



**DRAFT SUBMISSION REGARDING** *Preliminary Comments on Review of  
NSW Planning System*

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Executive Summary .....	3
1 Introduction.....	3
2 Purpose.....	4
3 The Need for Reform .....	4
4 Current NSW Planning System.....	5
4.1 Strengthening Local Government Capacity.....	5
4.2 Community Rights and Social Justice .....	6
4.3 Integrated Planning and Infrastructure Provision .....	7
4.4 Subordinate Legislation (SEPPs, Regulations etc) .....	8
4.5 Plan Making.....	8
4.6 Development Assessment Process.....	9
4.7 State Significant Projects .....	10
4.8 Decision making bodies.....	10
4.9 Exempt and Complying Codes and Development .....	11
4.10 Private Certification Scheme .....	12
4.11 Infrastructure Costs and Development Contributions.....	13
4.12 Social Impact Assessment.....	13
4.13 Natural Resource Management.....	14
4.14 Recognising Climate Change Issues.....	15
4.15 Reviewing the Legislation – Guiding Principles .....	15
5 Questions for Local Government from the Panel .....	16
5.1 Electronic Planning Data .....	16
5.2 Conciliation and Mediation.....	18
5.3 Standard Conditions of Consent .....	18
5.4 Development Contributions .....	19
5.5 Appeals Processes.....	19
5.6 Building and Development Applications.....	20
5.7 Decision Making Processes for Strategic Planning .....	21
6 Conclusion & Recommendations.....	21

## Executive Summary

The Local Government and Shires Associations of NSW (the Associations) believe that there is a need for wide ranging and comprehensive reform of the planning system to ensure it can meet the needs of NSW communities into the 21st century. The Associations welcome and support the current review.

At the time of its enactment in 1979, the *Environmental Planning and Assessment Act* was a far sighted piece of legislation, which sought to promote better environmental, social and economic outcomes for communities. It recognised the right of the public to be involved in environmental planning and assessment and promoted the sharing of responsibility for environmental planning between State and Local Government.

However, myriad amendments and additions to the Act over the past 30 years have compromised many of the key objectives of the legislation and resulted in a planning system that is one of the most legalistic and complex in Australia.

NSW Local Government is facing major challenges including a real infrastructure funding crisis; an inadequate revenue base exacerbated by rating pegging; deficient Commonwealth financial assistance grants; cost shifting; skills shortages; and ever increasing demands from the community and other spheres of government.

The Associations support an overhaul of the NSW land use planning system and legislation that would:

1. Enshrine the community's right to have a say in planning decisions that will affect them.
2. Restore the balance of responsibilities between State and Local Government, and cultivate a genuine partnership between all spheres of government, with reference to the principle of subsidiarity i.e. a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level.
3. Better align land use planning at the regional and local level with other legislation and plans, including natural resource management and the new integrated Community Strategic Planning framework being adopted by councils.
4. Strengthen the principles and practices of sustainable development as it relates to land use, resource management and building design. Climate change should be recognised as an important environmental consideration in planning and development.
5. Strengthen the capacity of Local Government and State agencies to carry out their planning responsibilities according to best practice planning principles and practice.
6. Generate natural resource plans at a scale consistent with local land use plans, to simplify and remove inefficiencies and overlaps in plan making and development.
7. Reduce 'red tape', removing duplication and improving transparency, probity and consistency in for development assessment/decision making at all levels of government.
8. Make the most of the opportunities provided by new technology as it relates to land use planning and development functions.

## 1 Introduction

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the regions of the NSW Aboriginal Land Council. The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian

Governments; provide industrial relations and specialist services to councils and promote Local Government to the community.

The Associations thank the NSW Minister for Planning and the Planning Review Panel for the invitation to make a preliminary submission concerning the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) and the State's planning system. This submission canvasses general issues associated with the NSW planning framework, identifies priorities for review and addresses some specific questions put to the Associations by the Planning Review Panel at an initial meeting. We look forward to working with the Panel on this important issue.

## 2 Purpose

The Associations note that this review will examine planning law as it is set out under the EP&A Act along with the broader planning system, and is divided into three stages:

- A listening and scoping stage to identify the key outcomes and principles for a new planning system, and the publication of an 'Issues Paper' for public comment;
- The preparation of a Green Paper with policy options in regard to the future planning system and the basis of a legislative scheme; and
- The release of draft legislation and a White Paper setting out the Government's new framework for the NSW Planning System.

The Associations would also strongly recommend that the Planning Review Panel examine planning systems in other jurisdictions, both in Australia and internationally, to identify best practices that may be applicable to NSW.

We understand that preliminary feedback is sought during the listening and scoping stage to inform the drafting of the Issues Paper.

The Associations' preliminary submission provides:

- An overview of the need to reform the NSW planning system;
- Some general observations about the current legislation and planning system and priorities for developing a new planning system; and
- Initial responses to specific questions raised by the Panel with specific relevance to Local Government.

## 3 The Need for Reform

There appears to be a consensus amongst representatives of Local Government, industry, environmental groups and the community on the need for comprehensive reform of the planning system in NSW to bring it into the 21st century.

At the time of its enactment in 1979, the EP&A Act was a far-sighted piece of legislation that provided a sound and equitable framework for environmental planning in NSW. However, myriad amendments and the addition of new parts to the legislation over the past 30 years have compromised a number of the key objectives of the Act. In addition new challenges and opportunities have arisen that are not recognised in the legislation or the planning system generally. The current system is characterised by its complexity, multi-layering of plans and consent bodies and the lack of integration of planning and environmental legislation.

The Associations strongly support calls from all sectors for a reduction in the 'red tape' that surrounds the current planning system and reforms that improve transparency and lead to greater accountability in planning and development decisions. However, sound planning principles should not be sacrificed for the sake of expedience. Shortening average development assessment times for example, must not come at the expense of

consistent, transparent and appropriate assessment. Additionally, implementing planning objectives requires equity amongst all stakeholders and relies on all participants having access to the relevant information as well as remaining well informed. The overriding goal of any reforms to the NSW planning system must be to assist in the achievement of sustainable built form and more liveable communities.

This current and comprehensive review of the NSW land use planning system and legislation presents a unique opportunity to make improvements to the existing system to bring it into the 21st century and achieve some key outcomes. The Associations propose that there are 8 key areas that such a review should aim to address:

1. Enshrining the community's right to have a say in planning decisions that will affect them.
2. Restoring the balance of responsibilities between State and Local Government, and cultivating a genuine partnership between all spheres of government, with reference to the principle of subsidiarity i.e. a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level.
3. Better aligning land use planning at the regional and local level with other legislation and plans, including natural resource management and the new integrated Community Strategic Planning framework being adopted by councils.
4. Strengthening the principles and practices of sustainable development as it relates to land use, resource management and building design. Climate change should be recognised as an important environmental consideration in planning and development.
5. Strengthening the capacity of Local Government and State agencies to carry out their planning responsibilities according to best practice planning principles and practice.
6. Developing natural resource plans at a scale consistent with local land use plans, to simplify and remove inefficiencies and overlaps in plan making and development.
7. Reducing 'red tape', removing duplication and improving transparency, probity and consistency in for development assessment/decision making at all levels of government.
8. Making the most of the opportunities provided by new technology as it relates to land use planning and development functions.

## **4 Current NSW Planning System**

From a review of the Associations' previous representations, council submissions, consultation with councils and attendance at selected Panel consultation forums, the Associations make the following observations and comments about the planning system and recent changes in NSW.

### ***4.1 Strengthening Local Government Capacity***

The capacity of Local Government to meet its current and future obligations in relation to the NSW planning system is directly related to the broader issue of the financial sustainability of Local Government in NSW.

Local Government faces a crisis in infrastructure renewal, resulting from restraints on rate revenue, community demand for new services, and a lack of equitable share in tax revenue. Planning and other reform programs legislated by the NSW Government but required to be implemented and administered by NSW councils, generally fail to recognise and account for the cost and resourcing impacts on local councils and their communities. These impacts are exacerbated by the financial constraints on councils, the ongoing and piecemeal nature of planning reform agendas and the shortage of skilled planners and development professionals, particularly in the rural areas of NSW. The previous planning reforms in NSW have had an almost singular focus on regulatory changes. Little attention has been paid to strengthening the capacity of State agencies and Local Government to better carry out their planning and development roles.

The Associations would welcome and support a greater focus in the NSW planning system on:

- Sharing knowledge and information through the development of best practice planning codes and guidelines;
- Improvements to business processes including greater investment at the state level in e-planning related initiatives (we have welcomed the NSW Government's recent commitment of \$4.3 million to expand and extend the current e-housing code program, in which the associations are a partner);
- Initiatives to address skills shortages in planning and development, particularly in rural areas; and
- Strengthening the financial and resource base of Local Government in NSW.

#### *Planning Fees and Charges*

An effective and efficient planning system needs to be adequately resourced. The current system of regulated planning fees means that councils are not able to fully recover the costs of their planning functions. Cost recovery actually deteriorated with regulated fees remaining static for over a decade. Planning legislation and regulations need to provide for full cost recovery.

## **4.2 Community Rights and Social Justice**

### *Public Involvement and Participation*

'Participation'- meaning "the opportunity for all people to genuinely participate in the community and be consulted on decisions which affect their lives" - is one of the four social justice principles which guide Local Government.

The EP&A Act clearly and explicitly endorses public participation, which was a major advance when it was first introduced, with the third object of the Act (section 5 (c)) being 'to provide increased opportunity for public involvement and participation in environmental planning and assessment'.

The Act provides for both:

- Public exhibition of local plans (not SEPPs); and
- Public exhibition of certain types of development.

A key question in the review of the legislation is 'How should people exercise their right to participate in planning decisions that affect them, and at what stage in the planning and development process should this occur?' It is generally held that maximising public participation and involvement at the plan making stage is the most effective and optimum time to facilitate community engagement. However, there are common limitations to obtaining public input at this stage and therefore this should not be relied on as the only time that communities should be involved in the planning process.

Although it is acknowledged that it more effective to involve communities early in a *robust and transparent* plan making stage so that their views can be integrated into local plans, the Associations believe that communities need to be involved at *all* levels of decision making (i.e. both in the plan making and the development assessment process).

The Associations endorse public participation in the planning process, to:

- Allow communities to be able to be constructively involved in planning decisions at the early stages of development through to the development assessment process; and
- Ensure that decision makers are accountable and transparent to the public which requires a high standard of practise and reduces probity risks.

Currently, the legislation does not provide for public participation in the formulation of SEPPs, which effectively allows the Government to circumvent public participation and community debate on key policy matters. The Associations assert that the public participation philosophy embodied in the existing legislation should be retained for all aspects of the plan-making process and extended to apply to SEPPs.

### *Appeals*

The present planning system limits the review of development decisions to applicants and only extends this to third parties in certain circumstances. For a more robust and transparent decision making process all applications for approval should be subject to merit reviews/appeals by any stakeholder (i.e. applicant, government agency, resident, objector). The planning framework should allow any party aggrieved by the decision of a planning authority to have the right of review at arms length from that authority. This would allow the merits of a proposal to be tested independently of the decision maker, reduce potential for corrupt behaviour and provide a framework for robust decisions. A variety of review pathways, depending on the type and scale of development, number of submissions and issues raised would assist in managing this process. The Associations would advocate an emphasis on tribunal-style hearings, limits on representation and venues in local/regional areas to ensure accessibility to such a review process.

### **4.3 Integrated Planning and Infrastructure Provision**

'Integration' is a recurring theme in the planning system, and the need for better integration is applicable in multiple levels, layers and disciplines of Government:

- Integrated strategic planning across State government agencies (e.g. metropolitan and regional plans, catchment plans etc);
- Integration of referrals and concurrences (for development approvals) at the State level;
- Integration between Commonwealth, NSW and Local Governments for planning and funding of regional and local plans/programs;
- Integration at the local level between land use planning and community strategic planning; and
- Integrated infrastructure provision, both across State agencies (i.e. involved in service delivery and planning) and up and down between State and local service providers.

### *Integrated planning*

Strategic land use plan making and policy development in NSW, particularly at the state and regional level, is poorly integrated with other planning processes, such as:

- Planning and provision of funding for infrastructure to meet the needs of growing communities;
- Natural resource planning; and
- Broader community planning that is taking place under the new planning and reporting framework (known as Integrated Planning and Reporting/Community Strategic Planning) currently being introduced to NSW Local Government.

The new Local Government integrated planning and reporting system has replaced councils' Management Plan, Social Plan and State of Environment Report with an integrated framework. The Community Strategic Plan sits at the top of the planning hierarchy. The purpose of the plan is to identify the community's main priorities and expectations for the future and to develop strategies for achieving these goals.

This wide-ranging review of the NSW (land use) planning system is a timely and unique opportunity to align land use planning at the regional and local level with the new integrated planning framework (and Community Strategic Plans) being adopted by councils. The Associations recommend that the planning system review recognises the potential linkages and/or overlaps between these two parallel planning frameworks at the local level and considers how they can best be integrated.

### *Integration of land use planning and infrastructure programs*

At present governance structures, particularly those involved in service and infrastructure delivery are strongly centralised within State Government agencies. This impedes the effective delivery of those services, fails to address local issues and militates against local involvement and participation. The result is disjunction between land planning processes and infrastructure programs, resulting in a lag between land development and infrastructure provision i.e. a mismatch between what has been decided for an area of land and what is committed for service delivery to that area. At both the State and local levels the planning system needs to address this gap between development planning and infrastructure provision.

At a minimum, if all these planning frameworks and layers cannot be better integrated into a comprehensive system there needs to be consideration of how these plans and their respective purposes can be explained and understood by the public.

#### **4.4 Subordinate Legislation (SEPPs, Regulations etc)**

In this 'comprehensive review' of the planning system, a review of subordinate legislation (such as State Environmental Planning Policies (SEPPs) and EP&A Regulations) is essential. SEPPs in particular have played such a significant role in the delivery of planning policy in NSW that a review of these planning mechanisms cannot be ignored in the overall planning system review. Particular SEPPs have been a major focus of community and council criticism of the planning system. Likewise, the EP&A Regulations require comprehensive review as part of the delivery of a new planning system for NSW.

#### **4.5 Plan Making**

The NSW planning system is characterised by a multi layered system of controls that regulate land use and development, including statutory instruments such as SEPPs, Regional Environmental Plans, Local Environmental Plans (LEPs) and Development Control Plans (DCPs) and non-statutory plans such as regional and sub-regional strategies.

Recent reforms have aimed to reduce the quantity of plans, reduce their complexity and avoid duplication e.g. abolition of Regional Environment Plans, attempts to reduce the number of SEPPs, standard template for LEPs and review of the number of referrals to State agencies. However, the system is still enormously complex and it is difficult for landowners to readily identify and understand the planning controls relevant to their property. The planning system review needs to look at options to improve and streamline the plan making system to make it easier and simpler to identify and access the relevant planning controls for each property.

Electronic planning tools such as web based access to maps, planning instruments and guidelines and electronic processing of development applications (DAs) may, in the future, provide a means of improving access to and navigating the currently complex and multi layered NSW planning and development system.

##### *Local Environmental Plans (LEPs)*

The introduction of the LEP Template was key among the changes introduced by the Department of Planning and Infrastructure to streamline plan making in NSW. The Associations accept in principle that a level of standardisation is necessary across councils on the format, structure and content of comprehensive LEPs. However, Local Government does not support the level of standardisation imposed by the rigorous implementation of the Template across rural, regional and metropolitan councils.

The level of standardisation presently imposed by the Department of Planning and Infrastructure:

- oversimplifies local planning controls and transfers some controls to DCPs where their standing becomes advisory rather than statutory;
- fails to address local expectations and issues; and
- fails to recognise council planning staff expertise and experience.

Allowing more flexibility within the Template will not erode the principles of simplicity, legibility and consistency between plans. Tailoring LEPs to account for local differences based on good planning principles will increase flexibility while still maintaining certainty and clarity for all stakeholders. The greater use of electronic mapping and online access to planning instruments can assist in achieving these objectives.

##### *Regional and sub-regional planning*

A major and ongoing criticism of the State Government's strategic planning process - including the development of regional and sub-regional plans by the NSW Department of Planning and Infrastructure - has been the lack of engagement of Local Government in the development of the strategies that directly affect local communities. Councils are required to meet the State targets through their comprehensive LEPs, and therefore need to be involved as an equal partner in the process.



As a recent example, the Associations have been concerned about the failure to undertake public involvement and participation with councils and communities in developing the Strategic Regional Land Use Plans (SRLUPs). Given the importance of these plans and the heightened sensitivity around mining and in particular coal seam gas extraction in the regions where these plans are currently being drafted, it is essential that the Government involve communities at an early stage of the plans' development. It is not acceptable that these draft plans will be substantially developed before they are put on exhibition for public comment. The plans will not succeed without council and community buy-in.

Another matter that is currently unclear is the hierarchy of, and relationship between, different State and regional plans/strategies, which plans have statutory force and which plans prevail over others. Without a consistent and logical flow-down from strategic and regional plans to LEPs, DCPs and individual development assessments, the outcomes of the higher level plans cannot be fully achieved. A statutory framework which flows from a clear set of legislative objectives, in priority order, will facilitate good and consistent planning decisions and should enable flexibility to adapt to local needs and expectations. The Associations contend that the legislation and planning system should be clear and consistent about the hierarchy and statutory/non-statutory status of these plans.

It may be worth considering whether DCPs could be made more determinative so that once they are adopted by a council they are required to be substantially followed. Currently there is inconsistency in the way councils apply their DCPs in development decisions, and the extent of this consistency is a consideration in decisions of the Land and Environment Court. It is worth considering the question that by requiring councils to substantially adhere to their DCPs, (but allowing for a degree of variation) this might go some way toward avoiding criticism that council decision making is too variable - and could reduce the number of appeals to the L&E Court, and hence expense.

In the new planning system, there is a need for a clear framework that provides:

- A more integrated and coordinated approach to planning across the State, including consideration and clarification of the following:
  - What is the relationship between SRLUPs, regional strategies and LEPs?
  - Is there a hierarchy of these plans (along with LEPs and SEPPs) or are they independent of one another?
  - Are SRLUPs intended to equate to, or replace regional strategies?
  - What statutory force do the SRLUPs have? (e.g. will there be a s117 direction requiring LEPs to be consistent with these plans (as there is for regional strategies)?
  - Is it likely that there would be any specific requirement for these plans to be made a matter for consideration when assessing DAs?
- Public involvement and participation that achieves community acceptance and endorsement of the objectives of the strategies. In the early stages of regional planning processes such as the SRLUPs, there needs to be an engagement strategy developed and agreed with councils in each region for the development of the plans.
- Development and integration of comprehensive social and transport strategies to support the regional and sub-regional strategies, and better integration with catchment action plans.
- Independent and ongoing review of the objectives and targets contained in the sub regional and regional strategies and/or SRLUPs.

#### **4.6 Development Assessment Process**

There is a need for a new approach to the system of development approvals under the EP&A Act that simplifies and better integrates the separate sets of development controls and assessment processes that apply to major projects, local development and complying developments. The Associations recognise the need for a development assessment system that caters for large public sector infrastructure projects and major developments that clearly are of state or regional significance, however, planning reforms should aim to improve the efficiency of the DA assessment and decision making process without compromising local accountability and public participation.

The principles of local democracy should be protected by retaining elected councillors in their decision making role on local planning matters, supported by advisory panels where considered appropriate. Council decision making can be improved through increased access to training on the role of councillors in the DA process and encouraging councils to adopt a policy of giving reasons when DA decisions are made contrary to staff recommendations.

The Development Assessment Forum (DAF) was formed in 1998 to recommend ways to "streamline development assessment and cut red tape - without sacrificing the quality of decision making". The DAF did some valuable work on development assessment and in 2005 developed the Leading Practice Model for Development Assessment which recommended ten leading practices to achieve greater efficiency and clarity. The work and recommendations of the DAF should be considered as part this planning system review. The report can be viewed at the following link:

[http://www.daf.gov.au/reports\\_documents/doc/DAF\\_LPM\\_AUGUST\\_2005.doc](http://www.daf.gov.au/reports_documents/doc/DAF_LPM_AUGUST_2005.doc)

The system of referrals to State agencies needs to be improved and streamlined without compromising the quality of assessments. Possible considerations are:

- Reviewing referrals and concurrences to remove unnecessary or outdated requirements;
- Requiring state referral agencies to publish their assessment criteria and performance data in the same way that local councils are required to report on their performance; and
- Not allowing for deemed approvals within shortened time frames, given the potential to compromise environmental assessments.

#### **4.7 State Significant Projects**

The planning approval process for State significant developments should be transparent and accountable. Applicants and third parties should know how and why a decision has been made. The new legislation and planning system must ensure there is a robust framework within which those responsible for decisions on these projects can operate with transparency, probity and due process. The recent changes to decision making processes for State significant developments have been welcomed by the Associations, however there are a number of areas which the Associations would like to see considered as part of the review of the EP&A Act. For example:

- Clarify and simplify roles of different decision making bodies (for example, the Minister, PAC, JRPPs, councils) - The Associations believe that the new planning system should provide increased independence and a larger role for the PAC and a lesser role for the Minister in determining applications, with councils being charged with responsibility for determining developments that are local in scale.
- Reduce complexity and overlap - The current State and Regional Development SEPP cannot be read and understood without detailed reference to the legislation (i.e. *EP&A Act 1979* and *EP&A Amendment (Part 3A Repeal) Act 2011*), and has potential crossovers with other SEPPs (e.g. Infrastructure, Exempt and Complying, Transport Corridors etc.).
- Review capital investment value (CIV) thresholds – The CIV dollar thresholds offer a reasonable approach for their relative simplicity, although it is arguable whether these are the most relevant criteria for determining state significance and whether the current thresholds are too low.
- Consultation – The Associations expect to see provisions for consultation specifically with the local council in relation to state significant development.

#### **4.8 Decision making bodies**

Changes to the EP&A Act in 2008 provided for the establishment of joint regional planning panels (JRPPs), the introduction of planning arbitrators and the establishment of a Planning Assessment Commission (PAC). At the time, the Associations argued that the reforms would not reduce 'red tape' but could significantly worsen the regulatory maze in decision making processes. The Associations proposed an alternative and simpler model of development decision-making which was consistent with the leading practice model for development decision making and the principles of good planning.

The lack of transparency and the unfettered powers conferred on the Minister for Planning following the reforms in 2008 promoted a perception of, and increased the potential for, undue influence and corruption in the development process, and has served to frustrate and alienate many local councils and their communities in their efforts to achieve good planning outcomes for their areas.

The Associations' concerns with JRPPs included the following:

- It was unclear whether a JRPP is an independent hearing body, an appointed council, or representative of the State Executive branch;
- There was no specific requirement to provide due process or reasons for decisions, posing a high potential risk;
- There were none of the transparency provisions of independent hearing and assessment panels (IHAPs), with JRPPs having permanent, known members who are potentially open to local pressures and no real body to which they are accountable (except in the most indirect way) or to monitor its performance. The Associations viewed JRPPs as effectively acting like a council without even the need to present at an election;
- Council nominees, if councillors, could potentially be in a conflict of interest situation – should they vote for the council's position or make up their own mind? The same issue could apply for any public service members from a department with policy interests in the area; and
- The Minister or council could dismiss nominees at any time for no stated reason. There was no judicial type protection. Members could be under considerable pressure to do the Minister's or council's bidding even if they cannot be officially directed. This stands in contrast to the protection given to the now disbanded Commissioners of Inquiry.

The Associations still hold that JRPPs are an additional decision making body that is exercising a role that could be performed by council with an advisory IHAP or the PAC. The Associations would also see a system that involves planning arbitrators as an entirely unnecessary addition to the planning system, with the potential for a costly duplication of acceptable appeal processes, and probity risks. However, recent changes to increase transparency and accountability are a positive step.

### *Planning Assessment Commission*

The new assessment regime, with a reduced role for the Minister in determining applications, an increased role for the PAC, changes to the operation and make-up of JRPPs, and the return of many developments previously categorised as regionally significant to councils, has been welcomed by the Associations. However, while a new structure for the PAC has been put in place, and the Minister has delegated responsibility for decisions to the PAC, delegation to the PAC nevertheless remains at the discretion of the Minister. In addition, members of the PAC are still appointed by the Minister. The Associations hold the view that the PAC should be a truly independent body, and mechanisms should be embodied in the legislation to ensure the PAC operates in a transparent and independent manner.

To improve the transparency of the planning framework, the Associations support an expanded and strengthened role for the PAC as an independent body, responsible for making recommendations to the Minister for Planning on State significant developments, with the Cabinet to determine the outcome if the Minister rejects the Commission's advice. The legislation should provide that the PAC be required to conduct proper hearings, with an appropriate level of public involvement and participation, and provide detailed written reasons, addressing the issues put before it and justifying its recommendations to the Minister. The Independent Commission Against Corruption (ICAC) recommended reforms to address some of these issues in its December 2010 report on the operation of Part 3A of the EP&A Act and the SEPP Major Development. The Associations recommend that the Panel consider the recommendations of ICAC relating to the tenure, independent oversight and governance arrangements for the PAC.

### **4.9 Exempt and Complying Codes and Development**

In 1998 the system of building approvals contained within the *Local Government Act* was transferred into the *EP&A Act*, and development applications (DAs) and building applications (BAs) were consolidated to have development applications and construction certificates. The former was reconfigured to now encompass a

wide range of building and technical matters that extended the detail at the DA stage and in turn the development responsibilities and determination times. This resulted in councils being required to assess simple building applications against the relatively complex and extensive criteria set out in s79C of the Act. At the same time, the private certification system was introduced.

Rather than addressing problems with the assessment and decision making processes under Part 4 of the Act, recent reforms have sought to reduce the number of developments that are assessed by councils under Part 4. The Act provides for developments to be determined as 'complying' if they meet the definitions and standards contained within the relevant complying code. The scope of complying development under the Act was expanded significantly with the introduction of the NSW Housing Code under SEPP (Exempt and Complying Development) 2008. The new Housing Code SEPP establishes separate controls and assessment processes for new houses and alterations and additions.

The Associations support the principle of widening exempt and complying provisions for appropriate development types. However, the Associations are concerned that the mandating of state wide standard categories of complying development will:

- Override local context (e.g. specific coastal conditions) and are often 'out of step' with local planning objectives and standards;
- Are 'broad brush' and lower planning performance standards by overriding environmental, planning and heritage controls applicable to precincts and localities;
- Are often too prescriptive and discourage diversity and innovation in design;
- Reduce the opportunities for local residents to have a say in the development process;
- Expand the role of private certifiers even though new controls to improve the accountability and probity of the certification system have yet to be tested; and
- Increase the potential for errors and omissions in the certification process.

Many have argued that returning to the pre-1998 system (i.e. separate DAs and BAs) would assist efficiency and clarity, enabling the "concept" of developments (e.g. building footprint, setbacks, design parameters and the land use) to be addressed at the DA stage and leave the technical building content to be dealt with at a building application stage that also could be conditioned to ensure compliance with the Building Code of Australia and other relevant standards. There may be benefit in the idea of adopting some of the fundamental concepts of this two-step assessment process and trying to reconsider how and whether stripping back the DA process is feasible and beneficial. This issue needs further debate to define what changes would be beneficial, practical and workable at the Local Government level.

This principle applies also to subdivisions. Generally, councils have worked collaboratively with developers to resolve the complexities of subdivision approvals and construction processes. The introduction of private certification has complicated it significantly and many councils feel they need to provide detailed requirements to ensure that private certification results in the inheritance of community assets that are of adequate quality and sustainability.

#### ***4.10 Private Certification Scheme***

The Associations support the Government's objectives for ongoing improvements to the regulatory framework for private certifiers and to ensure the safety and quality of building work. However, dealing with complaints and problems arising from sites under the control of accredited private certifiers continues to be a major issue for Local Government and a source of constant aggravation to councils.

The introduction of private certification appears to have resulted in councils bearing a significant proportion of the costs associated with ensuring accredited certifiers comply with their statutory duties in spite of the regulatory framework that has been in place since 2004 following the establishment of the Building Professionals Board (BPB). The cost burden is particularly problematic in areas where the majority of development sites are the responsibility of accredited certifiers or there is a high rate of complaints against certifiers.

The various amendments to the EP&A Act have certainly led to improvements to address the problems that have arisen since the introduction of private certification. However, some fundamental flaws in the system remain to be resolved, leaving the following concerns:

- An issue that councils have with the State Government's complying development provisions is that the resultant increase in privately certified work may significantly increase councils' regulatory role, to ensure that the community is not disadvantaged by some certifiers failing to address their concerns and legitimate expectations.
- There are currently no mechanisms for councils to fund this impost on their regulatory role and these costs may not be able to be adequately funded from councils' current revenue sources.
- It was never intended that councils would 'police' the private certifiers, and as competitors in this process, this outcome is an unintended consequence which conflicts with competition principles.
- Councils have had ongoing problems with the liberal interpretation adopted by many certifiers to clause 145 'not inconsistent with consent'. A definition of this term is essential to resolve ongoing issues for Local Government.
- The respective roles of council as the 'approving authority', council as 'certifier', private certifiers, and the BPB need to be clarified and refined to ensure there are no overlaps, gaps or potential implications for the spirit of competition.
- It appears that there is a need for a 'checking' or 'auditing' role to monitor and regulate the work of private certifiers. Currently this function is defaulting to councils, because of their legal powers and in the absence of any other authority charged with this responsibility. The BPB only responds to complaints.
- Councils are charged with both a certification role (in competition with private certifiers) while still retaining regulatory powers to issue orders on private certifiers.
- No powers of the BPB to issue orders and to conduct random checks of private certifiers.
- Some councils are having to rely on taking a bond up front from applicants, to cover any of the costs they may incur to follow up and deal with complaints, issue orders etc against private certifiers.

### ***4.11 Infrastructure Costs and Development Contributions***

The introduction of section 94 (s94) contributions in the EP&A Act 1979 was an enlightened initiative of the then State Government (although complications meant that they were only fully utilised since 1989). The underlying principles are soundly based in equity and efficiency. The principles and operation of s94 contributions subsequently have been tested and reaffirmed by judicial and administrative reviews.

Section 94 plans are a transparent and disciplined mechanism for raising revenue for infrastructure. The principles of nexus and apportionment are rigidly applied under the framework that ensures that contributions are applied to infrastructure specified under the s94 plan.

While the Associations acknowledge the need for measures to increase housing affordability by streamlining planning processes, the Associations believe it is imperative to recognise that the quality of the assets purchased through developer contributions is important to the creation of liveable suburbs. Further, it is questionable whether the cost of s94 contributions are actually passed on to homebuyers in the first place or whether any reductions in s94 charges would result in lower house prices.

### ***4.12 Social Impact Assessment***

Recognition of the social impacts of planning decisions is essential to creating environments that positively enhance the way of life, culture and cohesion of a community. The myriad of planning reforms that have taken place since the EP&A Act was first introduced in 1979 have gradually diluted the significant role of planning in addressing social justice.

Social impacts should be considered as an integral part of any planning decision, assessing how a development is likely to affect people's living, working and leisure environments. The relationships between environmental, social and economic aspects of community life need to be adequately considered during the

planning process. This 'Social Impact Assessment' is important for building better communities and for better planning. Social objectives identified in SEPPs, LEPs and other council policies can be addressed through Social Impact Assessment. Social Impact Assessment should not replace public involvement and participation. In fact, social impact assessment may not necessarily always need to include public involvement since more appropriate tools for measuring impact might be available (e.g. data on health and well being).

#### *Health and Well Being*

In the current legislation, people, communities or populations are not referenced, despite the direct (and in some cases indirect) impact that development has on communities' and individuals' health and well-being. The social determinants of health are embedded and addressed in current development assessment tools to some degree, however as environmental (built and natural) components are becoming more embedded and better understood in the planning process, there appears to be a shift in focus towards considering the impact on health. Articulation of community health and wellbeing as an objective of the new Act would help address this oversight and enable a people-centred approach to planning. Technical issues of development assessments and tools including social and environmental impacts (and possibly health) would need to be discussed and developed at a later stage to support this objective.

#### *Recognising Different Needs of Rural Communities*

Planning processes need also to recognise the concept of local distinctiveness and reflect how each and every place is unique. Local distinctiveness enhances the identity, morale and social cohesion of local communities. Cultural development should also be recognised as an integral part of planning for the overall wellbeing of a community.

The planning process also needs to ensure that the sense of place for Aboriginal people is acknowledged and preserved. Decisions made at the DA stage can be more easily justified if they have been supported by an understanding of the cultural significance of an area at a strategic level that has been incorporated in land-use planning.

It is also recommended that the Review address the treatment of Aboriginal heritage. In NSW the principle laws which deal with Aboriginal heritage are the:

- *National Parks and Wildlife Act 1974*
- *Heritage Act 1977*
- *Environmental Planning and Assessment Act 1979*

The need to reference three Acts creates complexity and there would seem to be scope for rationalisation.

#### **4.13 Natural Resource Management**

The Associations suggest the adoption of the following overarching principles for natural resource management:

1. To take account of the defined principles of ecologically sustainable development (ESD) in all undertakings;
2. Encouraging the proper management, development and conservation of natural resources; and
3. Promoting the appropriate sharing of responsibilities for environmental planning between all spheres of Government.

The plethora of natural resource plans and policies generates confusion, and in preparing their plans councils are often required to broker agreements between State Government agencies at the intersection of their responsibilities e.g. in the consideration of riparian areas where biodiversity and river function responsibilities merge. The Associations consider the following areas to be priority issues in the management and integration of natural resources across the State:

1. Better aligning land use planning at the regional and local level with other legislation and plans, including natural resource management and the new integrated Community Strategic Planning framework being adopted by councils.

2. Strengthening the principles and practices of sustainable development in relation to land use, resource management and building design.
3. Developing natural resource plans at a scale consistent with local land use plans, to simplify and remove inefficiencies and overlaps in plan making and development.
4. Promoting and encouraging greater focus on environmental assessment and protection at the strategic planning scale.
5. Allowing for land use planning decisions to be made in the context of the local landscape, not a standardised 'one size fits all' approach. An approach taken in one area may not be appropriate for another; a solution to a problem in one area may not be the best solution to the same problem in another area.
6. Ensuring consistency and alignment between Federal and State legislation, especially in the threatened species/biodiversity conservation field. Currently there are different requirements and methodologies in the assessment of environmental impacts of development at state and federal levels. Likewise, there are also different thresholds and offset/remediation requirements.
7. Ensuring equity and transparency in requirements placed on different levels of development, such as a consistent approach to conservation offsetting. The NSW Government is encouraging developers, land managers and councils to utilise binding offsetting schemes (such as BioBanking) to determine and protect offsets in perpetuity, however the state does not require State Significant development to utilise the same process. This inconsistency is seen as an unfair allocation of biodiversity conservation responsibilities away from (often) state government-run large development.

#### ***4.14 Recognising Climate Change Issues***

Climate change is a primary consideration in planning and development in NSW and councils currently face a good deal of uncertainty in relation to this issue. Climate change needs to be addressed in the planning framework by giving planning authorities more certainty and protection regarding their decisions. A council that approves a development that may become subject to inundation under a climate change scenario is likely to be held accountable either through the legal system or through the need to use public funds e.g. to undertake protective or remedial work.

Some form of statutory indemnity for councils similar to that which currently applies for flood-prone land under section 733 of the *Local Government Act*, may be warranted. This implies however that some clear guidance should be provided to councils. The Associations acknowledge the uncertainty of the extent of climate change impacts and the challenges in developing clear guidelines. However this is a task to be tackled sooner rather than later, and there needs to be a significant resourcing commitment by the NSW Government to further the scientific inquiry at a macro and a micro scale, and to provide appropriate advice to Local Government.

Councils have a unique opportunity in the preparation of new comprehensive Local Environmental Plans to consider climate change and natural resource management issues. Unfortunately, while the standard NSW LEP template contains a clause in relation to development in the coastal zone, it does not currently contain specific provisions for addressing climate change. This creates difficulties for councils in implementing any robust policy for coastal hazard management.

#### ***4.15 Reviewing the Legislation – Guiding Principles***

Any new planning system should retain and strengthen the core objectives of the existing planning system, which the Associations see as:

- Providing opportunities for public involvement and participation in land use planning and development decisions;
- Promoting the appropriate sharing of responsibilities for land use planning between Australian, NSW and Local Government; and
- Encouraging the proper management, development and conservation of natural resources and the built environment.

The following guiding principles for planning in NSW have been adopted by the Associations:

1. The aim of all planning and infrastructure decisions should be to achieve:
  - economic growth;
  - social justice;
  - environmental sustainability;
  - equitable access to housing and employment;
  - optimum quality of life for local communities.
2. Strategic metropolitan and regional planning is best carried out at a regional level in a partnership between Local and State Government.
3. Local Government should have a lead role in planning for local communities with other spheres of government as it is:
  - best placed to inform the planning process of the needs and expectations of local communities;
  - democratically accountable to local communities; and
  - the advocate for its community to other spheres of government.
4. Local Government should retain autonomy in the making of local planning decisions.
5. Adequate financial resources must accompany the devolution of planning powers and responsibilities to Local Government.
6. All spheres of government have reciprocal obligations to recognise and respect the legitimate objectives and strategies of each other.

## **5 Questions for Local Government from the Panel**

This section addresses specific questions that have been put to the Associations by the Planning Review Panel.

### **5.1 Electronic Planning Data**

#### Panel Questions:

*What is required to achieve electronic integration of the maximum amount of development control, zoning and planning information? What would be the likely costs to set up such a system and for ongoing maintenance?*

#### Associations' response:

The Associations are proud to have partnered with the Department of Planning and Infrastructure in the development of a draft e-Planning Roadmap for NSW. This document provides a comprehensive response to this question.

While the Roadmap was internally endorsed prior to the 2011 NSW State election, it has never publically released nor become government policy. As such, we are not in a position to submit a copy of the document to you. We recommend that the Panel seek a briefing from the Department on the e-Planning Roadmap. However, we are in the position to provide the following summary:

#### **Services Required**

##### Inform

All data and information about a specific site, street, suburb, Local Government boundary, region or state that is required by stakeholders to inform a strategic plan, policy or investment/development plan can be obtained from a single service. Note - in the EHC access to Council and State Government data is through the portal, the data should reside with the custodian



Assess

Single service accessible from multiple State Government agencies and all Councils that can be used to request and obtain approval from government for all planning and building / construction certificates and approvals required based on outcomes of the Inform Service

Plan making

Planning and development controls can be prepared, implemented, monitored and evaluated using technologies that collaborate and engage with stakeholders e.g. community, industry/business

Allows for the scheduling, conducting and recording of outcomes from inspection and surveillance activities. The information is used to either impose enforcement notices and/or inform the effectiveness and efficiency of controls (based on levels of compliance)

**Foundation Capabilities Required (to deliver services)**

Planning, Development and Building / Construction Data Management Plan

This plan will address the barrier regarding lack of shared understanding of “fitness for intended purpose” of government held datasets. The plan will contain a private and public sector collaboratively developed data sharing policy that can be applied by government when deciding to make data accessible.

It would provide government with the assurance that the private sector would view and potentially use the data without the risk of being held liable for quality and accuracy. In addition, the plan would outline data management processes and standards that can be used by State Government and Councils to accelerate the process of upgrading and making their data publicly available via whole of government platforms such as the SIX Platform and NSWData.

The plan will address how the accuracy, completeness and timeliness of data and information could be significantly improved by enabling any certified public or private sector specialists to collect and update data. Practitioners who regularly collect site level data can become authorised “data collectors” for selected datasets. These certified specialists will be able to provide updated data through the Inform service to the custodial agency responsible for the data. The custodial agency can then review the updated information based on verification and validation against agreed data standards.

The purpose of the plan is to largely collate (as opposed to create) existing data management processes and standards, such as eDAIS, Spatial Data Standards. Most of the data management “thinking” has been done but resides in multiple agencies and is very difficult for a single agency to have a sound understanding of the intent and purpose of all data management policies, processes and standards.

**Note** - State and Local Government data quality and access has been a key issue for the Electronic Housing Code (EHC). Once "addressed", better data and its ongoing maintenance opens up a range of opportunities for State and Local Governments. This should be a priority area for investment.

e-Planning Training and Transition Plan

To ensure a clear focus on service delivery improvements and not planning policy, a training and transition plan will be developed and implemented to educate government regarding how to improve service delivery by transitioning from traditional to e-government service delivery, and to facilitate the transfer of the private sector to ePlanning services.

Planning, Development and Building/construction Common Process Model

In order to clearly demonstrate that e-Planning is more than just the functions and tasks dictated by the Environmental Planning and Assessment Act and is greater than any one agency or sphere of government, a business process model needs to be created that links together planning, development and building/construction government functions and tasks and presents the mode in a customer-centric manner.

## Investment

It is estimated that approximately \$41 million (\$34 million capital and \$7 million in maintenance/operation) will be required over an initial five year period to implement and maintain the required ePlanning services, **subject to a detailed business case.**

It is essential that a business case be completed as the level of existing expenditure on current ePlanning services in State and Local Government has never been fully calculated and aggregated. Whilst estimates can be provided based on past experiences, calculating existing expenditure and comparing against existing ePlanning capabilities will be a critical outcome of the business case.

### 5.2 *Conciliation and Mediation*

#### Panel Questions:

*Would a requirement to minute pre-DA lodgement meetings assist in facilitating conciliation and mediation in the development process?*

*What dispute mechanisms/processes could be put in place earlier on in the DA process to preclude the need for appeal in the Land and Environment Court?*

#### Associations' response:

Many councils actively encourage applicants to have a pre-DA meeting with officers of the council. Depending on the scale of the DA councils will charge fees for advice.

Generally there are two approaches to how a pre-DA meetings are managed. These are:

- The meeting is informal and minutes are not taken so that advice can be general and based on preliminary concept plans; or
- Advice is specific and feedback is given in writing to specific plans and often larger fees are required.

While pre-DA meetings are helpful, they are not necessarily the panacea for the DA process and may not necessarily be essential in all cases. To avert potential delays with concurrence issues later, there may be benefits in involving representatives from key agencies at the pre-DA meeting, as wider issues may be able to be addressed that may interrelate to council requirements.

The Associations:

- Support practice that encourages a more efficient and workable DA assessment process;
- Support the use of pre DA advice where appropriate;
- Support other state agencies being in attendance at the pre-DA meetings, where appropriate; and
- Advocate that these meetings be managed having regard to the scale and importance of the DA, and only where appropriate should minutes of the meeting be required.

### 5.3 *Standard Conditions of Consent*

#### Panel Questions:

*What scope (options, costs and benefits etc) does Local Government consider is available to standardise conditions of consent for particular types of development e.g. dwelling houses?*

#### Associations' response:

There may be an advantage in having an agreed list of conditions of consent but only provided that these can be varied in content and/or additional conditions can be added where applicable. Currently councils develop their own set of conditions of consent (which will vary from council to council), but the recent set of conditions applied by the Land and Environment Court may provide a good base from which to start.

However, the issues with standard conditions of consent are that they can be lengthy and cumbersome documents, and, like the standard LEP template, would have to contend with the matter of flexibility to meet the vastly different local characteristics of councils across the state.

In addition, experience shows that the disputes on conditions may often be in relation to certain *additional* conditions that may be imposed on a development. Thus, having a 'standard' set of conditions of consent may not address the additional conditions that are more likely to be in contention.

#### **5.4 Development Contributions**

##### Panel Questions:

*Is progressive payment of development contributions a viable alternative to up front payment?*

##### Associations' response:

The Associations would support staged payments for staged developments. This is already provided for by many councils. The Associations do not support extended deferral of payment, for example until issuing of occupation certificates as advocated by some. Deferrals could create a mismatch in cash flows and disrupt the orderly provision of infrastructure to facilitate development. There are also concerns about securing deferred payment obligations.

#### **5.5 Appeals Processes**

##### Panel Question:

*Should councils and applicants be able to appeal against a decision of the Minister to reject an application for rezoning (a planning proposal)? If so, who to and on what grounds?*

##### Associations' response:

The current practice is that applications by councils for rezonings go through the LEP Review Panel, a body of departmental staff and Local Government representatives, who advise the Minister whether or not a rezoning should be supported. Since this Panel has been in operation from 2005 the decision making process is more transparent and the criteria for supporting a rezoning are clearer to councils. This process is reasonable and the practice could be included in the Regulations or as a Practice Note to legitimise this practice at law.

Nevertheless, this Panel only reviews 'spot re-zonings'. There is no process for councils to refute the decision of the Minister to not support a comprehensive LEP. Although there is a level of negotiation on what is decided to be included in the LEP based on the LEP Template the Associations hold the view that there needs to be a better process to enable councils to challenge and debate the decisions of the Department and Minister.

There is no process to challenge the state policy or mediate a dispute between council and the Department of Planning and Infrastructure or the Minister on an LEP, except where the process in preparing the LEP may be considered unlawful. There would be merit therefore in having a mechanism (such as an independent hearing panel) for councils to present an argument to deviate from applying a state policy position in their particular local planning circumstances.

Under s123 of the Act a person can take the Minister to Court on the grounds of failure to follow the correct procedure for making an LEP (e.g. the recent landmark case won by the Friends of Turramurra against the Minister). This is the only legal method to challenge a decision of the Minister, who may have required changes on the LEP not supported by council.

The Associations agree that there needs to be in place a better process to mediate these differences. Very recently the Minister has set up a Local Planning Panel (including representatives from Local Government) to review the effectiveness of the Standard Instrument (SI) LEP Program with a view to providing councils with more flexibility in applying the SI LEP Program. One option that could be further explored would be that this Panel be given a legal right to review decisions of the Minister and review the implementation of the SI LEP Program.

## 5.6 *Building and Development Applications*

### Panel Questions:

*In the present system, retrospective development consent is not possible for a new project, however, it is possible to grant retrospective approval to building modifications. Does this situation need review?*

*Building certificates and occupation certificates - is this two step process unnecessarily onerous?*

### Associations' response:

The Associations have interpreted the first question as “*How should council provide retrospective legitimacy for unauthorised works or provide ‘consents’ for older buildings where there is no record of approval? Does this need to be revised?*”

This is a complex issue that is dealt with by councils in a myriad of ways. Applicants apply to council to validate building work that has been undertaken where there is no consent issued or available. These situations can apply to either unauthorised works (that may or may not constitute illegal work) or where the documentation of an older building is not available due to the age of the building. There is an important distinction between unauthorised and illegal works. A garage may be unauthorised work, if erected without approval, but it may also be illegal if it is used and built as a dual occupancy in a zone that prohibits this use.

What is challenging for all councils is how to manage unauthorised works, especially where the work permits an illegal activity. Rectifying unauthorised work is moderately straightforward. Illegal work is generally required to be demolished or discontinued. Councils adopt different approaches to managing unauthorised and/or illegal work depending on the circumstances and the level and nature of such work the council may have to contend with.

Some councils require a Building Certificate to legitimise the works. Other councils ask for a DA, to approve the use of a particular structure, not the physical construction work. The purpose of requesting a DA is to establish a process (and fee) to assess whether the work is unauthorised or illegal, to assess its impact and seek submissions from neighbours. This process is more comprehensive than requiring the applicant to apply for a Building Certificate. However, recent changes to how Building Certificates can be issued (and the associated fees) have to some extent attempted to address the issue of unauthorised work. Now a higher fee is required, where the work has been undertaken in the last 24 months, attempting to target unauthorised work and not the older buildings.

The other situation where councils authorise building works retrospectively is by granting a s96 modification. Current practice has developed where modifications occur during the construction phase but are not ‘signed off’ by councils during the construction period. The law allows councils to approve a s96 modification after the event as it is assumed that the construction phase should not be delayed at that point and variations are part of the course. What needs to be addressed in these cases is how to allow more timely s96 modifications to be approved during the construction phase. Additionally, consistency is needed on how s96 is applied by the sector for the range of DAs that are approved. The extent to which works may require a s96 modification can vary significantly from council to council.

Local Government has an ongoing challenge of managing unauthorised works (some of which are illegal). The process needs to be flexible enough for councils to apply sensible mechanisms. Managing unauthorised works (other than incidental or consequential changes during an approved construction phase) should be through a mechanism which remains outside the approval system.

On the whole the approval system should be for new structures. Trying to provide retrospective ‘defacto consents’ for illegal and/or unauthorised work in an approval framework clouds the issue and tries to make the system do something for which it is not designed. Yet councils need powers to rectify work that is unauthorised that is reasonable and permissible under other circumstances.

It is recommended that the following approaches could be further explored:

- Consider ways to fast track approvals of s 96 modifications;
- Apply penalties for illegal work;

- Provide a mechanism outside the approval system to legitimise unauthorised work;
- Preserve the approval system to deal with approvals for new structures, or to incidental or consequential changes to a structure during an approved construction phase.

### **5.7 Decision Making Processes for Strategic Planning**

#### Panel Question:

*What might be the appropriate decision making process for decisions by councils which affect more than one Local Government area (e.g. supra-Council issues such as regional intractable waste management facilities)?*

#### Associations' response:

Under current legislation decisions on developments of genuine regional significance or supra-council nature would be dealt with by JRPPs or the PAC.

The Associations think it would be more appropriate for such decisions to be made by convening a duly constituted panel comprised of representative appointed by the relevant councils. That is, the councils that will be significantly affected by the development or that have a stake in the development. This would ensure that these decisions local community representatives that are democratically accountable.

## **6 Conclusion & Recommendations**

This submission has sought to reflect on some of the changes and trends in the legislation since its introduction 30 years ago, to highlight some of the key challenges for Local Government arising from current planning legislation and policy, identify priorities for review, and to address specific Local Government matters raised by the Panel.

Some of the Associations' concerns with the operation of the current planning system are that there has been:

- A lack of trust that the planning system will deliver a fair hearing for all parties - The dilution of the overall rights of councils and local communities in the planning process in recent years has led to a reduction in communities' trust of the planning system to deliver social justice and a fair hearing for all;
- Lack of clarity of responsibility and accountability at the State level e.g. conflicting and inconsistent views/advice being provided to councils from within the Department of Planning and Infrastructure; referral agencies failing to understand their obligations in the planning system, with timeliness and inconsistency in responses being common complaints from councils;
- Complex and overlapping plans and policies, and lack of integration e.g. Other 'plans' prepared at the State level (e.g. State Plan, State Infrastructure Plan, catchment plans) are formulated externally to the defined "planning system" and are not well integrated with planning under the EP&A Act; and
- Limited resources within Local Government, which hinders, for example delivery of State policies/planning objectives and to advances in e-Planning technology.

The following recurring themes throughout this submission highlight the directions Local Government would recommend for the new planning system:

- *Community rights* - Public participation and involvement should be retained as objectives in the Act and be fundamental components of the planning system, as well as being extended to include consultation on SEPPs;
- *Equity* - Greater emphasis should be given to social equity issues and social impact assessment.
- *Probity* - Embedding transparent processes and systems that have checks and balances in place to minimise corruption and probity risks;
- *Flexibility and adaptability* - Allowing land use planning decisions to be made within the local context, not a standardised 'one size fits all' approach.

- *Simplicity and efficiency* - A simplified development assessment process, and make it quicker and easier to navigate. The efficiency of the system could be improved by reducing the layers of approvals hierarchies, planning instruments and the ever-increasing matters that are required to be assessed;
- *Clarity of roles and responsibilities* - The planning system should make clear the respective responsibilities of the three spheres of government. Recognition should be given to Local Government having the primary role in planning for the local area. Local management and development control should not be undertaken at the State (i.e. Department of Planning and Infrastructure) level. There should be a positive working relationship fostered between the three tiers;
- *Capacity building* - Provisions are needed to strengthen Local Government capacity to meet its obligations. (e.g. funding and coordinating planning studies that form part of the LEP process; e-planning will be reliant on the capacity of councils (particularly smaller councils), working with State agencies, to deliver technological advances); and
- *Integration* - There should be greater integration of all facets of planning at the NSW State level. The local planning process should be integrated with the Department of Local Government's Community Strategic Planning which is currently a separate planning system for local communities. Even if all planning is not integrated into a comprehensive system there needs to be a central repository where this fragmented system can be explained and better understood.