Submission
No 69

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

Organisation: New South Wales Government

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Standing Committee on State Development
Parliament House
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Y09/454

16 FEB 2009

Dear Mr Catanzariti Tony,

Attached is the NSW Government's submission to the NSW Parliament Upper House Inquiry into the NSW Planning Framework.

Since the introduction of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in 1980, the NSW planning system has undergone significant amendments and evolved to provide a comprehensive planning regime dealing with increasingly complex matters associated with sustainable economic development.

The most recent reforms to the planning system have seen significant improvements in the system with simplification of approvals for minor development to the benefit of householders and small businesses. Further work is required to see these reforms efficiently and effectively implemented. The immediate focus is, and should be, on ensuring effective and efficient administrative arrangements are in place to deliver the intended outcomes of the reforms.

The Department of Planning considers that the key planning challenges facing NSW in the immediate to mid term are managing and facilitating sustainable growth; planning for climate change; addressing housing affordability and stimulating employment opportunities; and timely and credible assessment/decision making for the delivery of major development and infrastructure. These planning challenges are set against the backdrop of the current economic climate and business uncertainty.

Accordingly, in the near term, a fundamental review of the planning system and the governing legislation is not warranted nor is it a priority. NSW can address the key planning challenges indicated above through the considered implementation and application of the existing laws.

Yours sincerely

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NSW Parliament Upper House Inquiry into the NSW Planning Framework

NSW Government Submission

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NSW Parliament Upper House Inquiry into the NSW Planning Framework

NSW Government Draft Submission

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1 PREAMBLE

During its deliberations over the *Environmental Planning and Assessment Amendment Act 2008,* the NSW Legislative Council resolved to review the planning framework within NSW and referred the matter to the Standing Committee on State Development.

The State Development Committee are to inquire into and report on matters concerned with policy directions to ensure that opportunities for sound growth and wise development are pursued for the benefit of people in all areas of New South Wales. The terms of reference established for this inquiry are:

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.

The review is to focus on national and international trends in Planning legislation to ensure that NSW is served by the most facilitative and equitable Planning framework, capable of delivering quality strategic results for the State.

In November 2008, the Committee published a Discussion Paper on the Inquiry into the NSW Planning Framework. The stated aim of this discussion paper was to encourage the provision of submissions by providing an outline of the context for this inquiry and background information on each of the terms of reference. Submissions are required to be provided by 13 February 2009. The Committee has indicated that it will be holding public hearings in March, May, June and August of this year.

This submission from the NSW Government seeks to comment on each of the Terms of Reference individually and to make representations about the current planning framework, including the recent amendments, and suggest where alternative opportunities may arise.

2 Overview

Since the introduction of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in 1980, the NSW planning system has undergone significant amendments and evolved to provide a comprehensive planning regime for State and local plan-making, development assessment and approval processes, funding for local infrastructure, and planning reviews and appeals processes. The most recent reforms to the planning system have seen significant improvements in the areas of land use planning, development assessment process and simplification of approvals for minor development to the benefit of householders and small businesses.

Further work is required to see these reforms implemented efficiently and effectively, to ensure that administrative procedures are clarified and strengthened, and to address any emerging issues. The immediate focus is, and should be, on ensuring effective and efficient administrative arrangements are in place to deliver the intended outcomes of the reforms.

The Department of Planning considers that the key planning challenges facing NSW in the immediate to mid term are:

- managing and facilitating sustainable growth;
- planning for climate change;
- addressing housing affordability and stimulating employment opportunities; and
- timely and credible assessment/decision making for the delivery of major development and infrastructure.

These planning challenges are set against the backdrop of the current economic climate and business uncertainty. Any planning strategies designed to reduce the cost of housing and stimulate employment must continue to incorporate ecologically sustainable development principles and factor in climate change mitigation and adaptation. Conversely, efforts must be made to ensure that regulation does not result in further pressure on housing affordability, job creation, and economic investment, and the delivery of infrastructure.

Accordingly, in the near term, a fundamental review of the planning system and the governing legislation is not warranted nor is it a priority. NSW can address the key planning challenges indicated above through the considered implementation and application of the existing laws. The Department's key strategies in addressing the above challenges focus essentially on:

- developing integrated strategies for the metropolitan and regional areas to provide a framework for sustainable growth;
- promoting appropriate housing (mix and diversity) close to public transport and jobs, to address affordability and provide climate change friendly development;
- increasing the release of land for housing and employment in both greenfield and infill locations; and
- streamlining the planning approval process to reduce unnecessary costs.

In the longer term, it is inevitable that the State's planning legislation - after nearly three decades of implementation – would benefit from a broader review and evaluation of its functions and implementation tools in relation to:

- better alignment of strategic planning and development control (including rezoning);
- leadership in dealing with medium and longer term sustainability challenges, including climate change and ageing;
- strengthening land use and transport/infrastructure integration;
- clarification of the planning and development control roles of the Commonwealth, State and local levels of government;
- better integration of natural resources and planning;
- a more outcome-based legislative framework;
- an improved framework for community engagement at the strategic level; and
- simpler procedures and elimination of duplicated processes.

3 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

Questions raised in the Background Document:

- Is there a need for further development of planning legislation in NSW?
- What further changes to the planning legislation are needed?
- What principles should guide any future development of planning legislation in NSW?

(1) INTRODUCTION

The EP&A Act provides a comprehensive planning regime, including processes for State and local plan-making, development assessment and approval, local infrastructure funding,and planning reviews and appeals. When it commenced in 1980, the EP&A Act was state of the art legislation, providing a simple integrated framework for planning and development delivery and many groundbreaking initiatives. Being a product of its times, however, it's focus has been on processes rather than outcomes.

More importantly, the context in which planning is occurring has become increasingly complex over the last 30 years with the changing expectations from both the community and users of the planning system. As a consequence, the EP&A Act has been amended numerous times to accommodate building controls, provisions for exempt and complying development, the establishment of a role for private certifiers, provisions relating to threatened species and bushfires plus the impact of case law and the overlaying of other environmental management legislation.

(2) RECENT AND CURRENT INITIATIVES

Significant initiatives have been introduced particularly in the area of regional strategic planning, plan-making, environmental protection, and development assessment for both major projects and for local development. Major initiatives are summarised in Table 1. Following is a list of the key initiatives.

A. Planning initiatives

- Development of 25-year *regional strategies* for key regions of the State to provide a strategic approach for future economic development and land release, to set targets for the provision of suitably zoned land for homes and jobs, for infrastructure planning and for the protection of natural resources.
- Introduction of a new planning approach that streamlines plan-making through the use of 'standard templates" so that local councils can deliver greater consistency and certainty in their decisions. This approach has resulted in the deletion of unnecessary regulation imposed by regional plans, a reduction in the number of State environmental planning policies (SEPPs), and the removal of a vast number of redundant concurrences/referrals.
- Integration of specific provisions associated with protection of natural resources and biodiversity, and bushfires, flooding & coastal hazards risk management into planning.

B. Development assessment and approval initiatives

- Introduction of an approvals regime for State significant development that provides for integrated assessment and approvals, with extensive opportunity for community input and clear provisions as to which developments the Minister for Planning is the approval authority.

- Provision of assessment regimes that are based on the level of environmental risk including the introduction of exempt and complying development and redirecting the designated development provisions to only focus on high environmental risk development.
- Introduction of integrated development assessment provisions to more efficiently consider the approval requirements under other legislation upfront to reduce delays and inconsistencies for proponents needing a number of approvals under various Acts.
- Integration of the building provisions under the *Local Government Act 1993* with the planning provisions so building safety issues are considered along with planning issues in a more integrated manner.
- Introduction of specific provisions relating to bushfires, flooding & coastal hazards, industrial hazards, and the protection of natural resources and biodiversity.
- Provided for competition in the issuing of construction certificates or complying development certificates with the introduction of a private certifiers system.
- Introduced anti-corruption provisions including the Planning Assessment Commission, Joint Regional Planning Panels, and Independent Hearing and Assessment Panels.
- Revised the provisions for community (local) and State infrastructure contributions.
- Provided a new system of planning arbitrators to consider applicant appeals against council decisions on small scale development proposals.

Further work is required to see the 2008 reforms implemented efficiently and effectively, to strengthen and clarify administrative procedures and to address the implementation of strategic plans.

(3) CURRENT STREAMLINING OF DEVELOPMENT ASSESSMENT

Issues have been raised by the NSW development industry, and in particular commercial and housing developers, that the efficiency of the development approval system suffers from over-regulation. It has been argued that additional regulatory and approval requirements under the planning system and other legislation have duplicated assessment processes, which can lead to increased costs of development, thereby ultimately affecting economic growth, employment opportunities and housing affordability.

NSW Government agencies are working in collaboration to address issues with respect to duplication and over-regulation of development, particularly in the areas of environmental impact assessment. Significant reforms have been introduced over the last 3 years. The challenge now is to ensure these reforms are implemented in an efficient and effective manner to ensure the benefits are realised.

(a) Expanding exempt and complying development

The 2008 NSW Planning Reform program was designed to target areas of inefficiency and over-regulation in the planning system. While exempt and complying provisions had been introduced 10 years prior, the use of these provisions had been limited in most council areas. The reforms included the introduction of standard housing codes with the target of 40-50% of residential development to be dealt with as complying development. This will significantly reduce the time for approvals for houses which comply with the codes – from an average of 70-80 days to 10 days as well as reduce the cost of preparing application documentation.

These codes are currently being extended to other forms of residential development and for commercial, retail and industrial development with the development of codes for alterations and additions to existing development and low impact new developments.

The Infrastructure SEPP also allows low impact development of a routine nature to be considered exempt development. It also lists public educational and port facilities as complying development. These provisions are shortly to be expanded to cover telecommunication and broadband facilities and group homes.

Table 1 Summary of key changes in Planning Regime in last 20 years

Date	Initiative
1986 -8	• Protection of wetlands, littoral rainforests and bush in urban areas – SEPP 14, 19 & 26 • Consideration of wilderness and national parks in planning introduced
1989	• Introduction of planning controls on intensive agriculture
1991	• Protection of endangered fauna provisions introduced

1993-4	• Codifying existing role of Minister for Planning as approval authority of major development
	  • Div 4 Part 5 where Minister independent approval authority for major infrastructure
	  • SEPP 34 – Employment Generating Development with the Minister the consent authority for all major industrial development
	• Designated development provisions in Schedule 3 of the EP&A Regulated updated to reflect a more environmental risk based approach
	• Introduction of controls for industries potentially or actually hazardous – SEPP 33

1995	• Threatened species conservation provisions added to EP&A Act • Introduction of protection koala habitat – SEPP 44 • Introduction of protection and management of native vegetation – SEPP 64
1997	• Introduction of integrated development assessment provisions with agencies involved in assessing development applications • Provide under Part 4 for State Significant Development determined by the Minister • Exempt or complying development categories introduced • Integration of the building controls from the Local Government Act 1993 • Construction certificates or complying development certificates issued by council or private certifiers – opening up certification to competition – system of regulation of private certifiers
2002	• Anti-corruption provisions added to the EP&A Act • Rural fires provisions added to the EP&A Act • Introduce provisions relating to coastal development and coastal protection
2005	• Sydney Metropolitan Strategy *City of Cities: A Plan for Sydney's* • Part 3A with integrated approvals for major development, including critical infrastructure • Gazettal of Major Project SEPP with State Significant Site provisions • A Standard Local Environment Plan template introduced • Review of local development infrastructure levies
2006	• Minister may appoint a planning administrator or a panel to exercise councils functions • Introduction of regional Infrastructure levies provisions
2007	• Far North Coast, Illawarra South Coast and Mid North Coast Regional Strategy • Draft Sydney Metropolitan Subregional Strategies - East, North, North West, North East, Inner North, South West, South and West Central
2008	• Streamlined local environmental plan-making process with greater certainty upfront • Removal of one layer of plans (REPs) to simplify the planning framework • Streamline development assessment under Part 4 – to reduce time – with the removal of redundant referrals and concurrences to State agencies • Introduction of Infrastructure SEPP to remove 20 existing SEPPs and update and simplify planning provisions applying to infrastructure • New Codes to support a major expansion in the use of exempt and complying development. • Planning Assessment Commission to be established to provide advice and determine major projects delegated to it by the Minister • Joint Regional Planning Panels composed of two council representatives and three state government appointees to determine regionally significant development • A new system of planning arbitrators will consider applicant appeals against council decisions on small scale development proposals • Tighter rules for private certification, including new limits on the annual income that can be earned from, and the number of certificates that certifiers can issue to any one client • Further amendments to local and regional development infrastructure levies • Additional anti-corruption provisions to reduce corruption risks applying to decision making • Central Coast and Sydney Canberra Corridor Regional Strategy • Draft Sydney Metropolitan Sub-Regional Strategy - City of Sydney and Inner West

(b) Removing concurrence and referrals

The *SEPP (Repeal of Concurrence and Referral Provisions) 2008* was introduced to simplify the regulatory regime around concurrence and other State agency referrals under Parts 3 and 4 of the EP&A Act. The SEPP removed duplicative or outdated State agency referrals for a range of issues including natural resource matters already regulated under other legislation or other assessment processes including:

- development near national parks, marine parks and aquatic reserves;
- tourism development and protected lands;
- land stability, soil issues and contaminated lands;
- flood liable land and acid sulfate soils;
- water supply, water quality and river management issues;
- onsite sewage disposal, waste water and drainage management;
- mineral and extractive resources, and mine subsidence; and
- subdivision of rural lands, agriculture, travelling stock routes and forestry.

One of the primary benefits that will stem from the Concurrence Repeal SEPP will be greater council autonomy over planning decisions. Reducing the number of matters that need to be referred to State agencies will strengthen the decision-making powers of local councils, allowing them to do their work in a more efficient and effective manner.

(c) Council capacity building in development assessment

The Department of Planning recognises that any reduction in State agency involvement in development assessment must be supported by capacity building at the local government level. There is an ever increasing number of issues and considerations that local councils must take into account for land use planning and development assessment.

The Department is developing an extensive communication and education program to roll out with the current suite of planning reforms. These will be for council planners as well as industry and their consultants to ensure that the benefits of the reforms are fully realised and that the system operates more efficiently and effectively to deliver cost effective sustainable outcomes.

Many NSW Government guidelines have been developed specifically to assist councils in assessing particular environmental and socio-economic issues associated with proposed developments. The guidelines that have been prepared by State agencies have now been made available on a public directory called the *Register of Development Assessment Guidelines* hosted on the Department of Planning website. The Register provides a single point-of-reference to access NSW Government guidelines and other relevant documents covering various aspects of development assessment and plan-making. The Register will allow councils, developers, consultants and the public to readily obtain the latest information on environmental impact assessment, development control, and best practice advice on a whole range of land uses, development types and environmental issues.

(d) Performance monitoring and increased accountability

Since 2006, local government and the Department of Planning have been publicly reporting on their performance in development assessment through the *NSW Local Development Monitor* and *NSW Major Development Monitor* annual reports. This system of reporting is being used to monitor whether the development approvals process is working as effectively and efficiently as it should.

State agencies will shortly commence monitoring their own performance with respect to assessment of local development, issuing of concurrences and providing referral advice to local councils. This information will be used to assist in identifying ways that State government advice to councils can be optimised without delaying the development assessment process.

(e) Promoting targeted, integrated and risk-based EIA

There may be opportunities in future to promote targeted risk-based assessment for development proposals under the EP&A Act including development applications under Part 4 and project proposals under Part 5 of the EP&A Act.

This approach has already been adopted for State significant development and other major projects under Part 3A of the EP&A Act. The Part 3A process was introduced in 2005 to resolve many of the issues outlined above with respect to assessment duplication, multiple approvals, dual consent and other overlapping regulations. The Part 3A process is streamlined to ensure that, while all planning matters are addressed and a coordinated assessment is undertaken with a single approval. The EIA method used for Part 3A projects is a targeted 'risk-based' assessment that provides a high degree of assessment for priority matters key matters for the sustainable management of the project, but avoids over-regulation and assessment of minor or irrelevant environmental and planning matters. This approach could be applied to Part 4 with the consent authority issuing a single approval across a range of legislation or conversely removing the need for multiple approvals where there is a comprehensive development approval.

(4) EMERGING MATTERS FOR CONSIDERATION IN ANY FUTURE REVIEW

Key emerging issues that need further addressing in the longer term include:

(a) Better alignment of strategic planning and development control;
(b) Leadership in dealing with medium and longer term sustainability challenges, including climate change and ageing;
(c) Strengthening land use and infrastructure integration;
(d) Clarification of the planning and development control roles of the Commonwealth, State and local levels of government;
(e) Better integration of natural resources and planning;
(f) A more outcome-based legislative framework;
(g) An improved framework for community engagement at the strategic level; and
(h) Minimise duplicative processes and simplification of various procedures.

Strengthened administrative measures could be put in place in the mid term with legislative and regulatory adjustments in the longer term.

Further reforms to the NSW planning framework should not be focussed purely on legislation. While legislation underpins the development assessment and planning processes, attention should be given to ensure that more analytical rigour is applied to decision making at all levels of planning. In addition, the success of the planning system is also influenced by the appropriate integration of initiatives across State departments and local governments. Without cooperation with agencies or local government, the potential benefits of further planning reforms will not be realised.

In broad terms, the NSW Government is striving for a planning framework that is transparent, expeditious and consistent across the State. It is important that the appropriate level of regulation is applied to all levels of planning. However particular aspects of the planning system are currently "over regulated". As a result, a more risk based approach needs to be taken to identify which areas genuinely require regulation and which areas can be subject to less stringent regulation. This will ensure a streamlined planning process that exhibits minimal duplication and supports the expeditious assessment of development applications and plan-making.

The following points provide any overview of these planning issue, and outlines strategies for addressing and resolving issues in the immediate, mid and longer term.

(a) Better alignment of strategic planning and development control

The last decade has seen significant work undertaken in the area of strategic planning in NSW - from the priority-setting level and direction outlined in the NSW State Plan and the *Metropolitan Strategy – City of Cities 2005*, to the strategic land-use planning framework provided by Metropolitan and Regional Strategies, and in metropolitan Sydney, the draft Subregional Strategies. In particular, the Regional and Sub-regional Strategies provide a contemporary framework to direct long-term planning in NSW, and are driven and supported by active partnerships between State and local government, communities and business. NSW councils are required to develop their local environmental plans consistent with the relevant Regional or Sub-regional Strategy, to ensure that strategic planning is translated into the local planning and development control framework.

One of the benefits of comprehensive strategic planning is that development assessment and approval processes can be simplified and streamlined and should not be burdened by strategic considerations or other matters outside the scope of local development assessment. Initiatives have been introduced regarding better integration of biodiversity conservation issues through biocertification of plans under the EP&A Act.

In future there will also need to be better alignment of land release and major urban development projects with water management strategies under the Water Management Act to better anticipate and plan for the cumulative impacts of new development in an area. This planning would need to consider both ground water and riparian corridor implications.

An emerging issue relates to the need to ensure the rezoning and development process better integrates with the outcome of strategic plans rather than introducing an added layer with increased uncertainties to all stakeholders.

(b) Leadership in dealing with medium and longer term sustainability issues

There is a role for environmental assessment to lead and set the agenda for issues to be addressed early, and for a legacy to be left for subsequent generations. Sustainability involves the spectrum of economic, environmental and social/cultural matters.

Key challenges associated with climate change, biodiversity conservation and population growth and the ageing population need to be considered in strategic planning (and subsequent implementation planning), due to the longer term impacts of decisions. These key issues have significant short and long term the social, economic and environmental implications which have to be considered and balanced in planning decisions.

(c) Strengthening land use and infrastructure integration

The regional and sub-regional strategies provide the basis for better integration of land use and infrastructure planning. This is a trend which has been adopted overseas with the evolution of strategic assessment of infrastructure plans informed by strategic land use plans to provide the basis for provision of appropriate services, demand management and sustainable management of the government's infrastructure assets. This approach is equally relevant for the planning and delivery of health, education, emergency and social services as well as water, energy, communications, and transport infrastructure.

The integration of land use and transport is a key policy government position as outlined in the Integrated Land Use and Transport (ILUT) policy package. Integrating land use and transport is also supported through the State Plan (priorities S6, S&, E5 and E7), Metropolitan Strategy, Urban Transport Statement, draft Metropolitan Subregional Strategies and Regional Strategies. These strategies actively inform the preparation of local plan-making including detailed precinct and development control plans. Guidelines for integrating land use and transport are included in the Department of Planning's Register of Development Assessment Guidelines, and are a key consideration for plan-making and major project development.

Whilst the objectives of the EP&A Act address the need for sustainable and orderly development, it would be worth exploring the option of expressly including provisions in the Act regarding strategic planning for infrastructure to inform and be informed by land use strategies for the better integration of land use planning and delivery of infrastructure and services.

(d) Roles of the Commonwealth, State and local levels of government

The Council of Australian Governments (COAG) is the most significant intergovernmental forum in Australia, bringing together the three tiers of government in Australia. COAG's objectives include:

- increasing cooperation among governments in the national interest;
- pursuing reforms that aim to achieve an integrated, efficient national economy and single national market;
- continuing the structural reform of government and reviewing relationships among governments; and
- considering other intergovernmental or whole-of-government issues.

The NSW Government continues to support these objectives, and COAG's recent 2008 commitment to a comprehensive new microeconomic reform agenda for Australia, with a particular focus on health, water, regulatory reform and the broader productivity agenda. These issues are discussed in more detail in the next section of this paper.

The roles of different levels of government in development assessment should be clarified to assist in reducing duplication of environmental assessment processes. The Bilateral Agreement between NSW and the Commonwealth recognise the value and adequacy of local and State government assessment processes in addressing matters of National Environmental Significance.

(e) Better integration of natural resources and planning

It is widely recognised that better co-ordination is needed in relation land use plans and the various natural resource plans applying in an area. There are also overlapping approvals required under a number of acts and regulations in relation to natural resources and environmental management. There needs to be a particular emphasis on a 'whole of development' approach for proposals with multiple components and implications (eg. 'integrated' development).

Different models for integrating planning and natural resource management objectives and implementation processes to also achieve customer-focussed objectives should be explored. Such further work might consider:

- a more integrated legislative planning and development approvals framework with better integration of natural resource management into the environmental planning system with the removal of duplication;
- better coordination of natural resource management plans and plans under the EP&A Act such as LEPs and SEPPs;
- the establishment of a coordinated set of guideline documents covering both natural resource management and environmental planning approval provisions and similar requirements; and
- availability of natural resources information in maps and databases to make existing information readily accessible and to avoid duplication of surveys.

Initiatives such as biocertification under the *Threatened Species Conservation Act 1995* attempt to integrate biodiversity management into land use planning at the strategic level. There are a range of other natural resource and biodiversity planning initiatives that could benefit from being developed along with, and be informed by, land use planning strategies (e.g. better integration of water quality, water supply and demand management into land use planning).

If natural resource management is integrated appropriately into strategic and land use planning, assessment of local development can then focus on key site-specific considerations (rather than strategic issues) to maintain an efficient and timely development approval process.

(f) A more outcome-based legislative framework

Currently under the planning framework, some $30 billion worth of development applications are determined in NSW every year. Local government is responsible for assessing development worth $20 billion. Approximately 70 percent of this total value is for residential work, and up to 90 percent of this is lodged by non-developers.

In this context, any legislative review should focus on the smaller "once-off users" of the system, and should aim to create a more outcome-based legislative framework. This should include identifying opportunities to:

- simplify steps in development assessment and approval processes;
- improve customer service for all involved in the planning process, including improved efficiency and timely decision-making; and
- improve mechanisms for communication with and between stakeholders.

The existing exempt and complying provisions provide some of these elements. With the development of more Codes there will be greater opportunities for home owners and businesses to utilise this more efficient approach. Any review of the EP&A Act should look at extending these types of approaches to provide for streamlining in other aspects of the system.

The building control aspects of the planning system might be improved if they were updated. The current building control components of the planning legislation were extracted from the *Local Government Act 1993* and Regulation in 1997, and were not developed with an "integrated" planning and building system in mind. Building control has been impacted by a number of significant reforms to the Building Code of Australia (BCA) in the past decade. Whilst legislative changes and other actions have been taken to accommodate these reforms, there has not been the opportunity to combine these various controls in a "holistic" manner.

There is now an opportunity to undertake further reforms to deliver a consolidated suite of controls, which can better facilitate the operation of a more effective and efficient building and construction industry and remove unnecessary red tape, duplications and overlaps. The opportunity to undertake further reforms in this area now exists.

(g) Improved framework for community engagement at the strategic level

A range of new formal and informal approaches to consultation are allowing for a greater role for the community. Some examples are listed below:

- At the development application stage, the current notification of neighbours approach is an effective tool especially when further information about the development is made available on the Department's or councils' website.
- For major projects under Part 3A, the proponent has to consider the issues raised in community submissions and may amend the proposal in response to the issues raised. This elevates the importance of community submissions.
- At the major project level the use of community consultation committees has proved to be effective in providing for ongoing communication with the affected community as the project is assessed, constructed and operated.

Under the proposed new planning and reporting framework under the *Local Government Act 1993*, local councils are to develop Community Strategic Plans which set high level objectives for the local government area including objectives related to land use planning. The Community Strategic Plan is intended to sit at the top of the council's planning hierarchy. The purpose of the plan is to work with the community to identify the main priorities and expectations for that council area and to plan strategies for achieving these. Community Strategic Plans will be required, as a minimum, to cover a ten-year period. Each council will continue to be required to prepare a LEP in accordance with the EP&A Act. However the relationship between the LEP

and the Community Strategic Plan needs to be considered to assist in delivering associated land use strategies or conservation; infrastructure and economic development strategies. These strategies may be appropriately determined by the State Government and have an impact on the way local communities are planned. New LEPs must also take account of regional and subregional strategies, not just the community strategic plans of individual councils, to provide an integrated approach.

(h) Minimise duplicative processes and simplify procedures

In addition to the need for development consent, about a quarter of all development in NSW currently require one or more approvals under other Acts. The NSW Government recognises that more work is needed to reduce regulatory burden in the planning system and State agencies (including DECC, DPI and DWE) are working closely with the Department of Planning to identify ways of reducing overlapping regulatory responsibilities. The requirement to obtain multiple approvals increases development costs and often delays assessment with little added value, especially when the matters being regulated by other Acts already need to be considered by the consent authority in the approval of the development.

Recent legislation affecting development determined under the EP&A Act.

- *Petroleum (Onshore) Act 1991*
- *Mining Act 1992*
- *Local Government Act 1993*
- *Roads Act 1993*
- *Fisheries Management Act 1994*
- *Ports and Maritime Administration Act 1995*
- *Contaminated Land Management Act 1997*
- *Marine Parks Act 1997*
- *Protection of the Environment Operations Act 1997*
- *Rural Fires Act 1997*
- *Forestry and National Park Estate Act 1998*
- *Residential Parks Act 1998*
- *Sydney Water Catchment Management Act 1998*
- *Plantations and Reafforestation Act 1999*
- *Retirement Villages Act 1999*
- *Water Management Act 2000*
- *Housing Act 2001*
- *Sydney Olympic Park Authority Act 2001*
- *Catchment Management Authorities Act 2003*
- *Native Vegetation Act 2003*
- *Filming Approval Act 2004*
- *State Water Corporation Act 2004*
- *Trees (Disputes Between Neighbours) Act 2006*
- *Liquor Act 2007*

Recently, the *SEPP (Repeal of Concurrence and Referral Provisions) 2008* was introduced to simplify the regulatory regime around concurrence and other State agency referrals under Parts 3 and 4 of the EP&A Act. The SEPP removed duplicative or outdated State agency referrals for a range of environmental and other planning issues.

The NSW Government recognises that more work is needed to reduce regulatory burden in the planning system and State agencies are working closely with the Department of Planning to identify ways of reducing any overlapping regulatory responsibilities. For instance, the Department of Environment and Climate Change (DECC) and the Department of Planning are exploring options to reduce the number of 'dual consents' under the EP&A Act and the *Native Vegetation Act 2003*. This may include expanding exemption provisions where a development proposal has already been assessed by a council with respect to vegetation clearance. Similarly, the Department of Primary Industries (DPI), DECC and the Department of Planning are working to resolve dual consent issues related to the regulation of private native forestry activities. State agencies are exploring the option of having a comprehensive Private Native Forest Industry Code to be used by one regulatory authority, rather than requiring multiple agency consents for the same activity.

There have also been calls from the development industry to review the efficiency of the Integrated Development process under Part 4 of the EP&A Act. A possible review could look at whether there is significant duplication or overlap in government regulatory responsibilities and whether any existing approvals could be rationalised e.g. works along waterways regulated under the EP&A Act, the *Water Management Act 2000* and the *Fisheries Management Act 1994.*

(5) RECOMMENDATIONS

It must be acknowledged that there have been significant and beneficial reforms over the last decades which have improved the efficiency of the planning system while dealing with the increased complexity.

Currently, the focus should be on making the recent suite of reforms work effectively in these challenging economic times while meeting demands associated with affordable housing, sustainable economic development, climate change and conservation of biodiversity. Major legislative changes in the immediate to mid term will divert resources from much needed focus on efficiently delivering appropriate outcomes to improve the system to these challenges.

In the mid to longer term, consideration could be given to a broader review to consider:

- strengthening the strategic planning provisions in particular in relation infrastructure planning and the efficient delivery of infrastructure;
- strengthening the role of the planning system to deliver economic development, resource management and conservation outcomes in a more integrated manner;
- updating the legislative structure, to ensure the mechanics relating to the planning system are more outcomes oriented, provide a more integrated approach and are not overly complicated, burdensome or duplicative with a more risk-based approach; and
- providing a better framework for community engagement at the strategic level.

4 The implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales

Questions raised in the Background Document:

- Are the reforms and discussions at the COAG level important for the future development of the NSW planning framework?
- What are the specific implications of the work of the COAG on planning in NSW?

(1) SUMMARY

Established in 1992, COAG is the most significant intergovernmental forum in Australia, bringing together the three tiers of government in Australia. COAG is chaired by the Prime Minister and includes State Premiers and Territory Chief Ministers and the President of the Australian Local Government Association.

In March 2008, all Governments made a commitment to a comprehensive new micro-economic reform agenda for Australia, with a particular focus on health, water, regulatory reform and the broader productivity agenda. This work is being delivered through the following seven working groups, each chaired by a Commonwealth Minister:

1. ***Health and Ageing***
2. ***Productivity agenda*** - including education, skills, training and early childhood.
3. ***Climate change and water*** - a national approach to addressing climate change through a national emissions trading scheme and complementary policies and measures that achieve emission reductions at the least cost.
4. ***Infrastructure*** - a nationally coordinated approach to planning for, and facilitating investment in Australia's infrastructure needs.
5. ***Business regulation and competition*** - to reduce red tape in development and building regulations and improve competitiveness.
6. ***Housing*** - delivering vital initiatives to assist housing affordability and reduce the number of homeless people.
7. ***Indigenous reform***

(2) INITIATIVES AFFECTING THE PLANNING SYSTEM

The NSW Government supports the national level reforms through its involvement in COAG working groups. In this regard, NSW has been instrumental in ensuring issues of national importance have been addressed at COAG meetings. This work has included the Living Murray Initiative, Climate Change, Development Assessment Forum and Housing Affordability.

(a) Housing Affordability

COAG identified the decline in housing affordability as a pressing issue for Australians and recognised that improving affordability is critical to addressing financial stress and disadvantage, including for Indigenous communities. COAG agreed to implement five key housing initiatives:

1) facilitate improved housing supply through identifying surplus government land suitable for housing development;
2) provide incentives to construct affordable rental housing;
3) lower the burden of infrastructure and regulatory costs built into the purchase price of a new home;
4) improve the evidence base for housing policy and program development; and
5) support the neediest in society through joint Commonwealth-State investment in 600 houses and units for homeless people.

The COAG Housing Working Group agreed in March 2008 to a strategy aimed at addressing housing affordability that included the implementation of five key housing initiatives:

- a ***Housing Affordability Fund*** (HAF) to streamline development approval processes and reduce infrastructure charges and regulatory costs;
- a ***National Rental Affordability Scheme*** (NRAS) to increase the supply of affordable rental housing, reduce rental costs for low and moderate income households, and encourage large scale investment and innovative delivery of affordable housing;
- a ***Land Audit*** to facilitate improved housing supply through the identification of surplus Australian, State and Territory land for possible release for housing development;
- a ***National Housing Supply Council*** to provide research, forecasts and advice to the Australian Government and COAG on issues relating to the adequacy of housing and land supply to meet future needs; and
- **A *Place To Call Home*** to deliver 600 new dwellings for homeless people.

COAG agreed to the distribution of $150 million to deliver new homes for homeless people. These funds will be distributed with reference to the number of homeless people in each jurisdiction. With the introduction of the Housing Affordability Fund, a framework is being developed to ensure that affordable rental and purchased housing remains available to low and moderate income earners. Improving the delivery of land for housing and increasing the efficiency of the development approval process is seen to be key components of delivering improvements.

(i) Affordable housing policy

The National Affordable Housing Agreement represents sweeping reforms to the architecture for Commonwealth-State funding arrangements to enable NSW to deploy Commonwealth specific purpose payments more effectively and creatively, enhance public accountability and sharpen the incentives for reform through new national Partnerships agreements.

With the introduction of the Housing Affordability Fund, it has been identified that there is a need for audit and evaluation of the cost-benefits of affordable housing. A framework should be developed to ensure the affordable rental and purchased housing remains available to low and moderate income earners only. Consideration could be given to combining the Housing Affordability Fund with the NRAS to develop affordable rental housing in NSW particularly in high cost markets. If this is achieved, it would be useful if there was a process that enabled applications to couple HAF contributions with the NRAS.

The Department of Planning and Housing NSW are currently developing a new Affordable Housing Rental Policy to assist in the rollout of a range of modes of affordable rental housing including boarding houses, group homes, social housing complexes as well as affordable houses provided by the private sector. This will assist in reducing red tape for developers of housing funded as part of NRAS / HAF and to generally meet social housing and housing for key workers needs.

(ii) ePlanning initiatives

A key aspect of the COAG agenda for planning is the roll out of electronic development assessments (eDA). To date, eDA has been rolled out to varying degrees across different states and by different councils with NSW. A holistic strategy for the roll out of eDA is is being developed in NSW. However, care should be taken to ensure that the funding that the Federal Government is making available to NSW through the Housing Affordability Fund (HAF) does not dictate the solution that NSW will eventually adopt. The Department of Planning must have the opportunity to develop the most effective system for this State.

Electronic Development Assessment System

The Commonwealth also provided $30 million from the Housing Affordability Fund (HAF) for the roll out of eDAs for local government, with a priority focus on high growth areas. COAG requested the Local Government and Planning Ministers' Council to make the implementation of this work a priority. An allocation of $5.92 million under the HAF was made available to NSW subject to the receipt and approval of a detailed business case.

The HAF funding is linked to the COAG decision for streamlining of electronic development processes nationwide which will require the states and territories to adhere to national standards for eDA, namely the eDAIS. Considerable effort is being put into clarifying the implications for eDAIS compliance in each jurisdiction through the Commonwealth funded National eDA Steering Committee.

The Department of Planning is actively working with the NSW Local Government & Shires Association in the roll out of this initiative.

NSW Electronic Housing Code

In late 2008, NSW submitted a joint Department of Planning – Local Government and Shires Association business case for electronic development assessment processing online, focussing on complying development (the NSW Housing Code). The business case, referred to as the "NSW Electronic Housing Code" addressed three central requirements of the HAF:

(a) support the national eDA Interoperability Specification (eDAIS);
(b) deliver end-to-end eDA processes; and
(c) target high growth areas.

The "NSW Electronic Housing Code" business case has been accepted by the Commonwealth, and subject to final agreement on the project Memorandum of Understanding between the Commonwealth and Department of Planning, the pilot project targeting up to 12 councils in high growth areas of the state will commence in late February 2009. The pilot project will conclude in June 2010.

e-Planning Roadmap

A related State-funded initiative is the e-Planning Roadmap project, a project to develop a five-year strategy for the implementation of priority e-Planning initiatives in NSW. This joint Department of Planning – NSW Local Government and Shires Association project is expected to deliver a detailed report on e-Planning priorities by June 2009. The report will be based on wide stakeholder engagement including state and local government, industry and the broader community with the object of defining the initiatives to deliver on customer expectations for a clear path through the NSW planning system as facilitated by electronic planning systems.

(b) Business Regulation and Competition

Three areas were identified by the Business Regulation and Competition Working Group (BRCWG) of COAG which have direct implications for planning system. The Working Group concluded that progress could be made in reducing business regulation by:

(i) reducing duplication between the Commonwealth and States development assessment by extending existing agreements;
(ii) reviewing the Building Code of Australia; and
(iii) developing nationally consistent electronic information and delivery systems in the development and planning area.

(i) Environmental Assessment and Approvals Bilaterals

The development of approaches to provide for a more harmonised and efficient system of environmental assessment between Commonwealth and State and Territory schemes is welcomed. NSW signed an Assessments Bilateral in 2007 to provide for more efficient co-operation with the Commonwealth in the assessment of developments in NSW likely to affect matters of national significance. The next step is to work towards an approvals bilateral for all development or certain classes of development. As an alternative, the Commonwealth is proposing that in some circumstances, strategic assessments may be undertaken which would result in outcomes equivalent to an approvals bilateral agreement.

COAG agrees that:

- the Commonwealth and each State and Territory will work expeditiously and constructively to develop approvals bilateral agreements where efficiencies can be achieved in meeting the requirements of the *Environment Protection and Biodiversity Conservation Act 1999;*
- BRCWG will report to COAG on progress with approvals bilaterals by October 2008; and
- BRCWG will report to COAG on the case for additional reforms to ensure efficient Commonwealth/State/Territory environmental assessment and approvals processes, including for urban land and urban infrastructure development, by December 2008.

The NSW Government has had discussions with the Commonwealth on more strategic approaches under the existing approvals bilateral. Administrative approaches such as clarification of procedures and greater liaison between Commonwealth and State government staff during the assessment process, particularly for 'controlled action" developments, have assisted in making the existing approvals bilateral work more efficiently.

Currently the Approvals Bilateral Agreement applying to development associated with the Opera House is the only approvals bilateral under the EPBC Act in Australia. It is proposed to develop a similar approach for the Sydney Harbour Bridge which is of national heritage significance. In addition, discussions are being held on "strategic assessments" or a "conservation agreement" approach in the North West and South West Growth Centres areas with the expectation that an agreement similar to an approvals bilateral will be entered into, to avoid the need to refer development in these growth centres to the Commonwealth, if they comply with the agreement provisions. Following finalisation of the agreement, this approach could be applied to other key major development and land release areas.

(ii) National Construction Code (NCC)

The development of a NCC is a key COAG initiative and will involve:

(a) the consolidation of all "technical" on-site controls (i.e. building, plumbing, electrical and telecommunications) into one national code, with the consolidation of building and plumbing standards to be considered in the first instance;
(b) a review of the Inter-Governmental Agreement (IGA) which provides for the ongoing operations of the Australian Building Codes Board (ABCB) and the Building Code of Australia; and
(c) consideration of options for the funding, administration and implementation of a NCC.

BRCWG is also investigating the merits of mutual recognition or harmonisation of practitioner skills. The business case for, and the benefits and impacts of, a NCC are to be developed in consultation with State and Territory officials.

The need to review and possibly reform the building control components of the current legislation (as discussed in the section of this submission relating to the inter-relationships of planning and building controls) is further reinforced by the NCC proposal.

The implementation of a NCC in NSW will present particular challenges in terms of its administration, implementation and ongoing development and reform, as these controls are currently administered by different agencies and Ministers. Accordingly, consideration will need to be given to the most effective and efficient "Model" for implementing a NCC in NSW and whether the planning framework is the most appropriate vehicle to deliver these controls in the future.

The Department of Planning has been (and will continue to be) involved in providing input on all proposals and milestones associated with the development and implementation of a NCC.

(iii) Development Assessment Initiatives

The Development Assessment Forum made up of representatives of the States and local government was established in 1999 and has assisted in developing more efficient development assessment and approval models to assist States in the review and updating of their legislation. A focus of DAF is on streamlining the approvals process for smaller-scale development. The exempt and complying development regime in NSW is consistent with the DAF model.

Other initiatives to streamline the development assessment process are under discussion through the DAF. As part of this process, discussions were held on whether a single development control system could be introduced across Australia. While the Development Assessment Forum (DAF) may identify best planning practice, jurisdictions need to be able to maintain flexibility to address any locality specific issues that they may face. NSW should strive to meet the best planning practice identified by the DAF while maintaining flexibility to meet local demands. The BRCWG recognised that a "one size fits all" approach to regulating planning across Australia was not appropriate at this time, with extensive reforms required to lead to either harmonisation or mutual recognition of different systems where this was appropriate.

COAG agreed that all levels of government should continue moving to streamline planning and approval processes to reduce development costs and improve housing affordability. BRCWG is to report back to COAG on:

- progress with rapid adoption of electronic development assessment systems across local councils to help speed up land release and reduce development costs;
- options for fast-tracking the introduction of common performance measurement criteria; and
- the scope and timelines for taking the streamlining of processes further with moves towards a nationally consistent development approvals processes.

Improving the development assessment processes by maximising the uptake of electronic development assessment processing has been adopted nationally. $30 million has been allocated to assist local councils across Australia to introduce electronic development assessment systems.

Another initiative being progressed is to undertake performance monitoring across all states similar to the monitoring undertaken in NSW and reported in the Local Development Performance Monitoring Report and Major Development Monitor.

(c) Climate change and renewable energy

Climate change has been addressed at a number of recent COAG meetings. In April 2007, COAG endorsed a National Adaptation Framework as the basis for jurisdictional actions on adaptation over the next five to seven years. The Framework outlines the future agenda for collaboration between governments to provide information on climate change impacts to business and the community, and to fill critical knowledge gaps which currently inhibit effective adaptation. A key focus of the Framework is to support decision-makers in understanding and incorporating climate change into policy and operational decisions at all scales and across all vulnerable sectors. In March 2008, COAG adopted a new national approach to addressing climate change through a national emissions trading scheme and complementary policies and measures.

COAG has agreed to develop a National Strategy for Energy Efficiency, to accelerate energy efficiency efforts across all governments and to help households and businesses prepare for the introduction of the Commonwealth Government's Carbon Pollution Reduction Scheme (CPRS). Streamlined roles and responsibilities for energy efficiency policies and programs are to be agreed, and implementation of this Strategy will be finalised by June 2009, to ensure that programs assisting households and businesses to reduce their energy costs are in place prior to the introduction of the CPRS.

There have been many initiatives developed recently, and other initiatives are still in development, to be developed shortly to encourage the delivery of renewable energy and increase opportunities for energy efficiency and demand management. The NSW Planning system is responding to these initiatives by making small scale renewable proposals exempt and complying development and extending the areas where these types of development are permissible. In the development of major urban projects, the use of trigeneration and cogeneration are being encouraged.

(i) Building and Sustainability Index (BASIX)

BASIX is a web-based planning tool designed to assess the water and energy efficiency of new residential developments. It has been developed by the Department of Planning in association with other government agencies, local government and utilities. On 1 July 2004, the NSW Government introduced BASIX into the development approval system to make sure our homes use less water and energy. In 2005 it was extended to cover residential development State-wide and now applies to all new residential development (single dwellings and multi-unit) and alterations and additions over $50,000 in value.

COAG has agreed to develop initiatives to help households and businesses prepare for the introduction of the CPRS. One approach currently being considered is the adoption of the Building Code of Australia (BCA) energy provisions. NSW provides for energy provisions of the BCA through BASIX. BASIX provides for the greatest flexibility for home-owners and property developers to meet mandated energy and water targets for residential properties, reporting results of the savings committed to in tonnes of CO_2 and mega-litres of water.

The Department of Planning has initiated independent assessments of the performance of BASIX houses to ensure policy outcomes for the targeted water and energy savings are being met. The assessments are undertaken by water and energy utilities and will be reported in 2009. In 2008 the Department reported on the results of the first Australian pilot of cogeneration for residential development. The project has demonstrated there is significant potential for cost-effective energy savings for residential development through distributed energy systems.

To ensure jurisdictional arrangements are consistent with and complementary to the objectives of the CPRS, the Independent Pricing and Regulatory Tribunal (IPART) has been tasked by the Premier to prepare a report on the State's climate change mitigation measures. The review, to include BASIX and other state programs, is to be completed in mid-2009. A related Department

of Planning review of BASIX five years after its State-wide implementation is to be undertaken in 2009.

(ii) Climate change adaptation

COAG endorsed the National Climate Change Adaptation Framework in 2007, as the basis for government action on adaptation over the next five to seven years. The Adaptation Framework includes possible actions to assist the most vulnerable sectors and regions, such as agriculture, biodiversity, fisheries, forestry, settlements and infrastructure, coastal regions, water resources, tourism and health to adapt to the impacts of climate change. The National Climate Change Adaptation Program is designed to help prepare government and vulnerable industries and communities for the unavoidable impacts of climate change.

The Australian Government has committed funding of up to $126 million over five years for climate change adaptation. The program will:

- drive national efforts to increase Australia's ability to respond effectively to the impacts of climate change;
- provide decision-makers with the information and tools they need to understand and assess the risks of climate change impacts;
- work with partners to demonstrate adaptation approaches that deliver multiple benefits;
- facilitate and support businesses, communities and governments to develop and implement strategies to manage their risks from the impacts of climate change. Strong partnerships with these groups will ensure that the Centre's work meets their needs, is practical at local and regional levels, and encourages new ways of doing things; and
- deliver a number of important policy, program and research functions, coordinated through a new Climate Change Adaptation Research Facility.

In NSW, the study in the Lower Hunter to identify areas likely to be affected by sea level rise has set a benchmark for adaptation planning across the nation. The Department has produced a report which identifies low-lying areas on the Central and Hunter coasts at risk of sea level rise resulting from climate change. The report was funded by the NSW Government's Climate Change Impacts and Adaptation Research Program. The project used cutting-edge airborne laser technology and data collected by councils. The project report allows councils and the NSW Government to consider the likely impacts of sea level rise on low lying coastal areas both for existing and future development. The Department of Planning oversaw the project, with assistance and support from a number of other NSW Government authorities, Geosciences Australia, the University of Sydney and local councils.

Other adaptation measures are being developed such as setting sea level rise targets for planning over the next 100 years. Discussions are being finalised on planning guidelines to assist councils in land use planning and development controls to consider these risks associated with sea level rise and changes in bushfire risks.

(d) National Infrastructure planning and delivery

Infrastructure Australia which was set up in April 2008 is to develop a strategic blueprint for future infrastructure needs and in partnership with the states, local government and the private sector facilitate their implementation. It provides advice to governments about infrastructure gaps and bottlenecks that hinder economic growth and prosperity. It also sets investment priorities and policy and identifies regulatory reforms necessary to enable timely and coordinated delivery of national infrastructure investment. In the 2008-09 Federal Budget a Building Australia Fund was established with funds to be allocated to projects following a National Infrastructure Audit and development of an Infrastructure Priority List.

Strategic integrated planning for economic development and infrastructure across all levels of government is essential to feed into the National Infrastructure Audit and Infrastructure Priority List being prepared by the Commonwealth and Infrastructure Australia. Many of the significant challenges facing the Australian economy can only be addressed through more effective Commonwealth-State working relationships. A challenge for COAG will be identifying which

level of government should deliver each service where currently there is duplication. Another challenge for the States is aligning the infrastructure priorities identified by the States, with those priorities set by Infrastructure Australia, with the potential implications for land use planning in the states.

(3) RECOMMENDATION

Planning reform is seen to be of national importance with the potential to assist in addressing the economic downturn, to assist in the efficient delivery of affordable housing and essential infrastructure and to assist in addressing climate change and to provide for adaptation to that change.

The NSW Government should continue to work through the various COAG working groups to access opportunities for improving the planning system and for the development of a more efficient and robust planning framework. The benefits of the continued participation at the National and COAG level include:

- increased co-operation among governments and the sharing of knowledge and experience on issues of common interest;
- provision of opportunities to facilitate co-operation among state and local governments on reforms to deliver a more integrated, efficient planning system (e.g. housing policies, development codes, climate change, and sustainability);
- provision of resources through COAG programs e.g. the Housing Affordability Fund ($500 million over next 5 years); and
- enabling key NSW planning priorities to be promoted at the national level (e.g. housing affordability, complying development, eplanning systems, and climate change/sustainability).

5 The duplication of processes under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and New South Wales planning, environmental and heritage legislation

Questions raised in the Background Document:

- What are your experiences involving assessment processes under NSW and Commonwealth environmental legislation for controlled actions?
- Did the bilateral agreements reduce duplication of approval procedures for the controlled actions?
- Are there areas of duplication that need to be addressed?

(1) SUMMARY

There are a range of mechanisms available under the *Environment Protection and Biodiversity Conservation Act 1999* which have potential to reduce duplication of Commonwealth and State environmental assessment processes. While an Assessments Bilateral Agreement and an Approvals Bilateral for the Sydney Opera House already exist, and negotiations are underway for a Strategic Assessment of the Sydney Growth Centres, duplication and delays in these processes still exist. This is a result of some inflexibility of Commonwealth assessment processes, a lack of understanding by the Commonwealth of the statutory obligations of NSW assessment systems, and separate listing procedures in State and Commonwealth for threatened species and heritage values.

(2) BACKGROUND

(a) NSW Assessments Bilateral Agreement

In January 2007, the NSW and Commonwealth governments signed an Assessments Bilateral Agreement that accredits Parts 3A, 4 and 5 of the EP&A Act to ensure an integrated and coordinated approach for actions requiring approval under both NSW legislation and the EPBC Act. The Bilateral Agreement also accredits assessment processes under Part 6 of the *Threatened Species Conservation Act 1995* and Part 7A of the *Fisheries Management Act 1994* where a Species Impact Statement is included.

In 2008, 51 referrals were made to the Commonwealth for development/major projects in NSW. Of these, seven are being assessed under the Assessments Bilateral Agreement, five under Part 3A, and two under Part 4.

In 2007 there were 64 referrals made to the Commonwealth for development/major projects in NSW. Of these, 15 are being assessed under the Assessments Bilateral Agreement, twelve under Part 3A, two under Part 4, and one under Part 5.

Over the first year of its operation the Commonwealth and NSW identified areas where the administrative procedures under which the Assessments Bilateral Agreement operates could be improved. These procedures are currently being modified to reflect the improvements.

Possible Amendments to the Bilateral as a result of reforms in NSW

The current Assessments Bilateral Agreement will need to be updated when the current amendments to the EP&A Act have all commenced. The changes will need to include reference to the Planning Assessment Commission which takes the place of Independent Hearing and Assessment Panels (IHAPs) (under Part 3A) and Commissions of Inquiry. In addition, there needs to be recognition that the Joint Regional Planning Panels will have an approval role under Part 4 of the Act.

DECC is also in discussions with the Commonwealth on the recognition of the NSW Biobanking regime under the Assessments Bilateral Agreement and how it would be regarded in the assessment of controlled actions.

(b) Opera House Approvals Bilateral Agreement

An Approvals Bilateral Agreement between the Commonwealth and NSW governments was signed in December 2005 following the accreditation of the management plan for the Sydney Opera House. This means that approval under the EPBC Act for developments at the Opera House is not required (provided they are undertaken in accordance with the Management Plan). Negotiation between the governments is also underway to develop a similar Approvals Bilateral Agreement for the Sydney Harbour Bridge.

(c) Bilateral agreements and other approaches in other States.

(i) Assessment bilateral

Assessment Bilateral Agreements similar to the one between NSW and the Commonwealth have been signed in other states (SA, NT, Qld, Tas, WA) in relation to accreditation of environmental impact assessment processes. Assessment Bilateral Agreements are also being developed between the Commonwealth and the Victorian and ACT governments.

Bilateral Agreements under the EPBC Act

Signed bilateral agreements relating approvals	**Date of agreement**
New South Wales relating to the Sydney Opera House	18 January 2007
Signed bilateral agreements relating environmental assessment	**Date of agreement**
South Australia	2 July 2008
New South Wales	18 January 2007
Northern Territory	28 May 2007
Queensland	13 August 2004
Tasmania	12 December 2005
Western Australia	8 August 2007
Draft bilateral agreements relating environmental impact assessment still being negotiated	**Deadline for public comment**
Victoria	10 November 2008
Australian Capital Territory	26 June 2008

(ii) Approvals bilateral

NSW is the only State with an Approvals Bilateral Agreement under the EPBC Act, which only relates to the Opera House. No other States have developed Approvals Bilateral Agreements as yet.

(iii) Strategic Assessment

Under section 146 of the EPBC Act, the Minister may agree to undertake a strategic assessment on the impacts of actions under a policy, plan or program. Section 146 of the EPBC Act also provides for a public comment period for the draft terms of reference for a report on the impacts to which the agreement relates. Advantages of undertaking a strategic assessment include:

- early consideration of national environmental matters in planning processes;
- greater certainty to the local communities and developers over future development;
- reduced administrative burden for proponents taking actions consistent with a policy, plan or program approved under a strategic assessment;
- capacity to achieve better environmental outcomes and address cumulative impacts; and
- flexible timeframes commencing early in the planning process.

Strategic Assessments have been undertaken for fisheries, and for petroleum exploration areas. For example, the Plan for the Browse Basin Common User Liquefied Natural Gas Hub Precinct and associated activities in NW Western Australia.

The ACT Government has also recently entered into an agreement for a strategic assessment of the impacts of actions under the Molonglo and North Weston Structure Plan to allow urban development and associated infrastructure at Molonglo and North Weston in the Australian Capital Territory.

(iv) Conservation Agreements

The Commonwealth have entered into Conservation Agreements for the protection and conservation of biodiversity in an area of land or sea. A conservation agreement may provide for activities that promote the protection and conservation of matters of national significance and is another form of "approvals bilateral".

List of conservation agreements under the EPBC Act

	Agreement party	Matter of National significance
Queensland	Burnett Water Pty Ltd and Burnett Mary Regional Group	Protection, Restoration and Rehabilitation of Habitat for Migratory Shorebirds in the Burnett River Estuary
Victoria	Roads Corporation	Growling Grass Frog conservation management plan for proposed Donnybrook-Hume Highway interchange
Norfolk Is	Landholders (K & M Christian)	Listed threatened species under the EPBC Act
Norfolk Is	Landholders (S Ryves)	Listed threatened species under the EPBC Act
NSW	Landholders (B & M Blunden)	Listed threatened species or ecological communities under the EPBC Act at 835 Elliots Road, Myrtle Creek, Bungawlbyn
Victoria	Buller Ski Lifts Pty Ltd	Rehabilitation and management at the Mount Buller Ski Resort.
Queensland	Starline Australia Holdings	Great Barrier Reef World Heritage Property East Trinity.
Victoria	Multiplex Developments	conservation of the Pimelea spinscens subsp. spinecens
WA	Satterley Property Group, The Housing Authority and others	Research and monitoring of the Western Ringtail Possum in urban development areas of Busselton and Bunbury.
WA	Woodside Energy Ltd*	National Heritage of the Dampier Archipelago (Burrup Pen.)
WA	Hamersley Iron and Dampier Salt	National Heritage of the Dampier Archipelago (Burrup Pen.)
Victoria	Galaway Holdings Pty Ltd	Listed threatened species under the EPBC Act for grassland and wetland reserves at Lavaton.

A conservation agreement can require the owner of a place to:

- carry out activities that promote the protection and conservation of biodiversity;
- refrain from, or control, activities that may adversely affect the species, ecological community, or habitat, covered by the agreement;
- contribute towards the costs incurred under the agreement; and
- forfeit any money paid to them under the agreement if they contravene the agreement.

A conservation agreement may include a declaration that actions do not need approval under Part 9 of the EPBC Act.

(3) CURRENT ISSUES WITH ASSESSMENT BILATERAL AGREEMENTS

Examples have demonstrated how a cooperative relationship between the NSW and Commonwealth governments can significantly streamline environmental approval processes. This has significant scope to accelerate the development approval process and recover development costs. Care should be taken however to ensure that the bilateral agreements are adhered to and further requirements are not added to the development application process as is the case at the moment with the development of the Ingleburn Defence Site. Such situations have the possibility of undoing the benefits that can be derived from bilateral negotiations. Issues include:

(i) Listing Processes

- NSW and the Commonwealth currently have separate listing processes for threatened species and ecological communities, and heritage sites. There are State and Commonwealth scientific committees which may provide different determinations and definitions of species or ecological communities. There are instances where the Commonwealth listing process for an National Environment Significance (NES) matter is not consistent with the NSW listing. This is especially evident in threatened species and ecological communities listed under the EPBC Act and threatened species and endangered ecological communities under the *Threatened Species Conservation Act 1995*. An example

is the different definition of the endangered box-gum woodland communities in inland NSW. These differences complicate the assessment process for proponents who are obliged to make a referral under the EPBC Act and an application under the EP&A Act.

- The current EPBC Act review should include measures to increase the collaboration with States during listing processes, and improve the alignment of those listings. There are concerns with the practice of providing nominations to States for comment without attaching the nominated values. This makes it difficult to provide relevant comment or documentation on a nomination when the values for which the site to be listed are not available. In addition, while a jurisdiction can comment on the likely heritage significance of a site to that State or Territory, it is beyond its capacity to comment on the national significance of a site. If a preliminary analysis of the likely national significance of the site could be provided by the Commonwealth with the nomination, this would allow the jurisdictions to provide better targeted responses to the nomination documentation.

(ii) Referrals

- There remains uncertainty as to the appropriate time to refer matters to the Commonwealth and when / if the referral needs to go on public display. This can add considerable time to project development timelines. The clarification of the referral process would further promote a cooperative approach to assessment of controlled actions under the Assessment Bilateral Agreement. Further, clarification of whether the Commonwealth is required to make referrals under the Assessment Bilateral Agreement to the Minister responsible for administering the EP&A Act (and not any other Minister) would assist in resolving any ambiguities as to what is required under cl 12.2 of the Assessment Bilateral Agreement (which is read in conjunction with cl 44).

(iii) EIS processes

- Under the EPBC Act, the Commonwealth could consider an 8 lot subdivision to be a matter of national significance even thought it does not require an EIS under the EP&A Act or trigger a Species Impact Statement (SIS) under the TSC Act. Under the EPBC Act, the equivalent of a full EIS assessment process could be required including advertising the development application in a newspaper circulated nationally.

(iv) Administrative issues with the bilateral

- As acknowledged by the Commonwealth, assessments under the Assessments Bilateral Agreement insert additional steps and requirements to the NSW assessment processes and have the potential to delay assessments. The Commonwealth maintains that the Assessment Bilateral Agreement streamlines the process for proponents, but the proponent is still required to make a referral to the Commonwealth and an application in NSW for their development/project.
- NSW currently deals with four branches within DEWHA (the Biodiversity team, Mining team, Commonwealth owned land team and Heritage team). Delays can result from Commonwealth officers' understanding of the NSW assessment system and of the need for timeliness in dealing with development applications. There are also differences in the way different branches deal with assessments of controlled actions under the bilateral agreement.
- There was an underestimation by NSW of the level of oversight that the Commonwealth expected for each project being assessed under the Assessments Bilateral Agreement. Some steps for which that the Commonwealth requires NSW input appear trivial, such as the requirement that a proof copy of the advertisement be forwarded to the Commonwealth so that they can approve it going in a national newspaper. The Department of Planning felt that this is something that could be done without Commonwealth approval. Also, the Commonwealth reserving the right to make comments on the proposal but not to have those comments attributable to them publicly causes complications for the publicly available Response to Submissions report by the proponent. Although the review of administrative procedures has lessened delays due to excessive supervision, there is still potential for timelines not to be met.

- In developing the administrative procedures it was clear that, although the Commonwealth accredited the NSW assessment processes, there was little understanding of the steps involved in each process and the associated statutory timeframes. This has caused delays to the NSW assessment process.

(v) Differing Assessment Requirements

- Different assessment requirements for threatened species, ecological communities and heritage sites between the State and Commonwealth cause confusion for the proponent. A common set of requirements for these entities should be developed. Despite the Assessments Bilateral Agreement, certain duplication remains.
- Each Act has differently worded review and appeal provisions that aim to achieve similar outcomes. Any inconsistency between assessments may place legal uncertainty on a project.

(vi) Approval Conditions and Offsetting

- Where the Commonwealth Government approves a "controlled action", there may be different determinations and/or conditions of approval applied to the proposal from those imposed under NSW legislation. An example is the different requirements for biodiversity offsets applied to the Hume Highway duplication.
- The approach to offsetting under the EPBC Act, and the potential implications for processes such as Biobanking and Biocertification under the TSC Act, has caused some concern. The NSW Biobanking scheme currently is not accredited under a Bilateral Agreement, which means that it cannot be used by proponents who need to make a referral under the EPBC Act. This can be a deterrent to proponents using the biobanking scheme more generally.

(vii) Rezoning issues

- The NSW Government is moving toward more strategic approaches to conservation through the use of Biobanking and Biocertification at the rezoning stage for major land release and significant employment and housing sites. As a result, biodiversity conservation and corridor issues can be considered at the outset where the consideration of cumulative issues can result in better environmental outcomes with less red tape.
- Given the Commonwealth involvement only at the development application stage, there is a potential disconnect where arrangements for offsets have been made at the rezoning stage but are not taken into consideration when a later development triggers the EPBC Act.

(4) POTENTIAL STREAMLINING PROCESSES

(a) Approvals Bilateral Agreements

In 2008 the Department of Planning met with DEWHA to discuss a number of issues relating to the Bilateral Agreement, and further areas where duplication of process and red tape could be reduced. There are a number of areas of environmental assessment in NSW where Approvals Bilateral Agreements could be developed, which may assist in reducing duplication of environmental assessment processes. These may include some land release areas or State-significant site applications where comprehensive planning provisions are put in place and could include management of NES matters.

(b) Strategic Assessments

Under the EPBC Act the Commonwealth Environment Minister may agree to conduct a "strategic assessment" of potential actions under a policy, program or plan. These may include:

- regional-scale development plans and policies;
- district structure plans;
- local environmental plans;
- large-scale industrial development;
- fire, vegetation or pest management policies, plans or programs;
- water extraction/use policies; and
- infrastructure plans and policies.

A strategic assessment happens early in the assessment process and is separate to the conventional referral/assessment/approval process under the EPBC Act. The advantage of the strategic assessment approach, is that it can examine the potential cumulative impacts of actions and provide an efficient framework for the consideration of these issues upfront without the need to subsequently refer the development proposal to the Commonwealth.

Consideration could also be given to recognition as "strategic assessments", of the assessments of concept plans under Part 3A of the EP&A Act as well as the assessment required for a range of other zoning or environmental plans and that development undertaken subsequently, consistent with these outcomes would be exempted from the need to refer matters under the EPBC Act.

Draft Terms of Reference have recently been developed for a Strategic Assessment of the Sydney Growth Centres. The assessment involves input from DECC, the Department of Planning and the Commonwealth.

(c) Conservation Agreements

The potential also exists to pursue with the Commonwealth the development of Conservation Agreements for the protection and conservation of biodiversity in key areas of high biodiversity but where development is proposed. A conservation agreement may provide upfront the parameters to be addressed in the design of the development to promote the protection and conservation of matters of national significance. A conservation agreement may include a declaration that actions do not need approval under Part 9 of the EPBC Act. Currently there is only one such agreement in NSW: at Myrtle Creek, Bungawlbyn.

(5) RELATED ISSUES

Although not specific to this Term of Reference, two related matters are worth consideration in this Inquiry:

- the Commonwealth *Environment Protection (Sea Dumping) Act 1981* has generated similar issues in respect to overlap of required approvals for proposed works. It is noted that this Act allows for 'declarations' that can remove unnecessary overlap with State approvals, similar to the Agreement that has been reached in respect to the EPBC Act; and
- potential inconsistencies in both processes and environmental and other development standards between States for proposals that are adjacent to or cross-over State borders, such as highway construction, airport regulation, border rivers and catchment management, and pollution management.

(6) RECOMMENDATIONS

In order to decrease the level of duplication between Commonwealth and NSW environmental assessment systems, the following recommendations are made:

(a) Streamline administrative procedures for bilateral agreements to:

- adequately take into consideration the statutory timelines that bind the NSW assessment process;
- encourage early and frequent interaction between Commonwealth and State assessment officers to ensure that information is distributed in a timely manner;
- ensure consistent assessment requirements for State and Commonwealth threatened species/heritage values be developed;
- recognise the NSW Biobanking methodology; and
- recognise and endorse the NSW offset approach whether via biobanking or calculated by other methods.

(b) A consistent listing approach be taken for matters of national and state significance, including that the listing of threatened species and heritage values under Commonwealth and State legislation be agreed by the Commonwealth and State Ministers and should include consistent provisions.

(c) Extend bilateral agreements to include approvals agreements that cover key areas (e.g. land release areas, major rezonings, major development sites) or classes of development where strategic assessments or conservation agreements can be developed to provide a strategic approach upfront and remove the duplication of assessment or approvals at the project approval stage.

6 Climate change & natural resources issues in planning and development controls

Questions raised in the Background Document:

- How should climate change be addressed in the planning framework?
- Is the current framework adequate to consider the potential effects of climate change?
- How should natural resources issues be taken into account in the planning and development approval framework?

(1) SUMMARY

The EP&A Act has been subject to ongoing review and modification since its introduction in 1979 as new environmental, social and economic considerations have emerged and as society's values and priorities evolve especially in relation to environment protection and biodiversity conservation. The NSW planning system has had to adjust rapidly in the last decade to several emerging environmental issues that have played out in the NSW Courts including climate change and sea level rise, greenhouse gas emissions and ecologically sustainable development (ESD).

The incorporation of natural resource management (NRM) and climate change considerations in the both land use planning and development assessment processes is an ongoing process requiring cross-government collaboration at the local, state and national level. The consideration of climate change and natural resources should be integrated into all levels of the planning process. This will serve to mitigate future costs to all levels of Government that may arise as a result of environmental events. Care should be taken, however to ensure that requirements relating to climate change are derived from a risk based assessment of the evidence base that is available.

(2) LAND USE PLANNING FRAMEWORK

(a) Addressing NRM and climate change in land use planning

The available planning tools outlined below address climate change and NRM at different spatial and temporal scales. The NSW Government is working towards improved use of these tools, including better integration of NRM and climate change in the land use planning context.

(i) State planning and policies

The NSW State Plan sets the strategic direction for, among other things, environmental targets to secure sustainable water supplies, reliable electricity with increased renewable energy, cleaner air and reduction in greenhouse gases, improved native vegetation, biodiversity, land, rivers and coastal waterways, and jobs closer to home, to reduce travel times/emissions.

In respect of climate change, the NSW Coastal Policy provides for coastal protection, protection of public access and accommodation of coastal processes including those associated with climate change and sea level rise. In addition, various State Environmental Planning Policies (SEPPs) outline specific planning considerations related to environmental and natural resource values. These include: SEPP 71 Coastal Protection; SEPP 14 Coastal Wetlands; SEPP 26 Littoral rainforests; BASIX SEPP (reduction of energy consumption and water use for residential buildings) etc.

DECC and the Department of Planning have commenced a comprehensive review of coastal regulations including the NSW Coastal Policy, the Coastal Protection Act and SEPP 71 Coastal Protection to more adequately address coastal issues in the context of climate change adaptation.

(ii) Regional and strategic planning

The current framework used to direct long-term planning in NSW is the comprehensive regional planning strategies (Regional Strategies), driven by active partnerships between state and local government, communities and business.

The Regional Strategies provide a broad strategic context for land use planning, including establishing important green corridors, dedication of significant landholdings for public protection, and balancing regional economic development with the protection of environmental assets, cultural values and natural resources. The Regional Strategies also require consideration of natural hazards including those associated with climate change. The Strategies also promote concentration of new development around existing centres and appropriate mixed land uses in order to reduce vehicle trips, thereby minimising increases in greenhouse gas emissions.

NSW councils are required to develop their local environmental plans consistent with the relevant Regional Strategy, including those provisions relating to the management of environmental and natural resources. The NSW Planning Reform Fund provides financial assistance to councils to develop their LEPs consistent with Regional Strategies.

The Regional Strategies are prepared in consultation with natural resource agencies, councils and Catchment Management Authorities (CMAs). For example, Regional Conservation Plans, developed by NSW DECC identify lands of high conservation value to inform the Regional Strategies.

DECC has also been developing regionalised climate projections and a preliminary scan of the potential biophysical impacts associated with these predicted changes. This study will provide refined information to NSW decision makers at a regional scale. The study is looking at the effects of climate change in specific NSW regions on sea level, runoff and floods. It will then examine the impacts of these changes on land, coastal hazards and flood risks and natural ecosystems across NSW.

(b) Land use zoning and NRM clauses

Local Environmental Plans (LEPs) provide specific development controls and standards at the local government area scale. There are a number of measures that can be used in an LEP to protect environmental values and manage natural resources including land use zoning, additional zone objectives, permissibility provisions and 'Model clauses'.

There are several land use zoning options that complement environment protection objectives, or the management of natural resources and primary industries:

- four Environment Protection Zones that allow limited development that would not compromise various levels of environmental objectives;
- seven Rural Zones that promote protection of natural resource attributes as well as environmental protection; and
- three Waterway Zones that promote sustainable use of waterways commensurate with the differing levels of environmental protection ascribed by councils.

Ministerial Directions under Section 117 of the EP&A Act set out what councils must consider when preparing LEPs. Of the 29 current Ministerial Directions, 13 relate to natural resource management, including addressing climate change.

The *Standard Instrument – Principal Local Environmental Plan* provides the format (including standard zones) for all new LEPs in NSW. Currently, natural resource 'model clauses' are being drafted and reviewed by relevant State agencies for inclusion in the Standard Instrument. These model clauses, once finalised, can be adopted by councils in LEPs if a local provision is needed on a particular environmental or natural resource management matter.

Model clauses may include specific heads of consideration, development standards or other mechanisms for considering natural resources within the planning context. In some instances, the Model Clauses will be accompanied by maps which provide an overlay of a particular environmental feature or matter for planning consideration.

(c) Local planning - climate change considerations

As a consequence of climate change, adaptive management in land use planning is becoming increasingly important. For all councils, identification and mapping of hazards such as flooding and bushfire risks will need to be incorporated into LEPs. For coastal councils sea level rise, predicted weather and wave patterns, and changes in extreme events such as flash flooding and coastal flood frequency are additional factors to be considered.

The planning system will also play a key role in ensuring that primary industries can adjust to climate change to ensure that long term food, fibre and timber security can be maintained and regional economies and ecosystems can be supported.

Greater coordination is needed to ensure that State agencies, including NRM agencies, Primary Industries and Emergency Services organisations contribute to strategic planning for climate change adaptation. Council capacity building, including the provision of technical, planning and advisory tools will also be required to ensure that climate change is effectively incorporated into local plans.

DECC has produced a floodplain risk management guideline that provides advice on how to consider various degrees of sea level rise and increases in rainfall intensity that may occur to the year 2100. The guideline however does not specify a single figure for sea level rise, and different councils have begun applying differing sea levels within differing timeframes. In contrast, Western Australia, South Australia and Qld have applied State wide sea level rise benchmarks for some time, with different bench mark levels applied between states. Victoria is also developing a sea level rise benchmark to the year 2100.

The Department of Planning is currently working with DECC to provide councils with a consistent approach to assessing sea level rise in risk management and planning decisions. Consultation is expected to commence in March 2009 on sea level rise (SLR) benchmarks for 2050 and 2100. It is intended that SLR benchmarks will be incorporated into local land use planning and development assessment processes. It is envisaged that council capacity building, dissemination of sea level rise benchmarks, and the establishment of coastal adaptation planning guidelines will form part of the NSW Government's 2009 Climate Change Action Plan.

(d) Climate change and transport issues in planning

The NSW State Plan also acknowledges the complimentary role of transport related targets in reducing greenhouse gas emissions. The transport sector is a major source of greenhouse emissions. Sustainable land use and transport planning and development therefore have a key role to play in meeting the State Plan targets and addressing climate change mitigation.

In considering how climate change should be addressed within the planning framework, there is the opportunity to also recognise the potential benefits of reduced emissions resulting from rail freight and public transport infrastructure projects that facilitate a reduction in vehicle use and encourage sustainable development.

There are already a number of key projects promoting sustainable transport, including:

- Sustainable Mobility Initiatives for Local Environments (Smile) Project;
- NSW BikePlan and On your bike project; and
- National Australian Built Environment Rating Scheme (NABERS) – Transport.

The Australian Transport Council (ATC), which directly informs COAG, has previously supported the use of the *National Guidelines for Transport System Management in Australia.* Consistent with this approach, the ATC together with State and Territory Planning Ministers are considering draft *National Guidelines for Passenger Transport and Land Use Planning (2008)* which would become an appendix to the ATC National Guidelines. The draft Guidelines are also being considered by the Planning Officials Group. The draft Guidelines are consistent with the objectives of the National Charter for Integrated Land Use and Transport Planning, which reflects current practice in NSW. Agreement through COAG to apply National Guidelines for Passenger Transport and Land Use Planning as part of the ATC National Guidelines would result in minimal change to the NSW planning system.

(3) DEVELOPMENT ASSESSMENT FRAMEWORK

The EP&A Act puts in place development controls through the planning framework as outlined above (i.e. State policies, Regional Strategies, LEPs and DCPs). These development controls are used in development assessment and approval processes under Parts 4, 5 and 3A of the EP&A Act. The development assessment framework is designed to take into consideration NRM matters and climate change considerations through environmental impact assessment (EIA) – a system of identifying, evaluating, and outlining options for avoiding, mitigating or managing environmental impacts.

(a) Addressing NRM in development assessment

Over the last 30 years EIA methods have advanced significantly with improved understanding of various environmental effects and impacts, increased use of risk-based assessment, and the introduction of best-practice guidelines and performance-based standards for a broad range of industries and land uses.

In the main, most NRM matters form part of the environmental assessment of proposed developments assessed under the EP&A Act by councils, other approval authorities and determining authorities in NSW. As with other planning assessment matters however, effort is needed to avoid increasing any regulatory burden that may be introduced through over-regulation of a given issue.

NRM issues are addressed in development assessment processes in NSW through:

- assessment of development under Part 3A and Part 4 must address section 79C of the EP&A Act, which includes consideration of impacts on natural environments;
- determining authority assessment of Environmental Impact Statements (EISs) and Review of Factors (REFs) under Part 5 of the EP&A Act;
- compliance with other environmental laws (e.g. Threatened Species Conservation Act, Native Vegetation Act, Water Management Act, Rural Fires Act, Protection of Environment Operations Act etc);
- consistency with environmental planning policies including: SEPP 71 Coastal Protection; SEPP 19 Bushland in Urban Areas; SEPP 14 Coastal Wetlands; SEPP 26 Littoral rainforests; and the BASIX SEPP; and
- consistency with primary industries policies including: SEPP 30 Intensive Agriculture; SEPP 52 Farm dams and other Works; SEPP 62 Sustainable Aquaculture; SEPP Mining, Petroleum Production and Extractive Industries; and the Rural Lands SEPP.

(b) Addressing climate change in development assessment

Climate change adaptation and mitigation measures have been incorporated into the development assessment process under the EP&A Act through:

- consideration of the NSW Coastal Policy, SEPP 71 Coastal Protection, and the LEP Standard Instrument in respect of coastal hazards, climate change and sea level rise;
- BASIX program - requiring 40% savings in water and energy use in new residential developments including major alterations;
- compliance with the Building Code of Australia (BCA) for both residential and commercial development including energy efficiency requirements for commercial buildings covering building fabric, external glazing, air conditioning, ventilation systems, lighting, power and hot water systems; and
- integrated transport and land use planning initiatives including the provision of public transport infrastructure, planning provisions to encourage the use of public transport, introduce bike plans; implement jobs closer to home and strategically location of centres and employment areas.

The NSW Government, in conjunction with the Australian Building Codes Board (ABCB), is also investigating possible BCA climate change adaptation measures, including identifying the vulnerability of different types of buildings to potential climate changes such as stronger winds, higher temperatures, less rainfall, more bushfires and more severe flooding. Consideration is currently being given to strengthening and expanding the BASIX program under the NSW Government's 2009 Climate Change Action Plan as part of the Plan's climate change mitigation measures.

Co/Trigeneration technology provides an opportunity for localised distributed energy to be generated by micro turbines using gas as the energy source. The tri generation system can also capture heat that would otherwise be a surplus waste product, to provide space heating, hot water, space cooling and refrigeration and can even be used to chill water that is then used to cool buildings. These approaches along with other energy efficiency and demand management approaches are being encouraged in major development and redevelopment projects.

The planning system encourages domestic use of solar energy by allowing the installation of photovoltaic systems and solar hot water systems as exempt development if they meet specific development standards (size and positioning requirements to avoid impacts on surrounding amenity.

Recently issues has been raised as to whether the planning system can assist in protecting a householder's rights to solar access for the purposes of energy generation i.e. prevent adjoining development from overshadowing their property and reducing the efficiency of their solar energy systems. The right to solar access has for some time been a planning matter that consent and approval authorities have considered when assessing development proposals. The general approach taken by the Courts on similar issues is to allow for equitable sharing of amenity and resources between properties (e.g. view-sharing, solar access sharing etc). Councils will continue to address solar access for domestic households and solar-sharing arrangements, alongside other related considerations when assessing development proposals including ecologically sustainable development, climate change (including reducing greenhouse gas emissions) and the public interest.

(4) RECOMMENDATION

The planning system is well placed to consider natural resources, environmental conservation and management and climate change issues at each step of the process, whether at the strategic planning stage, zoning stage or development assessment stage.

Already extensive provisions have been integrated into this system with significant benefits in terms of biodiversity and sustainability outcomes, however these initiatives should be expanded through the following.

a) Increasing effort to integrate existing data and natural resource mapping and assessments into land use planning to provide a more integrated approach e.g. better utilisation of information systems being developed by the Department of Lands.

b) Natural resources clauses in the Standard LEP Template to be finalised and supported by guidelines along with training for council planners in their use.

c) Existing initiatives to integrate climate change adaptation into planning and development controls should be extended as programs are developed at the State and National level. For example, guidance on sea level rise benchmarks should be disseminated to councils and supported by coastal adaptation guidelines in the near future.

d) Measures to promote climate change mitigation in the planning system by extending the BASIX program to save water and energy.

e) Expanding integrated transport initiatives including efficient housing and public transport approaches, centres policy, jobs closer to home initiatives as well as efficient freight transport programs.

f) Furthering efforts between State agencies to avoid duplication and overlapping responsibilities with respect to the management of land and natural resources, particularly in the area of development assessment.

7 The appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales

Questions raised in the Background Document:

- Should competition analysis be part of the local planning decisions?
- How should competition be factored into the planning system, if at all?

(1) SUMMARY

Land use planning and development controls should support the competitive operation of the State's development industry.

The principal means of the planning system to support competition is through ensuring that the supply of suitably zoned land for development exceeds demand. This is best done at the strategic land use stage and consequently reflected within land use zonings and other provisions within LEPs, particularly in terms of infrastructure, demand, amenity or environmental degradation.

It is a legitimate role of the planning system to turn down developments that may increase competition but will place a net cost on society.

The Department of Planning is undertaking a number of initiatives to ensure the planning system supports competition, including developing a Draft Centres Policy, reviewing the retail provisions in the Standard Instrument and reviewing the Subregional Strategies.

(2) BACKGROUND TO COMPETITION POLICY AND THE PUBLIC INTEREST

Australian governments initiated a national approach to competition policy reform in October 1992 when they established an Independent Committee of Inquiry into a National Competition Policy for Australia. In 1995, all Australian governments agreed to a package of reforms based on the recommendations of the Hilmer Report. The introduction of a private certification scheme in 1997 was in response to this initiative.

The underlying presumption of National Competition Policy (NCP) is that competitive markets bring benefits, particularly for consumers and businesses. Restoring and enhancing incentives to compete leads to greater efficiency in resource use, lower prices and costs, higher real incomes and fairer outcomes. One on the initiatives to implement the *Competition Principles Policy Agreements* (1995) was to review and reform of all laws that restrict competition unless it can be demonstrated that the restrictions are in the *public interest.* The guiding principle set out in clause (5)(1) of the *Competition Principles Policy Agreements* for this review was that legislation should not restrict competition unless it can be demonstrated that:

- The benefits of restriction to the community as a whole outweigh the costs; and
- The objective of the legislation can only be achieved by restricting competition.

The NCP recognises that restrictions on competition may be justified. As a means of determining whether particular restrictions are justified, and whether their benefits outweigh their costs, they are assessed against a number of criteria including public interest considerations.

The factors used to determine what is in the public interest are outlined in clause 1(3) of the *Competition Principles Policy Agreements* and include:

- laws and policies relating to ecologically sustainable development;
- social welfare and equity, including community service obligations;
- laws and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

The NCP has left the list open ended and governments may account for any other matter relevant to determining the merits of a restriction on competition.

(3) CURRENT NATIONAL COMPETITION ISSUES ASSOCIATED WITH RETAIL

Recently there has been a considerable debate regarding the interaction between the planning system and competition, particularly with reference to the grocery sector.

This debate has been fuelled by the publishing of the following reports:

- Allan Fels Report for the Urban Taskforce, which argued that the planning system does not allow for sufficient retail floorspace and only allows supermarkets in some centres, which in turn drives up consumer prices, and impacts upon national economic performance;
- the ACCC inquiry into the grocery market, which argued that: (i) zoning and planning laws, including existing centres' policies, are perceived to act as a barrier to supermarket entry; and (ii) incumbent supermarkets 'game' the planning system, using objections to delay/deter the entry of competitors into the market; and
- the Productivity Commission report into the market for retail tenancies, which argued that planning and zoning laws can limit competition and erode the efficient operation of the market for retail tenancies.

Similar issues to those being raised in NSW by the Urban Taskforce are being raised in other states. For example, the Victorian Department of Planning and Community Development recently released their '*Retail Policy Review*' Discussion Paper, which acknowledges the arguments put forward by the ACCC and others. The Discussion Paper sets out 4 principles that guided the Review. One principle is that planning policies and controls should not limit retail competition and innovation, or distinguish between or favour particular forms of retailing unless there is a clear public policy case for doing so'.

It is also noted that the same debate is occurring in the United Kingdom. The UK Competition Commission, as part of its *Investigation into the Groceries Market* (2008), argued that a new competition test should be introduced into the planning system. It is proposed the test would examine:

- whether the proponent was a new entrant into the local area;
- the number of fascias in the local area; and
- the market share of the proponent.

The UK Government is considering its response.

(4) COMPETITION AND PLANNING

It is not, and never has been, the intention of the planning system to impede competition unless there are issues of *public interest.* The principal means of supporting competition in the planning system is through ensuring that there is sufficient suitably zoned land to accommodate market demand, thereby allowing new entrants into the market. This is best done at the strategic land use stage and consequently reflected within land use zonings and other provisions within LEPs, rather than at the stage of assessing individual development

applications. Establishing a policy position in this way (i.e. in the strategic plan and the LEP) will give greater certainty and up-front advice for individual landowners and applicants.

Competition per se is currently not a planning consideration in the assessment of zoning or development proposals. However competition issues do interact with the planning system in two keys ways:

- ***Directly*** through market competition for customers. For example,
  - if a new supermarket threatens to 'blight' an existing centre and 'force' these customers to travel further for their retail needs. In this case the merit assessment process would weigh the costs of the proposal against any demonstrated community benefit from having a new supermarket or centre which may bring greater choice for the wider community. This is a particularly important issue in regional and rural NSW. Having weighed up all the impacts, where there is a net benefit to society, the new centre/supermarket may be approved, but where there is a net community cost, it would be in the public interest to refuse the proposal.
  - where a development proposal has the potential to sterilise prime agricultural land, or mineral, petroleum of extractive resources due to its location and also where a large development has the potential to exhaust a large proportion of a region's water or other natural resources, the public interest test will be applied.
- ***Indirectly*** through competition for sites or resources for development. For example, where the planning system provides insufficient sites to meet market demand, it restricts new firms from entering the market.

Explicit anti-competitive aspects of the planning systems, such as those raised recently by the ACCC are being addressed. In addition, more indirect aspects, such as the length of time it takes to obtain a rezoning or development approval are also being addressed as part of the planning reforms.

(5) RECOMMENDATION

The Department of Planning is keen to ensure that the planning system supports appropriate competition. As a result the Department is undertaking a number of initiatives to examine the interaction between planning and competition while ensuring the broad-based social, environmental and economic objectives of the planning system are maintained. These include:

(a) Development of a Centres Policy

The Centres Policy currently under development aims to ensure the supply of floorspace exceeds market demand, removes any restrictions on the number of supermarkets in centres, and provides a 'Net Community Benefit Test' approach to provide for the rezoning land to expand existing centres or provide for out-of-centre retail developments. Key considerations include:

- providing for monitoring of the scale and nature of demand for retail and commercial floorspace in regions or sub-regions;
- ensuring the supply of floorspace in existing or new centres exceeds market demand;
- providing a robust, practical and flexible mechanism for rezoning additional sites when insufficient have been provided through strategic plans; and
- catering for different types of retail, for example, bulky goods in a competition neutral manner taking into consideration the public interest.

(b) Review of retail provisions in the Standard Instrument

Retail definitions and zoning provisions are being reviewed in parallel with the development of the Centres Policy to ensure the planning provisions avoid interfering with competition unless there is a public interest issue.

(c) Review of the Subregional Strategies

The provisions in the Sub-regional strategies to implement the Metropolitan Strategy will be reviewed following the finalisation of the Centres Policy to ensure the planning provisions promote competition unless this is outweighed by other public interest considerations.

8 Regulation of land use on or adjacent to airports

Questions raised in the Background Document:

- Is the current arrangement for regulating land use on or near airports appropriate?
- Is there sufficient involvement of the community within which the airport is located under the current system?

(1) SUMMARY

The key issues from a planning perspective include:

- the strategic importance of the airport as a transport hub for passengers and freight and the associated economic development implications in terms of aviation related development, tourism/recreation, ground transport and other economic activities;
- the regulation of activities on the airport (especially on Commonwealth land) – both aviation and non-aviation related – and their relationship to surrounding land use and transport links; and
- the regulation of development near the airport which is likely to be affected by noise or aviation risks and the impact of land uses near an airport on aviation safety.

The separation of land use controls between land within airport perimeters and land adjacent to airports often leads to land use conflicts. In addition, development within airport perimeters is likely to generate increased demand for state infrastructure services. However, States do not have the ability to set infrastructure requirements or to recover the cost of providing these services from airport operators on Commonwealth land.

Increasingly, development within airport boundaries is ancillary to core airport operations. The issue of regulation of non-core facilities (commercial, retail, car parking and entertainment) on Commonwealth land is currently being considered in the development of a National Aviation Policy. If the non-aviation development on Commonwealth land was subject to State planning legislation, this would result in greater consistency between the urban form in and adjacent to airports as well as providing state infrastructure agencies with an opportunity to better manage infrastructure delivery and cost recovery.

(2) AVIATION FACILITIES IN NSW

Sydney has Australia's busiest airport, accounting for 46% of Australia's international air passenger movements and 49% of Australia's air freight movement. A record 31 million domestic and international passengers travelled through Sydney airport in 2007, an increase of 6.4% or 1.87 million people on the previous year. Only two airports servicing NSW have international traffic: Sydney and the Gold Coast (approximately 0.2 million passengers per annum).

Sydney Airport is Australia's international air freight hub, accounting for nearly half of all international freight tonnage handled by Australian airports. In 2006-07, $10.4 billion of Australia's air freight were loaded or discharged at Sydney airport cargo terminals. Recent and planned investment in Sydney and New South Wales infrastructure will further increase Sydney Airport's dominant freight handling and aircraft movement capacity.

Currently 5 airports in NSW have customs facilities (Sydney, Canberra, Coolangatta, Dubbo and Norfolk Island) capable of handling international passenger or freight operations.

There are 90 aerodrome facilities in NSW or affecting NSW land use. These include:

- Seven civil aviation airports and six military aerodromes on Commonwealth land. These airports are currently outside NSW planning controls and are regulated under the Commonwealth *Airports Act 1996* or defence legislation.

CIVIL	MILITARY
Sydney Kingsford Smith	Dochra – Singleton (Military)
Coolangatta NSW/Qld	Williamtown Military
Canberra Act	Richmond (Military)
Newcastle Williamtown civil	Nowra Military
Bankstown	Jervis Bay (Military)
Hoxton Park	Luscombe Holsworthy Army Airfield
Camden	

- 73 aerodromes owned by local councils/authorities (may be leased to private operators). There are seven airline operators operating regular commercial services to 33 regional airports in NSW. Nine NSW regional airports are considered "major" – Coffs Harbour, Ballina, Dubbo, Albury, Wagga, Port Macquarie, Armidale, Tamworth and Williamtown (Newcastle). The aerodrome facilities that do not operate commercial services may have charter flights, private planes, aero clubs or crop dusting operating from the aerodromes.
- Four private aerodromes.

The air transport supply in regional NSW broadly reflects both the historical development of regional airports and the influence of airline economics on service provision together with the demise of Ansett, terrorism and the recent influx of low cost carriers. The domestic regional aviation industry has transformed in a number of ways over the decade including:

- an increase in average aircraft size (seat supply up 57%, flights down 9%);
- the introduction of low cost carriers – eg Jetstar, Virgin Blue;
- increased load factors (from 72.5% to 77.7%);
- more direct flights;
- more cheap fare deals; and
- decentralisation of flights..

Growth at regional airports over last 4 years (passengers/an)

Regional airports	2002/3	2006/7	% change in 4 years
Coffs Harbour	187,751	300,674	60%
Ballina	74,704	282,814	279%
Wagga Wagga	90,403	169,288	87%
Dubbo	92,295	167,224	81%
Albury	102,029	157,228	54%
Port Macquarie	67,712	109,959	62%
Tamworth	61,539	97,501	58%
Armidale	51,966	86,012	65%
Lismore	33,297	67,062	101%
Griffith	29,284	62,666	114%
Orange	34,727	58,504	68%
Newcastle (Williamtown)	40,208	49,427	23%

(3) REGULATION OF AIRPORTS IN NSW

(a) Federal Provisions

AirServices Australia, the Civil Aviation Safety Authority (CASA), and Australian Transport Safety Bureau (in the Department of Infrastructure, Transport, Regional Development and Local Government) constitute a tripartite structure for providing safe aviation in Australia, each with separate and distinct functions, working together as an integrated system.

- AirServices Australia is a Federal Government corporation providing air traffic control management and related airside services to the aviation industry and:
    - provides Aviation Rescue and Fire Fighting services at 19 airports;
    - manages air traffic operations for domestic and international flights;
    - provides aeronautical data, telecommunications and navigation services; and
    - since 1999, is responsible for endorsing Australian Noise Exposure Indices/Forecasts (ANEF) for all Australian airports.
- CASA - is an independent statutory authority which conducts the safety regulation of civil air operations in Australia with powers under the *Civil Aviation Act 1988* and *Air Navigation Act 1920* – regulating pilots in the operation of aeroplanes. Issues such as aviation security, safety and airworthiness of aircraft, competence of the flight crew, maintenance systems and operations management, are covered by regulations.
- Australian Transport Safety Bureau (in the Department of Infrastructure, Transport, Regional Development and Local Government).

Under the *Airports Act 1996* and regulations, additional powers have been introduced to protect the Commonwealth airports of Mascot, Coolangatta, Bankstown and Canberra. Although these airports are leased to private operators, they are 'Commonwealth places' and therefore remain under the jurisdiction of the Commonwealth.

Under the *Civil Aviation Act 1988* and supporting Civil Aviation Regulations, certain major or interstate airports are licensed and CASA exercises powers to protect operational airspace around those airports. These airports include Albury, Armidale, Ballina, Coffs Harbour, Dubbo, Port Macquarie, Tamworth, Wagga Wagga and Williamstown.

The Department of Defence operates six military airports under the *Defence Act 1903* and regulation. This legislation, either alone or in conjunction with the *Airports Act 1996*, provides for the protection of operational airspace around these airports.

Summary of Regulation of land use on and around Airports in NSW (excluding defence facilities)

	Airports on Cwth Land	**Airports not on Cwth Land**
Private operators - Aviation uses at airports	Self regulated unless major development or Master Plan – then approval by Federal Minister under the Airport Act	development consent under EP&A Act
Private operators - Non-airport use at airports		development consent under EP&A Act
Setting of ANEF	AirServices Australia	AirServices Australia
Use of ANEF to constrain nearby land use	Aust Standards & EP&A Act	Aust Standards & EP&A Act
Operational airspace	Regulated by CASA/Airservices + Airport Act	Regulated by CASA + Airport Act

(b) NSW State Provisions

(i) Air services

NSW Government regulation of intrastate air services applies only to route-operator allocation and does not cover issues of safety. Under the *Air Transport Act 1964*, air services linking regional centres or towns within NSW are regulated by the NSW Ministry of Transport. The principle purpose of this legislation is to prevent a single operator obtaining a monopoly over the operation of regional NSW air services.

(ii) Regulation of land in and around airports

Land use planning in and around airports (excluding Commonwealth aerodromes) is regulated under the EP&A Act as well as other acts such as the *Protection of Environment Operations Act 1997*.

Strategic planning

When preparing Regional Strategies and local environment plans, the location of the airport must be considered in terms of its potential to act as a strategic centre attracting tourist, industrial and business opportunities. It also needs to be considered in terms of its transport implications as well as the potential impacts on surrounding land uses. It is interesting to note that there has been a 279% growth in passenger numbers over the last 4 year at Ballina regional airport with associated growth in ground transport implications. As a result, strategic planning in areas where regional airports are located must be taken into consideration when ensuring the long term options for use of existing airport facilities.

Given the difficulty in obtaining sites for large scale infrastructure such as airports, it is important that the future uses of regional airports are not compromised through inappropriate land use planning. For example if land important for future aviation purposes at the airport was allowed to be used for non-aviation uses such as industrial sheds or shopping centres, this could limit the potential growth of runways, passenger terminals, aviation maintenance or training facilities. In addition, if land adjacent to the airport which was zoned for residential development, for example, it would constrain any future intensification of airport usage. Further the approval of tall structures likely to intrude into the operational airspace adjacent the airport under the flight path would affect the safety of aircraft flying into or out of the airport and limit any future expansion of the airport.

Air safety and noise control for development near airports

Air safety and noise control regulations can effectively sterilise adjacent non-airport land in terms of development potential and general usage. While this might be reasonable in respect to existing operations, airport operations and Commonwealth standards change over time with consequent potential increased impacts on adjacent land. Consideration should be given to ensuring that any such changes are accompanied by appropriate compensation for neighbouring affected landholders.

Under the EP&A Act, planning authorities must take into consideration airport noise and safety issues associated with tall structures when preparing an LEP relating to land in the vicinity of a licensed aerodrome.

These provisions are under a Ministerial Direction under s117provisions in the EP&A Act. These provisions require planning authorities to consult with the Commonwealth and the aerodrome lessee and set height limits that take into consideration the Obstacle Limitation Surface (OLS) as defined by the Commonwealth. The council must obtain permission from the Commonwealth to allow tall development in the OLS zone. These provisions also prohibit or regulate land use based around airports based on Australian Noise Exposure Forecast (ANEF) levels (see table below)

Type of development	Planning provisions in S117 Direction 3.5 Development Near Licensed Aerodromes	
	Prohibited	Only permitted if meets AS 2021 regarding interior noise levels
residential purposes, nor increase residential densities	ANEF exceeds 25	ANEF is between 20 and 25
schools, hospitals, churches and theatres	ANEF exceeds 20	ANEF is between 25 and 30
hotels, motels, offices or public buildings	ANEF exceeds 30	ANEF is above 30

As a result, the setting the ANEF and OLS under Commonwealth legislation (into which the State has no input) can have very significant implications on property values, development patterns and social amenity in the area surrounding an airport.

Development on airport land

Under the Infrastructure SEPP the following provisions apply under the EP&A Act, for airports which are not on Commonwealth land,

- If the airport is proposed by a public authority, then the proposal must be assessed under Part 5. If the proposal is likely to significantly affect the environment, then the proposal must be assessed under Part 3A with an EA prepared and determined by the Minister for Planning.
- If aviation and non-aviation development are proposed by non-public authorities, a development application under Part 4 must be lodged with the local council. Major aviation developments are considered to be designated development and require an EIS. Non aviation development on any existing airport sites require development consent, unless they are exempt developments.

(c) Issues with airport noise

Process of developing ANEF Contours

Currently ANEF Maps are developed to forecast the aircraft noise levels expected around an airport. There are 2 options for modelling these contours. The contours may relate to a particular year, generally about 10 years in the future, based on the airport operator's forecast of aircraft movement numbers, aircraft types, destinations, and a given set of runways at the airport for a particular year. Alternatively the ANEF maps could be based on the airport operator's estimate of the "ultimate capacity" of the airport which may include future runways (yet to be built) and airport operations which could occur in the future as a result of the further development of the airport and changes in national and international air services. The ANEF for Canberra Airport was based on Ultimate Capacity in 2050.

Generally, the airport owner/operator initiates the process for developing aircraft noise contour maps. Where the contouring work is undertaken by the airport owner/operator, Airservices Australia may assists in the process. In some cases, Airservices may undertake the work on behalf of the airport owner/operator for a fee. The ANEF is subjected to review and endorsement by Airservices Australia. For airports on Commonwealth land, the ANEF maps are linked with the airport's Master Plan which sets out a 20 year plan for the airport which is reviewed every 5 years. The Master Plan is approved by the Federal Minister.

The Australian Noise Exposure Forecast (ANEF) system has been used in four key ways in Australia to:

1. delineate where, and what type of, development can take place around airports;
2. to determine which buildings are eligible for insulation around Sydney Airport;
3. for technical assessments of airport operating options, and
4. as a tool for providing information to the public on noise exposure patterns around airports.

The ANEF system has been the subject of increasing criticism in recent years. These criticisms led to the establishment of a Senate inquiry, which followed the opening of the third runway at Sydney Airport in 1994. The Senate published the report 'Falling on Deaf Ears' (1995). A further

Senate inquiry – the Senate Rural and Regional Affairs and Transport References Committee Inquiry into the Development of the Brisbane Airport Corporation Master Plan in 2002 – made a number of recommendations for improvement of the ANEF system including that the dual roles of Airservices Australia of government adviser and external consultant be critically examined to determine whether there is potential for conflict of interest. This recommendation has not been acted on.

Recently there has also been extensive criticism of the ANEF prepared for Canberra International Airport. The Department of Planning considers that the predictions of future aircraft movements at the airport are unrealistic high. This *ultimate capacity* approach used with the Canberra and at the Brisbane Airport results in hypothetical capacity from changes to the airport not yet approved to model likely noise levels.

Criticisms of the ANEF system have included:

- The ANEF does not communicate to the community effectively the likely noise implications
- There is concern that the preparation of ANEFs by airport operators and the process of endorsement of ANEFs are open to manipulation. The linkage of the ANEF contour maps to the ultimate capacity of the airport including future runway configurations or usage patterns in the master plan can result in unrealistic projections and the potential to sterilise large areas of land.
- The dual roles of Airservices Australia of government adviser and external consultant need to be critically examined to determine whether there is potential for conflict of interest.

For federally owned airports leased under the *Airport Act 1996*, there is a requirement to prepare master plans. These master plans set out the plans for the operation of the airport in the next 10-20 years. The master plan must be updated every 10 years. Currently modelling of ANEF for the purpose of the master plans may include consideration of hypothetical situations such as noise generated from a runway which has not yet been built where they may be no certainty as to its configuration and hence likely noise impacts from the operation of the runway. This has occurred in Brisbane leading to a high level of annoyance in the community. In Canberra, the ANEF modelling used in the master planning for that airport included hypothetical estimates of plane technology and volumes of use which are well outside the likely operational level of the future. These contours can be seen as an ambit claim to prevent development in the vicinity and the potential for airport noise management measures in the future – such as curfews. This approach results in transference of costs and constraints to land owners in the vicinity.

It would be preferable if an independent panel be appointed jointly by the Airservices / DOTARs and relevant state Ministers for Planning to provide specifications as the basis for the development of ANEF contours and to assess the ANEF contours developed by either AirServices or the airport corporation and to endorse ANEF contours to be used in the State's planning regime. In addition the parameters in the master plan used to estimate flight movements should also be reviewed by the independent panel. It would be preferable if the parameters of the masterplan not be used in the development of ANEF projections without the agreement of the panel.

Use of the ANEF in planning

Having identified the ANEF contours, there is the critical issue of how this information should be used in planning. The use of the ANEF system for land use planning has been criticised for:

- the failure of ANEFs to consider the impact of aircraft noise under the 20 ANEF contour; and
- the appropriateness of the ANEF and Australian Standard AS 2021-2000 (Acoustics-aircraft noise intrusion-building, siting and construction) (AS 2021) system for both greenfield sites and brownfield sites.

Currently in the s117 direction, there are limits beyond which particular types of development are not permitted. There are also a range of limits where Australian Standard 'AS 2021' must be referred to with regard to meeting interior noise levels. Issues have been raised regarding the Australian Standard AS2021 and whether it should be reviewed. The attached table shows a comparison between the noise planning controls in Australia Standards and thos applied in other countries.

Table 6.1: Comparison of Aircraft Noise Based Land Use Planning Controls

Noise Exposure ANEF	Australia	United States	Netherlands	France	Canada	Germany
> 40	No housing	No housing	No housing	No new housing	Housing not recommended	No new housing
30 – 40	No new housing; insulation of existing housing at Sydney	No new housing; insulation of existing housing	No new housing; insulation of existing housing	Limited new housing	Housing not recommended	Limited new housing
25 – 30	No new housing	**No restrictions**	No new housing	**No restrictions**	New housing with insulation	Restrictions in some States
20 – 25	New housing with insulation	**No restrictions**	No new housing	**No restrictions**	**No restrictions**	Restrictions in some States
< 20	**No restrictions**	**No restrictions**	**No restrictions**	**No restrictions**	**No restrictions**	**No restrictions**

Source: *Expanding Ways to Describe and Assess Aircraft Noise* - Department of Infrastructure, Transport, Regional Development and Local Government.

The Australian Standard AS2021 could be reviewed to provide for clearer differentiation of "aircraft noise information" and "land use planning controls" and to take into consideration brown and greenfield sites. In addition consideration could be given to provisions to recognise "occasionally noise affected area" to more clearly convey to communities outside the 20 ANEF contour that these areas may be adversely affected by noise on occasions. A new category of "occasionally noise affected area" should be introduced and noise management approaches recommended rather than applied in a mandatory way for new developments in those areas.

Following the release of the Metropolitan Strategy, some inner-city local government areas are reliant on the ability to locate additional housing in aircraft noise affected areas to achieve their additional housing numbers. There is concern that strictly enforcing the provisions of s117 Direction No.3.5 at brownfield sites may potentially reduce dwelling targets. The s117 Direction No.3.5 may need to be amended to cater for increased residential development in areas adjoining, and in proximity to, brownfield airports. Criticism has been raised with regard to the use of s117 Direction No 3.5 for greenfield sites because of the potential to reduce the delivery of land for housing or employment opportunities (eg at Queanbeyan).

It has been suggested that the policy approach taken in the determination of major mines and other major development (with significant noise impacts) be adopted for airports in greenfield sites. The principles established for these developments could be applied to airports in the following ways.

- A "*high impact area*" is identified, and the proponent must acquire surrounding land if requested to do so or to implement noise mitigation measures to meet specifications. *The* airport owners/operators would need to develop a Noise Amelioration Program based on the principles at Sydney Airport potentially with the introduction of curfews as with Mascot, Adelaide and Coolangatta airports. The airport owner/operator would have an incentive and a range of approaches to limit the size of the high impact area – such as curfew, noise sharing flight paths, etc

- A further "*noise management area*" is identified, and monitoring must occur in that area. If monitoring indicates that the noise levels are unreasonable, then the proponent must acquire the land if requested to do so and to implement noise mitigation measures to meet specifications. The developer of the greenfield site would be required to build noise sensitive land uses such as residential to meet internal room specifications consistent with the policy established in the Infrastructure SEPP for noise sensitive development adjacent busy roads or railway.

DOTARS administers the Sydney Airport Noise Amelioration Program, which provides a mechanism for the insulation of homes and public buildings such as schools, pre-schools, churches and health care facilities, and the purchase of the most seriously affected properties. A similar scheme operates around Adelaide airport. The Sydney regime was introduced in 1994 after the opening of the third runway at Sydney airport and was extended in 2000.

- $400 million has been spent so far, with the money recovered via a noise levy on plane movements.
- The geographical boundaries for eligibility under the program are revised annually and reflect any annual changes in aircraft activity at the airports.
- The Commonwealth Government funds the cost of insulation up to a maximum limit of $60,000/household in Sydney.
- The Commonwealth Government funds the noise amelioration for eligible public buildings on an actual cost basis.

The *Airport Act 1996* provides for the environmental management of off-site impacts at airports on Commonwealth land. This is another area which should be strengthened so that airports appropriately take responsibility for noise impacts on surrounding communities.

(d) Issues with regulating airport uses on Commonwealth land in NSW

Currently NSW legislation does not apply to aviation or non-aviation development on Commonwealth land. Issues have arisen in NSW and other States regarding the regulation of activities on airports operating on Commonwealth land which are not subject to State planning and other laws. Issues for NSW include:

- Mascot Airport and implications for Rockdale, Botany and Kurnell – 1998 curfew;
- Canberra Airport and implications for land release in Queanbeyan;
- Albion Park Airport and land release in the vicinity;
- Williamtown airport and implications for Raymond Terrace;
- Coolangatta Airport and development in Tweed – 2001 curfew; and
- Bankstown Airport and development in the vicinity.

On major airports such as Mascot, a master plan is prepared by the airport lessee and approved by the Commonwealth under the *Airports Act 1996* which sets out the measures to manage the airport operations and development on the site. Developments with a value of less than $20 million which comply with the masterplan, do not require any further approvals. The need for an independent assessment of the masterplan and major development proposals has been raised by all State governments.

The NSW Government submission to Sydney Airport Corporation Limited's *Sydney Airport Masterplan 2009* supports the reforms to planning and land use regulation for major airports. NSW has called for:

- improved consultation with state and local authorities and co-operation between airport operators and state and local governments on landuse planning in and around airports;
- a more comprehensive program by the airport to mitigate significant noise impacts
- better integration of airports with improved road and rail links to and from airports; and
- mechanisms to be developed to ensure there is effective, ongoing dialogue between airport operators and the local communities.

The increased traffic and other environmental impacts brought about by development at airports can have a significant impact on local communities. If these impacts are not adequately

considered as part of the approvals process, developments on airport sites will also have an unfair advantage on developments in surrounding areas. There may also be an impact on land use targets set at a regional or state level that seek to manage the interaction between jobs, employment and the need for transport and other infrastructure.

The need to achieve better development outcomes in and adjacent to airports on Commonwealth land is becoming increasingly relevant. For example, the Department of Planning is investigating the development potential of the Western Sydney Employment Lands which is adjacent to the proposed second Sydney airport site and Badgerys Creek. There needs to be greater certainty around the planning requirements (eg noise contours, OLS etc) that may apply to these areas so that detailed investigations can be carried out on the site.

(4) RECOMMENDATIONS OF LGPMC

The NSW Government supports the recommendations unanimously agreed by all State and Territory Ministers at the Local Government and Planning Ministers Council on 4 August 2005. That is:

1. all airport non-aviation development (excluding defence or airport ancillary developments inside of terminal buildings) be subject to relevant state and territory planning laws, policies and procedures;
2. any land the Commonwealth may subsequently acquire and lease to an airport lessee that is put to non-aviation use be also subject to relevant State and Territory planning laws, policies and procedures;
3. all master plans and major planning proposals on airports be subject to a review by an independent panel which assesses the proposals, including their impact on surrounding land uses, relevant local government planning schemes and infrastructure; and
4. if non-aviation development control at airport remains with the Commonwealth, it should provide clarification as to how it will enforce conditions of development approval placed on airport lessee companies and what role state and territory government's are expected to play in relation to these conditions.

A similar resolution was also endorsed by all states and territories on the 9th February 2007 at the Council of the Australian Federation meeting.

As a general comment, it would seem to be imperative that the impact of non-aviation development within airports be subject to State planning requirements in order to properly assess implications on surrounding land use and infrastructure planned and developed to accord with local and regional objectives.

(5) CURRENT COMMONWEALTH REVIEW

The Department of Infrastructure, Transport, Regional Development and Local Government is currently co-ordinating the development of a comprehensive national aviation policy to guide the aviation industry's growth over the next decade and beyond. The Commonwealth Government's aim is to give industry the certainty and incentive to plan and invest for the long term, to maintain and improve the aviation safety record, and to give clear commitments to travellers and airport users, and the communities affected by aviation activity.

An Issues Paper was released for public comment in April 2008, with the Aviation Green Paper released for comment in December 2008 as the second of three steps in the development of the policy by the end of 2009. Issues being considered include:

1. Aviation Safety
2. Aviation Security
3. International Aviation
4. Domestic and Regional Aviation
5. General Aviation
6. Industry Skills and Productivity
7. Consumer Protection
8. Airport Infrastructure

9. Aviation Emissions and Climate Change
10. Noise Impacts

(6) RECOMMENDATIONS

The NSW Government is inputting to the development of a comprehensive national aviation policy in relation a range of issues including those recommended by the Local Government and Planning Ministers Council on 4 August 2005. Recommendations include:

- the establishment of community consultation committees to provide meaningful communication on the planning, assessment and ongoing operation of major airports;
- the establishment of independent panels with community and state and local government appointed membership to assess masterplans and non-aviation development proposals on Commonwealth land and to provide recommendations to the Commonwealth Minister.;
- a review of the process for setting and monitoring ANEF noise levels and OLS with an independent panel involved to evaluate the methodology and predictions parameters;
- a review of the use of ANEF levels in limiting land use planning surrounding airports;
- Agreement that airport lessees and non-aviation developments on Commonwealth land contribute to any relevant development contribution levees – for example upgrade of the road system to take into consideration increase vehicle movements associated with the development on the airport; and
- Agreement that airport operators develop an appropriate noise monitoring and management regime to appropriately deal with airport noise impacts on surround land uses and to provide incentives for operators to minimise adverse noise impacts on the community.

9 The inter-relationship of planning and building controls

Questions raised in the Background Document:

Is the current inter-relationship between the planning system and the regulation of building works appropriate?

(1) SUMMARY

An integrated planning and building control system has delivered some significant gains for NSW. However, it has also introduced some complexities. These complexities have arisen from the integration of planning and building controls and subsequent changes since that initial integration of the controls. These reforms include the introduction of private certification and the introduction of a performance based version of the Building Code of Australia.

Further complexities may arise with the proposed introduction of a National Construction Code, which will initially incorporate building and plumbing standards and may later be expanded to include electrical and telecommunications standards.

The planning reforms currently being undertaken will resolve some of the complexities and reduce red tape, however further work is required in this area.

(2) BACKGROUND

Prior to 1998, the EP&A Act controlled the land use and planning implications of that land use, but did not control the building or construction standards. There was a distinct separation between planning and building controls.

In 1998, building controls were transferred from the *Local Government Act 1993* to the EP&A Act and were integrated into the development control regime. This coincided with a number of other reforms to the planning system which:

- recognised State significant development;
- introduced exempt and complying development;
- improved integration of various State and local government approvals; and
- introduced a role for the private sector in the issuing of construction certificates and complying development certificates.

The EP&A legislation now controls both planning and building matters including post construction/operational aspects such as fire safety maintenance. The distinction between planning and building legislation is now less clear. Under the integrated system:

- *Development Approval (DA)* determines whether a proposed use and the development parameters is suitable for the site and complies with the relevant planning considerations
- *Construction Certificates (CC)* must demonstrate the design of a building complies with the Building Code of Australia and is consistent with the development consent
- *Occupation Certificates* (OC) demonstrate compliance with the necessary standard prior to occupation
- *Complying Development Certificates (CDC)* must demonstrate that the proposal meets the relevant development performance standards and the Building Code of Australia standards and replaces the DA and CC.

Just prior to the introduction of the integrated system (1997) the first fully performance-based version of the Building Code of Australia (BCA) was introduced. This allowed for a performance-based approach to building design and construction, and for discretion in determining the approach to be used in compliance analysis and evaluation.

(3) CURRENT SITUATION

Before 1998, council officers were the sole building control authority for their local government areas. Within councils, there tended to be a separation in the administration of the operational aspects of the planning and building controls. Planners dealt with strategic planning and development control in a planning sense, and building surveyors administered all aspects of the building control legislation. Building surveyors were responsible for not only checking for compliance with building standards and for enforcement of the building control legislation but also, for assessing the impact of changes to existing buildings and, for making discretionary decisions regarding whether to require the upgrading of that building.

Today building surveyors are either employed directly by a council or operate in the private sector as building certifiers. They issue certificates indicating whether a standard has been met and whether a development is consistent with the development consent. Private building certifiers are given no discretionary decision making authority in terms of requiring the upgrading of existing buildings. However, they are given discretionary authority in the assessment and approval of proposed performance-based designs.

Depending upon the terms of their accreditation, certifiers can:

- issue Subdivision Certificates;
- issue Construction Certificates, certifying (among other things) compliance with the Building Code of Australia (BCA);
- issue Compliance Certificates specifying that conditions of consent have been satisfied or that work complies with the plan and specification, or nominating the classification of a building under the BCA;
- issue Complying Development Certificates, certifying that nominated development proposals comply with standards and criteria in Council's Local Environmental Plans and Development Control Plans; and
- act as a Principal Certifying Authority (PCA), responsible for, among other things, issuing occupation certificates specifying that buildings are safe to occupy and subdivision certificates specifying a subdivision can proceed to registration where the Council's LEP permits private sector involvement.

Council certifiers are accountable for their decisions under legislation. Private sector certifiers are held liable through common law actions of negligence and breach of contract and by the Building Professionals Board (BPB). The BPB is a statutory authority established under the BPA to accredit, audit and investigate certifiers. The BPB has implemented a number of measures for this purpose including an accreditation scheme and a code of conduct..

The recent planning reforms have expanded the ambit of the BPB to allow it to accredit council employed building certifiers and other building professionals. Accreditation ensures an adequate level of competence and accountability. It also provides proportionate liability protection to those relying on certificates issued by accredited certifiers.

(4) ISSUES WITH THE CURRENT SYSTEM

The integration of planning and building controls under one regime has resulted in some significant benefits – including:

- the delivery of development which better reflects the intentions of the relevant planning authority and government; and
- providing for a more holistic consideration of the impacts of a building proposal - not only in terms of health, safety and amenity, but also in relation to sustainability and other environmental impacts:

Notwithstanding the benefits, the integrated system has introduced some complexities and challenges. These generally fall into two basic streams – namely the administration of the operational aspects of the controls, and the regulation of building standards.

(a) Administration of the operational aspects

The administration of the operational aspects of the planning and building controls in NSW is shared by consent and certifying authorities. Sharing of this responsibility between consent and certifying authorities has lead to some issues, including:

- confusion regarding the roles and responsibilities, and hence either duplication of work in the assessment and approval of certain building work (for example, unusual buildings or structures, and changes to existing buildings), or the function not being properly fulfilled;
- confusion regarding responsibility for compliance enforcement;
- the need to sometimes consider building matters in detail at development approval stage and the consequential impacts on applicants in terms of approval delays and the costs in meeting the application information submission requests from consent authorities; and
- the tendency of some Councils to adopt an over-regulatory approach to reduce the scope of certification involving private certifiers .

For example, under the planning system, certifying authorities assess a building proposal for compliance with the BCA (at the construction certification stage), however, the consent authority is responsible for determining at the DA stage, whether to require the fire safety or structural upgrading of an existing building that is subject to a proposed upgrade. Also, although a certifying authority may issue a notice of intention to serve an order for building breaches, it has no authority to issue an actual order.

The complexity of the planning system can also result in similar issues. Examples of complexities include:

- the regulation of building sustainability in NSW by BASIX and the BCA. BASIX addresses energy and water efficiency for residential development ("BASIX affected buildings"), and is applied at the DA stage. The BCA is relied upon to provide measures complementary to those required under BASIX and for regulating the energy efficiency of commercial buildings, and is applied at the construction certification stage. Sustainability measures outside of the BCA may be required by other development controls (eg. DCPs, local policies, etc.)
- the regulation of bushfire protection at both the DA stage (this may include construction standards and other conditions imposed by the Rural Fire Service) and at the construction certification stage (via the BCA)

The above are examples of policies which result in the need for applicants to provide detailed building information at the DA stage of the approval process.

The 'old system' more concept planning approval, which did not require detailed consideration of building matters at the DA stage (because the council officers were responsible for approving both stages) appears to have been lost. Often this detail is asked for at the DA stage with conditions imposed relating to the more building type mattes leading to duplication.

(b) Regulation of building standards

Building standards include the technical requirements relevant to building elements, building systems and services (including fire safety systems, mechanical ventilation systems) and the completed building (the finished product) with which compliance must be demonstrated in order to obtain approval to carry out building work, and with which the completed building work must comply. They are designed to protect the public interest and achieve the objectives of the government.

Some may also construe building standards to include any requirement which regulates the built environment – including standards for building setbacks, bulk and scale, privacy, private open space, overshadowing. However, these are often expressed as planning controls or development standards.

The Building Code of Australia (BCA) is the primary instrument for the regulation of technical building standards. It does not regulate the 'planning requirements' (building setbacks, bulk and scale, privacy, private open space, overshadowing). The latter are regulated by various

development controls such as State Environment Planning Policy (SEPPs), Local Environment Plans (LEPs),) and Development Control Plans (DCPs).

The BCA is a fully performance based building code. It specifies, in performance terms, what a building must achieve in terms of health, safety, amenity and sustainability and contains a suite of building standards that, if used, are deemed to comply with the performance requirements. However, an applicant for approval may propose to not use the deemed-to-comply provisions and instead propose an alternative building solution. There are a number of benefits that derive from the performance based approach including, cost efficiency in construction and promotion of innovation, however, it also introduces some complexities in terms of design, assessment, approval, implementation of the design, managing building changes, and management-in-use.

The BCA is a national code. It is applied by all states and territories of Australia via their respective Acts of Parliament which deal with building control matters. NSW implements the BCA via the EP&A Act. All BCA amendments and reforms are subject to rigorous assessment and due process in accordance with COAG principles before they are implemented. The Department of Planning plays a key role in this process on behalf of the community and Government of NSW. It should be noted that the BCA despite being Australia's national building code, does have variations which are specific to each state/territory.

(c) Issues with integrated system

Factors arising from the integration of the planning and building regulatory system include:

- a lack of clear delineation between planning and building controls under the NSW planning system.
- lack of clarity in the planning system regarding the roles and responsibilities of consent and certifying authorities in relation to administration of the operational aspects of the planning and building controls.
- limitations placed by the planning system on the role of certifiers (ie. they are limited to compliance checking only (tick the box), with generally no authority to make discretionary decisions regarding building control matters eg. whether an existing building subject to a proposed change should be upgraded).
- the planning legislation is designed to regulate planning matters – not necessarily detailed building matters.
- the building control aspects of the planning system are based on concepts and principles which have carried over from the old system and have not been reviewed or updated for many years, and were never drafted with an "integrated system" in mind.
- the building control aspects of the planning legislation are difficult and cumbersome to find, which exacerbates implementation and compliance issues.

Examples of where there are issues with the integrated system include:

- Councils regulating building standards which are already addressed by the BCA (eg. ceiling heights, sound insulation, fire safety standards) via their planning instruments, development control plans and other planning policies. While there are benefits to accrue from these actions, there are issues about the resulting regulatory inconsistencies between councils, the lack of rigorous regulatory assessment these requirements are subjected to before implementation, the cost impacts and confusion for applicants regarding which standards prevail – the BCA or the planning standard. Additionally, such actions have the potential to erode the significant gains that have been made in national uniformity through the BCA process. The opportunity to undertake further reforms in this area now exists, and issues relative to this matter are outlined in under issue (g) "Interrelationship of planning and building controls".
- Standards for some building elements arise from both the planning and building parts of the development control system. For example, a window in the external wall of a house is regulated by both the BCA (for the purposes of health, safety and amenity) and planning controls (for the purpose of sustainability, protection of privacy, etc.). This can result in difficulties for designers, industry, applicants, consent authorities, certifying authorities and

other stakeholders in trying to establish the standards that must be met, and the perception of duplication and overlap.

- The current planning system does not always comfortably accommodate the level of detail necessary for the proper regulation of building matters. The EP&A legislation is designed to control and regulate 'development', and on a broad scale it does this quite well. However, at the other end of the spectrum, where the proper regulation of the minutia associated with building design and construction can be of significant importance to public health and safety (eg. the regulation of the installation or modification of building systems and services), the EP&A legislation does not perform as well.
- The NSW Government's Fire Protection Systems Working Party released a report for public comment during 2008 which included some recommendations for improving the planning system in this regard. The final recommendations of this Working Party are yet to be determined. This issue may be exacerbated by a COAG reform which is seeking consideration of a proposed new National Construction Code (NCC). The NCC is intended to initially regulate both building and plumbing. In the future this may be extended to include telecommunications, and electrical work.
- The planning system does not adequately cater for a performance based building code and performance based designs (Alternative Solutions). The Department of Planning is currently taking some action to address this issue.

(5) NATIONAL TRENDS

Generally, the extent of the role of private certifiers in NSW, compared to the role of private building surveyors in other states generally, is limited. Building surveyors in other states play a greater role in relation to the building control function than their counterparts in NSW. For example they have discretionary authority on deciding whether an existing building subject to change should be upgraded to make the building safe.

Not every State and Territory has an integrated system:

- Victoria, Northern Territory the ACT and Tasmania have separate Building Acts and separate planning and building regimes. New Zealand also has a separate Building Act and separate planning and building approval regimes.
- Western Australia is in the process of introducing a new Building Act.
- Queensland has an integrated planning and building approval regime similar to NSW. However, they do have a separate Building Act, and the extent of the role given to private sector building certifiers is greater than that given in NSW.

(6) ACTIONS FOR IMPROVING THE SYSTEM

Several initiatives and actions have already been put in place to improve building control and the interrelationships between planning and building control matters in NSW, including:

- changes to strengthen building certification practice and increase accountability;
- expansion of the range of building professionals that may be accredited;
- accreditation of council employed building certifiers;
- better setting out of the roles and responsibilities of councils and accredited certifiers with regard to compliance with consents and certificates; and
- the development of a new Complying Development Codes for Housing, Industrial and Commercial Buildings. These codes will standardise, as much as possible, exempt and complying development across the State, giving councils more time to focus on strategic planning matters rather than processing of development applications relating to development with minor environmental impacts.

The Department of Planning is also undertaking a number of reviews of aspects of the planning system relating to building control, one of which includes a review relating to the design, approval, implementation and maintenance of performance-based designs proposed under the BCA (Alternative Solutions).

There is a decision to be made as to whether the integrated planning and building system should continue in its current form and whether this model is the most effective means of regulating the built environment in NSW. Furthermore, consideration will need to be given to how the pending building control reforms are managed and administered, for example the introduction of the National Construction Code (NCC) in this State.

It is widely recognised that having integrated planning and building controls is a necessity in order to provide for on the ground outcomes that truly reflect the intentions of the planners (state and local) and of the government and community. However, there appears to be a need for clear separation between the policy and operational aspects of planning and building controls. In this regard, there appears to be a need to further clarify planning and building controls – including consideration of whether building certifiers should be given more responsibility in the area of building control.

(7) RECOMMENDATIONS

For more effective integration of planning and building controls, further work is required in relation to:

- the articulation of the roles and responsibilities of the consent authority and certifier;
- distinguishing between building regulations that ensure the proper and safe functioning of buildings and strategic planning and urban design controls;
- ensuring that assessment of planning and building related matters occurs at the relevant stage of the approval process;
- updating, strengthening and clarifying building control components of the planning system; and
- accommodating the performance based approach to building regulations.

The issue of local government involvement in building regulatory matters is not unique to NSW. It has been discussed at the national level by the Building Ministers Forum and COAG. There is a need to continue work at this level to establish and implement a national approach to resolving the problem, as a matter of priority. This may include ensuring local government is aware that it has an opportunity to influence the development and reform, and hence content, of the BCA.

10 The implications of the planning system on housing affordability

Questions raised in the Background Document:

- What is the impact of the planning system on housing affordability?
- What changes, if any, need to be made to the planning system to improve housing affordability?

(1) SUMMARY

The planning system can impact on housing affordability in many ways. For example, housing affordability can be impacted by the extent and locality of land release, local planning controls, development contributions, provision of infrastructure and services and the time it takes to determine development applications. 'When developing planning policies, consideration should be given to the potential impact of housing affordability. The planning system should ensure adequate supply of appropriately zoned and serviced land in greenfield and brownfield locations across the State and in provide for an efficient approvals regime for different types of housing.

It is likely that effective planning policies can improve the affordability of housing in some areas. However, the development of such policy needs to be comprehensive and have regard to specific housing market conditions that prevail in a particular area and the impact of other legislation which affects accessibility to land and constraints on the use of that land.

Whilst many of the factors affecting housing affordability are outside the control of the planning system, the State Government is putting in place a range of initiatives to improve the affordability of housing in NSW. The NSW Government will continue to support these initiatives in particular improving its land release process and ensuring public infrastructure levies are set at an appropriate level.

(2) PLANNING ISSUES AND HOUSING AFFORDABILITY

(a) General issues

The NSW Government does not control the main levers that affect housing affordability – interest rates, tax laws, funding for public housing construction, rent assistance and migration are all controlled by the Commonwealth Government. However, one lever affecting housing affordability is housing supply which is important in helping to meet projected demand, keep pressure off housing prices and thus make housing more affordable to the community. The NSW Government is taking a number of steps to help increase the quantity and range of housing available across the State and thus contribute to the State Plan Priority E6 Housing Affordability.

The initiatives being pursued include:

- Streamlining new land release processes
- Reducing levies on new housing development
- Reforming residential development approval processes
- Protecting existing low rental housing, and
- Providing incentives for the development of affordable housing to be managed by social housing providers.

(b) Land supply

An increase in supply of appropriately zoned greenfield and brownfield land would significantly reduce budgetary impact on the provision of social housing. It would also substantially contribute to achieving the goals of the State Plan and Metropolitan Strategy.

(i) Zoning of land in greenfield sites

The time required to rezone land for residential development can affect the cost of housing. In recent times greenfield release area rezonings have taken up to seven to ten years. To shorten these timeframes, the Department of Planning has introduced a streamlined precinct planning process to get land to market as quickly and sustainably as possible.

Through the establishment of two Growth Centres in North West and South West Sydney, which benefit from a fast-tracked rezoning process is being applied, the Growth Centres will supply about 181,000 new dwellings. Three new release areas have already been rezoned for about 15,500 new dwellings with a further three residential precincts currently being rezoned. This has lead to the reduction of rezoning times within the Growth Centres to two or three years and as part of this work the Department of Planning is seeking precinct wide approvals which will expedite the development process and establish best practice for development of fragmented land.

Overall, the Department of Planning's Metropolitan Development Program is delivering significant increases in the amount of zoned and serviced land currently to the market and is thus contributing towards the State Plan target of zoned and serviced land to accommodate 55,000 potential dwellings. The potential of land zoned for housing has increased by 41 per cent since July 2005. For zoned and serviced stock the increase was to 33,858 dwellings – an increase of 44 per cent over two years.

These actions have helped ensure that stocks are at a higher level than current demand and are therefore positioned to respond to a market upturn.

(ii) Infill development

The Department's Metropolitan Development Program measures the level of infill residential development (dwelling construction) in existing urban areas. The percentage of dwelling construction from existing urban areas has been increasing compared to greenfield release areas over the past 4 years (most recently released public data is (2004/05).

The Metropolitan Development Program also provides a forecast of future housing supply. The Metropolitan Strategy provides an indicative distribution of supply showing that 60-70 percent of dwellings are to be provided in existing urban areas.

It is important that the planning system ensures that there is adequate supply of land zoned for medium and high density residential development in appropriate locations in these existing urban areas. Where there is an undersupply, this affects land price and affordability.

(c) Strata title reform and redevelopment of existing stock

The Department of Lands is the lead agency in respect to current work, nominated in the Metropolitan Strategy (*City of Cities - A Plan for Sydney's Future*, 2005), to review strata title legislation with a view to helping facilitate the redevelopment of older and/or low density strata title property as a way to assist housing affordability through increased supply.

This is particularly relevant in existing urban areas where redevelopment for greater density utilising investments made in existing infrastructure is being promoted. The Department of Lands is liaising with the NSW Office of Fair Trading and the Attorney-General's Department in this work and draft legislation is anticipated by 2010.

Although such legislation is orientated to achieving social and economic improvements by way of assisting housing affordability (through supply), this will need to be balanced against potential social and economic impacts relating to disruption and dislocation of existing owners and/or occupiers of strata title property. In particular, any such programme will need to include a resolution system to address situations where such impacts become matters of dispute and, potentially, compensation for the negative effect of any forced dislocation and disruption.

(d) Infrastructure provision and affordability

Government agencies and State owned corporations provide physical and social infrastructure to support new and existing housing development. The Department of Planning's role in the provision of infrastructure has in the past been broadly limited to the procurement of land and acting as the consent authority. However, recent fast track rezoning processes referred to above have also been programmed to seek to align the delivery of new housing with the necessary supporting infrastructure. The Department also assists infrastructure agencies in preparing their business cases for greater services in areas where new housing is proposed to allow for a higher proportion of lots / owners to develop.

The attractiveness of an area for development, and as a result its underlying land value, will increase with the provision of new infrastructure. In NSW development levies are charged based on the capture of increased land values that arise because of increased development potential of land. These levies are then used as contributions to help fund the infrastructure that, along with rezoning, provides the increase in development potential.

The Government has taken a policy position that the beneficiaries of the provision of new infrastructure should make a contribution to that infrastructure. This infrastructure contribution can be a significant cost of providing serviced vacant blocks of land ready for development. In some instances, infrastructure contributions for local, State and cities infrastructure can amount to over $65,000 for a single block of vacant land zoned and serviced for residential use.

However the imposition of levies can have an impact on housing prices. Given the current state of the development industry in NSW, along with the broader economic and financial climates, a review of State infrastructure contributions and water infrastructure levies applying to greenfield, infill and employment lands development, along with local government levies charged under sections 94 and 94A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) has recently been carried out. The objective of the review was to ensure that levies charged are consistent with Government plans to boost housing supply and affordability.

The outcomes of this review have been:

- Cessation of development charges imposed by Sydney Water and Hunter Water;
- Refinement of the types of State infrastructure recovered through a contribution and a temporary reduction in the State infrastructure contribution to 30 June 2011;
- Deferral of the payment of State infrastructure contributions from the subdivision certificate to the settlement of the new lot;
- Evaluation of all existing local government contribution plans that would, if applied to a particular development, result in a contribution exceeding $20,000 per residential dwelling; and
- Setting a threshold for all existing local government contribution plans of $20,000 above which contributions for individual residential dwellings may not be imposed except with ministerial approval.

These changes to minimise levies will reduce development costs and are consistent with a commitment to boost housing supply and affordability as well as supporting business and providing a stimulus for the construction industry. They will also improve system efficiencies and the accountability of contributions schemes.

The review of State levies creates a window of 2 years or more where the State has increased its contribution and provides an incentive to complete subdivision construction and stimulate economic development. It also allows the deferment of the time of payment to settlement of lots stimulating development by improving cash flows for developers.

(e) Transport issues and housing affordability

The Government has made a number of recent decisions regarding transport infrastructure provision and greenfield urban release areas. These decisions have been made in response to the current global economic crisis.

The reduction in levies for greenfield development is intended to support the NSW housing industry by achieving improved confidence in the market and thus encourage new housing development through increased affordability.

The Government will continue to support housing affordability, through initiatives such as:

- providing quality public transport infrastructure;
- encouraging the supply of infill development in existing suburbs currently serviced by public transport;
- promoting affordable housing in accessible locations;
- promoting the centres policy with housing close to jobs – jobs closer to home; and
- contributing to discussions regarding private sector contributions toward infrastructure provision in newly created suburbs.

(3) PLANNING ISSUES AND AFFORDABLE HOUSING

(a) Housing NSW Reshaping Public Housing Program

Housing NSW manages over 146,000 properties worth around $28 billion – the largest and most complex asset base of any housing authority in Australia. A key objective of Housing NSW is to increase access to affordable housing in the public and private sector.

Under Reshaping Public Housing, the NSW Government is currently undertaking the most comprehensive reforms to public housing in 50 years. One of the key components of the Reshaping Public Housing reforms is the redevelopment and realignment of its properties to better meet client needs. There is also a new focus on community housing to increase the contribution that it can play in supporting housing need and increasing the supply of affordable housing. A target for increasing community housing from 13,000 to 30,000 homes over the next 10 years has been set. Together these two strategies will require a substantial level of asset-related activity over the next decade.

Whilst planning issues affect the timing and delivery of Housing NSW's substantial asset programs, the key issues with the current program are:

- Delays on supply of Housing NSW sites zoned for medium and high density residential development;
- Inconsistent development standards applied across the state; and
- Specific delays in the assessment of Housing NSW development applications and need to expand the housing codes to include a range of affordable housing types.

The expansion of the types of development undertaken by Housing NSW as Exempt or Complying Development or Development without Consent would provide significant benefits through reducing costs and demand on resources as well as substantially reducing delays in providing upgraded and appropriate housing. Housing NSW has a number of requirements in regard to maintenance and redevelopment.

(b) Affordable Housing Policy

Planning approaches for affordable housing may be conceptualised along a spectrum, involving planning to protect existing sources of affordable housing which may be at risk due to redevelopment; planning to promote new affordable housing; and using the planning system to generate or produce new sources of housing, affordable to low and middle income groups.

Planning mechanisms to protect existing supplies of affordable housing can target incremental processes of change that may cumulatively reduce the overall availability of particular housing types. Mechanisms to protect stocks of lower cost housing that are currently available to local governments in NSW include:

- Ensuring planning instruments contain an overall planning objective to retain or protect existing sources of affordable housing, and to require impact mitigation strategies where the supply of affordable housing is threatened by development;
- Requiring social impact assessments to be conducted for development that could threaten the existing supply of affordable housing; and
- Introducing specific controls to preserve particular types of housing stock that may be threatened.

Opportunities to promote new sources of affordable housing through the planning system include

- Facilitating the supply of appropriately zoned residential land, to avoid artificial supply constraints that may affect the cost of housing, by identifying potential housing opportunities such as un-utilised or under-utilised land; areas in need of urban renewal or upgrading; vacant sites in public ownership. Such land may need to be rezoned for residential development or development at a higher density;
- Introducing planning incentives for diverse housing types or for affordable housing; and
- Facilitate voluntary contributions to finance or produce affordable housing stock through planning (or developer) agreements.

To assist in meeting these affordable housing objectives, the Department of Planning and Housing NSW are preparing an Affordable Rental Housing policy that aims to include incentives encouraging new affordable rental housing projects (including by the private and not-for-profit sectors) utilising the National Rental Affordability Scheme. These incentives may include relaxing zoning restrictions to increase the range of housing (including granny flats) allowed in residential areas; non-discretionary standards for height, floor space ratio, landscaped area, car parking etc; and floor space bonuses for affordable flats. The aim of the policy is to:

- Promote the retention of low cost rental housing or mitigate the loss of existing affordable rental housing including boarding houses;
- Support the Commonwealth government initiatives on homelessness by expanding the current provisions relating to group homes and supportive accommodation;
- Support the Commonwealth National Rental Affordability Scheme by facilitating the provision of affordable housing in appropriate areas;
- Provide incentives for the effective delivery of new affordable rental housing by the private sector and social housing providers;
- Expand the stock of affordable rental housing by providing for apartments, townhouses and secondary dwellings (including granny flats) throughout the State in appropriate zones;
- Streamline the approval regime for Department of Housing to provide for the upgrading of existing affordable rental housing stock and the expansion of that stock.
- Provide a sufficient supply of land zoned for medium and high density residential development in accessible locations;
- Provide affordable rental housing for key workers close to places of work; and
- Facilitate an expanded role for not-for-profit providers of affordable housing.

(4) RECOMMENDATIONS

The NSW Government's 2008 planning reforms legislation was aimed at cutting red tape and improving efficiency in the NSW planning system. This will have a flow on effect for housing affordability by:

- increasing the uptake of complying development from the current 11% to 50% of all applications over the next 4 years, enabling the certification of approvals in ten days and saving some $353 million to the NSW economy and home buyers. The recently gazetted Housing Codes State Environmental Planning Policy provides a major contribution towards this by fast-tracking the approval processes for new single dwelling houses;
- streamlining the plan-making system to substantially reduce delays in the processing of LEPs, including minor rezonings, and produce greater certainty in the delivery of land for investment in housing; and
- improving development application turnaround times through changes to the assessment process, creating the opportunity for voluntary contributions to finance or produce affordable housing stock, the removal of unnecessary concurrences and the introduction of planning arbitrators that will result in cost savings to applicants.