

DRAFT

Minutes 5th February 2008



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 5th February 2008, commencing at 5.30pm

PRESENT:

Councillors R. Swan (Mayor); S. Dover (Deputy Mayor); C. Baumann; H. Brown; G. Dingle; G. Francis; J. Hodges; K. Jordan; J. Nell; G. Robinson; S. Tucker, R. Westbury; General Manager; Executive Manager – Corporate Management, Facilities and Services Group Manager; Sustainable Planning Group Manager; Business and Support Group Manager.

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GENERAL MANAGER'S REPORT

**PETER GESLING
GENERAL MANAGER**

ITEM NO. 1

FILE NO: PSC2007-2338

DISCUSSION PAPER – IMPROVING THE NSW PLANNING SYSTEM

REPORT OF: DAVID BROYD – GROUP MANAGER, SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorses the draft submission in response to the NSW Government's Discussion Paper "Improving the NSW Planning System" (Attachment 1) and forward this to the NSW Premier, NSW Minister for Planning, the Director General of the Department of Planning, the NSW Opposition leader, the Shadow Minister for Planning and the President of the Local Government Association and the Local Government Shires Association.
- 2) Strongly reaffirm the following responses:
 - a) Strong opposition to the establishment of Joint Regional Planning Panels to determine Development Applications of a value in excess of \$50M;
 - b) Strong opposition to the increasing centralisation of planning responsibilities of the State Government in various forms in both plan making and development assessment;
- 3) The crucial need for neighbours to have the opportunity to make submissions on Development Applications for single dwellings and other "minor developments"
- 4) Support the view that private certifiers should only be able to make submissions of certificates to Councils and for Councils to be the final determining authorities.
- 5) Delegate to the General Manager to make changes to format and presentation as seen as appropriate before forwarding the submission – without changing the substance of the submission in any way.

CR BAUMANN EXCUSED HIMSELF FROM THE MEETING AND DID NOT RETURN

MOTION:

010	Councillor Hodges Councillor Nell	That Council endorses the draft submission in response to the NSW Government's Discussion Paper "Improving the NSW Planning System" (Attachment 1) and forward this to the NSW Premier, NSW Minister for Planning, the Director General of the Department of Planning, the NSW Opposition leader, the Shadow Minister for Planning and the President of the Local Government Association and the Local
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		<p>Government Shires Association.</p> <p>2) Strongly reaffirm the following responses:</p> <p>a) Strong opposition to the establishment of Joint Regional Planning Panels to determine Development Applications of a value in excess of \$50M;</p> <p>b) Strong opposition to the increasing centralisation of planning responsibilities of the State Government in various forms in both plan making and development assessment;</p> <p>3) The crucial need for neighbours to have the opportunity to make submissions on Development Applications for single dwellings and other “minor developments”</p> <p>4) Support the view that private certifiers should only be able to make submissions of certificates to Councils and for Councils to be the final determining authorities.</p> <p>5) Delegate to the General Manager to make changes to format and presentation as seen as appropriate before forwarding the submission – without changing the substance of the submission in any way.</p> <p>6) Endorse the changes to responses for A1, A11 and A18.5 contained in Supplementary Report No.1 and they be included in Council’s submission.</p> <p>7) That Council emphasise the need for a</p>
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MINUTES FOR EXTRAORDINARY MEETING – 5 FEBRUARY 2008

		<p>more “whole of government” approach to Planning Reform including the necessity for the NSW Department of Planning and NSW Department of Local Government to integrate their individual approaches contained in NSW Planning Reform and the integrated Planning Reform Framework. Further that relevant linkage to the State Plan be considered.</p> <p>8) That Council endorse the recommendation of Hunter Councils and the resolution of the LGMA Forum.</p>
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Cr Baumann excused himself from the meeting and did not return.

011	Councillor Francis Councillor Nell	It was resolved that a division be called for.
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Those in favour: Ctrs Brown, Francis, Jordan, Hodges, Dingle, Swan, Tucker, Nell, Dover, Robinson and Westbury

Those against: Nil

There being no further business the meeting closed at 5.58pm.

BACKGROUND

The purpose of this report is to recommend to Council a submission primarily to the NSW Minister for Planning and Department of Planning in response to the “Discussion Paper – Improving the NSW Planning System.”

On 3 December 2007, the NSW Minister for Planning formally released the Discussion Paper “Improving the NSW Planning System”. The Discussion Paper focussed upon regulatory reform and contains the following sections:

- Changing Land Use and Plan Making
- Development Assessment and Review
- Exempt & Complying Development
- e-Planning
- Building and Subdivision Certification
- Strata Management Reform
- Resolving Paper Subdivisions

There is widespread opinion amongst stakeholders in the NSW planning system that major reforms are needed. The real issues are around how these reforms are to be formulated and actioned.

The Need for Reform

The need for reform is put forward by the NSW Department of Planning as follows:-

1. The approval process is too long and complex

Between 2005-06, Councils reported that 45% of Development Applications (DA's) were for residential alterations and additions and 17% were for new houses. Councils across the State reported an average of 68 days to deal with all DA's including simple and routine proposals.

2. Too few complying development certificates – too many DA's

Exempt & Complying Development was initiated by the State Government in 1997. The intention was that most developments that previously only needed a building application would become complying developments. This has not been the case with subsequent practice. Before these changes, 60% of all developments only required a building application. In 2005-06, complying development certificates accounted for only 11% of all development decisions. Since 1997, when the Act was amended, the number of DA's processed in NSW has more than doubled to 105,000 (2005-06 data).

3. Plan making is too slow

The Local Environmental Plans (LEP's) for a whole Council area average about 5 years and the more simple LEP's correcting minor errors take an average of 196 days. The processes are the same for highly complex and relatively simple LEP's.

4. Community input can be ineffective

Community input to the planning system is often adversarial and discouraging for all parties involved. The "one size fits all" problem also applies, with the same requirements applying to a broad range of developments and plans irrespective of size, significance and potential controversy.

5. Process often seems more important than outcome

The Environmental Planning & Assessment Act is comprehensive in terms of steps needed to prepare a plan or determine a development, but the Act is limited in conveying what sort of planning and development outcomes are sought.

6. The planning system is complex and difficult to follow

The planning system has become increasingly complex and cumbersome and is open to substantial criticism by the main professional practitioners as well as by other stakeholders. Applicants are often expected to address issues of little or no relevance. Often there are contradictory controls in different planning instruments relating to the same site.

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7. The system is not consistent across the State

Different approaches to development control and assessment requirements for similar types of developments with similar outcomes have different approaches between Councils. The myriad of different approaches and controls results in a lack of predictability and consistency, making it harder for applicants to navigate.

8. Planning resources are not used effectively

The majority of our planning resources are taken up with small residential applications and there is a major mismatch with the resource allocation needed to deal with proposals involving much more significant investment, risk and public interest. Preliminary estimates for 2006-07 indicate that more than 95% of all applications have a value below \$1M.

Timeline for Reform

August 2007	New Ideas for Planning conference – 640 people attend
September-October 2007	Consulted with working groups/reference panel about planning reforms
November 2007	Discussion paper released
December 2007-February 2008	Discussion paper exhibited for public comment Public submissions received
March 2008	Exposure draft before Parliament
May/June 2008	Pass legislation
July 2008	Implementation date for many key reforms

LINKS TO CORPORATE PLANS

The links to the 2007-2011 Council Plan are:-

SOCIAL SUSTAINABILITY – *Council will preserve and strengthen the fabric of the community, building on community strengths.*

CULTURAL SUSTAINABILITY – *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

ECONOMIC SUSTAINABILITY – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

ENVIRONMENTAL SUSTAINABILITY – *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

BUSINESS EXCELLENCE – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

The Discussion Paper has the following implications:

- a) Enabling “fee for service” to be introduced for local government which is overdue and of significant benefit to enabling professional resources and service delivery to be enhanced. It also reflects the “third party” financial implications of planning decision making by local government.
- b) It is understood that Councils will be sought to resource and fund the proposed joint Regional Planning Panels which is inappropriate and indeed requiring developments in value of excess of \$50M to go to such Panels should be strongly opposed.

LEGAL AND POLICY IMPLICATIONS

The main issues and responses in these terms are:

- a) The need for reform is undeniable. It is a question of “how”, not “if”. The Discussion Paper is more about regulatory reform and administrative process efficiency – not about real planning reform and outcomes.
- b) The reduction of local government planning responsibilities to one that “bites at both ends”, i.e. more Exempt & Complying development open to certification and developments worth more than \$50M going to Joint Regional Planning Panels. This undermines local government democracy. It also has implications for the political and professional roles in local government and the “job satisfaction” that goes with those roles.
- c) The reduced entitlement for neighbours to comment on single dwellings and minor developments. Much emphasis is put on “mums and dads” as applicants, not on “mums and dads” as neighbours who have the right to comment upon impacts of proposed developments on lifestyle, property values, privacy, views etc.
- d) Increased role of private certifiers when there is a significant level of distrust, conflict of interest and what the LGSA refers to therefore as an “unworkable system”. It is recommended that Council support the LGSA view that private certifiers submit certificates to Council for determination.
- e) The real fundamental issues lie in the need for State legislation and State/local government practice reform. The NSW Premier, Cabinet and Minister for Planning should commit to a longer term framework reform into which short term reform is made compatible.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

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- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a cultural of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

The social, economic and environmental implications are intertwined in the Discussion Paper. The implications are largely covered in the Legal and Policy Sections above and in Attachment 1.

CONSULTATION

The main issue here is the lack of consultation by the State Government with local government and other stakeholders in putting forward the Discussion Paper and planning reform proposals. Also the timeframe for consultation on the Discussion Paper is highly limited and it is understood that draft legislation is already substantially prepared. Implementation of reforms should be deferred to 1 January 2009 to enable proper consultation to occur.

OPTIONS

- 1) Council endorse the recommendation and the draft submission which is Attachment 1.
- 2) Council not endorse the recommendations and submission (Attachment 1) and seek to modify substantially or partially.

Council does not have the option of deferring decision-making given that the closing date for submissions is 8 February 2008 although, if Council wishes, representations can be made to the Director General of the Department of Planning for an extension of time.

ATTACHMENTS

- 1) Submission to the NSW State Government : Discussion Paper and Summary Paper on Improving the NSW Planning System

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

**SUBMISSION TO THE NSW STATE GOVERNMENT : DISCUSSION PAPER AND
SUMMARY PAPER ON IMPROVING THE NSW PLANNING SYSTEM**

PORT STEPHENS COUNCIL

**SUBMISSION TO THE NSW STATE GOVERNMENT :
DISCUSSION PAPER AND SUMMARY PAPER ON
IMPROVING THE NSW PLANNING SYSTEM**

**SUBMISSION TO THE NSW MINISTER FOR PLANNING THE
HON. FRANK SARTOR AND THE DIRECTOR GENERAL,
NSW DEPARTMENT OF PLANNING: MR SAM HADDAD**

5 February 2008

1.0 General Comments

- 1.1 Firstly, Council commends the NSW State Government for undertaking significant reform of the NSW Planning System – it is certainly not a debate about ‘if reform is needed’ but “how reform should be initiated and implemented.”
- 1.2 Council respectfully requests the Minister to engage with a Reference Group involving the main stakeholders including the Local Government Association and Shires Association with a view to:
- a) reviewing the report on the submissions received in response to the Discussion Paper
 - b) Adding rigour and detail to many of the recommendations
 - c) Analysing the impacts and implications of the proposals
 - d) Establishing a more collaboratively agreed approach to implement reform by 1 January 2009.
- 1.3. The Premier, Cabinet and the NSW Minister for Planning should commit to a longer term vision of what we want the future planning system to look like and deliver and to be based upon comprehensive reform of a number of pieces of legislation that in combination represent the NSW planning system. The NSW planning system is based upon highly fragmented legislation and therefore practices and accountabilities amongst state government agencies, local government, private certifiers and the development industry generally. The short-term changes should be compatible with this longer-term vision/framework.
- 1.4 The key issues raised by the Discussion Paper and the Summary Paper for this Council and for Local Government can be summarised as:
- a) Significant displacement of local government responsibilities for effective service delivery within the planning system – both politically and professionally. This therefore undermines the operation of local democracy and for the general job satisfaction and pride felt in the planning profession by its practitioners at the local level;
 - b) Increasing centralisation of planning responsibilities, but there is unproven performance by the NSW Department of Planning to replace local government functions. This also means an increasing separation from the planning issues, policy implementation and accountabilities with communities that are impacted.
 - c) The Discussion and Summary Papers represent a focus upon regulatory reform and not planning reform. The emphasis is essentially upon administrative efficiency and process, not about planning outcomes which should be the real goal of the profession and the function of planning
 - d) The major lack of consultation with local government during the process of preparing the Discussion Paper and the Summary Paper – this is manifest in the lack of detail and lack of understanding in some of the content of

recommendations put forward and indeed is undermining a partnership approach to implementing true and effective planning reform.

- e) The proposal to enhance the level of private certification which compares with a level of distrust, and demands for higher levels of accountability and accreditation by local government and the community.
 - f) The limited time for consultation and input at this stage in response to the Discussion Paper and Summary Paper further reinforces the effects of lack of consultation with local government in analysing and implementing effective planning reform.
- 1.5 There are five essential principles against which the effectiveness of planning reform should be evaluated:
- a) Sustainability – including the financial and resource sustainability of local government to effectively play its role in planning;
 - b) Integration of development, infrastructure provision and environmental conservation/management in the planning process and in the achievement of outcomes;
 - c) Good governance, i.e. ensuring a positive working relationship between the two levels of government (between the NSW State Government and Councils) in implementing planning reform and achieving good outcomes;
 - d) Climate change – providing clear leadership to this major challenge;
 - e) A clear and efficient system of plan making and approvals that achieves the desired planning and public policy outcomes
- 1.6 The current separation/lack of connection between the Department of Planning's Discussion Paper on Planning Reform and the NSW Department of Local Government's proposals for Integrated Planning Framework is highly detrimental to good reform and should be addressed immediately by coordination between the two State Governments and through the NSW Cabinet.
- 1.7 The inclusion of broader social, cultural, economic, environment and governance outcomes and principles with the planning reform agenda must be focussed upon and as the bases for longer term planning to achieve quality outcomes and as mandatory strategic plans as foundations for Council's new Local Environmental Plans. The LEP is simply a legal instrument to implement good strategic planning which is the prime responsibility of our profession and of State and local government in delivering well in a planning system.

Governance.

- 1.8 There are significant issues around governance for the NSW Planning system raised by the Discussion Paper:
- a) Increasing centralisation by State Government, much of which is "ad hoc"
 - b) Need to clarify respective responsibilities

- c) Increasing adversity of working relationships between State and local government
- d) There is an inequity in that there are no regional plans west of the Divide and so programs are needed to roll out regional strategies for this major part of the State.

The Initiatives/responses to these issues are put forward as:

- Commitment to a longer-term process of legislative change to comprehensively reform the Planning System – and ensuring that the shorter-term changes are compatible;
- Negotiate an Inter-Governmental Agreement to clarify roles and responsibilities of State and Local Government in NSW planning – particularly: criteria for Part 3A,
 - monitoring and implementing regional strategies,
 - more tailored to benefits and equitable allocation of the Planning Reform money,
 - Establish guidelines for Memorandums of Understanding to be negotiated with State Agencies for service delivery on DA referrals and assumed concurrences/deeming provisions.
- Establish Regional Planning Commissions involving relevant State agencies, constituent Councils, interest group representatives etc. to:
 - annually monitor implementation of Regional Strategies
 - integrate State agencies, policies, budgets and delivery of infrastructure for regional settlement patterns
 - be the “LEP Panels” for that region.

2.0 **Plan Making**

2.1 Council commends the State Government and the NSW Minister for Planning for achieving a NSW State Plan and a number of regional strategies including the locally relevant Lower Hunter Regional Strategy. These should be built upon to:

- a) Establish Regional Commissions comprising of the Regional Director of the relevant Department of Planning Regional Office, representatives of local government, the development industry and interest groups to comprise a Commission for the effective implementation of the regional strategies and their translation into, and connection with, the LEP's to be prepared by local constituent councils;
- b) To enhance the integration of infrastructure and environmental research constraints and management with the settlement pattern and urban development embodied in those regional strategies;
- c) To carry out effective monitoring, review and adaptation of the regional strategies over time;

- d) To generally improve the connections with local strategic planning.
- 2.2 An enhanced integrated planning framework approach by the Department of Local Government and Department of Planning based upon sustainable futures and embodying longer term broader social, economic, environmental, cultural and governance outcomes should be the fundamentals of strategic planning approaches for which the State Government issues guidelines and practice notes.
- 2.3 The Regional Commissions proposed in 2.1 above can play roles in coordinating the connections between regional strategies and local plans and LEP's and better utilise the significant and currently under-utilised depth and strength of professional planning resources in regional offices of the Department of Planning. Also, coordination of State Government agency policy approaches at the regional level can be improved by this means.
- 2.4 Local planning strategies should be mandatory pre-requisites of the preparation of LEP's by Councils.
- 2.5 Inter-regional/State-wide issues and plans need to be given more emphasis, e.g. climate change policies, demographic change and other factors need to be subject of clear policy outcomes at the State level - and with intervention designed to increase the guidance of coastal development and decentralisation relative to infrastructure capacities and delivery, economic development opportunities and environmental constraints and factors.
- 2.6 The standard LEP should be reviewed to be less prescriptive in its content. The State Government needs to recognise the diversity of places that make up Council areas, both as existing and as thought to be created by planning. The Council agrees with a standardised format, but recommends less standardised content in the standard LEP issued by the State Government.
- 2.7 The role and status of Development Control Plans should be clarified and enhanced. Development Control Plans are effective local planning instruments that require formal review by the Council, public exhibition of proposed changes and subsequent reconsideration, modification and adoption by Councils in response to the public exhibition and the comments made. This enables accountable but timely delivery of planning policy changes at the local level. The Exempt & Complying provisions should be in Development Control Plans – and recognising the State Government's desire to have standardised approaches to certain extent the subject of formal review by the Regional Office of the Department of Planning before public exhibition of the DCP's is endorsed.
- 2.8 More detailed comments are made below relative to the recommendations contained in the Discussion Paper.

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PLAN MAKING – COMMENTS RELATIVE TO DISCUSSION PAPER RECOMMENDATIONS

Recommendation in NSW Government Discussion Paper	Support (Y/N)	Comments/Implications for PSC
<p>P1 It is proposed is to introduce a new system of plan-making that is better tailored to the scale, risk, and complexity of land use changes, and allows most LEP's to be finalised more quickly. For smaller LEP's, the system is expected to reduce average time of processing time by at least 50 percent.</p>	<p>No</p>	<p>The process for plan making under Part 3 of the Act is straight forward and simple but needs tightening and clarification. However, it is the operation of Part 3 by both levels of government that requires reform. Therefore, don't bring in a new system - refine current system.</p>
<p>P2 A gateway screening system for land use changes would be introduced. This would be carried out prior to any rezoning or LEP being commenced. A rezoning, or LEP, would not proceed if it did not meet certain specified criteria. The criteria would vary according to the risks and scale associated with a rezoning or development proposal, and would apply whether initiated by a council, State agency, or private proponent. Gateway evaluations for large scale proposals would require a whole of government approach, while smaller proposals, or LEP amendments, would be progressively delegated to other authorities. The gateway evaluation could also look at whether a temporary or permanent rezoning was appropriate.</p>	<p>Yes</p>	<p>Criteria should be formally established on how LEP's of differing scales, risks and complexities are to be managed by Councils and organisational arrangements to review the draft LEP before it is endorsed for public exhibition.</p> <p>Criteria for relatively minor LEP's should be strongly stated and sufficiently specific to enable the Director of Planning or equivalent at a local constituent Council to be able to endorse public exhibition as required of such relatively minor LEP's.</p>
<p>P3 When land use changes have been agreed to in principle, the making or amendment of a rezoning or LEP would also be authorised. The LEP (or relevant plan) would then be streamed into different pathways for processing and determination commensurate with risk, scale and sensitivity. For minor land use issues, consideration could be given to expanding those matters that can be dealt with under Section 73A.</p>	<p>Yes</p>	<p>Recognise that we don't need more complexity. Clear line of sight for processes. Panel needs to be based in region and include representatives with Local Government experience</p>
<p>P4 Where land use or plan changes are initiated by a private proponent, an appropriate fee for service would be chargeable to compensate the relevant council or agency for resources required in both gateway reviews and plan-making.</p>	<p>Yes</p>	<p>Majority of rezonings are developer initiated – system needs to recognise why rezonings are attractive to landowners and developers.</p> <p>Fees to be clarified and address land value capture or public benefits relative to the significant private financial benefits that a rezoning generates.</p>

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<p>P5 Referral to and consultation with State agencies would be required at gateway stage before a plan or LEP is commenced. In areas approved for release, where infrastructure and environmental issues have been addressed, no further referrals should be required. The referral and consultation process for all Plans would be subject to time limits to allow for efficient processing.</p>	<p>Yes</p>	<p>Provided that S.62 of the Act is removed. If additional information required, then agencies consulted again but still at gateway stage. State Agencies and DOP to be geared to provide timely and clear response, and this should be resolved at the gateway stage. Council emphasises the need for cultural change to take place in State government agencies, their management and associated priorities with Council LEP's in responding to this proposal.</p>
<p>P6 A system of accountability for LEPs would be introduced which might include:</p> <p>P6.1 Mandatory timeframes for different stages of the process.</p> <p>P6.2 The ability to refer an outstanding LEP or land use issue to the proposed PAC, or a Joint Regional Planning Panel (JRPP), where timeframes are not being met or finalisation of an LEP has stalled.</p> <p>P6.3 Extending the existing power in the EP&A Act (Section 74) to allow the State to directly amend an LEP where there are issues of State or regional significance.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Despite intentions, Department of Planning doesn't abide with stipulated time frames.</p> <p>Powers and representatives on PAC or JRPP needs clarification.</p> <p>Minister to formally and publicly justify why Minister's powers have been exercised.</p> <p>Need criteria to include exhibition process.</p>
<p>P7 To support the gateway and streaming process the responsibilities of different parties in the plan making process would be better defined to streamline the mechanical elements of plan making, in particular legal drafting. This would include a one stop shop model to operate once a council has exhibited and adopted a policy/land use change for incorporation into an LEP.</p>	<p>No</p>	<p>Have guidelines/templates on written Instrument to reduce surprises post-exhibition. Need for DOP to be advocate for Council rather than be silent and reserving its views until when formally asked. State government agencies should be required to devise criteria and policies that enable increased delegation to local Councils in formulating and implementing LEP's including integrated development assessment.</p>
<p>P8 The Department of Planning should continue to streamline and reduce the number of REP's and SEPP's by:</p> <p>P8.1 Preparing and implementing the regional and subregional strategies.</p> <p>P8.2 Enabling SEPP's to be prepared for</p>	<p>Yes</p>	<p>But removing SEPP numbers and altering the 117 direction numbers is confusing and inefficient. Regional strategies need more detailed and integration with rest of Government Agencies. Remove REP's – irrelevant Stop putting heads of consideration into</p>

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<p>issues of regional significance.</p> <p>P8.3 Further consolidation of SEPP's.</p> <p>P8.4 The possible removal of REP's from the plan-making system.</p>		<p>SEPP's for DA's – that's for Section 79C. There should be only 2 locations for planning definitions – in the Act or in the LEP template.</p> <p>The LEP template and an amended Section 74 extending Minister's powers makes SEPP's and REP's unnecessary</p>
<p>P9 The Department of Planning would issue guidelines for different levels of LEP's and DCP's to support a new system that would identify the appropriate content and timeframes of these Plans and non-compliance with State policies such as SEPP 65 would be prevented.</p>	<p>Yes</p>	<p>Need guidelines not only for legal planning but strategic planning for local district and regional scales.</p> <p>The Department needs to significantly increase its experience and skills on development control planning if it is to play a meaningful role in this.</p> <p>The Department should also be placing emphasis on how strategies should be prepared. e.g. content, level of detail etc</p>
<p>P10 The following measurable outcomes are recommended for the changes to plan-making:</p> <p>P10.1 Reduce processing time for LEP's by 50 per cent.</p> <p>P10.2 Reduce the number of SEPP's/REP's by 50 per cent</p>	<p>Yes with qualifications</p>	<p>Need clarification of requirement for 50% reduction.</p> <p>Prudent to determine what SEPPs and REPs are needed first before stipulating a target.</p> <p>Reducing processing time for LEP's is acceptable, but LEP's are not DA's. Document needs to recognise that draft LEPs are policy tools of local government and hence are inherently political. It is inappropriate for a legislated timeframe to be imposed on what is essentially a political process.</p>

3.0 Development Assessment

- 3.1 Part 3A of the Act should be amended to enable a Commission of Inquiry, or alternatively, a Merit of Review Appeal against Ministerial decisions on major development applications and state infrastructure projects.
- 3.2 Section 79 of the Environmental Planning & Assessment Act should be amended to relate to different categories of development and the related matters for consideration.
- 3.3 State government agencies should be required as a matter of priority and by certain dates to prepare policies and criteria that enable delegations to local councils on integrated development applications and local development applications – thereby substantially reducing the referral requirements and delays associated with State Government agency referrals. This includes referrals under integrated development to the Rural Fire Service where land is bushfire prone in terms of mapping required under the Bushfire Protection Act. Building Surveyors and Planners can be accredited through training to exercise such delegations under

certain criteria and to ensure implementation in accordance with the Bushfire Protection Manual.

- 3.4 Review and reform Section 79C and associated sections of the Act so that Statements of Environment Effects are not required for some minor local development applications or for complying development. Assessment reports under certain requirements can be facilitated for preparation by certified practising planners to assist Council processing in validating the professional content and thereby eliminate significant “rework” and checking required. This may involve resolution of accountability and liabilities between the certifying practising planner preparing the assessment report and the Council in making the subsequent determination.
- 3.5 The replacement of Councils in determining development applications of a value in excess of \$50M by joint regional planning panels is strongly opposed. This is undermining local democracy and the role of local government to an unacceptable extent. It also adds another layer and step in the process of determining development applications and has the distinct potential to cause more extensive delays in determination times and therefore go against one of the original intentions of such an initiative. Certain advisory panels, e.g. Design Review Panels, etc. should be encouraged for enhanced use by local councils. In effect, the local planning department is the expert in assessing, recommending and determining local and integrated development applications.



**NSW STATE GOVERNMENT DISCUSSION PAPER ON PLANNING REFORM
RESPONSE TO RECOMMENDATIONS**

**CHAPTER 4
DEVELOPMENT ASSESSMENT AND REVIEW**

Recommendation in NSW Government Discussion Paper	Support (Y/N)	Comments/Implications for PSC
A1 A hierarchy of decision making bodies would be established to reflect the differing levels of assessment for State significant, regionally significant, local, minor and complying developments (including reviews) and the degree of the environmental impacts.	Yes	This recommendation is supported, however it would require the establishment of a consultation process with Council. Clarification would also be sought regarding the representations within the proposed decision-making bodies (e.g. appointment, skills, experience and accreditation).
A2 Currently under Part 3A the Minister cannot delegate determinations to another body. Under this revised scheme, the Minister would delegate the majority of ministerial-level determinations to a new PAC, excluding applications for critical infrastructure and other key projects of State significance.	Yes	This recommendation is supported assuming that Council will provide an advocacy role to the Planning Assessment commission given its pool of local and regional knowledge, however there are staff resourcing issues associated with this.
A3 The new PAC would determine most projects of State significance. The PAC would also be able to conduct public hearings, provide advice to the Minister, and undertake other planning functions as directed by the Minister from time to time, such as a review of outstanding LEPs.	Yes	This recommendation is supported, however clarification is required in relation to the review of outstanding Local Environmental Plans.
A4 The PAC would determine regionally significant projects where the host Council does not have the resources to support a JRPP.	No	This recommendation is not supported. Clarification is sought as to why Council can't assess the application and refer it to the Planning Assessment Commission for determination. Nonetheless, development fees should cover the cost of the Joint Regional Planning Panel.
A5 At a regional level, JRPPs would be	Yes	This recommendation is emphatically not

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<p>established to determine applications of regional significance. These could include applications by State agencies, and other developments exceeding \$50 million in value. JRPPs would be modelled on the current Central Sydney Planning Committee (CSPC) for the City of Sydney, and would comprise three State appointees and two council appointees. These would only be established where Councils have sufficient planning resources to provide proper assessment advice on major applications.</p>		<p>supported. Clarification is required as to the meaning of “sufficient resources”. Does this relate to skills, expertise, finances? Why \$50M? Under this proposal, only two local government areas would be represented, which would be a problem with the likes of the Mahogany Ridge development which has impacts over three local government areas. It represents another layer in the system and undermines local democracy.</p>
<p>A6 At the local level, Councils could be directed to establish an Independent Hearing and Assessment Panel (IHAP) to deal with certain developments, such as applications seeking a major SEPP 1 variation beyond the existing LEP controls. However, such IHAPs would be advisory only and would be appointed by Councils from an accredited register.</p>	<p>No</p>	<p>This is potentially supported if such panels and the expertise that they provide are at the discretion of the Council. However, the existing Development Assessment Panel delegations and assessment staff enable this already.</p>
<p>A7 For small applications, such as single dwellings and matters worth less than \$1 million in CIV, it is proposed to establish a system of planning arbitrators. These would deal with all Section 82A reviews and deemed refusals for small matters. Planning arbitrators would be appointed by a council from a register accredited by the PAC, or the State. Senior council staff from adjacent or nearby councils may serve as planning arbitrators.</p>	<p>No</p>	<p>This is emphatically not supported and indeed is considered unnecessary given the existing Development Assessment Panel and assessment staff and is not supported.</p>
<p>A8 The role of IHAPs, design review panels and independent advisory panels should be rationalised to remove duplication and ensure consistent and expeditious advice to elected councils. One possibility is to ensure IHAPs contain appropriate design skills.</p>	<p>No</p>	<p>This is not considered necessary and is not supported as existing staff and assessment reviews deal with this already.</p>
<p>A9 The nature and extent of information required for different types of development applications could be mandated. Councils would prepare appropriate guidelines to outline the minimum requirements for plans, reports and studies. The period for councils to</p>	<p>Yes</p>	<p>This is strongly supported. Council already has the appropriate guidelines in place with the Development Application Guide 2006.</p>

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reject DAs on the basis of inadequacy could also be increased from seven to 14 days.		
A10 e-Planning will provide the basis for improved DA lodgement and tracking and would be strongly encouraged. See Chapter 6.	Yes	Clarification is required in relation to the funding for this recommendation, however it is generally supported.
A11 Appeals to the Court would generally be allowed, as is presently the case. However, the need for appeals when the PAC has held public hearings should be reviewed. Small applications subject to local independent review should only proceed to the Court after the matter has been considered and determined by a planning arbitrator. Stricter accountability measures for complying development would be introduced (see Chapter 5), but no appeals would be allowed.	No	This process appears to be less streamlined than the existing process and is not supported.
A12 The NSW Government would continue its review of agency referral requirements with a view to reducing unnecessary referrals. Where referral matters have been determined during planmaking, they would generally not be referred again at the development assessment stage. Concurrence and DA referral guidelines would be prepared to streamline the referral process.	Yes	This recommendation is supported, however clarification is required as to the proposed timeframes.
A13 Conditions of development approval would be standardised. One option is to require councils to prepare and publish standard development consent conditions consistent with State guidelines.	Yes (conditional)	This recommendation is supported subject to special development/site specific condition still being available for use.
A14 The current system of development modifications would also be improved. Changes to be considered would include:	Yes	
14.1 Reducing the number of Section 96 modifications that can be approved for a development.	Yes	This recommendation is supported, however clarification is sought as to how many Section 96 modifications will be allowed.
14.2 Allowing councils greater flexibility to re-issue consents under Section 96 if an error is made.	Yes	This recommendation is supported.
14.3 Ensuring that Section 96	Yes	This recommendation is supported,

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<p>modifications are subject to SEPP 1 where relevant.</p>		<p>however it has been suggested that the Department explore the possibility of requiring a new development application in the instance where a variation is sought to a development standard, and not allowing for it to be assessed as a Section 96 modification.</p>
<p>A15 To strengthen assessment accountability it is proposed to introduce a range of 'deemed to comply' periods to better reflect realistic determination times for developments. A scale of the following magnitude has been suggested:</p> <p>15.1 Ten days for complying development.</p> <p>15.2 Twenty days for DAs not requiring exhibition.</p> <p>15.3 Forty days for small scale development.</p> <p>15.4 Sixty days for medium scale development.</p> <p>15.5 Ninety days for development equivalent to designated development.</p>	<p>No</p>	<p>This recommendation is not supported, particularly the deemed to comply provisions. Thresholds need to be defined between small, medium and development equivalent to designated development. Resourcing and supply of assessment professionals would make this problematic.</p>
<p>A16 The current DA fee regime would be reviewed to enable councils to match fees for service.</p>	<p>Yes</p>	<p>This recommendation is strongly supported.</p>
<p>A17 The Department of Planning would issue consultation guidelines, which incorporate community consultation principles and standardised notification procedures. Councils will be able to require applicants to address issues raised during community consultation, as is currently the case with major project applications under Part 3A.</p>		<p>Consultation is generally supported, however further clarification of this recommendation is required.</p>
<p>A18 The following measurable outcomes are recommended for changes to the development assessment process:</p> <p>18.1 Reduce overall time frames for local government DA processing from 68 days (current State average) to 48 days.</p>	<p>Yes</p>	<p>These recommendations are generally supported, however clarification is sought in relation to the data used to establish the figures proposed.</p>
<p>18.2 Reduce the number of Section 96 applications by a third.</p>	<p>Yes</p>	<p>As above</p>

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18.3 Improve DA processing time frames and facilitate better regional planning by:	Yes	As above
18.4 Improve DA processing time frames and facilitate better regional planning by:	Yes	As above
18.5 Establishing Joint Regional Planning Panels – to deal with about 80 per cent of regionally significant projects.	Yes	As above
18.6 Reduce the need for legal appeals to the Court by 20 per cent. Achieve this by establishing planning arbitrators to double the number of minor appeals reviewed under Section 82.	No	This recommendation is not supported. While less litigation would be a positive outcome, the involvement of arbitrators would not be.

CHAPTER 5

EXEMPT AND COMPLYING DEVELOPMENT

Recommendation in NSW Government Discussion Paper	Support (Y/N)	Comments/Implications for PSC
C1 The Department would extend the ambit of exempt development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.	Yes	C1 cannot be judged until the Guidelines for such developments are provided, however Council supports the guidelines being prepared.
C2 The Department would extend the ambit of complying development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.	Yes	C2 cannot be judged until the Guidelines for such developments are provided, however Council supports the guidelines being prepared.
C3 The Department would establish a Complying Development Experts Panel (CDEP) to advise on complying codes policy, and the acceptability of complying development codes. The panel would include experts working within local government.	Yes	CDC Expert panel is supported.
C4 The Department would develop, with the assistance of the CDEP, a series of Statewide complying development codes for common minor development categories such as single dwellings, alterations and additions, industrial sheds, and commercial fitouts. Such	Yes	Should go further than merely addressing acceptable standards of amenity, it should go to streetscape performance, environmental performance of outcomes, and site design response.

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<p>codes would define acceptable standards for community amenity, and would be subject to public exhibition and stakeholder consultation prior to adoption.</p>		
<p>C5 The Statewide complying development codes would be made mandatory default codes, to apply to all relevant development categories unless an alternative local code has been accredited. Complying development codes will provide for numeric based 'deemed to comply standards', which will provide for both certainty in terms of the standards to be complied with; and flexibility to accommodate innovative design and matters such as different lot sizes and densities and minor non compliances. Performance based measures may be incorporated into the code.</p>	<p>No</p>	<p>Represents no significant difference to the current situation, other than revamping SEPP 60 to ensure Statewide consistency. This approach diminishes the local buy-in to development outcomes by communities, and seeks to make urban development across the state homogenous. This approach is against the intentions of pre-existing state policy such as the Coastal Design Guidelines that support SEPP 71 that seeks to guide and differentiate urban development outcomes depending on the hierarchy of urban development settlements in the coastal zone.</p>
<p>C6 Councils would be permitted to develop alternative complying development codes, which must be generally consistent with the State codes. These would be accredited by the Department on the advice of the CDEP and must achieve at least the same level of complying development as the State codes.</p>	<p>No</p>	<p>This recommendation assumes that the mandatory codes are going to perform to a standard that achieves the State Government intentions, whereas the historical facts demonstrate the SEPP 60 has not been largely successful, compared with Councils such as Port Macquarie Hastings that have developed their own exempt and comply criteria with far superior results to that of SEPP 60, due to the focused promotion and administration at the Customer Service Counter.</p> <p>The success of the codes will be largely dependent on how they are promoted and administered at the regulatory level.</p> <p>Recommendations should focus on promoting the codes and ensuring Council's are properly resourced to administer Complying Development Effectively.</p> <p>Supported to allow Council's to improve upon the Codes to address local issues.</p>
<p>C7. The achievement of increased levels of complying development should be reported annually through the Local Development Performance Monitoring Report issued by the Department, with an expectation that the level of complying development will increase</p>	<p>No</p>	<p>The selected targets are arbitrary, and are not based upon the capacity of the existing resource supply problems to meet the targets, the accreditation processes improvements, and the codes being developed that are workable.</p>

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<p>from 11 per cent to 30 per cent within two years of implementation, and to 50 per cent within four years.</p>		
<p>C8 The following procedures would be adopted for determining development where a complying code applies:</p> <p>8.1 Where a development proposal is fully compliant with an applicable code, a certifier (private or council), may approve the development and lodge the complying development certificate with the local council.</p> <p>8.2 Where a development proposal has minor non compliances that in the opinion of the certifier (private or council) would not generate an impact on neighbours or set a planning precedent in the neighbourhood, the certifier would be required to lodge a provisional complying development certificate with the local council. This would become effective after seven days unless challenged by council. If however, the council did not consider the non compliances to be minor then a DA would need to be formally lodged and processed in the normal manner.</p> <p>8.3 Where a development proposal has minor non compliances, which require a performance assessment by the council, only that aspect of the proposal will require council approval.</p>	<p>No</p>	<p>What about rights of appeal for residents that consider they have been affected by a variation deemed to be inconsequential by the PCA. The provisional CDC process should allow for community engagement. A seven (7) day turn around from the Council is insufficient time to consider the variation. What information is required to be provided from the applicant to demonstrate that variations have acceptable levels of impact</p>
<p>8.4 A certifier could also be empowered to condition an application that has minor variations so that it becomes compliant.</p>	<p>No</p>	<p>Who enforces the condition, and what if the condition is found to be ineffective in ensuring compliance with the CDC thresholds. Council should be consulted about the appropriateness of the condition if we are left to enforce.</p>
<p>C9 Where an accredited certifier issues a complying development certificate with minor non compliances endorsed by council, the council would be entitled to a fee for the service.</p>	<p>Yes</p>	<p>Council supports the fee for service in assessing and determining whether variations have merit.</p>

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<p>C10 Where a development does not comply with the relevant codes (and non-conformities are not minor or trivial), then a development application to Council would be required.</p>	<p>Yes</p>	<p>Council agrees that developments that do not comply with the codes and have impacts, should be lodged as a DA, and Council has the discretion to decide whether the variations are acceptable or not for CDC.</p>
<p>C11 The mandatory default code would include appropriate complying development standards for developments in environmentally sensitive or heritage areas. These codes will be informed by better mapping of environmentally sensitive areas.</p>	<p>No</p>	<p>Easier said than done, and relies on quality mapping and data gathering. This recommendation from experience will not carry forward due to the lack of commitment to local issues from the Department of Planning.</p>
<p>C12 The certifier (whether council or private) would have an obligation to provide a courtesy notice to immediate neighbours advising of the request for a complying development certificate, noting works found to be complying development would be automatically approved.</p>	<p>Yes</p>	<p>Obligatory notification of neighbours by the PCA for any CDC is supported. But where does the PCA issuing the CDC get the owners address details?</p> <p>Neighbours should have the opportunity for comments, particularly where it is a merit-based judgement.</p>
<p>C13 The local council would be required to keep an electronic database of all complying development details (certificates issued, construction values etc) for public and annual reporting purposes.</p>	<p>No</p>	<p>The Department should keep the electronic register of CDC's by LGA, with data mined from Council's records by the Department.</p>
<p>C14 Statewide procedures and guidelines governing the complying development certification process and for public reporting purposes would be required.</p>	<p>Yes</p>	<p>The level and type of documentation to be provided with any CDC should be included in the guidelines as well as lodgement checklists and assessment templates for use by proponents and PCA's in preparing CDC's;</p>
<p>C15 Changes to existing arrangements would be made to strengthen the accountability of accredited certifiers (see Chapter 7).</p>	<p>Yes</p>	<p>Increased accountability of accredited certifiers is strongly supported.</p>
<p>C16 The implementation of the first mandatory complying code would be targeted for 1 July 2008.</p>	<p>No</p>	<p>Implementation of mandatory codes should be deferred until such time as the industry and Councils have had the opportunity to engage in consultation of the NSW Code and supporting guidelines.</p>
<p>C17 The NSW Government, in conjunction with local government and industry representatives, would conduct a</p>	<p>No</p>	<p>The timeframes for implementation are too tight to carry out the suggested public education campaign with industry and</p>

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public education campaign on the system as it is implemented.		Council's. The issues surrounding environmentally sensitive lands and data gathering would seem to be a gap in the campaign as it is unlikely it will be implemented immediately.
<p>C18 The following measurable outcomes are recommended for the changes to exempt and complying development administration:</p> <p>18.1 Increase the number of exempt & complying development certificate from 11 per cent (currently) to:</p> <p>18.1.1 30 per cent within two years</p> <p>18.1.2 50 per cent within four years</p> <p>18.2 Mandatory default code to be adopted by 100 per cent of Councils across the State by July 2008.</p>	No	The targets are arbitrary and do not adequately reflect the different environmental issues, and resource shortages that various local government areas face.

CHAPTER 6

E-PLANNING INITIATIVES

Recommendation in NSW Government Discussion Paper	Support (Y/N)	Issues & Implications
E1 The NSW Government, in conjunction with local Councils, should assess the readiness and current competencies of local government and relevant NSW Government agencies in the areas of ePlanning.	Yes	<ul style="list-style-type: none"> ▪ Already underway. ▪ Investigation of readiness for e-planning should be investigated.
E2 The SiX Viewer should be implemented as the platform for e-planning to collate, integrate, manage and display planning information from councils and relevant NSW Government agencies to facilitate and accelerate the adoption of ePlanning initiatives.	Not sure at this stage	<ul style="list-style-type: none"> ▪ Need more information about SiX Viewer & compatibility. ▪ Costs to Council? Recoup existing funding development? ▪ Council's should be consulted about the SiX Viewer platform to ensure that IT resources are focused in the directions identified by the Department.
E3 The Department of Lands and Department of Planning should implement a number of regional and local council pilot programs utilising the SiX system within the existing Statewide framework to demonstrate	Yes	<ul style="list-style-type: none"> ▪ Pilot it first. ▪ Piloting of SiX Viewer is supported;

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the benefits of early adoption of ePlanning and to build on the work already undertaken in a number of sectors.		
E4 Protocols should be developed to ensure standard approaches to the exchange and the organisation of planning information.	Yes	<ul style="list-style-type: none"> ▪ Fundamental – is it XML format. Government/Industry standard required. ▪ Council supports the preparations of protocols for information management and capture. The issue of copyright in the display of information on-line is a significant hurdle that should be explored and addressed by the Department Planning.
E5 More effective delivery of the planning system using ePlanning should be explored in:		
5.1 e-DAs.	Yes	<ul style="list-style-type: none"> ▪ Subject to analysis and costs and State Government funding support. ▪ Council supports exploration of the opportunities identified in E5.1, E5.2, E5.3, and E5.4
5.2 Exempt and complying codes.	Yes	<ul style="list-style-type: none"> ▪ Council supports exploration of the opportunities identified in E5.2
5.3 Access to Section 149 certificates.	Yes	<ul style="list-style-type: none"> ▪ Council supports exploration of the opportunities identified in E5.3
5.4 The tracking of LEPs.	Yes	<ul style="list-style-type: none"> ▪ Council supports exploration of the opportunities identified in E5.4
E6 The Department would establish an ePlanning experts panel (EPEP) to advise on appropriate directions for ePlanning that are practical and work with existing systems. The EPEP would include experts working within local government. Its detailed terms of reference would be determined prior to its establishment.	Yes	<ul style="list-style-type: none"> ▪ If DoP funds it and fund backfill. ▪ E-planning experts panel is supported'
E7 That the collection and development of assessment information be expanded to include construction details.	Yes	<ul style="list-style-type: none"> ▪ Significant cost implications. ▪ Council collects construction data for the ABS, so this initiative is supported to measure resource supply in the context of Statewide economic development and sustainability
E8 An implementation plan would be developed over the next three years by the EPEP with targets for State and local government achievements. The	Yes	<ul style="list-style-type: none"> ▪ Potential funding – Mandatory funding needed from DoP. ▪ Planning the implementation – not actual implement.

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<p>plan would also include potential funding to reach these targets and an ePlanning training and communications strategy.</p>		<ul style="list-style-type: none"> ▪ Council supports the preparation of a report in 3 years, however, funding should be provided by the State government to allow Council's to achieve e-planning readiness or e-planning implementation;
<p>E9 The following measurable outcomes are recommended for the implementation of ePlanning:</p> <p>9.1 Implementation plan with targets adopted by State and local government within three years.</p> <p>9.2 Adoption of ePlanning platforms in local councils:</p> <p>9.2.1 Within two years 80 per cent of councils are to provide online DA tracking.</p> <p>9.2.2 Within two years 100 per cent of exempt and complying codes will be available on line (State provided) and 50 per cent of Council codes (as accredited by the State).</p> <p>9.2.3 Within three years 50 per cent to provide online Section 149 planning certificates.</p> <p>9.2.3 Within three years 50 per cent are to have LEP tracking systems.</p>	<p>Unsure at this stage</p>	<ul style="list-style-type: none"> ▪ EPEP to identify measures within say 12 months having regard to E1. Otherwise where have these measures come from ie data analysis? ▪ Analysis of cost to achieve the E9.2.1 to E9.2.3 should be undertaken in preparing the implementation plans, and funding should be allocated from the State for targeted e-planning projects within local government.

CHAPTER 7

BUILDING AND SUBDIVISION CERTIFICATION

Recommendation in NSW Government Discussion Paper	Support (Y/N)	Comments/Implications for PSC
<p>Addressing Conflicts of interest</p>		
<p>B1 For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested:</p>		
<p>1.1 The number of construction or complying development certificates that can be issued to</p>	<p>Yes</p>	<ul style="list-style-type: none"> • Council supports the allocation of building surveyors for large projects or repeat projects to ensure there is no

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<p>any one client or involving any one builder or developer by an accredited certifier to be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available.</p>		<p>conflict of interest;</p> <ul style="list-style-type: none"> • Council's accredited certifiers must be included in the pool of eligible accredited certifiers to be used in large and repeat projects for the certification process in order to meet National Competitive tendering
<p>1.2 Only the landowner would be allowed to appoint a certifier to issue a construction certificate or complying development certificate. An education campaign will be undertaken to inform landowners of this change.</p>	<p>Yes</p>	<ul style="list-style-type: none"> • Supported
<p>B2 For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested:</p> <p>2.1 The number of projects to which an accredited certifier could be appointed as the principal certifying authority by any one client or involving any one builder or developer be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available.</p>	<p>Yes</p>	<p>Council's accredited certifiers must be included in the pool of eligible accredited certifiers to be used in large and repeat projects for the certification process in order to meet National Competitive tendering</p>
<p>B3 For large or complex projects, (defined under the BCA as any building requiring a fire isolated exit), staff of the BPB would allocate the accredited certifier to issue construction certificates and act as the PCA for the project subject to the right of developers to reject the first two certifiers allocated.</p>	<p>No</p>	<p>Seeks to discriminate accredited certifiers, and is likely to exclude Council certifiers from the process.</p>
<p>B4 The BPB would develop a model set of contractual arrangements that will clearly specify the responsibilities of the certifier and the builder/developer.</p>	<p>Yes</p>	<p>Supported</p>
<p>B5 The BPB would undertake targeted audits focussing on:</p> <p>5.1 Those certifiers whose income from any one client or income derived from developments</p>	<p>Yes</p>	<p>Supported</p> <p>Audits should also extend to projects in environmentally sensitive locations to ensure compliance with the mandatory codes is being achieved.</p>

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<p>involving any one builder or developer exceeds a significant proportion of their total income for the year.</p> <p>5.2 Those certifiers who work on larger projects</p>		
<p>Broadening accreditation</p>		
<p>B6 The proposed changes would expand the accreditation system from individuals to include companies, provided the company employs at least three accredited certifiers. Under this system, at least one director of the company would be a certifying authority, and an appropriately accredited person must sign all certificates.</p>	<p>Yes</p>	<ul style="list-style-type: none"> • Accreditation of Building Surveyors – Generally is supported. However, issues for Council’s being able to supply Accredited Certifiers to deal with A1, and having to outsource accredited services, because the Act presently requires that Council must provide certification irrespective of whether Council’s can provide the accredited staff. • Councils should have access to a pool of A1 accredited certifiers. • Councils that employ building surveyors issuing CC’s on Class 2 to 9 structures should automatically be accredited to level A2 for five years. This will commit Councils to have officers tertiary trained and to gain the relevant accreditation. Further, will permit Councils to allocate funding and establish training programs within their organisation.
<p>B7 Under these revised rules, Councils would also seek corporate accreditation. All individuals in Council who are required to sign certificates or conduct mandatory inspections will be deemed to be accredited at A3 level of accreditation. These deemed accredited certifiers would only be allowed to certify certain types of development. All other developments will need to be certified by appropriately accredited certifiers, either from Council or the private sector.</p>	<p>Yes</p>	<p>Supported. Accreditation needs to be extended to development engineers responsible for the issue of construction certificates associated with road and drainage works (subdivisions).</p>
<p>B8 The NSW Government would investigate whether certain categories of building design professionals, particularly those involved in designing critical building systems, need to be accredited.</p>	<p>Yes</p>	<ul style="list-style-type: none"> • Everyone involved in critical building systems should be accredited due to OHS, Workcover issues etc

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Clarifying responsibilities and sanctions		
B9 Councils' responsibility to enforce development consents, whether or not the principal certifying authority is an accredited certifier would be mandated. Penalties could be imposed against councils where they are made aware of an issue and do not act.	No	<ul style="list-style-type: none"> • The responsibility for Council enforcing Development Consents that have been poorly administered by the PCA is significantly flawed. Firstly, because there are no ramifications or requirement for the Certifier to get it right the first time, secondly Council is left deal the owner who has already paid the certifier and expected that the Certifier would do their job properly, and thirdly because Council is left to bear the full cost of remedying a failed inspection process already paid to the PCA by the owner. This process is neither equitable or sustainable
B10 Councils' powers of enforcement for unauthorised work would be increased.	Yes	<ul style="list-style-type: none"> • PIN's are not an appropriate mechanism for raising revenue, they are part of a suite of regulatory tools to resolve development investigations, and should be used in accordance with the NSW Ombudsman Guidelines for enforcement. • Council supports the inclusion of a "Stop Work Order" in the Environmental Planning and Assessment Act.
B11 Consideration would be given to increasing fees for building certificates to avoid these certificates from being used as retrospective approvals for unauthorised building works.	Yes	<ul style="list-style-type: none"> • Council supports increasing the fees for Building Certificates to adequately reflect the work involved in assessing and issuing a Building Certificate Application.
B12 The BPB's powers to fine or suspend an accredited certifier or attach conditions on their accreditation would be expanded and streamlined.	Yes	<ul style="list-style-type: none"> • Council supports increased powers to BPB to regulate and discipline PCA's • However, the BPB needs to be resourced and motivated to take actions. • So far very little has been done to fine or suspend PCA's that have been found to be failing the requirements of the process.
B13 The respective roles and responsibilities of certifiers, Councils and landowners, should be clarified through the development of guidance/education material as well as possible legislative changes.	Yes	Council's are continually contacted by owners and neighbours to resolve disputes arising during the construction phase being managed by the PCA.
Certification of land subdivisions		

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B14 Consideration be given to allowing private certification of subdivisions (both land subdivision and strata subdivision), but with the following controls:	No	<ul style="list-style-type: none"> Issue of CC and subsequent Linen Release by PCA's that includes dedication of infrastructure (like roads and stormwater systems etc) presents serious concerns for Council regarding the adequacy of the works as installed. Only Council should be allowed to issue CC's and Linens that include works for which it will become ultimately responsible as asset owner
14.1 A developer could only be able to appoint a certifier from a list of five certifiers identified by the local council.	No	Excludes Council from nominating itself. Presumes all PCA'sa rein the private sector. The largest proportion of PCA's is within the Councils themselves.
14.2 The certifier would be required to lodge a provisional subdivision certificate with the local Council, which would become effective after fourteen days unless challenged by council.	No	Subdivision Certificates should remain with Council due to the critical nature of the certification process, particularly surrounding infrastructure, Section 94, and land titles.
14.3 The local council would be entitled to a fee for the service of reviewing the certificate.	No	Council's should be the only certifier in order to maintain independence in this very lucrative area of the development industry and should collect all fees for processing the subdivision certificate.
B15 Consideration will be given to enabling greater ranges of strata subdivision development proposals as complying development as one of the complying development codes outlined in Chapter 5.	No	<ul style="list-style-type: none"> Strata Subdivisions should not be CDC's unless the PCA is required to implement all conditions of consent (not just BCA issues), such as driveway finish, landscape outcomes, fire safety installations, disability access, building colours and finished, roof reflectivity etc. Council planners will need to explore subdivision outcomes at the time the original DA whether or not they are proposed, because, a PCA could effectively allow subdivision the land without further consultation with Council. This process will substantially add to the DA process in order for Council to be satisfies all outcomes required of a Strata Subdivision are achieved.
Miscellaneous amendments		
B16. Consider miscellaneous amendments to improve the certification system including:		
16.1 Mandatory training for accredited certifiers regarding policies for	Yes	Supported

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complying development.		
16.2 Mandatory reporting of complaints about developments to both council or the certifier (depending on who has received the complaint).	Yes	Supported. Public reporting of PCA's that are performing poorly should be undertaken.
16.3 Provide powers to the Minister to define the level of consistency with respect to the relationship of construction certificates to development consents.	Yes	<ul style="list-style-type: none"> • The powers vesting in the Minister is misguided and subject to political interference, and it should be delegated to the DG. • Council supports some guidance around the level of consistency between DA's and CC's; however, the extent of changes to the CC that do not require a S96 should be limited to internal changes. Alterations to the external appearance of the dwelling in terms of Bulk and Scale, setbacks, and size and location of doors and windows should be dealt with by a modification of consent.
16.4 Review the role of occupation and interim occupation certificates including their relationship with the development consent.	Yes	<ul style="list-style-type: none"> • Supported. Interim Occupation Certificates should be abolished, and no Occupation Certificates should be issued until the project is completed. Large projects should be staged to allow for Occupation Certificates to be issued at various stages. • Interim Occupation Certificates provide a high level of uncertainty for the consumer, and only seek to benefit the developers, that wish to force settlement of purchase of residential units before the works are completed.
16.5 Allow for conditioning of construction certificates in relation to BCA matters	Yes	<ul style="list-style-type: none"> • Council supports clarification of the Occupation Certificate and the enforcement of the Development Consent
16.6 Additional mandatory inspections for fire separating construction and acoustic insulation in BCA class 2–9 buildings as well as new inspections before the issue of strata certificates; construction certificates and complying development certificates.	Yes	<ul style="list-style-type: none"> • Support additional mandatory inspections for fire separating construction
16.7 Amend liability provisions for certifiers under the EP&A Act to make consistent with the	Yes	<ul style="list-style-type: none"> • Support the changes to the liability provisions

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insurance requirements under the BPB Act		
Monitoring the performance of the reforms		
B17. The following measurable outcomes are recommended for changes to certification:		
17.1 Accredited certifiers undertaking the role of the principal certifying authority to be audited at least every two years.	Yes	Supported
17.2 BPB to undertake at least 100 audits per annum within the first two years of the changes, and to increase this number over time.	No	A much larger sample should be obtained. The fact the Department recommends 100 audits is a reflection of the low level of significance the Department places on responsible certifying. Instead seeking to pass the responsibility on to Council's for enforcement and auditing of PCA's. This recommendation is an extremely poor reflection of the significance of the failures of the 1998 PCA reforms.
17.3 Number of complaints to the BPB relating to enforcement of development consents by accredited certifiers to reduce by 50 per cent in the first four years of the reforms.		<ul style="list-style-type: none"> • Support the increased auditing regime, however, the complaints of the BPB being reduced depends on the department's ability to improve the quality and rigour of the accreditation process.