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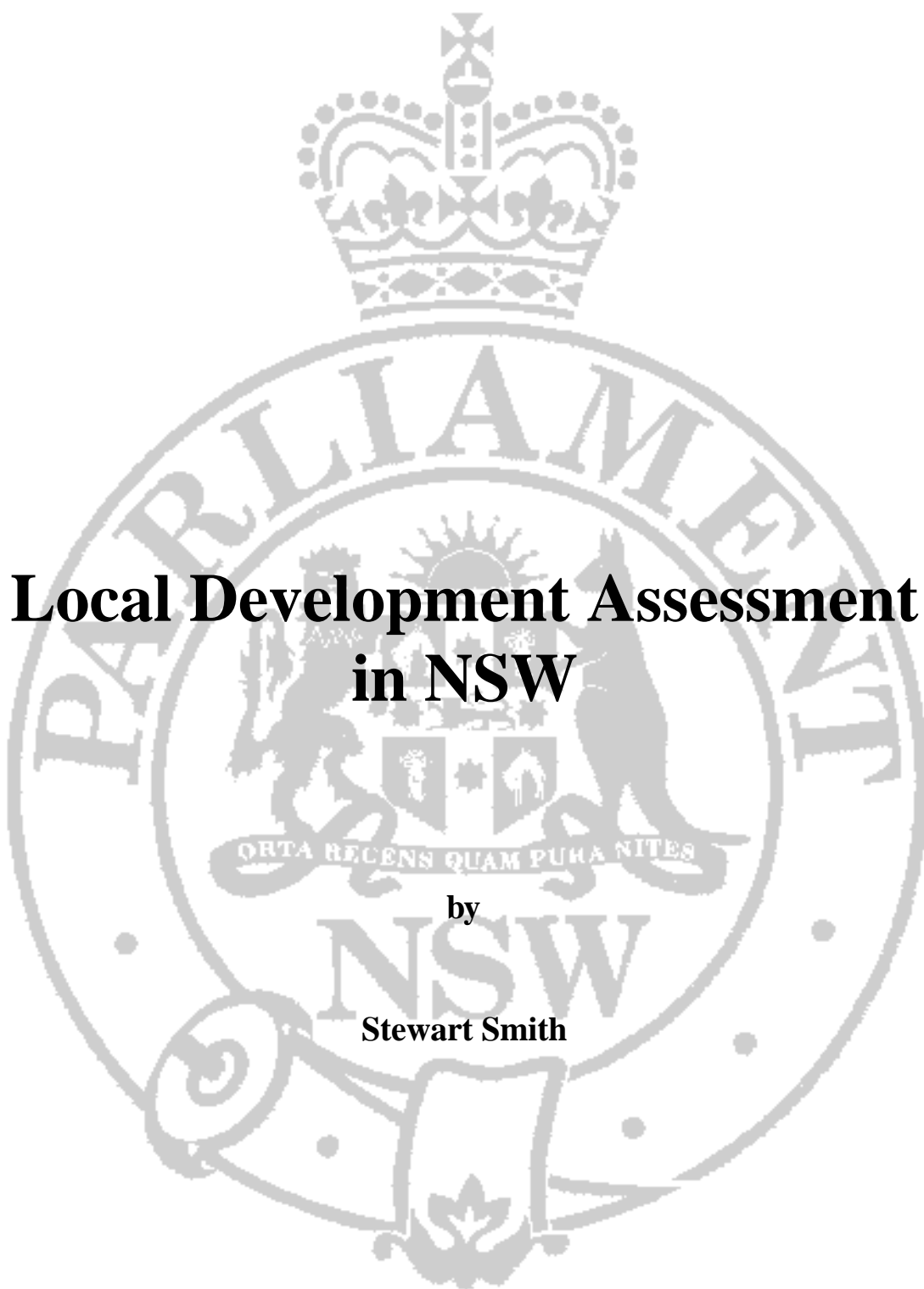# RESEARCH SERVICE

Local Development Assessment in NSW

by

Stewart Smith

Briefing Paper No 8/04

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EXECUTIVE SUMMARY

Local development is development for which a local council is the consent authority. For councils, development applications for housing and associated structures such as pools and garages makes up a large proportion of their development assessment work. However, it has been argued that the development approval process in NSW has been characterised by: a focus on process (rather than outcome); inconsistent policies; varying procedures; as well as a pervading sense of frustration and conflict. In response to this, on 3 July 2003, the Government announced that a taskforce was to be established to investigate and report on the development assessment and decision making process for local development. This paper looks at the outcomes of the taskforce review, the responses to the taskforce by various interest groups, and concludes by reviewing what other states and the Commonwealth are doing in the development assessment field.

The Taskforce review considered that a local development approval process is required which balances the rights of a landholder to be able to build a house to maximise enjoyment of their block whilst also protecting certain minimum rights of adjoining neighbours. According to the Taskforce, the solution lies in the development of appropriate housing standards against which houses are required to comply. It was considered that housing standards are critical to the management of approval times and approval processes as they provide the basis against which developments can be assessed and the process measured. Housing standards also define the community's expectations about what owners can build on their blocks of land and what neighbours can expect to be built next to them. This approach, combined with an increased focus on complying development and private certification, will, the Taskforce argues, result in a faster local development assessment process. This approach was not supported by the Local Government and Shires Association nor conservation groups, but had the broad backing of the Property Council of Australia and architect groups.

The Development Assessment Forum is a national body with representatives from the three spheres of government and the development industry. It was formed in 1998 in an attempt to reach agreement on ways to streamline the development approval process. The Forum engaged consultants to devise a new development assessment approach. The result is a system characterised by: the separation of roles - elected councillors to be responsible for the development of planning policies and independent bodies to be responsible for assessing applications against these policies; and development applications assessed against objective tests and rules – or standards in the NSW Taskforce terminology. Already, South Australia has independent development assessment panels to replace development consent by elected representatives.

From the analysis of the work of the Development Assessment Forum and legislative developments in other States, it is apparent that issues like complying development and private certification are firmly entrenched in the development assessment process, and likely to play a greater role in the future. This is clearly a concern to local government and the environment movement, but strongly supported by the development industry.

1.0   INTRODUCTION

Local development is development for which a local council is the consent authority. For councils, development applications for housing and associated structures such as pools and garages makes up a large proportion of their development assessment work. However, it has been argued that the development approval process in NSW has been characterised by: a focus on process (rather than outcome); inconsistent policies; varying procedures; as well as a pervading sense of frustration and conflict. In response to this, on 3 July 2003, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), the Hon Diane Beamer MP, announced that a taskforce was to be established to investigate and report on the development assessment and decision making process for local development. This paper looks at the outcomes of the taskforce review, the responses to the taskforce by various interest groups, and concludes by reviewing what other states and the Commonwealth are doing in the development assessment field.

2.0   THE NSW LOCAL DEVELOPMENT TASKFORCE REPORT

The Terms of Reference of the Taskforce were to:

1. Investigate and report on the development assessment and decision making process for local development under the *Environmental Planning and Assessment Act 1979* and whether it is achieving an effective, quick, simple process that delivers quality outcomes;
2. Investigate the operation of the system of exempt and complying development and assess whether there are common elements that provide opportunities for wider application;
3. Examine how the Building Sustainability Index (BASIX) developed by the Department of Infrastructure, Planning and Natural Resources will interact with the approval system;
4. Provide advice on the impact of agencies' concurrence and approval roles; and
5. Consult with stakeholders as necessary to ascertain views.

The Taskforce was comprised of eight members, including:

Neil Bird AM (Chair)
Bruce McDonald – Penrith City Council
Peter Williams – University of NSW
Elizabeth Crouch – Housing Industry Association
Robert Barnaby – Masterton Homes
Julie Heraghty – Office of the Minister Hon Diane Beamer MP (ex officio member)
Andrew Cappie-Wood – Department of Infrastructure, Planning and Natural Resources
Amanda Spalding – Department of Infrastructure, Planning and Natural Resources.[1]

Although a quarter of members of the Taskforce represented the development industry, there was

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[1]   Department of Infrastructure, Planning and Natural Resources, *Improving Local Development Assessment in NSW*. Report by the Regulation Review – Local Development Taskforce to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) October 2003. Chair Mr Neil Bird AM.

no inclusion of environment groups or a body such as the Local Government Association or Shires Association of NSW. Predictably, some of the fiercest criticisms of the recommendations of the Taskforce were from these two groups.[2]

A review of the findings of the Taskforce is presented, together with responses from various local government, architectural and development organisations.

The Taskforce Report - Intention of the 1998 Reforms and Current Reality
The Taskforce noted the intention of the 1998 reforms to the *Environmental Planning and Assessment Act* which established:

- A wider definition of development including building and subdivisions;
- New approaches to assessing routine development projects – exempt and complying development;
- Simplified criteria for councils to use in assessing development proposals;
- A system of private certification for certain parts of a development, including an accreditation system for individual professional practitioners.

A series of steps was undertaken to implement these reforms, including:
- Introduction of exempt and complying development by preparing State environmental planning policy (SEPP 60) and approving local environmental plans;
- Creating a market for private certification services by approving accreditation bodies and their accreditation schemes.

The purpose of introducing the concept of complying development was to create an 'as-of-right' development application process if a proposal complied with pre-set standards. The only assessment involved in complying development was whether the proposal was in an environmentally sensitive area and if not, whether the proposal complied with pre-determined standards. It was originally anticipated that 60 per cent of developments would be approved as complying development. However, the take up rate of development approved as complying development has ranged from: 2.4 per cent in 1999/2000; 7.5 per cent in 2000/2001; and 5.9 per cent in 2001/2002. Clearly, the 1998 reforms have not brought about the Government's desired results.

The Taskforce report noted the submission by Masterton Homes that in their experience the approval process for homes in the last five years has increased in terms of timeframes and complexity of process. For instance, Masterton data showed that the timeframe for development approvals in 2001 was 44 days, and in 2003 was 84 days. In contrast, the Department of Local Government, Annual Comparative Information Reports noted a decrease in the length of time for

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[2]   For instance, the Total Environment Centre stated: "The review ignores the environmental and social impacts of development, treating planning simplistically as if the landscape exists only for the benefit of developers." Kelly, F. "Developers' Agenda Gains Ground. Deregulating local development controls." In *Total Environment*, 2004, Issue 1.

development approvals, from an average of 59 in 1994/95 to 46.5 days in 2001/02. The
Department of Local Government's data is reproduced in Table 1 below:
Table 1: Local Government Comparative Data 1994 – 2002.

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02
Development Applications Determined	49,719	45,740	44,867	44,949	122,873	145,574	111,567	124,990
Average No days per Development Application	59	64	62	59	45.5	44.4	48.1	46.5
Median No Days per Development Application	36	37	35	35	29.1	28.1	27.4	27.5

The Taskforce report concludes that in reality, the 1998 reforms have lead to an increase in the
time taken for dwelling approvals due to the following reasons:

- The transitional provisions of the new system made all buildings require a development
  consent, with consequential increases in time and documentation requirements;
- The need for all houses to lodge a development application triggered neighbour
  notification policies of councils;
- There was a delay in the introduction of complying development as councils prepared
  their own Local Environment Plans;
- The ability of councils to prepare their own Local Environment Plans resulted in
  inconsistencies over the standards for a house that could be approved as complying
  development.

**The Local Government and Shires Association Response - Intention of the 1998
Reforms and Current Reality[3]**
The Associations noted that the Taskforce held local government responsible for much of the
delay experienced in the development assessment process. The Associations rejected this, and to
ascertain trends in development application processing, the Associations engaged consultants to
conduct a survey of councils' DA processing times. Fifty-six councils participated, with 3,472
DAs analysed. The results were:

- Two-thirds of DAs were determined within the relevant time frame;
- DAs that took longer to process were four times more likely to be non-compliant with

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[3]   Local Government Association of NSW & Shires Association of NSW, *Response to Report of
        Local Development Taskforce*, February 2004.

council policy and four times more likely to have provided incomplete information;

- DAs that took longer to process were twice as likely to have been referred to a state government agency and almost twice as likely to have required public notification and referral to a council meeting;
- 63% of all DAs were determined within the 40 or 60 calendar day timeframe;
- median processing time for all DAs was 31 days;
- For simple single dwelling DAs, the median was 29 days; for complex dwelling DAs the median time was 32 days; for advertised DAs the median was 37 days; for integrated DAs the median was 69 days.

From this survey, the Associations concluded:

- Negative publicity relating to councils DAs processing times relates to a minority of DAs;
- DAs which comply with council codes and policies and provide all the required information are determined more quickly than non-compliant or incomplete DAs;
- While public notification and referral to council meetings impact on processing times, they are an important part of the community endorsed planning process. Only 4% of DAs go before a council meeting;
- The performance of local government in relation to DA processing is a two way street. The quality of development applications submitted to councils is a crucial factor in the time they take to be determined.

The Associations concluded that the Taskforce's main premise is refuted by the survey findings.

The Property Council of Australia Response - Intention of the 1998 Reforms and Current Reality[4]
The Property Council considers that the development assessment system in NSW is slow, cumbersome and unnecessarily politicised. It claimed that despite reforms to the *Environmental Planning and Assessment Act* to streamline development, progress has been hampered by the:

- Reluctance of local government to divest any responsibility for even the most minor development;
- Dearth of strong, consistent and up to date statutory planning policies;
- Clouded approval processes which are politically motivated as against rationally based; and
- Reluctance of concurrence and referral agencies to facilitate development.

The Property Council agreed that development assessment approval times have become slower due to:

- The lack of sufficiently robust, clear and consistent provisions outlining requirements for

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4   Property Council of Australia, *Regulation Review – Local Development Taskforce, A response to the NSW Government Taskforce*. 22 August 2003.

complying development standards for houses and associated structures;

- The relatively small number of councils that have adopted complying development provisions in their planning instruments;
- The higher level of documentation required in the lodgement of development applications;
- The inability of certifiers to exercise discretion in cases where very minor encroachments may occur.

The Royal Australian Institute of Architects' Response - Intention of the 1998 Reforms and Current Reality[5]

In 2003 the Royal Australian Institute of Architects surveyed their members across Australia on the planning assessment process. Their results showed that in NSW in the year 2000 the average time taken for planning approvals to be processed for new homes was 4 months, and by 2003 it was seven months. Similarly, the processing times for medium density housing had increased from six months to nine months. The Institute agreed that the local development process is clearly unsuited to dealing with the large number of applications it must face, and that too many resources are applied to relatively common and routine approvals, at the expense of not addressing strategic planning issues.[6]

The Taskforce Report – The Preferred Model for Quick Approval of Houses

The Taskforce considered that an approval process is required which balances the rights of a landholder to be able to build a house to maximise enjoyment of their block whilst also protecting certain minimum rights of adjoining neighbours. According to the Taskforce, the solution lies in the development of appropriate housing standards against which houses are required to comply. It was considered that housing standards are critical to the management of approval times and approval processes as they provide the basis against which developments can be assessed and the process measured. Housing standards also define the community's expectations about what owners can build on their blocks of land and what neighbours can expect to be built next to them.

However, the expectations of housing standards differs across regions, such as inner city environments and new release areas. Presently the planning system manages these differing expectations by allowing each council to set its own housing standards and the controls that protect the environment and neighbourhood amenity. The Taskforce notes that this allows the controls to respond to local and environmental issues but prevents the consistency of housing standards across local government areas. Clearly the Taskforce considered this latter factor to be the more important because it then proposed the development of a set of common housing standards, and put forward the following draft standards for further investigation.

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[5]   Royal Australian Institute of Architects, *Improving Local Development Assessment in NSW, Submission to the Minister Assisting the Minister for Infrastructure and Planning (Planning Adminstration).* 14 February 2004.

[6]   The Royal Australian Institute of Architects, *Planning Assessment Survey Report 2003*, 18 September 2003, at 8.

Table 2: Proposed Draft Housing Standards for NSW

Issue	Standard
Number of Storeys	• A house may be built to a maximum of two storeys on any lot greater than 450 square metres;
Streetscape	• Houses to be setback 4.5m from the street, or the average of the 2 adjoining developments; • Garages to be setback 1m behind the front façade of the house; • Secondary street setbacks shall be 2m; • Garages are to be no more than 6.3m wide or 50% of the width of the lot, whichever is lesser; • The primary street façade must incorporate features to identify the façade as the 'front of the house' be it through an entry door, portico, verandah or the like; • Fences proud of the building line are to be less than 1.2m high; • 30% of the front setback is to be permeable.
Side and Rear Setbacks	• Minimum setback to the side and rear for 1 storey building is 900mm; • Minimum setback to the side and rear for 2 storey buildings is 1350mm; • Minimum setbacks to the side and rear for a related building is 450mm; • Some incursions are allowed for fittings, fixtures and eaves.
Bulk and Scale	• Ground floor level shall follow the natural slope of the site and be no more than 1m above the natural ground level at any point; • Houses are to be no higher than 10m to the roof ridgelines; • Wall heights are to be no higher than 7.2m (from natural ground level to ceiling height); • Roof openings cannot be higher than 150mm above the roof line, except for chimneys, flues and heat exchangers; • The maximum cut is to be 900mm and the maximum fill is to be 900mm;
Landscaping, open space and site density	• 20% of the lot must be permeable; • 20% of the lot, or 80 square metres must be private open space (which ever is the greater); • private open space must include an area at the side or rear of the building that is at least 25 square metres and have a minimum dimension of 3m.

Privacy and Solar Access	• At least 3 hours of sunlight must be available to 50% of the private open space of the lot and the private open space of adjoining lots between 9am-3pm on 21 June, or there is to be no net loss of sunlight if this cannot be achieved;
	• Habitable room windows or private open space of adjoining lots within 6m of a viewing point (habitable room window or elevated (1m+) balconies/terraces/verandahs) are not to be overlooked unless:
	   ○ Windows are offset by the width of the largest window, or
	   ○ Windows are fixed and obscure glazed to the point 1.7m from the floor; or
	   ○ Window sill heights are higher than 1.7m; or
	   ○ The viewing point has a fixed privacy screen; or
	   ○ There is a visual barrier 1.8m high and the viewing point is less than 800mm from ground level at the boundary.

Sustainability	• Houses meet a 3.5 NatHERS rating; • AAA rated water appliances are used; • Plumbing is installed to allow a water tank to be installed;
Materials and Colours	• As identified by a local development control plan; • To meet a 'State standard palate' where no local DCP exists.

The Taskforce also proposed that a similar range of standards could be introduced for associated residential structures such as garages, carports, pools etc, to increase the amount of exempt and complying development. The Taskforce recommended that the proposed standards be 'tested' and compared to the principles of good urban design as outlined in SEPP 65. Testing of the standards would need to include an analysis of impacts arising in the following circumstances:

- Environmentally sensitive sites as a result of flooding, bushfires, land slip and acid sulfate soils;
- In areas with existing heritage character or neighbourhood character;
- Where significant views or vistas are present; and
- On lots where large slopes, irregular shapes and poor orientation make it difficult to manage the adjoining impacts.

The Taskforce noted that an important part of the approval process for local development is the standards that identify what can and cannot be done on a standard residential lot. Equally important is the process that is followed to decide that the proposal meets these standards. It was noted that the process of approval must fill the following roles:

- Identify very clearly the standards that the proposed house or extension must meet;
- Identify whether the proposal meets the standard;
- Identify whether the land on which the proposal is to be built is suitable for that type of development (due mainly to environmental impacts or if it is to be built outside the common standards); and
- Provide a set of conditions to ensure that the proposal is built to the approved plans and standards.

The Taskforce report also noted that before the 1998 legislative changes, minor commercial development for shop fitouts, internal commercial works such as internal renovations and offices fitouts, or change of use, generally only required a building application or notification to council. A similar situation existed for minor industrial fitouts and changes of use. It is now common for these types of proposals to require a development consent and construction certificate.

Whilst some councils have made these minor commercial / industrial developments either exempt or complying development, the take-up rates have been very slow. The Taskforce noted that examples are being cited of 100-150 days for the approval of these types of developments. Given that these are usually small businesses and the approval process is straightforward, with conditions to guide opening hours and signage only, the value of going through a full development assessment process is minimal. The Taskforce recommended that the same process as that described for housing standards be utilised for identifying minor commercial and industrial

developments as either exempt or complying development.

The Local Government and Shires Association Response - The Preferred Model for Quick Approval of Houses

The Associations did not support the development of a common set of housing standards and the incorporation of these into an integrated plan template to apply across the State for the following reasons:

- A common set of housing standards does not recognise the differences within and between local government areas, urban and non-urban environments and environmentally sensitive areas. A 'one size fits all' approach is inappropriate and assumes that community expectations and the physical environment are homogenous – clearly not the case;
- Standardisation is not the panacea to the problems of the planning system, there are no compelling reasons for the level of standardisation proposed by the Taskforce;
- Standardisation will benefit private certifiers and developers, no case has been made that their customers, ie ordinary householders, will benefit;
- The standards will result in a denial of natural justice. They will override the provisions of a council's local environment plan which has been developed in consultation with the community;
- Single dwelling houses will fall outside council regulation in all but the most environmentally sensitive areas, posing potential risk to life and property;
- The standards have the potential to encourage 'lowest common denominator' housing design.

The Property Council of Australia Response – The Preferred Model for Quick Approval of Houses

The Council supported the preparation of a common set of housing standards. However, it warned that this needs to be done in a careful way to ensure that good design is perpetuated and mediocrity not rewarded. In the Property Council's opinion the draft standards provide a good basis for further discussion and consultation.

The Council noted the unnecessary delays in minor alterations or refurbishments of minor commercial applications and strongly supported the inclusion of exempt and complying development control for commercial and industrial developments.

The Royal Australian Institute of Architects' Response - The Preferred Model for Quick Approval of Houses

The Institute supported in principle the introduction of a set of common housing standards. However, the Institute's preferred model was for a State Environmental Planning Policy to target minor housing works, containing six or seven 'objectives', together with standards for complying

development which does not require any further assessment. Non-complying development should then only be assessed against those six or seven objectives.

The Taskforce Report – Complying Development
The *Environmental Planning and Assessment Act 1979* already provides an approval process for fast and simple approvals - complying development, with a safety net for more complicated houses – the local development process. However, the Taskforce noted that the introduction of complying development was one of the most controversial elements of the 1998 reforms. One of the principal issues of concern was whether private certifiers would provide the required independent scrutiny of proposals that councils can provide. Other problems in implementing complying development included: the lack of data created difficulties for councils in identifying environmentally sensitive land; and that proposals were quite frequently rejected as complying development because a single standard was not met and the certifier / council had no way of modifying the development to allow it to comply.

The Taskforce considered that there are three key issues surrounding complying development that need to be addressed to give councils greater confidence in the process:

- Clear, unambiguous and effective housing standards that manage community expectations;
- A method to ensure that inappropriate development is not built in environmentally sensitive locations;
- Sufficient confidence in private certifiers to ensure that they do not issue inappropriate complying development certificates.

The Taskforce concluded that the development of a common set of housing standards will address the first concern. It noted that whilst protection of environmentally sensitive areas from inappropriate development is a more difficult issue to address, it proposed that one potential method is to allow complying development to be issued in all but the most environmentally sensitive areas (eg: SEPP 14 wetlands, State significant heritage sites, Aboriginal places and national parks). Another option would be to introduce performance based standards, which would allow certifiers greater latitude in managing environmental impacts.

The Local Government and Shires Association Response - Complying Development
The Associations strongly opposed the introduction of complying development, and continue to oppose the mandating of it. They state that 'one size does not fit all' and is counter to community expectations as well as good planning principles. The Associations were particularly concerned about:

- Allowing for conditions to be placed on complying development certificates where a breach of a single standard occurs;
- Increasing the use of complying development certificates in all but the most environmentally sensitive areas; and
- The resultant reduction in neighbour consultation by limiting notification of development proposals to notification that an approval has been granted.

One of the major problems experienced by councils is that of private certifiers issuing complying development certificates for development which was not complying development in the first place – with councils left to 'pick up the pieces'.

The Associations acknowledged that there is a need for a better planning system to deal with minor development applications. They suggested that the government should seriously consider doing away with complying development and replace it with two categories of development:

- Development with minor impacts with limited heads of consideration; and
- Other development applications subject to merit review, including houses.

The Associations considered that both of these development categories would allow for neighbour notification, and do not consider that houses should be considered as 'tick the box' applications.

The Property Council of Australia Response - Complying Development
The Council agreed with the Taskforce that certifiers and councils should be able to impose conditions on complying development certificates (to make non-complying development comply) where the breach of a single standard occurs.

The Property Council acknowledged that extending the provisions of complying development to environmentally sensitive land is more difficult. The Council recommended that: the Department of Infrastructure, Planning and Natural Resources investigate opportunities to increase the use of complying development in environmentally sensitive areas; guidance be given to councils to develop standards for complying development for environmentally sensitive areas; a review be undertaken of land zoned environmentally sensitive to ensure that such a zoning is warranted; and assistance be provided to councils to assist in the determination of appropriate environmentally sensitive zones. The Council accepted that it may be appropriate that complying development in genuinely defined sensitive areas be confined to items which are associated with houses such as sheds and garages as opposed to houses.

The Royal Australian Institute of Architects' Response - Complying Development
The Institute supported in principle the Taskforce's comments re complying development, but noted that a range of complying development standards needs to be devised, including: free standing dwellings on flat sites; free standing dwellings on sloping sites; semi-detached house; houses on narrow sites; and terrace house infill.

The Taskforce Report – Certification of Development
The Taskforce dedicated a whole chapter to the issue of certification of development. It noted concerns about: the level of professionalism; management of the accreditation process; responsibility for enforcement; and the number of unresolved complaints in some accreditation schemes.   These have been a major impediment to the successful uptake of complying development. This lack of faith in the private certification system has resulted in:

- Councils requiring far greater levels of detail about a development during the initial stages because they are not confident that the construction detail will be appropriately managed by the certifier; and
- Councils are unwilling to expand the range of complying development until they are confident that certifiers will only approve development that complies with the standards.

On 13 March 2002 the then Minister for Planning Hon Dr Andrew Refshauge MP moved in Parliament for the establishment of the Joint Select Committee on the Quality of Buildings. The Parliament established the Committee because of the perception in the community that there were significant problems with new residential construction. One of the terms of reference for the Committee was to look at the private certification process.

The Committee heard considerable evidence on the poor outcomes of the certification process, and noted:

> The Committee feels the failure by Government to set up an audit system at the introduction of private certification is the single biggest contributor to the poor outcomes that have emerged in private certification to date. The Committee believes that perceptions of conflict of interest which have dogged private certification since its implementation would have been significantly reduced if a rigorous audit system had simultaneously accompanied the reforms.[7]

In response to the Joint Select Committee Inquiry, the Government introduced the *Building Legislation Amendment (Quality of Construction) Act* 2002. The Act amended the *Environmental Planning and Assessment Act 1979* in the area of certification. However, before some of these reforms commenced, the Government introduced the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*, which repealed the un-commenced sections of the *Building Legislation Amendment (Quality of Construction) Act 2002*.

The *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003* introduced a range of measures designed to improve the certification system, including:

- A regime of mandatory critical stage inspections for each class of building;
- The clarification of the role and responsibility of the principal certifying authority;
- The introduction of new offences and greater penalties for improper conduct by certifiers.

Also in response to the recommendations of the Joint Select Committee, the Government established the Building Professionals Board to accredit private certifiers and council staff undertaking certification functions. The Board was established in January 2004 and is to accredit, audit and investigate complaints against accredited certifiers in the Building Surveyors and Allied Professions accreditation scheme. The Board will be established in two stages, with stage one

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7   Parliament of New South Wales, Joint Select Committee on the Quality of Buildings, *Report Upon the Quality of Buildings*, July 2002 at 125.

expected to last for one year as an interim arrangement under the supervision of the Director-General of the Department of Infrastructure, Planning and Natural Resources. In stage two, the Board will develop procedures to accredit all certifiers including council staff. However, a permanent Board will not be established until further consultation on the composition of the Board is held.[8]

As noted, the Board is currently operated by the Department of Planning, Infrastructure and Natural Resources. However, the Taskforce noted its concerns that the Department, with its policy focus, has not been able to respond quickly enough to the regulatory challenges associated with the swift removal of poorly performing certifiers. In consideration of this, the Taskforce recommended that the Board should be placed in the administration of the Department of Commerce (Home Building Service), to separate the regulatory and policy aspects of certification and auditing.

The Local Government and Shires Association Response - Certification of Development
The Associations believe that the Taskforce report overstated the benefits that have accrued since private certification. While the speed at which construction may now take place may have improved, the quality of construction has most definitely not – hence the Parliamentary Inquiry. The Associations state that the system of private certification is fundamentally flawed and that it is incomprehensible that the Taskforce proposed an expanded role for it. The following points were also made:

- A system where a developer pays for their own certifiers is problematic. Too many certifiers continue to act in their own commercial interests with little or no regard for their statutory obligations;
- A comprehensive education program is needed for certifiers, principal certifying authorities, councils and the community;
- The Association generally supported the Taskforce recommendations for the transfer of responsibility for the establishment of the Building Professionals Board and the auditing and accreditation of certifiers from DIPNR to the Department of Commerce Home Building Service. In this regard there is a need to differentiate between policy and regulatory aspects in the management of certification;
- The building certification process should not be permitted to retrospectively 'approve' illegal or inappropriately certified development.

The Property Council of Australia Response - Certification of Development
The Council supported the recommendations of the Taskforce. However, the Council would like to see the changes introduced by the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003* be deferred for six months to enable the industry to identify potential problems which may have the effect of stalling the development approval process.

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[8]   Department of Infrastructure, Planning and Natural Resources, *Improvements to the NSW Building Certification System.* Letter to all Councils in NSW, 19 December 2003.

The Taskforce Report - Local Development and Local Environment Plans

The Taskforce considered that the local development process is unsuited to dealing with the large number of applications that it faces. It considered the question of whether the process must be simplified, or whether there are inappropriate proposals being forced to use the process? It concluded that for housing proposals it is the latter, and that the local development process would work much better if the 70,000 development applications annually received by councils for houses and associated additions/structures were dealt with as complying development. In this way, only the most complicated housing applications would be dealt with as local development, which means that the local development process is used only as a safety net assessment process for houses and not as the standard process.

The Taskforce considered that Local Environment Plans (LEPs) should have both a standard format and structure and some fixed content that is common to all plans. The format and structure of LEPs should be mandated by the Department and implemented consistently across all local government areas. Common content including: definitions; land use zones; model provisions; a standard set of exempt and complying provisions; and monitoring and review provisions should also be mandated by the Department and incorporated into each LEP.

The Local Government and Shires Association Response - Local Development and Local Environment Plans

The Associations accepted that some level of consistency is necessary across councils in the format, structure and content of local plans. However, the level of standardisation recommended by the Taskforce was not supported. It considered that standardisation does not give recognition to the differences within and between local government areas whether they be in rural, regional or metropolitan areas. The mandatory content of local plans with which the Associations had most concerns included: standard definitions; model provisions; a standard set of exempt and complying development provisions; mandatory monitoring; review provisions; and standardised land use zones.

The Royal Australian Institute of Architects' Response - Local Development and Local Environment Plans

The Institute supported the Taskforce proposals as a matter of principle, but as a long term priority. It noted that a standard template for all local environment plans including standard definitions is desirable but will take some time. There are hundreds of local environment plans across the State, and the familiarisation with and redrafting, re-exhibiting of them would be an enormous workload for planning staff.

The Taskforce Report - Advertising and Notification

The Taskforce considered that the appropriate level of public participation in development assessment depends upon the type of development proposed, and noted:

- For minor or routine developments, the public only needs to be informed after the assessment that the application has been granted (eg, complying development) because they are already aware of the extent of the development that is possible;

- For a proposed development that does not accord with the standards for which the community was previously aware (eg common housing standards), the community needs to be consulted to gains its views on the impact of the variations;
- For other types of development, such as large or complex proposals or masterplans, the public needs to be involved in the decision making process, as these types of developments invariably have far-reaching impacts.

In regards to notification for houses, given the process proposed for developing the complying housing standards, the Taskforce considered that notification of applications that complied with the standards was unnecessary. Where a development application is required to be lodged because an application does not meet the standards, notification would be carried out only in relation to those aspects of the development proposal that depart from the standards. This approach allows members of the community to know what they can expect in terms of typical houses, and to be informed and given an opportunity to comment when the standards are proposed to be varied.

The Local Government and Shires Association Response - Advertising and Notification
The Associations considered the Taskforce proposals to reduce neighbour notification of proposals for single dwelling houses unacceptable. It considered that to limit notification to neighbours that an approval has been granted, whether by council or private certifier, 'flies in the face' of the objectives of the *Environmental Planning and Assessment Act* to provide increased opportunities for public participation in the planning process. The notification of development proposals plays a critical role in the planning system.

The Property Council of Australia Response - Advertising and Notification
The Council supported the Taskforce's recommendation in this area. However, the Council believes it may be appropriate that notification be applied to complying development in sensitive areas due to the potential complexity of issues involved. The Council recommended that notification be the responsibility of the applicant prior to lodgement and that a statement that this occurred be part of the lodgement form.

The Royal Australian Institute of Architects' Response - Advertising and Notification
The Institute supported the proposals in principal, with immediate priority. However, the immediate neighbours should be informed prior to approval. No objection should be available for complying development unless the draft compliance certificate is found to be in error. A model notification policy should be developed.

The Taskforce Report - State Agency Consultation and Concurrence
Some types of local development applications require the local council to refer the application to a State Government department for consultation and concurrence, while another type is integrated development, which requires an approval to be obtained pursuant to another Act, eg the Heritage Act. The initial intent of these requirements for consultation and concurrence was to supplement councils' knowledge in the assessment of applications. However, many are now applications in their own right to Government departments, and the Taskforce provides the example of the

Threatened Species legislation requiring the preparation of a specialised species impact statement. The Taskforce considered that despite the initial need for councils to obtain State agency expertise in the assessment of development, there have been a number of changes over time that now necessitate a review of State agency roles. These changes include:

- Councils are now seeking strategic advice and guidance from State agencies instead of specified detailed advice on proposals. Many councils have developed considerable expertise in the assessment of environmental and infrastructure matters;
- Many councils have sophisticated procedures to manage development processes, whereas State agencies have not developed this aspect of their operations;
- The scientific methodologies of State agencies have advanced. However they have not been captured in strategic plans or approaches.

The Taskforce considered that as a result of these changes there is an increasing demand for State agency involvement in the assessment process to be reduced or at least delegated. Similarly, the Taskforce considered that the integrated development system to streamline State agency approval processes was a failure, and recommended that the Department review the process of integrated development.

The Taskforce noted the work of the PlanFirst review, and that DIPNR's review of state environmental planning polices and the preparation of regional strategies will provide opportunities for the identification and management of key natural resource and infrastructure issues to be undertaken at the plan making stage, rather than at the DA assessment stage.

The Local Government and Shires Association Response - State Agency Consultation and Concurrence

The Associations supported the Taskforce recommendations in relation to State agency consultation and concurrence in the local development process. However, the Associations recognised that agency involvement in the DA process has its place and can provide an important check and balance in the system as councils, particularly in rural and regional areas, sometimes do not have the necessary expertise locally to deal with complex applications. However, the Associations noted that clearly there are opportunities for agencies to improve their response times.

The Property Council of Australia Response - State Agency Consultation and Concurrence

The Council noted that there is increasing evidence of lengthy delays being incurred on integrated development applications due to the reluctance of concurrence and referral agencies to provide decisions in a timely or consistent manner. The Council considered that an underlying problem confronting the industry is the lack of certainty and non-existence of benchmarks to be attained in relation to environmental issues, particularly as they affect water quality, biodiversity, threatened species, flooding, bushfire, archaeological sites and native vegetation. The Council endorsed the PlanFirst review findings in relation to the role of State agencies, and supported the delegation of approval of minor or routine developments to councils.

The Taskforce Report - Governance of the Development Assessment Process
The Taskforce questioned the role of local government Councillors and the assessment of development applications. The Taskforce highlighted submissions that noted that councillor involvement in the determination of development applications creates the risk of:

- Emphasis on individual applications over the provision of clear policy direction;
- Greater risks of corruption as people attempt to influence the decision of councillors;
- Slower approval times due to the need to report an application to a cycle of council meetings and committees;
- Councillor assessment of a proposal based on community lobbying instead of the planning controls applying to the site;
- Councillors acting as advocates for individuals / groups whilst also participating as a decision maker in the development assessment process.

In reviewing the role of councillors in the development assessment process the Taskforce found two opposing views: that it is a fundamental right/function/power of councillors to participate in development assessment, either as an advocate for an applicant or the community or as a decision maker, or both. The opposing view is that councillors should remove themselves from the development assessment process as far as possible. They should make strategic policy decisions about development at the plan and policy making stage and leave development assessment to the technical experts.

The Taskforce noted that it is the *Environmental Planning and Assessment Act* that provides councils with powers to determine development applications, and that it is not a power conferred under the *Local Government Act*. Councils therefore have the ability to decide under the EP&A Act who should determine development applications – the council, council officers or another independent body. There is significant potential for councils to delegate this authority to officers or an independent panel. The Taskforce noted that already some councils are using panels, including: Independent Hearing and Assessment Panels – which provide independent specialist advice to councils, but do not have a decision making role in relation in development applications; pre-lodgement panels – where applicants can meet to discuss their development proposal before they lodge an application; and design review panels – which provide independent expert advice on the design quality of developments.

The Taskforce concluded that whilst the establishment of panels may not be necessary for those councils working efficiently, they may be of great assistance for councils who do not perform efficiently in their development assessment role. As such, the Taskforce recommended that the Government enact supporting legislation to provide for their establishment and operation. The legislation should not mandate the establishment of a panel. However, it would provide a level of comfort to councils who choose to establish a panel, that the participation of the panel in the development assessment process is legitimate and unchallengeable.

The Taskforce also recommended that all newly elected councillors be required to attend a mandatory environmental planning and development assessment training course. Furthermore,

new councillors should not be able to vote on development applications until they have completed this training.

In a review of councillors' conflict of interest in the development assessment process, R. Stokes of Macquarie University found that communities perceive an innate conflict of interest where councillors have personal interests in certain industries (notably real estate sales and development). Stokes reviewed some options to reduce this conflict of interest, including:

- Disqualifying people in certain professions (such as property development), or those involved in certain transactions, from standing for council. It was acknowledged that this is a blunt and unwieldy solution, which may disqualify talented people from local government;
- Leaving the role of councillors unchanged, and requiring communications on development applications to be documented;
- The Minister to be provided with a 'trigger' to remove a councillor on the basis that recurring pecuniary interest declarations demonstrate an inability to fulfil his or hers legislative functions (eg, the inquiry into Warringah Council noted that one Councillor declared a pecuniary interest on 190 occasions from September 1999 to 2002, while another declared 140 occasions over the same period);
- Remove councillors' powers to determine development applications in most situations, and transfer them to an independent assessment panel.

Stokes concludes that whilst the last option may appear 'revolutionary', the proposal is consistent with a general movement towards delegating powers from elected councillors to council staff and to independent persons. According to Stokes' analysis, independent panels enhance accountability, transparency and competition, as well as removing councillors from the operational side of local government. This then allows them to emphasise their primary role as civic leaders in strategic planning issues.[9]

The Local Government and Shires Association Response - Governance of the Development Assessment Process

The Associations strongly opposed any moves to reduce councillor involvement in the development assessment process. It was considered that the underlying theme of local planning is that councillors are elected to implement the wishes of the community and that their removal from the DA process 'flies in the face' of this concept. Elected representatives must retain responsibility for the fabric and look of their local areas. The Associations survey as reported above indicated that only four percent of DAs go before a council meeting.

The Associations generally supported the concept of training on broader strategic issues, but this should include: the planning system; the role of the State; the role of local government; the

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[9]   Stokes, R. "Councillors' conflicts of interest in Development Assessment: Lessons from Warringah." in *Local Government and Law Journal*, Vol 9 Pt 4, May 2004, at 185.

Environmental Planning and Assessment Act 1979; delegations; community expectations; community consultation; meeting procedure; business planning and other issues. The proposal that councillors not be permitted to vote on planning and development matters without having received training was noted as a denial of democracy. It was also noted that any requirement for councillors to receive mandatory training should be matched by identical requirements for elected representatives in other spheres of government.

The Associations were of the strong view that any independent development assessment and hearing panels must only have an advisory role – with no decision making powers. The establishment of such panels must be up to individual councils.

The Property Council of Australia Response - Governance of the Development Assessment Process
The Council strongly supported the establishment of independent hearing panels, and stated that panels should:

- Be mandatory for certain developments;
- Exercise a consent role;
- Apply to developments which: have a regional impact; are above a certain threshold ($20 million); and are located in specifically designated areas of significance; and
- Be composed of experts as well as nominated elected representatives.

3.0   DEVELOPMENT ASSESSMENT ACTIVITIES FEDERALLY AND IN OTHER STATES

Across Australia planning and development assessment is an area of public policy administration that is constantly criticised for its difficulty, complexity and lack of 'user friendliness'. This section of the paper discusses what other States and the Commonwealth are doing in an attempt to make the planning and development assessment process faster and more equitable. In particular, it is evident that much of the work of the NSW Taskforce has been influenced by the Commonwealth facilitated Development Assessment Forum, as noted below.

3.1   Commonwealth Sphere – the Development Assessment Forum
Following a meeting of key stakeholders in 1998, the Development Assessment Forum was formed to bring together relevant parties to reach agreement on ways to streamline the development approval process. The Forum's membership includes: Commonwealth, State and Local Government; the development industry; and related professional associations. No conservation groups are represented on the forum. The current chair of the Forum is Peter Verwer of the Property Council of Australia. The Secretariat of the Forum is the Commonwealth Department of Transport and Regional Services.

The Forum engaged consultants to devise a new development assessment approach. The result is a development assessment model with three key elements: leading practice principles – which

describe the key features of a better approach in terms of both process and outcome; leading practices – which explain the fundamental operating features of the model system; and leading practice logic – which details the ladder of decision making steps relevant to different types of projects.

The model has 12 leading practice principles which are the basis of the development assessment system. The principles indicate that a development assessment system should:

- Focus on achieving high quality sustainable outcomes;
- Encourage innovation and variety in development;
- Integrate all legislation, policies and assessments applying to a given site;
- Encourage an appropriate performance based approach to regulation;
- Promote transparency and accountability in administration;
- Promote a cost effective system;
- Promote a model that is streamlined, simple and accessible;
- Employ standard definitions and terminology;
- Incorporate performance measurement and evaluation;
- Promote continuous improvement;
- Promote sharing of leading practice information; and
- Provide clear information about system operation.

The nine leading practices were:

1. **Separation of Roles**: - elected politicians take responsibility for the development of planning policies and independent bodies (such as panels, which may include elected representatives) be responsible for assessing applications against these policies;

2. **Technically Excellent Assessment Criteria**: - community values and policy objectives set by governments should be codified as objective tests and rules. Once developed, these rules are the criteria by which development applications are assessed;

3. **A Single Point of Assessment**: - the goal is to limit referrals to those agencies with a statutory role and encourage a whole of government approach. Decisions on development applications, based on technically excellent criteria are best integrated by a single entity;

4. **Independent and Expert Assessment**: - panels be established at local or regional level to assess projects not determined by professional staff, and to review staff decisions;

5. **Appeals as a Second Assessment**: - in a merit appeal, applications should be assessed against exactly the same criteria by a more senior independent expert body. Each State should establish an independent expert commission to assess projects called in by the relevant Minister and to review appealed local panel decisions;

6. **Defined Third Party Involvement**: - a development assessment is made against technical criteria that enshrine policy defined after community consultation. Unless an error in administration occurs, third parties are encouraged to

advocate change to the policy driven criteria;

7. **Private Sector Involvement**: - in specified circumstances private sector experts should be able to provide advice that attests to compliance with technically excellent criteria. In other cases, the advice of private sector experts would be considered by the assessing authority (whether government officer, panel or commission);

8. **Stream Assessment into Tracks**: - early in the development assessment cycle, a project application should be streamed into a specific assessment track. Each track comprises a specific set of decision-making steps relevant to the project's complexity and impact on the built and natural environments;

9. **Built-in Improvement Mechanisms**: - formal feedback loops with the development assessment system are proposed. This would incorporate lessons learned by key stakeholders into overall planning policy, technical assessment criteria and the operation of the development assessment system.

The model proposed six assessment tracks based on project complexity and impact. These were:

*   Exempt: - Minor development that has negligible impact beyond the site and raises no policy implications, and therefore does not require an application or assessment. It must comply with the definition of exempt development.
*   Prohibited: - Development which cannot comply with one or more explicit requirements of the statutory plan;
*   Self Assess: - Routine development covered by a set of objective criteria. The proponent checks the proposal complies with all criteria, notifies the assessment authority and advises the immediate neighbours. The consent authority or certifier checks the assessment and if OK issues standard consent;
*   Code: - Most development follows this track and is covered by objective criteria relating to procedures, standards and/or performance. Expert assessment and determination is performed by the assessment authority or an accredited certifier;
*   Merit: - A small number of complex proposals or development in sensitive environments, where merit is assessed against criteria relating to quality, performance and effects. Public notification may be needed and the application is assessed by the consent authority;
*   Impact: - These are non-standard proposals where impact is assessed against criteria relating to thresholds and limits, with compliance established in each case by measuring predicted impacts. Public notification may be needed, and the application and impact assessment is assessed by the consent authority.[10]

3.2   Victorian Developments

In August 2003 the Victorian Government released the discussion paper *Better Decisions Faster, Opportunities to improve the planning system in Victoria*. The purpose of the paper

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[10]   This section from: Development Assessment Forum, "Road Map to a Model DA Process Engaging with Stakeholders", *News*, February 2004.

was, amongst other things, to: improve the timeliness of decision making; recognise the relationship between the complexity of an application and its assessment time and provide different 'streams' of assessment; and increase the responsibility of applicants to submit well documented plans and reward well prepared applications. Currently Victoria has a 'one size fits all' assessment model, and has outlined the following options for change under the various stages of the permit process:

Lodgement

- Encourage pre-lodgement certification. Currently, applications are of variable quality and there are a high number of further information requests. The proposal is for a private certifier to certify that an application is suitable for submission and notification, and Council initiates immediate notification. Three levels of certification have been developed. Information certification means that in the opinion of the Certifier the application is complete and fully documented. The second level, 'merits consideration', means that in the Certifier's opinion the application meets the requirements of the planning schemes sufficient to proceed to public notice without further assessment by Council. The third level, process certification, means that any required pre-lodgement process, including meetings, has occurred.
- Reject inadequate applications immediately;
- A new comprehensive application form: - applicants can nominate clauses under which a permit is sought; a 'tax pack' application form guides applicants through information requirements, with an ability to bypass questions if irrelevant to the application; and standard information requirements for common types of applications.

Information Assessment

- Time limit on further information: - a substantial number of applications have not been determined because outstanding further information requirements have not been answered promptly. The proposal is to introduce a 28 day time limit on the submission of further information once requested, otherwise the application automatically lapses.

Notification

- It is proposed to: identify a range of notification levels aligned to different types of applications; provide the ability to obtain 'neighbours' consent' for certain types of applications in advance (hence eliminating the need to notify); changing the wording of the Act to say any person affected may make a 'submission' rather than an objection; and prepare a submission form that requires a submitter to be more specific about their concerns, and potential changes that could be made to address the concerns.
- Another proposal was to charge a nominal fee per objection, the objective being to encourage the submission of joint objections with one contact person, and to increase the seriousness with which objectors make submissions.

Referral

- Currently referral requirements are difficult to find in planning schemes, often poorly written, and usually do not include reasonable thresholds for avoiding referral of unnecessary matters. Proposals include: list all referrals from the various planning instruments into a single combined list; and clarify all referral requirements and require thresholds to be specified below

which referral is not required.

- Increase deemed to comply provisions – these provisions allow exemption from a permit requirement where certain standards are met. This enables compliance with standard requirements without the need for lengthy processing times.

- Introduce self assessment opportunities: - self assessment is appropriate in circumstances where the matter requiring a permit is largely procedural but where a check for compliance is desirable. Self assessment could potentially be applied to proposals in flood prone areas, and some heritage and environmental matters;

- A new short permit process: - currently the same permit process is applied to all applications irrespective of scale. A new short permit process would allow identified types of applications to undergo a streamlined permit process. This would include a shorter timeframe for consideration, notification and referral prior to submission of an application, and on-site arbitration.

- Strengthen local policy outcomes: - presently the balance in the planning system has gone too far in favour of flexibility and performance based controls to the detriment of certainty, as well as uncertainty about the relative weight to be given to the various layers of policies in the planning scheme. The proposal is to establish a hierarchy of matters for consideration highlighting the pre-eminence of planning scheme policy, and to provide additional criteria to assist in balancing and prioritising policies.

- Model officer reports: - each Council has an individual approach to Council reports and delegation reports, with resultant variety in quality and detail. The proposal is to develop standard reports for different types of applications clearly setting out the policy context and decision making criteria.

- Align the decision maker to the decision: - presently the level of delegation to officers varies considerably across Councils. The proposal is to prepare and promote model delegation guidelines to encourage decisions to be made at the most effective and efficient level;

- Make minor changes during assessment easier: - currently there is no formal framework in the Act to consider amendment to plans after notification. The proposal is to provide a framework so that the applicant has the opportunity to amend plans, which may also trigger re-notification.

- Clarify minor changes after a permit has been issued: - this provides for greater flexibility to amend a plan without the application being subject to a new application.

Monitoring

- Require regular process auditing: currently there is no requirement for Councils to review their permit processing procedures. The proposal is for Councils to prepare an internal audit involving the use of a standard model and guidelines every three years.

- Introduce permit activity reporting: to compile data about the permit process including numbers, types of applications and timeframes for decision making, to be published on a regular basis.[11]

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11   Victorian Government, Department of Sustainability and Environment, *Better Decisions Faster. Opportunities to improve the planning system in Victoria. A discussion paper.* August 2003.

In total, the discussion paper outlined 31 initiatives to streamline and improve the efficiency of the Victorian planning process. During public consultation, only one initiative – introducing an administrative fee for objections, received significant criticism, and the Victorian Minister for Planning has announced that this option will not proceed. However, all other initiatives are being pursued, and the Government has committed $3.1 million to their implementation. Amending legislation is proposed for Spring 2004, with implementation of many initiatives scheduled from mid 2004 to mid 2005.[12]

3.3 South Australia

The South Australian Government has a program known as 'Improving the Planning System'. The program:

- Focuses the State Government on strategic and infrastructure planning and on implementing the Planning Strategy;
- Focuses councils on strategic and infrastructure planning for its community, placing desired future character statements at the centre of Development Plans;
- Promotes the assessment of development applications against the polices in Development Plans and the Building Code of Australia.

As one of the elements of 'Improving the Planning System', in February 2004 the South Australian government released the draft *Development (Sustainable Development) Amendment Bill 2004* for public consultation. The Bill amends the *Development Act 1993*. Proposed policies and changes relevant to this paper include the following:

Streamlined Development Assessment
The Bill provides a shift in emphasis for government away from development assessment to policy formulation, by the formation of development assessment panels across all tiers of government. The draft Bill proposes development assessment panels for State, Regional and Local development. At a State level, a seven member State Development Assessment Panel to assess applications of State significance is proposed. This would replace the Development Assessment Commission, and prepare guidelines and set the level of investigation for the Major Development assessment process.

It has been possible for groups of councils to voluntarily request the Minister to form a Regional Development Assessment Panel since July 2001. The draft Bill provides the Minister with the scope to establish regional Development Assessment Panels if progress is slow in their voluntary establishment. Aside from a specialist presiding member, membership of up to 50 per cent of elected Councillors in the region with the remainder being specialists is proposed. The types of development applications to be assessed by Regional DAPs will be outlined in the regulations, but

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12   Victorian Government, Department of Sustainability and Environment, *Better Decisions Faster. Opportunities to improve the planning system in Victoria. The Way Forward.* April 2004.

are likely to include matters where councils have a conflict of interest or where there are cross-council issues involved, but where there is no State signficance.

Similarly, since July 2001 all councils have been required to establish their own Development Assessment Panels to assess development applications. However, there have been inconsistencies in the number of panel members and their codes of conduct. The Bill proposes that each Development Assessment Panel comprise seven members: a specialist presiding member, three elected members (or three officers of the council) and three specialist members with specified experience. Each council will appoint the members of the Panel, but the Bill proposes that the Minister be consulted on the specialist members before they are appointed. Those elected Councillors not on the Assessment Panel have a key role in strategic planning and policy formulation, and can also be an advocate for their constituents and help them with applications, as they no longer have a conflict of interest.

To encourage timely advice and decision making, the Bill proposes that Development Assessment Panels – State, regional or council – and referral agencies, return their component of the development assessment fee if their decisions exceed the time limit specified in the regulations.

Building Rules Consent
Applicants have the option of going to the Council or a private building certifier for certification of building work. The draft Bill proposes that each be subject to a triennial building procedures audit to ensure risk management issues are addressed and to satisfy national building requirements.

A New Category of Development
Currently the Act has three classes of development: complying; merit; and non-complying. Each has a development assessment process, with non-complying the most difficult. It is proposed to introduce a new class of development – prohibited development, which would prohibit certain forms of developments in exceptional cases. An application for such development is still possible, but approval would only be possible with the concurrence of the Minister and the Environment, Resources and Development Committee of State Parliament.

Pre-lodgement Options
The draft Bill proposes to formalise voluntary pre-lodgement processes for prospective applicants. The proposals enable applicants to have discussions with neighbours and statutory referral bodies, and reach agreement with them on development proposals before a development application is lodged with council. In these circumstances, the application is not required to undergo duplicate notification and referral processes after lodgement.[13]

On releasing the Draft Bill for public comment, the Hon Jay Weatherill MP, South Australian Minister for Urban Development and Planning stated: "The present system is too focussed on development assessment at the expense of developing policy. This isn't just frustrating for

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[13]   Government of South Australia, *Draft Development (Sustainable Development) Amendment Bill 2004. Fact Sheet*. February 2004.

applicants, it's confusing for the community and is also unnecessarily time-consuming for local governments. These reforms will bring greater clarity and a real sense of purpose to the planning process."[14]

3.4   Western Australia

Western Australia has released a draft Bill to consolidate three pieces of planning related legislation into one, but at this stage has not conducted a fundamental review of the planning and development assessment system.[15]

3.5   Queensland

The Queensland *Integrated Planning Act 1997* forms the foundation of the State's planning and development assessment legislation. The Act contains one system for all development related assessments by local and state governments, known as IDAS – the Integrated Development Assessment System. Before the passage of the Act, over 60 different approval systems relating to development were in force in Queensland. There are three types of development under the Act. These are:

- Exempt development: - does not require development approval and there are no codes or standards applied to the development;
- Self-assessable development: - does not require development approval but the proponent is responsible for ensuring that the proposal complies with any applicable standards specified;
- Assessable development: - requires the lodgement of an application which is assessed and decided using IDAS. There are two types of assessable development:
    - Code assessment – the application is assessed for compliance against applicable standards. Public notification is not required. Private certification is available; and
    - Impact assessment – involves a broader assessment of the impact of the proposal. The application is assessed against the planning scheme, public notification is required and is subject to third party appeal rights.

An IPA planning scheme, developed by each local government area (similar in concept to a local environmental plan in NSW), contains:
- Desired Environmental Outcomes – a statement on what the planning scheme seeks to achieve;
- Maps – identify land use allocation, major infrastructure and areas where particular policies and development requirements apply;
- Zones or areas – terms given to the broad land use allocations in the local government area (eg business, residential);

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[14]   Weatherill, J. "Draft Bill on Planning Laws Overhaul Released." *Media Release*, 27 February 2004. Minister for Urban Development and Planning (SA).

[15]   Hon Alanna Mactiernan MLA, Minister for Planning and Infrastructure, *A Green Bill for the Consolidation of the Planning Legislation into the Planning and Development Bill and Planning and Development (Consequential Provisions) Bill*, April 2004.

- Development assessment tables – determine, for a particular parcel of land, if approval is needed for particular development (assessable development), and if development must comply with specified requirements (self-assessable development); and
- Development assessment criteria, including codes – which contain the criteria against which development is assessed.[16]

4.0   CONCLUSION

The fundamental argument of the NSW Taskforce on local development was that the local development assessment and approvals process is too slow, and that the development approval time frame has markedly worsened since the introduction of planning reforms in 1998. Whilst local government associations refute these arguments, the property industry and architectural organisations agree. The question is, how long is 'too long' for an approval for a house? The development industry wants a seven day approval process. Local government appears to state that the current statutory 40 day timeframe is not unreasonable.

The Development Assessment Forum provides an indication of the direction in which development assessment is moving. It is a system characterised by: the separation of roles - elected councillors to be responsible for the development of planning policies and independent bodies to be responsible for assessing applications against these policies; and development applications assessed against objective tests and rules – or standards in the NSW Taskforce terminology. Already, South Australia has independent development assessment panels to replace development consent by elected representatives.

From the analysis of the work of the Development Assessment Forum and legislative developments in other States, it is apparent that issues like complying development and private certification are firmly entrenched in the development assessment process, and likely to play a greater role in the future. This is clearly a concern to local government and the environment movement, but strongly supported by the development industry.

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[16]   Queensland Government, *Key Elements of IPA*, undated. See www.ipa.qld.gov.au.

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