahead for Planning in NSW*' undertaken by an Independent Panel which contained 374 recommendations.

The Green Paper has now been released for community consultation following which the Government will release a White Paper and Exposure Bill for further public consultation. The Government intends to present new planning legislation to the Parliament in early 2013.

The Green Paper sets out a blueprint for change in the following areas:

- **Community participation** – The major shift in the new planning system is to engage communities as an integral part of making key planning decisions that will affect the growth of their communities;
- **Strategic focus** – A major shift to evidence-based strategic planning in terms of planning effort, community and stakeholder engagement and decision making;
- **Streamlined approval** – A shift to a performance-based system in which duplicative layers of assessment have been removed, decisions are fast and transparent, and code-complying development is maximised; and
- **Provision of infrastructure** - A genuine integration of planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

The Government intends the new legislation to be an ‘enabling Act’, establishing the broad framework of the planning system. Detailed controls will be contained in guidance and good practice advisory notes.

The submission period on the Green Paper has been extended for local government until 5 October 2012.

Appendices:

1 Green Paper - A New Planning System for NSW



A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

Frequently Asked Questions

July 2012

Frequently asked questions for councils

WHY IS THE GOVERNMENT OVERHAULING THE NSW PLANNING SYSTEM?

- The legislation which provides the overarching framework for the planning system in NSW is over 30 years old.
- The legislation has been modified over 150 times to try to keep up with changes in the community, but it has reached a point where the State Government believes a new planning system is required.

WHAT ARE THE PROBLEMS WITH THE EXISTING SYSTEM?

- The current planning system has become too complex and difficult to understand for many users of the system.
- Businesses and community members have also expressed their frustration about the red tape and delays that impact on development applications for minor and major proposals.
- Environmental and biodiversity conservation issues and the protection of high value agricultural lands are managed in a piecemeal way, and are not proactively and appropriately catered for in current planning processes.

HOW DOES THE GOVERNMENT INTEND TO FIX THE PROBLEMS WITH THE EXISTING PLANNING SYSTEM?

- The Government is completely overhauling the planning system to make it more simple, user-friendly and better suited to the needs of the community and industry.
- Following extensive consultation with the community and industry throughout NSW, the Government has released a Green Paper – *A New Planning System for New South Wales*, which outlines major changes to the way the planning system will operate in New South Wales.

WHAT IS A GREEN PAPER?

- A Green Paper is a document which outlines the broad changes and reforms the Government intends to undertake for a major area of policy, in this case the NSW planning system.
- The Green Paper – *A New Planning System for New South Wales* is effectively the 'blueprint' for fundamental changes to the planning system and provides an outline of how the Government intends to deliver those changes.

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A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

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WHAT IS THE ROLE OF COUNCILS IN THE NEW PLANNING SYSTEM?

- Local councils will be taking a leadership role in the new planning system.
- Compared to the existing system, councils will have a greater focus on strategic planning. This is planning which caters for long-term growth, infrastructure provision and environmental protection across council areas and regions.
- For the first time local councils will be a partner in strategic planning at the regional and subregional levels, through the creation of Regional Planning Boards.
- The boards will provide independent advice to State and local government and have representatives from relevant local councils as well as State Government, stakeholders and community.

WHAT IS THE ROLE OF COUNCILLORS IN THE NEW PLANNING SYSTEM?

- The new planning system will engage councillors in strategic planning so they are involved in setting the broad direction for both their council area and its communities as well as the surrounding region.
- Councillors' role in making decisions on local development applications remains unchanged. However the Green Paper strongly encourages councillors to consider the option of delegating their decision making powers for local development applications to council staff or Independent Hearing and Assessment Panels established by Council. This approach is already being used by many councils in NSW, including around a quarter of all councils in the Sydney area.

HOW HAVE THE PREVIOUS SUBMISSIONS MADE BY COUNCILS TO THE INDEPENDENT PLANNING REVIEW BEEN CONSIDERED?

- The Green Paper builds on the recommendations of a review undertaken by an independent panel. The panel members were former Environment Minister the Hon. Tim Moore and former Public Works Minister the Hon. Ron Dyer. The panel's recommendations were based on feedback received as part of the listening and scoping workshops held across the State, meetings with local councils and the 600 submissions received on the panel's Issues Paper.
- Additionally, the department has reviewed all the submissions received, particularly from local councils, and used them to inform the transformative changes of the Green Paper.

HOW WILL LOCAL DEVELOPMENT APPLICATION DECISIONS BE DE-POLITICISED?

- Councils will be encouraged to establish independent expert panels to decide on the four per cent of local development applications currently determined by elected local politicians (councillors). A quarter of Sydney's councils have already established these panels.

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A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

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- This is consistent with moves to de-politicise decisions on regional and State significant development applications (through the introduction of joint regional planning panels and the Planning Assessment Commission).
- Research by the Property Council of Australia in January 2012 found that 78 per cent of people want independent experts in charge of local development application decisions.
- Council staff, under delegation, currently determine some 96 per cent of development applications. This will not change.

HOW WILL COUNCILS BE INVOLVED IN STRATEGIC PLANNING?

- Councils will have a key role in developing Regional Growth Plans and Subregional Delivery Plans in their regions. Through the Regional Planning Boards their local strategic planning will inform regional and subregional planning outcomes.
- Councils will be key partners in the development of sectoral strategies for housing, employment, environment and natural resources that will inform the Subregional Delivery Plans.

HOW ARE LOCAL LAND USE PLANS DIFFERENT FROM EXISTING LOCAL ENVIRONMENTAL PLANS (LEPS)?

- Currently, LEPs are highly prescriptive documents that tend to rigidly impose local development controls with little consideration for the broader strategic context. As a result, decision-makers must often approve or refuse individual developments with little, if any, guidance on how the area relates to its broader regional context.
- Local Land Use Plans, on the other hand, will form a key part of the overall strategic planning approach and ensure that local planning is consistent with the agreed direction set at the regional and subregional levels.
- They will be plain English documents that provide a clear explanation of the strategic focus for an area and establish appropriate development guidelines to assist with local decision-making.
- There will be one Local Land Use Plan per council area (152 in total) – compared with the more than 300 LEPs and thousands of development control plans (DCPs) currently – and will reflect community expectations and input.
- Importantly, every Local Land Use Plan will include a section on the delivery of infrastructure and services, ensuring this important aspect of planning forms a key part of local decision-making.

HOW WILL THE SYSTEM DEAL WITH INFRASTRUCTURE CONTRIBUTIONS AND PLANNING?

- The Green Paper acknowledges that, in the past, far too much of the burden of funding infrastructure has been placed on individual developments, which has made housing less affordable.

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A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

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- Instead, the Green Paper includes a number of broad suggestions for a fairer and simpler system based on the idea that the cost of new infrastructure and services should, wherever possible, be shared by those who will benefit from them.
- As such, the Green Paper outlines some key principles for how infrastructure should be funded under a new system, including the issue of local Section 94 contributions which is an ongoing challenge for State and local government. These include principles such as that the levy system:
 - Should be based on the principle of contributing to cost recovery.
 - Must be competitive with comparable markets in other jurisdictions.
 - Must not compromise housing affordability or inhibit housing delivery.
 - Should spread costs to the broadest base of beneficiaries, including over time.
 - Should support contestability.
 - Must provide a clear, transparent link between levy revenue collection and infrastructure programming and delivery.

HOW CAN COUNCILS PROTECT LOCAL AREAS WITH SPECIAL CHARACTER AND ENCOURAGE HOUSING AND BUSINESS DEVELOPMENT?

- The Green Paper proposes three new land-use zones.
- One of these zones is a 'suburban character' zone. This zone would allow councils and the community to preserve some areas known for their urban character or established development patterns from higher density development.
- Additionally, an 'enterprise zone' which will provide a flexible planning approach generally to target employment-generating development. A 'future urban release area' zone will provide a clear intention to provide greenfield housing over time.

HOW WILL THE CHANGES HELP IN RETURNING PLANNING POWERS TO LOCAL COUNCILS?

- Since coming to office, the Government has handed back to local councils and communities a large number of applications that were previously dealt with by the State Government under Part 3A of the Environmental Planning and Assessment Act 1979.
- The new system will continue to return planning powers to local councils by making them key participants in the creation of new long-term regional and subregional plans, including sitting on Regional Planning Boards.
- Councils will also be responsible for developing Local Land Use Plans.

WILL THE NEW SYSTEM REQUIRE CULTURAL CHANGE IN LOCAL GOVERNMENT?

- The current system has inevitably bred a culture of legalistic regulation and prescriptive decision-making amongst those who administer the system. This needs to change.

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A NEW PLANNING SYSTEM FOR NSW GREEN PAPER

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- The Green Paper outlines the Government's commitment to engender an outcome based culture within planning in NSW that focuses on delivery.
- While many planners across NSW take this approach, including in local councils, there is a need for widespread cultural change within both State and local government. This is an opportunity to entrench greater efficiency, transparency and customer-service within our planning organisations.
- The Green Paper also proposes regular public reports outlining whether housing and job targets outlined in regional, subregional and local plans are being met. This additional information and accountability should also assist in cultural change.

HOW CAN YOU HAVE YOUR SAY?

- The Government encourages members of the community and local councils to have their say on the Green Paper and on issues raised by the independent review report.
- Following requests from some sectors of local government, the NSW Government has extended the time for local council consultation until 5 October 2012.
- An online consultation forum has been set up at www.haveyoursay.nsw.gov.au/newplanningsystem to allow for comments on each of the proposed changes to the system and online discussions.
- In addition to the online forum, a number of face-to-face and online events and workshops will also be held throughout the exhibition period for members of the public and industry representatives to provide their feedback.
- Any submissions on the Green Paper can be lodged online at www.haveyoursay.nsw.gov.au/newplanningsystem or be mailed to New Planning System Team, Department of Planning and Infrastructure, GPO Box 39, Sydney 2001.
- All submissions received will be placed online at www.planning.nsw.gov.au. Names and addresses can be withheld on request.

FURTHER INFORMATION

Department of Planning & Infrastructure website:
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FILE11/58
TA/MC

28 June 2013

The Director General
Department of Planning and Infrastructure
New Planning System
GPO Box 39
SYDNEY NSW 2001



Dear Sir

NEW PLANNING SYSTEM WHITE PAPER - DUBBO CITY COUNCIL SUBMISSION

On 16 April 2013, the NSW Government released the "White Paper – A new planning system for NSW" for public feedback. In the subsequent consultation process, there has been a particular focus on actively engaging with Local Government entities in metropolitan areas and, importantly, in regional locations around the State. The Minister for Planning and Infrastructure and senior Departmental staff have held a number of meetings and forums in Dubbo, and the level of engagement and consultation has been greatly appreciated.

Attached is the formal Submission by Dubbo City Council. It was endorsed unanimously by Council at its Ordinary Meeting on 24 June 2013. It reflects the views and opinions of both Council staff and the wider Dubbo Community. The submission generally supports the structure and intent of proposed New Planning System, particularly the focus on upfront community engagement and consultation. While the body of the submission addresses the specific questions raised for each chapter in the Departments "White Paper Submissions Guide", it also identifies and discusses four key overarching themes that will need to be considered in the implementation of the new system. These are:

- The need to recognise the differences between regional and metropolitan councils, and to avoid a "one size fits all" approach to reform
- The need to integrate and coordinate this reform with the other major regional governance reforms being pursued by the NSW Government
- The need to ensure the Local Plan does not become too complex or voluminous for the public to readily access and understand
- The need to build the capacity and competence in the certification and compliance function, particularly in rural and regional areas

I commend the Dubbo City Council Submission to you and thank you for the opportunity to provide input to this very important reform for NSW.

Yours faithfully

Mark Riley
General Manager

Attachment: Dubbo City Council Submission

NSW GOVERNMENT WHITE PAPER – A NEW PLANNING SYSTEM FOR NSW

DUBBO CITY COUNCIL SUBMISSION

General Comments

Review of the NSW planning system is long overdue. Gazetted in 1979, the current planning system has been the subject of many amendments in an attempt to keep pace with the changing face of planning; however these changes have for the most part been reactive and not always well-considered in the context of the whole planning system.

The current planning system is complex, inflexible, highly process-driven and outdated. The White Paper proposes many initiatives that have the ability, if delivered well, to address these inadequacies.

The most positive elements of the White Paper include:

- Early community engagement in the planning process;
- Identification of the need for cultural change for everyone involved in the planning system;
- A reduction in the role of State Government in local planning decisions;
- Strategic focus and evidence-based planning;
- The proposed 'One Stop Shop' approach to multi agencies' input to the planning process;
- Streamlining of development assessment and the need to simplify the process; and
- Recognition of the key role of infrastructure and the need to provide greater certainty in the entire planning process.

While these positive elements are acknowledged, a review of the White Paper has identified four key themes that represent the major issues to be addressed in the implementation phase of the new planning system. These themes are discussed below:

1. Danger of the 'one size fits all' approach

The White Paper suggests a standardised strategic planning structure including regional, sub-regional plans and an entity called the 'Sub-Regional Planning Board'. In the context of the major coastal and metropolitan areas of NSW, this approach is understandable. However, for regional areas like Dubbo and the Orana Region, the proposed structure appears over-prescribed, cumbersome, costly and potentially time-consuming to implement. A simpler, more efficient approach could be applied for inland regional areas like the Orana Region,

taking advantage of the already-established and successful regional collaboration approach represented by the Orana Regional Organisation of Councils (OROC), as follows:

- * The recognition that for regional areas like Dubbo and the Orana Region, a new separate Regional and Sub-Regional Plan is not required and requirements of the system can be met via expanded and better coordinated regional and local plans;
- * The formal appointment by the Minister of OROC as the Regional/Sub-Regional Planning Board for the purposes of preparation of a Combined Regional Sub-Regional Growth and Delivery Plan if required; and
- * The utilisation of Dubbo City Council as a 'model' regional council to potentially 'road test' the new system and the application of new concepts like form-based codes and local and regional infrastructure contributions regimes.

2. Need to Coordinate Multiple NSW Government Reform Agendas

Currently, there are separate proposals for new regional structures for Local Land Management Services, Local Government (ie the so-called 'County Council' model) and for land use planning (the Sub-Regional Planning Boards). All are proposing separate structures, funding streams and different Regional boundaries. Each are proposing a separate and possibly overlapping array of responsibilities and powers, as well as separate 'secretariat' support structures. While each of itself may not represent a 'fourth tier of bureaucracy and government', taken together in their current form, these proposals effectively will create a new, complex and potentially expensive and unnecessary layer of governance.

For regional and rural councils charged with the delivery of increasing infrastructure and services, these new layers could increase the already significant burden of reporting and accountability detracting from the delivery of these services to the community. There is an urgent need to simplify and rationalise these proposals and minimise the cost and extent of unnecessary bureaucratic structures. Again, in the Orana Region, OROC potentially provides a pre-existing, functional regional mechanism for the management and delivery of a multiplicity of government programs and services.

3. Scale and Complexity of Local Plan

The Local Plan will be a dominant statutory mechanism governing local planning issues and addressing and enforcing State and Federal planning matters. At this stage, there is a lack of clear definition as to how the Local Plan will effectively include all of the proposed elements in a comprehensive yet readable and accessible document. Further, due particularly to the length of a Local Plan, the composition of the document, the accessibility of information and its useability, it is perceived that it will be heavily-dependent on the implementation of e-Planning. However, at this stage there is no clear guidance on the nature of the proposed e-Planning system, its capacity, structure, implementation timeframes, system requirements, support arrangement etc. This is a major proposed platform supporting the implementation of the new planning system and detail on what is proposed is urgently required.

In the same context, councils across the State are currently forging ahead with the implementation of their own e-Planning solutions, built upon a variety of software systems, GIS platforms, documents and data sets. Unless clarity is brought to this area of the new system quickly, there is a risk of wasted expenditure for councils and unnecessary confusion for end-users and the general community, as local e-Planning systems are superseded by a central system in an unplanned and uncoordinated manner.

There also needs to be some acknowledgement of the variability of councils across the State and their capacity to implement and maintain such systems and the accuracy/quality of the State data sets and mapping which may be applied as a basis for implementation of e-Planning.

4. Compliance and Certification Capacity

While reducing the extent of detailed development assessment required at the planning stage, the new system, combined with the revised Building Code of Australia (BCA), will have the effect of significantly increasing the burden of certification and compliance at the end of the development and construction process. The streamlined timeframes for issue of Complying Development Certificates (CDCs) and the introduction of new Code Assessment streams will mean building certification activities will require an increase in both council and private certification capacities across NSW. The availability of qualified and certified building surveyors and certifiers in rural and regional areas of NSW is already problematic. The increased demand arising from this element of the new planning system will only worsen a significant skills shortage. The initiatives suggested to ease this potential skills bottleneck are reasonable but seem to be more focused on metropolitan areas. Consideration needs to be given to special programs and solutions to develop capacity in regional areas.

Detailed Commentary

Chapter 3 - Delivery Culture

1. *Are there any improvements you would suggest to the planned changes to delivery culture?*
2. *What are the most important things to consider to successfully implementing:*
 - *A culture change action group?*
 - *Training sessions for practitioners and stakeholders?*
 - *Changes to the Department of Planning and Infrastructure to emphasise strategic planning and community participation?*
 - *Monitoring and reporting on the actions for culture change and lessons learnt?*

• *A Performance Monitoring Guideline?*

Dubbo City Council's Response:

The section on delivery culture is the least substantial of all the chapters in the White Paper, for what is arguably the most important element of the new planning system. The chapter does not clearly specify what the perceived problems are with the planning culture in NSW and therefore it is difficult to assess the suitability of the proposed changes.

The changes proposed are largely facilitative in nature; training sessions, action groups and a new senior position of cultural change within the Department of Planning and Infrastructure. These initiatives will help, particularly in changing the Department's culture, however the planning culture is larger than State or Local Government organisations. It encompasses the construction and development sectors, a range of professions including lawyers, architects as well as consultant planners and certifiers and, most importantly, it includes the general public. It is not clear how the proposed actions will impact these key stakeholders.

Unfortunately, the planning system has been in existence for so long that many bad habits have become ingrained in the NSW industry. A confrontational culture has led to a 'them and us' attitude amongst developers, objectors and Council officers. At times, a cynical gaming of the system occurs to achieve publicity and force political outcomes for a development which has undermined public faith in due process. To address this, it is suggested that a more comprehensive, multi-pronged approach to the management of cultural change be implemented. In addition to the proposed changes, the following could be considered:

- A requirement for developers/proponents to meet higher standards of community engagement and consultation as a prerequisite to merit assessment of applications;
- Ongoing educational and community engagement campaigns aimed at the general public to generate a more educated and consistent debate around planning issues; and
- Greater use of e-Democracy tools and mechanisms to garner community feedback to proposed developments as part of the design development process.

The White Paper discusses the role of the Planning Institute of Australia (PIA) in leading changes to the delivery culture of planning in the future. The PIA is undertaking a number of measures focusing on engagement with the industry on the need for change, establishing a group of cultural change champions, expanding its mentoring program, engaging with universities on current and future planning programs and preparing a comprehensive action list for change. The activities and actions of the PIA are all considered appropriate to further refine the planning culture and the education of industry participants. However, it is unclear as to when and/or how these actions have been implemented by PIA. In addition, not all planning professionals are members of the PIA and accordingly not all are represented and

engaged in mentoring programs and focus groups. Accordingly, there is an identified need for these programs to be resourced to planning professionals who are not members of the PIA.

Rather than formal training programs and sessions, programs should be focused on interactive learning and professional engagement for planners working in similar environments. In this context, there should be a realisation that one size does not fit all, and the implementation focus, issues and challenges facing planning professionals in rural and regional areas will be of a different type and order than those applying to metropolitan planners.

The main burden of data gathering and performance reporting will continue to fall on local councils under the new system. It is important that in the development of the new Performance Monitoring Guide and the evolution of the performance monitoring and reporting system that a strong focus is placed on a limited number of meaningful performance measures being maintained, and that the extent of 'reporting for reporting's sake' is minimised.

Chapter 4 - Community Participation

3. *Are there any improvements you would suggest to the planned changes to community participation?*
4. *What are the most important things to consider to successfully implementing:*
 - *Community Participation Plans?*
 - *Upfront community participation in strategic planning?*
 - *e-Planning services?*

Dubbo City Council's Response:

The shift to engage/consult with the community at the strategic stage commendable, as is the introduction of a Community Participation Charter, however there needs to be some acknowledgement that the Charter for Dubbo may be very different from that of a rural or metropolitan council. These charters need to be developed to be reflective of the community they represent and not prescribed by legislation.

Councils are already required to develop Community Engagement Strategies and Plans in order to engage with the community in the preparation of Community Strategic Plans under the Integrated Planning and Reporting regime. The question is raised as to whether it would be possible to combine community engagement in the two processes to avoid the onset of

'engagement fatigue' with a council having to undergo multiple engagement processes with the community.

The White Paper relies heavily on the implementation of e-Planning and enhanced information technology. There needs to be some acknowledgement of the varying capabilities of councils across NSW and their ability to access, implement and maintain such systems and then in turn the likely take-up rate by the respective communities given some limitation of connectivity and computer literacy in some areas.

Chapter 5 - Strategic Planning Framework

5. *Are there any improvements you would suggest to the planned changes to strategic planning?*
6. *What are the most important things to consider to successfully implementing:*
 - *A hierarchy of plans and policies comprising:*
 - *NSW Planning Policies*
 - *Regional Growth Plans*
 - *Subregional Delivery Plans*
 - *Local Plans?*
 - *A partnership between the state, the community, local councils, agencies and the private sector that will develop a shared vision for regions, subregions and local areas?*
 - *A 'one stop shop' for concurrences and approvals?*
 - *Identification of precincts and locations of significance through subregional planning for direct rezoning and setting of key development parameters?*
 - *Strong performance monitoring and reporting?*

Dubbo City Council's Response:

The general structure and hierarchical flow of the new strategic planning framework is a major advance on the overly complex and unwieldy nature of the current system. The tiered arrangement of State Planning Policies, Regional and Sub-Regional Plans and Local Plans is both logical and equally accessible to the planning professional and the general public alike.

The main area where further work is required is in the definition and application of the Regional and Sub-Regional Plans. It is understood that the proposed structure and content of these Plans is based largely on the existing Sydney metropolitan strategy. This combination of an overarching metropolitan plan and subsidiary centres plan has been a successful model for Sydney and the benefits of consolidating and extending this approach to other major urban population centres like the Hunter, Central Coast and Illawarra are recognised.

The relevance of this four-tiered, top-down structure to Regional NSW beyond the Great Dividing Range is less clear. For example, Dubbo has an established and growing role as a regional centre supporting and contributing to regional organisations like the Orana Region Organisation of Councils (OROC) and the Regional Development Australia (RDA) Orana region. Coordination of economic development, growth strategies and infrastructure development programs through this model is well-established. Relationships with State and Federal governments, their agencies and authorities are strong and this collaborative approach has the capacity to be expanded significantly in the future.

In the West, the need for both regional and sub regional plans, and the consequent organisational and bureaucratic frameworks that will support them, are questioned. It is suggested there may be an alternative model (subject to endorsement by other member councils) as follows:

- NSW Government appoints OROC to act as Regional Planning Authority, to prepare a Regional Plan as defined in the new planning system;
- OROC works with the Western Region Directorate DoPI to develop this Plan in accordance with government policy and priorities; and
- Member LGAs of OROC then flow through the relevant aspects of this Plan to their local Plans as they proceed to develop them.

This model has significant advantages over the 'one size fits all' approach suggested in the White Paper:

- It builds on a regional organisation that is generally recognised to be working well;
- It maximises community input and engagement in the strategic planning process via the OROC mechanism; and
- It is likely to be significantly cheaper and quicker to implement than the establishment of separate regional boards, compilation of multiple regional/sub-regional plans, and their application to local planning regimes.

Further, there is concern regarding the proposal to reduce the number of standard zones from 35 to 13 to focus on principal land use particularly because provisions for high or low density residential uses are proposed to be dealt with through development guides in the Local Plan. This is concerning as it is identified that the Development Guide within the Local Plan will

not have statutory standing. As such, some of the current land use controls enforced through zoning will not have statutory support.

It is understood that codes are to be included in the Development Guide provisions that form part of a Local Plan. These codes may require the imposition of 'building envelopes' for each and every site. Reservations exist as to the enormity of such a task and to the effect of ongoing subdivision and consolidations, particularly in the rural and regional context where this level of control is currently not applied or needed.

Chapter 6 - Development Assessment

7. *Are there any improvements you would suggest to the planned changes to development assessment?*
8. *What are the most important things to consider to successfully implementing:*
 - *80 per cent of all developments to be complying or code assessment within the next five years?*
 - *An expanded range of residential, commercial, retail and industrial developments to be complying or code assessment?*
 - *Promoting independent expert decision making?*
 - *New merit assessment processes?*

Dubbo City Council's Response:

The focus on engaging with the community at the strategic stage is acknowledged and supported. The preparation of guiding Community Participation Charters and Plans will provide some structure and certainty around the process for successfully implementing this change accordingly this is supported. However, it should be recognised that the wider community can be expected to struggle to comprehend the extent of the planning information at the strategic level. The point is made that the extent of this information, although presented in a clearer hierarchy, will be no less substantial than it currently is. It is expected that in the Dubbo context the community will not be significantly benefited through the strategic level engagement and will not gain a greater understanding of the system as a result of the structural amendments.

As the expectation that notification will be given at the development application stage is heavily carried, we expect that issues will arise in the implementation of the system when construction commences for development which was not notified. Further consideration should be given to implementation to ensure that the community will not feel remote from local planning matters once the system is in operation.

Further, it should be noted that the low take-up of complying development in the Dubbo context is due largely to the fact that the associated codes are not user-friendly and are difficult to interpret. It is self-evident that if the process was simpler the market would drive its uptake. It is therefore recommended that sufficient resources be allocated to developing well thought-through codes to ensure that the industry can most effectively and efficiently implement them, thereby achieving the aim of at least an 80 per cent uptake.

It should also be noted that the assessment required for complying development and code assessed developments under the Building Code of Australia remains complex and should be considered when determining and applying timeframes for assessment periods, particularly as they apply to the expansion of industrial and commercial developments.

Chapter 7 - Provision of Infrastructure

9. *Are there any improvements you would suggest to the planned changes to the provision of infrastructure?*
10. *What are the most important things to consider to successfully implementing:*
 - *The introduction of Growth Infrastructure Plans?*
 - *Contestability assessments?*
 - *Simplifying local and regional infrastructure contributions and making them more transparent?*
 - *Declaring particular projects to be Public Priority Infrastructure?*

Dubbo City Council's Response:

The integration of land use planning and infrastructure provision is supported. It is considered to provide certainty and definition to the development of infrastructure and collection of infrastructure contributions which are lacking in the current system.

It is noted that Regional Infrastructure Contributions are only applied in high growth areas to support the provision of regional infrastructure. Consideration should also be given to the provision of such infrastructure in areas outside of those identified as being high in population growth. It is expected that high growth areas will collect a high rate of contribution and accordingly have access to a high level of funding for necessary infrastructure. It should also be recognised that areas with low population growth also require access to funds for the provision of infrastructure of regional significance. While high growth does not drive the provision of infrastructure in these areas, the extent that localities are not situated within proximity to each other increases the cost of infrastructure provision.

In regional areas, where there is a low rate of population growth and subsequent low rate of development, it is difficult to plan for, prioritise and establish infrastructure over short time frames. As such, the proposal to impose a three year limit on holding contributions prior to expenditure is not practical and should not be applied in the regional context so long as the community is aware of this upfront in the development of the contribution plans.

The rationalisation of the infrastructure contributions system is long overdue. The proposed changes seem generally acceptable; however there is a need for more work on the approach to the proposed infrastructure cost benchmarking model. While regional price variations are recognised, the system also needs to recognise that in rural and regional areas, 100% recovery of both local and regional contributions may make a Greenfield development uneconomic. There are also issues of scale applying to development costs. The smaller scale residential and commercial developments in rural and regional areas means infrastructure contributions can form a greater percentage of total development costs, impacting on project viability. There needs to be a capacity within the development contributions regime to cross-subsidise development across the State to equalise the impact of contributions and encourage development across all regions and metropolitans areas in NSW.

Chapter 8 - Building Regulation and Certification

11. *Are there any improvements you would suggest to the planned changes to building regulation and certification?*
12. *What are the most important things to consider to successfully implementing:*
 - *Accreditation of additional occupations involved in building design and construction?*
 - *Mandatory certification of specified building aspects?*
 - *Improvements to building regulation process?*
 - *Decision support improvements for certifiers (eg peer review)?*
 - *Improvements to the regulation of building and use changes?*
 - *Improvements to the regulation of ongoing building performance, including the application of the building manual?*
 - *Strengthened controls on certifiers?*

Dubbo City Council's response:

Reference is made to the intention to expand the types of development that can be undertaken as complying development whilst still maintaining a timeframe of 10 calendar days for

determination. It should be recognised that with the expansion of the development types comes increased complexity in the Building Code of Australia (BCA) compliance for buildings which still have to be undertaken and completed by a building certifier within the 10 days.

It is unreasonable to expect that a complete and competent BCA assessment can be undertaken by a building certifier for a large commercial or industrial building within six (6) business days. Whilst a 10 day turn-around may have been appropriate for such minor structures such as carports, garages and dwellings, it is not for larger developments where alternate and fire-engineered solutions and complexity of fire services dominate the assessment process.

Whilst the intent of the proposed 'Building Manual' is understood, there are several areas identified where its facilitation appears impractical or inappropriate. The Building Professionals Act stipulates that accredited certifiers are prohibited from being involved in the design of any building development. The preparation of the proposed 'Building Manual' could potentially blur this clear professional demarcation line whereby the certifier is engaged only in a compliance regulatory role. The White Paper places the responsibility on the preparation and issue of the 'Building Manual' with the building certifier. The intended scope of the Building Manual appears to extend further than the current Fire Safety Schedule and caution is raised that it does require the certifier to specify matters which are of a design nature.