

Submission
No 54

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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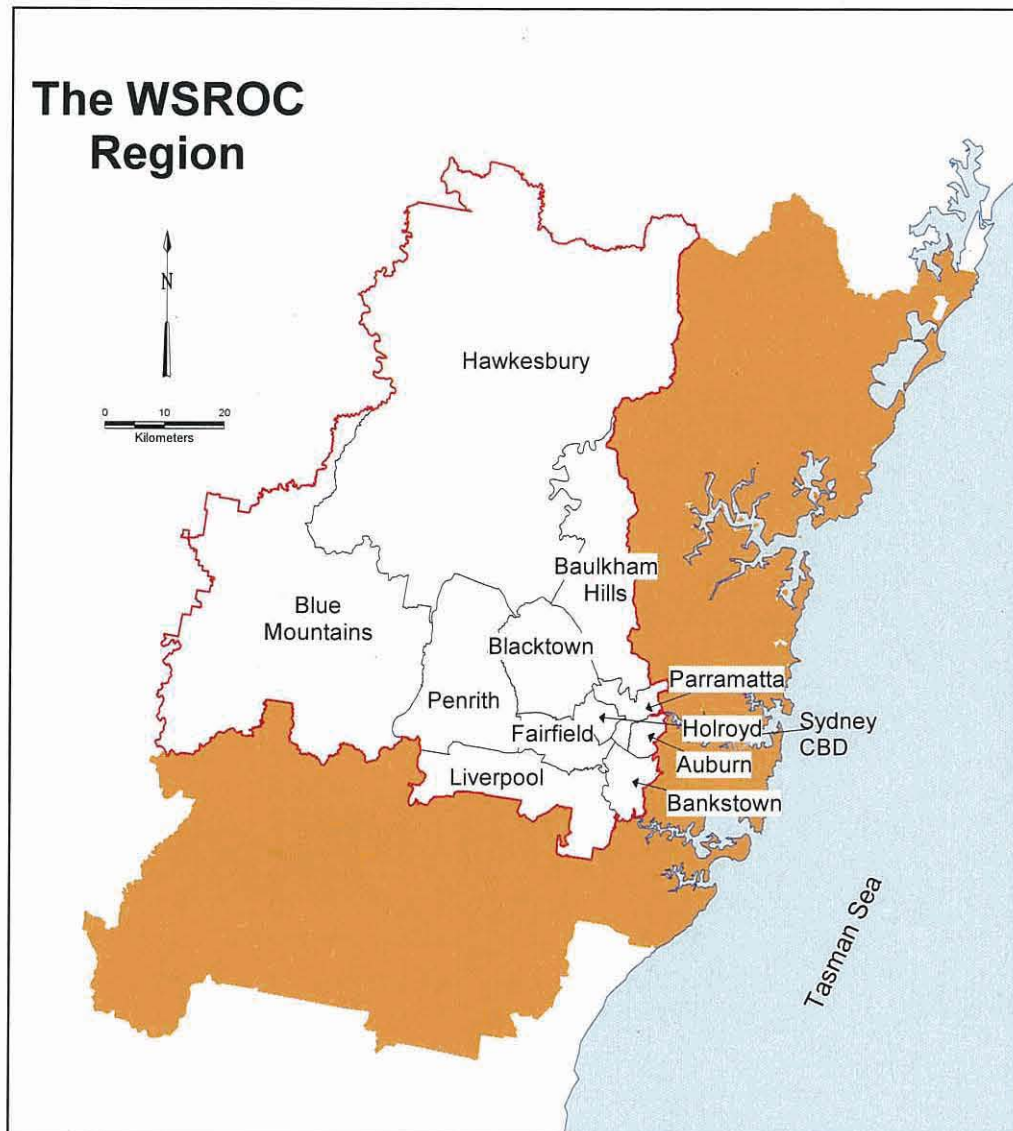


Advocating for the people of Western Sydney

INQUIRY INTO THE NSW PLANNING FRAMEWORK

FEBRUARY 2009

Prepared by the
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WSROC IN BRIEF

WSROC - the Western Sydney Regional Organisation of Councils Ltd - is one of Australia's oldest and most respected Local Government lobbying organisations and a key advocate for Western Sydney.

Member councils are:

- ◆ Auburn Council
- ◆ Bankstown City Council
- ◆ Baulkham Hills Shire Council
- ◆ Blacktown City Council
- ◆ Blue Mountains City Council
- ◆ Fairfield City Council
- ◆ Hawkesbury City Council
- ◆ Holroyd City Council
- ◆ Liverpool City Council
- ◆ Parramatta City Council
- ◆ Penrith City Council.

WSROC was formed in November 1973 and became a company limited in 1991. All member councils make an equal annual contribution to the operating costs of WSROC and have equal voting rights.

The decision-making body of WSROC is the Board, consisting of two voting Directors from each member council. The Board's role in managing the organisation is supported by the Executive Management Committee (EMC). The organisation is resourced by a small regional secretariat, with professional and support staff.

A number of professional committees and working groups of staff from member Councils also meet regularly to assist in implementing the work program and to discuss major regional issues. These staff groups, member councils, the secretariat, the EMC and the Directors themselves all provide advice and recommendations to the Board for consideration.

WSROC has a reputation for considered research, policy analysis and advocacy on a wide range of issues affecting the residents of Western Sydney. These include urban planning and management, infrastructure and public transport, economic development and employment, environment and sustainability, social equity, cultural development and community services, health, housing and a range of Local Government issues. WSROC is responsible for improvements in many of these areas and has helped to create many of the region's institutions and agencies.

WSROC's mission

To secure - through research, lobbying, and the fostering of cooperation between councils - a sustainable lifestyle for the people of Western Sydney and the provision of infrastructure such that no one should have to leave the region to have access to the sorts of amenities, services and opportunities others in urban Australia take for granted.

1. INTRODUCTION

In August 2008 the NSW Legislative Council's Standing Committee on State Development announced an Inquiry into the New South Wales Planning Framework in the context of national and international planning trends.

Particular consideration is to be given to the Council of Australian Government's (COAG) reform agenda for planning in NSW, climate change and natural and resource issues in planning and development controls and the duplication of processes under relevant Commonwealth and NSW legislation.

The Terms of reference for the Inquiry were as follows:

1. That the Standing Committee on State Development inquire into and report on national and international trends in planning, and in particular:

- (a) the need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development,*
- (b) The implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales,*
- (c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation,*
- (d) Climate change and natural resources issues in planning and development controls,*
- (e) Appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales,*
- (f) Regulation of land use on or adjacent to airports,*
- (g) Inter-relationship of planning and building controls, and*
- (h) Implications of the planning system on housing affordability.*

2. That the committee report by 14 December 2009.

In February 2008 WSROC responded to the Department of Planning's Discussion Paper on *Improving the NSW Planning System* (see previous submission). This submission expressed strong reservations regarding many of the changes proposed, as well as noting the far-reaching implications of the major changes to the developer contribution system under Section 94 (S.94) of the Act which had been introduced by the State Government.

This submission presents the considered regional response of WSROC. It presents some background discussion on the need for the review and, in Section 3, provides the WSROC response to the Terms of Reference.

It should be noted that whilst the submission draws upon and attempts to complement the views of individual WSROC Councils, submissions from our individual member Councils should naturally be read and accepted in their own right.

RECOMMENDATIONS

WSROC recommends:

- **The definition of planning processes in a new Planning Act;**
- **The new Act should take a strategic approach based on triple bottom line principles for long-term sustainability, rather than a focus on development control;**

- **There is a need for encouragement rather than prohibition;**
- **Planning rules should be based on evidence, recognising contemporary environmental concerns such as climate change and sustainability;**
- **State, Regional and Local Plans should be retained and streamlined in a planning hierarchy which recognises strategic policy directions;**
- **Greater emphasis should be given to social equity issues;**
- **Community consultation and participation should be fundamental components of the planning system;**
- **Recognition should be given to local government having the primary role in planning for the local area;**
- **There should be proper integration of all facets of planning at the State level;**
- **SEPP 10 needs further refinement; and**
- **Micro management and development control should not be undertaken at the Department of Planning level.**

2. BACKGROUND

The *Environmental Planning and Assessment Act (EP&A Act) 1979* provides the main statutory context guiding planning in NSW. Whilst acclaimed upon its introduction nearly thirty years ago, successive amendments, case law and a proliferation of other legislation, coupled with a greater emphasis on sustainability, has caused the planning regime in NSW to become over complex and increasingly inefficient.

WSROC is of the view that the current plan-making system in NSW is in need of a significant review, particularly to streamline and reduce the complexity and plethora of planning policies and plans that exist at the State, regional and local level.

Instead of tinkering with the EP&A Act there is a need to replace it entirely with new legislation that takes a holistic view of regulating land use in NSW. This is particularly important given the social, environmental and economic changes that have occurred since 1979. However, any new legislation should build on the positive aspects of the original objectives of the Act. Any reform proposal, or re-writing of the Act, must address physical, social, environmental and economic issues.

In the thirty years since the gazettal of the EP&A Act there has been increasing centralisation by the NSW Government, much of which has been of an ad hoc nature. The legislative amendments over the past decade have added more layers to the planning system which are constantly changing and are likely to be compounded by many of the reform proposals. The efficiency of the system could be improved by reducing the layers of approvals hierarchies, planning instruments and the ever-increasing matters that are required to be assessed.

The current planning system is fragmented and complex and is already feeling the cumulative impact of previous changes, which were themselves often poorly designed and hurriedly implemented. Throughout there has been a failure to properly monitor and assess the impacts of the planning "reforms" that have been put in place.

There is a pressing need to clarify the respective responsibilities of the three levels of government. There should be a positive working relationship between the three tiers, especially between Councils and the Minister and with other key players. At present governance structures, particularly those involved in services and infrastructure delivery are strongly centralised within State Government departments. This impedes the effective delivery of those services, fails to address local issues and greatly militates against local involvement and participation.

While the 2007 Department of Local Government Inquiry and reform process focused on the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*, local government is also required to deal with a plethora of legislation which stands outside these two pieces of legislation. For example:

- *Threatened Species Conservation Act*
- *Rural Fires Act*
- *Protection of the Environment Operations Act (NSW) 1997*
- *Federal Environmental Protection and Biodiversity Protection Act*
- *Coastal Protection Act (NSW) 1979*
- *Heritage Act (NSW) 1977*
- *Contaminated Lands Act*
- *Privacy and Personal Information Protection Act*
- *Freedom of Information Act*
- *Disability and Discrimination Act (Commonwealth)*
- *Anti-discrimination Act (NSW)*
- *Community Relations Commission and Principles of Multiculturalism Act 2000*
- *Child Protection Act*
- *Companion Animals Act*
- *Noxious Weeds Act*

For many years Councils have been concerned that the Department of Planning's resources have been geared towards duplicating local government work and performance monitoring, at the expense of the development of effective State policies. This leaves local government working in a policy vacuum and is under-utilising professional resources and expertise at a time when both are in short supply across the nation. There is a need to simplify the process. Micro management and development control should not be undertaken at the Department of Planning level.

This, in turn, is leading to increasing frustration and a lack of confidence in the planning system within the State Government as a whole. In addition, the recent proposed reforms have a strong emphasis on achieving and enforcing greater conformity across the planning system and removing a wide range of development proposals from council scrutiny; further marginalising local community and professional input.

For the last eight years WSROC has been undertaking research, preparing reports and holding regional workshops highlighting the connections between a healthy urban and social environment and the importance of preserving well-being for a sustainable region. The findings of this work are all available on the WSROC website on www.wsroc.com.au

2.1 Leadership on Climate Change

Despite the creation of Climate Change Ministries at both a State and Federal level and heightened community awareness of the implications of climate change, this key issue needs to be addressed in any revision of the EP&A Act.

Critical changes such as the impacts of global warming and rise in sea levels require meaningful policy responses. To date much of the emphasis has been placed on Councils' responsibilities to respond and the monitoring of local government's performance on these issues; rather than the State Government providing real leadership including through the planning system.

WSROC is of the view that the basic principles of sustainability and climate change should be incorporated whenever strategic plans (such as the Metropolitan Strategy or sub-regional plans) or proposals for legislative change are developed.

At both the State and local government level in NSW there is a need to achieve better integration of social, economic, environmental and cultural planning with resource planning. This requires a fundamental re-think in respect of planning focus and implementation:

- **Focus:** The planning process is often seen to be too remote from people and insufficiently area-based. Governments have tended to look at problems in an aggregate way without making allowances for the needs of particular communities. Planning is also over-concerned with the plan-making process and is insufficiently focussed on programs of action and outcomes. There is also no co-ordinated view on priorities, particularly in relation to the funding of both physical and social infrastructure.

There is a need to address a range of planning outcomes and sustainability. This includes local government's financial and resource ability to enable it to play its rightful role in planning. Good governance requires a positive working relationship between the two levels of government and other key players. The issue of the shift of emphasis from development assessment to strategic planning/policy-making should also canvas the issue of the limited professional resources available.

There has also been an ongoing failure to integrate development infrastructure provision and environment and conservation management. Any discussion on planning reform should also adequately respond to the major issue of climate change.

- **Implementation:** The current processes of planning are also too fragmented and too cumbersome. Confusion reigns in relation to the number and range of plans that exist and this slows down the process which is too static and tends to be overtaken by events, resulting in a loss of flexibility. This also leads to uncertainties about current policies and plans and it is difficult to effect a redistribution of resources which is fundamental to the planning process.

Another major complicating factor in land use planning and development assessment in NSW is the myriad of land use controls/regulations in legislation outside of, but related to, the EP&A Act noted above. In addition, the three tiers of government greatly exacerbate operational difficulties and it is often hard to establish who benefits and who loses in the planning process.

The onset of climate change has highlighted that social inequity limits the ability to achieve environmental sustainability. The need to respond to climate change, either by reducing its causes or by adapting to its impacts, is constrained by economic and social inequities. Equity must be a consideration in 'who pays' for climate change responses.

2.2 Inconsistencies in the Control of Flood Prone Land

WSROC has been alerted to apparent inconsistencies in the planning framework in regard to controls on development of flood prone land. This relates to the capacity for Councils to impose requirements on development affected by low risk flooding, despite the original NSW Floodplain Development Manual recommending this approach.

Neither the planning framework nor the Floodplain Development Manual provide adequate directions for Councils on their obligations for 'duty of care' in relation to the management of flood prone land under the Local Government Act (see the submission from Fairfield Council for more detail on this issue).

The Manual identifies a range of processes that Councils need to follow and, as a result, Councils such as Fairfield, Liverpool and Bankstown have committed significant resources to the following:

- Membership of the Georges River Floodplain Catchment Committee;
- Co-ordination and preparation of the *Georges River Flood Risk Management Study and Plan*;
- Extensive community consultation with property owners located within flood liable land;
- Preparation of detailed planning controls (with a 'merit' or 'performance' based aspect);
- On-going detailed flood studies for various catchments;
- Carrying out of a range of flood mitigation works; and
- Provision of detailed information and ongoing advice on s.149 planning certificates.

By conforming to the requirements of the NSW Floodplain Development Manual, Councils are pursuing their obligations of duty of care under the NSW Local Government Act in respect of flood prone land.

As the results of amendments introduced by the Department of Planning (DoP) in 2007 a number of concerns and uncertainty now exist for councils in NSW in relation flood plain risk management and protection from liability on flooding matters as follows:

- With no clear criterion on what constitutes 'exceptional circumstances' it would appear that the DoP has acted outside the requirements of the Manual and created uncertainty regarding the degree of protection afforded to Councils from liability if a case for exceptional circumstances cannot be clarified.
- Recent climate change modelling and advice from the Intergovernmental Panel of Climate Change (IPCC) indicates that the frequency for precipitation extremes is expected to increase "almost everywhere". The precautionary principle points to the need to ensure all forms of residential development are afforded the best available level of protection from flooding.
- Occupants of sites affected by low risk flooding, particularly the elderly or those with poor understanding of the issue, add to the risks for human life even in low flood risk areas.
- There would appear to be an absence of consideration of an integrated and comprehensive basis of evacuation issues for all residential development across a floodplain.

2.3 FutureWest

In 2002 thirteen local councils in Greater Western Sydney (GWS) and WSROC, with the assistance of the Macarthur Regional Organisation of Councils (MACROC), co-operated to prepare *FutureWest* – a framework for improved forward planning and the better management of growth to ensure a sustainable, healthy and liveable region.

During 2004 the NSW Government initiated the development of a new Metropolitan Strategy to guide the growth of Sydney. *FutureWest* outlined proposals for Greater Western Sydney's role in the success of the Greater Sydney Region.

The key principles guiding development in GWS outlined in *FutureWest* were:

Sustainability - to make decisions which ensure economic, environmental and social factors is mutually reinforcing and considers the needs of existing and future generations. It stressed the need for improved information sharing, co-operation and co-ordination of all three levels of government to achieve clearly defined regional outcomes.

Access - to address regional infrastructure and service deficits through growth and redevelopment opportunities. Improvements are needed in the accessibility of all residents to the employment, community, social and recreational facilities that do exist.

Diversity - in recognition that diverse social, cultural, economic and environmental conditions maximise stability, growth and responsiveness to change.

Equity - in recognition that social and individual justice in urban development decisions is a major goal. There is a need to create greater equity in the distribution of economic and social opportunities across Sydney and access for the region's residents and to reduce the back-log of under-provision in facilities, services and opportunities available to residents.

Well-being and health - to enhance the capacity of the population to lead healthy lifestyles through improved urban design and access to amenities and facilities, while reducing community stress by creating safer physical and social environments.

2.4 Authoring Contemporary Australia

Together with a launch of *FutureWest* in 2005 WSROC and fourteen councils in Western Sydney launched a report entitled *Authoring Contemporary Australia*. This was a unique strategy for the cultural development of the region over the next 25 years. The report aimed to secure and make best use of the region's cultural resources to enhance creative opportunities for all Greater Western Sydney people.

The key principles to guide cultural development in the region outlined in *Authoring Contemporary Australia* were:

Sustainability - to achieve cultural investments that nourish a vibrant culture and secure cultural facilities, resources and opportunities for the benefit of generations to come.

Dynamism and Diversity - it is through diverse social interactions and cultural exchanges that we negotiate and affirm our social bonds and express our individual identities.

Inclusion and Community Relevance - because cultural events, facilities and organisations should be locally accessible and inspire people to share their stories and contribute to a rich cultural life.

Openness and Continuity - because in GWS a sense of cultural continuity through practicing customs and passing down stories to new generations is vital to community and cultural identity.

Integration and Connectivity - in recognition that best-practice cultural planning integrates cultural matters into broader policies for public planning.

Distinctiveness - because GWS is a multi-centred region of cities, each with its own distinct community culture and identity, shaped by the unique combination of environment and historical developments, the diversity of people and their circumstances and the economic base of the place.

Creativity – because art is a means of publicly recognising and celebrating community's values, achievements and ambitions. Creativity is also key to devising new ways of approaching complex urban challenges.

2.5 An Agenda for Sustainability and Well-being for Western Sydney

WSROC prepared a draft **Agenda for Sustainability and Well-being in Western Sydney** for its 2008 Regional Conference *Sydney – the other city: building a sustainable Western Sydney by 2030*. The Agenda was developed from the outcomes of a Greater Western Sydney Health Impact Assessment (HIA) project and other policy documents, particularly *FutureWest*.

The Agenda identified seven key issues for the region in achieving sustainable development and the well-being of the population including:

- Urban Form and Nature;
- Transport;
- Economic Development;
- Healthy Regional Food Production;
- Social and Cultural Infrastructure;
- Resource Limits and City Containment; and
- Equity.

Overall the Agenda proposes to change the way regional centres, infrastructure and localities are designed and managed. It seeks to widen the focus of sustainability from individual behavioural change (such as reducing household energy and water use), important as this is, to developing strategies for structural change in places.

This involves making environments more liveable; building a mix of housing types and tenure in each local area; improving public transport infrastructure and service levels; preserving a level of self-sufficiency in locally produced fresh food; building in opportunities for every day physical activity through safe and appealing design of neighbourhoods; and so on.

The Agenda argues that social, environmental, cultural and economic issues need to be considered together in an ecological way. How the 'human ecological systems' interact with the 'natural ecological systems' will determine the region's sustainability and the health and well-being of its population.

2.6 Legislative Changes

The legislative framework within which local government works is constantly changing. For example some of the amendments in recent years have included:

- Planning Assessment Commission, 2008
- Minister may appoint a planning administrator or panel to exercise the functions of a council;
- 2005 a Standard LEP template introduced
- Local Government Amendment (Ecologically Sustainable Development) Act 1997.
- Local Government (General) Amendment (Community and Social Plans) Regulation 1998 Social Planning;
- Cultural Planning Legislation (Guidelines prepared);
- Section 79c of the EP&A Act (Social Impact Assessment);

- Community Planning and Services Policy (Adopted at the 1997 NSW Local Government Association Annual Conference);
- Threatened species conservation provisions added to the EP&A Act;
- Disability Discrimination Act 1992 (Commonwealth); and
- Anti-Discrimination Act 1977 (NSW).

2.7 Local Government's Role in Sustainable Development

There is now recognition worldwide that local government has a significant role to play in achieving a long-term balance between the needs of people, the economy and the environment. In addition to monitoring social well-being and economic capacity, there is recognition of the need to be equally aware of the effects of actions undertaken on the state of the urban environment and hence the state of the well-being of cities. Many ideas have been developed about how this can be achieved, including the following:

- Agenda 21
- Local Agenda 21
- Corporate Plans
- Local Approvals Process (LARP)
- Ecologically Sustainable Development (ESD)
- Social Justice
- Sustainable Development
- Healthy Cities
- Integrated Local Area Planning (ILAP).

Sustainability for the State means establishing processes and actions that support cultural vitality, environmental responsibility, social equity and economic viability. By attempting to show the interconnectivity between these four principles it can be demonstrated that:

- The quality of the natural environment is the bottom line for the quality of life;
- Expectations of a certain quality of life determine the pressures placed on the available resources;
- Experience of quality of life determines the options people seek in using their environment; and
- Equity, security and sustainability are goals common to any community, its economy and its environment.

The **quality of life** in NSW is therefore the outcome of the management of our community, economic and environmental resources. One way of making sure that sustainability is a concept that underlies the actions of all three levels of government would be to make it a key component of all NSW public policy considerations.

2.8 Why Consider Planning and Health Issues Together?

WSROC suggests that further consideration should be given to the following issues in the development of a new Act.

Sustainability

Governments nowadays are charged with responsibilities for sustainable management of social, environmental and economic resources. Communities are concerned about sustainability because the human impact upon the environment is leading to an increasingly unsustainable pressure on

the global environment. Through reducing the quality of air, water, soil, food and available space, pressures are being increased at the local scale.

Ecologically sustainable development (ESD) is based on more sustainable urban development practices. It introduces greater urgency into the need to consider planning concerns such as density, commercial centres planning and public transport provision. It seeks to promote improved air and water quality, protect natural systems, minimise use of scarce resources, encourage re-cycling and re-use and introduce energy-efficient transport systems and urban forms.

While ESD is seen to have a strong focus on the natural environment it should be acknowledged that ESD is about improving the total health of our society. This requires genuine and sustainable improvements to our environmental, economic and social capital – the “triple bottom line”

Social and Economic Disadvantage

Places have certain characteristics (such as the availability of healthy foods, health-affirming services and community norms) that influence health behaviour.

Places with high concentrations of multiple socio-economic disadvantages start to have a negative impact on the physical environment, which can result in a poverty of experience and a sense of loss and social connectedness. In areas that are socially and economically disadvantaged therefore health disadvantage is also exacerbated.

In planning for the Western Sydney region there is a need to consider the impact of social structure, place and time on people’s health-related knowledge, attitudes and behaviours. It is important to note that Western Sydney is still a disadvantaged place. Research undertaken by the University of Western Sydney’s Urban Frontiers Program *A New Vision for Western Sydney – Options for 21st Century Governance*, April 2002 stressed the following:

“Decades of under-investment of policy and fiscal resources in Western Sydney by successive State and Federal Governments have left many of the region’s cultural, social and environmental needs unmet. The legacy of this ‘undernourished’ development includes mounting social and environmental problems, including hardening pockets of poverty and social exclusion, a dwindling and fraying public sphere and ever-increasing ecological stress”

The report also pointed to “*newly forming pockets of disadvantage in older suburbs outside public housing estates*”. The authors noted that a lack of access to life enhancing opportunities (hospitals, parks, good schools and public transport) was resulting in locational disadvantage that “*may severely diminish the ability of relatively affluent households to make use of and enjoy their income*”.

The authors mapped the census-based Index of Socio-economic Disadvantage at the local collector district (CD) scale. This showed that disadvantage was widely associated with CDs in the middle and outer suburbs of Sydney, especially to the west and south-west. It was also stressed that ‘severe disadvantage’ was not the sole preserve of the larger public housing estates. Large tracts of Western Sydney standing out as locations of severe disadvantage having very low proportions of public housing.

Some suburbs have certain economic and social characteristics that may be called ‘multiple deprivation’. While the characteristics are not necessarily interdependent or causally related they tend to congregate in specific urban environments.

Studies of established urban areas of cities worldwide have furnished ample evidence that residents’ “state of well-being” is affected both by their immediate surroundings (living conditions in

their own home) and the quality of the physical and social environment they share with others. These studies have shown that it is the social environment – activities and relationships – that are every bit as important to people as the character and condition of the buildings, streetscape and open space. Much of the satisfaction and dissatisfaction with a place is associated with the changes that have taken place over time.

Socio-economic disadvantage has many dimensions and is rarely the result of one single factor. The lack of an integrated approach to solving complex urban problems contributes to socio-economic disadvantage and poverty in the region.

The Importance of Social Infrastructure in Urban Development

Surveys going back over the past 30 years have described the difficulties of life in new suburbs located at the fringe of urban areas. Poor access to employment, community facilities, education and health services and recreational and social opportunities have all been identified as key issues. The social costs of the inadequate provision of social infrastructure are harder to quantify than some of the environmental and political costs of not providing adequate sewerage, drainage or surfaced roads. However, there is no doubt that when home buyers move into new areas with large mortgages or other debts, young children, few friends or family support nearby, there are costs that can occur in terms of family breakdown, illness, alcoholism and drug dependence. These costs are not just borne by individuals but are passed on to the whole community.

As the result of assigning human services provision such a low priority, or by adding it only after the major physical planning issues have been resolved, communities in new release areas have functioned neither effectively nor efficiently. A lack of access to appropriate and timely services and facilities, aggravated by the relative isolation of new residents from support mechanisms, including existing family and friends, is likely to result.

The lifecycle needs of single people, childless couples, families, people with a disability, the aged and people from different cultural backgrounds should be catered for in new release areas.

However, Councils are limited in their ability to ensure an appropriate diversity of housing types to provide all the residents of an area with a wide range of choices. For example any household, irrespective of size, should be able to find accommodation which suits its needs in terms of size, style and type of dwelling and be well related to open space, shopping, community facilities and services and public transport. Also households with culturally specific needs, should also be catered for.

In addition to being socially more equitable, such a strategy helps to reduce the peak demand for age-specific services (such as child care and schools) and ensures a diversity of services exist to fulfil the full lifecycle of the community. It also assists in redressing the imbalance that exists in many areas of suburban Sydney where the majority of the housing stock comprises separate family dwellings,

The planning of human services should be a process which develops as a community grows and is responsive to its changing needs. This involves locating the community in its wider regional context, the examination of existing settlement patterns, demographic and socio-economic characteristics of both the existing and incoming populations, in addition to providing a perspective on social change and future development choices

The overriding importance of what is generally described as human services in tandem with the development of new housing areas has been well documented since the Growth Centres were proposed in the 1970s. The following quotation from a ***Newcomers Study*** commissioned by

Albury Wodonga Development Corporation by consultants Llewelyn-Davies Kinhill in 1976 is equally relevant today:

“Whatever the real relationship between social behaviour and the physical environment, it seems certain that inadequate provision of urban facilities such as shops, public transport, footpaths, playgrounds, entertainment and so forth can produce, or aggravate emotional reactions amongst new community residents. This is particularly the case if expectations were raised that these facilities would be available and because people who move to new (development) areas, by and large, are strangers to each other”.

Despite a wealth of literature that can be pointed to concerning these issues, it would appear that lessons from the past have not been heeded. The following quote from a report published in 1999 by the Rouse Hill Community Planning Team entitled *“What and When; Community Services in Rouse Hill Development”* highlighted a similar range of issues to those flagged 25 years earlier. The concerns were summarised as follows:

“This ‘fringe of the fringe’ style of development will lead inevitably to a complex system of suburban isolation and the subsequent range of social consequences that will arise. This may include domestic violence, marriage breakdown, child protection issues, substance abuse, low civic pride, unemployment and high crime rates. This area, as with many of its predecessors in the urban expansion of Australian cities, requires the urgent involvement of government at all levels, communities and community organisations in pro-active planning”

It should also be noted that the demands of a rapidly developing new community are rather different, both in terms of type and timing than in more established areas. It is important to identify the priority services and facilities required. Those then have to be considered in terms of the ‘minimum’ or ‘baseline’ essential services together with those that are ‘desirable’. This is particularly important for the initial residents, who are likely to suffer specific disadvantages associated with the long lead times for provision of major facilities or services, often compounded by the relative isolation from any existing social infrastructure.

To some extent facilities are the easiest component of the social program to assess. They have an obvious and direct relationship to the physical planning program, institutional structures already exist for their provision and current practices allow direct estimates of need to be made simply on the basis of assumed population size and distribution patterns.

The need for social processes is harder to assess because of the practical issues of resource allocation and organisation that are more subject to prevailing ideologies and political priorities. For example, there is generally no dispute about the need for a school, yet there is likely to be some debate about the extent of settlement services that should be made available for newcomers, or to the extent that incoming residents should be able to influence the direction of development policy.

Social development should be considered in five ways:

- Community development
- Public participation
- Social planning in relation to physical planning;
- Program investigations; and
- Monitoring and evaluation.

Community Development

In the case of new release area, the processes of community development are complicated by the arrival of relatively large numbers of newcomers over a relatively short period. These can give rise to two sets of problems:

Firstly the newcomers may be different in experience, expectations and lifestyle from existing residents. This can cause conflict of various kinds, such as resentment about the changes taking place in an area, or if newcomers appear to be obtaining greater benefit than established residents.

Secondly, newcomers may experience settlement problems, which could be either practical, emotional problems or both, and may be short or long term depending on their nature and the individuals involved.

The integration of new and established residents in terms of the avoidance or reasonable resolution of conflict, and the smooth settlement of newcomers will be critical to the success of a new release area program.

The Role of Social, Cultural and Community Planning

Greater emphasis is now being given to social/cultural/community planning due to:

- Increasing demand for local community services coupled with scarce resources resulting in needs based planning to ensure the fair and efficient allocation of resources;
- Requirements to prepare management plans, making the preparation of corporate plans incorporating social and cultural planning activities an essential pre-requisite;
- Awareness of the social isolation suffered by some communities which requires community support and community cultural development as techniques for improving the quality of life;
- Councils' statutory responsibilities in environmental planning which require the social and cultural as well as the physical effects of planning to be taken into account; and
- Realisation that separate planning by a multitude of government agencies often results in local communities being poorly served, has encouraged a move towards social/community planning involving many agencies and all sections of councils.

3. WSROC RESPONSE TO THE TERMS OF REFERENCE

The need, if any, for further development of the New South Wales planning legislation over the next five years and the principles that should guide such development.

As noted above, the NSW planning legislation is outdated, overly complex and too process orientated. It is now the most complex in Australia and is further complicated by the myriad of legislation outside the EP&A Act which is making it unworkable. WSROC is of the view that a new Act should be drafted to provide a more strategic focus; incorporate recent changes in planning practice and current issues in planning such as climate change, sustainability (social, environmental and economic) plus environmental (biodiversity) protection. Above all it should simplify the process to efficiently achieve quality outcomes.

The consultation process should be retained for all aspects of the plan-making process, including State Environmental Planning Policies (SEPPs) in order to maintain community participation and support for the outcomes.

There needs to be a balance between development and natural resource management, cultural heritage and long term sustainability. The planning system should employ a strategic approach and not simply focus on development control.

In recent years the NSW government has introduced major strategic policies in regard to the growth of Metropolitan Sydney and its sub-regions. Yet none of these planning directives have statutory recognition under the current EP&A Act. It is WSROC's view that important strategies guiding urban growth should be recognised as a principal policy initiative.

There is now acknowledgement from both the State and the Commonwealth Governments that legislative controls are required for the management of the natural environment. However, the resulting wide range of Acts has resulted in overlaps and contradictions. It is therefore essential that a review of the planning framework ensures that the duplication of legislation affecting natural resource management be eliminated.

There is also the need to reconcile the often conflicting objectives of public institutions and private individuals in land use and development decisions. Better direction is required to achieve achieving the rights of individuals versus the wider public interest.

The existing legislation is over focussed on Development Assessment with little consideration given to strategic planning. Council strategies should be given more legal weight and all statutory planning policies should be incorporated into the LEP Standard instrument.

Further consideration also needs to be given to the upfront cost of planning studies particularly for new areas on the urban fringe.

A planning framework is needed to create an environment in which human habitation and associated activities are reconciled with the need to protect the natural environment, cultural heritage and long term sustainability. This requires a greater strategic focus and the participation by those affected by change. The planning system is not simply about development control.

WSROC is of the view that the NSW Government, in partnership with local government and relevant stakeholders, should develop a new Act to replace the EP&A Act based on the following principles:

- 1) A focus on strategic outcomes based on triple bottom line reporting for long term sustainability;**
- 2) An integrated approach to address clear patterns of interrelated disadvantage – low incomes, low employment participation, poor housing and poor educational attainment ;**
- 3) Promotion and co-ordination of responsible, sustainable development to deliver quality outcomes;**
- 4) Creation of a strategic planning system that allows consultation and the participation of those affected by change in the creation of environmental and land use controls which will result in the modification of the environment;**
- 5) Recognition of contemporary environmental concerns such as the implications of climate change and the inclusion of strategies to respond to this issue;**
- 6) Retention and streamlining of State, Regional and Local plans in recognition of strategic policy directions;**
- 7) Reduced complexity through the development of planning strategies and statutory processes tailored to the scope, scale and complexity of the issue;**
- 8) Achieving a relationship between planning ambitions and policy; and**
- 9) Consideration should be given to putting a proper funding mechanism in place to assist Councils in the costs of planning for new release areas.**

The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW.

In March 2008 COAG made a commitment to a comprehensive new micro-economic reform agenda with a particular focus on health, water, regulatory reform and the broader productivity agenda. It was agreed that all levels of government would:

- Develop a proposal for a more harmonised and efficient system of environmental assessment and approval to ensure there is no duplication in assessment or approval requirements between Commonwealth, State or Territory schemes:
- Work to develop approvals and bi-lateral agreements where efficiencies can be achieved in meeting the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*;
- Improve development assessment processes to provide greater certainty and efficiency in the development and construction sector by reducing regulatory burdens and delays,

including maximum uptake of electronic development assessment processing nationally; and

- Review processes that apply to the Building Code of Australia (BCA) and remove unnecessary State-based and local government variations to the BCA and to establish a nationally consistent approach to licensing and accreditation of the building industry.

WSROC is of the view that the identified areas of reform should underpin a more efficient planning system, resulting in overall benefits to the community. As such they should be supported in principle.

The need for a major overhaul of the NSW planning system and the EP&A Act and the COAG reform agenda clearly have the same objectives. Many of the issues of common concern have been raised by local government, the development industry and the wider community in respect to the difficulties being experienced due to the growing complexity of the EP&A Act and the duplication of legislation at both a State and Federal level. Much of the COAG reform agenda could be delivered by undertaking a major review of the EP&A Act in NSW.

WSROC believes that the State Government, in partnership with local government, the development industry and relevant stakeholders, should develop a new EP&A Act to implement the COAG reforms based on the principle listed in Issue A above.

Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation.

A number of pieces of Federal and State legislation often slow down the planning process. Often Commonwealth processes are dealt with outside the scope of State processes, particularly in respect of environmental protection and biodiversity. Both the Commonwealth Environment Protection & Biodiversity Conservation Act (EP&BC) and the NSW Threatened Species Conservation Act (TSC) are required to be considered in the preparation and/or assessment of development proposals. Such duplication often leads to uncertainty and delays for Councils, land owners and developers.

Both Acts have their own tests or guidelines to establish significance. In Western Sydney for example Cumberland Plain woodland is listed under both pieces of legislation which results in unnecessary duplication of assessment.

Separate approval processes are an issue for new development and complaints relate to a lack of awareness of both State and Federal approval processes and the consequent additional work required to secure approval by both levels of government. The different criteria for approval applied by the two jurisdictions often do not allow direct transference of information from one jurisdiction to the other, resulting in duplication.

The EP&BC Act does not appear to have a mechanism to assess the cumulative impacts of developments which are being assessed separately. While individual developments may not be considered significant, there may be a significant cumulative impact.

The TSC Act has introduced the concept of Biodiversity Banking. This voluntary mechanism can be used as an alternative to the seven part test to assess impacts on the conservation of

threatened species. It is predicated on the loss of diversity in one area subject to saving it in another. Notwithstanding this it does not prevent the development of areas of high conservation value, the loss of irreplaceable value, nor require like for like offsets. It also does not apply where the State Government has imposed or allowed payment of a conservation levy, or where the proposal is being assessed under Part 3A of the EP&A Act.

Biodiversity Certification (BC) can be used by local governments to protect threatened species at the strategic planning stage rather than on a site-by-site basis. Biodiversity must be maintained or improved for certification to be granted. Certification, which is conferred at the discretion of the NSW Minister for the Environment, can switch off the need for additional threatened species site-level assessment and has the potential to address some of the shortcomings of Biodiversity Banking.

The NSW Government recently issued Biodiversity Certification to the North-West and South-West Growth Centres, switching off the TSC Act to give greater certainty to development outcomes, but this does not affect the Federal level of protection, hence no greater certainty has been achieved by this process.

Also Biodiversity Certification provides for a ten year period. Yet the status of a site may change over such a period through incidents such as colonisation by a mobile listed species. There is also a lack of quality data to inform the process which limits its practical application to spot rezonings. Councils also report resource limitations (both in terms of finance and expertise) to manage the assessment over larger sites.

WSROC believes there should be better Integration and co-ordination of natural resource management with the planning process by significant streamlining of the array of State and Federal environmental protection legislation and removal of the current duplication, rather than by the application of mechanisms to bypass existing legislation.

It is also of the view that the Commonwealth EP&BC Act and the NSW TSC Act should be amended to:

- 1. Remove unnecessary duplication, protect areas of high diversity value and prevent its loss via offset, conservation levies, Part 3A mechanisms or Biodiversity Certification;**
- 2. Encourage wider use of Biodiversity Certification as the strategic mechanism to conserve threatened species, populations and ecological communities and their habitat, provided that:**
 - appropriate parliamentary scrutiny of Ministerial decisions to issue Biodiversity Certificates that authorise the clearing of vegetation or other land uses that impact on native species;**
 - the Department of Environment and Climate Change is charged with the role and resourced to prepare biodiversity assessments of land that is the subject of an application for Biodiversity Certification; and**
- 3. Have agreed common criteria with species listings and definitions of Endangered Ecological Communities (EECs) identified in vegetation maps prepared pursuant to NSW Threatened Species legislation and upon which State approval processes are based.**

It would also be preferable that, when any certification is given at the State level, documentation supporting this certification is given at the Federal level to assist in

appropriate exemptions from legislation being obtained at all levels and the appropriate streamlining is achieved.

Climate change and natural resources issues in planning and development controls.

By 2030, average annual temperatures in Australia are predicted to be between 0.4^o and 2.0^o C higher than in 1990, and by 2070 to be between 1.0^o and 6.0^o warmer (CSIRO, 2001, *Climate Change Projections for Australia*, Climate Impact Group, CSIRO Division of Atmospheric Research, Melbourne). These dramatic changes are predicted to occur within the lifetime of many people alive today.

Information presented by Greening Australia, at a forum on the conversion of land from urban to peri-urban uses, showed a clear and large increase in temperatures in Western Sydney, especially for the summer months. This significant warming trend has been attributed to the Urban Heat Island Effect, (whereby areas that were once covered by vegetation have become urbanised) which would be five times greater than greenhouse warming for the region. The cheapest ways to reduce this effect is to maintain areas of open space, plant more trees and promote more energy efficiency.

As such climate change is anticipated to have a significant impact on local communities in Australia. Issues that arise include water security, more frequent and intense storms, rising sea levels, erosion and flooding. All of these issues will place increasing burdens on existing and the demand for future infrastructure.

In March 2008 the Premier announced that NSW will develop a Climate Change Action Plan to focus its efforts. Yet the EP&A Act does not specifically require consideration of or provide guidance on the implications of climate change in the preparation of environmental planning instruments or the assessment of development proposals.

However, the NSW Land and Environment Court has held that climate change is an ESD consideration, which is an objective of the EP&A Act and has overturned development approvals on the basis of insufficient consideration of climate change in the assessment of a number of significant proposals.

Councils in Western Sydney have made some suggestions on what broadly could be included in respect of climate change and natural resource issues in planning and development controls as follows:

- Acknowledgement of the Urban Heat Island effect being experienced in large urban areas in NSW (particularly Western Sydney) as part of the wider acknowledgement of human induced climate change;
- Specific reference to the assessment and management of:
 - Increased risk of flooding;
 - Increased heat stress-related mortality and morbidity; and
 - Biodiversity conservation in land use planning processes under the Act.
- The identification of appropriate building and development responses to higher temperatures and increased water and energy demands of a growing population and economy. BASIX should be strengthened in accord with current scientific knowledge and

predictions on temperature and rainfall patterns extended to cover commercial and not just residential development;

- Water Sensitive Urban Design (WSUD) should be separately identified as a strategy to respond to climate change and an income stream earmarked for Councils to be able to maintain and not just develop WSUD works; and
- The current provisions of the EP&A Act for planning agreements that facilitate the negotiation of environmental benefits from a development be supported by planning notes or other guidance specifically relating to climate change and environmental sustainability. This should include:
 - Facilitating stormwater capture from development for local environmental uses and/or recycling;
 - Use of materials, vegetation and urban design to reduce local heat impacts in civic spaces and to minimise the contribution of new development to the Urban Heat Island Effect in selected regions in NSW.

WSROC believes that specific provisions, reflecting those measures being developed in the NSW Climate Action Plan, should be incorporated into a new EP&A Act to require and guide consideration of climate change impacts in the preparation of environmental planning instruments and the assessment of specific development proposals.

Appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales.

The NSW Government's competition policy seeks to provide a more open and integrated market that limits anti-competitive conduct. The EP&A Act is an instrument that seeks to promote the interests of the public and the economic and orderly use and development of land. It does not seek to prevent competition in the market place or to protect private commercial interests.

Councils, as the consent authorities, are required to make a distinction between the public interest and the private commercial interests associated with any proposal. As a general rule the public interest is to be preferred over the commercial interests of a private operator. The Courts have deemed the fundamental tenet that the prospect of competition is not a relevant town planning consideration in relation to a development proposal, unless there is likely to be a net loss of public benefit.

WSROC is of the view that consideration of competition policy in land use planning should have its foundation in seeking to ensure the social and economic welfare of the community and not in the promotion of private interests. It therefore supports the current provisions of the EP&A Act requiring assessment of the social and economic impacts of development as appropriate considerations and the appropriate backdrop for consideration of competition issues.

Regulation of land use on or adjacent to airports.

Under the *Airports Act 1996* the Commonwealth has the jurisdiction to regulate land use on or adjacent to airports (e.g. Sydney and Sydney West, Bankstown and Richmond Airports). Development adjacent to the airport is covered by State and local legislation.

While the development of aviation facilities is of national significance and should be covered by Federal legislation, there is a blurring of the definition of what comprises core aviation activities as opposed to other commercial activities that needs to be resolved. This has been an area of increasing concern given the privatisation of airport operations and the desire to expand economic opportunities on airport sites. This can have a detrimental impact on surrounding land uses such as landfill contributing to an increase in downstream flooding.

It is reasonable to expect therefore that non-aviation activities should continue to be subject to and accord with State and local planning strategies governing development beyond and adjacent to an airport.

The Commonwealth Airports Act should be amended to directly specify the core aviation activities that fall within its jurisdiction and approval role. A more rigorous approval process should also be provided for non-aviation development on Commonwealth controlled lands that:

- Provides the same level of community consultation, security, planning assessment and development contribution as that applied to development under State and local planning systems; and
- Ensures that non-aviation developments on airport lands are consistent with respective State and local planning strategies.

WSROC is of the view that the NSW Government should request the Commonwealth Government to amend the Airports Act to:

- **Directly specify core aviation activities;**
- **Provides a more rigorous approval process for non-aviation development; and**
- **Take action as part of the current Federal aviation policy development process.**

Inter-relationship of planning and building controls.

The three areas of consideration that impact upon this issue are:

- (1) The delineation between planning and building processes

Recent planning reforms merged the two assessment processes of concept and construction together removing the ability to impose conditions on construction certificates. This has necessitated building construction assessment becoming a significant component of development assessment and the need for a much higher level of detail to be provided, increasing application costs and assessment times.

There would appear to be merit in being able to apply conditions to a construction certificate, or alternatively moving to a dual assessment process whereby Das would be assessed in relation to compliance with LEPS and DCPs and other EP&A Act section 79C criteria quantifying the compliance and merit of the proposal. Such a system would compliment the NSW planning reforms which increase the delineation between the assessment and certification processes.

WSROC is of the view that:

- **Development consent conditions should focus on the operational aspects of the use of the site and the ongoing management of the premises; and**
- **Construction certificates should focus on the physical works, with finalisation occurring with issue of an occupation certificate.**

- (2) Planning controls that require building performance greater than that required by the Building Code of Australia (BCA)

Both State and Federal legislation has mandated building standards that are at odds with those required by the BCA, an inconsistency recently revealed in the exhibited draft NSW Housing Code in respect of ceiling heights.

Other inconsistencies have been identified in respect of disability access requirements with differences between the BCA requirements, the NSW Disability Act 1993 and the Commonwealth Disability Discrimination Act 1992, both of which have more subjective requirements. Further complications also occur in respect of exemptions from BCA requirements having to be heard by the Human Rights Commission; and a lack of correlation between the requirements of the SEEP *Housing for seniors or People with a Disability and the requirements of AS 4299- Adaptable Housing*. This Australian Standard is also not referenced by the BCA.

As a result of all these inconsistencies there has been judicial intervention in the planning and development process which reduces efficiency

- (3) The need for uniformity in the development of planning and building controls

Variations are occurring in the format, language and assessment mechanisms and demonstration of compliance in planning legislation, environmental planning instruments, Australian Standards and the BCA which requires specialist knowledge in each in order to navigate a way through the applications and approval processes.

This situation requires a thorough review to provide a simpler and similar format, structure, language and control mechanisms across the various documents.

WSROC believes that the EP&A Act should be reviewed to greater delineation between the assessment and construction processes and that its provisions, together with those of nationally accepted Standards and Codes be integrated, simplified and aligned.

Implications of the planning system on housing affordability.

In Greater Western Sydney (GWS) hidden inequalities in housing can stem from differences in the physical and social infrastructure provided in various parts of the region. The presence or absence of infrastructure provision, as well as limited employment opportunities, has been shown to directly affect the health and well-being of households. Poor public transport provision, limited employment opportunities and scarce community services are all factors which erode the 'real' affordability of housing in GWS.

Land use planning has resulted in ad hoc urban renewal with poor outcomes. There has been little understanding of the processes driving the changes or the complex problems these areas face.

There has been no concerted effort to link land-use planning with the social interventions that these areas require, or recognition of how the housing market plays a key role in generating and maintaining the disadvantage of these areas. The lack of an integrated approach to addressing complex urban problems has contributed to the increasing socio-economic divide that is occurring in Sydney.

The current planning ideology that is attempting to concentrate flats in inner city and town centre locations implies a degree of social segregation by household type that will become a dominant feature of the future metropolitan structure. Urban consolidation policies need to be re-thought for existing socially disadvantaged areas, if socially regressive outcomes are to be avoided.

While local councils in NSW are obliged under the EP&AA Act 1979 to 'encourage the provision and maintenance of affordable housing' narrow interpretations of the Act and accompanying State Environmental Planning Policies (SEPPs), limit the capacity of local government to implement mechanisms to retain and promote affordable housing.

Accordingly, changes are needed to the legislative and/or regulatory planning system to support the affordable housing objectives of the EP&AA Act for local Government.

A more diverse range of housing and a greater social mix should be encouraged in both new release areas and older areas undergoing urban revitalisation, to ensure that new developments cater for as wide a range as possible of different socio-economic groups. The aim should be to develop communities where residents of all ages and income groups can live together. The lifestyle needs of singles, childless couples, families, people with a disability and the aged should all be catered for.

In addition to being socially more equitable, such a strategy helps to reduce the peak demand for age-specific services such as schools and health care and ensures a diversity of services exist to fulfil the full lifecycle of the community. It also assists in redressing the socio-economic imbalance that currently exists in GWS.

In planning for new release areas all State agency input has to be considered which can result in the sterilisation of large areas of land, inflict large acquisition burdens on councils as well as costly ongoing maintenance.

The creation of a new community consists of far more than merely a group of buildings connected by roads and utility services. Such projects cannot be treated as if they are a series of subdivisions. Councils have to ensure the developers provide the right product and have to cajole a myriad of public authorities and private developers to ensure that programs are achieved and priorities met.

There are significant cost advantages to be gained by proper planning and management of the process. The manner in which the development is managed is as much a part of the achievement of a better environment as the quality of the project itself.

There clearly needed to be a body responsible for the direction and management of the implementation of the whole project. It was asking too much of the present system, which is regulatory rather than entrepreneurial in nature, to expect the conventional tools of land-use zoning and small time sub-dividers, to come close to achieving the kinds of development that the community has grown to expect.

ISSUES NOT SPECIFICALLY COVERED BY THE TERMS OF REFERENCE

Concerns raised regarding boundaries, definitions and nominations.

The issue of the complex array of boundaries defined by different government departments and agencies has for years complicated the preparation of meaningful data across the GWS region. Outer urban councils also have difficulties in dealing with Government and non-government definitions of terms such as 'metropolitan', 'country', 'regional', 'sub-regional' and 'rural' when preparing plans or applying for funding. A review of the NSW Planning Framework should aim to have greater consistency in the application of these terms.

Need for a NSW Cultural Plan

WSROC supports the possible development of a NSW Cultural Plan to complement the State Plan and the Metropolitan Strategy. This would help to embed cultural development processes into the objectives and operations of State Government agencies and ensure that a 'whole-of-government' approach to cultural development can be achieved.

Strategic Planning for Cultural Infrastructure

The Government should ensure that agencies such as Arts NSW are adequately consulted in the preparation of any strategic plans for NSW and particularly to inform planning of arts investment in newly developing areas. This should include consideration of cultural development, not just in the regional cities, but also in major and emerging centres.

Heritage Issues

A long term planning approach to cultural infrastructure in Western Sydney is needed to determine which buildings could be purchased for potential social and cultural uses, their heritage value and the potential of their geographic location to service current or future population needs.

Concerns have been raised about the integration of the Heritage Council into the planning system. If this is to remain then measures need to be taken to ensure heritage is given equal weighting to development in planning processes. The State Heritage Register needs further development so that it can become comprehensive and a valuable reference resource.

Currently the NSW Heritage Register under-represents the natural environment, the culturally and linguistically diverse population and the Indigenous history of Australia. This issue should also be addressed.