

Standing Committee on State Development

New South Wales Planning Framework

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Terms of Reference

1. That the Standing Committee on State Development inquire into and report on national and international trends in planning, and in particular:
 - (a) the need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development,
 - (b) the implications of the Council of Australian Governments (COAG) reform agenda for planning in New South Wales,
 - (c) duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and New South Wales planning, environmental and heritage legislation,
 - (d) climate change and natural resources issues in planning and development controls,
 - (e) appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales,
 - (f) regulation of land use on or adjacent to airports,
 - (g) inter-relationship of planning and building controls, and
 - (h) implications of the planning system on housing affordability.
2. That the committee report by 14 December 2009.

These terms of reference were referred to the Committee by the Hon Frank Sartor MP, Minister for Planning, on 24 June 2008.

Committee Membership

Hon Tony Catanzariti MLC	Australian Labor Party	<i>Chair</i>
Hon Hon Rick Colless MLC	The Nationals*	<i>Deputy Chair</i>
Hon Matthew Mason-Cox MLC	Liberal Party	
Rev the Hon Fred Nile MLC	Christian Democratic Party	
Hon Christine Robertson MLC	Australian Labor Party	
Hon Michael Veitch	Australian Labor Party	
Hon Melinda Pavey MLC	The Nationals	

* The Hon Rick Colless MLC replaced the Hon Melinda Pavey MLC as a State Development Committee member and Deputy Chair on Thursday, 18 June 2009, as per the resolution of the House (Refer to Legislative Council Minutes No.107, Item 8).

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Chair's Foreword

The importance of the New South Wales planning framework to the economic and social well-being of our State cannot be underestimated. New South Wales is not unique in the need to ensure that its planning framework responds to the challenges of increasing population, the need for sustainable economic growth and climate change. Against this backdrop many governments have embarked on major reform of their planning systems.

Planning legislation is only one element of the planning framework. Legislation exists not to direct the planning framework but to support and enable it to achieve its aims and objectives. Planning legislation allows government, where necessary, to exercise control over the property rights of individuals. Therefore any examination of the planning framework must consider not only legislation but also administrative processes, the integration of initiatives across State departments and local government, and most importantly how the strategic land use vision for the State is developed and implemented.

The New South Wales planning system has undergone significant reform over the last 30 years. The most recent reforms in 2008, while extensive, were primarily aimed at improving the efficiency and timeliness of the development assessment process. The need for these reforms was pressing and could not be delayed.

However the main point borne out through this Inquiry was the inevitable need for a fundamental review of the NSW planning framework. This will be a significant undertaking that will take between three to five years to complete.

The Committee's primary recommendation is that such a review must take place. This recommendation is based on the extensive public consultation undertaken during the Committee's eighteen-month inquiry. The Committee held eleven days of public hearings and received over 100 submissions from practitioners and users of the current system.

This report does not seek to pre-empt or direct the outcomes of the fundamental review. A number of suggestions on various outcomes that could or should emerge from a fundamental review were made during the Inquiry. The review will need to hear the views of all stakeholders and consider a range of proposed models rather than having a pre-determined outcome in mind.

The report recommends that an independent expert and representative group be established to undertake the fundamental review. This group should make recommendations for legislative, strategic planning and system changes in order to develop a planning system that achieves the best mix of social, economic and environmental outcomes for the State. The findings of this review group must be subject to broad community review and input.

A fundamental review does not of itself mean that fundamental change will be required. Some of the initiatives of the 2008 planning reforms are still to be implemented. During the course of the Inquiry there was evidence of planning system improvements as a result of continuing government initiatives. The impact of the 2008 planning reforms will need to be carefully monitored and assessed as part of any broader review.

The Committee's strong recommendation is for the fundamental review to occur. However the Inquiry also highlighted specific areas where more immediate action is warranted.

There was consistent support for a regional strategic planning framework to guide local planning across the State. Regional planning strategies are seen as an essential plank in the planning framework. Currently not all areas of the State are covered by a relevant regional strategy. The Committee has

recommended that the Department of Planning develop additional regional strategies to ensure that there is an appropriate regional strategy in place for all local government areas across the State.

An underlying theme of the more recent reforms to the planning system has been the pursuit of consistency in the application of planning controls. Councils are now required to make their Local Environmental Plans in accordance with the Standard Instrument LEP template. During the Inquiry it became clear that there is also a need to acknowledge the differences in metropolitan, rural and coastal planning issues. A strong case was put to the Committee for developing an alternative to the current single SI LEP template. Therefore the Committee has recommended that the Department of Planning review the SI LEP with a view to developing a number of templates that reflect the different needs of metropolitan, rural and coastal local government areas.

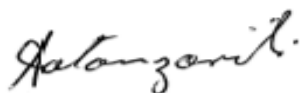
Local Environmental Plans have a profound and lasting impact on local communities. They need to be made well and to remain contemporary. Old, out-of-date LEPs are considered the bane of the planning system. Many local councils expressed concern that because of a lack of resources it would be some time before they would be able to make a new LEP. The Committee believed it is imperative that all councils be assisted in developing new LEPs as soon as possible and recommended that the Government provide additional funding to ensure all councils have a new SI LEP completed within the next two years.

Improved access to easily navigable information on planning controls applying to individual parcels of land would alleviate one of the major frustrations for users of the planning system. This is particularly so for one-off or infrequent users such as families who wish to improve or build on their land. There would be significant immediate benefits to all stakeholders if every local council had an efficient electronic-planning information system in place. The Committee has recommended that the Department of Planning continue to focus on improving these systems while the fundamental review is being undertaken.

Access to accurate and comprehensive information is essential for the planning system to effectively manage natural resources and protect biodiversity within the context of allowable development. Gathering comprehensive scientific data is often precluded by the cost involved. Large-scale development proposals, such as mining, need to be assessed in terms of their impact on natural resources and on other competing land uses such as farming. The Committee has recommended that the process for granting mining exploration licences be amended to ensure that a strategic and scientific assessment of natural resource constraints is undertaken.

This was a broad and in many ways complex subject area on which Inquiry participants expressed a range of different and sometimes conflicting views. I wish to acknowledge the interest and approach of my fellow Committee members in their investigation and examination of the numerous issues raised. My thanks also go to the Committee secretariat for their efforts in supporting the conduct of the Inquiry.

On behalf of the Committee I extend my gratitude to the many people who participated in this Inquiry through submissions and evidence and acknowledge the effort taken by many individuals in order to make their contribution. The information received and documented during this Inquiry will provide a useful resource during the fundamental review of the New South Wales planning framework.



Hon Tony Catanzariti MLC

Committee Chair

Executive Summary

Introduction (Chapter 1)

The Inquiry was established on 26 June 2008 when the Committee adopted terms of reference provided by the then Minister for Planning, the Hon Frank Sartor MP.

The Committee called for submissions in August 2008 through advertisements in the *Sydney Morning Herald*, and the *Daily Telegraph*. The Committee also wrote to organisations with a likely interest in the Inquiry, including business and community representative organisations, state government agencies and each local council in New South Wales.

The original closing date for submissions was 13 March 2009. However due to the wide interest in the Inquiry the Committee resolved to continue to accept submissions throughout 2009.

The Committee received 115 submissions from a range of stakeholders, the majority of which were made by local councils. Submissions were also made by a number of professional associations including those representing the planning, building, architectural, property, farming and retail sectors and by community and environmental representative organisations and individual businesses and citizens. The Committee received a whole-of-government submission from the New South Wales Government.

The Committee held eleven public hearings during the Inquiry. Six public hearings were held at Parliament House and the remaining five public hearings were held in regional locations, namely Queanbeyan, Orange, Tamworth, Ballina and Albury. More than ninety individuals appeared and gave evidence before the Committee.

During the course of the Inquiry, in June 2009, the Hon Rick Colless MLC replaced the Hon Melinda Pavey MLC as a member and Deputy Chair of the Committee.

Trends in planning (Chapter 2)

There is a discernible trend in planning reform both nationally and internationally. This is a sign of the times as all governments are confronting similar challenges. All governments have to provide for growing and changing populations while managing and preserving their natural resources. Similarly all governments need to meet the challenge of climate change while fostering economic growth through sustainable development.

There is a commonality in the stated principles upon which most planning reform is based. Many jurisdictions are also adopting similar regulatory mechanisms and strategic approaches. However, different planning frameworks even though they share common principles and a similar regulatory structure may still vary in their ability to deliver upon their stated objectives.

Need for further reform (Chapter 3)

The question of whether there was a need for further development of the New South Wales planning legislation was the primary issue for the majority of inquiry participants and was the subject of extensive examination during the public hearings. While a range of views and suggestions were presented to the Committee, there was consistent support for a complete rewrite and overhaul of the current legislation and a review of the planning framework.

On the basis of the weight of evidence it received from practitioners and users of the current system, the Committee finds that there is a need for a fundamental review of the overall planning framework in New South Wales. It was agreed that a fundamental review would require between three to five years to complete. It is the primary recommendation of this Report that such a review be undertaken.

Notwithstanding the volume of valuable evidence it received the Committee does not in any way wish to pre-empt the findings or outcomes of this review, including whether or not a completely new EP&A Act will be required. The report does highlight certain areas that warrant particular examination during any review.

A number of suggestions on various outcomes that could or should emerge from a fundamental review were put to the Committee, not all, of which were complementary. The Committee believes that the fundamental review should give consideration to all proposed models, rather than have a pre-determined outcome in mind. As such the Committee believes the submissions and evidence it has received will provide a valuable resource for the conduct of the review.

The Committee does hold a firm view on some aspects of how the review should be conducted. Following a clear statement on what are the desired land-use planning outcomes for the State, the review process should be a genuine cooperative exercise facilitated, but not directed, by the Department of Planning.

A review group should be established which must be representative of all primary stakeholders and relevant experts. It must include representatives from rural and regional areas and representatives who are planning system practitioners. It is essential that the review process consider the issues of regional variance and practical implementation at the time it is developing its recommendations.

The Committee recommends that arrangements to establish an independent expert and representative group commence as a matter of priority and that the review itself commence by no later than the end of 2010.

Strategic planning (Chapter 4)

There was consistent support for a strong and effective strategic planning framework that integrated and coordinated the input and activities of all government agencies, and for regional planning strategies to guide local planning. A primary criticism of the current planning framework was that not all areas of the State had a regional strategy.

The Committee supports the current State-regional-local strategic planning structure and agrees the regional planning strategies guide long-term planning at the local level. Recognising the importance of regional strategies the Committee was concerned that many areas of the State do not have one.

Through the course of the Inquiry a number of things became clear with respect to regional planning strategies. Firstly they are an essential element in the planning framework and, as such, all local government areas should be included within a relevant strategy. Secondly, the effectiveness of a regional planning strategy is diminished if it applies to too large or diverse an area.

The Committee notes that many local councils not currently covered by a regional planning strategy have identified regions of commonality of land-use and commenced joint strategic planning. The Committee recommends that the DOP develop additional regional strategies to ensure that there is an appropriate regional strategy in place for all local government areas across the State

It also recommended that as a first step the Department of Planning consult with local government areas not currently within a regional strategy area to determine appropriate and manageable new regional strategy boundaries.

Various government agencies have divided the State into regions for their administrative purposes. For example there are eleven State Plan regions. The Committee believes that it is sensible to align, as much as possible, the regional boundaries used by government agencies and departments.

The Committee recommends that the Government develop and implement common regional boundaries for use by government agencies and the planning process.

Regional development and implementation of strategic planning

Throughout the Inquiry, and particularly during the regional public hearings, many participants were critical of what they saw as the centralisation of the planning system. Regional representatives frequently argued that the Department of Planning issued directions or made decisions that were patently city or metro-centric.

In order to address these concerns there was a consistent call for an increased role for the Department of Planning regional offices, and a greater trust in, and power provided to, local councils to carry out work under the guidance of their relevant regional strategies.

The Committee believes that the fundamental review should have regard to the structure of the Department of Planning and examine the role best served by its regional offices to provide adequate consideration of regional differences.

Do strategic plans need statutory weight

Strategic plans set out the intent and goals for long-term land-use planning which guide both forward planning and decisions in the immediate and short term. The Department of Planning's regional strategies have a 25-year forward projection while being reviewed every five years. During the Inquiry the Committee heard arguments both for and against the need to give strategic plans some form of 'statutory weight'.

The Committee believes that the question of whether regional planning strategies or possibly local council strategic land-use plans should be given statutory weight, and if so, the practical implications of this, is one issue that should receive close examination during the review of the planning framework.

Infrastructure and planning

Land-use planning and the provision of and planning for infrastructure are inextricably linked. When new areas are developed for residential purposes there are accompanying infrastructure requirements, such as roads, sewerage and open public space. It is the responsibility of either the local or State government to construct this infrastructure. Both local and State government require developers to contribute towards meeting the new and increased demand for public services and public amenities within the area, by providing free land, monies or both.

These cost of contributions and charges are invariably passed on to purchasers of newly developed houses and units. The housing and development sectors have long argued that infrastructure charges in

New South Wales are too high and compare unfavourably with other States. They believe they are a key contributor to the high cost of housing and low level of development and construction in the State.

The Committee notes that when land is developed for residential purposes the provision of infrastructure both directly and indirectly linked to the developed properties will increase their value. The Committee believes that, under the current contributions and charges schemes, it would not be possible for local councils to bear the cost of providing infrastructure that is required before a property can be sold or leased until such time as the developer receives income from that sale or lease. There may perhaps be scope to defer contributions and charges relating to other purposes, which need to be held in reserve by councils, to a later stage. Infrastructure requirements will vary depending on the type of development, such as greenfield as opposed to infill, and according to geographical constraints or regional differences.

Other options to improve the contributions scheme

The Department of Planning suggested that if an expert group was established to review and make recommendations for future reform of the planning system, then consideration could be given to deferral of commencement of the remaining components of the 2008 reforms, including provisions relating to developer charges and contributions. It was suggested that this would avoid further ‘change fatigue’ being experienced by councils.

The Committee agrees that the issue of developer charges and contributions warrants broader consideration beyond changes to the current framework. However, in the interim the Government should do whatever it can to reduce or defer its development charges and contributions.

Major infrastructure

The State Government is also responsible for providing major infrastructure, such as hospitals, schools and transport. This infrastructure, and most particularly transport, has a profound effect on the amenity and liveability of communities. Planning for and provision of infrastructure guides and stimulates residential development.

The need for greater integration of land use and infrastructure planning and provision has been acknowledged for some time. The Government reiterated this need by identifying strengthened integration as one of the key issues requiring examination and reform in the short term. The Committee is not in a position to state whether this will require legislative and or administrative amendment to ensure that the necessary infrastructure commitments to support current and planned communities will be made and then met.

Community consultation in strategic planning

There was general agreement that the planning system would benefit from greater community engagement when developing strategic plans. Greater community input at the strategic level would reduce the likelihood of conflict at the development assessment stage.

Engaging the community in strategic planning is a challenging issue. The Government has rightly identified the need for an improved framework for community engagement at the strategic level.

The Committee did not receive much evidence to suggest how community engagement could or should be improved. However we do agree that when providing documents or plans for community input there is obvious merit in presenting them in clear language and in a manner that clearly identifies the issues that directly affect them.

Performance assessment

The need for a vision of what the planning framework aims to achieve and a strategic approach to achieving it is unquestionable. Once the aims have been set it is equally important to continually assess the outputs and outcomes of the planning system to determine whether that aim is being achieved.

The Committee has noted the importance of greater community engagement in strategic planning. If this is achieved, then a review of the success of strategic planning documents in guiding development should provide a measure of whether community and stakeholder expectations are being met.

The Committee concludes that the review of the planning framework will need to consider the current range of monitoring mechanisms, with a view to determining how the performance of the planning system can best be monitored and reported.

Local Environmental Plans (Chapter 5)

Local Environmental Plans was the second major issue with the current planning framework identified during the Inquiry. The three main issues identified in relation to LEPs were:

The new Standard Instrument – a template in accordance with all new LEPs must be made

The length of time taken to develop new LEPs

The detrimental effect that old, out of date LEPs has on the efficiency of the planning system.

Standard Instrument template

The Standard Instrument (SI) LEP template was introduced in 2005. At that time all councils were advised that they would have to remake their LEP in accordance with the template by a certain target year.

At the time of the conclusion on this Inquiry only a small number of SI LEPs had been finalised. As with other elements of the 2008 reforms, it is still too early to tell whether the stated intent of this initiative will be realised. The success of the SI LEP model will need to be judged primarily on the development outcomes to which it gives rise and how much those outcomes support and satisfy local community needs.

Alternatives to a single Standard Instrument LEP

While there was general concern among local councils with the SI LEP template the Committee found that this was more pronounced among non-metropolitan councils. There was a consistent criticism that the SI was too city-centric and did not adequately address the needs of rural and regional councils. This prompted many participants to recommend that a number of SI templates be developed.

The Committee believes there is a strong case for developing an alternative to the current single SI LEP model that better addresses the different needs of metropolitan, coastal and rural councils. It is likely that an alternative model would result in both greater acceptance by local government and ultimately greater standardisation, albeit on a regional basis.

The Committee recommended the DoP review the Standard Instrument LEP template with a view to developing a number of templates that reflect the different needs of metropolitan, rural and coastal local government areas.

Time taken to make an LEP

It is probably fair to say that old, out-of-date LEPs are the bane of the planning system. Some believe that the planning system has become more adversarial primarily because of the prevalence of out-of-date LEPs. They give rise to the need to consider individual rezonings, which is a resource and time-consuming process.

The Committee notes the apprehension of many local councils who are concerned at the length of time that will elapse before they will have a new comprehensive LEP in place. The Committee believes it is imperative that all councils be assisted in developing their new LEPs as soon as possible.

The Committee therefore recommends that the NSW government provide additional funding to local councils, the Department of Planning, and the Parliamentary Counsel's Office so all councils have a SI LEP completed within two years.

Keeping LEPs up to date

There was consensus that in an efficient planning framework LEPs are subject to regular review and amendment. There were differences of opinion on how frequently reviews should be conducted, and whether a set timeframe could apply to all councils. There was also some support for the timing of LEP reviews being based on certain trigger points being reached rather than based on set timeframes.

The Committee previously stated the importance of keeping LEPs current and up-to-date. As such we support the principle of mandatory review periods. We also believe there is merit in adjoining local government areas undertaking reviews at the same time. There is similar merit in LEPs being reviewed following the review of the relevant regional strategy.

The fundamental review of the planning framework will need to consider and recommend an LEP review system model that best ensures LEPs are regularly assessed and remain up-to-date.

E-planning and electronic provision of property information

During the Inquiry two issues relating to electronic planning were examined. The first is the move towards electronic development assessments (eDA), a key aspect of the Council of Australian Governments (COAG) agenda for national planning reform. The second is the potential benefits from the electronic provision of property information including the applicable development controls.

The Committee agrees focus should be given to developing efficient electronic planning information for the benefit of users of the planning system. It is clear that there are models interstate and here in New South Wales that are worthy of consideration.

The Committee therefore recommends that the Department of Planning develop best practice electronic planning systems and support their implementation at the local government level with additional funds and training, if needed.

Planning decision making (Chapter 6)

This Chapter considers the third major issue with the current planning system identified by Inquiry participants – the decision-making processes. As with the issues of strategic planning and Local Environmental Plans (LEPs), issues relating to the decision making process are an essential part of the fundamental review of the planning framework recommended by the Committee.

In the New South Wales planning system there are a number of different pathways by which development applications are assessed, and within these a number of different bodies that have the power to approve an application. The 2008 planning reforms saw the establishment of two new decision making bodies – the Planning Assessment Commission (PAC) and the Joint Regional Planning Panels (JRPPs).

Part 3A process

Part 3A has proven to be the most controversial section of the EP&A Act. Projects determined under Part 3A frequently generate media interest. Many Inquiry participants, in both submissions and evidence, called for Part 3A to be repealed. During the course of the Inquiry it became clear much of the dissatisfaction with Part 3A was associated with specific aspects of the process, rather than with its intent and purpose.

Part 3A development is significant and important for New South Wales. Despite the criticism levelled at Part 3A during the Inquiry, including the view that there is widespread community dissatisfaction with its application, the Committee believes Part 3A is an essential element of the planning system. However, because of its significance, there is a need and, as evidenced during the Inquiry, scope for improvements to its application and assessment processes.

The Committee expects that during the fundamental review of the planning system the process and application of Part 3A would be closely examined. The evidence received during this Inquiry should provide a useful resource to assist in that examination.

The number of decision making bodies

Much of the evidence received by the Committee was critical of the number of decision making bodies that exist within the planning system. During the Inquiry it was frequently put that two decision-making bodies would be the optimum number.

The Committee acknowledges the weight of evidence calling for a reduction in the number of decision making bodies within the planning system. The Committee notes the PAC and JRPPs are still in their infancy so it is too early to judge their efficiency and effect upon the planning system.

The issue of the optimum number of decision making bodies needs to be considered during the fundamental review of the planning system. The Committee notes that when this matter is examined acknowledgment will have to be made of the practical and administrative consequences for rural areas. It has become clear during the Inquiry that in the past many Statewide initiatives have not considered these implications adequately.

Level of assessment to match complexity of project

An ideal planning system is one where the level of assessment matches the complexity of the project. The Committee notes the Department of Planning has identified this as aim it is seeking to achieve.

While it was made clear to the Committee that the ability to match the level of required assessment to the complexity of the application was a desirable outcome, the Committee did not receive detailed evidence on how this could be practically achieved. The Committee notes the New South Wales Government and the Department of Planning have rightly identified this as an area for further examination.

The Committee noted the interconnection between different aspects of the planning system and how reform in one area has an affect on other areas. The more things are determined at the strategic level the easier it will be to devise a system that allows a more flexible system of assessment requirements.

The right to appeal planning decisions

During the Inquiry the primary issues raised with the planning appeals system were that it must be made more accessible to the general community; the prohibitive costs of the court appeal system precludes access and can influence decisions; and the belief the system had become increasingly adversarial and less inquisitorial.

The Committee agrees that the right to appeal planning decisions is a fundamental and necessary element of the planning framework. Ideally, cost should not prohibit anyone from exercising these rights.

The Committee notes improvements to other areas of the planning framework have the potential to affect the number and type of matters that become the subject of appeal. Such improvements include improved strategic planning, greater community participation and improved decision making processes leading to greater community confidence in the independence of the decision-making bodies.

Notwithstanding the above, the fundamental review of the planning framework will by necessity need to include review of the judicial body established specifically to support it. The group established to undertake the review will need to actively engage, if not include, the L&E Court to seek its views on what is required for the system to become more inquisitorial in nature.

Relationship between planning and building controls

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

In 1998, building controls were transferred from the *Local Government Act 1993* to the EP&A Act and were integrated into the development control regime. This coincided with introducing a role for the private sector in issuing construction and complying development certificates.

The New South Wales Government submission said the feature of the ‘old system’ now lost, was concept planning approval, which did not require detailed consideration of building matters at the development assessment (DA) stage. The submission notes the sharing of responsibility between consent and certifying authorities has seen some councils adopt an over-regulatory approach to reduce the scope of private certifiers. Many councils agree they now seek more information at the DA stage because they no longer have the capacity to impose conditions at the construction certificate stage.

The Committee could not ascertain whether the reforms relating to the private certification scheme will fully address all the concerns raised during the Inquiry. The Committee again notes it has recommended a fundamental review of all aspects of the planning framework. This review will be better placed to assess whether the private certification scheme is operating effectively and to make recommendations for any necessary changes.

Coordination of Commonwealth and State planning controls (Chapter 7)

In terms of efficiency the New South Wales planning framework will benefit from removing any unnecessary duplication of development controls and assessment processes. It is also agreed that all development in New South Wales should be controlled and assessed on a consistent basis.

Duplication of processes under EPBC Act and NSW legislation

The most frequent issues raised by local councils were the different Commonwealth and State listing processes for threatened species, ecological communities and heritage sites; and the delays in receiving responses from the federal Department of Environment.

The Committee agrees that a consistent listing approach for matters of national and state significance, including the listing of threatened species and heritage values under Commonwealth and State legislation is an outcome that should be pursued.

The Committee also believes that duplicative assessment and approval processes should be removed wherever possible, that is when they are not necessary for achieving a good outcome. The Committee acknowledges the argument from some stakeholders that the federal government consent role should not be diminished – because the New South Wales assessment and approval process is inadequate.

However, rather than rely on a second level of scrutiny the better approach is to refine the State system to the point where the need for additional scrutiny is reduced as much as possible. The Committee believes that if the fundamental review it has recommended is undertaken in the manner it suggested, the New South Wales planning system will improve and result in greater confidence in the system to assess and approve matters of national environmental significance.

Regulation of land use on or adjacent to airports

Put intro about the main issues trying to minimise land use conflict between airports and surrounding land use issues and the fact that non-aviation development on leased federal airport sites are not subject to local or State planning controls.

Airports are critical pieces of infrastructure that have a significant impact on the economic well-being of the surrounding regions. Regional strategic planning must take into account the future expansion and needs of airports so that their potential to contribute to the region is realised.

Aircraft noise has a negative effect on residential environmental amenity. In an ideal situation airports and residential development would be separated so that there is no discernible aircraft noise impact on residents. Those councils that have the luxury of enough available land to both implement 'buffer zones' and accommodate residential growth needs have adopted the approach of this separation in order to avoid land use conflict. However, this luxury is not available to all.

Air safety and noise control regulations do sterilise adjacent non-airport land in terms of development potential and general usage. The effective operation of an airport is dependent upon these controls.

The Committee acknowledges that the issue of the regulation of land use on or adjacent to airports is being examined as part of the development of the national aviation policy. The Committee further acknowledges the support for the approach taken by the New South Wales Government in providing

input into the national review. The Committee believes the New South Wales Government should continue to pursue its recommendations for change.

Climate change and natural resource issues (Chapter 8)

Proper consideration of climate change and natural resources issues is reliant on accurate information. Effective land-use planning decisions cannot be made if the values and present and future characteristics of the land are not known. What is also required is a clear direction on both how planning decisions should respond to changing environmental factors and how they can reduce factors, such as greenhouse gas emissions and water consumption, that negatively affect the environment.

There was a consistent call from local councils and from other inquiry participants for greater guidance on how to address climate change conditions in their land use planning and development assessment. This need for guidance was twofold: firstly advice on what the measurable impacts of climate change will be, and, secondly, guidance on the decisions councils will need to make to take account of these changes.

A feature of much of the 2008 reforms was a quest for standardisation, and many Inquiry participants were critical of this. However, with respect to policy and guidance for addressing the impact of sea level rise, there is a strong desire among all stakeholders for a standard approach across the State.

Through the course of the Inquiry the need articulated by local councils for a clear statement and guidance on dealing with predicted sea level rise was addressed by the Government.

The capacity to make planning decisions on how best to manage natural resources and biodiversity is dependent upon having the information necessary to inform those decisions. There is a need to increase the amount of information on our natural resources and biodiversity beyond current levels.

Various agencies hold natural resource information that is relevant to planning. This needs to be coordinated and then used to inform the planning system. Currently this is more likely to occur when Regional Strategies are developed.

The Committee recommended that Regional Strategies be developed for all areas of the State, that local councils receive funding support to prepare new LEPs with their associated mapping requirements, and that the Department of Planning proceed with developing electronic planning initiatives to increase access to relevant agency information. The Committee believes that if these things occur, a number of the significant issues regarding natural resource information will be addressed.

Agriculture and farmland

The farming sector by virtue of the size of its landholdings, plays an important role in natural resource management. The Committee believes that prime viable farmland is itself an important natural resource. There is a strong feeling among the agriculture and farming sectors that they are being disadvantaged, particularly in comparison to other industry sectors, by the planning system.

Perhaps the greatest potential for land-use conflict within the planning system is when the interests of the agricultural and mining industries collide. The Gunnedah Basin – Liverpool Plains area is a recent example of the conflict that can arise. There was a strong call for strategic and scientific assessment to identify the natural resource constraints and opportunities for conflicting land uses.

One of the purposes of the Department of Planning Regional Strategies is to minimise land use conflict. The Committee notes that none of the local government areas within the Gunnedah Basin or Liverpool Plains are covered by a relevant Regional Strategy. The Committee has recommended that Regional Strategies be developed for all areas of the State.

The Committee sees merit in the argument that a strategic and scientific assessment of the potential natural resource constraints should occur prior to the commencement of mining. The cost of any required study should be funded by mining companies. The Committee therefore recommends that the process for the granting of mining exploration licences be amended so that at the same time a licence is granted the Government appoints an independent committee of stakeholders to determine the terms of reference and manage a strategic and scientific assessment of natural resource constraints.

Housing affordability (Chapter 9)

The Committee distinguishes between ‘affordable housing’ and ‘housing affordability’. ‘Affordable housing’ refers to housing for which low to moderate-income households spend no more than 30 percent of their gross household income on recurrent housing costs. It includes public housing, community housing and other low-rent, social housing.

‘Housing affordability’ is a more general term and takes into account cost and supply of housing. Housing affordability is influenced by many factors such as supply of land and houses, infrastructure, market influences, interest rates, and broader economic and fiscal policy.

Evidence regarding the impact of the planning system on housing affordability was mixed. On the one hand, participants were less enthusiastic about opportunities within the planning system to positively influence housing affordability believing that the system should not be identified as a key mechanism for improving housing affordability. On the other hand, some Inquiry participants blamed the planning framework for increasing the cost of housing, through delays, developer levies and by not releasing sufficient land.

The Committee agrees that addressing housing affordability requires a whole-of-government approach, and that the planning framework is only one element of a systemic solution. The introduction of the new Affordable Rental Housing SEPP, with accompanying incentives and concessions, as well as other reforms that will further streamline the planning system, should have a positive effect on housing affordability in New South Wales, although the Committee can not comment on the impact of the SEPP as it was only released in July 2009.

Consideration of competition policy issues (Chapter 10)

There is a need to ensure that the planning system does not impede competition by creating unnecessary barriers to new entrants to a market. During the Inquiry there was also discussion on whether the planning system should adopt a more direct, interventionist role to ensure that individual competitors do not dominate certain markets, particularly the grocery market.

It is not the intention of the New South Wales planning system to impede competition unless there are issues of public interest. The principal means of supporting competition in the planning system is through ensuring that there is sufficient suitably zoned land to accommodate market demand, thereby allowing new entrants into the market.

In May 2009 the Minister for Planning and the Minister for Regulatory Reform jointly announced a review to consider if aspects of New South Wales planning policies and legislation need to be adjusted

to ensure the right balance in achieving sustainable social and environmental outcomes and in promoting a competitive business environment. That review encompassed consideration of the NSW Government draft Centres Policy.

Focus has been placed on ensuring that the planning system does not create unnecessary barriers to the competitive operation of the State's development industry. However, it was also put to the Committee that in some specific markets for competition to exist and flourish it may be necessary for the planning system to constrain the development activities of dominant market players through more rigorous assessment regimes. It was suggested that a competition test should be applied when considering development applications to ensure that no one organisation is allowed to dominate a market.

The Committee notes that the market dominance of the grocery/supermarket sector, and the resulting lack of competitive tension, is a national issue. The Committee believes that whatever approach is designed to address the issue must ultimately be consistently applied at a national level.

Traditionally, the planning system has not taken into consideration the direct impact on one organisation arising from the entrance into the same market of one of its competitors. The Committee must also note that it did not receive any evidence or suggestion from the local government sector that competition issues should be considered to a greater extent than they currently are within the planning framework.

If a competition test were to be introduced into the State planning system, the Committee would be concerned at the prospect of an increased administrative burden and associated costs being placed upon the shoulders of local government. Given that decisions could result in the constraint on the ability of certain organisations to freely trade, it would be best if those decisions were made by a level of authority above that of local government.

The Committee agrees that the Centres Policy being finalised by the Department of Planning is a significant plank of the NSW planning framework. A well-designed Centres Policy provides certainty and allows for strategic and infrastructure planning. The Committee notes that an aim of the policy will be to provide flexibility for development to occur out of centre where justified. That justification will need to be expressed in terms of the community's need and demand for such development.

The Committee recognises the importance of smaller community shopping areas to the people of New South Wales. Policy and legislation should recognise possible anti-competitive policies of major corporate organisations and differentiate between competitive and monopolistic behaviour.

Summary of Recommendations

Recommendation 1

Page 51

That the Minister for Planning establish an independent expert and representative group to undertake a fundamental review of the New South Wales planning framework with a view to formulating recommendations for legislative, strategic planning and system changes in order to develop a planning system that achieves the best mix of social, economic and environmental outcomes for New South Wales.

That the review group include representatives from urban, coastal, and regional/rural areas and include representatives who are practitioners of the planning system.

That the Department of Planning and other State agencies provide support to the review group in undertaking its task.

That the findings of the review group be subjected to broad community review and input and build on the work of this Committee's report.

That the review commence in 2010, recognising it may take up to five years to complete.

Recommendation 2

Page 70

That the NSW Government develop and implement common regional boundaries for use by government agencies and the planning process.

Recommendation 3

Page 71

That the Department of Planning develop a number of new regional strategies to ensure that there is an appropriate regional strategy in place for all local government areas across the State.

That as a first step the Department of Planning consult with local government not currently within a regional strategy area to determine appropriate and manageable new regional strategy boundaries.

Recommendation 4

Page 102

That the Department of Planning review the Standard Instrument LEP template with a view to developing a number of templates that reflect the different needs of metropolitan, rural and coastal local government areas.

Recommendation 5

Page 110

That the New South Wales Government provide additional funding to local councils, the Department of Planning and the Parliamentary Counsel's Office so all councils have a Standard Instrument Local Environmental Plan made within the next two years.

Recommendation 6

Page 124

That the Department of Planning develop best practice electronic planning systems and support their implementation at the local government level with additional funds and training, if needed.

Recommendation 7

Page 203

That the process for the granting of mining exploration licences be amended so that at the same time that a licence is granted, the government appoint an independent committee of stakeholders to determine the terms of reference and manage a strategic and scientific assessment of natural resource constraints, which is to be funded by the mining company.

Acronyms

ANEF	Australian Noise Exposure Forecast
AS	Australian Standard
BA	Building Application
BASIX	Building and Sustainability Index
BB	Bio-banking
BCA	Building Code of Australia
BMCC	Blue Mountains City Council
BP Act	<i>Building Professionals Act</i>
BPB	Building Professionals Board
CAP	Catchment Action Plan
CASA	Civil Aviation Safety Authority
CBD	Convention of Biological Diversity
CC	Construction Certificate
CDC	Complying Development Certificate
CMA	Catchment Management Authority
COAG	Council of Australian Governments
DA	Development Application
DAF	Development Assessment Forum
DCP	Development Contribution Plan
DECCW	Department of Environment, Climate Change and Water
EA	Environmental Assessment
eDA	Electronic Development Assessment
EDIAS	Electronic Development Assessment Interoperability Specifications
EDO	Environmental Defender's Office of New South Wales
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EL	Exploration Licence
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
ESDCP	Ecologically Sustainable Development Control Plan
HIA	Housing Industry Association
IDAS	Integrated Development Assessment System
IHAP	Independent Hearing and Assessment Panel

JRPP	Joint Regional Planning Panel
JRA	Jerrabomberra Residents' Association
L&E Court	Land and Environment Court
LEPs	Local Environmental Planning Policies
LEP	Local Environmental Plan
LGA	Local Government Authority
LGPDG	Local Government Planning Directors Group
LGPMC	Local Government and Planning Ministers' Council
LGSA	Local Government and Shires Association
MDP	Major Development Plan
Namoi ROC	Namoi Regional Organisation of Councils
NBA	Noise Abatement Areas
NCC	National Construction Code
NCCNSW	Nature Conservation Council of New South Wales
NCOSS	Council of Social Services NSW
NRM	Natural Resource Management
OLS	Obstacle Limitation Surface
PAC	Planning Assessment Commission
PCO	Parliamentary Counsel's Office
PCA	Principal Certifying Authority
PIA	Planning Institute of Australia
PUC	Practical Ultimate Capacity
RCP	Regional Conservation Plan
REP	Regional Environmental Plan
RPDC	Resource Planning and Development Commission
SEPP	State Environmental Planning Policy
SI	Standard Instrument
SIS	Species Impact Statement
SEIFA	Socio-Economic Indexes for Areas
TSC Act	<i>Threatened Species Conservation Act</i>
UDIA	Urban Development Institute of Australia
VBC	Village Building Company
WAPC	Western Australian Planning Commission
WSROC	Western Sydney Regional Organisation of Councils

Chapter 1 Introduction

This chapter provides an overview of the manner in which the Inquiry was conducted and the structure of the report.

Terms of reference

- 1.1 The Inquiry terms of reference referred to the Committee by the then Minister for Planning, the Hon Frank Sartor MP, on 24 June 2008. The Committee adopted the terms of reference, which are reproduced on page iv of this report, on 26 June 2008. The terms of reference require the Committee to examine where further reform of the NSW planning framework might be required.

Submissions

- 1.2 The Committee called for submissions through advertisements in the *Sydney Morning Herald*, and the *Daily Telegraph*. The Committee also wrote to organisations with a likely interest in the Inquiry, including state government agencies and local councils in New South Wales and business and consumer representative organisations.
- 1.3 The Committee received 115 submissions from a range of stakeholders, including local councils, private companies and business, other State governments, consumer representative bodies and individuals. The Committee received a whole of government submission from the New South Wales Government and a submission from the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government.
- 1.4 A list of all submissions is contained in Appendix 1. The submission may be accessed via the Committee website at: www.parliament.nsw.gov.au/statedevelopment.

Public hearings

- 1.5 The Committee held eleven public hearings during the Inquiry. Six public hearings were held at Parliament House and the remaining five public hearings were held in regional locations across New South Wales, namely Queanbeyan, Orange, Tamworth, Ballina and Albury. A list of the witnesses who appeared is provided in Appendix 2 and transcripts of the public hearings are on the Committee's website at: www.parliament.nsw.gov.au/statedevelopment. A list of documents tendered by witnesses at the hearings and accepted by the Committee can be found at Appendix 3. A list of witnesses who provided answers to questions taken on notice during hearing is at Appendix 4.
- 1.6 The Committee would like to thank all those persons who participated in the Inquiry, whether by making a submission, giving evidence or attending the public hearings.

Structure of the report

- 1.7** Chapter 2 provides a brief overview of the approach taken by a number of other jurisdictions in reforming their planning frameworks to meet the challenges of the future. It also outlines the reforms of the NSW planning system that have occurred over the last twenty years including the most recent raft of reforms introduced in 2008.
- 1.8** Chapter 3 examines the question of whether there is a need for further major development of the New South Wales planning legislation. This question was the primary issue for the majority of inquiry participants, and was the subject of extensive examination during the public hearings.
- 1.9** Chapter 4 examines the importance of strategic planning and analysis within the land-use planning framework. An efficient planning framework is more than just the related legislation that regulates land-use decisions. Legislation is simply a means by which to achieve the vision of how we wish our regions and localities to grow; and that vision needs to be clearly stated and supported through the development of strategic plans.
- 1.10** Chapter 5 examines issues relating to Local Environmental Plans (LEPs). LEPs are the primary planning tool for determining the types of development that can and cannot occur within a local government area. The main issues identified in relation to LEPs were the new Standard Instrument (SI) – a template in accordance with all new LEPs must now be made; the length of time it takes to develop new LEPs; and the detrimental effect that old, out-of-date LEPs has on the efficiency of the planning system.
- 1.11** Chapter 6 examines the process by which development applications are assessed and determined. There are a number of different pathways by which development applications are assessed and a number of different bodies with the authority to approve an application. The Chapter examines how the overall decision-making process could be improved including discussion on what is the optimum number of decision-making bodies within a planning system. It also examines the current provisions for the right to appeal development decisions and how the appeal process could be made more inquisitorial and less adversarial in nature.
- 1.12** Chapter 7 examines two cases where both State and Commonwealth legislation regulate land use, in particular environmental assessment of certain development and land use on or adjacent to airports. The Chapter discusses the NSW Government's efforts to improve the coordination of State and Commonwealth controls, including the aim of reducing unnecessary duplication of assessment.
- 1.13** Chapter 8 examines the need for the planning framework to take into account and effectively respond to climate change and natural resource issues. The Chapter examines the information that is available on natural resources and the impact of climate change on the physical environment, and the guidance provided to local councils on how they can best use this information when making planning decisions.
- 1.14** Chapter 9 examines the impact the planning system can have on housing affordability and what some stakeholders believe needs to occur to ensure that the cost of housing is not increased due to inefficiencies or anomalies within the system. It also discusses the direct role that the planning system can play in improving housing affordability and increasing the supply of affordable housing.

- 1.15** Chapter 10 examines the current provisions for taking into consideration competition policy issues in land use planning and development approval processes. The Chapter also examines the call from some stakeholders for the planning system to adopt a more direct role to promote and support a greater number of competitors in specific retailing markets

Chapter 2 Trends in planning

Planning systems deal with competing land use decisions in the face of increasing pressures on resources. The aim and efficiency of a planning system has a significant impact on the achievement of social, economic and environmental policy objectives. New South Wales is not unique in the need to ensure that its planning system responds to the challenges of increasing population, sustainable economic growth and climate change.

This chapter provides a brief overview of the approach taken by a number of other jurisdictions in reforming their planning frameworks to meet the challenges of the future. It also outlines the reforms of the NSW planning system that have occurred over the last twenty years including the most recent raft of reforms introduced in 2008.

The context for planning reform

- 2.1** During the development and consultation stage of the 2008 planning reforms the Department of Planning released a Discussion Paper: Improving the NSW planning system. The Discussion Paper placed the need for reform of the NSW planning system within the context of a global trend of reform:

Environmental and community pressures have mounted in recent years, as growing and changing populations place more stress on limited land and other resources. At the strategic planning level, all the State and territory governments are working towards accommodating growth in a sustainable manner, producing affordable land; planning and building new infrastructure; making better use of existing under-used land in well-serviced locations; and ensuring improved environmental outcomes.

Improved communications and liberated capital markets have also increased the fluidity of investment, creating a more competitive, risk-sensitive development industry, which requires greater certainty and efficiency in planning and assessment.

Against this backdrop, Victoria has developed reform proposals in its 2006 paper *Cutting red tape in planning*. Queensland has set out an ambitious agenda for reform in *Planning for a prosperous Queensland* (August 2007). South Australia has also recently announced its own reform program to its planning system.

In the United Kingdom, the Government's *Planning for a sustainable future* (May 2007) seeks to build a planning system which 'better serves us as individuals, communities and businesses, provided for better public consultation and engagement in the planning process; better supports local authorities' role; and better enables us to meet the challenge of climate change and deliver sustainable development including economic growth'.

In 1979 the *Environmental Planning and Assessment Act 1979* (the EP&A Act) was considered state-of-the-art environmental assessment legislation. When created

the EP&A Act recognised the importance of integrating environmental, social and economic outcomes in planning decisions. By implementing reforms now, the NSW Government will ensure NSW stays at the forefront of planning and development assessment.¹

- 2.2** The dominant trends in planning reform appear to be: reducing complexity and red tape; increasing jurisdiction-wide standardisation of local planning instruments, generally accompanied by an increase in the Minister's role in implementing jurisdiction-wide objectives through regional and local planning; improving strategic planning in growth centres and regions with a focus on transport hubs; and using independent panels of experts to advise and determine planning matters. Some jurisdictions are also seeking to improve community involvement in planning; improving state-local partnerships; and implementing performance based management.
- 2.3** A number of Inquiry participants noted that the in many cases the reforms in New South Wales and elsewhere have tended to focus on 'red tape reduction' and cost savings associated with planning processes to increase housing affordability rather than addressing mechanisms to achieve better planning outcomes. There was a concern that this would lead to a dominance of process and administrative reform as distinct from reform to achieve better outcomes on the ground.²
- 2.4** The following sections briefly outline features of the planning reform approach taken by various governments. Throughout the Inquiry and within this report discussion on certain aspects of the NSW planning framework includes reference to reform initiatives being undertaken in other jurisdictions.

The agenda set by the Council of Australian Governments

- 2.5** The Council of Australian Governments (COAG) is increasingly participating in planning reform, namely through the Development Assessment Forum (DAF) and the Local Government and Planning Ministers' Council (LGPMC). The Development Assessment Forum was formed in 1998 and represents the development industry, planning profession and local, state, territory and Commonwealth governments. It is an independent advisory forum with a mission is to encourage the harmonisation of Australian development assessment systems, through the promotion of leading practice regulatory reform.³
- 2.6** The DAF developed the Leading Practice Model for Development Assessment in 2005, which services as a blueprint for the jurisdictions for a simpler and consistent approach to development assessment, and is supported by the Local Government and Planning Ministers' Council. The Model provides ten leading practices that should be applied in a development assessment system that enables assessment by one of six tracks that are appropriate to the potential impacts of the proposal, which enables the most efficient assessment method:

¹ New South Wales Department of Planning, *Improving the NSW planning system: Discussion Paper*, November 2007, p 11

² For example, Submission 102, Local Government Planning Directors' Group (LGPDG), p 6

³ Submission 96, Department of Infrastructure, Transport, Regional Development and Local Government, p 6

- Exempt development: low impact beyond the site.
- Prohibited development: development that is not appropriate in specific locations (or zones), is clearly identified as prohibited in the planning instrument so that proponents and consent authorities do not waste time or effort on proposals that will not be approved (unless an amendment is made to the planning instrument).
- Self assess: proposals can be assessed against clear criteria, and development consent would always be given if the proposal met certain criteria. Minimal assessment is required as to whether criteria are met and there is no need for public notification. A standard consent would be issued.
- Code assess: development is assessed against objective criteria and performance standards. Assessment would be undertaken by an expert assessor and judgement would be required as to whether or not the proposal met the criteria. A standard consent would be issued.
- Merit Assess: development is assessed against complex criteria relating to the quality, performance, on-site and off-site effects of the proposed development, or where an application varies from stated policy. Professional assessors would carry out expert assessment.
- Impact assess: development is assessed against complex technical criteria that may be a significant impact on neighbouring residents or the local environment. This type of application would generally be of such a scale of significant that it should appropriate be determined by elected representatives, either local government or the Minister, based on the advice of an expert assessment panel.

2.7 In February 2006, the Council of Australian Governments (COAG) agreed to the National Competition Policy reform agenda, as part of the National Reform Agenda, which targeted specific under-performing sectors, including development assessment. COAG requested the Local Government and Planning Ministers Council (LGPMC) to:

- (a) Recommend and implement strategies to encourage each jurisdiction to:
 - (i) Systematically review its local government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction, and
 - (ii) Ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times;
- (b) Facilitate trials of electronic processing of development applications and adoption through Electronic Development Assessment.
- (c) Report back to COAG on progress and recommended options for streamlining legislation by the end of 2006.⁴

⁴

COAG Meeting outcomes, Attachment B, 10 February 2006, quoted in Submission 96, p 1

2.8 In April 2007, COAG endorsed the LGPMC recommendations that:

- all jurisdictions agree to review the outcomes of the current system and software trials of electronic development assessment processing and, if appropriate, facilitate further trials, with the aim of maximising the update of electronic development assessment processing by the end of 2009
- all jurisdictions agree that all new tender specifications for electronic development assessment software purchased by Commonwealth, State, Territory and Local Government will incorporate a National Communication Protocol for transferring development application information electronically from 1 July 2007.⁵

2.9 In March 2008 the COAG committed to a comprehensive new micro-economic reform agenda, with a particular focus on health, water, regulatory reform and the broader productivity agenda.⁶

2.10 In August 2008 the LGPMC agreed to the DAF developed protocol to support the electronic processing of planning and development applications.⁷

2.11 The Commonwealth Government's Housing Affordability Fund will invest over \$500 million over five years to lower the cost of building new homes by addressing two barriers to the supply housing – holding costs resulting from long planning and approval waiting times and infrastructure costs. Of this, \$30 million has been committed to develop the IT infrastructure and software needed to implement electronic development assessment systems, of which New South Wales will receive almost \$6 million. A further \$3.6 million has been allocated over the next three years to develop and implement national standards for eDA IT systems to enable all IT systems to talk to each other (the electronic development assessment interoperability specifications (eDIAS)).

2.12 COAG also agreed to establish a Ministerial sub-group, chaired by New South Wales and including Victoria, Queensland, South Australia and the Australian Local Government Association to develop proposals for further streamlining development assessment reform.

2.13 The increasingly national approach to planning in Australia is generally supported by New South Wales, with potential to address the economic downturn and assist in meeting objectives for affordable housing, infrastructure and climate change adaptation. The NSW Government identified the benefits of continued participation at the national level through COAG as being:

- increased co-operation among governments and the sharing of knowledge and experience on issue of common interests
- provision of opportunities to facilitate co-operation among state and local governments on reforms to deliver a more integrated, efficient planning system (e.g. housing policies, development codes, climate change, and sustainability)

⁵ COAG Meeting outcomes, Attachment B, 10 February 2006, quoted in Submission 96

⁶ COAG Meeting outcomes, quoted in Submissions 69, NSW Government, p 12

⁷ Submission 96, p 2

- provision of resources through COAG programs e.g. the Housing Affordability Fund (\$500 million over next 5 years) and
- enabling key NSW planning priorities to be promoted at the national level (e.g. housing affordability, complying development, eplanning systems, and climate change/sustainability).⁸

South Australia

- 2.14** The vision for planning in South Australia is economic growth supported by strategic planning, speedier development assessment, and certainty in land supply. Through compact, livable and efficient communities linked by mass transit public transport, planning reforms also seek to improve housing affordability, amenity, future economic prosperity, and equity to ensure 'all South Australians have the opportunity to benefit from the future economic growth.'⁹
- 2.15** To achieve this vision, the South Australian Government approved a suite of planning reforms in July 2008. Strategic planning will be underpinned by a 30-year growth plan for Adelaide, and regional plans that will direct growth in transport corridors.¹⁰
- 2.16** Development assessment will be streamlined by: expanding exempt development; creating a new Building Consent only list for minor home improvements; introducing a Residential Development Code for major alterations and additions to existing homes and for new dwellings which meet the Code; and speeding up the assessment process for development that requires merit based assessment.¹¹
- 2.17** An overhaul of land supply management will provide certainty for residential and commercial development through a 25-year rolling supply of land, with 15 years supply of land zoned at any one time.¹²
- 2.18** A new Department of Planning and Local Government was created in October 2008 by the amalgamation of separate agencies, including Planning SA and will provide improved strategic leadership. There will be incentives for councils to set up regional planning authorities to reduce administrative workloads, particularly for small councils.¹³
- 2.19** These reforms seek to improve a planning system that was overwhelmed with minor issues that created unnecessary delays, which limited economic growth and placed unnecessary

⁸ Submission 69, p 19

⁹ South Australia, *Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations*, pp 1-2

¹⁰ Submission 20, the Hon Paul Holloway, Minister for Planning and Urban Development, South Australia, p 1

¹¹ See further *Planning Reforms*, <http://www.planning.sa.gov.au>

¹² *Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations*, p 99

¹³ *Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations*, p xi and p 144

financial burdens on the community. There were low levels of complying development and the system was bogged down by too many development applications for things that are believed should occur as of a right. Economic growth and increased investment has meant increased population pressures with associated housing and infrastructure demands and house prices increased 300% between 1993 and 2006.¹⁴

- 2.20** The planning framework in South Australia centres around the *Development Act 1993*, administered by the Minister for Urban Development and Planning and the Department of Planning and Local Government. Local government areas in South Australia have development plans that reflect all relevant zoning, policies and controls. There are three development assessment tracks: complying, non-complying or merit based. Development proposals are referred to prescribed statutory bodies for comment, if required, before the planning consent is granted (applicant does not need to get separate approvals from separate statutory bodies under separate legislation). Certain high impact proposals require public notification, and the Environment, Resources and Development Court hears appeals.¹⁵
- 2.21** The Development Assessment Commission is an independent statutory body that assesses and determines certain development applications and assesses and reports on public development for which the Minister is the decision maker.
- 2.22** The Minister can declare and determine a development proposal to be a Major Development, which triggers a state-run assessment process with opportunity for public comment. Amendments to development plans can be made by the Minister or local councils, and can be triggered by strategic planning recommendations, councils or by individuals or companies. Amendments are subject to public consultation and can take a few months, or several years.
- 2.23** Since November 2007, applicants have been able to enter into formal discussions with the referral bodies. If a Pre Lodgement Agreement is reached between the applicant and the referral body, the proposal does not need to be referred, providing certainty for the applicant and potentially reduced assessment timeframes. Since 2006, Development Assessment Panels, which are established by local councils to ensure impartiality, are required to have a majority independent membership.
- 2.24** In 2006, system indicators were introduced to measure the performance of decision-making authorities in meeting set timeframes, including referral agencies, councils, private building certifiers and the Development Assessment Commission. These indicators are reported quarterly and enable easy identification of bottlenecks in the planning process.
- 2.25** Climate change and natural resource management are identified as pivotal issues and drivers in the planning reform process.¹⁶ *Tackling Climate Change: South Australia's Greenhouse Strategy 2007-2020* indicates the role of the planning system in adapting to climate change.¹⁷ Climate change will be addressed through strategic planning, which will reduce motor vehicle use and increase

¹⁴ *Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations*, pp iii–iv

¹⁵ Overview at www.planning.sa.gov.au

¹⁶ Submission 20 p 2

¹⁷ *Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations*, p 23

energy and water efficiency. A strategic approach to native vegetation management upfront will enable the removal of multiple referrals in the development assessment stage.¹⁸

- 2.26** It is South Australia's position that competition should be addressed at the strategic planning stage, informing planning policies, and should not be afforded greater weight over other relevant planning issues in DA assessment.¹⁹ The *Development Act 1993* contains provisions that aim to prevent planning appeal processes from being used solely for competitive commercial benefit by delaying a competitor's development.
- 2.27** Development approval usually follows two separate consent pathways. A planning consent is issued first. This is followed by a building consent, which must be consistent with the planning consent.

Victoria

- 2.28** Victoria's planning reforms seek to simplify process, improve efficiency in decision-making, reduce timeframes and improve partnerships between State and local governments, by building on a strong and equitable planning system.²⁰ A key principle is better matching the time and expense of the development assessment process to the potential impacts of the proposal.
- 2.29** Current reforms were proposed in its 2006 paper *Cutting red tape in planning*, which made 15 recommendations to improve the planning system, and are currently being implemented. The recommendations of the Victorian Auditor General's 2008 report *Victoria's Planning Framework for Land Use and Development* build on current reforms, identifying that the planning system is overly complex and not achieving its original intent, and recommending performance measuring.²¹
- 2.30** A key part of this reform is the modernisation of the *Planning and Environment Act 1987* to simplify planning laws, strengthen certainty and timelines, and streamline the growth area planning process to ensure that zoned land is available in time for future urban development and that mechanisms are available for development to contribute to the costs of infrastructure provision.²²
- 2.31** To improve development assessment, Victoria is currently trialling a code assess track (complying development). Referral requirements are being refined and a deemed to consent will be introduced if there is no response to a referral in 21 days. It has become easier and faster to amend planning schemes through better alignment of the required justification with

¹⁸ Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee for consideration by Cabinet, Executive Summary and Recommendations

¹⁹ Submission 20, p 2

²⁰ Victorian Department of Planning and Community Development, *Cutting Red Tape in Planning*, August 2006

²¹ Victorian Auditor-General, *Victoria's Planning Framework for Land Use and Development*, May 2008, p 34

²² Victorian Department of Planning and Community Development, *Modernising Victoria's Planning Act: A discussion paper on opportunities to improve the Planning and Environment Act 1987*, 2009, p 3

the significance of the proposal, however the need for further improvements in efficiency has been identified. If an objection is made after exhibition, an independent panel assessment process is triggered. Currently, there is no way for someone proposing an amendment to seek a review if the Council or relevant planning authority refuses the request, and the need for a formal mechanism to enable this has been raised.

- 2.32** The reforms also seek to improve the relationship between State and local planning – making State policy more relevant to local decision-making and making local planning stronger. This involves a review of State planning policies and the establishment of expert teams to provide advice to councils. A key initiative to address the gap between State and local planning is the creation of Development Assessment Committees to make development application decisions for matters of metropolitan significance.
- 2.33** The 2006 Plan for Melbourne’s growth areas initiative sets out the strategy for achieving well planned sustainable communities with appropriate services, protection of cultural and heritage sites and an adequate supply of residential land, including affordable housing in Melbourne’s growth areas. As part of this, the Grows Area Authority was established as an independent statutory body to improve planning and infrastructure coordination by creating greater certainty, faster decisions and better coordination for all parties involved in planning and development of Melbourne’s growth areas.
- 2.34** The planning framework is centred on the *Planning and Environment Act 1987*, administered by the Minister for Planning and the Department of Planning and Community Development. Local government areas have a planning scheme that reflects all State and local planning policies, zones and overlays. Planning schemes zone land for different land uses and state their purpose and the requirements for development. Each zone sets out land use controls in three categories: land uses that do not require a planning permit; land uses that require a planning permit; and prohibited uses. The Victoria Planning Provisions are a set of standard provisions and format for planning schemes. The Minister can declare proposed development to be of State significance. There are no formal criteria for State significant proposals and the need for criteria and a specific assessment process for State significant development have been raised.
- 2.35** Policies and planning guidelines for climate change mitigation and adaptation efforts are being developed, including developing a sea level rise benchmark to 2100 to inform coastal planning. There is a range of initiatives under the Victorian Climate Change Adaptation Program. The Victorian Government is undertaking mapping and modelling to inform risk assessment, environment and planning agencies and local councils will work together to develop policy and planning guidelines, including developing a sea level rise benchmark to 2100 and various building and land use planning initiatives to improve energy efficiency.
- 2.36** Victoria is currently reviewing retail policy in planning, underpinned by principles, including that planning policies and controls should not limit retail competition or innovation or distinguish between or favour particular forms of retailing unless there is a clear public policy case for doing so.
- 2.37** In the Victorian system planning and building controls are separate. Building permits are issued under the *Building Act 1993*. If a planning permit is required, a building permit can not be issued unless the building surveyor is satisfied that any relevant planning permit has been obtained and the building permit must be consistent with that planning permit or other prescribed approval.

Queensland

- 2.38** Reforms in Queensland seek to modernise the planning system to support growth and maintain lifestyles, by shifting the focus of its planning framework from process to outcomes, provide a stronger role for the State and encouraging active community participation in the planning and development assessment system.²³
- 2.39** Following a decade of planning reforms, Queensland's planning system remains under pressure from a population boom and decreasing housing affordability. Queensland's key planning legislation is the *Integrated Planning Act 1997*, administered by the Minister for Infrastructure and Planning and the Department of Infrastructure and Planning. Since its introduction, it has integrated over 30 pieces of legislation and 60 approval processes through the Integrated Development Assessment System (IDAS). Through this process, complexities have emerged, it has become difficult to determine referral agencies, and there is a lack of confidence in the planning system. Streamlining and simplifying the IDAS is now a key objective in Queensland's planning reforms.²⁴
- 2.40** The IDAS has four stages, each with set timeframes: application; information and referral; notification; and decision. Local government areas have planning schemes. The development assessment tracks are: exempt; self-assessable; and assessable (code assessment and impact assessment). Applications for rezoning of planning schemes can be made to the relevant local council and the determination can be appealed in the Planning and Environment Court. Rezoning can give rise to compensation to affected landholders.
- 2.41** A significant component of planning reforms has been restructuring local government – last year the number of local councils in Queensland was reduced from 157 to 73, to modernise local government and improve financial viability.
- 2.42** Queensland's key reform actions are outlined in its 2007 report *Planning for a Prosperous Queensland – A reform agenda for planning and development in the Smart State*, which makes 80 recommendations. The reforms centre on the introduction of new planning legislation to become operational in 2009, including new planning tools, and a review of the Integrated Development Assessment System (IDAS). The Planning Reform Reference Panel was established to provide guidance on the implementation of the 2007 reform agenda, with planning, industry, local government and the community representatives.²⁵
- 2.43** The new legislation will reduce complexity and increase consistency between councils through greater standardisation in local planning. It will also clarify the state-regional-local hierarchy of statutory planning instruments, which had become confusing. The Minister will make standard planning scheme provisions with standard specifications including a mandatory structure and

²³ Queensland Department of Local Government, Planning, Sport and Recreation, *Planning for a Prosperous Queensland: A reform agenda for planning and development in the Smart State*, August 2007, pp iv-viii.

²⁴ *Planning for a Prosperous Queensland*, p 2

²⁵ Planning Reform Reference Panel, Communiqué 4, October 2008, www.dip.qld.gov.au/planning-reform/planning-reform-reference-panel.html

format, definitions and a suite of zones, while local government will incorporate local content and variation as appropriate.²⁶

- 2.44** Legislative changes will also specify guarantees and benchmarks for effective consultation and State involvement with the aim of improving community engagement in making planning schemes to overcome an over-reliance on adversarial involvement at the development assessment and approval stage.
- 2.45** There is an emphasis on statutory-based strategic planning with the development of statutory urban and regional plans to support future growth and maintain quality of life. The *Integrated Planning Act 1997* provides the framework for regional planning and the Queensland Government has committed to accelerating implementation of the existing regional plans and delivering regional plans in rural Queensland. These initiatives aim to address the previous lack of implementation of voluntary regional plans and to assist regional communities respond to regional growth pressures. A consistent set of flexible and responsive regional planning tools with built in monitoring and review provisions will take account of the wide differences in Queensland's regions.²⁷
- 2.46** Infrastructure charges for new development will be simplified with a new schedule of standard charges, providing consistency between councils and improved equity and transparency.

Northern Territory

- 2.47** The Northern Territory's recent consolidation of its key planning instrument, the NT Planning Scheme, simplified and streamlined planning instruments and modernised the Northern Territory land information system.²⁸
- 2.48** The *Planning Act 2008* establishes the planning framework in the Northern Territory and is administered by the Minister for Planning and Land and the Department of Planning and Infrastructure. The Development Consent Authority determines development applications according to division areas. Local governments are not consent authorities – they only comment on development applications. Local government was reformed with the creation of 8 new shires in 2008 to improve service delivery and support improved business and employment opportunities in rural and remote communities.
- 2.49** The environmental assessment process is administered under the *Environmental Assessment Act*. The Environment Protection Authority, an independent body that advises the NT Government, is currently reviewing the Territory's environmental impact assessment procedures.²⁹
- 2.50** Planning reforms in the Northern Territory are embodied in its new Northern Territory Planning Scheme, which was introduced in 2007. This new Northern Territory Planning

²⁶ *Planning for a Prosperous Queensland*, pp 8–11

²⁷ *Planning for a Prosperous Queensland*, pp 19–20. Also see Planning Reform Reference Panel, Communiqué 4, October 2008

²⁸ Submission 14, Minister for Planning and Lands, Northern Territory

²⁹ Northern Territory Government, Environment Protection Agency, www.epa.nt.gov.au

Scheme rationalised, integrated and consolidated existing planning controls, policies and guidelines into a single, coherent document that covers the whole Territory (except the town of Jabiru, which is covered by its own specific planning scheme). It replaced 21 town plans, 370 land use objectives, 82 control plans over Aboriginal Community Living Areas and other documents.³⁰

- 2.51** The new Planning Scheme establishes common zones, land use definitions and control provisions. It also provides planning principles for the entire territory, as well as for specific regions, and determines the types of development that require development consent in different parts of the Territory. Its development assessment tracks stream applications into a process that corresponds with the level of assessment required: permitted, discretionary and prohibited.³¹
- 2.52** To maintain the Planning Scheme as a dynamic document, the Planning Act sets a clear process for amendments that anyone can request, involving public exhibition and a public hearing. Amendments are expected soon to incorporate the COAG national principles for water efficiency.³²
- 2.53** The Northern Territory is also modernising its landmark Integrated Land Information System, which is an inter-related system of spatial data, policies and procedures, including natural resources, the environment, land use, transport, communications, and demography, where such information can be related to a geographical location. As part of this, an electronic development assessment and building approval processes is being developed.
- 2.54** Public appeal rights have been maintained in recent reforms. An applicant can appeal the decision of the consent authority within 28 days, or if the application has not been determined within 12 weeks. Third party appeals only apply in certain circumstances in residential zones, but not for approvals for dwellings two stories or less, or for subdivisions or consolidations.³³
- 2.55** The Planning Scheme distinguishes between those principles that apply across the Territory and those that are specific to a region. Planning initiatives are also underway for specific places or regions. For example, the Alice Springs CBD Revitalisation Project and the residential land release strategy were outcomes of a review of the Alice Springs Land use Framework Plan and Principles in the NT Planning Scheme, based on community consultation and growth projections.³⁴

³⁰ Submission 14, p 1

³¹ Submission 14, p 1

³² Submission 14, p 1

³³ Northern Territory, *Planning Appeals*, www.nt.gov.au/lands/planning/system/appeals.shtml

³⁴ Northern Territory, *Planning for the Future Forum*, www.futurealice.nt.gov.au/updates/index.shtml

Australian Capital Territory

- 2.56** Planning reform in the Australian Capital Territory seeks to make the current planning system ‘simpler, easier to use, faster and more effective for residents, industry, business and the community’³⁵
- 2.57** The Territory Plan, provides the planning framework for the Australian Capital Territory, and is administered by the Minister for Planning and the ACT Planning and Land Authority. Consultation prior to the recent reforms found that all sectors of the community recognised the need for reform. Industry supported the adoption of the Development Assessment System model and supported the reduction of third party appeal rights, while environmental groups supported the proposed reform of the environmental impact assessment system and were concerned about the removal of third party appeal rights.³⁶
- 2.58** The ACT launched a planning reform project in 2005 and a new planning framework took effect in March 2008. A key component of the planning reforms is the new *Planning and Development Act 2007*. It classifies a new development assessment process that is clearer and more transparent, with clear assessment pathways with certain time frames (exempt, assessable under a code, merit or impact track, or prohibited). It also tightens eligibility for third party appeals, and improves proponents’ ability to obtain pre-approval advice. The new framework sets a clear environmental impact assessment process in which the appropriate level of environmental assessment is completed before the development application is considered.³⁷
- 2.59** A new restructured Territory Plan - the key statutory planning instrument - consolidates and simplifies land use policies, sets clear criteria for development assessment, and enables certain proposals to go through a quicker process. Other legislative changes widened exemptions from building approval and enhanced building certifiers’ regulatory role, allowing certifiers to be the sole regulator of exempt houses, so that people seeking to build new house that meet development exemption criteria will only have to deal with a single consent to obtain all approvals to start construction.³⁸
- 2.60** The new planning framework also has a strategic planning focus, reflecting its role as Australia’s capital. The Territory Plan includes a statement of strategic direction, which includes guiding principles for sustainable development, and environmental, economic and social sustainability, as well as urban design principles. The Territory Plan must be consistent with the National Capital Plan, which is made under the Commonwealth *Australian Capital Territory (Planning and Land Management) Act 1988* to ensure that planning and development in the ACT accords with its national significance.³⁹
- 2.61** While key reforms have been implemented for the development assessment process, reform is continuing with a review of the planning policies in the Territory Plan in an effort to further

³⁵ Australian Capital Territory, *Introduction to planning system reform – development assessment*, 2008, p 1

³⁶ *Introduction to planning system reform – development assessment*, 2008, pp 9-16

³⁷ *Introduction to planning system reform – development assessment*, 2008, p 8

³⁸ *Introduction to planning system reform – development assessment*, 2008, p 7

³⁹ Australian Government, *National Capital Plan*, p 2-3, www.nationalcapital.gov.au

improve speed and efficiency of the planning system. An Industry Monitoring Group is monitoring the implementation of the continuing reforms.⁴⁰

Western Australia

- 2.62** Planning in Western Australia rests on a 50-year old model with an independent expert body to manage planning and make decisions.⁴¹ The Western Australian Planning Commission is the key planning authority in Western Australia. It was originally called the Metropolitan Regional Planning Authority and is currently established under the *Planning and Development Act 2005*, and consists of up to 15 members with an independent chairperson, heads of seven government agencies and representatives from economic, social and environmental areas, local government, regional development and coastal management. Planning committees provide expert advice and local knowledge to the Commission. The Department of Planning and Infrastructure provides professional and technical advice and administrative services, and implements the Commissions decisions.⁴²
- 2.63** Ongoing reforms include a series of initiatives to address modern planning challenges within its existing framework. A series of planning initiatives aim to achieve the State's broader sustainable development objectives. In 2003, the Integrated Project Approvals System was introduced for major state development projects, such as large mining and petroleum projects. The new system reduced red tape and duplication and set clear timeframes to encourage investment in major projects in WA.⁴³
- 2.64** State Planning Policy Number 1, introduced in 2006, sets principles to guide the way future planning decisions are to be made. This includes environment protection, vibrant and safe communities, sustainable economic activity and regional wealth, efficient and equitable infrastructure, and regional development. The strategic direction set in State Planning Policy Number 1 is given effect through a mix of regional and local strategic and statutory planning instruments administered by the WA Planning Commission and Local Government. The Commission prepares statutory regional schemes. Local governments prepare and administer local planning strategies and schemes and must reflect regional strategies and schemes. While the Commission determines larger development assessments, some types of development assessment have been delegated to local governments.⁴⁴
- 2.65** The *Planning and Development Act 2005* brought together three separate pieces of legislation and improved consistency and certainty, streamlining urban and regional planning and development assessment processes. For example, environmental assessment processes were integrated at the early stage of development, to enable land development to occur faster.⁴⁵

⁴⁰ Australian Capital Territory, *Territory Plan Review*, www.actpla.act.gov.au

⁴¹ Western Australian Planning Commission, *An Introduction to the Western Australian Planning System*, October 2007

⁴² *An Introduction to the Western Australian Planning System*, October 2007, p 2.

⁴³ *An Introduction to the Western Australian Planning System*, October 2007, p 15

⁴⁴ *An Introduction to the Western Australian Planning System*, October 2007, pp 5–9

⁴⁵ *An Introduction to the Western Australian Planning System*, October 2007, p 4

- 2.66** In 2007, a \$3 million dollar initiative involved State Government funding to local governments for housing development with the objective of achieving more approvals in less time, with higher densities where appropriate.⁴⁶
- 2.67** The Regional Hotspots initiative provided land supply reports for 11 key regional centres. These reports present information about natural resources and planning and infrastructure requirements for future residential, commercial, industrial, tourism, workforce accommodation and government land development to guide investment.⁴⁷
- 2.68** A draft state planning policy on developer contributions to infrastructure was recently prepared. It will guide local government in charging developers contributions for infrastructure and promote efficient and effective public infrastructure provision, ensure consistency and transparency and ensure developer contributions are necessary and charged equitably among those who benefit.⁴⁸
- 2.69** Sustainable development is also a principle in guiding planning, including managing growth by sharing responsibility between industry, community and government. For example, the 2005 Network City Strategic Plan for greater Perth is guided by principles of providing new dwellings in existing urban areas and developing partnerships between State and local government, improved transport; focus on growth corridors and transport-oriented developments and protecting the environment.
- 2.70** In 2006, the EnviroPlanning Project was introduced to integrate land use planning and natural resource management. It provides funding and technical assistance to local governments and other stakeholders to make strategic and statutory land use planning more responsive and effective as a tool for supporting natural resource management.

Tasmania

- 2.71** Planning reforms in Tasmania aim to streamline decision making, clarifying the planning system and the roles of its major players, building up State policy to guide, and improve consistency.⁴⁹
- 2.72** Tasmania's planning reform agenda follows over three years of review initiatives and public consultation. The 2004 - 2005 *Better Planning Outcomes* initiative, involved a discussion paper and public consultation, found that stakeholders lacked confidence in the planning system⁵⁰ and canvassed a range of options for planning reform. In 2006, the Legislative Council's Select Committee on Planning Schemes identified inconsistency and procedural issues relating to the

⁴⁶ Western Australian Planning Commission, www.planning.wa.gov.au

⁴⁷ Western Australian Planning Commission, www.planning.wa.gov.au

⁴⁸ Western Australian Planning Commission, www.planning.wa.gov.au

⁴⁹ Tasmanian Government, *Review of the Tasmanian Planning System: Steering Committee Report*, February 2009, p 2

⁵⁰ Parliament of Tasmania, Legislative Council Select Committee 2006, *Planning Schemes*, p 2, and *Review of the Tasmanian Planning System: Steering Committee Report*, p 13

Resource Planning and Development Commission and concluded that the problems can be adequately addressed within the existing legislative framework.⁵¹

- 2.73** More specifically, problems with the planning system included lack of State guidance in planning matters, confusion about the role of various players in the planning system, inconsistency in planning schemes and in the application of State policies. Overall, the system was not operating as it was supposed to. Consultation also identified a lack of planning expertise in councils, the need to establish a separate department of planning, and a lack of regional planning to coordinate infrastructure, economic development projects and environmental and social interests.⁵²
- 2.74** The key planning legislation is the *Land Use Planning and Approvals Act 1993*, administered by the Minister for Planning. Local councils prepare and administer planning schemes. There are three development assessment tracks: permitted (Council is bound to grant a permit, if it meets the requirements prescribed in the planning scheme), discretionary (Council has the discretion to refuse of permit), or prohibited (requires planning scheme amendment). An application for prohibited development can be submitted as a joint proposal for both development and planning scheme amendment, where the latter is forwarded to the Commission for assessing and determining the proposed planning scheme amendment.
- 2.75** Prior to its amalgamation with the Land Use Planning Branch of the Department of Justice, the Resource Planning and Development Commission's role was to assess and approve local planning schemes and conduct inquiries into the use of public land. It also assessed projects of State significance and advised the Government, which then made the final decision.
- 2.76** The applicant or third parties can appeal planning decisions to the Resource Management and Planning Appeal Tribunal. The Minister does not have any direct powers to intervene in planning decisions by local councils, the Commission or the Tribunal. However, the Minister has a role at the strategic planning stage and can issue planning directives, which can require local councils to change their planning schemes.⁵³
- 2.77** The review of the Tasmanian planning system commenced in March 2008 and the review's steering committee released its recommendations in February 2009. It seeks to streamline decision making by reviewing the role that various bodies play in the planning system. It will also review the way State planning policies are developed and implemented, the use of mediation to resolve planning disputes, the structure of the Resource, Planning and Development Commission, the assessment of projects of regional significance by expert panels, and the adequacy of the planning system to deal with climate change.⁵⁴
- 2.78** In March 2009, the Tasmanian Government announced the creation of the Tasmanian Planning Commission, which will be formed by the amalgamation of the Resource Planning and Development Commission and the Land Use Planning Branch of the Department of Justice. A new category of development assessment was also announced – projects of regional significance will be able to be called-in by the Minister and will be assessed by an expert panel.

⁵¹ *Planning Schemes*, 2006, p 3

⁵² Tasmanian Government, *Better Planning Outcomes Response Report*, 2005, p 5

⁵³ For explanation of the Tasmanian planning system, see www.justice.tas.gov.au/landuseplanning

⁵⁴ *Review of the Tasmanian Planning System: Steering Committee Report*, p 2

Other reforms underway include regional planning initiatives being established around the state, drafting provisions for model planning schemes and reviewing State policies.⁵⁵

United Kingdom

- 2.79** The United Kingdom's vision for planning is outlined in its 2007 white paper *Planning for a Sustainable Future* – a planning system which supports vibrant, healthy sustainable communities, promotes the United Kingdom's international competitiveness and enables the infrastructure which is vital to our quality of life to be provided, in a way that is integrated with the delivery of other sustainable development objectives, and ensures that local communities and members of the public can make their views heard.⁵⁶
- 2.80** New planning legislation was introduced in 2008. An independent national body, the Infrastructure Planning Commission, is being established to speed up the process for nationally significant infrastructure projects. As a consent authority, its decisions will be based on a new framework of national policy statements set by the Government and subject to public consultation and Parliamentary scrutiny. At a local level, a community infrastructure levy is being introduced, allowing councils to raise funds required for vital infrastructure in new communities.⁵⁷
- 2.81** In other reform initiatives outlined in the white paper, councils will be required to take action on climate change in their local development plans, green homes will improve energy efficiency, development will be located to reduce travel and public transport will be better integrated. Development assessment is being streamlined, including by reducing the number of developments that require planning permission.
- 2.82** Planning reforms in the United Kingdom started in 1997 and significant achievements have been made. However, problems remain and new challenges are emerging. The planning framework was identified as not being sufficiently clear and responsive, with too much red tape and uncertainty for development proponents. There were difficulties in achieving effective community engagement and decisions were not made at the right level, for example, Ministers being decision makers for local proposals.
- 2.83** To date, planning reforms in the United Kingdom have achieved gains in efficiency and effectiveness, including electronic planning services. Housing has been increased while also minimising urban sprawl through the use of brownfield land and improvements in design standards. The Government has also issued planning policy statements, including on housing and climate change. A series of advisory bodies has been created to assist planning authorities, large proposals and local communities and individuals.

⁵⁵ *Review of the Tasmanian Planning System: Steering Committee Report*, p 12

⁵⁶ UK Government, *Planning for a Sustainable Future White Paper*, 2007, p 5

⁵⁷ UK Department of Communities and Local Government, www.communities.gov.uk/planningandbuilding

- 2.84** The *Planning for a Sustainable Future* outlined the principles guiding the United Kingdom planning reforms:

...planning must be responsive, particularly to longer term challenges such as increasing globalisation and climate change, and properly integrate our economic, social and environmental objectives to deliver sustainable development; the planning system should be streamlined, efficient and predictable; there must be full and fair opportunities for public consultation and community engagement; the planning system should be transparent and accountable; and planning should be undertaken at the right level of government – national, regional and local.⁵⁸

- 2.85** The planning system is recognised as having a key role in mitigating the effects of and adapting to the impacts of climate change and the protection of natural resources. A Planning Policy Statement on Climate Change was published in December 2001, and sets out how planning, in providing for the new homes, jobs and infrastructure needed by communities, should help shape places with lower carbon emissions and which are resilient to the impacts of climate change.⁵⁹

Planning in New South Wales

- 2.86** When it was created in 1979, the EP&A Act was generally acknowledged to be groundbreaking, with its focus on environmental protection, sharing of control between State and local and provisions for public participation. Other jurisdictions soon followed suit with similar legislative reform.⁶⁰
- 2.87** Prior to the commencement of the EP&A Act, land use planning was dominated by central government and assisted by technical experts, with limited opportunity for public involvement in planning.⁶¹ The 1970s saw the outcomes of post war planning being questioned – both the high rise housing and inner city freeways and the low density suburbanisation, in Australia and worldwide.⁶² At the same time, the rise of resident action groups, movements for social justice and public participation in government, environment and heritage protection and green ban movements in Sydney and Melbourne, all shaped a new climate for planning.⁶³

⁵⁸ *Planning for a Sustainable Future White Paper*, 2007, p 19

⁵⁹ UK Government, *Planning Policy Statement: Planning and Climate Change – Supplementary to Planning Policy*, 2009, www.communities.gov.uk

⁶⁰ Lipman Z and Stokes R, *The technocrat is back: Environmental land-use planning and reform in New South Wales*, EPLJ 305, 2008, quoted in Submission 79, Appendix, Mr Rob Stokes, Member for Pittwater

⁶¹ Lipman Z and Stokes R, *The technocrat is back: Environmental land-use planning and reform in New South Wales*, EPLJ 305, 2008, quoted in Submission 79, Appendix, Mr Rob Stokes, Member for Pittwater

⁶² Freestone R, *A History of Planning*, in Thompson S, *Planning Australia: An Overview of Urban and Regional Planning*, 2007, p 80

⁶³ Freestone R, *A History of Planning*, in Thompson S, *Planning Australia: An Overview of Urban and Regional Planning*, 2007, pp 81-83

- 2.88** The EP&A Act's essential aim was to 'create a system of environmental planning under which decisions on land use and resource management are made within the physical capacity of the environment in order to promote the economic and social welfare of the people of New South Wales.' Its broad objectives were: to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and man-made resources; to share government responsibility for environmental planning between the State and local government; and to increase the opportunity for community involvement in environmental planning and assessment.⁶⁴
- 2.89** The EP&A Act was introduced along with the *Land and Environment Court Act 1979* and amendments to the *Heritage Act 1977*. The principal objectives of this package of legislation were to:
- broaden the scope of planning effectively to embrace economic, social and ecological considerations in the preparation of environmental plans and in development control
 - provide positive guidelines for the development process, to speed up decision-making, to foster investment and facilitate economic growth
 - authorise the preparation of different types and forms of environmental plans each respective designed to deal with State, regional and local planning issues and problems
 - ensure that the State is principally concerned with matters of policy and objectives rather than matters of detailed local land use
 - co-ordinate, especially at a State and regional level, the development programmes of public authorities
 - provide an opportunity for public involvement in the planning process
 - provide for a more simplified administration of the system of planning decision making and
 - provide a system for the assessment of the environmental impacts of proposals that would significantly affect the environment.⁶⁵

How the EP&A Act has changed

- 2.90** Since its introduction, the EP&A Act and the planning framework has been extensively amended to achieve new policy objectives and response to emerging challenges. The NSW Government submission provided the following summary of key changes to the planning system over the last twenty years.

⁶⁴ NSWPD (Legislative Council), 21 November 1979, pp 3345-3356

⁶⁵ NSWPD (Legislative Council), 21 November 1979, pp 3345-3356

Table 2.1 Key changes to the NSW planning system⁶⁶

Date	Initiative
1986-88	Protection of wetlands, littoral rainforests and bush in urban areas – SEPP 14, 19 and 26 Consideration of wilderness and national parks in planning
1989	Planning controls on intensive agriculture
1991	Protection of endangered fauna provisions
1993-94	Codify existing role of Minister for Planning as approval authority of major development Designated development provisions in Schedule 3 of Regulations updated to reflect a more environmental risk based approach Controls for industries potentially or actually hazardous – SEPP 33
1995	Threatened species conservation provisions added to EP&A Act Protection of koala habitat – SEPP 44 Protection and management of native vegetation – SEPP 46
1997	Integrated development assessment provisions with agencies involved in assessing development applications Provision under Part 4 for State Significant Development determined by Minister Exempt or complying development categories Integration of building controls from Local Government Act 1993 Construction certificates or complying development certificates issued by council or private certifiers – opening up certification to competition – system of regulation of private certifiers
2002	Anti-corruption provisions added to EP&A Act Rural fires provisions added to EP&A Act Provisions relating to coastal development and coastal protection
2005	Sydney Metropolitan Strategy City of Cities: A Plan for Sydney's Future Part 3A with integrated approvals for major development, including critical infrastructure Gazettal of Major Projects SEPP with State Significant Site provisions Standard Local Environmental Plan template Review of local development infrastructure levies
2006	Minister may appoint a planning administrator or a panel to exercise councils functions Regional infrastructure levy provisions

⁶⁶ Submission 69, p 5

2007	Far North Coast, Illawarra South Coast and Mid North Coast Regional Strategies Draft Sydney Metropolitan Subregional Strategies – East, North, North West, North East, Inner North, South West, South and Central
2008	Streamlined LEP plan-making process with greater certainty upfront Removal of one layer of plans (REPs) to simplify the planning framework Streamline development assessment under Part 4 – to reduce time – with the removal of redundant referrals and concurrences to State agencies Introduction of Infrastructure SEPP to remove 20 existing SEPPs and update and simplify planning provisions relating to infrastructure New Codes to support a major expansion in the use of exempt and complying development Planning Assessment Commission to provide advice and determine major projects delegated to it by the Minister Joint Regional Planning Panels comprised of two council representatives and three state government appointees to determine regionally significant development New system of planning arbitrators to consider applicant appeals against council decisions on small scale development proposals Tighter rules for private certification, including new limits on the annual income that can be earned from, and the number of certificates that certifiers can issue to any one client Additional anti-corruption provisions to reduce corruption risks applying to decision making Central Coast and Sydney-Canberra Corridor Regional Strategies Draft Sydney Metropolitan Subregional Strategy – City of Sydney and Inner West

- 2.91** As will be discussed in Chapter 3, many Inquiry participants argued that the EP&A Act and the planning framework has suffered from too many issue-specific amendments over the years. The conclusion drawn by most participants was that the Act and the planning framework now required an overall review of the entire system.
- 2.92** The 2008 planning reforms were introduced with the primary aim of simplifying the system with respect to and reducing the bottleneck of small-scale developments. The different elements of the 2008 reforms were and are still being progressively implemented.
- 2.93** In response to a written question on notice, the Department of Planning provided the following table outlining the target dates for implementation of the 2008 planning reforms. This is reproduced in Table 2.2.

Table 2.2 2008 Planning reforms target dates⁶⁷

Environmental Planning Matters Reform	Commencement
Planning Assessment Commission established to provide independent review of contentious planning matters and determination of major projects where a conflict of interest may exist	3 November 2008
Exempt and complying SEPP Stage 1 – Ten day approvals for new homes on lots greater than 450 sq/m if they comply with NSW Housing Code	27 February 2009
Exempt and complying SEPP Stage 2 – Release of code allowing fast-tracked internal approvals for retail, commercial and industrial development	July 2009
Streamlining development assessment system, under Part 4 of the EP&A Act	July 2009
Implementation of Joint Regional Planning Panels to provide a regional determination body for projects which are of regional significance	July 2009
Streamlining creation of new LEPs in ‘gateway’ reform – replacing ‘one size fits all’ system to get better upfront State agency input and remove unnecessary roadblocks	July 2009
Exempt and complying SEPP Stage 3 – Fast tracked code approvals for housing on lots under 450 sq/m, attached housing and rural lots	End 2009
Exempt and complying SEPP Stage 4 – Release of code for fast-tracked approvals for external changes to commercial, retail and industrial development	Early 2010
New developer contribution approach: Implement Part 5B to create consistency and transparency with developer contributions	Post July 2009, to be determined
Introduction of planning arbitrators	Post July 2009, to be determined
New statutory system to resolve long-standing paper subdivision issues	End 2009
Building Professionals Board (BPB) matters reform	
Increasing fines against certifiers ten-fold and additional investigation powers to councils to require certifiers and others to answer questions	1 September 2008
Allowing corporate bodies to operate as accredited certifiers	3 November 2008
New enforcement measures including mandatory inspections, fines and new council powers to issue stop work orders for unauthorised works	March 2009
Further certification and enforcement powers including requiring a certifier to issue a notice after becoming aware of consent breaches	July 2009
Additional mandatory inspections for fire separating construction and acoustic insulation in certain buildings	September 2009
New fire safety engineer accreditation category	September 2009
New council building surveyor accreditation category and accreditation processes for council officers	Post July 2009, to be determined
Miscellaneous provisions including ‘income limit’ and ‘Prescribed Persons’ list	Post July 2009, to be determined

⁶⁷ Answers to questions on notice taken during evidence, 30 March 2009, Department of Planning, p 17

- 2.94** The implementation and implication of the above reforms, some of which are still yet to be introduced, are examined throughout relevant sections in the body of this report.

Committee comment

- 2.95** There is a discernible trend in planning reform both nationally and internationally. This is a sign of the times as all governments are confronting similar challenges. All governments have to provide for growing and changing populations while managing and preserving their natural resources. Similarly all governments need to meet the challenge of climate change while fostering economic growth through sustainable development.
- 2.96** There is a commonality in the stated principles upon which most planning reform is based. Many jurisdictions are also adopting similar regulatory mechanisms and strategic approaches. However, different planning frameworks even though they share common principles and a similar regulatory structure may still vary in their ability to deliver their desired outcomes.
- 2.97** As will be examined in the following chapters it is important to ensure that the intention of any reform is supported by the ability to see it practically implemented. It will also be shown that there is an inter-relationship between many areas of the NSW planning framework identified by stakeholders as requiring reform.

Chapter 3 Need for further reform

The question of whether there was a need for further development of the New South Wales planning legislation was the primary issue for the majority of inquiry participants, and was the subject of extensive examination during the public hearings. While a range of views and suggestions were presented to the Committee, there was consistent support for a complete review and overhaul of the current legislation.

Throughout the Inquiry it was also emphasised that legislation is only one element of the planning framework. Legislation exists not to direct the planning framework but to support and enable its objectives; it is a tool that is used, when required, to exercise control over the property rights of individuals. Therefore any review of the planning legislation must also consider the overall planning framework.

A complete review of planning legislation

- 3.1** The vast majority of inquiry participants said that the *Environmental Planning and Assessment Act 1979* (the EP&A Act) was now complex and difficult to navigate, and, on that basis, argued for its complete rewrite.⁶⁸ It was often emphasised that the Act was now 30 years old, and that while it was rightly considered to be groundbreaking legislation at the time of its enactment successive amendments and the subsequent creation of separate pieces of legislation that impact upon development control were the main contributors to the complexity of the overall planning system⁶⁹.
- 3.2** The view expressed in evidence by Mr David Broyd, Group Manager of Port Stephens Council and a member of the Local Government Planning Directors Group (LGPDG) was typical of those participants who argued that the time had come for a complete overhaul of all planning legislation:

We have reached the point at which the fundamental legislation, the Environmental Planning and Assessment Act—now almost 29 years of age—needs a major overhaul. We have so many different Acts of Parliament now that govern the way in which development and environment outcomes are reached in New South Wales. It has become so fragmented, so complex and so reliant on multiple local government and State Government agencies in reaching a decision that it is almost an unworkable, dysfunctional system. As stated in our submission, I urge the Committee to recommend a major overhaul of the New South Wales planning legislation.⁷⁰

⁶⁸ For an alternative view, see for example, Mr Michael Harrison Director, Strategy and Design, City of Sydney Council, Evidence, 9 March 2009, p 3

⁶⁹ For example, Mr John Mant, Evidence, 9 March 2009, p 27; and for an alternative view, see for example, Ms Julie Bindon, Evidence, 9 March 2009, p 43

⁷⁰ Mr David Broyd, Group Manager, Port Stephens Council, Evidence, 17 August 2009, p 2

3.3 The submission from Goulburn Mulwaree Council, like many others, referred to the survey by the Planning Institute of Australia (PIA), which rated the New South Wales planning system as the worst in Australia.⁷¹ In evidence Mr Christopher Berry, Acting General Manager, Goulburn Mulwaree Council, argued that if the peak professional body is saying there is a problem with the system, then ‘we should be taking notice and going back to the drawing board’.⁷²

3.4 In arguing the need to go back to the drawing board, Mr Berry, emphasised that it was essential to design a system that would actually produce better outcomes for growth and certainty in the regional areas:

It needs to balance that growth with conservation and the environment; major concerns with environment and conservation rather than trying to protect absolutely everything. That is a frustration and it needs to provide for engagement with local community and involve in a much more meaningful way local community input into the planning process.⁷³

3.5 The General Manager of Tamworth Regional Council, Mr Glen Inglis said that the key function of a planning system is to create a quality environment for New South Wales communities:

To us, an effective planning system is essential for many reasons but principally for a prosperous economy, the effective development of land and, in particular, the effective development of infrastructure and environmental protection. The key reason we do what we do is to create a quality environment for people to live in. So, as a council we have always seen it as a fundamental necessity to get the planning system right, if possible.⁷⁴

3.6 Discussion on the need for further reform often included reference to the 2008 legislative reforms to the EP&A Act. While the level of support for the reforms differed among the various interest groups, there was still a common view that further reform was required. Ms Judith McKittrick, President of the Urban Development Institute of Australia (UDIA) said that her organisation believed the 2008 reforms would likely yield benefits for the development industry and the economy. She added that despite these reforms, the UDIA believed the planning system remained unnecessarily complex, legalistic and inefficient.⁷⁵

3.7 During the consultation period prior to the introduction of the 2008 planning reforms, the Department of Planning released a discussion paper: *Improving the NSW planning system*. The paper was released in November 2007 with a call for submissions by 8 February 2008.

⁷¹ Submission 4, Goulburn Mulwaree Council, p 1

⁷² Mr Christopher Berry, A/General Manager, Goulburn Mulwaree Council, Evidence, 19 May 2009, p 20

⁷³ Mr Berry, Evidence, 19 May 2009, p 20

⁷⁴ Mr Glen Inglis, General Manager, Tamworth Regional Council, Evidence, 21 May 2009, p 2

⁷⁵ Ms Judith McKittrick, President, Urban Development Institute of Australia, Evidence, 15 June 2009, p 27

- 3.8** In evidence to the Committee in March, Mr Sam Haddad, the Director General of the Department of Planning said that the 2008 reforms were in response to concerns expressed by many stakeholders during the consultation period:

These reforms were made to fundamentally address significant concerns, expressed by many, that our planning system is rigidly process orientated, complex and the level of assessment does not always reflect the level of significance, it is confusing in many areas and it is wasteful in its resources. That is what some of those reforms were trying to address. These deficiencies were confirmed through early consultation processes, pre- and post-discussion papers, and involvement during the formulation of the reforms.⁷⁶

- 3.9** In evidence both the PIA and the Australian Institute of Architects said that during the consultation period they put forward the view that fundamental legislative change was required. Representatives from both organisations told the Committee that they had been advised that overall fundamental reform was not an issue for consideration at that time.⁷⁷

- 3.10** The Australian Institute of Architects said that the 2008 reforms were designed and pushed forward in order to fix immediate difficulties. Mr Michael Neustein Committee Chair, Australian Institute of Architects agreed that need for those reforms was so pressing that they could not be deferred for five years – the time he believed would be required to develop new planning legislation – as that would have made development in New South Wales during that time, next to impossible.⁷⁸

- 3.11** The former Minister for Planning, the Hon Frank Sartor MP, indicated to the Committee that he had always been of the view that a rewrite of the EP&A Act was warranted:

You might recall that when the planning legislation that was being enacted last June was being considered I had discussions with you about issuing a reference to the Committee as planning Minister to look at the long term. Reverend Nile, I think you will recall some of the robust discussions I had with you about the planning bill. There was a view amongst some members of the planning profession that we actually needed a new Act. I agree with that view. The reforms we were doing last year were really reforms that had to be done in the short to medium term...⁷⁹

- 3.12** Mr Broyd told the Committee that he and his colleagues were heartened by recent statements from the current Minister for Planning, the Hon Kristina Keneally MP, regarding the Government's goal of building Australia's best planning system. However, he still believed that an overhaul of the legislation was required in order to enable and support the Minister's stated intent:

⁷⁶ Mr Sam Haddad, Director General, Department of Planning, Evidence, 30 March 2009, p 2

⁷⁷ Ms Julie Bindon, President, Planning Institute of Australia, Evidence, 9 March 2009, p 43; Mr Michael Neustein, Committee Chairman, Australian Institute of Architects, Evidence, 9 March 2009, p 52

⁷⁸ Mr Neustein, Evidence, 9 March 2009, p 53

⁷⁹ Hon Frank Sartor MP, Member for Rockdale, Evidence, 15 June 2009, p 1

Minister Kristina Keneally I think is sending some very good messages about the intent for transparency being a fundamental legislative change, about getting decisions made at the most appropriate levels of government. So, the fundamentals and intents are there; it is a question of how we basically overhaul and direct the legislation to enable those very supportable intents to be fulfilled.⁸⁰

- 3.13** In contrast to the majority of evidence received from planning practitioners, the submission from the New South Wales Government argued that a fundamental review of the planning system and the governing legislation in the near term is not warranted nor is it a priority. However it did agree that in the longer term it is inevitable that the State's planning legislation – after nearly three decades of implementation – would benefit from a broader review and evaluation of its functions and implementation tools.⁸¹
- 3.14** Mr Haddad held the view that new legislation was not necessary. In evidence he said that he had reviewed most of the arguments calling for the need for an overhaul of the EP&A Act but that he could not identify a causal relationship between the need for new legislation and the planning outcomes that are desired. Mr Haddad said that careful thought had to be given to what fundamental difference new planning legislation could achieve that the current EP&A Act and legislative framework is not already, or capable of, achieving.⁸²
- 3.15** At the hearing on 25 August 2009 the Committee requested the Director General to provide written advice on the reasoning behind the stance that it is not necessary to replace the current Act. The Committee also asked for advice as to what, in the absence of replacing the EP&A Act, could be proposed to improve the planning system.
- 3.16** The response from the Director General is reproduced at Appendix 10. It notes that the New South Wales Government is committed to securing Australia's best planning system in terms of practice, culture and legislation, including:
- a model legislative framework that is outcome based
 - efficient practices and processes and timely decision making
 - a whole of government integrated approach
 - a transparent and up to date public participatory process.
- 3.17** The response also listed the key emerging matters and direction for future reform:
- better alignment of strategic planning and development control (including rezoning)
 - strengthening land use and transport/infrastructure integration
 - better integration of natural resources and planning

⁸⁰ Mr Broyd, Evidence, 17 August 2009, p 12

⁸¹ Submission 69, NSW Government, p 2

⁸² Mr Haddad, Evidence, 25 August 2009, p 5

- leadership in dealing with medium and longer term sustainability challenges, including climate change and ageing population
- simpler procedures and elimination of duplicated processes with overlapping legislation
- a more outcome based legislative framework
- an improved framework for community engagement at the strategic level.⁸³

3.18 The response argues that all of these issues can be addressed without necessarily needing to completely rewrite or replace the current EP&A Act. It notes that with respect to the issue of overlapping State legislation, important steps have been made in simplifying the system, and that in due course more legislative amendments may be appropriate. It states that the need to simplify the interaction between various State laws seems insufficient justification for a full rewrite of the planning legislation.⁸⁴

3.19 As is examined later in this Chapter, the response does recommend the establishment of an expert group to review the planning system and make recommendations on how the emerging issues for the planning system may best be addressed.

Committee comment

3.20 The Committee cannot ignore the weight of evidence it received from planning practitioners and users of the system who believed the current planning legislation was too complex and difficult to navigate. While there was general consensus on the need for a fundamental review of planning legislation there were different views on what changes were required to the current legislation and on how new planning legislation should be structured.

Features of new planning legislation

3.21 During the Inquiry a number of proposals for changes to the current planning legislation were discussed with the Committee. These ranged from amending the objects of the current EP&A Act to consolidating all legislation affecting development control and land-use into a single piece of legislation. Those issues that were most consistently raised during the Inquiry are discussed in the following sections.

Principles that should guide development of new planning legislation

3.22 Many of the submissions to the Inquiry included a list of principles that should guide the development of new planning legislation and the overall planning framework. The Committee found there was a general commonality among the principles proposed by Inquiry participants. The Committee also acknowledges that some participants included as guiding principles issues that were of particular interest to their specific representative sector.

⁸³ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 17

⁸⁴ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, 23 September 2009, p 19

3.23 The Department of Planning's 2007 discussion paper: *Improving the NSW planning system*,⁸⁵ said that it was generally agreed that a better planning and development assessment system for New South Wales is required and that changes are possible to improve the operation of the system without sacrificing the achievement of sustainable development outcomes.⁸⁵ It noted it is important to recognise and confirm the basic principles on which good planning should be based.

3.24 The discussion paper listed the following eight principles:

- **Sustainability** – A sustainable system seeks to ensure that planning processes and decisions encourage and enable sustainable development to occur. Sustainable development integrates environmental, economic and social outcomes, recognises the needs of current and future generations and takes a cautious approach to decisions with serious environmental consequences.
- **Transparency** – A transparent system is clear, predictable and easily understood.
- **Accountability** – An accountable system has unambiguous lines of responsibility and reporting. It should be clear to anyone using the system who is responsible for making decisions and against which criteria such decisions will be made.
- **Efficiency** – An efficient system is one where processes are streamlined and ensure the economic use of resources and time. Planning processes should be undertaken in an efficient and effective manner taking only as much time as is necessary, and no more.
- **Simplicity** – A simple system is one which is easily understood, removes unnecessary red tape and is user-friendly, particularly for small scale and straightforward applications.
- **Objectivity** – An objective system is one where there are established, agreed systems and criteria for decision making. It is also one where there is independent oversight of significant issues and where the potential for conflicts are minimised.
- **Consistency** – A consistent system is one where there is a uniform approach to plan-making and development assessment. There are practices and standards across the system that are well understood and universally observed. The performance of the system should be regularly monitored and assessed against these standards.
- **Equity** – An equitable system is one that ensures an equal and fair approach to all decisions for all participants. Decisions are made having regard to the implications across all spheres and balancing, economic, social and environmental considerations to ensure the most equitable outcome across the community.⁸⁶

⁸⁵ *Improving the NSW planning system*, Department of Planning, November 2007, p 21

⁸⁶ *Improving the NSW planning system*, p 21

- 3.25** The Development Assessment Forum (DAF) was established in 1998 to provide independent advice and recommendations to the Local Government and Planning Ministers Council (LGPMC) at the Council Of Australian Governments' (COAG). The DAF has identified and published Principles and Leading Practices to achieve a model development assessment system applicable across all States in Australia.
- 3.26** Mr Sartor noted that the DAF had devised twelve leading principles and practice for a model development system, which he summarised as follows:
- focus on achieving high quality sustainable outcomes
 - encourage innovation and variety in development
 - integrate all legislation, policies and assessments applying to a given site
 - encourage appropriate performance based approach to regulation
 - promote transparency and accountability in administration
 - promote a cost effective system
 - promote a model that is streamlined, simple and accessible
 - employ standard definitions and terminology
 - incorporate performance measurement and evaluation
 - promote continuous improvement
 - promote sharing of leading practice information
 - provide clear information about system operation.⁸⁷
- 3.27** In his submission Mr Sartor noted the LGPMC had recently adopted a National Development Assessment Reform Program as part of the COAG reform agenda, a component of which was the development of national planning system principles, building on the previous work of the DAF.⁸⁸
- 3.28** The New South Wales Government submission said that while the DAF may identify best planning practice, jurisdictions need to be able to maintain flexibility to address any locality-specific issues that they may face; and that New South Wales should strive to meet the best planning practice identified by DAF while maintaining flexibility to meet local demands.⁸⁹

Committee comment

- 3.29** The Committee believes that there is sufficient agreement on the principles that should guide the development of both planning legislation and planning systems. The Committee notes that the first principle listed by both the Department of Planning and the DAF focus on the achievement of sustainable outcomes. This is important.

⁸⁷ Submission 109, NSW Farmers' Association, p 9

⁸⁸ Submission 109, p 13

⁸⁹ Submission 69, p 16

- 3.30** While it is important to have an efficient, transparent and accountable system; it is essential to clearly enunciate the desired outcomes the system is designed to achieve. Land-use planning and development assessment has a profound effect on communities. There can be no argument that the State should aspire to having Australia's best planning system. The Committee believes that the test of what is the preferred planning system is a system that meets the social, economic and environmental expectations and needs of the local community.

The objects of new legislation

- 3.31** The current objects of the EP&A Act received much attention during examination of the question of the need for further reform of the planning legislation. Issues raised included whether the current objects, some of which date back to the inception of the EP&A Act, are still valid; the need to prioritise the objects; and the inclusion of objects more relevant to today's needs and goals.

- 3.32** The objects, stated in section 5 of the EP&A Act are as follows:

- (a) To encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment
 - (ii) the promotion and coordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and coordination of communication and utility services
 - (iv) the provision of land for public purposes
 - (v) the provision and coordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecological sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.⁹⁰

⁹⁰ *Environmental Planning and Assessment Act 1979* (NSW), s 5

- 3.33** The Urban Taskforce of Australia noted the importance of the objects of the EP&A Act and argued that it was essential that they be reviewed. Its Chief Executive, Mr Aaron Gadiel expressed the view that poorly constructed objects can be harmful to the planning system:

I think there is a tendency, in dealing with the law legislation, to sort of gloss over the objects of the Act, saying, "Don't worry about the statement of principles. Let us worry about the substantive provisions." In some legislation that is okay because the objects of the Act are not harmful. In the Environmental Planning and Assessment Act they are seriously harmful. They are used as the touchstone every day in the planning system for public servants, the Land and Environment Court, panels. They are constantly referred to and cited.⁹¹

- 3.34** The Urban Taskforce of Australia also called for the legislation to promote private investment by enshrining a *respect for property rights* as a fundamental tenet of planning law.⁹²
- 3.35** Mr Michael Harrison, Director, Strategy and Design, City of Sydney Council said his Council experienced difficulties incorporating higher density development, because without a mandate for a requirement for higher levels of design quality, it was difficult convincing the community that high density could be a good outcome. He believed that including *sustainability and design quality* as key objects in any legislative change would assist in this regard.⁹³
- 3.36** In evidence both the Environmental Defender's Office of New South Wales (EDO) and the Nature Conservation Council of New South Wales (NCCNSW) called for *ecologically sustainable development*, which is currently one of the ten objects of the Act, to be made the primary object of the EP&A Act. In particular the NCCNSW argued the current situation of having ten objects that are not ranked in any priority order, simply makes the system confusing as to what is the primary objective of the EP&A Act.⁹⁴ While the EDO argued that ecologically sustainable development requires the integration of environmental, economic and social conditions, and that essentially encompasses many of the current objects.⁹⁵
- 3.37** The Department of Planning advised that it did not see any practical merit in positioning ecologically sustainable development above the other objects of the EP&A Act. The Department stated that all objects of the Act are equally important and it would therefore not be appropriate to have one object positioned above the rest.⁹⁶

⁹¹ Mr Aaron Gadiel, Chief Executive Officer, Urban Taskforce of Australia, Evidence, 30 March 2009, p 27

⁹² Mr Gadiel, Evidence, 30 March 2009, p 25

⁹³ Mr Michael Harrison, Director, Strategy and Design, City of Sydney Council, Evidence, 9 March 2009, p 3; see also Mr Neustein, Evidence, 9 March 2009, p 54 on the need to further address design quality within the EP&A Act

⁹⁴ Mr James Ryan, Treasurer, Nature Conservation Council of NSW, Evidence, 25 August 2009, p 35

⁹⁵ Mr Robert Ghanem, Environmental Defender's Office of NSW, Evidence, 9 March 2009 p 21

⁹⁶ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 10

- 3.38** A number of inquiry participants argued that many of the reforms to the EP&A Act had resulted in a decrease in public participation in environmental planning and assessment, and that these reforms were in conflict with the object to *provide increased opportunity for public participation*. The Director of Planning, Byron Shire Council, Mr Raymond Darney, was one who believed there was a need to truthfully acknowledge what the EP&A Act is seeking to achieve:

We are saying these are the objectives of the Act but we have moved away from them. We have moved to something that is more economically driven and more money orientated—and I do not have a problem with that either—but at the same time we should recognise the truth and fix up those objectives and write the Act in accordance with what New South Wales believes is the right way forward.⁹⁷

- 3.39** Mr Darney suggested that if the Government was serious about *addressing climate change*, and, in doing so, intended to use planning legislation to expedite the development of alternative energy industries – then this should be reflected by making it a priority objective:

That is one of the prime things I think you need to do when you rewrite the new Act. You need to make sure that climate change, et cetera, is made a clear, high-priority objective in that so that when you do your assessments—I know that the neighbour is not going to like it—you are looking at that objective of trying to be supportive of development that should negate some of the climate change situations we have at present. You would write it into your objectives as No. 1 and No. 2 objectives, to make it a high priority. I know that people are going to object, but it is going to be the way of the world I believe.⁹⁸

- 3.40** Mr Sartor said he believes the current objects of the EP&A Act are too general and vague. He suggested that in developing any new planning legislation there was a need to be clear about its purpose. Mr Sartor acknowledged that during development and consultation on any new legislation there would no doubt be debate among stakeholders on what that purpose should be.⁹⁹

Committee comment

- 3.41** The Committee can understand the various arguments for changes to the objects of the EP&A Act. If the EP&A Act is subjected to a fundamental review then it should be the case that the objects honestly reflect the purpose of the legislative outcome of that review. Just as the legislation needs to support the intent of the planning system; so do the objects need to reflect how the legislation will provide that support. During any review the Committee also believes it would be necessary to examine whether the objects as currently expressed pose any problems to the efficient working of the system.

⁹⁷ Mr Raymond Darney, Director of Planning, Byron Shire Council, Evidence, 26 May 2009, p 15

⁹⁸ Mr Darney, Evidence, 26 May 2009, p 22

⁹⁹ Mr Sartor, Evidence, 15 June 2009, p 2

Split the EP&A Act in two

- 3.42** A number of participants argued that in re-developing the current EP&A Act, it should be separated into two distinct pieces of legislation – one part to deal with the plan making process and the second to deal with development assessment and control. The premise behind such a separation is that most users of the system, that is people wishing to develop their land, are only concerned with the development assessment and control aspect of the legislation.
- 3.43** Dr Peter Jensen, from the Planning Law Chapter of the PIA explained why his organisation was in favour of this separation:
- ...the PIA's position is that it has got to the stage where the only solution really is to chop the Gordian Knot in half and make two pieces of legislation from those two halves: one to deal with strategy—which has got a political complexion—and the other half to deal with simple development control—a simple system where the local authorities know what they are supposed to be doing, in terms of the use of land.¹⁰⁰
- 3.44** Mr Neustein said his organisation had adopted the same basic approach as that of the PIA:
- Our submission says, like the Planning Institute, two Acts. We do not think chuck out the Environmental Planning and Assessment Act. We think maybe rename it Development Assessment Act, keep a fair bit of it applicable, no problem, and move the plan-making functions out of that Act into a new Act. So that becomes the Act that deals with strategic planning. It is the same basic approach as the Planning Institute.¹⁰¹
- 3.45** Mr Neustein said that legislation dealing with strategic plan-making should be a simple drafting exercise to prescribe a commonsense process for plan-making. As such he believed it would have a reasonable life-span before requiring amendment.¹⁰²
- 3.46** Mr Darney, also saw merit in separating the legislation dealing with development control from the legislation dealing with strategic plan making. Mr Darney believed this could be achieved through either two sections of a single act or two separate acts. However, he emphasised that all development assessment legislation, not just that currently residing within the EP&A Act, had to be incorporated into a single piece of legislation.¹⁰³
- 3.47** Mr Haddad was not in favour of this proposal as he viewed it as being counter-productive and adding unnecessary complexity.¹⁰⁴ Mr Haddad said that breaking these aspects into different

¹⁰⁰ Dr Peter Jensen, Planning Law Chapter, Planning Institute of Australia, Evidence, 9 March 2009, p 43

¹⁰¹ Mr Neustein, Evidence, 9 March 2009, p 52

¹⁰² Mr Neustein, Evidence, 9 March 2009, p 53

¹⁰³ Mr Darney, Evidence, 26 May 2009, p 21

¹⁰⁴ Mr Haddad, Evidence, 25 August 2009, p 6; see also 30 March 2009, p 9

acts would result in unnecessary tensions and complexity – as currently often occurs when different acts control different aspects of the one development.¹⁰⁵

Master natural resource legislation

3.48 The submission from the NSW Farmers' Association argued that consideration should be given to development of a single master Natural Resources and Planning Act that establishes the core processes and principles and authority for allocating and managing land, water and biodiversity. Single issue, subsidiary regulations covering biodiversity, water, mining and statutory planning would be developed to sit beneath and refer to the master Act.¹⁰⁶

3.49 The Committee canvassed the NSW Farmers' Association submission with a number of witnesses. There was general consensus that there was a need to better integrate the various pieces of environmental legislation that have an impact on planning decisions. However, most participants, without having the detail of how the proposal from the NSW Farmers' Association might work in practice, reserved their endorsement for that particular solution.

3.50 Representatives from Ballina Shire Council agreed there was a need for better integration of the various pieces of legislation that governed natural resource management:

I think in New South Wales, because we have a range of different tools now in terms of natural resource legislation, there is certainly a level of complexity for people working outside the planning system to understand and grasp, so it becomes very insular in terms of the people who understand that. There would certainly be opportunities to streamline how those different pieces of legislation work together, and perhaps better connect them into the planning tools we have and the primary planning legislation, whatever they might look like in the future. ... So I would think there is an opportunity to streamline that and possibly an umbrella-type document may be of assistance in that regard, but then I do not have a strong view about that.¹⁰⁷

3.51 Mr Michael Silver, the Director of Planning and Environmental Services, Gunnedah Shire Council thought, that without having knowledge on how it would be set up, the proposal for umbrella legislation could simply result in making it more complex for people to understand how the legislation applies.¹⁰⁸

3.52 As noted in paragraph 3.47 Mr Haddad acknowledged that unnecessary tension and complexity is a frequent outcome when different acts control different aspects of development control.

¹⁰⁵ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 19

¹⁰⁶ Submission 109, p 5

¹⁰⁷ Mr Matthew Wood, Strategic Planner, Ballina Shire Council, Evidence, 26 May 2009, p 6

¹⁰⁸ Mr Michael Silver, Director of Planning and Environmental Services, Gunnedah Shire Council, Evidence, 21 May 2009, p 18

Committee comment

- 3.53** The Committee acknowledges that the farming sector, in particular, feels the effect of having to operate under the governance of a number of separate pieces of legislation. The Committee well understands NSW Farmers' Association desire for a new model that better integrates and clearly states the constraints under which their sector must operate.
- 3.54** The Committee does not dismiss the proposal put forward by the NSW Farmers' Association. Indeed in any fundamental review of planning legislation it is important not to have any pre-conceived notions of what the outcome should be. In any review process a number of models should be considered and compared. As will be discussed in the next section a number of participants suggested that all planning control legislation be consolidated into a single piece of legislation. If a review found that this suggestion proved to be impractical, then the proposal from the NSW Farmers' Association could prove to be a viable alternative.

Consolidate all planning control legislation into one Act

- 3.55** Mr Inglis, like many other participants, argued that when the EP&A Act was first created it was truly visionary as it was an integrated act that allowed users to deal with all environmental issues within a single piece of legislation.¹⁰⁹
- 3.56** The submission from the New South Wales Government noted that in addition to the need for development consent, about a quarter of all development in New South Wales currently require one or more approvals under other acts. The submission lists 24 separate pieces of legislation that affect developments determined under the EP&A Act.¹¹⁰
- 3.57** The introduction of the *State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008* saw the removal of a large number of duplicative or outdated State agency referrals for a range of environmental and other planning issues. The Government submission notes that more work is needed, and is being done, to further reduce overlapping regulatory responsibilities.
- 3.58** A number of Inquiry participants argued the best way to reduce these overlapping responsibilities and to streamline the planning system is to incorporate all legislative controls over property rights into a single piece of legislation.
- 3.59** Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council noted that many acts 'have a finger in development', and argued for greater integration of the relevant acts in order to facilitate environmentally appropriate development. He argued that having separate and separately administered acts preclude proper consideration of ecologically sustainable development:

At the moment the planning Act largely sits separate, for example, from the Threatened Species Act. But the Threatened Species Act, for example, can cruel the rezoning process completely and utterly. So we have got all these disparate Acts sitting out there that have a finger in development, so to speak,

¹⁰⁹ Mr Inglis, Evidence, 21 May 2009, p 11

¹¹⁰ Submission 69, p 11

and then they play off one another and at the end of the day, whether we like it or not, the environment is paramount. I guess what council would argue is that there needs to be a broader consideration of environment, [ecologically sustainable development] ESD, in the broader sense, not just environment. In regional areas like the Shoalhaven there is a need to continue to provide for a level of appropriate growth. We cannot just lock down the area. The Acts need to not just look at focusing on stopping development but actually help us facilitate appropriate development.¹¹¹

- 3.60** Mr Haddad acknowledged the reasons behind the argument for a single piece of legislation. However, he noted that the desired outcomes could be achieved by further strengthening administrative arrangements within the current legislative framework, without the need to consolidate:

Firstly, there is nothing administratively or within the provisions of the existing legislation that cannot provide strategies, for instance, and plans for this outcome to be delivered. I suppose whether the bureaucracy is delivering on it or not is a different issue...

...I think we should do much more in strengthening, firstly, administrative arrangements between the different legislation...We have tried to do that recently. I am chairing now a committee with other chief executive officers and we are trying to work together to be able to deliver that. It is not easy. You have different terms of reference and different people, and they have to do their job and they have to do it properly. So, I have also to be careful to have the one decision maker overruling everybody to achieve that, so it is a fine balance.¹¹²

- 3.61** When examining this issue the Committee noted the concern regarding the voice and role of individual agencies potentially being diminished if all legislation affecting development control was situated within the one act and ostensibly under the responsibility and control of a single Minister.
- 3.62** Mr Broyd said that he believed that a single piece of legislation was essential. He acknowledged that it would be a complex and difficult task that would more than likely take three to five years to achieve. Mr Broyd suggested that responsibility needed to be placed on the various State agencies who are major stakeholders in achieving this outcome, through the draft bill and Cabinet process:

I know that is a difficult balance to strike between what still is retained in the Native Vegetation Act or the Bushfire Protection Act but I think we have to integrate responsibilities for development and environmental outcome in one single piece of legislation and place some direct integrating responsibilities upon the State agencies who are major stakeholders in achieving those outcomes in the same Act of Parliament. That is my simplest answer to you.

¹¹¹ Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, Evidence, 19 May 2009, p 15

¹¹² Mr Haddad, Evidence, 25 August 2009, p 5

That is complicated. It will take, as I said, three to five years probably to work through, but I think we must go there. We must try and work that through and get that balance right between the parent legislation of those State agencies and what they are obliged to do under a planning Act of some description. It must happen.¹¹³

3.63 In order to examine this issue further, the Committee sought the view of the Department of Environment, Climate Change and Water (DECCW) on the possibility and practicality of separating out the planning and assessment sections of legislation under their control. For example, the separation of those sections of the *Threatened Species Act* that deal with development assessment from those sections that deal with listing of threatened species. Unfortunately, the response from DECCW did not address the substance of the question, as it was of the view that only after a period of implementation and monitoring of the recent reforms could an assessment of further regulatory reform be properly made.¹¹⁴

3.64 DECCW did advise that it is generally possible to identify the majority of environmental constraints at the strategic level and, if properly considered, their involvement at the development assessment stage can be greatly reduced and in many cases removed. DECCW noted that its biocertification scheme is designed to have issues fully considered at the strategic level.¹¹⁵

Committee comment

3.65 The Committee acknowledges there is a need to reduce legislative overlap wherever possible. As such the consolidation of all planning legislation into a single Act is an ideal that should be examined, and after a thorough examination if found to be practical it should be implemented.

3.66 The Committee also notes that consolidation of all legislation into a single Act does not necessarily of itself mean the absolute removal of the need for referrals to other agencies. Other agencies will continue to have an important role in land-use planning and assessment. In Chapter 4 the Committee, among other things, examines the issue of better integration at the strategic planning level in order to reduce the need for multiple agency involvement at the development assessment level. This includes examination of a number of current initiatives to address this need.

3.67 A review of the planning legislation by itself will not address the problems that current users of the system say they are facing. A review of planning legislation must also encompass a review of the administration of overall planning framework if it is to achieve any lasting benefit.

¹¹³ Mr Broyd, Evidence, 17 August 2009, p 6; see also p 12

¹¹⁴ Answers to questions taken on notice during evidence, 25 August 2009, Department of Environment, Climate Change and Water (DECCW), p 3

¹¹⁵ Answers to questions taken on notice during evidence, 25 August 2009, DECCW, p 2

Review of the strategic land use planning framework

3.68 Many inquiry participants made the point that planning legislation is required simply because of the need for a mechanism to exercise control over the property rights of individuals.¹¹⁶ Similarly, it was often emphasised that legislation should serve or enable the planning system to fulfil its social, economic, environmental and governance outcomes.¹¹⁷ Therefore if planning legislation is to be reviewed, it follows that the strategic framework the legislation is designed to serve, should be first reviewed and clarified.

3.69 Many participants said that any review should extend beyond just a review of the EP&A Act and encompass the entire planning system.¹¹⁸ For example, Mr Broyd believed that the current planning framework had led to a ‘blame game’ culture of planning in New South Wales. He urged that all parties – the development industry, local government, State Government and community interest groups – be involved in an overall review.¹¹⁹

3.70 The New South Wales Government submission acknowledges that further reform of the New South Wales planning framework can not focus purely on the legislation:

While legislation underpins the development assessment and planning processes, attention should be given to ensure that more analytical rigour is applied to decision making at all levels of planning. In addition, the success of the planning system is also influenced by the appropriate integration of initiatives across State departments and local governments. Without cooperation with agencies or local government, the potential benefits of further planning reforms will not be realised.¹²⁰

3.71 Minister Keneally has stated that one of the goals of the State Government is to achieve Australia’s best planning system. During her appearance before the Inquiry into the Budget Estimates 2009-2010 the Minister described such a system as being one where decisions are made efficiently and transparently, where decisions provide certainty, and where decisions are made at the most appropriate level:

The New South Wales planning system is undergoing its biggest changes in 30 years, but it is not simply change for the sake of change. It is about creating real improvements and real outcomes. It is about confidence in the planning system—confidence for investors that their project will be assessed rigorously and efficiently in the planning system—it is about creating confidence and certainty for proponents as to how the system will respond to their project, and it is about creating confidence in the community that projects will be dealt with transparently and on their merits. To create this confidence in our

¹¹⁶ For example, Submission 48, Mr John Mant, p 2

¹¹⁷ Submission 102, Local Government Planning Directors Group, p 6

¹¹⁸ For example, Mr Ken Morrison, NSW Executive Director, Property Council of Australia, Evidence, 30 March 2009, p 38

¹¹⁹ Mr Broyd, Evidence, 17 August 2009, p 2

¹²⁰ Submission 69, p 7

planning system, the Government has set itself one goal: to build Australia's best planning system.

That is not to build a system so that we can all stand back and admire it. It is to build a system about job creation and economic investment. It is about protecting the environment through sustainable development; it is about planning for our future growth; it is about increasing housing affordability, delivering jobs closer to home; and it is about coming out of this economic downturn in better shape than when we went into it. This goal of creating Australia's best planning system will take a whole-of-government effort in partnership with the community, the development industry and local and Federal governments. We are aided in that task by the legislative changes that were introduced in 2008: those amendments to the Environmental Assessment and Planning Act that started the change. So we start with a good base. The foundations of the system we want are already here in front of us.¹²¹

Committee comment

- 3.72** The Committee acknowledges and endorses the Minister's commitment to building Australia's best planning system. We agree that achieving this goal will require a whole-of-government approach in partnership with the community, the development industry, local and federal governments and other stakeholders. The Committee cannot ignore the weight of evidence it received that called for a fundamental review of the entire planning framework.

When should the review commence and how long would it take?

- 3.73** During the Inquiry there was general agreement that a fundamental review, examining all aspects of the planning system, would be required. However, there was some debate surrounding when such a review should commence. A number of witnesses argued that a period of stability was required to implement and assess the 2008 reforms. Others argued that the need was so pressing that a review should occur sooner rather than later, particularly as, it was generally agreed, a major review would take between three to five years.
- 3.74** The submission from the New South Wales Government argued that in the near term, a fundamental review of the planning system and the governing legislation is not warranted nor is it a priority. The submission further noted that in the longer term, it is inevitable that the State's planning legislation – after nearly three decades of implementation – would benefit from a broader review and evaluation of its functions and implementation tools.¹²²
- 3.75** This stance was reiterated by Mr Haddad at the second hearing of the Committee:
- Our submission basically is that those reforms should be the priority and we should focus on implementing those reforms as a high priority and a hold-off any further reform initiatives to the legislative scheme that we have at present. Any additional reform would be, in a sense, time consuming. It would be

¹²¹ NSW Legislative Council, General Purpose Standing Committee No. 4, Inquiry into Budget Estimates 2009-2010, Evidence, 16 September 2009, p 13

¹²² Submission 69, p 2

resource intensive. Our submissions says that essentially we should be focusing on making sure that the planning reform that we have introduced recently works and works appropriately, and that they are given the opportunity to demonstrate the benefits of their introduction, essentially.¹²³

3.76 Similarly Mr Joe Woodward, Deputy Director General, DECCW argued that time was required to monitor the impact of the implementation of the current reforms as this would assist in identifying where the system requires further improvement.¹²⁴

3.77 As indicated at paragraph 3.17 the New South Wales Government has identified key emerging matters and directions for future reform. While arguing against the need to replace the current EP&A Act, the Department of Planning agreed many areas of the planning framework will need to be reviewed:

Some of these matters may require legislative change, many will require the development of strategic frameworks such as integrated transport and land use planning to provide for improved infrastructure, conservation and resource planning at the State, regional and local level, and some will require improved systems at the State and local government level.¹²⁵

3.78 A number of witnesses agreed that industry sectors need a period of stability following the 2008 reforms. They also agreed that the effectiveness of the 2008 reforms need to be assessed before any further changes should be considered. It was suggested that industry sectors required a period of between two to five years before they could either absorb additional system changes or participate in a full scale review.¹²⁶

3.79 Mr Graham Wolfe, New South Wales Executive Director of the Housing Industry Association Limited was among those who argued that time was needed to bed down the current reforms, as he was concerned at the prospect of more incremental reforms. However, he did agree that if major changes were to be considered it was important that they be consistent with a national approach.¹²⁷

3.80 With respect to how long it would take to assess the success of the 2008 reforms, the PIA said the main focus of a lot of the 2008 reforms was the reduction of the sheer volume of development applications in the system, and that they had been advised that there should be a quantifiable reduction within 12 to 18 months.¹²⁸

¹²³ Mr Haddad, Evidence, 30 March 2009, p 3

¹²⁴ Mr Joe Woodward, Deputy Director General, DECCW, Evidence, 25 August 2009, p 50

¹²⁵ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 21

¹²⁶ See for example: Ms Louise Southall, Policy Adviser, NSW Business Chamber, Evidence, 9 March 2009, p 11; Mr Morrison, Evidence, 30 March 2009, p 39

¹²⁷ Mr Graham Wolfe, New South Wales Executive Director, Housing Industry Association Limited, Evidence, 24 August 2009, p 43

¹²⁸ Ms Bindon, President, Planning Institute of Australia, Evidence, 9 March 2009, p 45

- 3.81** Ms Bindon also thought that the fundamental reform necessary would require close to a five year period before any new legislation and framework would be ready to be released:

I think it is really going to take at least two years to seriously think these things through, get the white papers and green papers out there, get the consultation happening, and also taking on board some of the work that the Development Assessment Forum is doing at the Federal level. We would like it to be integrated. What we are suggesting is integrating legislation at the Federal level as well. We know that we are caught by Federal legislation on threatened species, for example. That needs to be rationalised, so we have to work with the Feds. I think that realistically it is not going to happen within two years; it is the two to five-year timeframe that we should be looking to have some really good, robust, well-thought through alternative legislation ready to roll.¹²⁹

- 3.82** Mr Broyd was also of the view that if New South Wales did revisit its planning legislation it should do so in a way that reflects national level consistency.¹³⁰

- 3.83** Mr Sartor told the Committee that he also envisaged a three to four year timeframe.¹³¹ Mr Sartor said that he had for some time held the view that there was a case in the longer term for new legislation, but also noted that it would have been premature to commence consideration of a new framework while work at the federal level was still in its infancy:

...I also formed the view that there was a case in the longer term for a new Act, but I also knew that the Federal processes were still quite in their infancy and that now there is more impetus at Federal level it will be good if we have got a new Act that it is consistent with the national planning principles. They are not totally finalised yet. As I have indicated in my submission, there are various projects happening—a lot of them will be finished this year or next year—that will then give all the States clarity as to what the national framework will look like. That is why moving for a new Act earlier would have been a waste of time.¹³²

- 3.84** Mr Sartor recommended that new planning legislation be developed subject to extensive community consultation and that it be consistent with national planning principles currently being developed. Consistent with planning reforms in other States, and similar recent reforms in New South Wales, new legislation should be guided by national best practice principles and the outcomes of current work to reform the planning systems of Australia under the auspice of COAG and the LGPMC To this end Mr Sartor argued that work on developing new legislation should commence in 2010.

Committee comment

- 3.85** The Committee agrees that the impact of the 2008 reforms do need to be carefully monitored and that an assessment of their impact would be an important part of any broader review. The

¹²⁹ Ms Bindon, Evidence, 9 March 2009, p 49

¹³⁰ Mr Broyd, Evidence, 17 August 2009, p 8

¹³¹ Mr Sartor, Evidence, 15 June 2009, p 1

¹³² Mr Sartor, Evidence, 15 June 2009, p 7

Committee notes the advice from Mr Haddad that any review would be resource intensive, and the evidence from the Department of Planning and others that a period of stability is required before more change is introduced.

- 3.86** The Committee also notes the general agreement that a fundamental review would require between three to five years before any changes would be implemented. Given this timeframe, and the weight of evidence supporting the pressing need for fundamental reform, the Committee believes the process should not be delayed and should commence as soon as it is practicable.
- 3.87** Undertaking a fundamental review of the planning system must be a priority. Accordingly, State agency and departmental resources required to support this review must be allocated, either via resource enhancement or diversion. In saying this, the Committee envisages that the review would engage a broad range of appropriate stakeholders in the cooperative development of any proposed models as opposed to seeking their individual input and then their comment on proposals developed independently by the Department of Planning.

How should the review be conducted?

- 3.88** During the course of the Inquiry there was much discussion on how to engage stakeholders in any fundamental review of the planning system. In shaping their responses many participants said there were lessons to be learned from the way the 2008 reforms were developed and then implemented.
- 3.89** There was some criticism that the consultation prior to the 2008 reforms was undertaken too quickly, and that much detail was not examined prior to the reforms being rolled out. In March 2009 Ms Bindon from the PIA said that this concern led to their request that an Implementation Advisory Committee be established:

There is also a lot of work to be done through the Implementation Advisory Committee, which was something that the Planning Institute—I think it is fair to say—was pretty much at the forefront in requesting that there be an Implementation Advisory Committee, because we were concerned that the detailed work had not been done in the legislation as presented and we wanted to make sure that things were being addressed thoroughly and properly as the rollout occurred. That is still happening to varying degrees of success.¹³³

- 3.90** The Government established the Implementation Advisory Committee to assist with the implementation of the 2008 reforms. That Committee comprises the Minister and Director General of Planning plus representatives from the following organisations:

- Planning Institute of Australia
- Australian Institute of Architects
- Local Government Association of New South Wales
- Shires Association of New South Wales

¹³³ Ms Bindon, Evidence, 9 March 2009, p 45

- Local Government General Managers Association
- Total Environment Centre
- Nature Conservation Council
- Law Society of New South Wales
- Property Council of Australia
- Urban Development Institute of Australia
- Housing Industry Association
- Real Estate Institute
- Urban Taskforce Australia
- Australian Institute of Building Surveyors
- Association of Accredited Certifiers
- Master Builders Association
- New South Wales Business Chamber.¹³⁴

3.91 The Committee heard that in addition to the Implementation Advisory Committee there are a number of working groups looking at specific issues relating to the reforms. Mr Ken Morrison, the New South Wales Executive Director of the Property Council of Australia cited the new New South Wales Housing Codes as an example of where the input from stakeholders resulted in a better outcome:

These are significant reforms so you need to have stakeholders in the room helping to implement them. I think we have seen that with a number of reforms, particularly the housing code. That was a housing code that was not going to work in its first draft and there was a lot of good work done from a lot of people around that table and we have come up with a much better code.¹³⁵

3.92 The Minister for Planning also established the LPGDG. The LGPDG comprises a representative group of planning directors from metropolitan, coastal and rural local council. Mr Haddad said that this group's input had been of great value, particularly as they provided the view and expertise of practitioners. Mr Haddad said he envisaged the activities of this group being expanded beyond the current planning reforms:

I am relying on it to provide much broader advice to us, not only on the legislation but on the broader planning, and it has been and still is a very ongoing, very useful committee, notwithstanding that we do not agree or we have very rigorous debates, but these forums have been very useful.¹³⁶

¹³⁴ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 1

¹³⁵ Mr Morrison, Evidence, 30 March 2009, p 42

¹³⁶ Mr Haddad, Evidence, 25 August 2009, p 6

3.93 The LGPDG comprises representatives from the following local government areas:

- Blacktown City Council
- Greater Taree Council
- Leeton Council
- Mid Western Regional Council
- Port Stephens Council
- Shoalhaven City
- Sutherland Shire
- Tamworth Regional Council
- Warringah Council.¹³⁷

3.94 In evidence before the Committee, one of its members, Mr John Brunton, Director Environmental Services for Sutherland Shire Council, said that one of the advantages of this Group was that it has three city, three coastal and three regional/rural directors. He noted that the issue of flood-prone land and its affect on limiting the application of the new Housing Code was identified through that Group because it had rural representatives who were able to articulate precisely what the problem was.¹³⁸

3.95 In evidence Mr Broyd suggested the task of developing a new planning framework should be given to a representative group of stakeholders. He thought a group similar in representation to the Implementation Advisory Committee could be employed and should be given clear terms of reference to undertake that task:

However, it needs to become more of a working group as distinct from the way it is operating at present. It should also have terms of reference to achieve the overhaul of the legislation. As needed, director generals of State agencies would need to be involved in that process as well, to look at the Bushfire Protection Act, the Threatened Species Conservation Act, and other legislation like that. It needs to have more integration with our mainstream planning legislation.¹³⁹

3.96 The Mayor of Byron Shire Council, Councillor Jan Barham suggested to the Committee that the task of advising on what is required for a world class planning system could be given to a group of independent experts:

It would be a fabulous exercise to get a group of experts to advise on a contemporary planning system that incorporates all the constraints and land use issues into one overarching model and then some subset sort of arrangement...There are better minds than ours that could address it, particularly some of the legals, who have been in court for the last 30 years

¹³⁷ Submission 102, p 13

¹³⁸ Mr John Brunton, Director, Environmental Services, Evidence, 30 March 2009, p 50

¹³⁹ Mr Broyd, Evidence, 17 August 2009, p 2

challenging all this. To send them away with the task of writing the best possible thing they could for New South Wales would be an interesting exercise.¹⁴⁰

- 3.97** As noted earlier in this Chapter the Committee was advised the New South Wales government has identified key emerging areas and directions for future reform. The Department of Planning suggested that consideration could be given to the establishment of an expert group to review and make recommendations on how these emerging issues could be best addressed:

In order to progress the next step in improving the planning system in NSW, consideration could be given to establishing an Expert Group in 2010 to review and make recommendations on how these emerging issues can be better addressed. Any such review would need to be evidence based, with appropriate analysis undertaken of existing practices in NSW and other regimes. While the submissions received to this Inquiry would provide important input to the process, a more rigorous investigation based on research and analysis by an Expert Group would better inform the next step in the process.¹⁴¹

- 3.98** The NSW Farmers' Association took a strong interest in the conduct of this Inquiry and sought the leave of the Committee to have their representatives appear as witnesses at a number of the public hearings. Ms Lorraine Wilson, Executive Councillor for the Association argued that the NSW Farmers Association is well placed to represent the views of the agricultural and horticultural sectors and would welcome the opportunity to be directly involved in any review of the planning system:

New South Wales Farmers is arguably the biggest agribusiness lobby group in Australia. It has incredible resources to be able to assist in any way that the Government would be asking them to and we would also, I would think, be happy to increase those resources to enable something that we could all live with come out of it. That is a wonderful suggestion.¹⁴²

- 3.99** The Committee also heard evidence from other representative organisations, for example the Council of Social Service of New South Wales and the New South Wales Minerals Council, whose client base were directly affected by decisions shaped by the nature of the planning system and who could no doubt provide valuable input into any review.¹⁴³

Committee comment

- 3.100** As will be discussed in the next chapter, the Committee heard a consistent call for issues, wherever possible, to be determined at the strategic level. Many of the representative groups

¹⁴⁰ Clr Jan Barham, Mayor, Byron Shire Council, Evidence, 26 May 2009, p 21

¹⁴¹ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 21

¹⁴² Ms Lorraine Wilson, Executive Councillor, NSW Farmers Association, Evidence, 24 August 2009, p 8

¹⁴³ For example, see evidence, from NSW Minerals Council, 17 August 2009; Council of Social Services of NSW, 24 August 2009

that participated in the Inquiry hold different views on specific matters and are seeking somewhat different outcomes from the planning system. Land-use conflict between some of these sectors is a feature of the current planning system. In any fundamental review of the planning system it is vital to include input from representatives from all principal community or industry sectors, particularly those that are experiencing difficulties with the current system.

Conclusion

- 3.101** The Committee received over 100 submissions and held eleven days of public hearings. On the basis of the weight of evidence it received from practitioners and users of the current system, the Committee finds that there is a need for a fundamental review of the overall planning framework in New South Wales. It is the primary recommendation of this Report that such a review be undertaken.
- 3.102** Notwithstanding the volume of valuable evidence it received the Committee does not in any way wish to pre-empt the findings or outcomes of this review, including whether or not a completely new EP&A Act will ultimately be required. As noted previously it is agreed that a fundamental review would require between three to five years to complete.
- 3.103** A number of suggestions on various outcomes that could or should emerge from a fundamental review were put to the Committee, some, but not all, of which were complementary. The Committee believes that the fundamental review should give consideration to all proposed models, rather than have a pre-determined outcome in mind. As such the Committee believes the submissions and evidence it has received will provide a valuable resource for the conduct of the review.
- 3.104** The Committee does hold a firm view on some aspects of how the review should be conducted. Following a clear statement on what are the desired land-use planning outcomes for the State, the review process should be a genuine cooperative exercise facilitated, but not directed, by the Department of Planning.
- 3.105** A review group should be established which must be representative of all primary stakeholders and relevant experts. It must include representatives from rural and regional areas and representatives who are planning system practitioners. It is essential that the review process consider the issues of regional variance and practical implementation at the time it is developing its recommendations.
- 3.106** The Committee recommends that arrangements to establish an independent expert and representative group commence as a matter of priority and that the review itself commence by no later than the end of 2010.

Recommendation 1

That the Minister for Planning establish an independent expert and representative group to undertake a fundamental review of the New South Wales planning framework with a view to formulating recommendations for legislative, strategic planning and system changes in order to develop a planning system that achieves the best mix of social, economic and environmental outcomes for New South Wales.

That the review group include representatives from urban, coastal, and regional/rural areas and include representatives who are practitioners of the planning system.

That the Department of Planning and other State agencies provide support to the review group in undertaking its task.

That the findings of the review group be subjected to broad community review and input and build on the work of this Committee's report.

That the review commence in 2010, recognising it may take up to five years to complete.

Chapter 4 Strategic planning

Chapter 3 examined whether a fundamental review of the planning framework is required. That chapter focused on when such a review should commence and how it should be conducted; it also considered some suggestions on how the planning legislation could be improved.

During the Inquiry participants raised a number of issues relating to various elements of the current planning framework, including changes brought about by the ongoing implementation of the 2008 planning reforms. These are considered in the following chapters under broad themes of strategic planning, Local Environmental Plans (LEPs) and the decision making process. Most of the issues should properly be considered during the fundamental review the Committee has recommended should commence in 2010.

The Committee does not wish to pre-empt the findings or conduct of the review. However, based on the evidence received, the Committee makes recommendations for more immediate action. The Committee also notes current government initiatives are likely to address some of the issues raised.

The importance of strategic planning

- 4.1** Many Inquiry participants believed the planning framework suffered from a lack of effective strategic planning and a clear vision. The submission from the New South Wales Chapter of the Australian Institute of Architects argued that an efficient planning framework is more than just land-use planning and related legislation; it needs to encompass a strategic assessment leading to a vision of what to achieve for a locality or region.¹⁴⁴
- 4.2** In evidence, Mr Michael Neustein, Committee Chair, of the New South Wales Chapter of the Australian Institute of Architects said the New South Wales State Plan and Metropolitan Strategy¹⁴⁵ had not articulated this vision. Mr Neustein believed the New South Wales State Plan is a generalised document of strategic intent that required some fleshing out. He was more critical of the Metropolitan Strategy, which he described as a capacity assessment tool, concerned primarily with identifying land to accommodate forecast population growth. Mr Neustein emphasised the importance of having a clear vision for New South Wales cities and regional centres:

We say that that is not the right way to do planning. You need to be informed by anticipated population growth, but you also need to have a vision for what sort of city you want or what sort of regional centres you want. What will they look like? How will they work? To what extent will you provide employment in them for the people who live around them? How will people move through them? Those and transport infrastructure are terribly vexed problems.

¹⁴⁴ Submission 62, Australian Institute of Architects New South Wales Chapter, p 3

¹⁴⁵ Department of Planning, *Metropolitan Strategy city of cities: a plan for Sydney's future* December 2005, www.metrostrategy.nsw.gov.au

To use that plan as the means for resolving some of those ideas so that everyone is moving towards a planned vision for either the whole metropolitan area or the individual components within it, that is what is lacking. It is the whole idea of a vision. It is not simply just an exercise in testing the maximum capacity based on the present ways we do things, because we will have to revolutionise how we do things.¹⁴⁶

- 4.3** Similarly, Ms Julie Bindon, President of the Planning Institute of Australia (PIA) said in developing a strategy or a strategic plan guiding land-use planning it is important to anticipate emerging issues and give consideration to a range of methods by which these issues can be met:

It has the same meaning as in warfare. You can respond by thinking forward, anticipating problems and working out ways to meet the problems that will emerge as a matter of strategy. I suppose [Local Environmental Planning Policies] LEPs represent the tactics of what you do. When we refer to "strategy" we are trying to anticipate a situation that is developing, look at a number of different ways it may develop and come up with solutions that can lead into a process that is expressed in a local environment plan designed to make work the strategy that has been adopted.

...Strategic planning when applied to spatial planning, as we call it, or a land use dimension when we are planning things on the ground, is really about looking to the future and it tends to be medium and longer-term. There is a process to determine what that future would look like. It incorporates and integrates all the future end requirements of the various agencies and looks at anything that will affect the use, development and management of land.¹⁴⁷

- 4.4** Mr Christopher Berry, Acting General Manager, Goulburn Mulwaree Council described strategic planning as a simple, cyclic process:

It is that cyclic process of establishing what you would like to achieve out of the system, doing your background research, developing future options, evaluating those, picking your preferred future and then implementing and reviewing it. It is a nice, simple, cyclic process. I do not think we should try to overcomplicate it, and systems should be designed to reflect that type of process.¹⁴⁸

- 4.5** The Committee heard evidence from a number of local councils about how they benefited from long-term strategic planning. For example, Mr James Treloar, Mayor, Tamworth Regional Council said their current strong economic position was due to their vision to focus on areas where they wanted to pursue industrial growth and development. For example, when the local airport relocated there was a large parcel of land available for redevelopment. The

¹⁴⁶ Mr Michael Neustein, Committee Chair, New South Wales Chapter Australian Institute of Architects, Evidence, 9 March 2009, p 53

¹⁴⁷ Ms Julie Bindon, President, Planning Institute of Australia, Evidence, 9 March 2009, p 47

¹⁴⁸ Mr Christopher Berry, Acting General Manager, Goulburn Mulwaree Councils, Evidence, 19 May 2009, p 24

Council identified it as an industrial area and maintained this view and are now reaping the rewards with three major employers, significant food processing and engineering works operating in the area.¹⁴⁹

- 4.6** Mr Graham Gardner, Director of Planning and Building, Greater Taree City Council said a commitment to strategic planning was fundamental to successful planning, and that its early commitment to strategic land-use plans prevented it from later being subject to development and land rezoning pressures:

We have been lucky. The council allowed a commitment to strategic planning ahead of the real development pressures. We are starting to get serious development pressures now but we did our development planning 15 to 20 years ago. As the development responses come into our area they are following the lead we have provided, so we have been in front of the game in that regard. I just think that is what every community should do. I think that is fundamental to successful planning.¹⁵⁰

- 4.7** Once a vision for the future has been determined it is essential all government agencies be involved in developing an integrated plan setting out their respective roles in achieving that vision.

- 4.8** Mr Bohdan Karaszkewych, Director Planning Wagga Wagga City Council praised the Northern Territory planning framework for its seamless connection between State, regional and local strategic plans:

I draw your attention to the framework that the Northern Territory [NT] Government has. It had reviewed the planning Act on a very regular basis—about every five or six years—and in 2001 it commenced a program of reviewing the NT planning scheme. That planning scheme reflected what appeared in the Act in terms of high level State government policy in relation to airports, road infrastructure, environmental consideration and economic considerations.

The essence of that appeared in the NT planning scheme at a very top level and then drilled down to the regional and local levels. There was a seamless connection between high level policy and the way you considered developments at the ground level or the coalface. When you do consider development applications, your consideration must not be inconsistent with the regional and the high level or State level policy. I believe that if you have a very comprehensive system like that, you do have quality outcomes. It is a clear and consistent process; there is less ambiguity and you get far better outcomes more cost effectively.¹⁵¹

¹⁴⁹ Mr James Treloar, Mayor, Tamworth Regional Council, Evidence, 21 May 2009, pp 9-10

¹⁵⁰ Mr Graham Gardner, Director Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p 37

¹⁵¹ Mr Bohdan Karaszkewych, Director, Planning, Wagga Wagga City Council, Evidence, 29 May 2009, p 50

- 4.9** Both Ms Bindon and Mr David Broyd, Group Manager, Port Stephens Council and member of the Local Government Planning Directors Group (LGPDG) drew the Committee's attention to the situation in Queensland. Ms Bindon noted in Queensland once a strategic plan had been established the need for agency involvement in assessing individual projects is virtually removed.¹⁵² Mr Broyd said the Queensland model placed a greater obligation on that State's agencies:

But they have an integrated planning Act in Queensland, as you may be aware, and that really puts a lot more direct obligation in a legal sense on the State agencies to respond in those ways. South-east Queensland regional planning is a great example where the State Minister—the State Department of Planning equivalent—State agencies and local government have engaged in the process of linking infrastructure delivery to the planning of development in that area. I think New South Wales, quite honestly, can take some real lessons out of that situation.¹⁵³

- 4.10** Mr John Brunton, the Director of Environmental Services, Sutherland Shire Council and a member of the LGPDG, emphasised that overarching integration was crucial to an effective planning framework. Mr Brunton also cited Queensland as a current example of effective integration¹⁵⁴ and the Sydney Olympic Games as a past example of what can be achieved:

Closer to home, I would use the example of the Olympic Games here in Sydney, where there was a very good integration of local government, State Government and all government agencies from planning all the way through to implementation, and the Sydney Olympic Games were seen as being a very great success. The key to all of that was good integration so that everyone knew what was going to be achieved. If you can do that sort of delivery of a good result with an Olympic Games, why can you not do it for New South Wales?¹⁵⁵

- 4.11** Mr Neustein drew the Committee's attention to the Western Australian Planning Commission (WAPC) which he believed was an excellent model for integrating various government agencies in strategic planning:

...a commission in which all these necessary government departments were represented and they tossed around how development was done for instance for greater Perth, worked out what should be done jointly, argued it out on papers presented by their own departments and managed by the Department of Planning, and made recommendations to Government or, in some cases, for lower level functions actually just implemented them to make possible coordinated planning for Perth.¹⁵⁶

¹⁵² Ms Bindon, Evidence, 9 March 2009, p 47

¹⁵³ Mr Broyd, Evidence, 17 August 2009, p 5

¹⁵⁴ Mr John Brunton, Director, Environmental Services, Sutherland Shire Council, Evidence, 30 March 2009, p 46

¹⁵⁵ Mr Brunton, Evidence, 30 March 2009, p 45

¹⁵⁶ Mr Neustein, Evidence, 9 March 2009, p 54

- 4.12** Mr Neustein believed a similar body could be established in New South Wales. He suggested it should be comprised of relevant government departmental heads and possibly representatives from professional bodies. He said its role would be to coordinate and ensure a shared vision across planning areas of the State. Mr Neustein described how such a planning commission, supported by the Department of Planning, might work:

It is, supported by the Department of Planning, if necessary with a secretariat provided by the Department of Planning. With the issues that need to be there, it might be the subject of multiple papers. You could imagine talk of expansion to the north-west being the subject of technical papers from people in charge of water resources, electricity supply, transport infrastructure, actual urban planning of the area, social services. They might throw all those things in the mix and this body would have to make decisions on how it is going to deal with all these issues as a co-ordinated whole. In the same sense, it will also bind those departments to implement that.¹⁵⁷

- 4.13** The Department of Planning advised that the WAPC consists of government agencies, an independent Chair and other stakeholder representatives. A similar model was considered during the development of the 2008 planning reforms, however, it decided not to pursue it:

The Government was concerned that an added layer of bureaucracy and inflexibility might be generated by the introduction of a WAPC equivalent in NSW. The WAPC model also raises certain governance issues by the fusion of independent advisors, departmental CEOs and stakeholder or sectoral representatives in one forum.

With the 2008 reforms the Government opted for a model which maintained a clear distinction in the roles of Government agencies, stakeholders and independent technical experts, first by establishing the Planning Assessment Commission as a source of independent technical expertise, secondly by establishing the Implementation Advisory Committee of stakeholders, which meets monthly, and thirdly by maintaining a number of Government agency CEO groupings covering agencies with planning responsibilities.¹⁵⁸

- 4.14** Mr Broyd said he was enthusiastic about the development of both the New South Wales State Plan and the regional strategies prepared by the Department of Planning. However he did not believe there was enough direct connection between them and the integration of state agencies' activities at the local level.¹⁵⁹
- 4.15** Mr Broyd argued that all state agencies need their own operational plans by which to implement the New South Wales State Plan and regional strategies. A committee made up of the chief executive officers of state government agencies should drive the implementation of these operational plans:

¹⁵⁷ Mr Neustein, Evidence, 9 March 2009, p 56

¹⁵⁸ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 38

¹⁵⁹ Mr Broyd, Evidence, 17 August 2009, p 5

...I understand the Premier has initiated a director general's or CEO's committee. That needs to have more strength to get their various agencies to respond to the planning system and implement the State plan. The State agencies themselves should really be saying for the Hunter region—our region, for example—the regional managers need to be saying we need to do A, B and C to fulfil the State Plan at a regional level and have a plan of our own to implement the State Plan and the regional strategy.

They do not have that. That needs to be driven either by the Premier's Department or the equivalent of a Coordinator General or by the Department of Planning if it is given the strength at the regional level to make that connection between the State Plan and Port Stephens and Great Lakes and Lake Macquarie, to implement by prioritisation. There is no connection between the State Plan, the regional strategy and the work program of the Roads and Traffic Authority for the next five years or the policies of the Department of Environment and Climate Change or whatever it might be. There is no real connection. So, those State agencies need to upgrade their planning and programming in a public way to implement the State Plan and the regional strategy.¹⁶⁰

- 4.16** In evidence Mr Sam Haddad, Director General of the Department of Planning said he believed the concerns expressed to the Committee regarding the lack of strategic planning in the current system were misguided.¹⁶¹ Mr Haddad said that the Department of Planning had expended extensive resources on strategic planning over the last three years, including on the metropolitan strategies, draft sub-regional plans and the whole of government regional strategies.

The New South Wales strategic planning hierarchy

- 4.17** The Committee asked the Department of Planning to provide an overview of the hierarchy of non-legislative elements that comprise and influence the planning framework. The Department of Planning advised there is a large number of 'non-legislative elements' that are part of the planning framework but no particular hierarchy. Each element is relevant depending on the situation. The Department of Planning advised that their website (www.planning.nsw.gov.au) contains details on the following non-legislative elements:

- Sydney Metropolitan Strategy and its sub-regional strategies
- regional strategies
- land supply and management
- national policies and agreements
- circulars and planning notes on the planning system, building system and local planning

¹⁶⁰ Mr Broyd, Evidence, 17 August 2009, p 5

¹⁶¹ Mr Sam Haddad, Director General, Department of Planning, Evidence, 30 March 2009, p 2

- planning policies such as housing, coastal protection, hazards, biodiversity and many others
- Section 117 directions
- environment assessment policies
- the Register of Development Assessment Guidelines.¹⁶²

4.18 In its simplest form the strategic planning framework consists of the New South Wales State Plan, the relevant Metropolitan or regional strategy, and the relevant LEP. The Department of Planning advised regional and sub-regional strategies guide long-term planning in New South Wales:

NSW Councils are required to develop their local environmental plans consistent with the relevant Regional or Sub-regional Strategy to ensure that strategic planning is translated into the local planning and development control framework.¹⁶³

4.19 Throughout the Inquiry there was consistent support for the concept of an effective State-regional-local strategic planning framework.

The New South Wales State Plan

4.20 The New South Wales State Plan is a long-term plan for service delivery to the people of the State in identified key areas.¹⁶⁴

4.21 There was overwhelming support for the concept of a New South Wales State Plan among Inquiry participants. Though some participants indicated the content of the current plan requires improvement or refinement.¹⁶⁵

4.22 Mr Brunton told the Committee following the introduction of the New South Wales State Plan, he detected an interesting and positive move within State government agencies, with some agencies surrendering certain of their corporate desires for the sake of a declared whole of government direction.¹⁶⁶

4.23 Mr Brunton said there was a need for a constant re-endorsement of the New South Wales State Plan and its objectives, particularly following a change in leadership of the Government, to keep agencies focussed and motivated towards the plan's objectives. At the time of his

¹⁶² Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 37

¹⁶³ Submission 69, NSW Government, p 8

¹⁶⁴ Department of Premier and Cabinet, *NSW State Plan 2009*, <http://more.nsw.gov.au/stateplan> accessed 24 November 2009

¹⁶⁵ See for example: Mr John Mant, Evidence, 9 March 2009, p 29; Mr Neustein, Evidence, 9 March 2009, p 53

¹⁶⁶ Mr Brunton, Evidence, 30 March 2009, p 47

appearance before the Committee in March 2009, Mr Brunton said that he had detected a decrease in fervour and focus with respect to the New South Wales State Plan.

4.24 Similarly, Mr Gardner said it has been incredibly valuable to have the New South Wales State Plan, and he hoped the plan would continue to develop over time.¹⁶⁷

4.25 The Committee notes that in the second half of 2009 Government moved towards reviewing and refocussing the priorities of the New South Wales State Plan. The Department of Premier and Cabinet are managing the review of the plan.

4.26 For the purposes of receiving community input into the New South Wales State Plan and then preparing specific local delivery plans, the State has been divided into the following eleven regions:

- Sydney
- Western Sydney
- South West Sydney
- North Coast
- New England/North West
- Western NSW
- Hunter
- Central Coast
- Illawarra
- South East
- Riverina Murray.¹⁶⁸

4.27 The New South Wales Government website states existing regional plans, such as regional land use plans, will be linked to the delivery of the New South Wales State Plan.¹⁶⁹

Regional planning strategies

4.28 There was consistent support for a regional planning strategy to guide local planning. The primary criticism of the current planning framework was that not all areas of the State had a regional strategy.

4.29 The Ms Judith McKittrick President of the Urban Development Institute of Australia argued a strong, well developed regional plan would eliminate many of the problems the planning system faces with what many see as competing pieces of planning legislation:

¹⁶⁷ Mr Graham Gardner, Director of Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p 33

¹⁶⁸ A map depicting the State Plan regions is reproduced within Appendix 7

¹⁶⁹ *NSW State Plan 2009*, <http://more.nsw.gov.au/stateplan>, accessed 24 November 2009

No, not for one minute are we suggesting that issues such as threatened species or water management or bushfires should be ignored. We are saying they should not be sitting outside the planning regime. They have come about because these issues have emerged and you could say it is a fault of the Environment Planning and Assessment Act because 30 years ago we did not have threatened species, so what was the response? The then National Parks and Wildlife Service formulated an Act, and we have an Act that sits outside of the system. That is why I say if we go back to what would be the best planning system—let us take the Hunter region. You have a strategy there that identifies biodiversity corridors. It identifies where infrastructure should be. That should be the vehicle that sets the direction for where that region goes as distinct from a raft of disparate pieces of legislation.¹⁷⁰

- 4.30** Mr James Ryan Treasurer of the Nature Conservation Council said well developed regional plans can reduce or eliminate the traditional conflict between the environmental and development sectors:

However, if at the level of a regional plan we had a realistic assessment of conservation and we said, "We will direct development into areas where it does not impact on conservation; we will set aside land and compensate landholders where they live in areas of high conservation value", at a more strategic level we would be covering much of this issue. We would not have the same concerns about extension and the inevitable slide downward that we seem to be experiencing at the moment. That would be a far better approach to take to conservation and to development planning than the system we have at the moment.¹⁷¹

- 4.31** Mr Ryan noted that the Lower Hunter Regional Strategy, while not in his opinion adequately addressing biodiversity conservation in total for the area, exhibited what can be achieved if applied on a broader scale:

The green corridor in the Hunter, which is the Stockton to Watagan corridor, is something for which people have been lobbying for a long time and undoubtedly it is a good thing. However, it is only a small part of the Hunter. It is not a solution to biodiversity conservation in the whole of the Hunter; it is a good example of what should occur on a broader scale.¹⁷²

- 4.32** The Department of Planning advised that regional planning strategies and regional planning generally manage potential land-use conflicts by setting out clearly the future land use intentions in the area. These plans balance the demands for future growth with the need to protect and enhance environmental values and sustain productive agricultural land:

¹⁷⁰ Ms Judith McKittrick, President, Urban Development Institute of Australia, Evidence, 15 June 2009, p 32

¹⁷¹ Mr James Ryan, Treasurer, Nature Conservation Council of NSW, Evidence, 25 August 2009, p 42

¹⁷² Mr Ryan, Evidence, 25 August 2009, p 42

By publicly stating the broad future land use patterns for a region in this way, these strategies or plans provide clear direction for the community and guide Local Environmental Plans being prepared by local councils.

In areas where a regional strategy is in place, the Department of Planning has worked with all State agencies through the Regional Coordination Management group framework (supervised through the Department of Premier and Cabinet). In particular Planning works with agencies such as the Department of Transport and Infrastructure, the Department of Industry and Investment, the Department of Environment, Climate Change and Water, and the Catchment Management Authorities. All relevant agencies are able to provide input during consultation and through the Cabinet process.

There is a public consultation process for draft Regional strategies, which, the Department advises, allows opportunities for the community and special interest groups to become involved in the planning process.¹⁷³

- 4.33** Mr Haddad acknowledged the Department of Planning was seeking to better translate the purpose of these strategies – identifying where development can occur and under what conditions– into a more efficient and streamlined process for dealing with development applications.¹⁷⁴ Mr Haddad said the effectiveness of the strategies will be continually monitored:

We will put much more emphasis on making sure that those strategies are good strategies. I know that when we started about two or three years ago, my main goal was to try to get those strategies out. We had not done it before, to the best of my knowledge. We wanted to put efforts into getting those strategies out. They may not be 100 per cent perfect; hopefully next time they will be better.¹⁷⁵

- 4.34** Mr Joe Woodward, Deputy Director General Department of Environment, Climate Change and Water (DECCW) advised DECCW worked closely with the Department of Planning in the development of the regional planning strategies. In addition DECCW is in the process of preparing Regional Conservation Plans (RCPs), which are designed to sit alongside and complement the regional strategies. Mr Woodward, explained the benefit this will provide:

The regional conservation plans that we have been developing identify the regional environmental biodiversity resources in the areas, and they have been developed to sit as sister documents to the regional strategies. The regional strategies identify where appropriate development should occur in New South Wales and where biodiversity should be protected, and the regional conservation plans give more detail about the biodiversity areas. When and if there are more developments proposed in some of those areas, that provides a

¹⁷³ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, pp 5-6

¹⁷⁴ Mr Haddad, Evidence, 30 March 2009, p 9

¹⁷⁵ Mr Haddad, Evidence, 25 August 2009, p 11

good basis for broader decision making by local councils when they are doing their local environmental plans and for individual developments.¹⁷⁶

- 4.35** Councillor McCaffery, President of the Local Government Association of New South Wales believes it is vital to have a regional planning strategy to guide local planning. Cllr McCaffery was concerned that not all areas of the State have their own regional strategy:

It is vital to have a regional framework for local planning. I think again it is a resourcing issue. I know the regional plans and the Sydney Metropolitan Plan took up an enormous amount of resources. I think we desperately need it. What that reaffirms among our members on the other side of the sandstone curtain is that they are like priority nil, and I think that is a very important message to be delivering to those communities.¹⁷⁷

Committee comment

- 4.36** The Committee supports the current State-regional-local strategic planning structure, and agrees that regional planning strategies guide and direct long-term planning at the local level. Recognising the importance of regional plans, the Committee is concerned that many areas of the State do not have one. This is further considered in the following sections.

What best defines a region?

- 4.37** During the Inquiry the Committee spent some time exploring with witnesses the question of how best to define a region for planning purposes. It became clear that there are a number of criteria that could justifiably be used to define a region. However, when considering the development and implementation of regional planning strategies administrative and practical issues ultimately come to the fore.
- 4.38** Aside from the broader Sydney Metropolitan area, there are four Department of Planning regions that cover New South Wales: Hunter Region; Northern Region; Southern Region, and Western Region. Appendix 7 includes a map showing the Department of Planning's regional boundaries. The Department of Planning has also produced seven regional planning strategies. Appendix 7 includes a map depicting the regional strategy boundaries.
- 4.39** Of the seven regional planning strategies produced to date, each is comprised of a number of local government areas – ranging from two to eight. Table 4.1 lists the local government areas, and their estimated resident population at 30 June 2008, within each regional strategy.

¹⁷⁶ Mr Joe Woodward, Deputy Director General, Department of Environment, Climate Change and Water (DECCW), Evidence, 25 August 2009, p 46

¹⁷⁷ Cllr Genia McCaffery, President, Local Government Association of New South Wales, Evidence, 30 March 2009, p 19

Table 4.1 Composition of Regional Strategy regions***Lower Hunter Regional Strategy***

Local Government Area	Estimated residential population at 30 June 2008
Cessnock	49,900
Lake Macquarie	195,600
Maitland	67,600
Newcastle	152,700
Port Stephens	65,500
Total	531,200

Far North Coast Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Ballina	41,700
Byron	31,500
Kyogle	9,700
Lismore	45,000
Richmond Valley	22,700
Tweed	86,800
Total	237,400

Illawarra Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Kiama	20,300
Shellharbour	65,600
Wollongong	198,300
Total	284,200

South Coast Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Bega Valley	33,000
Eurobodalla	37,100
Shoalhaven	93,900
Total	163,900

Central Coast Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Gosford	164,000
Wyang	146,600
Total	310,500

Sydney-Canberra Corridor Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Goulburn-Mulwaree	27,700
Palerang	13,900
Queanbeyan	39,600
Upper Lachlan	7,400
Wingecarribee	45,400
Yass Valley	14,400
Total	148,400

Mid North Coast Regional Strategy

Local Government Area	Estimated residential population at 30 June 2008
Bellingen	13,200
Clarence Valley	51,000
Coffs Harbour	70,400
Greater Taree	47,800
Great Lakes	34,900
Kempsey	28,900
Nambucca	18,900
Port Macquarie-Hastings	73,900
Total	338,800

4.40 The Department of Planning advises when defining a region for the purposes of preparing a regional strategy the criteria considered include[s]:

- recognition of existing, well-established regional areas
- recognition of communities of interest
- significant, integrating landscape features (such as the Murray River)
- consideration of land use issues which require a regional response

- inclusion of the whole of the constituent local government areas to provide ease of implementation for councils.¹⁷⁸

- 4.41** Ms Alison McLaren, President Western Sydney Regional Organisation of Councils (WSROC) argued there needs to be a greater focus on social factors, particularly social inequity, when developing regional plans. She believes poor planning contributed to the people of Western Sydney rating worse than other areas in terms of social disadvantage as measured by the last round of Socio-Economic Indexes for Areas data.¹⁷⁹
- 4.42** Mr Haddad advised socio-economic data from the Australian Bureau of Statistics, while not a factor in defining the boundaries of regions, does assist in the formulation of the regional strategies themselves.¹⁸⁰
- 4.43** Some participants suggested that local government boundaries were not the best foundation for developing regional strategies. Among those participants, it was often thought that water catchments would provide a better basis for regional planning.¹⁸¹
- 4.44** However, there are only 13 Catchment Management Authority (CMA) areas in the State. Appendix 7 includes a map showing the catchment management areas. The Department of Planning advised that the CMAs are involved in the development of regional strategies.¹⁸² However, some local government areas fall within two or three different catchment management areas. This would cause a problem when a council's LEP is to reflect the relevant regional strategy.
- 4.45** A number of participants agreed there was no perfect answer to what best defines a region.¹⁸³ Ms Jennifer Bennett, Executive Officer, Central New South Wales Councils (CENTROC) argued the things that could be considered included water catchments, community of interest, and alignment of government departments.¹⁸⁴ Similarly, Mr Berry noted that regional boundaries could be different depending on whether you are taking an environmental, economic or social view. Mr Berry concluded that ultimately the decision on regional boundaries is not really an issue, provided the outcomes are being achieved for the local community and do not conflict with what is happening in the State and broader regional areas.¹⁸⁵

¹⁷⁸ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 4

¹⁷⁹ Ms Alison McLaren, President Western Sydney Regional Organisation of Councils, Evidence, 15 June 2009, p 17

¹⁸⁰ Mr Haddad, Evidence, 25 August 2009, p 11; Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 4

¹⁸¹ Mr Jeff Smith, Director, Environmental Defender's Office, Evidence, 9 March 2009, p 23

¹⁸² Ms Yolande Stone, Director Policy and Systems Innovation, Department of Planning, Evidence, 30 March 2009, p 11

¹⁸³ For example, Mr Glen Inglis, General Manager, Tamworth Regional Council, Evidence, 21 May 2009, p 25

¹⁸⁴ Ms Jennifer Bennett, Executive Officer, Central New South Wales Councils, Evidence, 1 May 2009, p 31

¹⁸⁵ Mr Berry, Evidence, 19 May 2009, p 25

- 4.46** When discussing the issue of regional planning boundaries a number of participants argued for a greater integration of service boundaries for all government agencies. Mr Craig Filmer, Director, Environment and Planning, Young Shire Council said that the current non-alignment of agency boundaries is frustrating:

Our greatest frustration at the moment for Young council is that we answer to the RTA [Roads and Traffic Authority] in Wagga, we answer to the Lands department in Goulburn, we answer to the EPA [Environment Protection Authority] in Queanbeyan, and we answer to Health in a number of different ways or regions. We answer to, you name it; it is like an interlocking set. If the State was just an even grid and each department was serviced on that same even grid, but that is too idealistic. But with that even grid being catchments, for example, and your EPA, your Health, your this, your that, all go on catchments or multiple catchments, I believe that the State could service its local areas far better.¹⁸⁶

- 4.47** The former Minister for Planning, Hon Frank Sartor MP, agreed that it made sense to align, as much as possible, the way State departments determine regions:

The first thing I think is that a region for planning purposes should be the same as a region for State development purposes or the same as for the Department of Premier and Cabinet. In other words, as much as possible the regions that various State departments define should be the same, with the possible exception of health which is a much more complex problem, because you have specialty issues. Even though they are arbitrary, if they were defined so they apply to all agencies and all departments it starts to help.¹⁸⁷

- 4.48** The DECCW has its own regional boundaries for administrative purposes. Notwithstanding this, DECCW is developing Regional Conservation Plans (RCPs) to sit as sister documents to the Department of Planning's regional strategies. The boundaries for the RCPs are based on local government areas and align exactly with the regional strategies.
- 4.49** During the regional public hearings the Committee heard evidence from a number of representatives from councils that do not fall within any of the regional strategies. A number of potential regional boundaries were suggested on the basis of common land-use or community interest. Often, in the absence of a regional strategy, these councils had, of their own accord, commenced coordinated strategic planning.
- 4.50** For example, Mr Kenneth Filmer, Director, Planning and Environment, Young Shire Council said his and adjoining councils all faced similar issues, which would benefit from regional strategic guidance:

I am a fan of a regional plan. Take a look at the five or six councils around my area. They have all got broad-scale, broadacre farming issues. They have all got

¹⁸⁶ Mr Craig Filmer, Director, Environment and Planning, Young Shire Council, Evidence, 1 May 2009, p 22

¹⁸⁷ The Hon Frank Sartor MP, Member for Rockdale, Evidence, 15 June 2009, p 14

this. I would love State direction in that regard. It helps us frame our local instruments.¹⁸⁸

- 4.51** Similarly, Ms Elizabeth Stoneman, Manager, Planning and Development Services for Leeton Shire Council said Council is working with the surrounding councils that could all be described as broadacre, irrigated councils.¹⁸⁹ While Mr Gregory Cooper, Director, Environmental Services, Cabonne Council believed that the local government areas of Cabonne, Blayney and Orange represented a logical planning region or sub-region:

But if you look at it in terms of our planning strategy we are actually working with Blayney and Orange. That is actually a good catchment or sub-region because they are directly influenced by what happens in Orange. You have a population of people that relate to Orange, other than some fringe areas which head off south or west, and they have the ability to deal with common interests.¹⁹⁰

- 4.52** In evidence Mr Anthony Thorne, a member of the Urban Development Institute of Australia said the broader the geographical area, the more difficult it is to call it a region.¹⁹¹ This view was shared by Mr Leslie Tomich, General Manager of Albury City Council who, when responding to the hypothesis that the Murray-Darling Basin might be considered a region, cautioned that once a region is too large it makes it difficult to achieve a cohesive planning perspective:

It is probably not inconceivable that they could be a region, but it is starting to make it a very, very big region and it is starting to bring into play many influences and factors. I do not know whether that necessarily would deliver what you are seeking to achieve from a planning perspective anyway because you would simply have conflicting interests because of various things within the region. I believe that it would have to be more compact than that perhaps.¹⁹²

- 4.53** Mr Sartor concurred with this view, advising that whatever boundaries may be decided upon they have to be manageable:

Everything you do, whether you are in a private company or government, has to be broken down into manageable bits. By having regional strategies it is breaking down the State growth problem to manageable areas, to bits where you can define the parameters, define the key transport routes.¹⁹³

¹⁸⁸ Mr Kenneth Filmer, Director, Planning and Environment, Young Shire Council, Evidence, 1 May 2009, p 23

¹⁸⁹ Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council, Evidence, 29 May 2009, p 32

¹⁹⁰ Mr Gregory Cooper, Director, Environmental Services, Cabonne Council Evidence, 1 May 2009, p 47

¹⁹¹ Mr Thorne, Member, Urban Development Institute of Australia, Evidence, 26 May 2009, p 44

¹⁹² Mr Leslie Tomich, General Manager, Albury City Council, Evidence, 29 May 2009, p 6

¹⁹³ Mr Sartor, Evidence, 15 June 2009, p 13

4.54 Mr Broyd said that boundaries can react to issues such as natural water catchments and social-economic structure but in the end they need to reflect the administrative boundaries of the Department of Planning.¹⁹⁴

4.55 Mr Haddad reiterated that this was the case. Regions are defined according to local government boundaries for administrative and practical reasons¹⁹⁵ – council LEPs connect to and reflect the regional strategy, and conversely the intent of the regional strategies are incorporated into LEP provisions:

Natural resource is one issue, but fundamentally the difficulty that we have of introducing a statutory scheme is that in New South Wales under the current legislation, the current jurisdiction that we have, local councils have a defined boundary by law and the LEP or the planning scheme—the statutory scheme—applies to that.¹⁹⁶

Western region

4.56 As shown in Appendix 7, the Department of Planning Western region is a vast area. The region comprises the people from 48 different local government areas living in diverse environments ranging from dispersed rural villages to large regional centres. There is no regional strategy for the western region. In evidence, Mr Garry Styles General Manager of Orange City Council expressed the disappointment, shared by many others, that the region did not receive the same attention as other areas of the State:

In terms of coordination, the State has gone to the trouble of doing metro strategies and various coastal strategies but there has not been too much about doing a regional strategy out here.¹⁹⁷

4.57 Mr Sartor was of the view that you cannot have just one region for western New South Wales because its size precludes it from being a manageable area. Ms McKittrick said her association did not have a stated position on regions west of the Great Dividing Range, as most of its work representing members was along the coast. However, she did add that including the west of the State into a single region did not appear to be a sensible approach.¹⁹⁸

4.58 Mr Haddad explained why a western regional strategy had not been developed in the past and told the Committee that consideration was now being given to a specific strategy for the western region:

The reason that we do not have a specific regional strategy for the western region is in no way a reflection that the issues are not important or not taken into account. We made the judgement that probably it is better to focus on specific strategies for those areas, strategies like rural areas and the relationship between water and population in some areas, rather than having a single

¹⁹⁴ Mr Broyd, Evidence, 17 August 2009, p 8

¹⁹⁵ Mr Haddad, Evidence, 25 August 2009, p 3

¹⁹⁶ Mr Haddad, Evidence, 30 March 2009, p 10

¹⁹⁷ Mr Styles, Evidence, 1 May 2009, p 31

¹⁹⁸ Ms McKittrick, Evidence, 15 June 2009, p 30

strategy. We are thinking now actually of a specific strategy for the western region. We have done some preliminary work and we are looking into whether we should proceed with a single strategy. I am not sure that we have done enough work to be able to say that we need to divide it into a number of sub regions. I understand that the area is large but we think we should be addressing the issues rather than the areas themselves. I think there are issues where we can focus on probably better than what we did previously. We know better about it. I have put more staff in our Dubbo office and they are starting to do a bit more work in that regard.¹⁹⁹

4.59 The Committee was advised in September that a draft Murray regional strategy would soon be released for public comment. The draft strategy applies to the local government areas of Albury, Greater Hume, Corowa, Berrigan, Murray, Conargo, Deniliquin, Wakool, Balranald and Wentworth. The areas contained within the Murray regional strategy forms part of the Department of Planning western region, together with areas of the Department's southern region.²⁰⁰

4.60 As noted in Chapter 3, in its response to a question on notice, the Department of Planning suggested that consideration could be given to establishing an expert group in 2010 to review and make recommendations for improving the planning framework. It was further suggested by the Department of Planning that consideration could be given to whether the remaining components of the 2008 reforms – provisions relating to development approvals and developer contributions – should be commenced prior to the recommendations of this expert group being received.

4.61 Instead of implementing the remainder of the 2008 reforms, the Department of Planning suggested focus could be placed on two areas – electronic planning systems and regional strategies. With respect to regional strategies the Department of Planning suggested the focus over 2010 could be on the review and updating of the Metropolitan Strategy along with the development of regional strategies in the remaining regions in New South Wales for which regional strategies have not yet been developed.²⁰¹

Committee comment

4.62 The Committee believes that the NSW Government must develop and implement common regional boundaries for use by government agencies and the planning process.

Recommendation 2

That the NSW Government develop and implement common regional boundaries for use by government agencies and the planning process.

¹⁹⁹ Mr Haddad, Evidence, 25 August 2009, p 2

²⁰⁰ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 1

²⁰¹ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 2

- 4.63** Through the course of the Inquiry a number of things became clear with respect to regional planning strategies. Firstly they are an essential element in the planning framework and, as such, all local government areas should be included within a relevant strategy. Secondly, the effectiveness of a regional planning strategy is diminished if it applies to too large or diverse an area.
- 4.64** The Committee notes that many local councils not currently covered by a regional planning strategy have identified regions of commonality of land-use and commenced joint strategic planning.

Recommendation 3

That the Department of Planning develop a number of new regional strategies to ensure that there is an appropriate regional strategy in place for all local government areas across the State.

That as a first step the Department of Planning consult with local government not currently within a regional strategy area to determine appropriate and manageable new regional strategy boundaries.

Strategic land use planning by local government areas

- 4.65** As mentioned at paragraphs 4.5-4.6 a number of council representatives related the benefit of having developed long-term strategic land-use plans. While the *Environmental Planning and Assessment Act 1979* (EP&A Act) requires councils to have a LEP there is no similar requirement for a strategic land-use plan.
- 4.66** Councils will be required under amendments to the *Local Government Act 1993* (NSW) to develop ten-year Community Strategic Plans (CSPs), which are intended to sit at the top of the council's planning hierarchy. Under this new requirement, local councils will develop CSPs which set high level objectives for the local government area including objectives related to land-use planning. The purpose of the CSPs is to work with the community to identify the main priorities and expectations for that council area and to plan strategies for achieving these.²⁰²
- 4.67** A number of participants raised their concern at the somewhat unclear relationship between land-use planning as expressed in a council's LEP and the financial, asset management and the community priority planning as expressed under CSPs. Mr Shaun McBride, Strategy Manager of the Local Government and Shires Association said there was some discomfort at the separation of these two integral areas:

With the integrated planning and reporting system or program that the Department of Local Government is developing and of which we are very supportive and working closely with them, from the outset, there has been some discomfort with the fact that land use planning has been separate to it,

²⁰² Submission 69, p 10

not integrated with it, so we have the financial, the asset, the management and the community planning all captured under integrated planning and reporting. The land use planning, the LEP, is sitting off to the side. Yes, in theory, one should inform the other and vice versa, but whereas they have managed to integrate the other planning functions of council, this is still sitting out there separately. So the specific solution to that, I do not have.²⁰³

4.68 Representatives from both Greater Taree City Council and Richmond Valley Council, echoed this view and argued strategic land-use planning should be required under and enshrined within the EP&A Act, and that there be better integration between the *Local Government Act 1993* (NSW) and the EP&A Act in delivering outcomes.²⁰⁴

4.69 The submission from the New South Wales Government notes that the relationship between LEPs and CSPs needs to be carefully considered, particularly as LEPs must take account of regional and subregional strategies:

Each council will continue to be required to prepare an LEP in accordance with the EP&A Act. However, the relationship between the LEP and the Community Strategic Plan needs to be considered to assist in delivering associated land use strategies or conservation, infrastructure and economic development strategies. These strategies may be appropriately determined by the State Government and have an impact on the way local communities are planned. New LEPs must also take account of regional or subregional strategies, not just the community strategic plans of individual councils, to provide an integrated approach.²⁰⁵

Committee comment

4.70 The importance and benefit of long term strategic plans is underlined by the new requirements under the *Local Government Act 1993* (NSW). The Committee agrees that it makes sense that land-use planning, which has a fundamental effect on communities, should be guided by a strategic vision developed in consultation with the community.

4.71 It is also self-evident that any strategic plans that relate to a particular community or area, whether a regional strategy, an LEP, or a CSP, need to be consistent and complementary.

4.72 The Committee understands the call from some local councils, particularly those that do not fall within one of the current regional strategy areas, for the EP&A Act to require and assist councils to develop strategic land-use planning documents. The Committee's recommendation in the previous section regarding the development of new regional strategies may go some way to addressing this need.

²⁰³ Mr Shaun McBride, Strategy Manager, Local Government and Shires Associations of NSW, Evidence, 30 March 2009, p 17

²⁰⁴ Mr Graham Gardner, Director of Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p 32; Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council, Evidence, 26 May 2009, p 29

²⁰⁵ Submission 69, p 11

Regional development and implementation of strategic planning

- 4.73** Throughout the Inquiry, and particularly during the regional public hearings, many participants were critical of what they saw as the centralisation of the planning system. Regional representatives frequently argued that the Department of Planning issued directions or made decisions that were patently city or metro-centric.
- 4.74** In order to address these concerns there was a consistent call for an increased role for the Department of Planning regional offices, and a greater trust in, and power provided to, local councils to carry out work under the guidance of their relevant regional strategies.
- 4.75** Mr Malcolm Ryan, representing the Local Government Planning Directors Group (LGPDG) strongly advocated for a comprehensive strategic planning process. As a corollary to that Mr Ryan argued local government should be then empowered to manage the work under the guidelines set by the relevant regional strategy. This would entail removing some of the consent powers assigned to the Joint Regional Planning Panels (JRPPs). Mr Ryan suggested that if councils did not perform adequately then appropriate action should then be taken.²⁰⁶
- 4.76** Mr Broyd also said that if there was greater clarity between what is State or regional development and what is local development, this could lead to a shift of Department of Planning resources to the regional offices:
- ...the majority of staff in the State Department of Planning are now engaged in assessing major developments—not future planning but assessing major developments. If there was greater clarity between what is State and regional and what is local, I believe there could be a shift of resources to local and regional offices of the department, which are less effective because of certain centralisation of those processes on major projects to the Sydney office of the Department of Planning.²⁰⁷
- 4.77** Particularly in the earlier stages of the Inquiry participants expressed disappointment at what they saw as a diminishment of the role and capacity of the Department of Planning's regional offices. They believed the Department of Planning did not give enough recognition to the quality and capabilities of regional office staff or their understanding of local issues and communities.²⁰⁸
- 4.78** The Department of Planning has eight regional offices across the State: Grafton, Tamworth, Newcastle, Gosford, Wollongong, Queanbeyan, Jindabyne and Dubbo. During her appearance before the Inquiry into the Budget Estimates 2009-2010 the Hon. Kristina Keneally MP, Minister for Planning said that the regional offices play an important role in the delivery of the standard instrument LEP program. Ms Keneally said that the regional offices continue to produce a high volume of quality professional work; and that the key functions of the offices were to:

²⁰⁶ Mr Malcolm Ryan, Director, Planning and Development Services, Warringah Council, Evidence, 17 August 2009, p 12

²⁰⁷ Mr Broyd, Evidence, 17 August 2009, p 4

²⁰⁸ Mr Gardner, Evidence, 21 May 2009, p 33; Mr Anthony Thorne, Member, Urban Institute of Australia, Evidence, 26 May 2009, p 49

- develop regional strategies to guide councils and other State agencies in achieving sustainable development outcomes, including growth, and environmental and economic outcomes
- work with councils to implement regional strategic outcomes and State policies through LEPs, policies and approvals
- lead participation in projects that deliver key strategic outcomes relevant to the region including economic, land release, and environmental or agricultural projects
- undertake monitoring to ensure the achievement of key regional outcomes, including housing and employment lands
- contribute to the development of State policies and reforms
- develop strong and active partnerships between State and local government, communities and businesses.²⁰⁹

4.79 On a number of occasions it was suggested to the Committee that the LEP Review Panel process should be regionalised rather than centralised in Sydney. Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council told the Committee that Shoalhaven Council had long argued for the regionalisation of the LEP Review Panel process:

One thing we have always argued for was regionalisation of the LEP review panels. Why should all LEPs throughout New South Wales be dealt with by a body in Sydney? Why not have a number of decentralised panels, one in Wollongong, one on the North Coast and one in Dubbo, for example? Someone from head office would give the head office spin on things so that the regional angle on things is not lost. It has been the experience with the current LEP panel that that is very much the case.²¹⁰

4.80 Goulburn Mulwaree Council was one of the first to complete a new comprehensive LEP using the Standard Instrument (SI). Mr Berry told the Committee that the process took 4½ years – 14 months to prepare the draft documents and the remainder in negotiations with the Department of Planning. Mr Berry, like other regional participants, praised the input of the regional Department of Planning office, while being critical of the centralised LEP Review Panel process:

The working relationship we have with the regional office has been excellent. They were part of our steering committee right from the word go, in terms of being able to direct us with our documents and to make sure we were not cutting across broader State or regional areas. That was a worthwhile process to have them directly involved. Where we seemed to probably go off the rails, in my opinion, was when we started to hit head office.²¹¹

²⁰⁹ General Purpose Standing Committee No 4, Inquiry into Budget Estimates 2009-2010, Hon Kristina Keneally, MP, Minister for Planning, Evidence, 16 September 2009, p 42

²¹⁰ Mr Clark, Evidence, 19 May 2009, p 13

²¹¹ Mr Berry, Evidence, 19 May 2009, p 19

- 4.81** Mr Haddad acknowledged the views that not enough responsibility had been given to the regional offices and that everything was being run in a bureaucratic manner from Sydney. Mr Haddad argued that it had not been possible to delegate responsibilities to the regional offices without first having a strategic framework in place. Mr Haddad did add that with respect to the LEP process there was a need to better recognise regional differences.²¹²
- 4.82** Over the course of the Inquiry the Committee detected a shift in attitude on the part of the Department of Planning in acknowledging the need to cater for regional differences and to enhance its regional presence. At the hearing on 25 August 2009 the Department of Planning advised that more staff resources had been assigned to the Dubbo regional office to work on developing the Western Regional Strategy. Mr Haddad concluded that the Department of Planning would have to give thought to how it can credibly serve its regions.²¹³
- 4.83** The submission from the LGPDG argued that governance of New South Wales planning activities would be substantially improved through an agreement on the respective responsibilities of State and local government. One of the recommendations proposed in their submission was to establish regional committees.
- 4.84** It was proposed that these regional committees be led by the relevant regional office of the Department of Planning and comprise relevant State agencies and constituent councils. They would be responsible for:
- preparing, implementing and monitoring regional strategies
 - evaluating the compatibility of draft LEPs with the regional strategy and State policies – thereby enabling them to proceed in a timely manner without reference to the head office of the Department of Planning.²¹⁴
- 4.85** The value of having other departmental representatives involved in the preparation and negotiation of draft LEPs was explained to the Committee. In evidence, Mr Berry said the minimum rural lot sizes threatened to be a major impasse in the progression of Goulburn Mulwaree's SI LEP, until negotiations with the Department of Primary Industries brokered a resolution²¹⁵
- 4.86** The Department of Planning was not in favour of the LGPDG proposal. It noted that it is a requirement that regional strategies be reviewed every five years and it is expected that regional working groups, involving relevant state agencies and local councils, will be used to inform the five-yearly review process.
- 4.87** The Department of Planning advised that as part of its consideration of draft LEPs the LEP Review Panel receives an explanatory report and recommendation from the relevant regional office. The regional directors of the Department of Planning regularly sit on the LEP Review Panel. The Department of Planning concluded that the proposal to establish regional

²¹² Mr Haddad, Evidence, 25 August 2009, p 11

²¹³ Mr Haddad, Evidence, 25 August 2009, p 3

²¹⁴ Submission 102, Local Government Planning Directors Group, p 3

²¹⁵ Mr Berry, Evidence, 19 May 2009, p 21

committees would need to be weighed against the benefits of this centralised system with broader representation, offering streamlined and consistent advice to the Minister.²¹⁶

4.88 DECCW advised that it had made administrative improvements to the way in which it interacts with the planning system. Mr Woodward said DECCW t now provides a single point of coordinated input into the planning process, and that this is provided mainly through its regional offices.²¹⁷

4.89 Mr Woodward noted that any regionalised department runs the risk of providing diverse and inconsistent advice and input into planning issues. To this end Mr Woodward advised that DECCW had many internal processes in place to ensure consistent strategic advice.

Committee comment

4.90 The Committee received much evidence in support of an increased role for the regional offices of the Department of Planning, and little to suggest otherwise.²¹⁸ For example when examining the issue of the SI LEP, which is detailed in the next Chapter, two things in particular were highlighted the need to account for regional differences and the need to speed up the LEP plan making process.

4.91 The Committee notes the view of the Department of Planning that a centralised system offers consistent advice to the Minister on the determination of LEPs. The Committee also notes DECCW's confidence in a regionalised system when adequate guidance and processes are in place to provide consistent advice. Regional offices have an important role as a conduit for information both from the region and to the regions. This role must be recognised by the Department of Planning.

4.92 The Committee believes that the fundamental review it has recommended should have regard to the structure of the Department of Planning and examine the role best served by its regional offices to provide adequate consideration of regional differences.

Do strategic plans need statutory weight?

4.93 Strategic plans set out the intent and goals for long-term land-use planning which guide both forward planning and decisions in the immediate and short term. The Department of Planning's regional strategies have a 25-year forward projection while being reviewed every five years. During the Inquiry the Committee heard arguments both for and against the need to give strategic plans some form of 'statutory weight'.

4.94 A number of Inquiry participants said that the planning system suffered from being too 'legalistic' and that efforts should be made to reduce unnecessary legal content wherever

²¹⁶ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 8

²¹⁷ Mr Woodward, Evidence, 25 August 2009, p 46

²¹⁸ The Committee notes the evidence, of Mr Sartor, 15 June 2009, p 16

possible. Mr John Mant, practising town planner, was among those who argued that planning legislation should be restricted to the exercise of control over property rights.²¹⁹

- 4.95** Mr Mant was involved as member of the advisory committee for the development of the Metropolitan Strategy. He emphasised that the strategy is not a statutory document although it has statutory consequences because it advises changes to development controls.²²⁰ These development controls are then reflected in either planning legislation or in LEPs.
- 4.96** Ms McKittrick while calling for a reduction of legalistic content, also urged strategic documents be given legislative weight through their identification in the EP&A Act as overriding planning instruments.²²¹
- 4.97** A number of representatives from local councils argued there was a need for their strategic land-use plans to have some form of statutory weight. The reason for this need was their ability to control property rights, as expressed in their LEP, often does not reflect their long-term intent.
- 4.98** Mr Gardner advocated that strategic land-use plans be given some form of statutory weight so that greater reference can be made to them during development decision making:

I think it is important because we did all that planning for a period of time and when it comes to the other end of the planning system, the development control system where land use decisions are made, we are often referring to those documents to justify decisions we are making. At the moment we simply refer to those under section 79C as being the community interest or public interest background to the decisions that are being made. That is the only reference in a statutory sense to the documents. I think it is important that, firstly, they be mandated. I think every community should do this because this is the sort of planning that should be done. Secondly, I think they should have a statutory weight so that they can provide a stronger reference, if you like, to the development control decision making.²²²

- 4.99** Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council related an example where Council's strategic planning had been compromised because it lacked statutory weight. Richmond Valley received a development application for two chicken farms that were to be located in areas adjoining future residential development areas. Mr Exley said Council had concerns because the land did not incorporate the appropriate buffer zones that would be required in the future:

Council did not have the opportunity to refuse those applications. We were negotiating with the developers to try to relocate them further away from our nominated development strategy zones. Both matters went before the court. Council was unsuccessful in expressing its concern about the impact on loss of future development. The courts appeared to really not give any credence to the

²¹⁹ Mr Mant, Evidence, 9 March 2009, p 29

²²⁰ Mr Mant, Evidence, 9 March 2009, p 32

²²¹ Ms McKittrick, Evidence, 15 June 2009, p 29

²²² Mr Gardner, Evidence, 21 May 2009, p 34

strategic plans in relation to their future impact and, as a result, because of those two developments we have estimated we have lost about 350 potential residential lots, which have now been sterilised because of development on adjoining land. I feel that the legislation should recognise and somehow give weight to strategic plans. In the current framework little weight or legal support is provided.²²³

- 4.100** Mr Sartor argued that strategic land use planning, specifically regional strategies, should have statutory force. In arguing this Mr Sartor said that strategic land use plans must include statutory provisions for infrastructure:

I think that land use plans and infrastructure plans should be all in one. I suppose they really should be land use capacity plans, which talk about what infrastructure you would need if you created a certain level of population. It should include infrastructure funded by developers as well as infrastructure that would otherwise be funded by local government or by the State Government. I am arguing for much more of a regional perspective on strategic planning in which you look at regions and their needs at local and regional level and factor in the requirements before the greenfield areas are bulldozed and work starts.²²⁴

- 4.101** Mr Haddad agreed the system would benefit from more recognition of the strategic aspects of the legislation. Mr Haddad said that while there is not a need to make the regional strategies statutory documents there was a desire to provide legislative provisions for the implementation of the strategies.²²⁵

- 4.102** The submission from the New South Wales Government argued it was worthwhile exploring the option of including provisions in the EP&A Act regarding strategic planning for infrastructure. This would result in better integration of land use planning and delivery of infrastructure and services.²²⁶

Committee comment

- 4.103** The Committee agrees that properly conducted strategic planning is essential for an effective planning system for the State. That is why, in recognition of this, the Committee has recommended that regional planning strategies be prepared for all areas of the State. Strategic plans, when followed through, provide guidance and certainty to communities and users on how an area will develop and grow and allows them to make decisions accordingly.
- 4.104** The Committee also notes that the ultimate effect of statutory planning instruments is to constrain the exercise of property rights or to require certain actions related to development such as the provision or contribution towards infrastructure.

²²³ Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council, Evidence, 26 May 2009, p 25

²²⁴ Mr Sartor, Evidence, 15 June 2009, p 2

²²⁵ Mr Haddad, Evidence, 25 August 2009, p 6

²²⁶ Submission 69, p 9

- 4.105** There is the issue that individual property rights may be unfairly constrained by the stated intent of long-term strategic plans if that intent is not subsequently implemented. In this regard, it is particularly important that the State Government meet its stated infrastructure commitments to support regional planning strategies.
- 4.106** The Committee believes that the question of whether regional planning strategies or possibly local council strategic land-use plans should be given statutory weight, and if so, the practical implications of this, is one issue that should receive close examination during the review of the planning framework.

Infrastructure and planning

- 4.107** Land-use planning and the provision of and planning for infrastructure are inextricably linked. When new areas are developed for residential purposes there are accompanying infrastructure requirements, such as roads, sewerage and open public space. It is the responsibility of either the local or State government to construct this infrastructure. Both local and State government require developers to contribute towards meeting the new and increased demand for public services and public amenities within the area, by providing free land monies or both.
- 4.108** These cost of contributions and charges are invariably passed on to purchasers of newly developed houses and units. The housing and development sectors have long argued that infrastructure charges in New South Wales are too high and compare unfavourably with other States. They believe they are a key contributor to the high cost of housing and low level of development and construction in the State.
- 4.109** The State Government is also responsible for providing major infrastructure, such as hospitals, schools and transport. This infrastructure, and most particularly transport, has a profound effect on the amenity and liveability of communities. Planning for and provision of infrastructure guides and stimulates residential development.
- 4.110** The Government submission stated that it would be worth exploring including provisions in the EP&A Act regarding strategic planning for infrastructure to achieve better integration of land use planning and delivery of infrastructure and services.²²⁷
- 4.111** Mr Haddad said that there were different models that could be pursued. Mr Haddad emphasised that an integrated model of land release and infrastructure is a basic tenet of sensible planning. However the challenge remains in determining how the cost of infrastructure can best be met:

There are different models or you can provide for that legislatively. The notion of making sure that if we are releasing land we have an appropriate infrastructure to support it, being transport, water or whatever, is a very critical one. We will continue to advise governments that that should be done, because it has not been done previously, for whatever reason—

²²⁷ Submission 69, p 9

...The advice to Government is that we should continue an integrated model of land release and infrastructure because that is basic. That is why we need to be flexible sometimes and say that if we need to accommodate population growth it may well be that in some cases infill development may address an immediate need as distinct from other needs. That is the advice. Obviously if we go back 10 or 20 years when land was released for whatever reason without proper support, I cannot tell you that this is good planning. Good planning has to take into account, within reason, an integrated approach to infrastructure. I must also tell you that we do that in a much more disciplined way in the planning process now than we have ever done. One of the main reasons it is taking too long to rezone land—it is essentially one factor—is our questioning consistency of infrastructure. Who is going to pay for it, how is it going to be paid for, and all the rest of it? It is really a big challenge for us as a community to do it.²²⁸

- 4.112** The following sections examine the views put to the Committee regarding recent initiatives for developer charges and contributions and further options that could be explored to improve the developer charges and contribution framework. It also examines the need to better integrate land-use planning and provision of major infrastructure.

State infrastructure charges

- 4.113** In December 2008 the Government announced that State infrastructure charges would be reduced until June 2011 and, most importantly, payment would now be due on the sale of land rather than at the time of development consent. This announcement was welcomed by the development industry.
- 4.114** Mr Aaron Gadiel, the Chief Executive Officer of the Urban Taskforce Australia explained that the change in timing of payment would be of significant benefit. Mr Gadiel said that it was a necessary change as many developers could not secure the capital to fund both construction costs and government charges:

That was a very necessary change because developers simply did not have the capital or collateral to get finance at the beginning of a process to pay the government charges. The way the developer finances these things is they obviously put in place a certain amount of equity and the balance is debt finance. The debt finance is normally secured against the land which is going to be developed. It is hard enough to get enough money out of that debt finance arrangement just to pay for the construction costs of what you are trying to build. To try to pay also for government charges which are, and have been, massive is very problematic.²²⁹

- 4.115** Mr Gadiel said that he believed state infrastructure charges amounted to around \$17,000 a lot. He said it was regrettable that this change in timing of payment was not extended to include

²²⁸ Mr Haddad, Evidence, 30 March 2009, p 13

²²⁹ Mr Aaron Gadiel, Chief Executive Officer, Urban Taskforce Australia, Evidence, 30 March 2009, p 31

local contributions made under EP&A Act s 94 (section 94 contributions) which are an even greater cost.

- 4.116** At the public hearing in June 2009 the Committee heard that the development industry was frustrated that six months into the process there was still no certainty on how the deferral process for state charges would be administered. As a result the development industry was calling for an extension to the period of reduced charges.
- 4.117** In evidence before the Inquiry into Budget Estimates 2009-2010 Ms Keneally said that the implementation of the deferral process for charges had proven to be a complex process. Currently the proposal is to use a combination of a caveat preventing the sale of the land until the charge has been paid or a bank guarantee to secure the charge.²³⁰
- 4.118** Mr Tomich told the Committee Albury Council faces difficulties in attracting development in competition with nearby centres in Victoria. Mr Tomich told the Committee that developers often raise the issue of the difference in the cost of developer charges between Victoria and New South Wales.²³¹
- 4.119** In particular Mr Tomich noted the decision by the Victorian Government to mandate that water and sewer development contributions would be no more than \$500 per block. In Victoria water and sewerage is supplied by a corporatised entity. Albury City has reduced its own developer charges to well below cost recovery in order to be more competitive
- 4.120** Mr Tomich suggested that the New South Wales Government needed to make a similar commitment to that of the Victorian Government if it wished to increase the State's competitiveness in attracting investment.²³²

Section 94 Local infrastructure contributions

- 4.121** The topic of local infrastructure contributions, required by local councils under Section 94 of the EP&A Act was raised frequently during the Inquiry. There was a general call from representatives of the development industry for a significant reduction in section 94 contributions. Councils argued that they were charging only what was necessary and that it was impractical to apply a flat ceiling amount across all types of development.
- 4.122** The New South Wales Business Chamber said that it was not opposed to section 94 contributions, however it believed that contributions should be linked only to things that improve the value of or are directly linked to the developed properties:

There is no objection to the concept of section 94 contributions because the idea behind it is that when new greenfields areas open up, the value of those lands will improve by having infrastructure and that improvement will flow

²³⁰ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 14

²³¹ Mr Tomich, Evidence, 29 May 2009, p 3

²³² Mr Tomich, Evidence, 29 May 2009, p 3

through to land values and benefit those who have bought the land, and that is fine. There should be some contribution.²³³

- 4.123** Critics of the section 94 contributions scheme often point to the amount of contribution monies held in reserve by councils, the argument being that councils are collecting more than is necessary. In evidence, Clr McCaffery dismissed this common argument as a furphy as councils are constrained by virtue of their contribution plans as to when they can spend the monies they collect:

Councils are required—and I think quite properly—to collect section 94 contributions. We advertise the plan. We say what we are going to spend it on, and that money is advertised. So we have to spend it on the thing that we collect it for. With North Sydney, for instance, we collected section 94 contributions and we can only spend the money we collect in those contributions on North Sydney pool. If you are going to spend \$13 million on a project, it takes a while to collect the \$13 million. So it is a total furphy from the development industry to say that councils have reserves. If we did not have reserves, we would not be properly managing money we have collected from individuals, with a commitment to our communities and to the applicants that we will spend it properly. If we did not do that, we would be fundamentally breaking the law and breaking a promise and commitment we made with our communities. Of course we have money in reserves—we should.²³⁴

- 4.124** As part of the 2009-2010 State Budget the Government announced the establishment of the Local Infrastructure Fund. The \$200 million dollar fund was established to provide interest-free loans to councils to fast-track local infrastructure projects that have been delayed due to local funding shortfalls. Applications for the fund were called for in June 2009 and closed on 31 August 2009. The fund received over 100 applications.
- 4.125** Local councils were able to apply for funds for projects that supported urban development, such as roads, water, sewerage and drainage. Projects had to have a minimum cost of \$1 million, and no more than ten per cent of the total funding could be spent on specialist advice, or design or permit costs.
- 4.126** During her appearance before the Inquiry into Budget Estimates 2009-2010 Ms Keneally said that it was incumbent upon the Government to ensure that when land is released it is adequately serviced by new local infrastructure such as roads and stormwater facilities. The Minister explained that applications for funds must meet eligibility criteria and would be assessed against equally weighted essential funding criteria of ability to deliver work essential to urban development, accelerated infrastructure provision and value for money.²³⁵
- 4.127** In 2008 the Minister for Planning announced an across the board cap for section 94 contributions of \$20,000 per lot. Councils may apply for permission to exceed this threshold.

²³³ Ms Louise Southall, Policy Adviser, NSW Business Chamber, Evidence, 9 March 2009, p 12

²³⁴ Clr McCaffery, Evidence, 30 March 2009, p 21

²³⁵ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 52

The Government appointed a contributions review panel, which included independent experts, to review applications from councils.

- 4.128** Minister Keneally said the review panel highlighted inconsistencies and complexities in both local infrastructure funding and planning across the State. She said it would be fair to say that no two councils use the same approach to determine contributions. Ms Keneally also said that the levy review has given the Government a good opportunity to work with councils and the development industry to address issues of infrastructure provision and housing affordability.²³⁶
- 4.129** Representatives from the development industry all said that it was essential that section 94 contributions to be restricted as much as possible to the \$20,000 limit.²³⁷ In evidence Mr Graham Wolfe, New South Wales Executive Director of the Housing Industry Association Limited said he was disappointed that 20 councils had received approval to charge above the \$20,000 threshold. Mr Wolfe pointed that approximately 50 per cent of all New South Wales building approvals occur within these 20 council areas.²³⁸
- 4.130** Many councils noted that there was a vast difference between the infrastructure required for development of a greenfield site compared to development in established areas. Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council told the Committee that in the case of Penrith City Council, it would be impossible to reduce the required developer contributions to the \$20,000 limit:

Certainly, the \$20,000 threshold that has been introduced is somewhat problematic for us, not so much in the established older areas of our city, and I suspect in those similar situations in other council areas, but to do with the delivery of new urban release areas in green field locations. That particular threshold is simply unrealistic and we cannot reduce our contributions to get down to near that level.²³⁹

- 4.131** Mr Wolfe said that a significant and increasing cost to developers is the open space requirements for new greenfield development:

Land is very expensive, raw land is very expensive, so providing open space comes at a cost. We understand now that that degree of open space expected by councils is increasing from 15 per cent up to 20 and more per cent of open space, so a development needs to contribute far greater open space because that is the expectations of the council and they believe that is the expectations of their community. So you have a doubling effect of land increasing in price and councils wanting more of that for open space; somebody has to pay for it.²⁴⁰

²³⁶ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 14

²³⁷ Mr Morrison, Evidence, 30 March 2009, p 21

²³⁸ Mr Graham Wolfe, New South Wales Executive Director, Housing Industry Association Limited, Evidence, 24 August 2009, p 38

²³⁹ Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council, Evidence, 30 March 2009, p 52

²⁴⁰ Mr Wolfe, Evidence, 24 August 2009, p 43

- 4.132** Both the Urban Taskforce of Australia and the Property Council of Australia called for a change in the timing of making (because they could be in kind) of section 94 contributions. They said that, similar to the proposal for State charges, contributions should not be due until the developer starts to sell or lease the developed properties.²⁴¹

Committee comment

- 4.133** The Committee notes that when land is developed for residential purposes the provision of infrastructure both directly and indirectly linked to the developed properties will increase their value. The Committee believes that, under the current contributions and charges schemes, it would not be possible for local councils to bear the cost of providing infrastructure that is required before a property can be sold or leased until such time as the developer receives income from that sale or lease. There may perhaps be scope to defer contributions and charges relating to other purposes, which need to be held in reserve by councils, to a later stage. Infrastructure requirements will vary depending on the type of development, such as greenfield as opposed to infill, and according to geographical constraints or regional differences.
- 4.134** The Committee notes the comment that the contributions review panel has found that there is no uniform approach adopted by councils to determine contributions. It appears that it is impossible to impose a uniform dollar threshold for section 94 contributions.
- 4.135** It would perhaps be better to develop a uniform approach by which councils determine contributions rather than seek to impose a uniform limit on the amount that can be charged. A uniform approach could outline the type and quantum of local infrastructure for which contributions can be levied, in a range of development situations. This is the approach of the uncommenced component of the 2008 reforms relating to developer contributions.

Other options to improve the contributions scheme

- 4.136** During discussion on infrastructure charges reference was made to options for improving the current contributions scheme. While these options were not explored in much detail, it became clear that a broader investigation of the current scheme is warranted.
- 4.137** The New South Wales Council of Social Service (NCOSS) notes the system of developer contributions was introduced because of the experience of several decades ago when housing estates were built without necessary infrastructure. NCOSS acknowledged that the imposition of levies increases the risk of escalating the cost of housing; but asserted that the infrastructure required for liveable functioning communities must be provided, by whatever means:

Prior to the current system being introduced a lot of housing estates were built and redevelopment occurred without the necessary infrastructure, which is why the developer contribution system was introduced.

Our sector is not so much interested in the methodology that you use to obtain those facilities; our interest is in ensuring that people moving into those areas have access to neighbourhood centres, to childcare facilities and to things that

²⁴¹ Mr Morrison, Evidence, 30 March 2009, p 41

they need. We would be perfectly happy if Federal or State governments paid for those community facilities out of their taxes, borrowings or other means.²⁴²

- 4.138** In evidence, Mr Kenneth Morrison New South Wales Executive Director of the Property Council of Australia highlighted that currently developers outside growth centres where designated charge applies, face the uncertainty of what infrastructure charges will apply. Mr Morrison advised that the Property Council had raised the proposal of a flat percentage levy system:

One of the things we argued to the Government's review before Christmas was that we replace this ramshackle system with a flat percentage levy system so that there is much more certainty around what you are being charged and you can have a broader discussion around what level of taxation effectively is being applied to new development to fund infrastructure at a local and regional level.²⁴³

- 4.139** Mr Nethercote argued such a system might be appropriate in established neighbourhoods where physical infrastructure already exists, however, he did not believe it would be adequate in greenfield areas.²⁴⁴

- 4.140** Ms McKittrick said that councils, because of the constraints of rate-pegging, were forced to use section 94 contributions to fund new facilities for their overall populations. Ms McKittrick argued that section 94 contributions should only fund the basic required infrastructure, and that general public amenities should be funded by council rates:

We say you should cut it back to the very basics of the new development and spread the funding of infrastructure across a wider population base, just as Sydney Water has done with water and sewerage charges within the Sydney metropolitan area. We advocate that that is the model that should be used at all other levels to fund infrastructure. To do that, local government would have to have rate pegging removed. We do not want to see a holus-bolus claim for massive increases of rates, so there needs to be clear guidance around that, but that is what we have been advocating to government.²⁴⁵

- 4.141** Mr Nethercote noted suggestions to review rate pegging, and require councils to borrow money to fund infrastructure. While in favour of the removal of rate pegging, Mr Nethercote cautioned that this would be problematic depending on how much infrastructure councils would be then expected to fund:

Penrith Council could conceivably be able to deal with some of that. But the sorts of rate increases that would be needed to take significant elements out of the developer contribution funding arrangements and move those across to council borrowing would see pretty dramatic increases in rates beyond the

²⁴² Mr Warren Gardiner, Senior Policy Officer, Council of Social Service of NSW, Evidence, 24 August 2009, p 31

²⁴³ Mr Morrison, Evidence, 30 March 2009, p 41

²⁴⁴ Mr Nethercote, Evidence, 30 March 2009, p 55

²⁴⁵ Ms McKittrick, Evidence, 15 June 2009, p 31

general CPI limit that the Minister for Local Government would provide for councils on an annual basis.²⁴⁶

4.142 Ms McKittrick said that the recent review of development levies had demonstrated that the contributions framework is highly complex. She believed that it cannot be significantly reformed without a broad, comprehensive debate on how infrastructure is financed.²⁴⁷

4.143 Mr Nethercote mentioned that a number of alternatives to the current contributions regime had been presented to the State Government over recent years. He believed that rather than focusing on developer contributions as they are channelled through local councils, the time had come for a broader examination of the alternatives:

...those [development industry] groups have presented to government over some recent years now a range of opportunities and alternatives to just simply looking at the contributions regime as it is under the legislation. They go to propositions such as the tax increment financing or betterment tax type ideas, infrastructure bonding, review of the property tax regimes and those sorts of things.

I am certainly not claiming to be an expert on those but a number of those things [seem] to be heading down the right pathway in terms of looking at a suite of infrastructure funding mechanisms that would need to be introduced, rather than just simply focussing on developer contributions as they are channelled through local councils.²⁴⁸

4.144 Mr Sartor argued a greater integration between strategic land use and infrastructure plans could result in less focus on or even the removal of section 94 plans.²⁴⁹ This issue of land use and infrastructure integration, particularly transport integration is examined later.

Committee comment

4.145 The Department of Planning suggested that if an expert group was established to review and make recommendations for future reform of the planning system, then consideration could be given to deferral of commencement of the remaining components of the 2008 reforms, including provisions relating to developer charges and contributions.²⁵⁰ It was suggested that this would avoid further 'change fatigue' being experienced by councils.

4.146 The Committee agrees that the issue of developer charges and contributions warrants broader consideration beyond changes to the current framework. However, in the interim the Government should do whatever it can to reduce or defer its development charges and contributions.

²⁴⁶ Mr Nethercote, Evidence, 30 March 2009, p 52

²⁴⁷ Ms McKittrick, Evidence, 15 June 2009, p 28

²⁴⁸ Mr Nethercote, Evidence, 30 March 2009, p 52

²⁴⁹ Mr Sartor, Evidence, 15 June 2009, p 2

²⁵⁰ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 21

Major infrastructure

4.147 As noted at the beginning of this section the integration of land-use planning and major infrastructure, particularly transport planning and provision is essential for an effective planning framework.

4.148 Mr Gardner said recent work on regional strategies has been very encouraging. However, Mr Gardner argued not enough attention was paid to major infrastructure:

I am very encouraged by the last little period of work when there have been regional strategies—I think that is a very good initiative by the State Government—but I am very concerned about the quality of the work in those strategies. I am a great advocate of having them but it just seems woefully negligent to have a regional strategy like the one just released for the North Coast, which is a 25-year strategy about industrial land outcomes and housing outcomes over a 25-year period. The only mention of infrastructure is what is currently in the State infrastructure plan, which, I am sure you would be aware, is really much-needed catch-up stuff. That now will stop, it is almost behind its demand, yet this is a strategy with a 25-year horizon. There is totally inadequate attention to infrastructure.²⁵¹

4.149 The Department of Planning's 2009 Regional Strategy Update Report outlines the link between the whole-of-government State Infrastructure Strategy 2008-2018 and the Department of Planning regional strategies:

In June 2008, the NSW Government released the State Infrastructure Strategy 2008-2018. It outlines a \$140 billion capital program for the next decade. It links the planning embedded in the regional strategies with the budget process.

The regional strategies and their demographic information are repeatedly referenced in the State Infrastructure Strategy. A Schedule in each regional strategy identifies the infrastructure to be rolled out in each of the regions.²⁵²

4.150 Mr Gardner called for a greater infrastructure commitment from the State to be enshrined within the regional strategies. He argued that regional strategies should plan for previously committed State infrastructure. This would allow local government to do its job effectively under the strategy.²⁵³ Mr Gardner said that the ability to forward plan for both local and State infrastructure at the same would allow for suitable and appropriate land to be set aside for future development.²⁵⁴

²⁵¹ Mr Gardner, Evidence, 21 May 2009, p 32

²⁵² *Regional Strategy Update Report 2009*, Department of Planning, p 42

²⁵³ Mr Gardner, Evidence, 21 May 2009, p 33

²⁵⁴ Mr Gardner, Evidence, 21 May 2009, p 34

- 4.151** Mr Sartor agreed that the Government needed to be ‘truer’ to the regions by deciding what infrastructure is required for a region over a 20 year period and then providing it:

All I am saying is at that strategic level is when we should be saying here is a region, we expect it to grow by this much, this is what infrastructure will be provided over the next 20 years. Of course, some of that will come out of levies and some will not. I think that is better than rezoning a few things and then the council decides to do a section 94 plan and it goes off on a frolic or we decide at a State level that we have to change priorities. We need to be a bit truer to the regions. We need to decide what infrastructure has to be and stick to it.²⁵⁵

- 4.152** Mr Sartor said that the most important piece of infrastructure related to land-use is transport. This view was shared by Mr Morrison who drew the nexus between an effective planning system and the delivery of major transport infrastructure:

We would say that the Environmental Planning and Assessment Act was not the worst problem in the efficiency of our planning system, in particular, if you regard planning as being more than just development assessment. As I mentioned in my opening comments, in the area of infrastructure planning and, in particular, transport planning in Sydney, over the past decade we have had lots of changes in direction, which has had major implications for the way in which Sydney grows.

It is unsustainable not to be able to have a much better planning process to identify the transport needs for Sydney and then commit to those projects, get them on the ground and do the planning around that. That is a major need.²⁵⁶

- 4.153** Ms McKittrick went further, stating that the value of planning strategy was compromised by stronger than predicted population growth, significantly lower than required building production and, critically, a failure to deliver on key infrastructure commitments such as the north-west and south-west rail lines.²⁵⁷

- 4.154** Ms Alison McLaren, President, Western Sydney Regional Organisation of Councils also decried the failure to provide the transport infrastructure identified in strategic plans, and the focus on developing large parcels of land without regard to how they connected to existing infrastructure. Ms McLaren said that the Western Sydney communities were particularly prone to the effects of inadequate transport:

Western Sydney is the most ethnically diverse community in Australia and often recently arrived migrants do not have access to a car, so they are very reliant on public transport. If that public transport does not exist or does not go where they need to go, they will not seek employment. There is also a very large indigenous population. The social disadvantage experienced by

²⁵⁵ Mr Sartor, Evidence, 15 June 2009, p 13

²⁵⁶ Mr Morrison, Evidence, 30 March 2009, p 40

²⁵⁷ Ms McKittrick, Evidence, 15 June 2009, p 28

Aboriginal Australians is well documented. Everything comes back to the lack of access to transport. If you cannot get to school, if you cannot get to work and if you cannot meet with social networks, you will end up being far more disadvantaged²⁵⁸

- 4.155** Mr Morrison said that he believed there was not enough alignment between agencies' forward capital spending programs and the areas for which growth was planned.²⁵⁹ As mentioned in paragraph 4.102 the Government submission noted it might be worth including provisions in the EP& A Act regarding strategic planning for infrastructure. The Department of Planning advised that such provisions would ensure that all agencies had a clear focus on future infrastructure needs:

Legislation incorporating the requirement to specifically recognise the linkage between land use planning and infrastructure planning and delivery would serve to strengthen these [administrative] processes by clearly mandating to all agencies involved in land use and infrastructure planning and development their responsibility to adequately resource the planning process and have a clear focus on future infrastructure needs and timing to meet the challenges of growth and change.²⁶⁰

Committee comment

- 4.156** The need for greater integration of land use and infrastructure planning and provision has been acknowledged for some time. The Government reiterated this need by identifying strengthened integration as one of the key issues requiring examination and reform in the short term. The Committee is not in a position to state whether this will require legislative and or administrative amendment to ensure that the necessary infrastructure commitments to support current and planned communities will be made and then met.

Community consultation in strategic planning

- 4.157** There was general agreement that the planning system would benefit from greater community engagement when developing strategic plans. In evidence Mr Haddad acknowledged that achieving this is a challenge:

One area of consultation that we are probably still struggling with is consultation at the strategic level. We find that when we put policies out or plans out we are not getting the level of engagement sufficiently and then, of course, people engage more at the specific development application stage when there is an actual proposal. We may need to do a bit better in this area but it is an area of ongoing thinking. It is a challenge.²⁶¹

²⁵⁸ Ms Alison McLaren, President, Western Sydney Regional Organisation of Councils, Evidence, 15 June 2009, p 22

²⁵⁹ Mr Morrison, Evidence, 30 March 2009, p 43

²⁶⁰ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 38

²⁶¹ Mr Haddad, Evidence, 30 March 2009, p 7

- 4.158** The submission from the Housing Industry Association (HIA) highlighted the importance of involving the community at the strategic planning stage as a means of reducing objections at the development applications stage. The HIA suggested that removing third party appeals for development that complies with all of the planning controls and strategies for an area would force potential objectors to involve themselves during the development of strategic plans and subsequent planning controls.²⁶²
- 4.159** On the evidence before the Inquiry it appears in some regional areas generating community engagement is less of a problem.²⁶³ Mr Treloar told the committee that the Tamworth community ‘loved’ to get involved in local consultation. In the case of the preparation of its comprehensive LEP each member of the public who made a submission was able to give a presentation to the elected council and staff regarding their concerns about any of the issues in the LEP.²⁶⁴
- 4.160** Draft LEPs are required to be advertised for community comment for three months. Dr John Formby Chairman of the Friends of Crookwell, suggested that often this did not allow enough time, particularly given that LEPs are often long and technical documents.²⁶⁵
- 4.161** Dr Formby suggested in order to improve community input into Local Environment Plans (LEPs), councils should produce a plain English document to outline the objectives of the plan, including identifying any changes from the previous LEP:
- I think it is, and also, as you said, making people aware of what the key issues are in the plan. As you know, a plan is a very long and technical document and if you are a member of the public reading one of those, I reckon you would not have a hell of a lot of idea what it was all about. I think it is not just a matter of saying that the plan is there for people to look at. I would actually produce a document, which summarised what the council thought the key issues in the plan were, so that people would think, "Okay, we need to look at these."²⁶⁶
- 4.162** As will be discussed later in the report, there is a move for councils to outline their desired outcomes of their draft LEP in narrative prose, provide this to the Parliamentary Counsel’s Office who then draft the legal document to give effect to those outcomes.
- 4.163** It should also be noted that a rezoning amendment to an LEP could for all intents and purposes have the same effect and importance as a new comprehensive LEP on those persons whose property fall within or adjoin the land being rezoned.

²⁶² Answers to questions taken on notice during evidence, 24 August 2009, Housing Industry Association Limited, p 2

²⁶³ The Committee notes reports that Eurobodalla Shire Council received more than 700 submissions on its draft LEP; *ABC –LEP issues focus on State template*, www.abc.net.au/news/stories/2009/11/04/2732603.htm

²⁶⁴ Mr Treloar, Evidence, 21 May 2009, p 6; Mr Inglis, Evidence, 21 May 2009 p 3

²⁶⁵ Dr John Formby, Chairman, Friends of Crookwell, Evidence, 24 August 2009, p 26

²⁶⁶ Dr Formby, Evidence, 24 August 2009, p 27

Committee comment

- 4.164** Engaging the community in strategic planning is a challenging issue. The Government has rightly identified the need for an improved framework for community engagement at the strategic level.
- 4.165** The Committee did not receive much evidence to suggest how community engagement could or should be improved. However we do agree that when providing documents or plans for community input there is obvious merit in presenting them in clear language and in a manner that clearly identifies the issues that directly affect them.

Performance assessment

- 4.166** The need for a vision of what the planning framework aims to achieve and a strategic approach to achieving it is unquestionable. Once the aims have been set it is equally important to continually assess the outputs and outcomes of the planning system to determine whether that aim is being achieved.
- 4.167** As noted in Chapter 3 Ms Keneally described Australia's best planning system as one where decisions are made efficiently and transparently, where decisions provide certainty and are made at the most appropriate level. The Minister also noted that a planning system needs to create jobs and investment, protect the environment through sustainable development, increase housing affordability and deliver jobs closer to home.
- 4.168** Much focus has been placed on improving the capacity to assess the efficiency of the planning system in terms of the length of time taken to make planning decisions. While the Committee agrees with this aim, there is also a need to focus on assessing the outcomes of decisions.
- 4.169** Since 2005, the Department of Planning has published an annual Local Development Performance Monitoring Report. This Report collates an array of data on planning determinations, the size of developments and on the time taken to process a variety of categories of applications in order to determine if the planning system is working efficiently and effectively. The data is presented both on a Statewide and local council basis.
- 4.170** Mr Morrison is strongly in favour of the Local Development Performance Monitoring Report. He advocates that, as occurs in South Australia, a similar reporting regime be extended to include State agencies:

This report and the major project monitor are excellent reports that detail exactly what is happening for different categories of development, at different levels, and also council-by-council. They also shine the spotlight back at the performance of the Department of Planning in managing the part 3A projects. It is important for us to understand how successful the system is and how efficient it has been in managing projects. However, a gap exists as these reports miss the State agencies. Nothing out there monitors the performance of the different State agencies and how inefficient or efficient they are, which is a real gap. One of the things we have recommended is that there be a complementary report modelled on the local development monitor, or the

major projects manager, that looks at those State agencies and establishes how efficient they are.²⁶⁷

4.171 Action is being taken in this regard. The New South Wales Government submission advises that State agencies will shortly commence monitoring their own performance with respect to assessment of local development applications, issuing of concurrences and providing referral advice to local councils. This information will be used to assist in identifying ways that State government advice to councils can be optimised without delaying the assessment process.²⁶⁸

4.172 Many inquiry participants noted that discussion concerning the planning system tended to focus on process rather than outcomes. A number of participants identified outcomes that they believed should be included in any performance assessment scheme. For example, Mr Morrison suggested that, among other things, the planning system needed to be assessed on how well it was facilitating and measuring urban growth.²⁶⁹

4.173 Mr Ryan argued there needed to be greater measurement and reporting of the environmental outcomes arising from development decisions:

Finally, we see that there is a great gap at the moment in any monitoring system in the New South Wales planning system. For example, the New South Wales development monitor, which is published by the department, can tell you how many development applications were lodged and in which councils, how many part 3A developments were lodged and how long it has taken to the process those development applications, and it can tell you the value of those development applications but it cannot tell you how much native vegetation has been impacted as a result of those applications, and it cannot tell you how many of those had significant impacts on threatened species et cetera. We think there is a big gap in the qualitative monitoring of the planning system and to a certain extent we are operating in the dark because that monitoring just does not take place.²⁷⁰

4.174 The Committee notes that the Regional Conservation Plans (RCPs) being developed by DECCW are to be comprehensively reviewed every five years. The RCPs are based on the fundamental principle of improvement to or maintenance of biodiversity. The review of an RCP will, among other things, assess the extent of biodiversity loss and conservation gain against that predicted in the RCP.²⁷¹

4.175 Mr Haddad said that much more needs to, and will be, done to monitor the effectiveness of the planning system and the recent reforms. At the public hearing of 25 August 2009 Mr Haddad advised that the Department of Planning would soon be publishing a document detailing all the monitoring processes to be put in place.²⁷²

²⁶⁷ Mr Morrison, Evidence, 30 March 2009, p 39

²⁶⁸ Submission 69, p 6

²⁶⁹ Mr Morrison, Evidence, 30 March 2009, p 42

²⁷⁰ Mr Ryan, Evidence, 25 August 2009, p 35

²⁷¹ See for example: DECCW, *Lower Hunter Regional Conservation Plan*, April 2009, Sydney pp 6, 9

²⁷² Mr Haddad, Evidence, 25 August 2009, p 12

- 4.176** The Committee sought the view of Mr Sartor on how the success of the planning system should be measured. Mr Sartor responded that, in general terms, a planning system is working well if it allows development to be determined in accordance with community and stakeholder expectations.²⁷³ He said that in addition more specific measures relating to the efficiency of the planning processes could also provide insight.

Committee comment

- 4.177** The Committee has previously noted the need for greater community engagement in strategic planning . If this is achieved, then a review of the success of strategic planning documents in guiding development should provide a measure of whether community and stakeholder expectations are being met.
- 4.178** The Committee concludes that the review of the planning framework will need to consider the current range of monitoring mechanisms, with a view to determining how the performance of the planning system can best be monitored and reported.

²⁷³ Answers to questions taken on notice during evidence, 15 June 2009, Mr Sartor, p 3

Chapter 5 Local Environmental Plans

Local Environmental Plans (LEPs) is the second major issue with the current planning framework identified during the Inquiry. Strategic planning was considered in Chapter 4 and the decision making process will be considered in Chapter 6. The significance of LEPs within the planning framework were summarised by the Hon Ms Kristina Keneally, Minister for Planning during her appearance before the Inquiry into Budget Estimates 2009-2010:

LEPs guide decision making on land use. They determine the areas in which various types of development can be considered and which areas of open space and environmentally sensitive land need to be protected. These plans can have a profound and lasting impact on local communities and can affect the economic well-being of the State. So they need to be done well and they need to be done promptly.²⁷⁴

5.1 The three main issues identified in relation to LEPs were:

- the new Standard Instrument - a template in accordance with all new LEPs must now be made
- the length of time it takes to develop new LEPs and
- the detrimental effect that old, out-of-date LEPs has on the efficiency of the planning system.

The Standard Instrument LEP

5.2 The Standard Instrument (SI) LEP template was introduced in 2005. At that time all councils were advised that they would have to remake their LEP in accordance with the template by a certain target year. Each council was assigned to one of those. The Government submission states that the use of a standard template in plan making streamlines the process and results in greater consistency and certainty in local council decisions.²⁷⁵

5.3 The SI is comprised of standard clauses, definitions and zones from which councils select to build their LEP. The zones within an LEP are significant because development is determined by the zone within which land falls. While the SI zones had been finalised, the development of additional standard clauses continued during the Inquiry. The majority of councils who participated in the Inquiry expressed concern and dissatisfaction with the use of standard zones and clauses supported the use of standard definitions.²⁷⁶ Ms Jan Barham Mayor of Bryon Shire Council was one who concurred that where consistency was appropriate, it was a positive for the planning system:

²⁷⁴ GPSC 4, Inquiry into Budget Estimates 2009-2010, Hon Kristina Keneally, Minister for Planning, Evidence, 16 September 2009, p 41

²⁷⁵ Submission 69, New South Wales Government, p 3

²⁷⁶ Clr Genia McCaffery, President, Local Government Association of New South Wales, Evidence, 30 March 2009, p 21

I support the idea of there being standardisation of some things. If you look at the amount of time and money that has been wasted on differing definitions being argued in court, or zonings, I think where you can have consistency it is really good.²⁷⁷

- 5.4** The Committee was advised it was the Department of Planning's SI policy to provide for the broadest possible range of compatible permissible uses in rural, residential, commercial and industrial zones. This minimises the need for future rezonings and only allows the prohibition of land uses that are clearly incompatible with the objectives of the zone. The Department of Planning believed that as well as reducing the need for rezonings this would encourage innovative responses over time.²⁷⁸

- 5.5** However, many councils decried what they described as the 'one-size fits all approach' of the SI LEP. In March 2009, Clr Genia McCaffery, the President of the Local Government Association of New South Wales said that councils were struggling with standard clauses as they did not allow the ability to properly reflect the variance in communities, and that councils were forced to 'shoehorn' an area into a standard zone that was not appropriate. Clr McCaffery cited the example of Cremorne Point which she believed would suffer from being placed in a standard zone:

In North Sydney we have a place called Cremorne Point. It has a very particular history. It has had a residential G zone. It is a funny place because it has great big mansions and then it has a whole lot of flat buildings built in the 1920s and 1930s. So it has a unique history—very different to everything around it. We have had to shoehorn that area into a residential C zone. I do not believe it is going to work. I think we are going to get a whole lot of development there that that community is going to be furious about.²⁷⁹

- 5.6** Similarly, the Committee heard that Tamworth Regional Council was struggling with using the standard zones with respect to matching the current provisions it applies to the central business area of Tamworth and to Tamworth Regional Airport.²⁸⁰ While Byron Shire Council advised that it would lose its coastal protection zones that it had used effectively for the last 20 years.²⁸¹ Bathurst Regional Council said it was having difficulty applying an appropriate standard zone for Mount Panorama.²⁸²

- 5.7** Mr Graham Gardner, Director of Planning and Building at Greater Taree City Council was concerned that complying with the SI LEP format would see it lose some provisions that it had successfully used to provided good outcomes in the past:

²⁷⁷ Clr Barham, Evidence, 26 May 2009, p 23

²⁷⁸ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 51

²⁷⁹ Clr McCaffery, Evidence, 30 March 2009, p 22

²⁸⁰ Ms Genevieve Harrison, Strategic and Corporate Planning Manager, Tamworth Regional Council, Evidence, 21 May 2009, p 5

²⁸¹ Clr Barham, Evidence, 26 May 2009, p 13

²⁸² Mr David Shaw, Director, Environmental Planning and Building Services, Bathurst Regional Council, Evidence, 1 May 2009, p 42

In fact, we are going to lose some really nice provisions that were drafted into our current LEP. One in particular was a provision where we could basically consider any form of development outcome on the basis of a public conservation value arising. Since 1995 we have used that five times. For example, one was a small rural residential subdivision where if we carved up the whole landscape they were going to get X number of lots. There was an area of high conservation Sydney peppermint gums in the middle of the development. Basically we took that out as a public reserve and we used that provision to give them the same yield out of the remaining land. It was a sensible and rational trade-off. That provisional LEP allowed us to do that.²⁸³

- 5.8** The Committee put the concern expressed by Clr McCaffery to the Department of Planning via a written question on notice. The Department responded that there were options within the SI which would assist councils in maintaining the character of places such as Cremorne Point:

Each zone has mandatory objectives that form part of the Standard Instrument Order. Council may provide additional local objectives to give further guidance on how the zone may be applied.

The Department of Planning has recently released an LEP Practice Note to assist councils when drafting local zone objectives.

The Mayor's fears are not considered well-founded as there are options in the Standard Instrument LEP which will assist in maintaining the character of the Point including:

- the use of *local* objectives, where appropriate
- application of a floor space ration
- setting building heights
- the management of the many heritage items on the Point through the compulsory *Heritage conservation* clause in the LEP.²⁸⁴

- 5.9** In evidence, Mr Marcus Ray, Executive Director of Legal Services with the Department of Planning, expanded on the flexibility built into the SI LEP process, which he described as a collection of tools to be used to reflect the strategic approach and needs of a local area:

Certain land uses are prescribed in zones but there is a range of choice to put other land uses in zones. What councils do is the first building block. They do their strategic work and they build up the bundle of things that will go into particular zones. However, they also have some flexibility. Although we have model provisions we encourage councils, where the model provisions do not fit, to come forward with a local provision. As long as that local provision does

²⁸³ Mr Graham Gardner, Director of Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p 36

²⁸⁴ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 8

not undermine one of the mandatory standard provisions we are happy to consider it.

The standard LEP is really like a toolbox. However, you do not get there unless you do your strategic work and the work relating to each of the zones. There is a great deal of flexibility within each of the zones and within the controls. You can apply different controls in different clauses to different pieces of land. There is a degree of flexibility. As I said, there are also the additional local clauses. At a further level down there are development control plans. It is really not a one size fits all; it is a collection of tools that you bring together to reflect your local community, your local needs and your strategic approach.²⁸⁵

5.10 Mr Shaw, Director Environmental Planning and Building Services at Bathurst Regional Council argued that it is absolutely imperative that local provisions remain in a LEP. He was concerned that the capacity to insert local provisions to offset what is contained within a mandatory standard provision may result in LEPs simply becoming more cumbersome and less user-friendly.²⁸⁶

5.11 A number of participants raised concerns regarding the stated objectives for any zone. The former Minister for Planning, Hon Frank Sartor MP, said that there was a need to ensure that objectives were not internally contradictory.²⁸⁷ Mr Ian Graham a consultant planner said it was often difficult to determine how to comply with a zone's objective. He called for more work to be done on guidance for complying with the objectives of a zone including assigning them comparative weighting:

I think the new system falls down a little because of the objectives. They are a keen element in determining a zone. The zone seems to be the prominent basis for the determination. The land-use table is associated with it and those uses are permitted with consent and others are prohibited, coupled with the objectives of the zone. It is easy to define those uses that are permitted and those that are prohibited, but it is much more difficult to define how to comply with an objective.²⁸⁸

Committee comment

5.12 The importance of LEPs being able to support local variations and needs was a consistent theme raised throughout the Inquiry. The Committee notes the Department of Planning's view that councils will be able to meet their specific local needs through the use of local objectives and local provisions, albeit, 'where appropriate' and approved by the Department.

²⁸⁵ Mr Marcus Ray, Executive Director, Legal Services, Department of Planning, Evidence, 25 August 2009, p 8

²⁸⁶ Mr Shaw, Director, Evidence, 1 May 2009, p 35

²⁸⁷ Hon Frank Sartor MP, Evidence, 15 June 2009, p 2

²⁸⁸ Mr Ian Graham, consultant planner, Evidence, 29 May 2009, p 14

- 5.13** At the time of the conclusion on this Inquiry only a small number of SI LEPs had been finalised. As with other elements of the 2008 reforms, it is still too early to tell whether their stated intent will be realised.
- 5.14** The success of the SI LEP model will need to be judged primarily on the development outcomes to which it gives rise and how much those outcomes support and satisfy local community needs. The following section examines a suggestion, frequently put to the Committee, for improving the SI LEP.

Alternatives to a single Standard Instrument LEP

- 5.15** While there was general concern among local councils with the SI LEP template the Committee found that this was more pronounced among non-metropolitan councils. There was a consistent criticism that the SI was too city-centric and did not adequately address the needs of rural and regional councils. This prompted many participants to recommend that a number of SI templates be developed.
- 5.16** In evidence before the Committee Mr Gregory Cooper, Director, Environmental Services, Cabonne Council argued for two SIs – one city based and one rural based:

In terms of the local environmental plan, the standard instrument, a number of councils, including Cabonne, pushed very strongly that there should be two standard instruments, one of which is basically a city-based or a metro-based instrument—not just for Sydney, but it might even be applicable to Orange, for example. We also think there should be a new rural plan—very similar to the way it was back in 1980. They brought in a standard rural plan and a standard urban plan.

...There are a huge number of components to the standard plan that really just are not relevant. Rural areas are extremely complicated, but they are also very simple. A small number of controls based on some sound reasoning can actually control a whole lot of activities.²⁸⁹

- 5.17** The submission from Queanbeyan City Council suggested there was a need for three separate SI templates to reflect the different circumstances of rural, coastal and metropolitan areas. In evidence, Ms Lorena Blacklock, Strategic Planning Coordinator, Queanbeyan City Council, expanded on the proposal, noting that landform and land features guide the requirements of each LEP:

The actual focus of the planning instruments in regional and coastal areas is quite different from the metropolitan and urban context. In terms of reflecting the planning controls, councils such as Queanbeyan do not have a high emphasis on particular multitudes of residential type zones. There is also a mix between looking at rural residential type developments and maintaining diversity, protecting agricultural lands—which tends to be under threat from further expansion of rural areas—looking at water catchments and things like that, which do not necessarily happen in the city. The coastal one is different

²⁸⁹ Mr Cooper, Evidence, 1 May 2009, p 49

from the regional one, in that there are a lot more different landforms and features.²⁹⁰

5.18 Ms Blacklock noted that the SI LEP has standard mandatory clauses that apply for all LEPs, and that currently there was the capacity for individual council to develop new local clauses and submit them to the Department of Planning for approval. Such clauses would then be offered to all other councils for inclusion in their new LEP. Ms Blacklock was concerned that it could translate into a ‘first-in, best-dressed’ scenario in terms of standard local clauses. That is why Queanbeyan was in favour of three templates – so that there are three suites of standard local clauses.²⁹¹

5.19 Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, echoed these concerns in evidence before the Committee. He related the case of his council’s proposed flooding clause in its LEP. Shoalhaven City Council was advised by the Department of Planning to use one of the clauses that had already been through the system. Mr Clark noted his concern with this approach:

We are told to use one of the ones that have currently been through the system. We could say, yes, that is fine, but the flooding clause for Liverpool does not assist the Shoalhaven. We have got a completely different situation. We need a more tailored clause that applies to our situation.²⁹²

5.20 Mr Clark agreed there was a need for some delineation in terms of metropolitan, regional and coastal issues. As an alternative to separate LEP templates, Mr Clark suggested the establishment of a series of separate provisions and clauses tailored for metropolitan, regional and coastal areas from which councils could select in consultation with the Department of Planning

5.21 Mr Sam Haddad, Director General, Department of Planning, acknowledged that the desire for standardisation and the need to reflect local planning strategies was a challenge that needed to be balanced:

We need to ensure that their local strategies are properly reflected in the planning instruments. That is the end outcome. If the standard planning instruments that we now have do not reflect local strategies—the strategies that have been developed to reflect local requirements—either we have to find another one or we have to do something about it. Basically, that is the answer to your question. When we standardise all over the State we must ensure that we do not keep on adding things as we might end up non-standardising. That is the challenge we have.²⁹³

²⁹⁰ Ms Lorena Blacklock, Strategic Planning Coordinator, Queanbeyan City Council, Evidence, 19 May 2009, p 3

²⁹¹ Ms Blacklock, Evidence, 19 May 2009, p 7

²⁹² Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, Evidence, 19 May 2009, p 14

²⁹³ Mr Sam Haddad, Director General, Department of Planning, Evidence, 25 August 2009, p 8

- 5.22** In evidence the Director of Planning of Byron Shire Council, Mr Raymond Darney, argued that if there had been different templates, then there would be greater chance of substantially standardised LEPs within a region; whereas, he argued, the current process might result in less standardisation of LEPs, as councils will increasingly seek to have their own local provisions approved:

We would have a more consistent approach, even with our local provisions, if we had a more regional or rural orientated plan, if some of the definitions you need for caravan parks and things like that were in there, and if flooding and bushfires were addressed. The normal things that we deal with day by day, that could have been covered, are not covered in the template. Ballina, Tweed, Lismore, Byron, Grafton, et cetera, could all have had a predominantly similar LEP. We have now all gone in with trying to get our own local provisions. I do not believe it was ever the direction that the Government should have taken. It should have just said, "Let's have one for Sydney, one for the coast, and one for inland New South Wales."²⁹⁴

- 5.23** In his submission and evidence Mr Sartor argued the planning system needed to allow for more flexibility in country towns, particularly those not under a lot of growth pressure and where decisions are unlikely to result in setting an undesirable precedent. Mr Sartor noted that to achieve this type of flexibility would require carefully crafted planning controls:

So I think there is a strong argument for more flexibility in country areas because it is not as if you set the precedents that you would set in a high-pressure part of Sydney where the moment you allow it for each you have to allow it for everyone else. In some of those towns it will not matter because it is not as though they are under a lot of growth pressure. So, yes, you are quite right. How to fix it is difficult. It is just to have better crafted planning controls and making sure the local councils in those country areas get a bit more flexibility in what they can do.²⁹⁵

- 5.24** The proposition of developing three SIs was put to representatives from the Department of Planning. Ms Yolande Stone, Executive Director, Policy and Systems Innovation said she believed the issue was one of not having enough tailored clauses to meet the needs of inland council LEPs. Ms Stone said that because most of the new SI LEPs being developed were for coastal and metropolitan councils, there had probably not been enough attention given to developing local clauses to meet the requirements of inland councils.²⁹⁶

- 5.25** As mentioned in Chapter 4, over the course of the Inquiry it appeared the Department of Planning was giving greater acknowledgement of the need for the planning system to accommodate different needs across the State. For example, when discussing the finalisation of the Draft Centres Policy, Mr Haddad said this significant policy had to address very

²⁹⁴ Mr Darney, Evidence, 26 May 2009, p 23

²⁹⁵ Mr Sartor, Evidence, 15 June 2009, p 16

²⁹⁶ Ms Yolande Stone, Executive Director, Systems and Policy Innovation, Department of Planning, Evidence, 25 August 2009, p 7

difficult issues, and the Department of Planning was moving carefully to ensure the policy recognised regional, rural and metropolitan differences.²⁹⁷

Committee Comment

- 5.26** The Committee believes there is a strong case for developing an alternative to the current single SI LEP model that better addresses the different needs of metropolitan, coastal and rural councils. It is likely that an alternative model would result in both greater acceptance by local government and ultimately greater standardisation, albeit on a regional basis.

Recommendation 4

That the Department of Planning review the Standard Instrument LEP template with a view to developing a number of templates that reflect the different needs of metropolitan, rural and coastal local government areas.

Cost of preparing new SI LEPs

- 5.27** The cost of preparing a new LEP is significant, and this is an issue particularly for smaller councils. The Department of Planning uses monies from the Planning Reform Fund to, among other things, assist local councils in the preparation of their new LEPs. Councils must apply for this funding.
- 5.28** By September 2009 there had been six rounds of funding. Following finalisation of this sixth round, \$23 million had been allocated to local government with 72 per cent going to rural and regional councils.²⁹⁸
- 5.29** Mr Craig Filmer, Director Planning and Environment, Young Shire Council said that all rural councils were facing significant costs in producing their new LEPs and only half of this cost was provided by Planning Reform Fund.²⁹⁹
- 5.30** The Acting General Manager of Goulburn Mulwaree Council, Mr Christopher Berry, advised the cost of preparing the suite of planning documents required for the new comprehensive LEP ran to about \$1 million dollars, \$475,000 of which was financed by the Planning Reform Fund. Mr Berry said it would not have been possible to complete the project without this funding and the use of external consultants. Mr Berry noted it would be difficult for smaller, more remote councils to find the resources and access the skills required to develop the documents and plans.³⁰⁰
- 5.31** The Ms Elizabeth Stoneman, Manager, Planning and Development Services of Leeton Shire Council said council had two applications for Planning Reform Funds rejected because, in her

²⁹⁷ Mr Haddad, Evidence, 25 August 2009, p 16

²⁹⁸ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 41

²⁹⁹ Mr Filmer, Evidence, 1 May 2009, p 18

³⁰⁰ Mr Christopher Berry, Acting General Manager, Goulburn Mulwaree Council, 19 May 2009, p 21

view, Leeton was not viewed as a priority council. Ms Stoneman said council had taken the view it would not commence the preliminary planning for preparing a new comprehensive LEP until it did receive funding:

The council has taken the viewpoint that it will not start the procedure until we have planning reform money because there a couple of studies that we need to undertake that will cost the council a large amount of money. Really, we have better things to spend that on, such as water, sewer and roads.³⁰¹

Committee comment

- 5.32** As noted earlier Ms Keneally acknowledges that LEPs, given their profound and lasting effect on local communities, need to be done well and done promptly. The Committee is concerned that many councils may not be able to meet the cost of preparing a new LEP under the current funding arrangements.

The time taken to make an LEP

- 5.33** It is probably fair to say that old, out-of-date LEPs are the bane of the planning system. Some believe that the planning system has become more adversarial primarily because of the prevalence of out-of-date LEPs. They give rise to the need to consider individual rezonings, which is a resource and time-consuming process.
- 5.34** Out of date LEPs also impede initiatives to improve the system. For example, the 2008 reforms introduced a new type of third party objector reviews for specified types of development when standards are exceeded by more than 25 per cent. Mr Aaron Gadiel, Chief Executive of the Urban Taskforce Australia, said he did not agree with this reform, primarily because the development standards were often inappropriate because they were set ten to 25 years ago in old LEPs.³⁰²
- 5.35** The State Government has set itself a target to achieve a 50 per cent overall reduction in the time taken to produce LEPs. Ms Keneally said the new Gateway process for approval of LEPs would assist in meeting this target:

it provides clear and publicly available justification for each plan at an early stage; it ensures that vital New South Wales and Commonwealth agency input is sought at an early stage; and it replaces the former one-size-fits-all system—under which all LEPs, large and small, were subject to the same rigid approval steps—with one that better tailors assessment of the proposal to its complexity. Importantly, it improves links between long-term strategic planning documents, such as regional and metropolitan strategies. This system does not involve any increase in the New South Wales Government's powers

³⁰¹ Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council, Evidence, 29 May 2009, p 31

³⁰² Mr Aaron Gadiel, Chief Executive Officer, Urban Taskforce Australia, Evidence, 30 March 2009, p 31

and represents a potential reduction of powers because the Minister now can delegate decisions on new plans.³⁰³

5.36 The target times for amendments to or replacement of LEPs are:

- 3 months for a minor rezoning to correct anomalies
- 6 to 12 months for routine rezonings
- 6 to 12 months for land release and other major rezonings that are consistent with regional or sub-regional strategies
- 2 years for a comprehensive LEP.³⁰⁴

5.37 Mr Glen Inglis, General Manager of Tamworth Regional Council told the Committee his council's major planning and land-use issue was the finalisation of their comprehensive LEP to drive forward the prosperity of the local economy. Mr Inglis said that council had had its section 65 application lodged with the Department of Planning since September 2008, and the time being taken to progress the matter was of concern:

That is of great concern, not only to us; it puts that dint in investor confidence, and I am sure you understand how that can work. They need to have some surety to invest money in things. Getting back to my earlier point, as a council we see the LEP as one of the key documents of the council. Personally, I see it second to the budget. The budget is obviously the most important document but second to that for a regional city is the LEP. So, currently that is the number one thing we would like to have sorted out. There has been a little bit of movement at the station in the past couple of days but there has been a little bit of movement at the station periodically over that time anyway.³⁰⁵

5.38 The Gateway process and the remaking of all LEPs according to the SI LEP was an ambitious undertaking. Early during the Inquiry many councils voiced their concern about the time taken to work through the new process. In March, the Mr Haddad agreed that it had been a frustrating exercise and a departmental is identifying how to improve the efficiency of the process:

It is taking too long, much longer than what is expected. It is a very frustrating exercise. It is taking longer than what is expected in terms of the design of the program itself for a number of reasons: first, people want to devise a strategic outcome, so you are rethinking your whole area from a strategy point of view. That takes time. Second, the legal complexities involved are very extensive, so people are trying to get all the legalities precise. Third, the resources of councils, the departments and Parliamentary counsel needed to reach a point. I fully agree with you in terms of some of the program itself. It has been hard work to get it and it is very unfortunate that it is not being delivered in

³⁰³ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 14

³⁰⁴ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 41

³⁰⁵ Mr Glen Inglis, General Manager, Tamworth Regional Council, Evidence, 21 May 2009, p 3

accordance with timetables that have been promised before and without due thought about what had to be done.

I am now looking at some sort of adjustment to the scheme, because you are right—councils are expressing concern about it. We will have to respond to that. For example, we have now learned enough through various legal mechanisms to be able to progress councils into, say, exhibition without going through Parliamentary Counsel. That will cut a lot of time. We are looking at a number of streamlining processes and hopefully we will be doing much better given that we have gone through all the difficult stuff we have been going through.³⁰⁶

5.39 The Department of Planning advised, as at 28 April 2009, of the 118 councils who had formally resolved to prepare a SI LEP, four had completed the process. The Department of Planning further advised it was in the process of re-prioritising the SI LEP program to establish a list of priority LEPs to be progressed to gazettal over the next two years.³⁰⁷

5.40 In September 2009, during the Budget Estimates hearings, Ms Keneally advised that with respect to rural and regional New South Wales, two councils had finalised their comprehensive LEP in line with the SI; ten councils had completed the formal exhibition of their draft LEP, and two others were currently on exhibition.³⁰⁸

5.41 In evidence to the Committee, Ms Clarke said she was sure the reason why so many LEPs were not progressing through the Department of Planning was a lack of resources within the Department of Planning.³⁰⁹ This view was echoed by other participants,³¹⁰ including Mr Gordon Clark from Shoalhaven City Council:

I think that perhaps the Department of Planning possibly underestimated the task at hand and when you work back from the deadlines that they gave to councils in the first instance, they possibly could have seen the flood of LEPs that would hit them at a particular point in time. I do not know whether they and Parliamentary Counsel were resourced and ready for that to hit them.³¹¹

5.42 Leeton Shire Council was originally scheduled to have a new SI LEP by 2011. However, the Committee heard following the decision by the Department of Planning to re-prioritise the completion of LEPs, Leeton's target date would most likely be pushed back to 2013 or 2015. The Committee was advised that this was not a concern for Leeton as it had a major LEP amendment instrument gazetted in 2000, which provided residential, commercial and industrial land to take the area forward to 2030.

³⁰⁶ Mr Haddad, Evidence, 30 March 2009, p 14

³⁰⁷ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 44

³⁰⁸ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 42

³⁰⁹ Clr McCaffery, Evidence, 30 March 2009, p 18

³¹⁰ See for example: Mr Inglis, Evidence, 21 May 2009, p 4

³¹¹ Mr Clark, Evidence, 19 May 2009, p 11

- 5.43** However, other councils expressed anxiety about the delay in the processing of new SI LEPs, and at the time of giving evidence were apprehensive about whether or not they would make the Department of Planning's priority LEP list.³¹²

Role of Parliamentary Counsel

- 5.44** Throughout the public hearings the Committee questioned local government representatives on their experience in developing and having new LEPs approved, to determine why the process was so time consuming. During these discussions many participants expressed concern at the role and practices of PCO. Many believed that the PCO was a, if not the, major contributing factor to delays in the process.
- 5.45** The Parliamentary Counsel, Mr Don Colaguri SC gave evidence before the Committee in August 2009. It became apparent that while many of the criticisms of the PCO may have had some basis in the past they were not applicable in the present. Mr Colaguri also outlined recent initiatives that appear likely to improve the process.
- 5.46** In evidence Mr Colaguri said PCO has three roles with respect to planning:
- drafting planning instruments on the instructions of the Department of Planning
 - providing legal opinion on planning instruments
 - providing public access to consolidated and up-to-date planning instruments via the New South Wales Government legislation website.³¹³
- 5.47** The PCO deals with State Environmental Planning Policies (SEPPs), which are made by the Governor, LEPs, which are made by the Minister, but not Development Control Plans (DCPs), which are made by councils. Mr Colaguri noted that, unlike regulations, Parliament cannot disallow planning instruments, and that to a certain extent the PCO has been involved as a form of accountability that the planning instruments are in accordance with Parliament's intentions when they enacted the EP&A Act.
- 5.48** Many local government representatives were very critical of the time taken by the PCO in dealing with their draft LEPs. Many participants told the Committee that the PCO had taken up to twelve months. However, it appears that the cause of the delays more likely rests with the Department of Planning rather than the PCO.
- 5.49** The Committee heard that the PCO has a performance measure to deal with at least 70 per cent of the instruments that are submitted for drafting and an opinion within 20 business days.
- 5.50** Mr Colaguri was aware of the criticism of the timeliness of the PCO in dealing with LEPs and he provided the following performance figures for the percentage of instruments completed within 20 business days:
- 2004-2005 – 75 per cent

³¹² Ms Harrison, Evidence, 21 May 2009, p 6; Mr David Broyd, Group Manager, Port Stephens Council, Evidence, 17 August 2009, p 6

³¹³ Mr Don Colaguri SC, Parliamentary Counsel, Evidence, 25 August 2009, p 19

- 2005-2006 – 89 per cent
- 2006-2007 – 92 per cent
- 2008-2009 – 88 per cent.³¹⁴

5.51 Mr Colagiuri said he believed a new document tracking system will allow councils to easily determine where their LEP is sitting within the process:

The department has now done a lot of work to develop a document management system to track planning instruments. The long and the short of this long story is that a council sends up an instrument, asks regional office where it is, and it is told, "It is with Parliamentary Counsel." Often a council does not realise that it has not yet got to Parliamentary Counsel, or it has been to Parliamentary Counsel and it has gone back to the department. People get the perception that something has been sent up, 12 months have gone by and they are informed that it is still with Parliamentary Counsel.³¹⁵

5.52 Some participants suggest the PCO be removed from the process. Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council questioned whether, with the introduction of the SI, the PCO was still required in the process:

The previous speaker was asked a question about Parliamentary Counsel. It struck me when I was hearing that conversation that if we have a new template as a blueprint for how a local plan should be produced, that is, a local environmental plan, and we have a standard set of zones, a standard set of land use definitions, a standard framework, I pose the question: Why do we need to go backwards and forwards to Parliamentary Counsel if we are working on a standard proposal?³¹⁶

5.53 In response to this type of suggestion both the Department of Planning and the PCO emphasised the need to have LEPs legally made stems from the fact that a breach of a plan can result in criminal penalties of up to \$1.1 million.³¹⁷

5.54 During the public hearing in Tamworth it was suggested the role of the PCO in drafting LEPs might be better given to a dedicated legal branch in the Department of Planning, to remove one step in the process. When the proposition was put to Mr Thorne saw some merit, but also cautioned the need for legal clarity:

I think there is some merit in that, to be honest. I think that, like every industry, planning has its own jargon, and whether that causes a problem in a legal sense in court—you would want to be careful of that, and that is why you would still need to have a legal mind on it. But if it were a legal mind that is

³¹⁴ Mr Colagiuri, Evidence, 25 August 2009, p 20

³¹⁵ Mr Colagiuri, Evidence, 25 August 2009, p 24

³¹⁶ Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council, Evidence, 30 March 2009, p 53

³¹⁷ Mr Ray, Evidence, 25 August 2009, p 12; Mr Colagiuri, Evidence, 25 August, p 19

very familiar with the planning system and the intent of it, I would support that as being a positive way to go about it.³¹⁸

5.55 On the question of an expanded legal branch within the Department of Planning drafting LEPs the Mr Haddad advised if possible, he would prefer to address improvements to the process rather than take over the role of the PCO.³¹⁹

5.56 The other criticism made by many councils was changes made by the PCO to the draft LEPs submitted by councils went beyond legal drafting issues to planning policy issues.³²⁰ Mr Garry Styles, General Manager of Orange City Council highlighted what he believed to be a fundamental problem with the current process:

In relation to efficient plan making, we think there need to be some improvements with the Parliamentary Counsel process. This idea that we will do all the stuff to produce a plan and settle it down and then it will go to Parliamentary Counsel who will come up with some amendments and we have to readvertise is not, in our view, the right way to do it. We think it should be the other way around so that we can get something that we can settle and put on exhibition with the input of Parliamentary Counsel. Of course, that needs to be resourced.³²¹

5.57 The Department of Planning acknowledged this problem. Mr Marcus Ray, Executive Director, Department of Planning, explained a new approach to present to the community during the consultation process a planning proposal in narrative form, not a technical LEP to outline the draft LEP aims. Following consultation, the narrative is sent to the PCO for legal drafting:

One of the important initiatives that we are now going forward with in the reforms to plan making is a different way of drafting and a different way of going to the community and conducting the community consultation. We are having a planning proposal rather than a draft instrument. That planning proposal is, if you like, in narrative form what council wants to achieve with that particular plan. Then with the drafting process, although it still comes at the end, people have not been thinking in terms of actual clauses in instruments. So that planning proposal is to form the basis of the legal drafting. Then there is to be a cooperative approach between Parliamentary Counsel, the department and councils, a more cooperative drafting approach—which is something the department has done for a long time with Parliamentary Counsel on State instruments. So we are now moving towards that sort of interactive approach.³²²

³¹⁸ Mr Thorne, Evidence, 26 May 2009, p 41

³¹⁹ Mr Haddad, Evidence, 25 August 2009, p 13

³²⁰ For example: Mr Clark, Evidence, 19 May 2009, p 16; Mr Shaw, Evidence, 1 May 2009, p 41

³²¹ Mr Garry Styles, General Manager, Orange City Council, Evidence, 1 May 2009, p 25

³²² Mr Ray, Evidence, 25 August 2009, p 12

- 5.58** Mr Ray noted this would be a more resource-intensive approach. He said the Department of Planning would have to resource it to make it work. For the system to work the legally drafted LEP must exactly reflect and enable the implementation of the intent of the planning proposal presented to the community.³²³ Mr Colaguri agreed:

If we have not got the intent, then Parliamentary Counsel will say that we have failed. Our task is to get into the written law the detailed policies that the people who are deciding the policy want. If we have not done it, we have failed in our job.³²⁴

- 5.59** Mr Colaguri said problems arose when councils drafted the actual LEP. Mr Colaguri believed the new process where councils provide in narrative what the LEP instrument needs to achieve should solve much current dissatisfaction.

- 5.60** The Committee only became aware of this new approach to the drafting of LEPs during the final public hearing of the Inquiry. This approach appears to have significant potential, the Committee notes it did not have the benefit of the views of local government representatives.

- 5.61** Previously new LEPs were officially made when published in the Government Gazette. Now new LEPs are officially made when published on the website managed by the PCO. Mr Colaguri explained how the adoption of the SI will streamline required changes in standard definitions:

If a problem has arisen and we need to change the standard instrument definition of what a church is, this will be done by order of the Governor and, after the order is made, it will automatically change all the planning instruments that have adopted the standard instrument. For all those councils that have adopted the standard instrument, it will automatically change the definition in the official version of the instrument.³²⁵

- 5.62** Some years ago the PCO received an increase in staff resources to deal with drafting environmental planning instruments. Mr Colaguri said notwithstanding this increase the staff dedicated to planning instruments cannot by itself cope with the number of instruments that comes in, and this work needs to be undertaken by other areas within the PCO. This has been necessary in particular because of the demands of the SI program.³²⁶ Mr Colaguri said there had been some anxiety about the resource demands of the SI LEP program, but this had been allayed by the creation of the SI LEP priority list.³²⁷

Committee comment

- 5.63** Out-of-date LEPs are a major problem for the planning system in New South Wales. They impede the strategic and orderly development of local areas. They create a vicious circle by

³²³ Mr Ray, Evidence, 25 August 2009, p 12

³²⁴ Mr Colaguri, Evidence, 25 August 2009, p 26

³²⁵ Mr Colaguri, Evidence, 25 August 2009, p 22

³²⁶ Mr Colaguri, Evidence, 25 August 2009, p 23

³²⁷ Mr Colaguri, Evidence, 25 August 2009, p 24

creating an increased need to consider separate rezonings that in turn engage resources that could be directed to the development of comprehensive LEPs.

5.64 The Committee notes the apprehension of many local councils who are concerned at the length of time that will elapse before they will have a new comprehensive LEP in place. The Committee believes it is imperative that all councils be assisted in developing their new LEPs as soon as possible.

5.65 While the initial timetable for new LEPs may have proven to be ambitious, it is better to retain that ambition rather than resile from it. It is a concern that the SI priority list, which will result in winners and losers, appears to be a result of inadequate resources within the Department of Planning and the PCO. Local councils also face significant costs in developing new LEPs.

Recommendation 5

That the New South Wales Government provide additional funding to local councils, the Department of Planning and the Parliamentary Counsel's Office so all councils have a Standard Instrument Local Environmental Plan made within the next two years.

Keeping LEPs up to date

5.66 There was consensus that in an efficient planning framework LEPs are subject to regular review and amendment. There were differences of opinion on how frequently reviews should be conducted, and whether a set timeframe could apply to all councils.

5.67 Mr David Broyd, Group Manager, Port Stephens Council and a member of the Local Government Planning Directors Group (LGPDG), said councils should be required to undertake a comprehensive review of their LEP every five years.³²⁸ This view was shared by Ms Julie Bindon, President of the Planning Institute of Australia (PIA) who pointed out that a five-year mandatory review mechanism has been in place in most plan-making legislation around the world for a long-time.³²⁹

5.68 Mr James Treloar, Mayor of Tamworth Regional Council bemoaned the fact that implementing regular reviews of LEPs is a fundamental need the planning process has been unable to achieve. Mr Treloar pointed to the proliferation of requests for spot rezonings as a manifestation of this inability:

I do not think spot rezonings are the solution. The solution is to have a process where the planning review can take place to a minor degree every five years and substantially as is required, about every 10 years. Looking at spot rezonings is a piecemeal process.³³⁰

³²⁸ Mr Broyd, Evidence, 17 August 2009, p 6

³²⁹ Ms Julie Bindon, President, Planning Institute of Australia, Evidence, 9 March 2009, p 48

³³⁰ Mr James Treloar, Mayor, Tamworth Regional Council, Evidence, 21 May 2009, p 4

- 5.69** Conversely, the Committee heard that Greater Taree City Council had developed a single LEP for its area in 1995. As a result of having a single up-to-date LEP and the use of strategic land-use planning, there has not been much pressure for spot-rezonings:

Basically what we do in Taree is implement our strategies. There have been very few rezonings that we have supported that do not have strategic justification under our local strategies. That is not to say that opportunistically there might not be a good suggestion or something worthwhile come out, but to date there have not been any major changes to what we had in the first place.³³¹

- 5.70** The Housing Industry of Australia (HIA) argued unexpected population growth and changes in manufacturing and commercial practices create a need to alter the residential/industrial/commercial mix. The HIA argued even five-year reviews of LEPs is not sufficient to keep pace with the fluidity of investment nor can they deliver the certainty and efficiency capital markets require. The HIA believes rezonings are necessary, and should be made a more allowable, feature of the planning system.³³²

- 5.71** Mr Glen Inglis the General Manager of Tamworth Regional Council was in favour of having a set statutory review period as this provides the development industry with some confidence and ability to forward plan. He cautioned that review requirements would need to take into account the size and nature of different councils:

So it is always nice to be able to say to the development industry that our LEP is up for review in such and such a year so they have something that they can look to and plan to. But as to the requirements about a review period, you just have to be cautious about that because the need for, say, Tamworth Regional Council to do an LEP review and the requirement for, say, Walcha Council to do an LEP review are entirely different... But reviews are important and review periods I think are important to the development industry to know that it is coming up for a review. So I like the idea of actually having a statutory review period.³³³

- 5.72** LEPs are required to reflect their relevant regional strategy and regional strategies must be reviewed every five years.

Trigger points for LEP reviews

- 5.73** A set regular review period for LEPs is an important mechanism to ensure they remain current and capable of catering for forecast needs. Nevertheless circumstances can change within a review period that may warrant a comprehensive change to an LEP.

³³¹ Mr Gardner, Evidence, 21 May 2009, p 36

³³² Answers to questions taken on notice during evidence, 24 August 2009, Housing Industry Association, p 1

³³³ Mr Inglis, Evidence, 21 May 2009, p 7

- 5.74** During the Inquiry the concept of agreed trigger points for a comprehensive review of an LEP was proposed as an alternative or additional model to a set review period.
- 5.75** Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council, said for rural councils not subject to continuing population growth a flexible LEP review system with triggers would be an excellent idea.³³⁴
- 5.76** Mr Haddad agreed it is counterproductive to strictly adhere to a timeframe, when changes in circumstances demand a review:

I think that is appropriate. Timeframes are just timeframes, but the strategic issue is significant changes or changes which can impact on the outcome. Obviously there are other things, including the rate of growth, different growth, and different requirements. These are things that change in communities. These things are happening, and we are still waiting another five years to review the LEP. Obviously there is something fundamentally flawed in that.³³⁵

Committee comment

- 5.77** The Committee previously stated the importance of keeping LEPs current and up-to-date. As such we support the principle of mandatory review periods. We also believe there is merit in adjoining local government areas undertaking reviews at the same time. There is similar merit in LEPs being reviewed following the review of the relevant regional strategy.
- 5.78** The Committee emphasises that a five-year review or assessment may show that an existing LEP is satisfactory and does not need to go through the formal process of ‘making’ a new comprehensive LEP for approval by the Minister. This will particularly be the case for local government areas that experience only minimal growth pressures. Conversely changing circumstances may demand an LEP be comprehensively remade notwithstanding that it may be less than five years old.
- 5.79** The fundamental review of the planning framework will need to consider and recommend an LEP review system model that best ensures LEPs are regularly assessed and remain up-to-date.

LEPs to contain all controls

- 5.80** A number of Inquiry participants pointed out that the LEP is the first and primary reference point for any landowner or developer. During the Inquiry the experienced planner and non-practicing lawyer, Mr John Mant, presented his concept where all development controls that apply to a given parcel of land are consolidated into a single document akin to an LEP. The Committee explored this concept with other Inquiry participants.

³³⁴ Ms Elizabeth, Stoneman, Manager Planning and Development Services, Leeton Shire Council, Evidence, 29 May 2009, p 34

³³⁵ Mr Haddad, Evidence, 25 August 2009, p 13

5.81 Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, also argued that for any landowner or developer the LEP is the primary document they refer to for the relevant development controls. Mr Clark suggests that wherever possible development controls should reside within the LEP.

5.82 Mr Clark said that as part of the process of working towards its new comprehensive LEP, Shoalhaven Council was advised that its old, but highly regarded, bushfire hazard reduction clause could not be included in its new LEP as it would duplicate a requirement that sat in a separate piece of legislation. Mr Clark suggested duplication should be avoided, but for practical reasons it might be allowed if it makes the process easier for users:

We are told that from a State level that clause has to be removed because that requirement already sits in some legislation, in a miscellaneous amendment Act. Our view on that is that we accept that, but the bottom line is that the landowner or developer within the Shoalhaven will pick up our LEP first. So if there is some duplication there when they read our LEP, they will not look for some reference in some miscellaneous amendment Act.³³⁶

5.83 Mr Anthony Thorne, a member of the Urban Institute of Australia and planning practitioner, shares the view that the LEP will always remain the primary reference point. Part of the rationale behind the standardisation of LEPs was to make it easier for users who develop land in different local government areas. Mr Thorne was of the view, however, that the move towards standardisation of LEPs was not a strict necessity:

I do not think they have to be identical. When you move into another area you always go to the LEP. And you will do so in the future, even with a comprehensive LEP, because there are some local nuances in each of them, or there are some differences in each of them. You are still going to look at them.³³⁷

5.84 As noted earlier in Chapter 3 many councils advised the introduction of the *SEPP Exempt and Complying Development 2008* had resulted in far more restrictive exempt provisions than had previously existed. Mr Gordon Clark told the Committee that Shoalhaven City Council had suggested that it would have been better if the State Government rolled out the standardisation of exempt and complying development via the SI LEP instrument rather than creating another SEPP.³³⁸

5.85 Mr Mant's concept is for a single document to contain all the development controls relating to a specific parcel of land. When people wish to consider development of that land they need only to reference that one document. In this concept local and State governments would have the authority to specifically amend this single document.³³⁹ Finally, within this concept, all controls applying to a parcel of land would be accessible on-line, in one integrated, authorised and up-to-date document.

³³⁶ Mr Clark, Evidence, 19 May 2009, p 11

³³⁷ Mr Thorne, Evidence, 26 May 2009, p 39

³³⁸ Mr Clark, Evidence, 19 May 2009, p 14

³³⁹ Submission 48, Mr John Mant, pp 4-5

- 5.86** The concept proposed by Mr Mant is described as a “place-based” management system. Instead of an LEP having a number of zones, it is comprised of a number of places – determined by the type of development appropriate and desired for that place:

the council area is divided into a number of places and those places may be one parcel, 200 parcels or 1,000 and the places are determined by the nature of the development there. If it is a general low-density suburb, that might be one place. If it is a city centre with a couple of heritage buildings on the block, six parcels may be a place because you have a specific set of controls for that block.³⁴⁰

- 5.87** Mr Mant favoured this place-based approach over the traditional land zoning approach. He argued the zone-based approach was too rigid and did not allow detailed specific consideration of the best mix of permissible uses appropriate for a particular place. Mr Mant was critical of the current system where a number of separate documents – SEPPs, LEPs and DCPs all exercise development control. He argued the current system encourages the constant layering of control documents without regard to clarity or the convenience of users.

- 5.88** Mr Mant was particularly critical of the practice of using SEPPs to give effect to changes in planning policy, as it invariably makes the system more complex for users:

Therefore SEPPs are laid over the top of LEPs without specifically amending the LEP. There is no obligation for State planners to assess the adequacy of existing controls before adding new ones.

Departmental offices say that there will be too much work for them in checking the nature of existing controls before overlaying new ones. This of course is what everyone else has to do under the existing system. All users should read the vast pile of EPIs when they try to work out what the rules are. If the Departmental officers did it right the first time, everyone could take advantage of their publication of an authoritative integrated wording.³⁴¹

- 5.89** The Council of the City of Sydney suggested to the Committee to simplify the system consideration should be given to consolidating all SEPPs into a single document that is continually updated. The Department of Planning advised that they did not believe that this was a practical suggestion due to the number and range of topics covered by SEPPs.

- 5.90** The Department of Planning said that planning will remain a two-tier system of SEPPs and LEPs.³⁴² However, the Department of Planning has reduced the number of SEPPs through consolidation and deletion. The Department of Planning also advised that the SI LEP, when universally adopted, provides the potential for greater integration between these two tiers:

...the more the plans are standardised the easier it becomes to make the same amendment across all the plans to give effect to a change in policy. Ultimately

³⁴⁰ Mr John Mant, practicing town planner, Evidence, 9 March 2009, p 32

³⁴¹ Submission 48, p 19; See also Mr Mant, Evidence, 9 March 2009, p 34

³⁴² Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 42

with this level of standardisation it will be possible to align more State planning controls with the standard zones in LEPs in order to integrate the system further.³⁴³

- 5.91** There was general consensus among other Inquiry participants that to have all the relevant controls relating to a piece of land consolidated into a single, easily accessible source would be ideal. For example, Mr John Sheehan, Chair of the Government Liaison Committee with the Australian Property Institute (New South Wales Division) agreed that for users of the system it was incredibly difficult to determine all the controls that apply to a specific piece of land.³⁴⁴
- 5.92** However, Mr Sheehan was of the view that the concept favoured by Mr Mant *‘just simply will not happen’* because of the lack of resources in councils and because of the vast amount of information that would have to be pulled together. Dr Peter Jensen, member of the PIA believed Mr Mant’s concept was interesting and similar to the approach of the PIA in advocating development control legislation.³⁴⁵
- 5.93** Mr Haddad said the Department of Planning had been considering the concept of having more of a place management approach to planning.³⁴⁶ Later, in response to questions on notice, Mr Haddad advised that the Department of Planning no longer supports single planning documents and the concept of an integrated parcel based planning system is more likely to be delivered through a combination of initiatives:

The Department no longer supports single planning documents, like the Warringah LEP 2000 in that they become very long: 439 pages – without maps, and therefore present difficulties for users. In South Australia the Barossa Valley Plan runs to more than 500 pages. If such plans have place based controls rather than zonings then they also require substantial administrative resources to amend: one change may have to be made to the desired future character statements for 20 different areas, rather than to one or two zones that apply across the local government area.

Consequently the Department is now of the view that integrated parcel based planning system is more likely to be delivered through a combination of initiatives: The Standard Instrument for LEPs, rationalising and standardising the format of State Environment Planning Policies, together with a variety of e-planning initiatives. In this way controls applying to parcels can be accessed by web-based tools from different documents, rather than by relying on having the controls in a single planning document. Such a system would then also remove the need for a separate section 149 certificate.³⁴⁷

³⁴³ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 41

³⁴⁴ Mr John Sheehan, Chair, Government Liaison Committee, Australian Property Institute (NSW Division), Evidence, 9 March 2009, p 40

³⁴⁵ Dr Peter Jensen, Planning law chapter, Planning Institute of Australia, Evidence, 9 March 2009, p 50

³⁴⁶ Mr Haddad, Evidence, 30 March 2009, p 9

³⁴⁷ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 41

Committee comment

- 5.94** Currently the onus is on users of the planning system to ensure they have regard to all the development controls that apply to a piece of land. In many cases the onus is also placed on users to determine how various controls from different sources integrate and their applicability.
- 5.95** Later in this chapter the Committee examines the issue of the provision of electronic planning information, which has the potential to improve access to and increase understanding of, the planning system for users.
- 5.96** The planning system must be made as user-friendly as possible. The Committee believes this issue should be seriously considered during the fundamental review that the Committee has recommended be established. The Committee believes all potential models, including that proposed by Mr Mant, should be considered during this review.

Development Control Plans

- 5.97** Development Control Plans (DCPs) provide more detailed and specific development control provisions for land within an LEP. It is not uncommon for a number of DCPs to be in existence for the one local government area, each DCP applying to a separate defined area. Councils are responsible for drafting DCPs, and as such they are not statutory documents.
- 5.98** The Department of Planning advised that the intended function of DCPs is set out in the EP&A Act, section 74C(1) and that their purpose is generally limited to:
- providing more detailed provision with respect to development to achieve the purpose of an environmental planning instrument
 - advertising or not advertising certain types of development applications and
 - matters specifically identified in the EP&A Act to which a development control plan can apply.
- 5.99** Further, section 79C(5) of the EP&A Act states that a provision of a DCP will have no effect if it:
- is substantially the same as a requirement of an environmental planning instrument or
 - is inconsistent with a provision of an environmental planning instrument or its application prevents compliance with a provision of any such instrument.³⁴⁸
- 5.100** The submission from the New South Wales Government noted there was a tendency of some councils to adopt an over-regulatory approach to reduce the scope of private certifiers.³⁴⁹ The submission from the Australian Property Institute argued many DCPs unlawfully extend

³⁴⁸ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 45

³⁴⁹ Submission 69, p 48

beyond the parameters of LEPs, and suggested that DCPs should be scrutinised to the same level as LEPs.³⁵⁰

- 5.101** The Committee sought to determine whether the extent and breadth of control exercised by DCPs across the State was an issue of concern for the Department of Planning. While noting there was cause for concern in some instances, the Department of Planning advised that councils were capable of self-regulation to ensure their DCPs complied with the EP&A Act:

...a DCP is limited to providing detail to achieve the purpose of an environmental planning instrument. The purpose of an EPI seeks to control development by setting standards in relation to design and siting of the structure, but not the detailed building standards already detailed in other legislation such as the Building Code of Australia.

Although the Department encourages councils to prepare LEPs and DCPs together to ensure that the DCP and LEP have integrated controls there have been some circumstances where DCPs have not generally conformed to the provisions of an LEP. Provisions that do not generally conform to the LEP are not authorised by the Act.

The Department also discourages local councils from duplicating or reiterating controls such as the Building Code of Australia, which are called up through the certification provisions of the Act and regulations, the Department acknowledges that in some cases councils do adopt an over-regulatory approach.

In each of these circumstances a review of the DCP is warranted and councils should be undertaking that review and amending their DCP accordingly.³⁵¹

- 5.102** The Department of Planning did not see a need for DCPs to be made in accordance with a standard template, similar to the SI LEP. However, the Department of Planning did foresee future consideration could be given to a standard format for the preparation of DCPs:

The DCP controls are made by councils without reference to the Department and provide that more fine grained local planning detail that councils, with their knowledge of their local areas, are better placed to develop. However, since 2006 the Department is encouraging councils to consolidate all of these controls in one DCP for the local government area. In future the Department may look at standardisation of the DCP format, rather than particularly controls.³⁵²

- 5.103** In evidence, Mr Ken Exley, Director, Environmental Development Services with Richmond Valley Council called for DCPs to receive the same legislative weight as LEPs. He was

³⁵⁰ Submission 18, Australian Property Institute, p 2

³⁵¹ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 46

³⁵² Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 41

concerned at the limited support DCPs have in relation to being enforced, particularly by a court.³⁵³ In evidence the Mr Colagiuri argued against the proposition that DCPs be legally drafted.³⁵⁴

Committee comment

- 5.104** Ideally there should not be any conflict between the provisions of a DCP and the provisions of an LEP. Similarly, DCPs should not adopt an over-regulatory approach. Yet in many instances this is the case.
- 5.105** It is perhaps worth investigating why this has occurred. If councils are using DCPs as a means to address what they perceive as being problems with the planning system, then this is probably a good indicator that those issues themselves need to be closely examined.
- 5.106** Development Control Plans, as public documents, set the expectations among the relevant local community of standards to which development will comply. However, the fact that these standards can be exceeded either via consent or appeal does raise the issue of how much certainty members of the community can have of the standard of development that may occur in their area generally or land adjacent to their own.

E-planning and electronic provision of property information

- 5.107** During the Inquiry two issues relating to electronic planning were examined. The first is the move towards electronic development assessments (eDA), a key aspect of the Council of Australian Governments (COAG) agenda for national planning reform. The second is the potential benefits from the electronic provision of property information including the applicable development controls.

Electronic lodgement of development applications

- 5.108** In evidence, Ms Jenifer Dennis, Policy Officer with the Local Government and Shires Association of New South Wales said there was general agreement that electronic lodgement was the way forward, and that additional funding would be required to see its implementation:

Local government has taken a lead in that area. Currently, a number of councils are on electronic format. However, we all agree that it needs to be improved and that there should be additional funding. State and local governments agree that assessment processes would be improved if information were put onto electronic format and delivered to applicants in a timely manner. In that way deferrals and all those sorts of issues could be streamlined. We all agree that electronic format is the way to go.³⁵⁵

³⁵³ Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council, Evidence, 26 May 2009, p 30

³⁵⁴ Mr Colagiuri, Evidence, 25 August 2009, p 23

³⁵⁵ Ms Jenifer Dennis, Policy Officer, Local Government and Shires Association of NSW, Evidence, 30 March 2009, p 17

- 5.109** Mr William Mackay, Acting Director, Planning and Regulatory Services, City of Sydney Council agreed that the provision of eDA was an important aim, but they cautioned care in developing the form in which it is presented, including appropriate checks and balances, to ensure at least the majority of applications lodged contain the information necessary for assessment.³⁵⁶
- 5.110** The Mayor of Ashfield Council, Councillor Edward Cassidy issued a similar caution. Councillor Cassidy told the Committee that Ashfield Council's performance with respect to time frames for dealing with development applications had in the past been poor. However, he said that future figures would be impressive and this was due to the pre-lodgement process that has been implemented.³⁵⁷
- 5.111** The New South Wales Business Chamber believed that the majority of development applications, at least from business applicants were professionally prepared and believed a move to electronic lodgement would not give rise to problems from poor quality applications.³⁵⁸
- 5.112** In response to a question on notice, the Department of Planning advised it did not have information on the number or percentage of development applications that are self-prepared or prepared with professional assistance. The Department of Planning did advise that it encouraged pre-development application meetings as a means to confirm what information is required for an application. The Department of Planning said it was developing best practice and development assessment guidelines, which would include a checklist of matters each type of application should address before it is submitted to councils.³⁵⁹
- 5.113** Participants from some rural councils said they would be hard pressed to support electronic lodgement. The Committee also heard that in some rural areas there was not now nor likely to be a demand for it. Mr Exley noted that there were different expectations and ways of doing business in rural areas:

We have the facilities where we can do it now but we have not had any developer that has expressed a desire to do so. We have encouraged them but it requires a great deal of cost to keep those portals open and really there has not been the demand in the development industry. Again, we are dealing with a different community up here. Only fairly recently I had discussions with a developer who has a \$9 million development proposed in Casino. That developer has flown up twice from Sydney just to sit down and talk about his proposal, because he required face-to-face contact with council. I think that rural areas do a different type of business than Sydney.³⁶⁰

³⁵⁶ Mr William Mackay, Acting Director, Planning and Regulatory Services, City of Sydney Council, Evidence, 9 March 2009, p 7

³⁵⁷ Cllr Edward Cassidy, Mayor, Ashfield Council, Evidence, 30 March 2009, p 36

³⁵⁸ Ms Louise Southall, Policy Adviser, New South Wales Business Chamber, Evidence, 9 March 2009, p 15

³⁵⁹ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, pp 63-64

³⁶⁰ Mr Exley, Evidence, 26 May 2009, p 34

- 5.114** Mr Anthony Thorne, a member of the Urban Development Institute of Australia (UDIA), noted the surveying industry went through an electronic lodgement process, and there is always a section of any profession resistant to change. He believes that smaller rural councils would have difficulty in supporting an electronic process.³⁶¹
- 5.115** Mr Malcom Ryan Director, Planning and Development Services with Warringah Council said his council's population has high Internet usage and generally had their development applications professionally prepared. As such he did not perceive any problems with the move to electronic applications. Previously Mr Ryan worked in smaller, rural councils and he thought that for such councils the needs of their community may make it less possible to move to a completely electronic process.³⁶²
- 5.116** Mr Broyd said that for an efficient and beneficial eDA system State agencies would need to take referrals electronically and data and information transferred immediately.³⁶³
- 5.117** The Commonwealth government is developing a common computer language called eDAIS to enable data and information exchange. In evidence Mr Ryan expressed some doubt about the capacity for that project to realise progress in the near future.³⁶⁴
- 5.118** Mr Haddad said the Department of Planning had made a number of submissions to the Commonwealth about the eDAIS language. Mr Haddad said it was without question an area that needed to be accelerated.³⁶⁵

Electronic property information

- 5.119** As discussed earlier, at the first public hearing of the Inquiry Mr Mant put forward his place management concept. Part of that concept was to have all the development controls for a specific piece of land consolidated into a single document. A corollary to that was all the development control information relating to a piece of land would then be available electronically.
- 5.120** The Committee put this proposal to other Inquiry participants. There was overwhelming support for such a mechanism to exist. It would assist what Mr Michael Silver, the Director of Planning and Environmental Services, Gunnedah Shire Council saw as a major concern for rural communities – the ability to understand the planning system:

One of the big issues in rural communities is the ability to understand what the legislation means and to be able to find the pieces that relate to a particular development proposal. People find it very difficult. They find the pathway through the myriad things they have to deal with very difficult. We have to try

³⁶¹ Mr Thorne, Evidence, 26 May 2009, p 46

³⁶² Mr Malcolm Ryan, Director, Planning and Development Services, Warringah Council, Evidence, 17 August 2009, p 19

³⁶³ Mr Broyd, Evidence, 17 August 2009, p 19

³⁶⁴ Mr Ryan, Evidence, 17 August 2009, p 19

³⁶⁵ Mr Haddad, Evidence, 25 August 2009, p 15

to simplify it so we can say, "If you do this, this and this it will satisfy requirements."³⁶⁶

- 5.121** Mr Broyd suggested such a facility should be an aim of the planning system. He described in simple terms how such a system should work:

I do think it should be, in terms of service delivery to the public and the efficiency in the whole system. If a landowner goes onto the website and runs the cursor over a block, the constraints that will show up are "subject to flood", "subject to bushfire" and so on. It makes the whole preparation of the development application so much more efficient. Ideally, yes, it is something that should be aimed for.³⁶⁷

- 5.122** At the public hearing on 29 May the Committee heard evidence from representatives from Albury City Council. The council comes in contact with practitioners, developers and community members who reside and work on different sides of the New South Wales and Victoria border and exposed to different planning frameworks. During the hearing a number of comparisons were made between the two systems.

- 5.123** Mr Michael Keys, Director, Planning and Economic Development, Albury City Council, said one advantage of the Victorian system is the ability to access property information electronically. Mr Keys said the ability to do this in New South Wales is a significant opportunity for improvement:

We believe that the Victorian system offers some advantages compared with the system in New South Wales. Recent discussions have highlighted that if members of the community have no understanding of the system they are more keen to select their parcel of land over the Internet through electronic means, they will understand all the regulations relating to land-use planning that apply to their parcel of land, and they will have a clearer indication of the outcome or the expected use of that land.³⁶⁸

- 5.124** Mr Keys believes the system has been operating in Victoria for about six years. He noted significant commitment from the then State Government of Victoria was provided to all local government areas to implement the system. Mr Keys strongly urged that such a system be considered as it would reduce the current confusion faced by users of the planning system:

Essentially, it has the ability to provide a service to every community member, ratepayer, developer and proponent and even to council. They could pick out their parcel of land, or a parcel that they are interested in purchasing or developing, and find the legislation that applies to it in a quick and easy

³⁶⁶ Mr Michael Silver, Director of Planning and Environmental Services, Gunnedah Shire Council, Evidence, 21 May 2009, p 18

³⁶⁷ Mr Broyd, Evidence, 17 August 2009, p 18

³⁶⁸ Mr Michael Keys, Director, Planning and Economic Development, Albury City Council, Evidence, 29 May 2009, p 2

process. That would make it a lot more simple, open and transparent, and it would provide easy access for people.³⁶⁹

- 5.125** Mr Adam Dyde, Director, Evolutions Pty Ltd added not only is information more accessible in the Victorian system, it is also easier to understand:

Information seems to be available online and it is easily accessible. The DSE has put a lot of time into things such as rehabilitation plans. You do not have to be a botanist to come along and determine what is required at a specific location. A whole heap of work is being done that complements the legislation. I think there is less in legislation and more support for the legislation. That has been my direct experience.³⁷⁰

- 5.126** Mr Thorne agreed that provision of consolidated property information is something the New South Wales system should move towards. He noted a lot of property information is available electronically via various, albeit uncoordinated, sites:

I think the information is almost there now, to be honest, between Google, and even the Department of Lands has the six-viewer site. I am not the one in our office who does all that but I know we can get a lot of that information, aerial photos, cadastral, straight from the department. We probably cannot get zoning and planning laws. For some layers of it you would still have to go elsewhere, I think, but you could get your first cut, if you like.³⁷¹

- 5.127** The Committee's attention was frequently drawn to the electronic property information enquiry tool provided by Pittwater Council. In that tool users type in a street number and address and then access a range of information in text and maps from the one screen. It also lists the SEPPs that may apply to the land, and in case of SEPPs relating to exempt and complying development whether they do apply. Pittwater Council also provides an electronic development application and construction certificate tracking service.

- 5.128** Mr Ryan told the Committee about the increased electronic planning information Warringah Council will be providing. This includes increased opportunity for community participation in the LEP exhibition process:

We will be live in October this year with that facility in our new local environment plan. Our neighbouring council has had it live for at least four years, the Pittwater Council. It is a lot of work to do that, but we have actually compiled our new local environmental plan, even though it is inside the template format, to go electronic. We do not ever envisage that we will print that document on paper anymore.

Will we use it as a consultation process? Every member of the community can log on and see how the LEP will affect their parcel. Hopefully they will then be able to make online commentary and submissions to the exhibition, and that

³⁶⁹ Mr Keys, Evidence, 29 May 2009, p 8

³⁷⁰ Mr Adam Dyde, Director, Evolutions Pty Ltd, Evidence, 29 May 2009, p 55

³⁷¹ Mr Thorne, Evidence, 26 May 2009, p 47

way it would flow through to become the online system. It is easy to do. It is not that difficult to do. There is a lot of reluctance by people who are scared of it. There are a lot of privacy issues. At the present time you can go to my council and track all applications online, everything from a construction certificate to an occupation certificate to a development application.³⁷²

- 5.129** Mr Ryan said Council would consider providing property owners electronic access to all council records pertaining to their parcel of land. Mr Ryan notes it is a huge undertaking and that a full-time staff member will be assigned to maintain the database that underpins the system.
- 5.130** As noted previously, early in the Inquiry the Committee sought the Department of Planning's views on the proposal by Mr Mant for consolidating all development controls into a single document. The Department of Planning advised it advocated accessing the controls applying to a parcel of land from a number of web-based tools.
- 5.131** The Department of Planning alerted the Committee to the *Liverpool LEP 2008* which is available on the New South Wales legislation website www.legislation.nsw.gov.au in its entirety, with both text and maps. The maps are linked to the cadastre (official record of the parcel of land) and show property boundaries, the application of zones, and particular clauses relating to particular lots.³⁷³
- 5.132** The Committee notes when accessing the Liverpool LEP from the council website it includes the caveat that it is advisable to check SEPPs and regional environmental plans (prepared by the New South Wales government) that may apply to the land.
- 5.133** At the final hearing of the Inquiry the Committee put to Mr Haddad the possibility of developing an electronic system to provide all the development controls and planning instruments relating to a particular parcel of land. Mr Haddad acknowledged that it should be possible:

I cannot see why it is not possible. If it does happen—and I recognise that some councils are doing it more than others—then there will be significant efficiencies gained, not only for the end users but also for the policy makers and others. So I think it is a very good thing. It is something that we need to have resourced properly, because it is not only the doing it but also the maintaining of it that is very important, particularly when there are statutory obligations, information given to people which can impact on them.

...We have also made a number of submissions to the Commonwealth through a national program that it is running. We are hopeful that we can progress it. But it is something that we will have to accelerate without any question. We are also particularly interested in using it generally in terms of improving public participation. This is another thing that other jurisdictions for

³⁷² Mr Ryan, Evidence, 17 August 2009, p 19

³⁷³ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 41

whatever reason have done better than we have. I think we will benefit from a recommendation to accelerate this work.³⁷⁴

Committee comment

- 5.134** Appendix 11 contains the Department of Planning's suggestion on how a review of the planning framework should take place. It proposes while waiting for the review's recommendations, focus be placed on improving electronic planning systems. It rightly points out that irrespective of the legislative framework under which these systems operate there would be significant immediate benefits to all stakeholders to have efficient e-planning information in place in all councils across the State.
- 5.135** The Committee agrees focus should be given to developing efficient electronic planning information for the benefit of users of the planning system. It is clear that there are models interstate and here in New South Wales that are worthy of consideration.

Recommendation 6

That the Department of Planning develop best practice electronic planning systems and support their implementation at the local government level with additional funds and training, if needed.

³⁷⁴ Mr Haddad, Evidence, 25 August 2009, p 14-15

Chapter 6 Planning decision making

This Chapter considers the third major issue with the current planning system identified by Inquiry participants – decision making processes. As with the issues of strategic planning and Local Environmental Plans (LEPs), issues relating to the decision making process are an essential part of the fundamental review of the planning framework recommended by the Committee in Chapter 3.

The decision making process

- 6.1** In the New South Wales planning system there are a number of different pathways by which development applications are assessed, and within these a number of different bodies that have the power to approve an application. The 2008 planning reforms saw the establishment of two new decision making bodies – the Planning Assessment Commission (PAC) and the Joint Regional Planning Panels (JRPPs).
- 6.2** It is essential for any planning system that development applications are appropriately assessed. While ensuring this, an efficient planning system is one that matches the level of assessment to the complexity of the application, and where assessment process takes no longer than necessary. Appendix 5 contains flow diagrams of the steps in the current development approval processes.
- 6.3** A number of Inquiry participants argued that the number of different decision making bodies introduced unnecessary complexity and uncertainty to the planning system. Mr Jeff Smith, Director, Environmental Defenders Office was among those who believed the introduction of the PAC and the JRPPs conflicted with the principle of the 2008 reforms under which they were introduced:

The issue, I guess, for us in terms of who makes these decisions is the system seems to have got more and more complicated over the years. One of the tenets of the last wave of reforms was that we should streamline and simplify the system. But at the decision making level it is enormously complicated. You have got arbitrators, you have got joint regional planning panels, you have got the planning assessment commission, you have got councils, you have got the Land and Environment Court. We are back to what we had before 1979. You are aware of what happened then, it was a disaster. There were so many bodies that were making decisions about this bit of environmental planning law and that bit of environmental planning law. I thought we had actually come some way in New South Wales towards going down a different path to simplifying the pathways to decision making. But it seems to have all come back in. Ironically, under the rhetoric of simplifying the system, I think there is more work that needs to be done there.³⁷⁵

- 6.4** Local government representatives were particularly critical of the introduction of new decision making bodies. They saw this as part of the continuing trend in the erosion of their powers.

³⁷⁵ Mr Jeff Smith, Director, Environmental Defenders Office, Evidence, 9 March 2009, p 22

Councillor Genia McCaffery, President of the Local Government Association argued that local councils need to retain autonomy in the making of local planning decisions:

We are democratically elected and, therefore, we are accountable to our local communities, and we are advocates—or we could be advocates—for our communities when dealing with other spheres of government. Local councils need to retain autonomy in the making of local planning decisions and they are best placed to represent those interests to their local communities.³⁷⁶

- 6.5** The following sections examine issues commonly raised during the Inquiry with respect to the different processes and pathways used to assess and determine development applications.

The Minister for Planning and the Part 3A process

- 6.6** The Minister for Planning is the consent authority for development projects to which Part 3A (major infrastructure and other projects) applies. Part 3A applies to development that is declared to be a project to which Part 3A applies either by a State Environmental Planning Policy (SEPP) or by order of the Minister. The types of development that may be declared to be a project to which Part 3A applies are major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance.
- 6.7** In addition the Minister may declare any development project, to which Part 3A applies, to be a “critical infrastructure project”. Such projects are, in the opinion of the Minister, essential for the State for economic, environmental or social reasons. Critical infrastructure projects are not subject to the same appeal provisions as major infrastructure projects.
- 6.8** Part 3A has proven to be the most controversial section of the EP&A Act. Projects determined under Part 3A frequently generate media interest. Many Inquiry participants, in both submissions and evidence, called for Part 3A to be repealed. During the course of the Inquiry it became clear much of the dissatisfaction with Part 3A was associated with specific aspects of the process, rather than with its intent and purpose.
- 6.9** In evidence before the Inquiry into Budget Estimates 2009-2010, the Hon Kristina Keneally MP, Minister for Planning stated that the Government is committed to Part 3A and retaining the major projects system. Ms Keneally argued the State Government has an important leadership role in supporting major projects and major investment in the State. In supporting Part 3A Ms Keneally referred to a recent announcement by the Victorian Government of its intent to introduce a system similar to Part 3A.³⁷⁷

Perceptions and criticisms of Part 3A processes

- 6.10** Part 3A was introduced in 2005, and many of its critics perceive it to be a recent, and unwelcome, phenomena. However, during the regional hearings, representatives from coastal

³⁷⁶ Clr Genia McCaffery, President, Local Government Association of New South Wales, Evidence, 30 March 2009, p 16

³⁷⁷ General Purpose Standing Committee (GPSC) 4, Inquiry into Budget Estimates 2009-2010, The Hon Kristina Keneally MP, Minister for Planning, Evidence, 16 September 2009, p 15

councils noted they have had similar Ministerial powers imposed upon them since 2002 when SEPP 71 Coastal Protection was introduced.³⁷⁸ The former Minister for Planning, Mr Frank Sartor MP, noted Ministerial intervention and determination of development applications has been a feature of the planning system since at least the 1960s.

- 6.11** Critics argue Part 3A is used excessively. In 2006 there were 74 Part 3A determinations; in 2007 there were 143 and in 2008 there were 147.³⁷⁹ In the period from September 2008 to September 2009 there were 127 projects assessed under Part 3A.³⁸⁰
- 6.12** Many local councils raised the issue that while council is removed from the decision making process, the Department of Planning is still heavily reliant upon council staff for administrative assistance, including preparing and managing exhibition material, input into the assessment process and preparing of conditions of consent. Many councils, particularly coastal ones, were concerned about the significant council resources involved, without any State contribution or funding to compensate them.³⁸¹
- 6.13** Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council noted the coast has been the predominant area where the Part 3A process applied. Mr Clark said at any one time there could be between ten to fifteen Part 3A applications being assessed within his local government area. Because of this the Council has been required to appoint an officer just to manage the Part 3A development applications.³⁸²
- 6.14** The Committee heard criticism that decisions made under Part 3A unfairly override local concerns and do not take into consideration local strategic planning for the area. In evidence, Councillor Reginald Kidd, Mayor of Orange City Council told of a recent 3A decision to rezone land (a Department of Primary Industries site in the south of Orange) which was in conflict with the council's plans for the orderly development to the north of the city. Mr Kidd said the development was never foreseen and he believed it to be premature and potentially disruptive to the local development industry.³⁸³
- 6.15** There is a strong belief that Part 3A was established specifically to assist the development industry, as a means to have major developments favourably assessed. However, in some cases Part 3A can result in a longer and more expensive assessment route. A number of local government representatives advised that in their experience, applicants, when they believe they

³⁷⁸ Clr Jan Barham, Mayor, Byron Shire Council, Evidence, 26 May 2009, p 11

³⁷⁹ The Hon Frank Sartor MP, Member for Rockdale, Evidence, 15 June 2009, p 3

³⁸⁰ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 11

³⁸¹ See for example: Ms Kate Singleton, Strategic Planner, Ballina Shire Council, Evidence, 26 May 2009, p 2

³⁸² Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, Evidence, 19 May 2009, p 10

³⁸³ Clr Reginald Kidd, Mayor, Orange City Council, Evidence, 1 May 2009, p 7

were likely to receive consent from council, actively seek to avoid their projects being considered under Part 3A.³⁸⁴

- 6.16** This element of ‘forum shopping’ is another frequent criticism. The Committee heard Bryon Shire Council experienced developers manipulating details of their application:

"State-significant" has problems in that there is a loophole there where people can claim that anything is of State significance. For example, it might be a tourist facility worth \$5 million plus. We have had a problem with tourist facilities devaluing their construction price because it reduces how much they pay. But if they feel that it is going to give them an easy ride to a development approval all of the sudden it will be worth \$5 million. That is the problem.³⁸⁵

- 6.17** Both the Planning Institute of Australia (PIA) and Mr John Mant, a practicing town planner, told the Committee they believe without some changes to the process to instil a sense of transparency and independence, it will be impossible to shift negative perceptions surrounding Part 3A, particularly with respect to political donations:

Part 3A is really very reactive. It is an attempt to try to solve some really serious fundamental problems about the existing Act and I think it has created something else. It is an absolute monster. Whichever way you look at it, the person implementing it is likely to be criticised because it looks like it is being used for something that cuts across the general thrust of the Environmental Planning and Assessment Act as it was in the first instance.³⁸⁶

...combined then with a sense of donations, mates and people in the Urban Taskforce and so on, gives rise to everyone saying—I mean, a lot of the decisions made under part 3A have been good decisions. Frank Sartor did some very good work in making decisions. It is just that he got totally caught by the fact that he was doing it in a black hole, in a political situation where there were donations made here and he was making decisions there.³⁸⁷

- 6.18** The Committee understands the Government now issues a monthly major project update that notes approvals where proponents have made a political donation.³⁸⁸

- 6.19** Mr Sartor said the Part 3A process was robust and transparent. However, he was of the view assessment requirements were applied inflexibly and did not adequately reflect the complexity and risks of the project being assessed:

³⁸⁴ Mr John Brunton, Director Environmental Services, Sutherland Shire Council, Evidence, 30 March 2009, p 47; Mr Graham Gardner, Director of Planning and Building Greater Taree City Council, Evidence, 21 May 2009, pp 38-39

³⁸⁵ Clr Barham, Evidence, 26 May 2009, p 22

³⁸⁶ Dr Peter Jensen, Planning Institute of Australia, Planning Law Chapter, Evidence, 9 March 2009, p 51

³⁸⁷ Mr John Mant, town planner, Evidence, 9 March 2009, pp 33-34

³⁸⁸ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 26

My point simply is that a process that is so long and so complicated might be fine for a desalination plant, might be fine for a major coalmine like Anvil Hill, but it is crazy for a building at Darlinghurst that is \$20 million for the Garvan. It is absolutely crazy. All I am saying is that it is a bit too much of a sledgehammer for small things, but it is actually a very good process for projects that have environmental risk or other risks in terms of land use. It is actually a very good process and I do not think anyone can objectively say it is bad. To me it is just too inflexible.³⁸⁹

- 6.20** In contrast Mr James Ryan, Treasurer from the Nature Conservation Council of New South Wales (NCC New South Wales) argued the application of assessment criteria under Part 3A is too flexible and required more prescription:

One of the criticisms of part 3A is just the breath of discretion the Minister has. The Minister can determine the terms of reference, the EARs as they are called now, the environmental assessment requirements. The Minister determines. The Minister can determine whether they are being complied with and then make a decision regardless of whether they have been complied with or not. We would like to see a more prescriptive approach, saying if part 3A is going to stay and the Minister is the consent authority, it needs to be more transparent and more prescriptive just what the criteria are by which a development is assessed.³⁹⁰

- 6.21** Dr John Formby, Chairman, Friends of Crookwell, believed a major failing of Part 3A was the lack of objectivity and impartiality in the environmental assessments process. Dr Formby said he saw no problem with the Minister making a determination, on the basis of State need, overriding an environmental assessment. However, he believed departmental advice was being tailored to provide a basis for a pre-determined decision:

I would like to put to you a general principle about environmental assessment that I think is being repeatedly broken at the moment, and that is what I call the principle of separation. The environmental assessment process should be an objective and relatively scientific and impartial one, and the assessment of the environmental assessment by the Department of Planning should be likewise: it should be impartial and it should be objective. The separation is that after that the political decisions can be made. So that the Minister can come in and say, "Despite what this environmental assessment says, because of our political views or considerations we are going to approve the project." But at the moment that political aspect has worked its way right back into the Department of Planning, I believe, and into the environmental assessment process itself.³⁹¹

³⁸⁹ Mr Sartor, Evidence, 15 June 2009, p 8

³⁹⁰ Mr James Ryan, Treasurer, National Conservation Council of New South Wales, Evidence, 25 August 2009, p 40

³⁹¹ Dr John Formby, Chairman, Friends of Crookwell, Evidence, 24 August 2009, p 21

The virtues of Part 3A

- 6.22** Some who were critical of the application of Part 3A acknowledged the inherent merit of the development assessment pathway it provides: a application is made the consolidated specific assessment requirements are determined for the application.
- 6.23** Both the PIA and Mr Mant believed Part 3A was created to overcome fundamental flaws in the existing legislation.³⁹² The fundamental flaw was the inconsistency between the assessment processes under Parts 4 and 5 of the EP&A Act. Mr Mant argued that at the time Part 3A was created, an opportunity to improve the system had been lost:
- ...the government sought a better process. The solution was not to combine the *two existing processes*, but to create a *third process*, namely that under Part 3A. This allows major developments that might have been caught by the Part 5 process to be dealt with by the Minister as a development application, but one with a different administrative process than that under Part 4. (In some ways the Part 3A process is a better process).³⁹³
- 6.24** Mr Mant said he did not believe it was efficient to have a number of different assessment processes within the EP&A Act. He believed if the EP&A Act was to have one assessment process then it is probably best designed around the actual processes of Part 3A.³⁹⁴
- 6.25** While many participants were critical of the application of Part 3A they acknowledged the planning system require scope for Ministerial override. The submission from the Environmental Defender's Office of New South Wales (EDO) called for the repeal of Part 3A. However, in evidence Mr Jeff Smith, Director, EDO, said we could not simply go back to a system with only Part 4 and Part 5, as there is a need for a regime in New South Wales that deals with government infrastructure projects. Mr Smith saw a distinction between a major development undertaken by government and private developers and there should be separate pathways for each of these types of developments.³⁹⁵
- 6.26** Mr Smith agreed that State interests, if they do rightly outweigh the local interests, should prevail. However, he saw the need for an independent body to assess these developments, and issue a report acknowledging local objections and explaining the broader issues that informed approval.³⁹⁶ Similarly, as noted in paragraph 6.21, Dr Formby also saw the need for the Minister to have the right, on the basis of overriding State need, to approve a development notwithstanding the Department of Planning may recommend refusal.

³⁹² Dr Jensen, Evidence, 9 March 2009, p 51

³⁹³ Submission 48, Mr John Mant, pp 3-4.

³⁹⁴ Mr Mant, Evidence, 9 March 2009, p 34

³⁹⁵ Mr Smith, Evidence, 9 March 2009, p 18

³⁹⁶ Mr Smith, Evidence, 9 March 2009, p 22

How to improve the Part 3A process

6.27 During the Inquiry suggestions on how the Part 3A process could be improved generally focused on two aspects: greater clarity about and adherence to eligibility criteria and, greater independence in the assessment process.

6.28 In evidence Mr Sam Haddad, Director General of the Department of Planning conceded that previously there was not enough public information available about Part 3A projects. Mr Haddad said this deficiency had now been addressed:

We have prepared guidelines. Maybe we have not done well in making sure they are as available as much as we can. You are probably right that this is one reason that people did not have enough information. But we have now put on our website quite an extensive range of guidelines. We have accelerated the program of guidelines. If you go to the website now you will find quite a lot of guidelines.³⁹⁷

6.29 The Department of Planning subsequently provided the Committee with a list of the fact sheets and guidelines providing information on major projects, including information on how a project qualifies as a major project or critical infrastructure.³⁹⁸

6.30 The NCC New South Wales said their major concern with the current process was the preparation of Environmental Assessments (EAs) by applicants. Mr Ryan said under the current system applicants naturally engage their preferred consultants to prepare EAs, and an obvious consequence is that the independence of consultants is compromised by their desire to secure continuing business.

6.31 Mr Ryan proposed a system where EAs are prepared at arm's length from the applicant. In his system a body of accredited ecologists is created and assigned randomly to undertake EAs for Part 3A projects. The cost for service could be drawn from the application fee.³⁹⁹

6.32 In a similar vein, Dr Formby advocated establishing an independent statutory authority charged with assessing environmental issues related to Part 3A applications and managing the entire environmental assessment process, including monitoring that proponents comply with any conditions of consent.⁴⁰⁰

6.33 The NCC New South Wales saw merit in Dr Formby's proposal:

We are in this current situation now where many people perceive that the reliance of those consultants on the development sector influences the tone of what they write. So, we have long held that those consultants should be engaged at arm's-length by the council or the Department of Environment and Climate Change or the Department of Planning. If you went one step further

³⁹⁷ Mr Sam Haddad, Director General Department of Planning, Evidence, 30 March 2009, p 4

³⁹⁸ Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, pp 4-5

³⁹⁹ Mr Ryan, Evidence, 25 August 2009, p 35

⁴⁰⁰ Dr Formby, Evidence, 24 August 2009, p 22

and created another agency to conduct and to oversee that process, it probably has a lot of merit.⁴⁰¹

- 6.34** A number of Inquiry participants questioned whether senior public servants, under the contract employment system, were capable of providing independent, impartial advice.⁴⁰² There was a call for assessment of applications to be undertaken by a truly independent body.
- 6.35** A number of Inquiry participants suggested that the Planning Assessment Commission (PAC) could fulfil the role of independent assessor. Dr Formby agreed the PAC could potentially undertake the role he envisaged for an independent statutory authority.⁴⁰³ The EDO said they would be content with the retention of Part 3A if the role of the PAC was expanded.⁴⁰⁴ Both believed for the system to work effectively the PAC should assess all Part 3A applications.

Committee comment

- 6.36** Part 3A development is significant and important for New South Wales. Despite the criticism levelled at Part 3A during the Inquiry, including the view that there is widespread community dissatisfaction with its application, the Committee believes Part 3A is an essential element of the planning system. However, because of its significance, there is a need and, as evidenced during the Inquiry, scope for improvements to its application and assessment processes.
- 6.37** The Committee believes that Part 3A development approvals should seek to be compliant with the relevant Local Environmental Plan and Development Control Plan. The Committee acknowledges that in the case of State significant development this cannot always be the case. However, when development approval is granted the Minister for Planning needs to clearly state the reasons for the basis for State significance and non-compliance with local controls.
- 6.38** The Committee expects that during the fundamental review of the planning system the process and application of Part 3A would be closely examined. The evidence received during this Inquiry should provide a useful resource to assist in that examination.

Planning Assessment Commission

- 6.39** In evidence, Mr Marcus Ray, Director, Legal Service, Department of Planning advised the PAC has two separate functions: a decision making role and an advisory role:

Yes, the Minister delegated an approvals function to the Planning Assessment Commission back in November. They relate to projects that were in her electorate or projects that were the subject of a political donation under the new political donation laws, in essence. So they are the ones that go to the Planning Assessment Commission for approval. Then the Minister also indicated that she wanted to make the Planning Assessment Commission her principal advisory body on different projects. Of course, that is the other role

⁴⁰¹ Mr Ryan, Evidence, 25 August 2009, p 41

⁴⁰² For example, Mr Mant, Evidence, 9 March 2009, p 33

⁴⁰³ Dr Formby, Evidence, 24 August 2009, p 26

⁴⁰⁴ Mr Smith, Evidence, 9 March 2009, p 18

of the commission. It can provide advice; it can review applications where it does not have the decision making role and then do a report and advise the Minister for her decision. Quite a number of matters have been referred to the Planning Assessment Commission in that function. So it has two separate functions. There are clear delegations as to what goes to the commission to determine and a range of other matters can go to the commission on an as-needs basis.⁴⁰⁵

- 6.40** In evidence during the Inquiry into the Budget Estimates 2009-2010, Ms Keneally referred to the benefit of having the PAC assess matters and determine an outcome:

We also used the Planning Assessment Commission—in some very notable circumstances—to hold public hearings, such as in relation to the Metropolitan Coal Project, which resulted in an outcome that was welcomed by both the coal industry and environmental groups. It was a decision that protected the drinking water supply under the Eastern Tributary and the Waratah Rivulet.⁴⁰⁶

- 6.41** During consultations on the establishment of the PAC there was an expectation that they would determine around eighty per cent of Part 3A applications. During the Inquiry it became clear there was a strong general preference that determination functions of the PAC be expanded beyond its current delegations.

- 6.42** Ms Julie Bindon President, PIA said she supported a broader role for the PAC determined by project-type, rather than the current Ministerial electorate/political donation criteria:

We would support the original intention as presented, I believe, when the legislation was brought in that the vast majority should go through the PAC and it should be determined by project type or criteria rather than donation-based criteria. The donation-based criteria seem to be a uniquely New South Wales thing and I do not think it reflects terribly well on New South Wales. Other places in Australia have a similar panel system. South Australia, for example, is probably the most advanced in that regard and they just use project-based criteria for what goes to which decision maker.⁴⁰⁷

- 6.43** Mr Smith suggests the role and functions of the PAC needs to be clearly defined in the legislation and not subject to the discretion of the Minister:

At the moment the problem is that the roles and functions of the Planning Assessment Commission can ebb and flow according to who the Minister was, for example. Under the previous planning Minister, the Hon. Frank Sartor, he very much had a vision, as I understand it, whereby he did not want to deal with major projects and the idea would be to have State environmental planning policy in place which would deal with, say, 80 per cent of matters by

⁴⁰⁵ Mr Marcus Ray, Director, Legal Services, Department of Planning, Evidence, 30 March 2009, p 5

⁴⁰⁶ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 12

⁴⁰⁷ Ms Bindon, Evidence, 9 March 2009, p 51

the Planning Assessment Commission and he would deal with the so-called critical infrastructure type matters.⁴⁰⁸

6.44 Mr Smith argued it was important that there be public confidence in the major project system. He believed public perception could be adversely affected when it is not clear why some matters and not others are referred to the PAC.

6.45 In evidence Mr Sartor stood by his view, expressed when he was the Minister for Planning, that the PAC should determine the majority of Part 3A decisions. He believed this will eventually be the case:

I am arguing that in the long run it would help us all in this State if we had a less politicised and a much more predictable process, which therefore would be totally out of any suggestion of any improper influence, whether it be being lobbied by people, often locals, or by developers or by anybody else. I think everyone would agree we just want to get rid of the politics and all the sort of innuendo over this and do it properly; correct?⁴⁰⁹

6.46 The Committee notes while the majority of Inquiry participants called for a reduction of decision making bodies in the planning system, when alternative models were proposed they included the PAC or a similar such body.

Joint Regional Planning Panels

6.47 The establishment of JRPPs was met with universal condemnation from local government. Many believed they were established in response to the poor performance of a small number of councils.

6.48 The JRPPs were established to provide independent, merit-based decision making and advice to the Minister on regionally significant proposals. Each JRPP includes three State and two local members nominated by the relevant local councils. They make decisions on development applications for projects between \$10 million and \$100 million; ecotourism or local infrastructure projects worth more than \$5 million; or projects where the council is the proponent.

6.49 In evidence before the Inquiry into Budget Estimates 2009-2010, Ms Keneally noted the Western Australian government had recently introduced a system very similar to the JRPPs. Ms Keneally argued JRPPs would see a return of some powers to councils for regionally significant development:

Members of the public and interested parties are able to make presentations directly to the panel when it meets—similar to local council meetings.

Regional panels are determining a number of coastal, retail, residential and commercial proposals that were previously assessed by the department and determined by the Minister for Planning. These proposals will now be assessed

⁴⁰⁸ Mr Smith, Evidence, 9 March 2009, p 19

⁴⁰⁹ Mr Sartor, Evidence, 15 June 2009, p 6

by council staff and determined by regional panels, returning some powers to councils for regionally significant development.⁴¹⁰

6.50 However, most councils viewed the establishment of the JRPPs as another reduction in local councils' role. Ms Kate Singleton, Strategic Planner at Ballina Shire Council argued that unlike the JRPP, the elected council is answerable to the local community; and has the resources and technical expertise to adequately assess and determine local applications.⁴¹¹

6.51 A number of Inquiry participants from local government believed the imposition of JRPPs was a response or over-reaction, to the poor or corrupt performance of a small number of local councils.⁴¹² Mr Craig Filmer, Director Planning and Environment from Young Shire Council voiced a concern that the administrative requirements for the functioning of the JRPPs would likely result in a taxing workload for already overstretched rural councils:

I believe everybody has been tainted a bit with a couple of bad eggs that may have happened in other shires. Be careful with panels, especially in the bush, because someone such as me is probably going to get dragged across to a panel in a neighbouring shire. You are going to lead to inefficiencies in your already lean management structures and lean council structures.⁴¹³

6.52 The impact of the \$10 million threshold varies across councils. For example Bathurst City Council told the Inquiry they might deal with one or two \$10 million decisions a year,⁴¹⁴ while Mr Ryan from Warringah Council noted \$10 million developments was quite frequent for his council, and would be generally be determined quicker by council than it would by a JRPP.⁴¹⁵

6.53 Mr Anthony Thorne, a member of the Urban Development Institute of Australia, agreed there was a need for JRPPs, or a similar independent panel, to deal with development applications in limited circumstances where the council is the proponent. He also saw the JRPPs being a benefit for some of the smaller rural councils that do not have frequent experience dealing with larger development projects.⁴¹⁶

6.54 Mr Thorne suggested the monetary value criteria for referral to the JRPPs should be raised to around \$50 million and include specific types of development that have a regional impact. Mr Thorne was concerned that in larger council areas a number of normal development applications would be unnecessarily caught within the JRPP process when they could have been assessed by councils with good structures in place:

⁴¹⁰ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 3

⁴¹¹ Ms Kate Singleton, Strategic Planner, Ballina Shire Council, Evidence, 26 May 2009, p 9

⁴¹² See for example: Mr Filmer, Evidence, 1 May 2009, p 23; Submission 102, Local Government Planning Directors Group, p 2

⁴¹³ Mr Filmer, Evidence, 1 May 2009, p 23

⁴¹⁴ Mr David Shaw, Director, Environmental Planning and Building Services, Bathurst Regional Council Evidence, 1 May 2009, p 41

⁴¹⁵ Mr Malcolm Ryan, Director of Planning and Development, Warringah Shire Council, Evidence, 17 August 2009, p 14

⁴¹⁶ Mr Anthony Thorne, Urban Institute of Australia, Evidence, 26 May 2009, p 42

A three-storey building could be \$10 million in an area that has been zoned, it complies with the height limit and is zoned for that use, why do we need to bring three people out of town and two local people to make that decision if you have got the proper planning controls in place?⁴¹⁷

- 6.55** The Committee was advised that the Local Government Planning Directors Group (LGPDG) had written to the Minister for Planning requesting the operation of the JRPPs be reviewed after six or twelve months. Mr David Broyd, a member of LGPDG explained that the LGPDG had requested that matters currently considered by JRPPs be delegated back to those councils who demonstrate the capacity to adequately assess those matters:

As a group we have written to the Minister to respectfully ask her to review the operation of the joint regional planning panels after six months or 12 months. At the moment, a DA that goes before a panel is going to take 90 days, whereas a “dog of a DA” that should be rejected in 14 days or where it could be determined for approval within 40 days under a delegation it still will go to a panel under the current set-up. We have asked her to reconsider some councils who are demonstrably performing strongly on assessing those DAs—they could have made a determination after 40 or 50 days—to delegate back to those councils DAs that are currently classed to go before a joint regional planning panel. We believe that legally can occur. As you alluded to earlier in your remarks, in some ways the establishment of joint regional planning panels may be a reaction to a number of “non-performing” councils—and, let us face it, there are those councils—but the performance of the others I do not think should be detrimentally affected by that factor.⁴¹⁸

Committee comment

- 6.56** The Committee agrees there is merit in an independent panel determining applications where the relevant local council is the proponent. The Committee notes the evidence it received from planning practitioners that predicted the JRPPs would in many cases cause an administrative burden and result in longer assessment times for developments.
- 6.57** The operation and effect of the JRPPs will need to be closely monitored. There is some merit in the suggestion JRPPs be established and used where there is a demonstrable need rather than have them apply universally across the State.

Local councils

- 6.58** The view was expressed by many that the intended benefit of expanding exempt and complying categories was to remove standard developments from the development application process and thus give local councils more time to concentrate on larger more complex projects.⁴¹⁹ However, councils countered that many of the new reforms, particularly

⁴¹⁷ Mr Thorne, Evidence, 26 May 2009, p 42

⁴¹⁸ Mr David Broyd, Group Manager, Port Stephens Council, Evidence, 17 August 2009, p 13

⁴¹⁹ Ms Louise Southall, Policy Advisor, New south Wales Business Chamber, Evidence, 9 March 2009, p 14

the JRPPs were taking larger projects out of their hands and with a reduced role it would be difficult to maintain the skills and expertise of their staff.

- 6.59** Clr McCaffery said the Local Government Association of New South Wales had been calling for a long time for a genuine partnership between the State and local government to meet the range of planning related challenges. However, Clr McCaffery was of the view the State government was more interested in reducing the role of local government to simply administering the changes imposed by the State:

We think the Government has preferred to direct its energies to more and more regulations to simply strengthen the control State government has over local planning and development decisions, and just reducing the role local government has in the planning process. The latest reforms substantially reduce the opportunities for local communities to be involved in the planning decisions that impact directly on their lives. I do not have to make any of you aware what they involve. Although it is easy for the State Government to gazette a new regulation or issue a new policy, it is us at local level who have to implement the changes. We believe many of them are made in haste, and the costs to council are growing, at a time when financial resources are being stretched to the limit.⁴²⁰

- 6.60** Many councils argued removing decision making powers from local councils was in effect disenfranchising local communities:

Recent changes to the planning Act mean that planning control and accountability have been removed from local representatives, people who know their local community and have their best interests at heart and are in a position to determine what is best for their local area, but more importantly are accountable to the people in that community. By removing those particular powers from councils, you are disenfranchising the community. That is one aspect that needs to be changed.⁴²¹

Committee comment

- 6.61** The Committee agrees communities will feel disenfranchised when bodies that are, or appear to be, remote from their local area, make development decisions. However, councils determine what is best for their communities in two ways. Firstly they develop the policies and rules that determine the type of development that can occur. Secondly, they make decisions in accordance with those policies and rules on whether development to approve applications.
- 6.62** There is an argument that councils, and indeed all elected bodies, should focus on developing the policy guidelines against which development applications are determined and should be excluded from making determinations. However, in such a case, if councils are to be able to remain truly accountable and responsive to their local community the planning system must ensure policy changes can be implemented in a timely fashion and ensure decision making bodies have regard to and do not deviate from those policies.

⁴²⁰ Clr McCaffery, Evidence, 30 March 2009, p 15

⁴²¹ Ms Alison McLaren, President, Western Sydney Regional Organisation of Councils (WSROC), Evidence, 15 June 2009, p 17

Relationship between planning and building controls

- 6.63** Prior to 1998, the EP&A Act controlled the land-use and planning implications of that land-use, but did not control the building or construction standards. There was a distinct separation between planning and building controls.
- 6.64** In 1998, building controls were transferred from the *Local Government Act 1993* (NSW) to the EP&A Act and were integrated into the development control regime. This coincided with introducing a role for the private sector in issuing construction and complying development certificates.
- 6.65** The New South Wales Government submission said the feature of the ‘old system’ now lost, was concept planning approval, which did not require detailed consideration of building matters at the development assessment (DA) stage.. The submission notes the sharing of responsibility between consent and certifying authorities has seen some councils adopt an over-regulatory approach to reduce the scope of private certifiers.⁴²² Many councils agree they now seek more information at the DA stage because they no longer have the capacity to impose conditions at the construction certificate stage.
- 6.66** When addressing the issue of how to improve the relationship between planning and building controls there was a universal call from local government representatives for a return to the pre-1998 system as the simplest solution. Typical of this call was the submission from the LGPDG said a simple return to past legislation and practice could improve effectiveness of the planning system and better serve the needs of the building industry:
- Returning to the pre-1998 system would assist efficiency and clarity to a significant extent. It would enable the ‘concept’ of developments, eg. building footprint, setbacks, design parameters and the land use to be addressed at the DA stage and lead to the engagement of the community consultation and the heads of consideration under section 79c of the EP&A Act whilst the technical building content would be subsequently left to a building application stage that also could be conditioned to ensure compliance with the BCA etc.⁴²³
- 6.67** The New South Wales Government submission noted a decision was needed on whether the integrated planning and building system should continue in its current form and whether this model is the most effective means of regulating the built environment in New South Wales.⁴²⁴
- 6.68** The Department of Planning advised it is not necessarily a matter of returning to the pre-1998 system, as there is room in the current integrated planning system to more effectively regulate the built environment. The Department of Planning further advised there did not appear to be one specific alternate model applied elsewhere in Australia that could be applied in New South Wales, but there were elements of other systems that could be considered to improve aspects of the New South Wales system.⁴²⁵

⁴²² Submission 69, New South Wales Government, p 48

⁴²³ Submission102, p 11

⁴²⁴ Submission 69, p 51

⁴²⁵ Answers to questions taken on notice during evidence, 28 April 2009, Department of Planning, p 53

- 6.69** The Committee was unable to gain further insight on how the relationship between planning and building controls could be improved. This was because most submissions and evidence touching on this subject was presented by local councils who simply called for a return to the pre-1998 system.
- 6.70** Many councils also highlighted their concerns with the private certification system.

Role of private certifiers

- 6.71** Clr McCaffery argued there was an inescapable conflict of interest with the use of private certifiers: :

The fundamental problem with private certifiers is that there is a fundamental conflict of interest because the person making supposedly, and what the community requires, an independent decision is being paid for by the person who is getting the decision. It is very difficult as a professional to separate yourself out away from the person who is paying you. What we have seen consistently across private certifiers is that they deliver to the applicants, their clients, what their client expects. So that corners are cut, processes are not properly carried out, sites are not properly supervised and the person who suffers is the consumer.⁴²⁶

- 6.72** Clr McCaffery went on to point out that when problems arise from privately certified matters, it is council to whom consumers turn for rectification or action, even though councils are not involved in or have responsibility for those matters.
- 6.73** Throughout the Inquiry many participants from local government raised the issue of sub-standard performance by some private certifiers and the perceived lack of adequate response by the Building Professionals Board (BPB). In particular, during the public hearing held in Orange on 1 May 2009, representatives from Orange City, Bathurst Regional and Cabonne Councils related instances of poor performance and inadequate response from the BPB.⁴²⁷
- 6.74** The Committee noted many of the concerns raised would in principle be addressed by the 2008 reforms relating to private certifiers and the increased powers of the BPB. Nevertheless, the Committee was compelled to write to the Minister on 23 June 2009 to bring these concerns to her notice as there appeared to be either a lack of awareness by local government regarding the recent BPB reforms or a lack of confidence that the BPB has the resources or capacity to give full effect to them.⁴²⁸
- 6.75** As part of its input during the consultation phase leading to the 2008 planning reforms the Local Government and Shires Association (LGSA) commissioned Mr Mant to prepare alternative solutions to two key problems identified in the current development assessment

⁴²⁶ Clr McCaffery, Evidence, 30 March 2009, p 20

⁴²⁷ Evidence, 1 May 2009, pp 25-27; pp 37-38

⁴²⁸ Correspondence from The Hon Tony Catanzariti, Chair, State Development Committee, to Hon Kristina Keneally MP, Minister for Planning, 23 June 2009

process – one of these being the private certification model. In February 2008 the LGSA presented its alternative model to the Minister for Planning.⁴²⁹

- 6.76** The model proposes the role of private certifiers be restricted to checking and confirming compliance with set criteria and providing confirmation to council.⁴³⁰ Council would remain the consent authority:

Private certifiers should provide their certificates to local government which can then issue the construction certificate relying on the quantitative matters certified to in the certificate. Local government can then judge any qualitative matters such as whether the details substantially conform to the previous consents for the development (eg the concept or sketch plans) or if they do not, whether consent should be granted for the amendments. If the application is for a single-stage consent, then the use, urban design and construction matters can be dealt with at the one time.⁴³¹

- 6.77** The submission from Mr Sartor referred to the “Leading Practices” articulated by the Development Assessment Forum (DAF). One leading practice related to the involvement of the private sector to provide flexibility, free up and hasten approvals.⁴³² The Committee heard of a number of councils had established their own private certifying arms.⁴³³

- 6.78** In his submission Mr Sartor noted that the DAF stated in specified circumstances it is recommended that private sector experts provide advice attesting to compliance with technically excellent criteria. In other cases, the assessing authority would consider advice of private sector experts (whether government officer, panel or commission).

- 6.79** Mr Sartor further noted New South Wales already provides for private sector involvement through the use of private certifiers for complying development, construction certificates and occupation certificates. However he believed further expansion of self-assessment raises a number of difficult public policy issues and may undermine community confidence in the planning system. As such, he argued when developing new planning legislation, considering expanding private sector involvement would have to be approached with caution.⁴³⁴

- 6.80** However, Mr Sartor was not in favour of the model proposed by the LGSA and believed it would simply add another step and thus lengthen the assessment process.⁴³⁵

- 6.81** Mr Haddad said government policy was committed to maintaining the scheme of private certification. Mr Haddad said the Department of Planning will continue to work with local government to ensure the system operates properly:

⁴²⁹ See Submission 48 for a copy of this model

⁴³⁰ Mr Mant, Evidence, 9 March 2009, p 31

⁴³¹ Submission 48, attachment 1, p 3

⁴³² Submission 111, Mr Frank Sartor, p 11

⁴³³ For example see; Mr Paul Cashel, Leader, Strategic Planning, Blue Mountains City Council, Evidence, 30 March 2009, p 60

⁴³⁴ Submission 111, p 12

⁴³⁵ Answers to questions taken on notice during evidence, 15 June 2009, Mr Sartor, p 6

The current legislation and the foreshadowed legislation maintain the scheme of private certification. That is a government policy and it is there. We are trying to make the scheme work better. Obviously many councils and others have expressed concern, sometimes with and at other times without evidence, about issues with private certification. The first approach was for us to look at the Building Professionals Board and to strengthen it. We now have a new board. It is a very strong board—if I may use that word—and we have increased the penalties and the provisions for auditing and so on. Having said that, it is an issue on which we will continue to work with local government to ensure the system operates properly. It is there and we have various provisions in the reforms that address the deficiencies that have been drawn to our attention.⁴³⁶

Committee comment

- 6.82** The Committee could not ascertain whether the reforms relating to the private certification scheme will fully address all the concerns raised during the Inquiry. The Committee again notes it has recommended a fundamental review of all aspects of the planning framework. This review will be better placed to assess whether the private certification scheme is operating effectively and to make recommendations for any necessary changes.

Referrals and concurrences

- 6.83** Many submissions to the Inquiry criticised the planning system for being too complex and time-consuming. One of the main contributing factors cited was the need to refer development applications to various government agencies for concurrence.
- 6.84** The 2008 Reforms saw the introduction of the SEPP (Repeal of Concurrence and Referral Provisions), which removed a large number of duplicated or outdated State agency referral requirements.⁴³⁷ As a result, the Committee understands, there are now approximately 140 concurrence provisions compared to over 2,300 provisions that existed prior to 2004.⁴³⁸
- 6.85** Mr Joe Woodward, Deputy Director General of the Department of Environment Climate Change and Water advised that 83 per cent of the referrals and concurrences to his department previously required have now been removed from the planning process.⁴³⁹
- 6.86** The EDO expressed concern at removing concurrence requirements from natural resource agencies. They argued concurrences should be maintained regardless of the consent authority or category of development, to ensure relevant government expertise informs decision making to achieve a coordinated approach to natural resource management.⁴⁴⁰

⁴³⁶ Mr Haddad, Evidence, 30 March 2009, p 11

⁴³⁷ Submission 69, p 6

⁴³⁸ NSWPD (*Legislative Council*), 30 June 2008, p 8073

⁴³⁹ Mr Joe Woodward, Deputy Director General, Department of Environment, Climate Change and Water (DECCW), Evidence, 25 August 2009, p 45

⁴⁴⁰ Mr Robert Ghanem, Environmental Defender's Office, Evidence, 9 March 2009, p 17

6.87 The EDO's concern is warranted only if the removed concurrences were not unnecessary or duplicates. The Committee did not receive any evidence to indicate that this was the case.

6.88 It was suggested to the Committee that in order to further improve the system referral agencies should be given deadlines and that if a response is not provided within the timeframe that compliance should be presumed. Mr Brunton cautioned against such a system noting the presumption of compliance would not assist in achieving required outcomes:

It is fine to say that if that agency does not answer within the time frame you can assume that they think it is okay, but that assumption does not help you determine the development application. You can construct a different system—there is a way around it—but merely telling government agencies that they have to respond in time is not going to solve the problem. It is more complicated than that. It comes back to things you read from many people: the system is too complex.⁴⁴¹

6.89 Many submissions and much of the evidence from local council representatives relating to their concern with the delays mentioned the New South Wales Rural Fire Service (RFS). There was consistent criticism of delays and calls for mechanisms by which councils could be accredited to assume the concurrence role in appropriate circumstances.⁴⁴²

6.90 A number of council representatives called for standardisation of the process and greater delegations to local councils to certify that RFS requirements are met.⁴⁴³ The submission from the LGPDG called for greater clarity of standardised requirements and greater delegation to local councils:

The Rural Fire Service position is obviously fundamentally important to a good outcome, but increased clarity of standardised requirements, better resourcing of the RFS to respond to local government development applications, and, where appropriate (and endorsed by the RFS), accredited/agreed delegation to local government to determine the level of bushfire protection required to whether indeed an application for development is acceptable in a bushfire prone area.⁴⁴⁴

6.91 The RFS assumed a regulatory role with respect to development applications in bushfire prone areas in August 2002 when amendments to both the *Rural Fires Act 1997* (New South Wales) and the EP&A Act came into effect. New South Wales Rural Fire Service Assistant Commissioner Rob Rogers said from an industry perspective the new legislation created major challenges for developers, local government and members of the community.⁴⁴⁵

⁴⁴¹ Mr Brunton, Evidence, 30 March 2009, p 47; see also Submission 102, p 5

⁴⁴² For example of issues typically raised, see evidence, from Blue Mountains City Council, 30 March 2009, p 59

⁴⁴³ For example: Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council, Evidence, 29 May 2009, p 32

⁴⁴⁴ Submission 102, p 5

⁴⁴⁵ Assistant Commissioner Rob Rogers, New South Wales Rural Fire Service, Evidence, 25 August 2009, p 27

6.92 Assistant Commissioner Rogers acknowledged that when the changes were first introduced the RFS had difficulty meeting its 40-day response timeframe. He believed that much of the criticism from local councils was likely based on their experience from these times. Mr Thorne said that from an industry perspective the performance of the RFS had improved ‘a lot’ since 2002.⁴⁴⁶ Assistant Commissioner Rogers noted the last annual report of the RFS showed that 97 per cent of applications met the 40-day timeframe.⁴⁴⁷

6.93 Assistant Commissioner Rogers explained that the RFS is involved with two types of development under the EP&A Act and its focus is on providing advice on major integrated developments:

There are two types of development principally that the Rural Fire Service is involved with, one being the assessments under section 79BA of the Environmental Planning and Assessment Act, which is normally confined to infill development—a vacant block of land that someone wants to build on. They are handled in a very different way, inasmuch as the local council has the responsibility to assess whether that development meets *Planning for Bushfire Protection*, and if it does not, to pass it to the Rural Fire Service.

...The other types of developments are integrated developments, which are referred to us through section 100B of the Rural Fires Act, which is subdivisions, special-purpose developments such as schools, childcare centres, nursing homes and things like that, and they are the principal types of ones we handle at head office.

They require a bushfire safety authority to be issued by the Rural Fire Service Authority, by the commissioner, in order for that development to proceed. Whereas, the other ones I spoke about, under section 79BA, simply require a recommendation back to council as to whether it should approve them or not, but ultimately it is council's decision. The integrated developments are more the ones that we need to give agreement to for them to go forward. They are handled within our head office development control unit, with support from regional people for site visits where needed.⁴⁴⁸

6.94 The Committee was advised that 87 per cent of the applications referred by local councils are unnecessary as they meet the *Planning for Bushfire Protection* guidelines. Assistant Commissioner Rogers said he did not know if this was because councils were adopting a risk management strategy, but it did cause an unnecessary overload of referrals for the RFS.⁴⁴⁹

6.95 The RFS is developing a computer system to better inform councils and reduce the level of unnecessary referrals made to the RFS. The computer system can be used by councils to assess developments to see if they meet the *Planning for Bushfire Protection* guidelines, and

⁴⁴⁶ Mr Thorne, Evidence, 26 May 2009, p 45

⁴⁴⁷ Assistant Commissioner Rogers, Evidence, 25 August 2009, p 30

⁴⁴⁸ Assistant Commissioner Rogers, Evidence, 25 August 2009, p 28

⁴⁴⁹ Assistant Commissioner Rogers, Evidence, 25 August 2009, p 33

recommends conditions to apply to those developments, without need for referral to the RFS.⁴⁵⁰

- 6.96** At the public hearing on 25 August 2009, the Committee was advised the new system was anticipated to be ready within a few months. Further, the RFS intends to visit every council and provide training to their staff on how to use the new system and provide a mentoring role for some time. If necessary the RFS will consider locating staff at individual councils until such time as the council has the required expertise to use the system. The RFS has set itself a target date of six months for councils to be self-sufficient in use of the system..⁴⁵¹

Committee comment

- 6.97** The Committee notes the improvements that should continue to accrue from the removal of unnecessary and duplicate concurrence provisions. In particular, the Committee commends the RFS for its efforts to assist local councils in assuming more autonomy for determining development applications within bushfire prone lands.
- 6.98** Notwithstanding the removal of many referrals and concurrences and the desire to move towards resolving issues at the strategic level where possible, the need for multiple government agency input and concurrence for particular projects remains. In a later section of this chapter the Committee examines the issue of the need for mechanisms to coordinate and streamline multiple agency input in these circumstances.

Management of multiple agency input

- 6.99** As discussed earlier in the report there were consistent calls for issues to be resolved at the strategic planning level as much as possible to avoid the conflict that often arises from the need for multiple government agency concurrences at the development application stage.⁴⁵² However the need for multiple agencies to be consulted on particular project applications is likely to remain.
- 6.100** DECCW advised that, generally, it is possible to identify the majority of environmental constraints at the strategic level. Certain developments, due to their nature and scale, will continue to require input from the Department of Planning. Such developments are usually assessed under the major project system.⁴⁵³
- 6.101** The pressing need to establish a body or persons with authority to coordinate the requirements of various government agencies with respect to a development application was put to the Committee throughout the Inquiry. This ‘advocate’ or ‘facilitator’ needs the authority to resolve any conflict between different agencies, and to determine, from a whole-of-government perspective, whether or not an application may be approved.

⁴⁵⁰ Assistant Commissioner Rogers, Evidence, 25 August 2009, p 30

⁴⁵¹ Assistant Commissioner Rogers, Evidence, 25 August 2009, p 31

⁴⁵² For example, Ms Dennis, Local Government Association, Evidence, 30 March 2009, p 20

⁴⁵³ Answers to questions taken on notice during evidence, 25 August 2009, DECCW, p 2

- 6.102** Mr Morrison, Executive Director, Property Council of Australia, highlighted his members' frustration with the current system where they have to deal with different agencies:

Some of these agencies do not have a published policy base from which they make these decisions. We have members that are sitting between two warring government departments who have a different view as to what the waterway cum drain constitutes and which piece of legislation it should fall under, both asking for different consultant reports, et cetera, so you have a proponent virtually having to create policy and mediate between different government agencies because they have lodged a development application.⁴⁵⁴

- 6.103** Mr Leslie Tomich, General Manager, Albury City Council, drew the Committee's attention to the planning system in Victoria where it was possible to receive an inclusive government response in a timely fashion. Mr Tomich argued the New South Wales system desperately needed a 'one-stop shop' for government requirements:

For the sake of our hypothetical, we need to refer the application to the Department of Planning and know that it would come back with the government requirements. Whether they are transport, threatened species, water or whatever is irrelevant. It would come back as a commitment from government within a reasonable time stating the requirements. We would then do our part of the planning process and deliver to the community.⁴⁵⁵

- 6.104** Mr Thorne argued that the Minister and the Department of Planning must take the role of chief planner, coordinator and leader of the planning process. Mr Thorne emphasised he was not advocating further centralisation of the planning system, rather the Department of Planning, possibly at the regional level, being the acknowledged authority to resolve agency conflict and empowered to make a binding decision.⁴⁵⁶

- 6.105** However, Mr Broyd and Mr Ryan, in their capacity as members of the LGPDG, cautioned against a simple reinstatement of the regional coordinators that had existed in the past. In their experience the relevant regional coordinator had been swamped by the amount of work referred and hampered by an insufficient level of authority.

- 6.106** Mr Thorne told the Committee that he had been heartened by recent comments from Ms Keneally about the creation of application coordinators. Mr Thorne understood their role would be a champion of the application and they would ensure a determination was made in a timely manner.⁴⁵⁷ Early in the Inquiry, Mr Morrison advocated that the role of the then proposed Department of Planning project managers would need to be strengthened by placing them within the Premier's Department.

- 6.107** In evidence before the Inquiry into Budget Estimates the Minister for Planning said that new timeframes had been set for making a determination on major projects and land re-zonings.

⁴⁵⁴ Mr Morrison, Evidence, 30 March 2009, p 42

⁴⁵⁵ Mr Leslie Tomich, General Manager, Albury City Council, Evidence, 29 May 2009, p 12

⁴⁵⁶ Mr Thorne, Evidence, 26 May 2009, p 39

⁴⁵⁷ Mr Thorne, Evidence, 26 May 2009, p45; see also p 48

Ms Keneally said it will be the task of the newly created project delivery managers to ensure major projects and land rezoning assessments meet these timeframes:

Those time frames are 85 per cent of projects to be determined within three months, 95 per cent of projects to be determined within five months, and no project assessment to take longer than eight months. To achieve these goals, we have brought in a team of project delivery managers. It is their job to work with projects to ensure that they meet these time frames. The clock started ticking six months ago on these new time frames and shortly we will release our public report card on how we are tracking against those time frames. Overall, in terms of rezoning, we want to see a 50 per cent reduction in the amount of time it takes to bring new land to market.⁴⁵⁸

Committee comment

- 6.108** Establishing project delivery managers responsible for facilitating major projects and new land rezonings may address calls for the creation of an advocate empowered to broker a unified set of government requirements with respect to development applications. The Committee notes the comments of the Minister for Planning that the level of success of these managers will soon become apparent.
- 6.109** What will also need assessing is whether there remains a significant class of development or project applications that require multiple concurrences, which do not benefit from coordination and combined agency advice.

Division between policy development and decision making

- 6.110** In his submission and evidence before the Committee Mr Sartor argued there was a strong need to separate development policy and decision making. He referred to the findings of the Barker Review in the United Kingdom:

...I have argued very strongly about the separation of decision making about development from policy making. I refer you to the British Barker review. They have an independent infrastructure planning commission, which approves major infrastructure projects in the United Kingdom, and they argued very strongly and have set it up so that the infrastructure planning commission, which approves major projects, is quite separate from what they call the national policy statements which the government releases. They have separated the implementation of policy, that is the decisions on development, from the policy making. That is a key principle recommended by Barker in the United Kingdom and that is what I am getting at here—that in fact they who make the policy should not be they who implement the policy.⁴⁵⁹

⁴⁵⁸ GPSC 4, Inquiry into Budget Estimates 2009-2010, Ms Keneally, Evidence, 16 September 2009, p 14

⁴⁵⁹ Mr Sartor, Evidence, 15 June 2009, p 3

6.111 Mr Mant also argued that at both local council and State government levels there should be an independent people established to determine applications, whose members have not been associated with the application.

6.112 Mr Mant argued that elected representatives who are involved in determining development matters are undertaking both a political and a judicial role – and that these two roles should remain distinct:

Making a development control decision on a particular application is a judicial role; it is not a political role. That is why there is an appeal to the court. So, with respect, councillors might make very good judges but in a council meeting they are behaving like a legislature, and that is not the right place to be considering whether this particular application fits the rules or should be an exception to the rules and so on.⁴⁶⁰

6.113 Mr Mant said that those councils who had set up Independent Hearing Assessment Panels (IHAPs) saw a significant improvement in staff morale, and IHAPs had been well received by both applicants and councillors.

6.114 Mr Sartor told the Committee he thought there would be an eventual acceptance and implementation of this separation of the political process from development decisions. He noted it has occurred in South Australia and he thought it would not be long before all States adopted this separation.⁴⁶¹

The number of decision making bodies

6.115 As noted previously many of the submissions and evidence to the Committee were critical of the number of decision making bodies that exist within the planning system. During the Inquiry it was frequently put that two decision making bodies would be the optimum number. For example, Mr Raymond Darney, Director of Planning, Byron Shire Council suggested the number of decision making bodies should be reduced to two – local councils and the JRPPs.⁴⁶²

6.116 While Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council and member of the LGPDG said there was a need for an intergovernmental agreement between the two tiers of government clearly setting out what should be determined by local authorities and what should be determined by the State:

Things like water buybacks, irrigation areas, major transport networks and major funding of regional infrastructure, such as the upgrading of Wagga Wagga airport, would all be things that would sit comfortably with State strategies. Local issues and local developments—even if they are valued at over \$10 million—such as local supermarkets and tourist developments are really local issues. The State Government probably has more important things to be dealing with rather than considering them. We need to define those issues of

⁴⁶⁰ Mr Mant, Evidence, 9 March 2009, p 30

⁴⁶¹ Mr Sartor, Evidence, 15 June 2009, p 6

⁴⁶² Mr Raymond Darney, Director of Planning, Byron Shire Council, Evidence, 26 May 2009, p 13

State significance that should be dealt with at a state level. The community can define local community issues. If that were clearly stated in an intergovernmental agreement, I think there would be fewer conflicts between the two levels of government.⁴⁶³

- 6.117** In evidence Mr Sartor argued that, providing there was a separation of policy and decision making, the planning system could operate with only two decision making bodies – one at the State level and the other at the local level:

If you had the system I am talking about, you probably only need two tiers—the State system with the Planning Commission and then local panels appointed by the councils themselves so they have a bit more ownership, but not elected people. They have to be independent, accredited experts who, subject to certain criteria—you would probably want at least one planner on a panel; you might want at least one architect, whatever, depending on the nature of the development. All I am saying is that there is scope for shifting some of that back to the local level, provided that it is not politicised.⁴⁶⁴

- 6.118** Mr Malcom Ryan, Director, Planning and Development Services, Warringah Council, informed the Committee that Warringah Council has delegated all its planning application determining powers to an independent body. Mr Ryan explained how the separation of policy making and decision making operates at Warringah. If the elected council is dissatisfied with the decisions being made by the independent panel it is incumbent upon them to change the policy – the tools – that guides the panel in making its determinations:

If the council is upset over the way that panel is working—the interpretations of the policies are not being carried out—their job is to change the policy. It is not their job to interfere or influence the panel in its decisions; it is their job to give them a different set of tools to work with. I fully expect my council to review the work of the panel and then say do they like what is being built on the ground or not. If they do not like what is being built then change the policy to give the panel a different set of rules to work under.⁴⁶⁵

- 6.119** In a demonstration of how reforms to various parts of the planning system interconnect, Mr Ryan noted that the current process and time to change LEPs means most elected councils never see a philosophical policy change implemented within their four-year term.⁴⁶⁶

- 6.120** Mr Ryan said the independent panel works exactly in the same fashion as the JRPP for his area. He noted that one panel member has been engaged to serve on the JRPP. Mr Ryan outlined to the Committee the qualifications required to sit on the Warringah panel and its operational method:

It is four-member panel. There are mandatory qualifications for the chair: there must be a lawyer; we must have an architect or urban designer; we must have

⁴⁶³ Ms Stoneman, Evidence, 29 May 2009, p 30

⁴⁶⁴ Mr Sartor, Evidence, 15 June 2009, p 9

⁴⁶⁵ Mr Ryan, Evidence, 17 August 2009, p 13

⁴⁶⁶ Mr Ryan, Evidence, 17 August 2009, p 23

an environmental scientist—they are prescribed qualifications; then the last member is a community representative. We have a panel of four and we rotate them because they have an inherent conflict of interest because they obviously live in the area, so we make sure they are not determining applications in the area they live in, and they take it cyclically through the application so they are also not overwhelmed by too much work. However, the JRPP will take away a significant amount of that workload.⁴⁶⁷

- 6.121** Under Mr Sartor’s model the members of independent panels for each council would be drawn from an accredited State list. He said that local councils should be empowered to appoint panel members from this list.⁴⁶⁸
- 6.122** The Local Government and Shires Association commissioned Mr Mant to prepare an alternative decision making model. This model was presented to the Minister for Planning in February 2008.⁴⁶⁹ The model proposed two decision making bodies – local councils and the PAC. It proposed the use of IHAPs should be supported, but councils should have the discretion whether or not to use them, depending on their circumstances (for example: the expense of an IHAP may not be warranted for small rural councils with few Development Applications). It also proposed councils should be free to select panel members and not be constrained by an approved or accredited list.
- 6.123** Clr McCaffery said that while she was a great advocate of panels providing advice she believed the ultimate decision should lie with the elected council because ‘making these decisions is what our communities elect us to do.’⁴⁷⁰

Committee comment

- 6.124** The Committee acknowledges the weight of evidence calling for a reduction in the number of decision making bodies within the planning system. The Committee notes the PAC and JRPPs are still in their infancy so it is too early to judge their efficiency and effect upon the planning system.
- 6.125** The issue of the optimum number of decision making bodies needs to be considered during the fundamental review of the planning system. The Committee that when this matter is examined acknowledgment will have to be made of the practical and administrative consequences for rural areas. It has become clear during the Inquiry that in the past many Statewide initiatives have not considered these implications adequately.

Level of assessment to match complexity of the project

- 6.126** An ideal planning system is one where the level of assessment matches the complexity of the project. The Committee notes the Department of Planning has identified this as aim it is seeking to achieve.

⁴⁶⁷ Mr Ryan, Evidence, 17 August 2009, p 13

⁴⁶⁸ Mr Sartor, Evidence, 15 June 2009, p 9

⁴⁶⁹ Submission 48, appendix

⁴⁷⁰ Clr McCaffery, Evidence, 30 March 2009, p 19

6.127 The submission from the New South Wales Government stated there may be opportunities in future to promote targeted risk-based assessment for development proposals under the EP&A Act, including development applications under Part 4 and project proposals under Part 5.

6.128 The New South Wales Government submission noted an approach similar to that under Part 3A could be adopted, where the consent authority issues a single approval, or removes the need for multiple approvals:

The EIA method used for Part 3A projects is a targeted ‘risk-based’ assessment that provides a high degree of assessment for priority key matters for the sustainable management of the project, but avoids over-regulation and assessment of minor or irrelevant environmental and planning matters. This approach could be applied to Part 4 with the consent authority issuing a single approval across a range of legislation or conversely removing the need for multiple approvals where there is a comprehensive development approval.⁴⁷¹

6.129 The Department of Planning further advised that under Part 4 there is a high level of duplication, since approval councils as well as relevant government agencies grant conditions. A risk-based assessment approach would reduce duplication for low-risk development applications by removing the requirement to seek approval by government agencies.⁴⁷²

6.130 In evidence Mr Woodward said that the DECCW took a risk-based approach to its environmental decision making:

We take a risk-based approach to our environmental decision making. For big issues that have a big risk, we will be tough on those issues; for smaller issues with a smaller risk, we may at times be more lenient with those issues. We also strive to seek the most cost-effective solution to issues we are dealing with, rather than simply ignoring that.⁴⁷³

6.131 Mr Sartor argued that Parts 3A, 4 and 5 of the EP&A Act should be abolished and replaced by a single provision for development assessment that is flexible enough to deal with things differently if they are more complex.⁴⁷⁴

6.132 As noted in paragraph 6.122 the LGSA commissioned Mr Mant to develop an alternative decision making model, which is reproduced at Appendix 6. That model also envisages a single pathway for all applications.

6.133 Mr Christopher Berry, Acting General Manager at Goulburn Mulwaree Council suggested rather than being prescriptive about the legal or supporting documentation to accompany a development application, a simple approach would be to allow the assessment process to identify the supporting information necessary for an adequate assessment:

⁴⁷¹ Submission 69, p 7

⁴⁷² Answers to questions taken on notice during evidence, 30 March 2009, Department of Planning, p 39

⁴⁷³ Mr Woodward, Evidence, 25 August 2009, p 46

⁴⁷⁴ Mr Sartor, Evidence, 15 June 2009, p 3; see also p 8

If there are shortcomings with the information that has been lodged it will soon come out of the planning process. The public will pick up on any shortcomings and information. Your planning professionals will pick that up as part of the assessment process. You have got mechanisms there available to ask for further information...So a less prescriptive approach would be my view. Again, other States and other jurisdictions have got this down a little bit better than we have. Ours seems to be very much focused on a very prescriptive, process-driven thing rather than an outcomes-driven system.⁴⁷⁵

- 6.134** It is important to reduce the amount of unnecessary supporting information that is required to accompany a development application. However, at the same time it is likely that applicants would prefer to be certain up front of what information is or will be required to allow their application to be assessed.

Committee comment

- 6.135** While it was made clear to the Committee that the ability to match the level of required assessment to the complexity of the application was a desirable outcome, the Committee did not receive detailed evidence on how this could be practically achieved. The Committee notes the New South Wales Government and the Department of Planning have rightly identified this as an area for further examination.
- 6.136** The Committee again notes the interconnection between different aspects of the planning system and how reform in one area effects many others. The more things are determined at the strategic level the easier it will be to devise a system that allows a more flexible system of assessment requirements. Similarly, as will be examined later in this chapter, the Committee notes that many councils, in response to their concerns over the private certification system, have tended to require more detailed supporting information at the development application stage.

The right to appeal planning decisions

- 6.137** Decisions on whether or not to approve, or modify, development applications can have a profound affect on individuals and communities. Individual applicants are affected because their right to develop their land is constrained by the decisions made by consent authorities. Approved development can also affect the amenity of adjoining or nearby property owners or the broader community. As such the right of appeal or review of decisions is a fundamental element of the planning framework.
- 6.138** The planning appeals system falls within the jurisdiction of the New South Wales Land and Environment Court (L&E Court). In simplistic terms the appeals system comprises three broad components:
- appeals on matters of law
 - merit appeals by an applicant

⁴⁷⁵ Mr Berry, Acting General Manager, Goulburn Mulwaree Council, Evidence, 19 May 2009, p 23

- merit appeals by objectors where a development is defined as designated development.⁴⁷⁶

6.139 The 2008 planning reforms included a number of provisions, not all of which have yet been introduced, to expand review and appeal rights. These include:

- a new type of third-party objector review available to people directly affected (ie if they own or occupy land within a one-kilometre radius) by certain types of development, where the development consent exceeded development standards by more than 25 per cent
- the appointment of planning arbitrators to arbitrate on certain types of development valued under \$1 million, to provide a non-legalistic low-cost process
- changes to ensure the development application submitted to the Court in the case of a merit appeal is substantially the same as the application that was submitted to the consent authority for decision.

6.140 During the Inquiry the primary issues raised with the planning appeals system were that it must be made more accessible to the general community; the prohibitive costs of the court appeal system precludes access and can influence decisions; and the belief the system had become increasingly adversarial and less inquisitorial.

6.141 With respect to the 2008 reforms the Committee heard that councils were pleased with the changes requiring applicants to submit the same application to the court as was originally assessed by council. Councils noted there was some latitude with its application and that the effectiveness will be proven over time.⁴⁷⁷

6.142 Mr Sartor submitted that while appeals to the L&E Court on matters of law may, by necessity, be matters that need to be dealt within an adversarial system, there is no justifiable reason why merit appeals should rely on an adversarial process rather than an inquisitorial process.⁴⁷⁸ Throughout the Inquiry the Committee frequently heard that the appeal system had over time become increasingly adversarial in nature.⁴⁷⁹ Other Inquiry participants said in more recent times the L&E Court had increasingly encouraged a conciliation approach to resolve matters more quickly⁴⁸⁰ and had made moves to simplify merit hearings.⁴⁸¹

6.143 It was argued by some that the increasingly adversarial nature of the L&E Court was simply a reflection of the increasing legalistic nature of the planning system itself. Mr Broyd suggested that the multiple number of acts that affect planning has led to greater legal complexity.

⁴⁷⁶ Submission 111, p 21

⁴⁷⁷ Mr Peter Adams, Group Manager, Community and Corporate, Blue Mountains City Council, Evidence, 30 March 2009, pp 61-62

⁴⁷⁸ Submission 111, p 21

⁴⁷⁹ For example, Mr Broyd, Evidence, 17 August 2009, p 22

⁴⁸⁰ Answers to questions taken on notice during evidence, 24 August 2009, Housing Industry Association Ltd (HIA), p 2

⁴⁸¹ Submission 48, attachment 1, p 5

Mr Ryan said he believed the Court was simply reacting to the state of the planning system – specifically the problems that arise from making consent decisions within the framework of out-of-date LEPs:

I have a somewhat simplistic philosophy with regard to what has happened over the past 20 years in this business. Previously, the court was quite inquisitorial in that the commissioner would throw the issue on the table, have a discussion and then make a decision. It was a friendly, low-cost and relatively effective process. However, the plan-making process in New South Wales has slowed down so that most elected councils never see a change in their local environment plan during their term in office.

We have relied on the development application system as a policy-making tool. As soon as we start processing applications in a policy or legal void because the plan cannot be changed, the developers get upset because new things are thrown at them. The courts become involved and it becomes very legalistic because they want to see black and white results. The situation has snowballed to the point where we have an incredibly adversarial-type court that argues about prepositions, pronouns, commas and full stops rather than whether we really meant to put a block of flats on a site.⁴⁸²

6.144 Throughout the Inquiry participants from all sectors argued the cost of having an appeal heard was too expensive. Mr Frederick Harrison, CEO of Ritchies Stores Pty Ltd said that the current appeal process was too expensive and lengthy.⁴⁸³ Mr Cilliers, Planning and Environment Manager, Griffith City Council, told the Committee the cost to council was generally \$70,000 to \$80,000 for a commercial case and \$40,000 for a smaller case.⁴⁸⁴

6.145 Mr Peter Adams, Group Manager Community and Corporate, Blue Mountains City Council said prohibitive costs associated with the current appeal system had the effect of influencing councils in their decision making:

In a democratic process the right of appeal is absolutely fundamental. The role of the Land and Environment Court probably comes up in the discussion between councillors every time there is a contentious issue and they are wrestling with difficult decisions. That is because often their decisions are shaped by the threat of the Land and Environment Court. That might be a healthy pressure or in other cases it might be an unhealthy pressure. Nowadays developers do not even want the council to determine something because they want to go straight to the Land and Environment Court.⁴⁸⁵

6.146 A symptom of an unhealthy planning system may be that consent authorities are constrained and influenced in their decision making by the threat of incurring substantial costs upon

⁴⁸² Mr Ryan, Evidence, 17 August 2009, p 23

⁴⁸³ Mr Frederick Harrison, Chief Executive Officer, Ritchies Stores Pty Ltd, Evidence, 24 August 2009, p 19

⁴⁸⁴ Mr George Cilliers, Planning and Environment Manager, Griffith City Council, Evidence, 29 May 2009, p 24

⁴⁸⁵ Mr Adams, Evidence, 30 March 2009, p 61

appeal. Both the local government sector and the development industry acknowledged the benefit of mediation either formally through the conciliation and mediation mechanisms offered by the L&E Court, or informally through negotiation during the assessment of an application. However, the Committee heard evidence from councils that developers wish to proceed straight to appeal hearings as well as evidence from developers that councils do not wish to participate in conciliation conferences or mediation.⁴⁸⁶

- 6.147** Community associations or organisations often need to act in their own or the general public interest and challenge major planning decisions. Dr John Formby, Chairman of the Friends of Crookwell said it was now beyond the scope of most committees to exercise this right:

the Land and Environment Court has become impossibly expensive. The Friends of Crookwell are supporting an associated group that is involved in a very limited, narrow appeal. The group has found that it needs at least \$150,000 and probably \$200,000 to launch that appeal in the Land and Environment Court. If it loses, it will probably be up for double that. Appealing is now beyond the scope of most people.⁴⁸⁷

- 6.148** Similarly Mr James Ryan said community organisations now had to be extremely confident of success before they could consider bringing a matter before the L&E Court. Mr Ryan suggested there would be great public interest benefit if there was a mediation or dispute resolution system established that sat as an intermediary step prior to matters proceeding to the Court.⁴⁸⁸

- 6.149** While noting the current structure of the L&E Court is designed for examining matters in both an inquisitorial and adversarial manner, Mr Sartor told the Committee he believed a review of the planning framework should include reform of the L&E Court.⁴⁸⁹

- 6.150** In his submission and evidence to the Committee Mr Sartor called for changes to the merit appeal processes of the L&E Court to make it a more available option to the general public for smaller planning matters. Mr Sartor recommended legislation to provide for an inquisitorial rather than adversarial process, appeal costs to be capped together with rules to ensure appellants, and other parties, are not disadvantaged because of their means.⁴⁹⁰

- 6.151** As discussed earlier in this Chapter Mr Sartor also argued for all local consent decisions to be determined by independent panels. If such a system were introduced Mr Sartor argued it would then be sensible to expand the current third party appeal rights, to be heard by planning arbitrators, and encompass developments that involve a breach of a development standard.⁴⁹¹

⁴⁸⁶ Answers to questions taken on notice during evidence, 24 August 2009, Housing Industry Association Ltd, p 3

⁴⁸⁷ Dr Formby, Evidence, 24 August 2009, p 33

⁴⁸⁸ Mr Ryan, Evidence, 25 August 2009, p 41

⁴⁸⁹ Mr Sartor, Evidence, 15 June 2009, p 12

⁴⁹⁰ Submission 111, p 23

⁴⁹¹ Submission 111, p 23

- 6.152** The Committee notes any move to broaden third party appeal rights would need to take into consideration the practice of granting consent to development in breach of standards in return for a change in the development that results in a community benefit.
- 6.153** Various members of the property development sector argued there was a need to allow applicants to appeal to the L&E Court against a decision to refuse a rezoning application.⁴⁹² In arguing this position the Australian Property Institute of Australia New South Wales Division noted that Queensland, under its integrated planning legislation, had such a scheme, which was viewed as quite successful.⁴⁹³ The Property Council of Australia also argued for reform to allow the private sector to initiate rezoning or otherwise allow an appeal mechanism.⁴⁹⁴
- 6.154** Councils are required to strategically plan for the orderly development of their communities and to have this planning reflected in their LEPs. This includes having sufficient suitably zoned land available for development. The need to apply for and consider rezonings is influenced by the number of out-of-date LEPs. An efficient plan-making process, whereby LEPs can be regularly reviewed and where necessary amended should see a reduction in the number of rezonings needing consideration.

Committee comment

- 6.155** The Committee agrees that the right to appeal planning decisions is a fundamental and necessary element of the planning framework. Ideally, cost should not prohibit anyone from exercising these rights.
- 6.156** The Committee endorses the intent of the 2008 reforms to expand the review and appeal rights of the general community. Whether this can be best achieved through the use of planning arbitrators or through ensuring more equitable access to the L&E Court needs consideration.
- 6.157** The Committee also notes improvements to other areas of the planning framework have the potential to affect the number and type of matters that become the subject of appeal. Such improvements include improved strategic planning, greater community participation and improved decision making processes leading to greater community confidence in the independence of the decision making bodies.
- 6.158** Notwithstanding the above, the fundamental review of the planning framework will by necessity need to include review of the judicial body established specifically to support it. The group established to undertake the review will need to actively engage, if not include, the L&E Court to seek its views on what is required for the system to become more inquisitorial in nature.

⁴⁹² See for example, Submission 93, HIA, p 6

⁴⁹³ Mr John Sheehan, Chair, Government Liaison Committee, Australian Property Institute (New South Wales Division), Evidence, 9 March 2009, p 35

⁴⁹⁴ Mr Morrison, Evidence, 30 March 2009, p 38

Chapter 7 Coordination of Commonwealth and State planning controls

In terms of efficiency the New South Wales planning framework will benefit from the removing any unnecessary duplication of development controls and assessment processes. It is also agreed that all development in New South Wales should be controlled and assessed on a consistent basis.

The federal Minister for the Environment exercises a consent role for certain development proposals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The federal Minister for Infrastructure, Transport, Regional Development and Local Government, under the *Airports Act 1996*, is responsible for regulating land use on leased federal airports. This chapter examines terms of reference (c) and (f) in the context of the need for and potential to improve the coordination of and consistency between federal and State planning controls with respect to these areas.

Duplication of processes under the EPBC Act and New South Wales legislation

- 7.1 Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council said the council viewed the EPBC Act as a ‘showstopper’ when considering potential development. Mr Clark said that the council saw little point in going through the State rezoning process when there was the likelihood of the Commonwealth subsequently refusing the development.
- 7.2 Mr Clark related the case of the investigation of rezoning of the Heritage Estates area, situated between Jervis Bay and St George’s Basin. Council decided to refer the matter ‘prematurely’ to the Commonwealth. The federal Minister refused the rezoning and Council terminated its investigation.⁴⁹⁵
- 7.3 The most frequent issues raised by local councils with requiring Commonwealth approval were the different Commonwealth and State listing processes for threatened species, ecological communities and heritage sites; and the delays in receiving responses from the federal Department of the Environment.⁴⁹⁶
- 7.4 The New South Wales Government submission noted there are a range of mechanisms available under the EPBC Act which have the potential to reduce duplication of Commonwealth and State environmental assessment processes, but there were a number of issues requiring resolution:

While an Assessments Bilateral Agreement and an Approvals Bilateral for the Sydney Opera House already exist, and negotiations are underway for a Strategic Assessment of the Sydney Growth Centres, duplication and delays in these processes still exist. This is a result of some inflexibility of Commonwealth assessment processes, a lack of understanding by the Commonwealth of the statutory obligations of New South Wales assessment

⁴⁹⁵ Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, Evidence, 19 May 2009, p 2

⁴⁹⁶ For example, Submission 102, Local Government Planning Directors Group, p 8

systems, and separate listing procedures in State and Commonwealth for threatened species and heritage values.⁴⁹⁷

7.5 In January 2007 the New South Wales and Commonwealth governments signed an Assessments Bilateral Agreement that accredits the assessment processes within Parts 3A, 4 and 5 of the EP&A Act to ensure a coordinated approach for actions requiring approval under both New South Wales legislation and the EPBC. The New South Wales Government submission identified the following actions that should be undertaken in order to further decrease the level of duplication between Commonwealth and New South Wales environmental assessment systems:

- streamline administrative procedures for bilateral agreements
- adopt a consistent listing approach be taken for matters of national and state significance, including the listing of threatened species and heritage values under Commonwealth and State legislation be agreed by the Commonwealth and State Ministers and should include consistent provisions
- extend bilateral agreements to include approvals agreements that cover key areas (eg. land release areas, major rezonings, major development sites) or classes of developments where strategic assessments or conservation agreements can be developed to provide a strategic approach upfront and remove the duplication of assessment or approvals at the project approval stage.⁴⁹⁸

7.6 The Environmental Defender's Office does not oppose the idea of bilateral agreements in theory so long as the State process being accredited is robust and comprehensive. The EDO said that its concerns with the New South Wales assessment process, particularly that undertaken under Part 3A, lead it to oppose any reduction in the Commonwealth's consent role:

In relation to plans to further reduce duplication between the EPBC Act and the New South Wales planning process, we oppose any suggestion to accredit New South Wales approval processes (which would effectively make the Commonwealth's role superfluous)...Part 3A does not ensure the protection of environmentally sensitive areas and there is a lack of genuine public participation in the approval process. It is therefore important that the Commonwealth, through the EPBC Act, maintains a gatekeeper role and the power to veto developments. This 'safety net' ensures that there are two levels of scrutiny and accountability, which reduces the possibility that bad decisions are made and increases the likelihood of sustainable outcomes.⁴⁹⁹

7.7 The Nature Conservation Council of New South Wales also argued that an expansion of bilateral agreements could reasonably be pursued only if the current assessment processes under Part 3A were reformed in terms of greater consistency and transparency and if specifically linked to the principles of Ecologically Sustainable Development (ESD).⁵⁰⁰

⁴⁹⁷ Submission 69, New South Wales Government, p 20

⁴⁹⁸ Submission 69, pp 25-26

⁴⁹⁹ Submission 74, Environmental Defender's Office, p 9

⁵⁰⁰ Submission 114, Nature Conservation Council of New South Wales, p 20

- 7.8 Mr Joe Woodward, Deputy Director General of the Department of Environment Climate Change and Water (DECCW) said that it was working with the federal government towards establishing a Bilateral Approvals process.⁵⁰¹ Mr Woodward said that while the objective was to establish the process as quickly as possible, the final decision will rest with the federal government:

I do not have a timeframe on it at the moment. Our objective in New South Wales is to get it in place as quickly as possible but that does depend on the Australian Government, in terms of their timeframes and their confidence in New South Wales to be able to make decisions that they would be comfortable with.

...There are some things that we have approved and the Commonwealth has decided that they were not satisfied with our approval so they have gone down their own path to do further assessments and to make their own decisions.⁵⁰²

Committee comment

- 7.9 The Committee agrees that a consistent listing approach for matters of national and state significance, including the listing of threatened species and heritage values under Commonwealth and State legislation is an outcome that should be pursued.
- 7.10 The Committee also believes that duplicative assessment and approval processes should be removed wherever possible, that is when they are not necessary for achieving a good outcome. The Committee acknowledges the argument from some stakeholders that the federal government consent role should not be diminished – because the New South Wales assessment and approval process is inadequate.
- 7.11 However, rather than rely on a second level of scrutiny the better approach is to refine the State system to the point where the need for additional scrutiny is reduced as much as possible. The Committee believes that if the fundamental review it has recommended is undertaken in the manner it suggested, the New South Wales planning system will improve and result in greater confidence in the system to assess and approve matters of national environmental significance.

Regulation of land use on or adjacent to airports

- 7.12 The New South Wales Government submission stated that, with respect to the regulation of land use on or adjacent to airports, the key planning issues include:
- the strategic importance of the airport as a transport hub for passengers and freight and the associated development implications in terms of aviation related development, tourism/recreation, ground transport and other economic activities

⁵⁰¹ Mr Joe Woodward, Deputy Director General, Department of Environment, Climate Change and Water, Evidence, 25 August 2009, p 44

⁵⁰² Mr Woodward, Evidence, 25 August 2009, p 51

- the regulation of activities on the airport (especially on Commonwealth land) – both aviation and non-aviation related – and their relationship to surrounding land use and transport links
- the regulation of development near the airport which is likely to be affected by noise or aviation risks and the impact of land uses near an airport on aviation safety.

7.13 The separation of land use controls between land within airport perimeters and land adjacent to airports often leads to land use conflicts. In addition, development within airport perimeters is likely to generate increased demand for state infrastructure services. However, States do not have the ability to set infrastructure requirements or to recover the cost of providing these services from airport operators on Commonwealth land.⁵⁰³

Regulation of leased federal airport sites⁵⁰⁴

7.14 The regulation of land use on the leased federal airport sites is conducted within the framework of the *Airports Act 1996* (Airports Act) and the associated Airports Regulations 1997 and Airports (Building Control) Regulations 1996 and Airports (Environment Control) Regulations 1997.

7.15 The regulation of land use on leased federal airports is the responsibility of the Australian Government Minister for Infrastructure, Transport, Regional Development and Local Government.

7.16 The primary means of regulating land use, planning and building controls is under Part 5 of the Airports Act, which specifies the process in the form of airport master plans, major development plans (MDPs) for significant developments, the approval of building activities on airport sites and the certification of buildings and structures on airport sites.

7.17 Master plans, 20-year forecasts produced every five years and requiring 60 business days' public consultation, must ensure that uses of the airport site are compatible with the areas surrounding the airport. Relevantly, airports are required to specify an Australian Noise Exposure Forecast (ANEF) for the areas surrounding the airport, flight paths, undertake consultations with local government bodies in the vicinity of the airport for managing noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels, and identify and manage environmental issues.

7.18 Major airport developments require an MDP, which must be consistent with the airport lease and master plan. Similar consultation provisions apply and an MDP must set out, among other matters, an assessment of environmental impacts and managing noise intrusion and also have regard to Australian Standard AS2021.

⁵⁰³ Submission 69, p 36

⁵⁰⁴ The following paragraphs which describe the current situation with respect to the regulation of land use on leased federal airport sites are drawn from Submission 96, Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government, pp 4-5

- 7.19** For both master plans and MDPs airports must demonstrate how they have addressed the concerns of state and local government and other stakeholders before submitting their proposals to the Minister for approval.
- 7.20** The Airports (Protection of Airspace) Regulations 1996 provide a system to protect declared prescribed low level airspace at and around airports. Intrusions into prescribed airspace are permitted as ‘controlled activities’ subject to an assessment of impacts on safety, efficiency and regularity of existing or future air transport operations in and out of airports. Under Regulation 8 of these regulations a local government body is required to give notice of proposed building activities that would constitute a controlled activity.
- 7.21** The Civil Aviation Safety Authority (CASA) administers the Civil Aviation Safety Regulations 1998 of which Part 139, and the associated part 139 of the CASA Manual of Standards, prescribes the detailed regulation that is determined to be necessary for the safety of air navigation on and around aerodromes. The Civil Aviation (Buildings Control) Regulations 1998, also administered by CASA, specifies controls on building heights within the vicinity of airports.

Airports in New South Wales⁵⁰⁵

- 7.22** There are ninety aerodrome facilities in New South Wales or affecting New South Wales land use. These include:
- seven civil aviation airports (Sydney, Coolangatta, Canberra, Newcastle, Bankstown, Hoxton Park, Camden) and six military aerodromes on Commonwealth land. These airports are currently outside New South Wales planning laws and are regulated under the Commonwealth Airports Act or defence legislation
 - 73 aerodromes owned by local councils/authorities (may be leased to private operators). There are seven airline operators operating regular commercial services to 33 regional airports in New South Wales. Nine regional airports are considered ‘major’ – Coffs Harbour, Ballina, Dubbo, Albury, Wagga, Port Macquarie, Armidale, Tamworth and Williamtown. The aerodrome facilities that do not operate commercial services may have charter flights, private planes, aero clubs or crop dusting operating
 - four private aerodromes.⁵⁰⁶
- 7.23** When preparing Regional Strategies and Local Environmental Planning Policies (LEPs), the location of the airport must be considered in terms of its potential to act as a strategic centre attracting tourist, industrial and business opportunities. It also needs to be considered in terms of its transport implications as well as the potential impacts on surrounding land uses.

⁵⁰⁵ The following paragraphs describing the aviation facilities in New South Wales and the issues relating to the regulation of land use on or adjacent to airports are drawn from Submission 69, New South Wales Government, pp 36-45

⁵⁰⁶ Submission 69, p 37

- 7.24** Given the difficulties in obtaining sites for large scale infrastructure such as airports, it is important that future uses of regional airports are not compromised through inappropriate land use planning, with respect to both development on or adjacent to the airport land.⁵⁰⁷
- 7.25** Air safety and noise control regulations can effectively sterilise adjacent non-airport land in terms of development potential and general usage. While this might be reasonable in respect to existing operations, airport operations and Commonwealth standards change over time with consequent potential increased impacts on adjacent land. Consideration should be given to ensuring that any such changes are accompanied by appropriate consideration for neighbouring affected landholders.
- 7.26** Under the EP&A Act, planning authorities must consider airport noise and safety issues associated with tall structures when preparing an LEP relating to land in the vicinity of a licensed aerodrome.
- 7.27** These provisions are under a Ministerial Direction under section 117 provisions in the EP&A Act. These provisions require planning authorities to consult with the Commonwealth and the aerodrome lessee and set height limits that take into consideration the Obstacle Limitation Surface (OLS) as defined by the Commonwealth. The council must obtain permission from the Commonwealth to allow tall development in the OLS zone. These provisions also prohibit or regulate land use around airports based on Australian Noise Exposure Forecast (ANEF) levels as shown in the table below.

Table 7.1 ANEF limitation on development

Type of development	Planning provisions in s117 Direction – development near licensed aerodromes	
	<i>Prohibited</i>	<i>Only permitted if meets AS 2021⁵⁰⁸ regarding interior noise levels</i>
Residential purposes, nor increase residential densities	ANEF exceeds 25	ANEF is between 20 and 25
Schools, hospitals, churches and theatres	ANEF exceeds 20	ANEF is between 25 and 30
Hotels, motels, offices or public buildings	ANEF exceeds 30	ANEF is above 30

- 7.28** As a result, setting of the ANEF or OLS under Commonwealth legislation (into which the State has no input) can have very significant implications for property values, development patterns and social amenity in the area surrounding an airport.⁵⁰⁹
- 7.29** Currently ANEF Maps are developed to forecast aircraft noise levels expected around an airport. There are two options for modelling these map contours. The contours may relate to

⁵⁰⁷ Submission 69, p 39

⁵⁰⁸ Australian Standard AS2021 (Acoustics – Aircraft Noise Intrusion – Building Siting and Construction)

⁵⁰⁹ Submission 69, p 40

a particular year, generally about ten years into the future, based on the airport operator's forecast of aircraft movement numbers, aircraft types, destinations, and a given set of runways at the airport for a particular year.

7.30 Alternatively, the ANEF maps can be based on the airport operator's estimate of the 'ultimate capacity' of the airport which may include future runways (yet to be built) and airport operations which could occur in the future as a result of the further development of the airport and changes in national and international air services. The ANEF for Canberra Airport was based on ultimate capacity in 2050. In evidence representatives of Canberra Airport said their ANEF was not based on a time in the future but on the practical ultimate capacity of the airport.⁵¹⁰

7.31 Generally the airport owner/operator initiates the process for developing ANEF maps. Where the work is undertaken by the owner/operator, Airservices Australia may assist in the process. In some cases, Airservices may undertake the work for a fee. The ANEF is subject to review and endorsement by Airservices Australia. For airports on Commonwealth land, the ANEF maps are linked with the Airport's Master Plan which sets out a 20 year plan for the airport which is reviewed every five years. The Master Plan is approved by the federal Minister.

7.32 The ANEF system has been used in four key ways in Australia:

- to delineate where, and what type of, development can take place around airports
- to determine which buildings are eligible for insulation around Sydney Airport
- for technical assessments of airport's operating options
- as a tool for providing information to the public on noise exposure patterns around airports.⁵¹¹

Current concerns and criticisms

7.33 The ANEF system has been the subject of the following criticisms:

- the ANEF does not communicate to the community effectively the likely noise implications
- there is a concern that the preparation of ANEFs by airport operators and the process of endorsement of ANEFs are open to manipulation. The linkage of the ANEF contour maps to the ultimate capacity of the airport including future runway configurations or usage patterns can result in unrealistic projections and the potential to sterilise large areas of land.
- these unrealistic projections can be seen as an ambit claim to prevent development in the vicinity and the potential for airport noise management measures in the future – such as curfews.

⁵¹⁰ Mr Stephen Byron, Managing Director, Canberra Airport; Mr Andrew Leece, Manager, Regulatory Affairs, Canberra Airport, Evidence, 19 May 2009, p 30

⁵¹¹ Submission 69, p 40

- the dual roles of Airservices Australia of government adviser and external consultant need to be critically examined to determine whether there is potential for conflict of interest.
- the failure of ANEFs to consider the impact of aircraft noise under the 20 ANEF contour
- the appropriateness of the ANEF and AS 2021 system for both greenfield and brownfield sites.⁵¹²

7.34 New South Wales legislation does not apply to aviation or non-aviation development on Commonwealth land. Issues have arisen in New South Wales and other States regarding the regulation of activities on airports operating on Commonwealth land that are not subject to State planning and other laws.

7.35 The increased traffic and other environmental impacts brought about by development at airports can have a significant impact on local communities. If these impacts are not adequately considered as part of the approvals process, developments on airport sites will also have an unfair advantage on developments in surrounding areas. There may also be an impact on land use targets set at a regional or state level that seek to manage the interaction between jobs, employment and the need for transport and other infrastructure.⁵¹³

Development of national aviation policy

7.36 The Department of Infrastructure, Transport, Regional Development and Local Government is coordinating the development of a comprehensive national aviation policy to guide the aviation industry's growth over the next decade and beyond. An Issues Paper was released for public comment in April 2008, with the Aviation Green Paper released for comment in December 2008 as the second of three steps in the development of the policy by the end of 2009.⁵¹⁴

7.37 Chapter 8 of the Green Paper *Flight Path to the Future*, released on 2 December 2008 considers planning at the leased federal airports and responses to the following related themes identified in the April 2008 issues paper.⁵¹⁵

7.38 The Aviation Green Paper commits the Australian Government to work with the state and territory governments on airport planning and development, with clear consultation and decision-making processes, including the key initiatives outlined below:

- establishing Airport Planning Advisory Panels, drawn from industry, community and government, for each of the major airports, to provide independent expert analysis and advice to the Minister

⁵¹² Submission 69, p 41

⁵¹³ Submission 69, p 43

⁵¹⁴ Submission 69, p 44

⁵¹⁵ The following information on the Aviation Green Paper is taken from Submission 96, Department of Infrastructure, Transport, Regional Development and Local Government, pp 5-6

- examining the impact of airport development on surrounding transport and community infrastructure and how the leased federal airports might contribute to this infrastructure
- strengthening the airport Master Planning process to provide greater transparency and certainty about future land uses at the airports
- empowering the Minister to call for additional detail in precinct plans for areas which have been proposed for non-aeronautical development
- reviewing the triggers for the airport major development process to ensure those developments of most interest to the community are subject to proper consultation
- establishing community consultation groups at each airport to foster effective community engagement in airport planning issues
- establishing a clear policy defining 'public safety zone areas' around airports, which can be taken into account in local planning.

7.39 The Green Paper notes that for airport operators, it is essential that local planning schemes support the development of the airport and prevent development that would impact on current and future operations. In turn, the Green Paper acknowledges that planning authorities are seeking more effective input to airport development processes.

7.40 Mr Milton Cockburn, Executive Director of the Shopping Centre Council of Australia told the Committee his organisation had for some time argued that there are inadequacies in the land use planning and development approval processes for non-aviation development on federal airport land. Mr Cockburn praised the actions of the State Government in ensuring it was considered as part of the review:

I accept that State governments have been as frustrated about this as many other bodies such as ourselves. I think the New South Wales Government has probably done more to draw attention to these anomalies than any other State government. I am happy to say that as a result of the Government drawing attention to it, the current review of the aviation policy statement has also drawn attention to these issues as something that is being reviewed.⁵¹⁶

7.41 Mr Andrew Leece, Manager Regulatory Affairs, Canberra Airport said there was an urgent need for dialogue and greater integration between the Commonwealth, State and local government levels:

We actually agree that there needs to be a consistent approach where the top factors that you are talking about are taken into account and are considered in any government proposal. Our fundamental point is that what we need to do going forward is start with discussions between the States, Territories and the Commonwealth so that you can have an integrated planning approach that covers airports; that does not treat it as distinct or separate—as an island—from the surrounding region but actually looks at it and says "Okay, it is a

⁵¹⁶ Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia, Evidence, 15 June 2009, p 39

Commonwealth asset; it does affect wider regions but it is also special because it is a piece of national infrastructure so what is the best approach to deal with it from a planning perspective?"⁵¹⁷

7.42 In its input to the development of a comprehensive national aviation policy the New South Wales Government has put forward the following recommendations:

- establishment of community consultation committees to provide meaningful communication on the planning, assessment and ongoing operation of major airports
- establishment of independent panels with community and state and local government appointed membership to assess masterplans and non-aviation development proposals on Commonwealth land and to provide recommendations to the Commonwealth Minister
- review of the process for setting and monitoring ANEF noise levels and OLS with an independent panel involved to evaluate the methodology and predictions parameters
- review of the use of ANEF levels in limiting land use planning surrounding airports
- agreement that airport lessees and non-aviation development on Commonwealth land contribute to any relevant development contribution levees – for example upgrade of the road system to take into consideration increased vehicle movements associated with the development on the airport
- agreement that airport operators develop an appropriate noise monitoring and management regime to appropriately deal with airport noise impacts on surrounding land uses and to provide incentives for operators to minimise adverse noise impacts on the community.⁵¹⁸

7.43 Representatives from both the Village Building Company in Canberra and the Jerrabomberra Resident's Association supported the New South Wales Government's recommendations. In particular they agreed with the need for a review of the process for setting and monitoring ANEF levels.⁵¹⁹

Non-aviation development on airports on commonwealth land

7.44 As noted previously, development, both aviation and non-aviation development, on airports on federal land is not subject to State planning controls. Inquiry participants argued there was no justification for non-aviation development to be exempt from relevant State controls, and that proposed major development had to be considered within the context of the broader

⁵¹⁷ Mr Leece, Evidence, 19 May 2009, p 32

⁵¹⁸ Submission 69, p 45

⁵¹⁹ Ms Margot Sasche, President, Jerrabomberra Resident's Association, Evidence, 19 May 2009, p 41, Mr Kenneth Ineson, General Manager, Special Projects and Feasibilities, Village Building Company, Evidence, 19 May 2009, p 51

strategic planning for the region. A number of participants also noted that non-aviation development could potentially constrain further aviation development in the future.

- 7.45** Representatives from the Council of the City of Sydney pointed out that non-aviation development had to be assessed in terms of its potential to constrain further aviation development. Mr Michael Harrison, Director, Strategy and Design, believed that given the land constraints of Sydney Airport, care had to be taken when considering further commercial development:

Another aspect of the airport is that there is probably a natural tension between the airline and what they want and the airport owners and what they want. Some years ago I was involved in a master plan for the Qantas jet base. They were anticipating huge growth. My concern is that the land is so constrained, you really have to be very careful of what other uses you put on the airport land. In fact, what we really need is to expand the land area, if we can.⁵²⁰

- 7.46** Mr Andrew Thomas, Executive Manager, City Plan, believed that commercial development on federal airport land had to operate within the strategic planning framework for the region. When it does not there is the risk that local and State strategic planning and infrastructure decisions will be undermined:

We feel that the investment that the State and the local government makes in infrastructure in and around the airport has to be consistent with a policy that covers both pieces of land. We feel that the proliferation of non-airport related activities, such as shopping centres, would place some of the city's and the State's proposed infrastructure investment, particularly around the Green Square town centre, at risk and would compete with the primary purpose of the airport, which is essentially a passenger terminal rather than a shopping centre.⁵²¹

- 7.47** Ms Lorena Blacklock, Strategic Planning Coordinator, Queanbeyan City Council also argued that non-aviation development needed to be subject to the relevant local controls particularly so that the planning hierarchy that has been set for the region is adhered to.⁵²² Ms Blacklock emphasised that her council was not advocating a complete restriction on non-aviation on airport lands:

I do not know that council would be requesting no development at all. It is just that if any development occurs there it should be looked at in terms of the whole region and the impacts it has on that region. Yes, it may be that there are some types of development that can be non-aviation related that are actually quite appropriate there, and need not be located in a central business

⁵²⁰ Mr Michael Harrison, Director, Strategy and Design, City of Sydney Council, Evidence, 9 March 2009, p 5

⁵²¹ Mr Andrew Thomas, Executive Manager, City Plan, City of Sydney Council, Evidence, 9 March 2009, p 5

⁵²² Ms Lorena Blacklock, Strategic Planning Coordinator, Queanbeyan City Council, Evidence, 19 May 2009, p 2

district or in a traditional employment area. They might be quite suitable there. So I do not think that council is advocating that nothing at all occur on this land; it is just that it needs to recognise the actual setting where it is occurring.⁵²³

- 7.48** Mr Cockburn said that the Shopping Centre Council of Australia had argued for some time that there was no justification for exempting non-aviation development from local planning controls:

We believe that commercial non-aviation development of airport land should be subject to the same level of scrutiny, community consultation, planning assessment and developer contributions as a similar development under State and local planning laws. We can see no public interest justification for exempting non-aviation development - and I stress non-aviation development - on airport land from the State and local planning laws that apply to every other development. While Commonwealth control of aviation development at airports is warranted, given their national significance, we cannot see that there is any similar justification for exempting non-aviation development from local planning laws.

We emphasise that we are not saying that there should be no commercial or retail development of airport land. We are simply saying that if there is to be commercial or retail development on land that was previously set aside for aviation purposes, it should be subject to the same level of public scrutiny, community consultation, planning assessment and developer contributions as are similar developments under State and local planning laws.⁵²⁴

- 7.49** During the public hearings it was acknowledged that the organisations that bid for and bought federal airport leases paid a premium for the right to operate and develop the airport lands with a view to maximising their capital return. While there was a consistent call for regulatory change so that non-aviation development be subject to State planning controls, including developer contributions towards required public infrastructure, there was no suggestion that a new scheme should be applied retrospectively.⁵²⁵

Regulation of land use adjacent to airports

- 7.50** The Committee took evidence from representatives from a number of local councils that had airport facilities within their local government area. It was clear that airports, whether commonwealth or state, civil or military, are regarded as a very valuable resource which make a major contribution to the economic well-being of a region. It also became clear that councils generally seek to protect that resource's potential by taking action to minimise land use conflict.

⁵²³ Ms Blacklock, Evidence, 19 May 2009, p 6

⁵²⁴ Mr Cockburn, Evidence, 15 June 2009, p 36

⁵²⁵ Mr Cockburn, Evidence, 15 June 2009, p 40

- 7.51** Shoalhaven City Council has a defence military base and a defence bombing range within its local government area. Mr Gordon Clark, Strategy Planning Manager told the Committee that, while a good working relationship exists, it has been difficult for the Council to manage in a planning sense the activities emanating from HMAS Albatross, as the Department of Defence have their own regulations ‘that allow them to do practically anything’.
- 7.52** However, Shoalhaven Council is very keen to protect the integrity of the base. Mr Clark said that council has taken a two-pronged approach in this regard. First, council has established a buffer zone around the base – which it has no intention of changing, even if ANEF forecasts change in the short term. Council’s aim is to ensure there is never any conflict between development and future flight paths.
- 7.53** Second, the Council takes pains to ensure, as much as possible, that potential landowners moving into the area are well aware that the Shoalhaven is primarily a defence area and that there is always the potential for military flight traffic overhead.⁵²⁶
- 7.54** Tamworth Regional Council operates Tamworth Regional Airport, which is the tenth busiest airport in Australia. Originally the airport was located quite close to the central business district. In the 1950s it was relocated to a site some distance from the town. Ms Genevieve Harrison, Strategic and Corporate Planning Manager, told the Committee that Tamworth Council has a major investment in the airport and has for the last 15 years used a planning framework and a specific zoning around the airport to protect that investment.⁵²⁷
- 7.55** Representatives from Ballina Shire Council said that Council was committed to providing a surrounding buffer zone to Ballina Airport:
- Council has historically not had too many significant difficulties or problems in the localities. Council has a longstanding set of Australian noise exposure forecast [ANEF] contours that have been applied fairly consistently, and that seems to have provided a decent buffer around the airport. Of course, development is starting to encroach as Ballina expands, but at this point the council is committed to the application of those ANEFs and the appropriate guidance that goes with that, and has identified a range of uses that are not appropriate in the vicinity of the airport. Therefore, at the moment the interface seems not to be creating too much conflict.⁵²⁸
- 7.56** Richmond Valley Council has two aerodromes located at Evans Head and Casino. Mr Ken Exley, Director, Environmental Development Services, explained that the council had sought to ensure that the future viability of the aerodromes would not be threatened by conflicting land use development. Council based its planning on the long-term potential of the aerodromes and had used the ANEF system to identify development boundaries:

⁵²⁶ Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, Evidence, 19 May 2009, p 17

⁵²⁷ Ms Genevieve Harrison, Strategic and Corporate Planning Manager, Tamworth Regional Council, Evidence, 21 May 2009, p 5

⁵²⁸ Mr Matthew Wood, Strategic Planner, Ballina Shire Council, Evidence, 26 May 2009, p 5

I think it is quite a valuable planning tool. We used an ANEF study at the Evans Head aerodrome. It has equivalent flight movements—so we over calculated—it is equivalent to Coolangatta airport. Currently we are lucky to get one plane a day land at Evans Head. There are no facilities there, no fuel, a couple of hangars there and a couple of light aircraft. When we laid down that footprint we were very cautious. We did not want to have a development that would encroach and make the aerodrome nonviable. It really gave council some clarity as to where the boundaries should be in relation to various land uses. We have done the same at Casino. So we are quite comfortable with that as a tool to ensure there are no conflicting land uses and that the aerodromes are not subject to challenge in the future because of land use around them.⁵²⁹

7.57 Clr Kerry Pascoe, Mayor of Wagga Wagga City Council told the Committee that the Council was making significant investment in its regional airport and was actively seeking to secure federal and commercial airline interest to locate aviation training facilities within the airport.⁵³⁰

7.58 Mr Bodhan Karaszewych, Director, Planning, said council was using the ANEF system to guide it in reconciling its plan for the airport's future growth with residential growth needs:

Our airport is extremely important to us. It is a central hub there and that is why we are going through all these processes of spending \$6.5 million and spending something like \$160,000 on master planning and so forth.

In relation to the airport master plan, we are considering an airport city link as part of our broader city master plan exercise. We are very conscious of the ANEF contours and the noise impacts on development with rural living or more compact residential living. We have had a number of approaches from developers wanting to expand the urban area in the vicinity of Forest Hill...They are essentially, as an option, a large residential development area to the north, to the riverside of Forest Hill.

We are very conscious about the very considered plan for the airport's future growth and the noise impacts that it may generate.⁵³¹

Committee comment

7.59 On the evidence received, it appears that in general local councils take pains and are able to manage the land use adjacent to the airports within their local area. In those cases where council is not the owner/operator the key to this success appears to be the establishment of a good working relationship with the airport concerned.

⁵²⁹ Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council, Evidence, 26 May 2009, p 34

⁵³⁰ Clr Kerry Pascoe, Mayor, Wagga Wagga City Council, Evidence, 29 May 2009, p 48

⁵³¹ Mr Bohdan Karaszewych, Director, Planning, Wagga Wagga City Council, Evidence, 29 May 2009, p 49

Community understanding of ANEF noise contours

7.60 As noted earlier, depending on the applicable ANEF noise contour, development is either permitted, permitted subject to noise mitigation building controls, or prohibited. An individual's understanding of the implications of ANEF contours generally depends on whether that individual resides within a contour area. There is an acknowledged need to increase the general public's understanding so individuals are adequately informed prior to making a decision on purchasing land affected by aircraft noise.

7.61 As stated earlier, Shoalhaven City Council takes pains to ensure, as much as possible, that potential landowners moving into the area are aware that the Shoalhaven is primarily a defence area and that there is always the potential for military flight traffic. Mr Clark noted that the current regulations guiding what is placed within section 149 certificates, mean that most potential land purchasers are not as fully informed as they could be:

We issue section 149 zoning certificates at the time the land is bought and sold. However, under the current regulations that specify what we put in those, the naval flight regulations can only go in the non-compulsory part of 149, so most landowners do not see it. We have on display permanently in our council the flight operating areas for HMAS *Albatross* so that someone moving into the area can say, "I live in an helicopter operating area so I can expect to see a helicopter over my house once in a while."⁵³²

7.62 Queanbeyan City Council recommended that the requirements of section 149 certificates be changed to identify land falling within ANEF 20 so that potential purchasers are made aware that the land is subject to aircraft noise. They further suggested the 149 certificate should note where information about aircraft noise can be sourced.⁵³³

7.63 Mr Wood from Ballina Shire Council believed the Shire's broader community had a limited understanding of the ANEF process, because there were few properties falling within aircraft noise contours. Mr Wood suggested that additional information clearly describing the likely impact on amenity of the various contour levels could improve the general public's understanding:

I think the ANEF process is a good core of that process, but I think there are other opportunities to further expand on what those types of issues mean and also to provide a range of different information that is more meaningful to the community. So rather than applying contours and technical things like ANEFs perhaps there are better ways of representing whether or not noise is perhaps at a level that would be annoying or disruptive to an activity, for example. So rather than saying someone is in this contour—indicating how many times a day you would expect to be upset by the noise from that airport—it would be an improvement tool.⁵³⁴

⁵³² Mr Clark, Evidence, 19 May 2009, p 17

⁵³³ Submission 57, Queanbeyan City Council, p 7

⁵³⁴ Mr Wood, Evidence, 26 May 2009, p 5

- 7.64** Mr Exley from Richmond Valley Council said that the Evans Head community had a high level of knowledge regarding ANEF. This was because council held a number of community meetings regarding the plans for the potential development of the aerodrome, during which experts attended and explained the implications of ANEF noise contours in simple terms.⁵³⁵
- 7.65** Mr Michael Keys, Director, Planning and Economic Development, Albury City Council, said the ANEF contours were used by Council in its strategic land-use planning, primarily to identify land not suitable for residential development. Mr Michael Keys agreed that the community's understanding of the implications of the ANEF was generally poor, but said council continued to advise the community on the reasons for the need to preserve land within the ANEF contours.⁵³⁶
- 7.66** The New South Wales Government submission noted that consideration could also be given to recognising "occasionally noise affected areas" to more clearly convey to communities outside the 20 ANEF contour that these areas may be adversely affected by noise on occasions. If such a new category was introduced noise management approaches would be recommended rather than applied in a mandatory way for new developments in those areas.⁵³⁷

Compensation for changes to ANEF noise contours

- 7.67** Queanbeyan City Council recommended that when ANEFs are reviewed by airports and are expanded the land subsequently identified within ANEF 25 and above (which prohibits residential development) should be listed for acquisition by the airport or some other compensatory measure agreed to by the landowner.⁵³⁸
- 7.68** In relation to this suggestion, Mr Stephen Byron, Managing Director, Canberra Airport argued that acquisition costs would prove to be prohibitive when the land has already been zoned residential:

Quite clearly there have been a lot of discussions about how to resolve this matter in the past, and indeed Frank Sartor was interested in acquiring the land to preserve a residential-free corridor. It is very difficult when you have a developer who has bought a parcel of land for \$3.7 million and if they get 5,000 houses, say, valued at \$200,00 per house that is \$1 billion of uplift in value. Sure there are development costs and infrastructure costs, but when you have that sort of windfall gain as a consequence of a rezoning you are going to have difficulty acquiring the land, be it ourselves or the New South Wales or Commonwealth governments.⁵³⁹

- 7.69** The New South Wales Government submission suggested that a new approach whereby airport operators are required to either acquire surrounding land or implement noise

⁵³⁵ Mr Exley, Evidence, 26 May 2009, p 34

⁵³⁶ Mr Michael Keys, Director, Planning and Economic Development, Albury City Council, Evidence, 29 May 2009, p 9

⁵³⁷ Submission 69, p 42

⁵³⁸ Submission 57, p 7

⁵³⁹ Mr Byron, Evidence, 19 May 2009, p 33

mitigation measures would act as an incentive to limit the size of the area significantly affected by aircraft noise. Operators could achieve this through mechanisms such as use of night curfews or through broader noise sharing flight paths.⁵⁴⁰

Canberra Airport and residential development

- 7.70** An airport's operations, particularly 24-hour operations, have a significant effect on residential environmental amenity. The reasonable need to ensure that residents have an acceptable environmental amenity can, in turn, have a constraining effect on the current and future operations of an airport. The potential for this land use planning conflict is clearly demonstrated in the case of Canberra Airport and proposed residential development in the Queanbeyan City Council local government area.
- 7.71** The Committee received submissions from Canberra Airport,⁵⁴¹ the Jerrabomberra Residents' Association⁵⁴² and The Village Building Company.⁵⁴³ The Committee also heard evidence from representatives from each of these organisations at the public hearing held in Queanbeyan on 19 May 2009.
- 7.72** The Committee received evidence from Mr Andrew Leece, Manager, Regulatory Affairs; Mr Stephen Byron, Managing Director; and Mr Noel McCann, Director, Planning, Canberra Airport, from Ms Margot Sachse, President, Jerrabomberra Residents' Association, and Mr Robert Winnel, Chief Executive Officer, and Mr Kenneth Ineson, General Manager, Special Projects and Feasibilities, The Village Building Company.
- 7.73** In both the submissions and evidence presented there was some conflict and an exchange of criticism between the parties. The Committee is not in a position, nor does it have the authority, to resolve the specific issues of conflict between the parties. In this report the Committee seeks to summarise some of the main arguments presented by the respective parties.
- 7.74** In both submission and evidence Canberra Airport raised the following arguments and observations:
- Canberra Airport is a piece of critical national infrastructure and that the maintenance of its curfew-free status is vital for both the planned expansion of the airport and for the functioning of the nation's international passenger and freight network⁵⁴⁴
 - the proposed residential development at Tralee would invariably increase the existing calls for the implementation of a curfew on the airport's operations
 - development at Tralee will likely result in noise sharing mitigation measures which will unfairly affect residents in existing suburbs.

⁵⁴⁰ Submission 69, p 42

⁵⁴¹ Submission 45, Canberra Airport

⁵⁴² Submission 24, Jerrabomberra Residents' Association

⁵⁴³ Submission 33, The Village Building Company

⁵⁴⁴ Mr Byron, Evidence, 19 May 2009, p 3; Submission 45, p 4

- the population growth needs of the Queanbeyan area could be met without the need to develop residential land under or near the airport's flight paths, such as that at Tralee⁵⁴⁵
- the ANEF as it is currently used is inadequate as a planning tool for determining appropriate land use near airports⁵⁴⁶
- the amenity of residents in noise-affected land is compromised even though it may be below the ANEF 20 contour.⁵⁴⁷ The ANEF did not adequately reflect the effect on night-time amenity.⁵⁴⁸
- greater federal and State coordination was required to adequately plan to ensure that the viability of airport operations are not compromised by inappropriate land use planning decisions.⁵⁴⁹

7.75 The suburb of Jerrabomberra was created 20 years ago and now has a population of approximately 9,000 residents. Thirty per cent of the population is made up of Defence Force families. Ms Margot Sachse, President of the Jerrabomberra Resident's Association (JRA) said that as a result, instead of gradually ageing, the community is continually replenished by young family groups.

7.76 Ms Sasche said that the development of Jerrabomberra from its first planning to the present time has been 'a bit of a disaster'. When the suburb was initially developed there were promises that it would include social and community facilities, such as a public school, a non-government primary school, an indoor sports stadium and other community facilities. At the public hearing, Ms Sasche tendered a copy of the plans indicating these community facilities, that were given to people at the time they were considering purchasing homes in the area.

7.77 Ms Sasche said that, other than the primary school, none of the facilities have been provided; and that all the land that had been originally earmarked for these facilities had subsequently been developed for housing.⁵⁵⁰ The JRA has sought the rezoning of the land in the Jerrabomberra Valley primarily so the community could finally receive the social infrastructure required to support a functioning community.

⁵⁴⁵ Submission 45, p 8, p 10, p 18; Mr Byron, Evidence, 19 May 2009, p 33

⁵⁴⁶ Mr Byron, Evidence, 19 May 2009, p 29

⁵⁴⁷ Submission 45, p 19

⁵⁴⁸ Mr Byron, Evidence, p 33

⁵⁴⁹ Mr Byron, Evidence, p 29

⁵⁵⁰ Ms Sachse, Evidence, 19 May 2009, p 37

7.78 In submission and evidence the JRA made the following points:

- it was severely critical of the Practical Ultimate Capacity (PUC) ANEF developed by Canberra Airport. It believes the ANEF, endorsed by Airservices Australia in June 2008, does not truly reflect the capacity of the airport now or in the future.⁵⁵¹
- the process for developing and endorsing ANEF needs to be reviewed so that there is independent verification of the data used to produce an ANEF.⁵⁵²
- the significantly enlarged ANEF 20 contour in the 2008 PUC had unfairly compromised the planning for Jerrabomberra including the relocation of the planned secondary school
- the ANEF system needs to make a greater distinction between the impact of aircraft noise during the day and during the night.⁵⁵³

7.79 In its submission and evidence The Village Building Company, which is the proponent for residential development in the Tralee area, noted that the South Jerrabomberra area had first been identified for residential development in 1994 and that this was subsequently confirmed in 1995, 1998 and 2008.⁵⁵⁴

7.80 Mr Robert Winnel, Chief Executive Officer, The Village Building Company, called for a strengthening of regional land use planning so as to ensure that strategic planning commitments are met in a timely fashion:

I guess the only thing that I could say in the confines of today is that we endorse the various submissions by the Planning Institute and various industry bodies that have said strategic planning should be strengthened; it should bind all parties. The decision-making process needs to be reviewed because, just as a large development company can lobby, just as a community group can object, or an airport can object, what is happening today is the water then gets muddled.

The strategic planning, which in this case was developed over a 15-year period, just gets ignored because the political implications are that you put political pressure on a government to depart from the strategic planning and governments sometimes then find it difficult to make a forthright and timely decision. I think that is reflected on both sides of politics. Somehow there has to be a way of taking a lot of the politics out of the particular decisions on each particular side so that the Parliament is the body that sets the strategic plan.

⁵⁵¹ Submission 24, p 2

⁵⁵² Ms Sacshe, Evidence, p 42

⁵⁵³ Ms Sasche, Evidence, p 45

⁵⁵⁴ Mr Ineson, Evidence, 19 May 2009, p 44

Once it adopts it through the department and the Minister, once that is adopted, there is not this room to reconsider at every stage.⁵⁵⁵

- 7.81** The Village Building Company, like the JRA, was also very critical of the PUC ANEF developed by Canberra Airport. Mr Ken Ineson, General Manager, Special Projects and Feasibilities, noted that the ANEF contours for most airports had remained fairly stable since privatisation in 1998, notwithstanding the continuing increase in the number of aircraft passengers.⁵⁵⁶

Committee comment

- 7.82** Drawing upon the evidence it received the Committee can make a number of observations. First, airports are critical pieces of infrastructure that have a significant impact on the economic well-being of the surrounding regions. Regional strategic planning must take into account the future expansion and needs of airports so that their potential to contribute to the region is realised.
- 7.83** Second, the Committee agrees that the process for setting ANEF contours needs to be reviewed to ensure public confidence in its methodology. Having said that the Committee believes, if it can be practically achieved, there is merit in ANEFs being developed to accurately forecast to a point as far into the future as possible. An ANEF that proves to underestimate growth capacity may only serve to defer or create land use conflict problems in the future. The Committee notes that the role and volume of aircraft traffic at Canberra Airport has dramatically changed over the last twenty years.
- 7.84** Aircraft noise has a negative effect on residential environmental amenity. In an ideal situation airports and residential development would be separated so that there is no discernible aircraft noise impact on residents. Those councils that have the luxury of enough available land to both implement 'buffer zones' and accommodate residential growth needs have adopted the approach of this separation in order to avoid land use conflict. However, this luxury is not available to all.
- 7.85** Third, air safety and noise control regulations do sterilise adjacent non-airport land in terms of development potential and general usage. The effective operation of an airport is dependent upon these controls.
- 7.86** The Committee notes the suggestions for improvements to the information relating to aircraft noise contained in section 149 certificates. The Committee also agrees that in addition to displaying ANEF contour maps in their LEPS local councils need to provide the community and interested purchasers of land with easily accessible and understood information on land affected by aircraft noise.
- 7.87** The Committee acknowledges that the issue of the regulation of land use on or adjacent to airports is being examined as part of the development of the national aviation policy. The Committee further acknowledges the support for the approach taken by the New South Wales

⁵⁵⁵ Mr Robert Winnel, Chief Executive Officer, The Village Building Company, Evidence, 19 May 2009, p 49

⁵⁵⁶ Mr Ineson, Evidence, 19 May 2009, p 44

Government in providing input into the national review. The Committee believes the New South Wales Government should continue to pursue its recommendations for change.

Chapter 8 **Climate change and natural resource management issues**

This Chapter considers terms of reference 1(d) – climate change and natural resource issues in planning and development controls. The NSW planning system has had to adjust rapidly in the last decade to several emerging environmental issues including climate change and sea level rise, greenhouse gas emissions and ecologically sustainable development (ESD).

Proper consideration of climate change and natural resources issues is reliant on accurate information. Effective land-use planning decisions cannot be made if the values and present and future characteristics of the land are not known. What is also required is a clear direction on both how planning decisions should respond to changing environmental factors and how they can reduce factors, such as greenhouse gas emissions and water consumption, that negatively affect the environment.

How climate change and natural resource management are addressed in the planning framework

- 8.1** The incorporation of natural resource management (NRM) and climate change considerations in both land use planning and development assessment processes is an ongoing process requiring cross-government collaboration at the local, state and national level. The consideration of climate change and natural resources should be integrated into all levels of the planning process.⁵⁵⁷
- 8.2** The NSW Government⁵⁵⁸ outlined the available planning tools to address climate change and NRM at different spatial and temporal scales. This section provides an overview of the various methods by which climate change and NRM issues are considered by the planning system, including the State Plan, Regional Strategies, Local Environmental Plans (LEPs) and the development approval process.

The State Plan and State Environmental Planning Policies

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

⁵⁵⁷ Submission 69, NSW Government, p 27

⁵⁵⁸ Submission 69, pp 27-31

- 8.4** The State Plan acknowledges the complementary role of transport related targets in reducing greenhouse gas emissions. The transport sector is a major source of greenhouse emissions. Sustainable land use and transport planning and development therefore have a key role to play in meeting State Plan targets and addressing climate change mitigation.
- 8.5** The NSW Government submission notes that in considering how climate change should be addressed within the planning framework, there is the opportunity to also recognise the potential benefits of reduced emissions resulting from rail freight and public transport infrastructure projects that facilitate a reduction in vehicle use and encourage sustainable development.
- 8.6** The NSW Coastal Policy provides for coastal protection, protection of public access and accommodation of coastal processes including those associated with climate change and sea level rise.
- 8.7** Various State Environmental Planning Policies outline specific planning considerations related to environmental and natural resource values. These include State Environmental Planning Policy 71 Coastal Protection, State Environmental Planning Policy 14 Coastal Wetlands, State Environmental Planning Policy 26 Littoral Rainforests and Building and Sustainability Index (BASIX) State Environmental Planning Policy (reduction of energy consumption and water use for residential buildings).

Regional and strategic planning

- 8.8** Regional Strategies provide a broad strategic context for land use planning, including establishing important green corridors, dedication of significant landholdings for public protection, and balancing regional economic development with the protection of environmental assets, cultural values and natural resources.
- 8.9** The Regional Strategies also require consideration of natural hazards, including those associated with climate change. The Strategies promote concentration of new development around existing centres and appropriate mixed land uses in order to reduce vehicle trips, thereby minimising increases in greenhouse gas emissions. They are prepared in consultation with natural resource agencies, councils and Catchment Management Authorities (CMAs). Regional Conservation Plans (RCPs) developed by the Department of Environment and Climate Change (now the Department of Environment, Climate Change and Water) identify lands of high conservation value to inform the Regional Strategies.

Local Environmental Plans (LEPs)

- 8.10** A number of measures are used in a LEP to protect environmental values and manage natural resources, such as land use zoning, additional zone objectives, permissibility clauses and model clauses. There are several land use zoning options that complement environment protection objectives, or the management of natural resource and primary industries:
- four Environment Protection Zones that allow limited development that would not compromise various levels of environmental objectives

- seven Rural Zones that promote protection of natural resource attributes as well as environmental protection
- three Waterway Zones that promote sustainable use of waterways commensurate with the differing levels of environmental protection ascribed by councils.

- 8.11** Ministerial directions under section 117 of the *Environmental Protection and Assessment Act* (EP&A Act) set out what councils must consider when preparing LEPs. Of the 29 current ministerial directions, 13 relate to natural resource management, including addressing climate change.
- 8.12** NRM model clauses are being drafted and reviewed by relevant State agencies for inclusion in the Standard Instrument (SI) LEP. These model clauses can be adopted by councils in LEPs if a local provision is needed on a particular environmental or natural resource management matter.⁵⁵⁹
- 8.13** The NSW Government submission notes that as a consequence of climate change, adaptive management in land use planning is becoming increasingly important. For all councils, identification and mapping of hazards such as flooding and bushfire risks will need to be incorporated into LEPs. For coastal councils sea level rise, predicted weather and wave patterns, and changes in extreme events such as flash flooding and coastal flood frequency, are additional factors to be considered.
- 8.14** The submission further notes that the planning system will also need to play a key role in ensuring that primary industries can adjust to climate change to ensure that long term food, fibre and timber security can be maintained and regional economies and ecosystems can be supported.

Development Assessment

- 8.15** Over the last 30 years Environmental Impact Assessment (EIA) methods have advanced significantly, with improved understanding of various environmental effects and impacts, increased use of risk-based assessment and the introduction of best-practice guidelines and performance based standards for a broad range of industries and land uses.⁵⁶⁰
- 8.16** In the main, most NRM matters form part of the environmental assessment of proposed developments assessed under the EP&A Act by councils, other approved authorities and determining authorities in NSW.
- 8.17** Climate change adaptation and mitigation measures have been incorporated into the development assessment process under the EP&A Act through:
- consideration of the NSW Coastal Policy, State Environmental Planning Policy 71 Coastal Protection and the SI LEP with respect to coastal hazards, climate change and sea level rise

⁵⁵⁹ Submission 69, p 29

⁵⁶⁰ Submission 69, p 30

- implementation of the BASIX program – requiring 40% savings in water and energy use in new residential developments including major alterations
- compliance with the Building Code of Australia (BCA) for both residential and commercial development
- integrated transport and land use planning provisions.

8.18 The planning system also encourages domestic use of solar energy by allowing the installation of photovoltaic systems and solar hot water systems as exempt development if they meet specific development standards.⁵⁶¹

Potential improvements

8.19 The submission from the Blue Mountains City Council (BMCC) argued that the planning framework should be able to consider not only the potential effects of climate change, but also to plan for climate change by strategically planning urban and rural areas of NSW for the reality of a low carbon future. This could be achieved through appropriate provisions within LEPs and Development Control Plans (DCPs) and a strengthened BASIX.⁵⁶²

8.20 The BMCC made a number of suggestions and observations on how the planning system could help mitigate the effects of climate change. These included:

- planning for a low carbon economy by providing flexibility in permissible uses and forward planning relating to decentralisation of power supply, community gardens, commercial collection of green waste, and urban greening.
- increased requirements for private and civic landscaping (green cover) in urban areas to reduce the heat island effect. The role that green cover in urban areas will play in the mitigation of climate change effects was acknowledged as the single most important design and development feature in the context of climate change by the Chief Executive of the Town and Country Planning Association (United Kingdom) in 2006
- increased use of climate appropriate designs for residential, commercial and industrial development in order to minimise use of mechanical cooling devices
- the role that micro generation of power at individual building level in moving towards a zero carbon/carbon neutral approach. As an example, the London Borough of Merton requires all new commercial buildings to generate 10% of their energy use on-site
- increased use of water sensitive urban design at residential and subdivision scale
- the importance of guaranteeing solar access for both on-site power generation and food supply (vegetable gardens) versus the need to conserve biodiversity and

⁵⁶¹ Submission 69, p 31

⁵⁶² Submission 65, Blue Mountains City Council, p 8

green cover is an increasingly complex issue and needs to be reviewed with the aim of providing policy guidance.⁵⁶³

8.21 BMCC also suggested expanding the BASIX program, including considering developing zero carbon/carbon neutral targets for new residential and commercial building. It referred to the United Kingdom where all new homes will have to be carbon neutral by 2016, which is being achieved by a progressive tightening of the appropriate building codes.⁵⁶⁴

8.22 The NSW Government submission states that while the planning system is well placed to consider natural resources, environmental conservation and management and climate change issues at each step of the planning process, this capacity could be expanded through the following actions:

- increasing effort to integrate existing data and natural resource mapping and assessments into land use planning to provide a more integrated approach, for example better utilisation of information systems being developed by the Department of Lands
- natural resource clauses in the SI template to be finalised and supported by guidelines, along with training for council planners in their use
- existing initiatives to integrate climate change adaptation into planning and development controls should be extended as programs are developed at the State and National level. For example guidance on sea level rise benchmarks should be disseminated to councils and supported by coastal adaptation guidelines in the near future.
- measures to promote climate change mitigation in the planning system by extending the BASIX program to save water and energy.
- expanding integrated transport initiatives including efficient housing and public transport approaches, centres policy and jobs closer to home initiatives, as well as efficient freight transport programs
- furthering efforts between State agencies to avoid duplication and overlapping responsibilities with respect to the management of land and natural resources, particularly in the area of development assessment.⁵⁶⁵

8.23 The Committee believes that suggestions contained within both the NSW Government and BMCC submissions are areas that should be pursued or explored. Both submissions were made in the early stages of the Inquiry, and in the case of the areas identified by the NSW Government, some progress was made during the course of the Inquiry.

⁵⁶³ Submission 65, p 9

⁵⁶⁴ Submission 65, p 7

⁵⁶⁵ Submission 69, p 32

NSW Climate Change Action Plan

8.24 The Government is currently developing a NSW Climate Change Action Plan. Many aspects of this Plan will directly link to the planning system. The NSW Government submission notes that it is envisaged the Plan will include:

- council capacity building, dissemination of sea level rise benchmarks, and establishing coastal adaptation planning guidelines
- strengthening and expanding the BASIX program.⁵⁶⁶

8.25 The Committee was advised that it was anticipated the Climate Change Action Plan would be finalised by the end of 2009. The Department of Environment, Climate Change and Water is the lead agency in the preparation of the plan. The Deputy Director General, Mr Joe Woodward, said that in preparing the plan the Department of Environment, Climate Change and Water had developed regional profiles to account for the different predicted impacts of climate change in different parts of the State:

On the North Coast of New South Wales the predicted impacts of temperature change and rainfall patterns are different to the predicted impacts in the south west of the State, and the impacts of that would be quite significant on agriculture, for example. We have broken the State up into 13 regions, the State Plan regions, and to get as much up-to-date, scientific information as we can available on those.

For that, we have held forums in each of those 13 areas with local councils to present the information to them to provide it to them as draft information that can be considered for developing a climate change action plan in New South Wales and give them an opportunity to feed back into that. That information has come back from councils and we have been going through another round of scientific information. That is covering also things like bushfires, which are incredibly important, so there has been established a CRC [Cooperative Research Centre] for bushfire in New South Wales at the University of Wollongong with Professor Ross Bradstock. That is very active in terms of looking at climate change impacts on fire regimes in New South Wales as well. That is information that is feeding into this process as well. All that information will be provided back to councils. Some things we are providing out, like the sea level policy, as soon as we get sufficient information on that.⁵⁶⁷

Committee comment

8.26 As will be examined below, the component of the Climate Change Action Plan relating to information and guidance for local councils with respect to addressing the impacts of sea level rise was progressed during the course of the Inquiry. The review of the planning system will need to take account of the finalised Climate Change Action Plan and examine whether

⁵⁶⁶ Submission 69, p 29, p 31

⁵⁶⁷ Mr Woodward, Deputy Director General, Department of Environment, Climate Change and Water, Evidence, 25 August 2009, p 53

further enhancements to elements of the planning system could contribute to a carbon-constrained future.

Climate change planning issues

8.27 There was a consistent call from local councils and from other inquiry participants⁵⁶⁸ for greater guidance on how to address climate change conditions in their land use planning and development assessment. This need for guidance was twofold: firstly advice on what the measurable impacts of climate change will be, and, secondly, guidance on the decisions councils will need to make to take account of these changes.

8.28 Mr Graham Gardner of Greater Taree City Council told the Committee said that all councils were struggling with climate change and there was a need for a clear policy framework within which local councils can work:

We are all struggling with climate change and I am not sure how much that is appreciated by the State Government. It is a difficult area of policy and there is an uncertain science behind the issue. However, we are making development control decisions on a day-by-day basis and the courts are saying we have to address climate change issues in response to each matter. If we have to go to court and deal with climate change issues we need a clear policy framework to do it in.⁵⁶⁹

8.29 However, the Committee heard that for many inland councils the recent drought has already brought planning for predicted climate changes to the fore. Ms Elizabeth Stoneman from Leeton Shire Council said that at a recent climate change workshop it emerged that the current drought conditions are worse than those forecast in the more extreme climate change predictions. Ms Stoneman said that councils are already implementing strategies to deal with reduced rainfall:

Probably because we are now in about the tenth year of this drought, we see climate change as actually being wetter than what we have now. It is comparatively less of an issue.

...We are actually physically on the ground doing the work. We are talking about a water saving scheme. Murrumbidgee Irrigation is working towards pressurising all its horticultural areas and upgrading the technology. The council, with its water and sewer services, is looking at recycling and saving water. I guess when coastal areas are looking at sea rises over time, they have time to actually get in and plan that. Because of the severity of this drought, which I think is now worse than the drought at Federation in this region, we

⁵⁶⁸ For example, Mr Robert Ghanem, Environmental Defender's Office, Evidence, 9 March 2009, p 22

⁵⁶⁹ Mr Graham Gardner, Director, Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p 36

are having to do the things that we may have had 15 years lead time to do, but we have to do them today.⁵⁷⁰

Rise in sea level

- 8.30** The most frequent call for guidance was from coastal councils with respect to anticipated sea-level rise, as they not only had to consider it in terms of long-term strategic planning but also in terms of current development assessments.
- 8.31** In March 2009, the Director, Environmental Services, Sutherland Shire Council told the Committee that councils were waiting for the Government to make definitive statements regarding anticipated sea level rise. Mr Brunton said that his council had itself done modelling and mapped anticipated impacts of sea level changes on land in the Sutherland Shire. However council was reluctant to release that information, for fear of legal liability, until such time that the Government made a formal statement on anticipated sea level rise.⁵⁷¹
- 8.32** Midway through 2009 the Department of Environment, Climate Change and Water released a draft sea level policy statement. The statement included sea level planning benchmarks. The adopted benchmarks predict a sea level rise, relative to 1990 mean sea levels, of 40 centimetres by 2050 and 90 centimetres by 2100.
- 8.33** The Deputy Director General, Department of Environment, Climate Change and Water, acknowledged there was some scientific debate surrounding predicted sea rise. However, Mr Woodward said that the benchmarks were based on a variety of sources and represented the strong majority of scientific opinion:
- We are trying to ensure that decision-makers in New South Wales are well informed and to set up communication to be able to achieve that. We think it would be irresponsible of us or the Government to ignore that information—which is from the scientific world. That is not to say that we are not open or that we are closed to other viewpoints expressed by individuals. There are people who disagree with some of these issues, but they are very much in the minority. However, we think it would be irresponsible for New South Wales to ignore this rather than to take it into account sensibly and to continue to review it over time.⁵⁷²
- 8.34** At the time the benchmarks were released there was some public comment on the fact that New South Wales and Queensland had adopted different benchmarks. Mr Woodward advised the Committee that the measured sea level rise experienced over the past 15 years had not been equal around the world. New South Wales has in fact experienced some of the highest sea level rises around the world. The benchmark of 90 centimetres is the mean figure for the coast of New South Wales:

⁵⁷⁰ Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council, Evidence, 29 May 2009, p 33

⁵⁷¹ Mr John Brunton, Director, Environmental Studies, Sutherland Shire Council, Evidence, 30 March 2009, pp 48-49

⁵⁷² Mr Woodward, Evidence, 25 August 2009, p 48

...we have put out a policy talking about planning taking into account a rise of 0.9 of a metre. Queensland has put out a policy saying they should plan for a rise of 0.8 of a metre. We are using the same science and we are totally aligned with the other States. On the surface one might ask why Queensland's recommendation is 0.8 of a metre and ours is 0.9 of a metre. I am clearly showing that that is based on very solid science and measured sea level increases.⁵⁷³

8.35 In August 2009 Mr David Broyd from Port Stephens Council welcomed the statement from the Government with regard to anticipated sea level rise. However, he added that both local councils and the insurance industry were looking for a consistent State-wide policy on how infrastructure on the coastal zone potentially impacted upon by climate change should be managed and developed.

8.36 Mr Broyd outlined the difficulties now facing council when making decisions regarding development applications for buildings that will be in existence at the time of the forecast rise in sea level:

There is certainly the potential now for land zoned for residential or other development that does fall within that coastal impact zone. The council will find it quite hard to refuse development under the current policy framework that relates to climate change. However, that same council may, in 20 years time, be subject to legal action by the landowners who then cannot insure the property because of the climate change impact. It really is a very complex risk management situation that local government finds itself in at the moment.⁵⁷⁴

8.37 Mr Woodward advised the Committee that there were two stages to developing the Sea Level Rise Policy Statement. First was disseminating the benchmark numbers, second was developing guidance material on how councils should use those numbers:

Yes, we are working with councils on that and we are looking to try and develop how councils and the State Government can come up with a sensible policy that protects infrastructure and also puts a reasonable amount of responsibility on councils and landowners to make their own decisions about investments in areas that might be subject to erosion or its impacts.⁵⁷⁵

8.38 In November 2009 the Department of Planning released the Draft NSW Coastal Planning Guideline. The guideline encourages a risk-based approach to strategic planning and development assessment, taking into consideration the sea level rise planning benchmarks.

8.39 The guideline is based around the implementation of six coastal planning principles:

- assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks

⁵⁷³ Mr Woodward, Evidence, 25 August 2009, p 48

⁵⁷⁴ Mr Broyd, Evidence, 17 August 2009, p 17

⁵⁷⁵ Mr Woodward, Evidence, 25 August 2009, p 50

- advise the public of coastal risks to ensure that informed land use planning and development decision-making can occur
- avoid intensifying land use in coastal risk areas through appropriate strategic land use planning
- consider options to reduce land use intensity in coastal risk areas where feasible
- minimise the exposure to coastal risks from proposed development in coastal areas
- implement appropriate management responses and adaptation strategies with consideration for the environmental, social and economic impacts of each option.⁵⁷⁶

Committee comment

- 8.40** A feature of much of the 2008 reforms was a quest for standardisation, and many Inquiry participants were critical of this. However, with respect to policy and guidance for addressing the impact of sea level rise, there is a strong desire among all stakeholders for a standard approach across the State.
- 8.41** The Committee acknowledges that through the course of the Inquiry the need articulated by local councils for a clear statement and guidance on dealing with predicted sea level rise was addressed by the Government.

Urban sustainability

- 8.42** The submission from the Nature Conservation Council of NSW (NCC NSW) said that in addition to considering sea level rise in coastal development, the issue of climate change requires a greater emphasis on urban sustainability to assist in lowering our carbon footprint.⁵⁷⁷
- 8.43** The submission noted that the Department of Planning has well-developed policies to integrate land use planning with transport considerations. It said that despite these policies designed to reduce car dependency and greenhouse gas emissions, and minimise community and environmental costs, NSW is still approving dispersed greenfield developments without corresponding provision of sufficient public transport. The NCC NSW Treasurer, Mr James Ryan, reiterated this point in evidence:

The set of policies that are available on the Department of Planning's website are very good. They describe all the pitfalls of trying to have urban sprawl stretching right out and not connecting that with adequate public transport—the impact on people's health, the impact of the loss of habitat, impact of increased greenhouse gases. That is all well-documented by the department's set of policies and it really concerns us that, despite the recognition, we are still

⁵⁷⁶ Department of Planning Fact Sheet: *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise*

⁵⁷⁷ Submission 114, p 23

getting development decisions that are contrary to those policies or do not seem to recognise them.⁵⁷⁸

8.44 The NCC NSW recommended considering legislative measures to ensure existing policies to reduce dispersed patterns of settlement and car dependency, and to maximise access to public transport, are implemented.⁵⁷⁹ As noted in Chapter 3 the better integration of land-use planning and transport provision has been identified as a key area requiring review and attention.

8.45 As noted at the start of this Chapter, the submission from BMCC suggested there needed to be increased requirements for green cover in urban areas to reduce the heat island effect.

8.46 Representatives from the Western Sydney Regional Organisation of Councils (WSROC) said that urban heat was an increasing issue facing Western Sydney. The President of WSROC, Ms Alison McLaren, said that the planning framework needed to ensure that new developments did not result in inefficient homes that simply contributed to this phenomenon:

One of the big issues that we face in western Sydney is the urban heat phenomenon. That is because there is too much concrete, too much high-density developments in one location. Also in certain council areas there is no control over the size of the house that you build on a block. One of my pet peeves is that there is no requirement that houses have eaves, which means that they are incredibly inefficient and you need to heat them in winter and cool them in summer. The greenhouse gas emissions from those are phenomenal. Regulating requirements on development to meet certain standards means that you are not designing a house that has high-level CO2 emissions. There have been big moves forward. Ten or 15 years ago it was impossible to get a water tank approved by a council. Now all new developments require them. To ensure that any new development is environmentally sustainable and not just a concrete jungle, which parts of western Sydney are, and ensuring that there are controls so that the greenhouse gas emissions from each individual property, whether it be residential or commercial, are limited should be enshrined in legislation.⁵⁸⁰

8.47 Ms Sharon Fingland, Assistant Director, WSROC, told the Committee that research had shown that there had been a temperature rise of up to two degrees in Western Sydney over what would be expected through climate change. Ms Fingland said that much of this has been attributed to vegetation loss due to concentrated high-density development.⁵⁸¹

8.48 Representatives from the City of Sydney Council said the city had prepared, but not implemented, an Ecologically Sustainable Development Control Plan (ESDCP). The Director, Strategy and Design said there was some resistance from industry who were concerned about

⁵⁷⁸ Mr Ryan, Evidence, 25 August 2009, p 39

⁵⁷⁹ Submission 114, p 24

⁵⁸⁰ Ms Alison McLaren, President, Western Sydney Regional Organisation of Councils Ltd (WSROC), Evidence, 15 June 2009, p 18

⁵⁸¹ Ms Fingland, Assistant Director, WSROC, Evidence, 15 June 2009, p 18

increases in construction costs. Mr Harrison argued that if considered in the design phase the cost could be negligible.⁵⁸²

Committee comment

- 8.49** The Committee acknowledges that the housing and property sectors are generally opposed to an expansion of sustainability requirements under the BASIX program, and to increased developer contributions for open space. Their opposition is based on the impact of the associated increased cost on housing affordability and the housing market.
- 8.50** While this may be the case, it must be acknowledged that while such requirements may increase the immediate cost of housing, they do decrease the cost of living, through reduced costs for energy and water consumption. It is also the case that the Government, through various agencies, provides subsidies and rebates for initiatives to reduce resource consumption. This is because such initiatives benefit not only the individual but also the community as a whole.

Managing natural resources and protecting biodiversity

- 8.51** The provision of accurate and comprehensive information is essential for the planning system to effectively manage natural resources and protect biodiversity within the context of allowable development.
- 8.52** Ms Lorena Blacklock from Queanbeyan City Council told the Committee that the impact of threatened species legislation is a major issue for rural councils in determining where land can be developed:

The impact of the threatened species legislation is that it has generally become more and more an issue that will prevent rezoning occurring or it will change the nature of how that occurs. It will define where the boundaries of development will go. It is one of the key issues in any rezoning that environmental constraints and threatened species are actually identified early so there are not surprises later on in the process. Generally speaking, councils work with the Department of Environment and Climate Change and there is fairly good information sharing and consultation.⁵⁸³

- 8.53** Ms Blacklock went on to explain the importance of conducting biodiversity studies to provide a broad overview of where further development can either occur or needs to be constrained:

...we have gone through an exercise where we have done biodiversity studies, which is about identifying areas of high conservation value, which is based on vegetation type, the potential for threatened species and the idea of biodiversity or biolinks where there are corridors to link particular areas such as Mount Jerrabomberra to the escarpment where you can continue to have links basically so that one area does not become isolated and by its isolation its value

⁵⁸² Mr Michael Harrison, Director, Strategy and Design, City of Sydney Council, Evidence, 9 March 2009, p 3

⁵⁸³ Ms Blacklock, Evidence, 19 May 2009, p 8

is reduced and it does not become viable. That exercise has been done from a local government perspective. It does not give you individual site-by-site details but it will give you an overall picture of the local government area of where the areas of high conservation value are.⁵⁸⁴

- 8.54** Mr Craig Filmer, Director, Planning and Environment, Young Shire Council told the Committee that the mapping obligations under the new LEP format will assist natural resource management within the planning process. However, Mr Filmer cautioned that resourcing issues at small regional councils is a concern:

I believe resources and the ability to service is increasing with every day. Relationships now are better than they were 10, 15 years ago. That is not to say that everything is absolutely wonderful. In our mapping process, for example, with the new LEP we have been involved in the environmental layers of water, land and biodiversity that we have been obligated to under our mapping. They will form a renewed strength towards natural resource management efforts within our planning process. Whether we have the number of staff to do that as well as we should becomes an issue.⁵⁸⁵

- 8.55** Mr John Sheehan from the Australian Property Institute told the Committee that he had been advised that only three per cent of vegetation in New South Wales is accurately mapped.⁵⁸⁶ Ms Anne Reeves, Executive Member of the NCC NSW also noted the need for accurate biodiversity information at the strategic planning stage:

The other aspect is the importance of resourcing the biodiversity type mapping at an early stage. Unfortunately, New South Wales has not been at the forefront of some of this. In some ways it has been a problem in achieving outcomes, as we are making the decisions at the wrong end of the spectrum. We need more resources to ensure a successful outcome. The Hunter area is a case in point. More detailed work on the biological mapping would have pre-empted some of the need for argument at a later stage. Often that is the case right across the State. The further west we go the more problems there are likely to be.⁵⁸⁷

- 8.56** The Biocertification Scheme when applied to environmental planning instruments (EPIs) provides the twin benefits of streamlining regulatory processes while ensuring provisions are in place to protect biodiversity.⁵⁸⁸ Significant investment is required to achieve biocertification at the EPI level, but it is envisaged large savings will be realised in the future by removing the need to undertake detailed threatened species impact assessments at the development stage.

⁵⁸⁴ Ms Blacklock, Evidence, 19 May 2009, p 8

⁵⁸⁵ Mr Craig Filmer, Director, Planning and Environment, Young Shire Council, Evidence, 1 May 2009, p 17

⁵⁸⁶ Mr John Sheehan, Chair, Government Liaison Committee, Australian Property Institute (NSW Division), Evidence, 9 March 2009, p 39

⁵⁸⁷ Ms Anne Reeves, Executive Member, Nature Conservation Council of NSW, Evidence, 25 August 2009, p 42

⁵⁸⁸ Answers to questions taken on notice during evidence, 25 August 2009, DECCW, p 1

8.57 Mr Woodward advised that biodiversity certification was designed mainly for urban areas. In terms of agricultural development the *Native Vegetation Act* still applies – as there is no equivalent of biocertification under that Act at this stage.⁵⁸⁹

8.58 Mr Woodward noted that the Department of Environment, Climate Change and Water had been working on developing multi-property vegetation plans, specifically in the Walgett area, to bring together a landscape scale plan. While this process has been lengthy, the Committee was advised that a suitable plan could be agreed upon soon.⁵⁹⁰

Role of Catchment Management Authorities

8.59 There are thirteen CMAs covering New South Wales. The functions of CMAs are:

- preparing and implementing catchment action plans (CAPs) and associated investment strategies
- recommending and managing incentive programs to implement CAPs and maximise environmental outcomes
- consulting fully with regional and local communities in developing and implementing CAPs.

8.60 As discussed in Chapter 4, CMAs and local council boundaries are not aligned. As a result, many councils fall within more than one catchment. Local councils are supposed to take the relevant CAP (or CAPs) into consideration when developing their LEPs. The Committee detected some variance between local councils in their view of the role of CMAs in strategic land use planning and the development of LEPs.

8.61 All councils do refer to CAPs when developing their LEPs, albeit to a varying degree. Some councils have a strong relationship with the relevant CMA and seek their input on a range of matters.⁵⁹¹ However, a number of councils saw the primary role of the CMAs as implementing their CAPs through on-the-ground interaction with property owners.⁵⁹²

8.62 Mr James McDonald, Chairman of the Namoi CMA said that there is a high expectation of what CAPs should achieve, but that more work is required before that expectation could be met:

Well, someone theoretically is in charge of planning, water, and climate change, all these things, at a regional level now. The assertion at the moment is that that is through the catchment action plans. I think the catchment action plans

⁵⁸⁹ Mr Woodward, Evidence, 25 August 2009, p 47

⁵⁹⁰ Mr Thomas Grosskopf, Director, Landscape and Ecosystem Conservation, DECW, Evidence, 25 August 2009, p 47

⁵⁹¹ For example; Ms Blacklock, Evidence, 19 May 2009, p 8

⁵⁹² For example: Ms Jan Barham, Mayor, Byron Shire Council, Evidence, 26 May 2009, p 24; Mr Christopher Berry, A/General Manager, Goulburn Mulwaree Council, Evidence, 19 May 2009, p 25; Mr Mathew Wood, Strategic Planner, Ballina Shire Council, Evidence, 26 May, 2009, p 10

still have a lot of work to get to that high expectation, but we believe that should be the vehicle.⁵⁹³

- 8.63** Mr McDonald said that, while CMAs have a consent role under the *Native Vegetation Act* with respect to land-use planning, he saw their role as providing advice through a regional decision making process:

We do not have any role in water or in mining and we should have no role in land use planning through the LEPs, but there are obviously discussions between the CMAs and the councils on how those two work together. That is our preference. We would prefer to negotiate a line-up between the catchment management plans and the LEPs, rather than having decisions imposed. In the end there has to be some sort of regional decision-making process that everybody adheres to and then it goes into the planning framework, whatever that may be.⁵⁹⁴

- 8.64** Local councils are required to develop their LEPs consistent with the relevant Department of Planning regional strategy. The regional strategies themselves are prepared in consultation with natural resource agencies and the CMAs.

- 8.65** The Department of Planning advised that there was an increasing amount of natural resource information prepared by State agencies, which can and should inform the preparation of LEPs:

The CMAs are not the only source of information in this regard and certainly the other agencies have a wealth of information. For instance, DECC [Department of Environment and Climate Change] is now working with the councils to upgrade their flood management plans. So there is a lot of other information that councils have to consider when they are doing their own strategy within their local government area and then delivering that in an LEP.⁵⁹⁵

- 8.66** Mr Sam Haddad, Director General of the Department of Planning said that it was essential that any information or data that is relevant from a catchment management perspective is taken into account and built into LEPs as much as possible. Mr Haddad acknowledged that more work was required on developing the relevant clauses and definitions within the SI LEP to reflect this need.⁵⁹⁶

- 8.67** Ms Yolande Stone, Director, Policy and Systems Innovation, Department of Planning said that the development of e-planning projects to allow access to State agency information

⁵⁹³ Mr James McDonald, Chairman, Namoi Catchment Management Authority, Evidence, 21 May 2009, p 17

⁵⁹⁴ Mr McDonald, Evidence, 21 May 2009, p 18

⁵⁹⁵ Ms Yolande Stone, Director, Policy and Systems Innovation, Department of Planning, Evidence, 30 March 2009, p 10

⁵⁹⁶ Mr Sam Haddad, Director General, Department of Planning, Evidence, 30 March 2009, p 10

relevant to planning will provide greater capacity for councils to take into account natural resource management issues.⁵⁹⁷

Committee comment

- 8.68** The capacity to make planning decisions on how best to manage natural resources and biodiversity is dependent upon having the information necessary to inform those decisions. There is a need to increase the amount of information on our natural resources and biodiversity beyond current levels.
- 8.69** Various agencies hold natural resource information that is relevant to planning. This needs to be coordinated and then used to inform the planning system. Currently this is more likely to occur when Regional Strategies are developed.
- 8.70** In earlier Chapters the Committee recommended that Regional Strategies be developed for all areas of the State, that local councils receive funding support to prepare new LEPs with their associated mapping requirements, and that the Department of Planning proceed with developing electronic planning initiatives to increase access to relevant agency information. The Committee believes that if this occurs, a number of the significant issues regarding natural resource information will be addressed.

Agriculture and farmland

- 8.71** The farming sector, by virtue of the size of its landholdings, plays an important role in natural resource management. The Committee believes that prime viable farmland is itself an important natural resource. Representatives from the NSW Farmers' Association appeared at several of the public hearings, to express their concerns with the way they believe the planning system constrains and penalises the agriculture sector.
- 8.72** The Mayor of Orange, Councillor Reg Kidd, noted that farming land will always be under pressure from the potential of greater capital returns from residential development.⁵⁹⁸ Clr Kidd argued the need to identify and protect farmland with deep profile soils as this was a very limited resource that was irreplaceable, and which the State could not afford to lose through development for other purposes.⁵⁹⁹
- 8.73** Ms Fiona Simson, Executive Councillor, NSW Farmers Association cited the Liverpool Plains in particular as a significant farmland resource deserving protection and preservation:

The Liverpool Plains also grows soybeans, mungbeans, chickpeas, olives, and canola, and sustains a \$110 million beef industry, including two large-scale feedlots, plus turkey, pigs and lamb production. The Australian Bureau of Agricultural Research Economics classed the above crop yields at 40 per cent above the national average. That is impressive. The Liverpool Plains yields consistently 40 per cent above the national average. According to Geoscience

⁵⁹⁷ Ms Stone, Evidence, 30 March 2009, p 10

⁵⁹⁸ Clr Reginald Kidd, Mayor, Orange City Council, Evidence, 1 May 2009, p 3

⁵⁹⁹ Clr Kidd, Evidence, 1 May 2009, p 5

Australia, the Liverpool Plains fulfills all criteria for prime agricultural land—well-managed, high-output aquifers, reliable winter and summer rainfall, high water-holding capacity, fertile volcanic soils, a large diversity of agricultural enterprises, and last, but most certainly not least, the land is serviced by a resilient, skill-rich sustainable farming community. Only 6 per cent of Australia is termed arable in any case, but land and regions such as the Liverpool Plains are very rare indeed.⁶⁰⁰

- 8.74** Ms Simson said that from a farmer's perspective, it is most unfortunate that this agricultural resource is underlain by an equally impressive coal resource. Ms Simson argued that the Liverpool Plains deserved to be recognized as State significant farmland:

In May 2008, the State Environmental Planning Policy (Rural Lands)—colloquially called the rural lands SEPP—was drafted. Part 4 of this document deals with State significant agricultural land. It provides for the identification and protection of such lands from uses not compatible with agriculture, and refers to schedule 2, which supposedly lists such lands. Despite lobbying from local councils, and organisations such as ours, schedule 2 remains empty. If the Liverpool Plains are not to be listed in this schedule, it is hard to imagine what other State agricultural region could or would.⁶⁰¹

- 8.75** The Department of Planning advised that the provision to list lands as State significant agricultural land within Schedule 2 of the State Environmental Planning Policy (Rural Lands) is likely to be used only in exceptional and limited circumstances, and where the protection of the land will result in a public benefit:

State Environmental Planning Policy (Rural Lands) 2008 provides the ability for the Minister for Planning to list lands within Schedule 2 of the SEPP that are of agricultural significance to the State. This provides the opportunity to protect land that has State or regional significance. These provisions are only likely to be used in exceptional and limited circumstances.

Land that may be included in this schedule is agricultural land of State and regional significance, which may be under pressure from uses not compatible with the current agricultural use and where its protection will result in a public benefit. There is no land currently listed in Schedule 2 of the SEPP. Should land be identified as of agricultural significance to the State, the Minister for Planning may amend the SEPP by listing that land in Schedule 2.⁶⁰²

- 8.76** Ms Lorraine Wilson, Executive Councillor, NSW Farmers' Association also spoke about the immense pressure on coastal regions to provide land for expanding populations and that the correlation of this is a diminishing agricultural sector, particularly in the Sydney Basin region.⁶⁰³ An article in *The Sydney Morning Herald* commenting on the findings of a report

⁶⁰⁰ Ms Fiona Simson, Executive Councillor, NSW Farmers' Association, Evidence, 21 May 2009, p 24

⁶⁰¹ Ms Simson, Evidence, 21 May 2009, p 24

⁶⁰² Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning

⁶⁰³ Ms Lorraine Wilson, Executive Councillor, NSW Farmers' Association, Evidence, 24 August 2009, p 2

conducted by the NSW Department of Industry and Investment confirmed this to be the case.⁶⁰⁴

- 8.77** *The Sydney Morning Herald* article said the report found that there are now 1050 vegetable farms left in the Sydney basin and the vegetable industry occupies less than half the land than it did as documented in two reports six years ago. The report noted that more than half of the current farms are set to disappear over the next two decades because they are within the southern and north-west growth areas earmarked for suburban development.
- 8.78** The report recommends a review of the Sydney vegetable industry to consider whether it should be encouraged to expand so that the metropolis becomes more self-sufficient in produce. It also said there should be a full carbon life-cycle assessment of vegetables grown in the NSW regions and interstate, compared to the same crops produced in Sydney greenhouses.
- 8.79** The proposition to preserve or expand the Sydney Basin vegetable industry at the expense of planned residential and industrial land development was reportedly met with criticism from the Chief Executive Officer of the Urban Taskforce, Mr Aaron Gadiel, who was quoted as saying that preserving the farm on Sydney's fringe would cripple the city's growth and put extra pressure on renters and home owners.⁶⁰⁵
- 8.80** The Committee was advised that the Department of Planning is working with the former Department of Primary Industries, now the Department of Industry and Investment, as part of a working group to determine options to facilitate sustainable agricultural industry development in the Sydney Basin.⁶⁰⁶ To support the working group, an Agricultural Reference Group has been established, on which the Farmers Association has been invited to participate.
- 8.81** Ms Wilson said that the concept of agribusiness parks could be a possible solution to the conflict of competing land demands in major urban areas and the desire to produce food close to population areas.⁶⁰⁷ On request from the Committee Ms Wilson provided a copy of a report on a study tour examining agribusiness parks in Europe.⁶⁰⁸
- 8.82** The report, entitled *Future of Farming Project – Researching the development, planing and protection of agribusiness parks, Netherlands*, explored the concept of agribusiness parks, which focus on sustainable development through agricultural clustering and intensive farming and food production practices. The report concluded that the concept can be applied to intensive agriculture in Australia, especially in close proximity to major cities. It noted that for this to occur the concept would need to be fully embraced and supported by all levels of government, and that, among other things, changes to current planning controls and zoning would need to occur.

⁶⁰⁴ *Suburbs will swallow Sydney's market gardens*, Sydney Morning Herald, 12 October 2009

⁶⁰⁵ *Grow suburbs, not vegies: developers*, Sydney Morning Herald, 13 October 2009

⁶⁰⁶ Answers to questions taken on notice during evidence, 25 August 2009, Department of Planning, p 3

⁶⁰⁷ Ms Wilson, Evidence, 24 August 2009, p 6

⁶⁰⁸ Answers to questions taken on notice during evidence, 24 August 2009, Ms Lorraine Wilson, Executive Councillor, NSW Farmers' Association

'Right to farm'

- 8.83** The Committee heard of the conflict between existing farming operations and the subsequent expansion of residential areas close to those farms. Clr Kidd explained that when this occurs farms are frequently the subject of complaints regarding noise and activity, often leading to farms having constraints placed on their operations. In response to this increasing problem, Clr Kidd said the NSW Farmers' Association recommends introduction of legislative recognition of the "right to farm":

I know that in the United States and parts of Europe that I have had the opportunity to visit, specifically looking at this area, they have built within their legislation this right-to-farm type of legislation. They allow the planning and say, "If you are going to develop this urban development here, there have to be some buffer zones." It must be made quite clear to the people who want to buy and build there that over here the land use practice is farming, and that cows moo, sheep bleat, and tractors make a noise.⁶⁰⁹

- 8.84** Ms Elizabeth Tomlinson, Executive Councillor, NSW Farmers' Association said that it was Association policy that Section 149 certificates be required to advise potential land purchasers of the proximity to, and resulting potential impact on amenity of, agricultural activity:

It says that we believe that there should be a mandatory part of that section 149 certification that warns prospective buyers of the potential loss of amenity from agricultural activity and notes that the local environmental plan requires the consent authority to protect and maintain land for agriculture, and explains to prospective purchasers the purposes of any buffer zones as well as the advantages of maintaining buffers into the future. That is an issue we would like to see addressed. If people know what they are going into, well, at least they know what they are going into, whereas I think a lot of people go out and they just have no idea what they are getting into and that creates issues.⁶¹⁰

- 8.85** The Committee notes that the agricultural sector encompasses a vast range of industries, the impact of which in terms of environmental effects and the effect upon neighbours will vary depending upon the activity being undertaken. The impact on neighbouring properties of a cropping property is quite different to that of a cattle feedlot or a piggery.
- 8.86** It would follow that the appropriate size of a buffer zone would depend on the type of agricultural industry being undertaken. Issues could arise if buffer zones had been established and subsequent to that, the landholder proposed a change to the agricultural activity on his or her land. In such cases, the onus should be placed on the landholder to incorporate the increased buffer requirement within their existing land.
- 8.87** It was also put to the Committee that the proliferation of rural-lifestyle lots can result in the fragmentation of viable farmland, which constrains the potential for expansion of dedicated

⁶⁰⁹ Clr Kidd, Evidence, 1 May 2009, p 10

⁶¹⁰ Ms Elizabeth Tomlinson, Executive Councillor, NSW Farmers' Association, Evidence, 1 May 2009, p 13

agricultural industry.⁶¹¹ Mr Christopher Berry said that Goulburn Mulwaree Council had adopted the approach of allowing a range of minimum lot sizes, ranging from 10 through to 100 hectares. Smaller lot sizes were allowed in more urban areas and close to villages, with an expanding increase in minimum lot sizes the further away land was located.⁶¹²

- 8.88** In response to a written question from the Committee, the Department of Planning said that it was aware of concerns regarding conflict between farms and rural residential development. The Department advised that it believed these concerns were addressed in three ways:

The Department has addressed these concerns through the implementation of the *State Environmental Planning Policy (Rural Lands) 2008*. Clause 10 of the Rural Lands SEPP specifies matters that are to be taken into consideration when determining development applications, including whether the development is likely to be incompatible with a use on land within and adjoining rural residential zone, and any measures that would be used to avoid land use conflict. This would include the option of using buffer zones.

The NSW Government's regional strategies also contain actions to prevent land use conflict in rural areas. For example, the Mid North Coast Regional Strategy contains an action requiring new development adjacent to farmland to include buffers.

The Department is also working closely with local councils as they prepare new local environmental plans for rural areas. This involves planning the best location for rural residential or rural lifestyle development, which will avoid or minimise impacts on working farms.⁶¹³

- 8.89** During the Inquiry Mr Haddad tabled a copy of the 2009 Regional Strategy Update Report. The report noted that conservation of high quality farmland in the Mid North Coast region is a key action of that regional strategy.

- 8.90** The report states the Mid North Coast Farmland Mapping project was carried out as a partnership between the Departments of Planning, Primary Industries and Environment and Climate Change, with the project's first stage funded by the Northern Rivers Catchment Management Authority. The project mapped regionally significant farmland capable of sustaining long-term agricultural activity in the local government areas of Port Macquarie-Hastings, Kempsey, Nambucca, Coffs Harbour, Bellingen and Clarence Valley. The maps, which can inform appropriate planning decisions, aim to protect these areas from urban or residential development other than in limited circumstances.⁶¹⁴

- 8.91** The update report also noted that the Far North Coast Regional Strategy outlines a series of town and village growth boundaries to reinforce the role of existing villages and centres and ensure there are green breaks between coastal settlements to protect important coastal

⁶¹¹ Mr Garry Styles, General Manager, Orange City Council, Evidence, 1 May 2009, p 33

⁶¹² Mr Berry, Evidence, 19 May 2009, p 22

⁶¹³ Answers to questions taken on notice during evidence, 23 September 2009, Department of Planning, p 12

⁶¹⁴ Tabled document, Department of Planning, *Regional Strategy Update Report 2009*, p 45

biodiversity and resource areas. The report describes these resource areas as including State significant farmland on the Cudgen plateau.⁶¹⁵

- 8.92** This again demonstrates the benefit derived from the whole of government development of Regional Strategies and reinforces the Committee's recommendation that Regional Strategies be developed for all areas of the State.

Farming versus mining

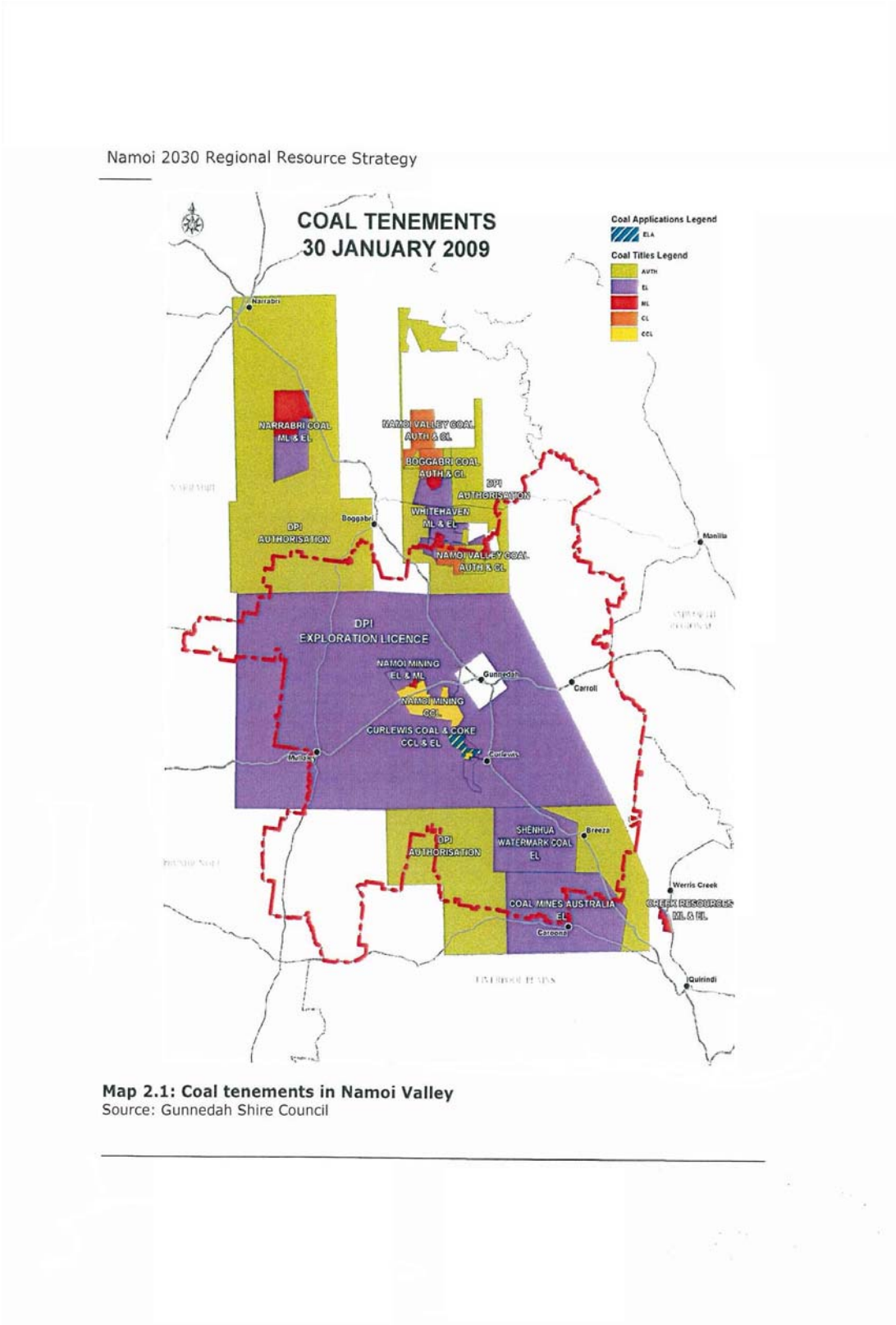
- 8.93** Perhaps the greatest potential for land-use conflict is where the interests of the agricultural and extractive industries collide. The case of the Liverpool Plains – Gunnedah Basin is the most recent example of the conflict that can ensue.
- 8.94** As noted in paragraph 8.73 the Liverpool Plains area is rich agricultural resource with a long-standing agricultural community history. It is also a substantial coal and gas resource. The submission from the Namoi Regional Organisation of Councils (Namoi ROC) said that the Gunnedah Basin also has a long history of typically small-scale coal mining operations. However in recent years Exploration Licences (ELs) covering large areas have been granted – the Caroon Coal area and the Watermark Exploration Area.⁶¹⁶
- 8.95** In evidence, Mr Michael Silver, Director of Planning and Environmental Services, Gunnedah Shire Council tendered a map displaying the current coal titles that have been issued both in terms of exploration licences and mining leases and consolidated coal leases across the Narrabri, Gunnedah and Liverpool Plains areas.⁶¹⁷ These are illustrated in figure 8.1 on the following page.

⁶¹⁵ Tabled document, Department of Planning, *Regional Strategy Update Report 2009*, p 19

⁶¹⁶ Submission 26, Namoi ROC, p 3

⁶¹⁷ Mr Michael Silver, Director of Planning and Environmental Services, Gunnedah Shire Council, Evidence, 21 May 2009, p 15

Figure 8.1 Map of mining licences and leases



8.96 Namoi ROC recommended that when an EL is granted, particularly over a resource province such as the Gunnedah Basin, the Government through the Department of Planning should undertake a strategic assessment of coal mining potential and constraints on the region, to provide guidance to the exploring company, government and the community. The submission argued that work of this nature had been undertaken previously with respect to the Upper Hunter Valley.⁶¹⁸

8.97 There was a consistent call from stakeholders for greater strategic assessment and more scientific information on natural resources, particularly water, constraints and impacts. The submission from the NSW Minerals Council argued there was a need for greater emphasis on strategic planning in regional NSW, particularly where mining occurs adjacent to and underneath alternative land uses:

Strategic land use planning would promote the development of integrated landscapes, reduce land use conflicts and maximise the productivity of developing regions, contributing to the development of vibrant and successful rural and regional areas. This is particularly important in NSW where mining occurs adjacent to and underneath alternative land uses.⁶¹⁹

8.98 Similar to the view expressed by the Namoi ROC and others, the NSW Minerals Council called for strategic assessment and planning to identify the constraints and opportunities for conflicting land uses. Ms Rachel Benbow, Director, Environment and Community, said such strategic planning would provide a more structured process for engagement with the community:

In addition to that, it provides a more structured process to engage with the community on future land use going forward and I think that is a really valid process for government to be involved in and it also provides a lot more certainty for development. So if any industry is going into an area, the conditions of that development or what the limitations are in a certain area are known upfront so that people also know then what issues are critical to that area and what needs to be addressed.⁶²⁰

8.99 Ms Sue-Ern Tan, General Manager, Policy and Strategy, NSW Minerals Council said that scientific data on natural resources was essential in trying to resolve what typically become quite emotional debates about conflicting land use, such as is occurring in the Liverpool Plains:

They need to get that data. That information is critical to the debate, which at the moment seems to be lacking in that area: data about the coal resource, data about water and data about how it interacts. I think injecting some science into the debate is very important so that everyone actually is on the same page and understands this is what it could look like, this is what it might not look like, these are the issues. It is very hard because it is a very emotional issue,

⁶¹⁸ Submission 26, p 5

⁶¹⁹ Submission 78, NSW Minerals Council, p 1

⁶²⁰ Ms Rachel Benbow, Director, Environment and Community, NSW Minerals Council, Evidence, 17 August 2009, p 30

particularly for the farmers up in that area. I absolutely accept that they have a long association with the land up there.⁶²¹

- 8.100** Ms Simson said that the current lack of required scientific information precluded proper consideration of the true potential for mining in the area:

Because New South Wales has not made the upfront investment in science and information needed to underpin complex impact assessment processes involving groundwater systems, the aquifer systems in the Liverpool Plains and in other regions within the Namoi Valley are poorly understood. There is no robust data source to enable an assessment team to make findings regarding the current condition of the resource, how the system works, and how exploration and mining itself may impact on such a resource. In short, there is no existing basis on which to make a truly informed decision about the degree of risk to the farming system.⁶²²

- 8.101** The Chairman of the Namoi CMA told the Committee that the while the CMA had substantial data sets on native vegetation, it was lacking an independent water study.⁶²³ The Committee heard that following the granting of the ELs, the Minister for Primary Industries had established a committee to draft terms of reference for an independent water study. Ms Simson estimated the cost of the water study to be about \$12 million:

The draft terms of reference for the independent water study have been handed to the Minister for comment and for him then to establish a ministerial oversight committee to put the study out to tender. The problem is that it is a \$12 million study. The Federal Government through Penny Wong has committed nearly \$1.5 million—it is more than \$1.3 million—because it is part of the Murray-Darling Basin, on condition that the State Government matches it. The State Government has not matched anything yet. The shortfall at this point would have to be covered by the mining companies.⁶²⁴

At the moment there is no study because there is no money. We have draft terms of reference. We have \$1.375 million or something like that from the Federal Government towards a \$12 million study. That is the only money we have. The study will be cut up into sub-catchments; the whole Namoi catchment will be cut up into sub-catchments and it is predominantly trying to see where the water comes from, where it goes to, where the aquifers are in relation to the coal seams and the gas seams. It will give that scientific knowledge that we need to assess whether or not these developments are in fact possible.⁶²⁵

⁶²¹ Ms Sue-Ern Tan, General Manager, Policy and Strategy, NSW Minerals Council, Evidence, 17 August 2009, p 33

⁶²² Ms Simson, Evidence, 21 May 2009, p 26

⁶²³ Mr McDonald, Evidence, 21 May 2009, p 17

⁶²⁴ Ms Simson, Evidence, 21 May 2009, p 28

⁶²⁵ Ms Simson, Evidence, 21 May 2009, p 30

- 8.102** The Committee was advised that the cost paid to the Government for the right to explore under the EL for the Caroon Coal Area was \$125 million, while the cost for the Watermark Exploration Area was over \$300 million.⁶²⁶ The Namoi ROC submission recommended that some of the monies derived from granting an EL should be directed towards strategic assessments to identify any natural resource constraints on the potential of mining.⁶²⁷

Committee comment

- 8.103** One of the purposes of the Department of Planning Regional Strategies is to minimise land use conflict. The Committee notes that currently none of the local government areas within the Gunnedah Basin or Liverpool Plains are covered by a relevant Regional Strategy. The Committee has recommended that Regional Strategies be developed for all areas of the State.
- 8.104** The Committee sees merit in the argument that an independent strategic and scientific assessment of the potential natural resource constraints should occur prior to the commencement of mining. The cost of any required study should be funded by the mining company.
- 8.105** This could be resolved by the process of the government implementing an independent committee of stakeholders to set the terms of reference for any strategic and scientific assessment at the time when an exploration licence is granted.

Recommendation 7

That the process for the granting of mining exploration licences be amended so that at the same time that a licence is granted, the government appoint an independent committee of stakeholders to determine the terms of reference and manage a strategic and scientific assessment of natural resource constraints, which is to be funded by the mining company.

⁶²⁶ Submission 26, p 3; Ms Simson, Evidence, 21 May 2009, p 30

⁶²⁷ Submission 26, p 7

Chapter 9 Housing affordability

This Chapter considers the Committee's term of reference 1(h) - implications of the planning system for housing affordability. Delays in bringing land onto the market and the cost of developer levies are two significant and direct factors in housing affordability that can be attributed to planning system. Therefore the discussion about section 94 contributions in chapter 4 is also relevant. The Committee also notes the recent and comprehensive report on affordable housing by the Legislative Council's Standing Committee on Social Issues that was published in September 2009.⁶²⁸

Housing affordability

- 9.1** The Committee distinguishes between 'affordable housing' and 'housing affordability'. 'Affordable housing' refers to housing for which low to moderate-income households spend no more than 30 percent of their gross household income on recurrent housing costs.⁶²⁹ It includes public housing, community housing and other low-rent, social housing.
- 9.2** In its submission to the Standing Committee on Social Issues inquiry into homelessness and low-cost rental accommodation, the NSW Government advised that in Sydney and the Greater Sydney Metropolitan Region 'low-income' refers to households earning up to \$50,600 gross per annum, and 'moderate income' includes households earning between \$50,600 and \$75,900 gross per annum. To take account of regional differences, in the rest of New South Wales, 'low income' refers to households earning up to \$45,500 gross per annum and 'moderate income' refers to households earning between \$45,500 and \$68,200 gross per annum.⁶³⁰
- 9.3** 'Housing affordability' is a more general term and takes into account cost and supply of housing. Housing affordability is influenced by many factors such as supply of land and houses, infrastructure, market influences, interest rates, and broader economic and fiscal policy.
- 9.4** Mr Warren Gardiner, Senior Policy Officer, Council of Social Service of NSW (NCOSS), summarised NCOSS's understanding of the Committee's terms of reference regarding housing affordability as having two distinct meanings, the first being how the planning framework affects the affordability of housing:

The first relates to how the planning system operates. Does it affect the affordability of housing? Are we talking about housing for home purchasers, renters, or whatever? It involves building standards and lots of things like that and it involves delays. Is it easy to get through certain designs or not? Undoubtedly all those things contribute to the cost of housing. There are a lot

⁶²⁸ NSW Legislative Council Standing Committee on Social Issues, *Homelessness and low-cost rental accommodation*, Report No 42, September 2009

⁶²⁹ Standing Committee on Social Issues, Report No 42, p 17

⁶³⁰ Standing Committee on Social Issues, Report No 42, p 17

of issues with which we are all familiar relating to developer charges and other requirements.⁶³¹

9.5 Mr Gardiner referred to the second meaning as the ‘product’ of affordable housing, targeted exclusively at low to moderate-income earners.⁶³²

9.6 Mr Graham Wolfe, NSW Executive Director of the Housing Industry Association Ltd, attributes the lack of housing affordability in NSW to current economic conditions, rent cost rises and lack of housing supply, and emphasised to the Committee the effect on affordability of ‘simply not building enough’ homes:

Are we seeing enough houses, enough apartments and enough residential homes for people that would not otherwise have a home being contributed to by this process of upping the ante, in terms of the yield available to a developer on a block of land? I do not know the answer to that. All I know is that it is driving the price up and it is driving the price up for people that ultimately, when you look at it, cascade down through, back into the rental market and start putting further demands. I think the current economic conditions, the recent implications of rental cost rises and low housing supply across this State has highlighted the fact that simply if we do not build enough everybody loses. You can argue about the fringe areas, but if we do not build enough everybody loses.⁶³³

9.7 Mr Malcolm Ryan, Director Planning and Development Services, Warringah Council, noted that there is a need to ‘physically interfere with the market’ to maintain affordable housing or market forces will see it evaporate:

...if you have a diverse community and a whole range of society to provide housing for, which most of us do have, especially the regional cities have that situation, and the point you raised earlier about providing a workforce for all the industries there and some of them need particular characteristics, councils have to try and provide that housing. But in a free market situation, you create the affordable house and it is bought cheaply and the next time it is traded it is on the market at the normal price. Unless you physically interfere with the market, either by housing trusts or force by covenant that that house must be sold [to] someone who meets some criteria, the affordable housing will just evaporate as soon as it is sold the next time.⁶³⁴

9.8 Inquiry participants also discussed the concept of ‘affordable living’, whereby the cost of a house is one factor in determining affordability – the cost of living is also relevant. Ms Sharon Fingland, Assistant Director, Western Sydney Regional Organisation of Councils (WSROC)

⁶³¹ Mr Warren Gardiner, Senior Policy Officer, Council of Social Services of NSW (NCOSS), Evidence, 24 August 2009, p 31

⁶³² Mr Gardiner, Evidence, 24 August 2009, p 31

⁶³³ Mr Graham Wolfe, NSW Executive Director, Housing Industry Association Limited, Evidence, 24 August 2009, p 41

⁶³⁴ Mr Malcolm Ryan, Director Planning and Development Services, Warringah Council, Evidence, 17 August 2009, p 20

illustrated the concept in relation to western Sydney, pointing to environmental, social as well as economic factors:

We then have a situation that the urban form in western Sydney has changed from a series of small towns along railway lines when it was first settled to one where people are moving further and further away from existing infrastructure and are now totally car dependent because public transport opportunities are very poor. The cost of location in western Sydney for those people, who in many instances are already poor, is adding to the cost of living. It is not just the cost of affordable housing, because some of the housing certainly is cheaper there than it used to be, it is the actual cost of living in that area. There are the costs of congestion, travel, greater exposure to oil dependency and all of those things. We argue that taken in its entirety those issues should be considered as an environmental impact as well as an economic and social impact.⁶³⁵

- 9.9** This point was also made by Mr Merv Ismay, General Manager, Holroyd City Council, who linked inadequate infrastructure in Western Sydney to a lack of housing affordability:

There is a significant shortfall in the supply of transport infrastructure in Western Sydney to support new housing development. Provision of essential infrastructure such as the North West and South West rail lines and frequent and useable bus services are vital for housing affordability and will also provide significant environmental benefits through a reduction in the reliance on motor vehicles as the only viable form of transport to and from the region. A lack of housing diversity in many areas of Western Sydney contributes to affordability problems as much of the existing housing stock is inappropriate for the diverse demographic need of the region.⁶³⁶

- 9.10** It must be acknowledged that location remains a major factor in the cost of housing, as the price of land varies dramatically across the State. While noting that a major contributor to the cost of housing development is the delays in the planning system, Greater Taree City Council said that housing affordability is not an issue for its local area:

For us housing affordability is not really an issue. You can still buy a house on a block of land in Taree for a couple of hundred thousand dollars or less. We still have land in the city that is very good. It is a policy area we have not been so concerned about. We are concerned about the cost of development, and a major contributor to the cost of development is all the delays in the planning system. We can improve our local affordability by getting a better system.⁶³⁷

- 9.11** During the regional hearings the Committee heard evidence on the variance in cost of land both from one local government area to another and from within one area. In the case of Richmond Valley Council, the Committee heard that for Evans Head the cost of a block of

⁶³⁵ Ms Sharon Fingland, Assistant Director, Western Sydney Regional Organisation of Councils (WSROC), Evidence, 15 June 2009, p19; see also p 20

⁶³⁶ Submission 77, Mr Merv Ismay, General Manager, Holroyd City Council, p 2

⁶³⁷ Mr Graham Gardner, Director of Planning and Building, Greater Taree City Council, Evidence, 21 May 2009, p41

land could range from \$350,000 to \$500,000 and in some cases from \$600,000 to \$700,000, while in Casino the cost ranges from \$60,000 to \$260,000.⁶³⁸ In Griffith the cost is a minimum of \$120,000.⁶³⁹

Implications of the planning system on housing affordability

9.12 The submission from Dr Robyn Bartel from the University of New England emphasised the need for a ‘whole of government’ approach to addressing housing affordability in New South Wales, stating that ‘it must be recognised that planning alone cannot solve this issue of housing affordability in NSW’.⁶⁴⁰ The Committee acknowledges this limitation. However, consistent with the evidence received during the Inquiry, the Committee also acknowledges that the planning system can have an effect on housing affordability.

9.13 The NSW Government submission identifies a number of ways the planning system can impact on housing affordability, including:

- the extent and locality of land releases
- local planning controls
- development contributions
- provision of infrastructure and services
- time taken to determine development applications.⁶⁴¹

9.14 However, while suggesting that planning policies can improve the affordability of housing, the NSW Government states that policies need to be specific to different areas:

It is likely that effective planning policies can improve the affordability of housing in some areas. However, the development of such policy needs to be comprehensive and have regard to specific housing market conditions that prevail in a particular area and the impact of other legislation, which affects accessibility to land and constraints on the use of that land.⁶⁴²

Land release

9.15 The Urban Taskforce Australia noted in their submission that ‘the central issue underlying housing affordability is the supply of housing’, with lack of affordability caused by a ‘systemic mismatch between the demand for and supply of housing’. The Urban Taskforce stated that ‘supply-side measures are the key to boosting affordability for both renters and home buyers’

⁶³⁸ Mr Ken Exley, Director, Environmental Development Services, Richmond Valley Council, Evidence, 26 May 2009, p 29

⁶³⁹ Mr Exley, Evidence, 29 May 2009, p 22

⁶⁴⁰ Submission 94, Dr Robyn Bartel et al, University of New England, p 44

⁶⁴¹ Submission 69, NSW Government, p 52

⁶⁴² Submission 69, p 52

and identified two ways in which the planning system contributes to the problem of affordability in respect of land release:

- preventing or limiting the construction of new medium and high density housing in areas where it is most in demand
- restricting the availability of greenfield land for the development of new detached housing.⁶⁴³

9.16 Mr Thorne from the Urban Development Institute of Australia said that it is often argued that you need more land available (rezoned) for development than what is actually required because this provides competition in the market, which can reduce land costs:

With regard to the supply issue, that is always a question for regional towns, and it would be in Sydney as well. It is one of those conundrums that are sometimes hard to resolve. What happens with that is that if the land is held in too few hands it creates a cartel situation potentially. I agree that that is really unhealthy, in relation to the market, economic activity, and housing affordability—just all round. That is why we have often argued that you need more land available than what you need to provide the housing, so that there is competition in the market. I have seen it first hand in Port Macquarie, where there was a large release done in the late 1980s and it was really developed through the 1990s, the early to mid-1990s in particular. You had probably 10 different landowners subdividing land at that time. You had a very healthy market and competition. I think competition is a way of keeping a lid on affordability as much as you can.⁶⁴⁴

9.17 The Urban Taskforce Australia submission asserted that increasing the land available for development, and reducing the cost of developing and building rental housing would boost competition between different land-owners and developers, thus driving down prices.⁶⁴⁵

9.18 The impact of land supply on market competition was also commented on in the submission from JBA Urban Planning Consultants, who stated that ‘the current planning system has not assisted in bringing sufficient land/development opportunities to the market to benefit from market competition’, asserting that ‘land supply targets have been set conservatively and with limited timeframe which has resulted in a constrained supply’.⁶⁴⁶

Impact of delays

9.19 Delays in bringing land onto the market and the cost of developer levies are two significant and direct factors in housing affordability that can be attributed to planning system. Getting land to market faster, streamlining development approvals and simplifying planning

⁶⁴³ Submission 91, Urban Taskforce Australia, p 94

⁶⁴⁴ Mr Anthony Thorne, Member, Urban Development Institute of Australia, Evidence, 26 May 2009, p 40

⁶⁴⁵ Submission 91, p 94

⁶⁴⁶ Submission 72, JBA Urban Planning Consultants Pty Ltd, p 21

requirements were raised by inquiry participants as factors that can improve housing affordability.

- 9.20** The submission from the Housing Industry Association Ltd (HIA) identifies the two main reasons for increases in the cost of completed housing projects, stemming from delays in the planning approval process as being additional holding costs and rising material costs.⁶⁴⁷ In response to these issues, the HIA recommended that an independent Planning Ombudsman be established as a mechanism for inquiring into excessive planning delays relating to individual development applications:

The Ombudsman, engaged by the proponent following the lapsing of a deemed refusal timeframe would be authorised to inquire into the reason/s for delays in a council's assessment of a specific DA or number of DAs and importantly, the extent to which the delays are unnecessary, unreasonable and excessive. The Ombudsman would have no power to question the merits of a planning decision or to influence the decision-making process in anyway. However, having investigated the council's assessment process in the particular circumstances and reasons for delay, an "independent" Planning Ombudsman would be tasked with reporting directly to the Minister for Planning for action.⁶⁴⁸

Increased building standards

- 9.21** The HIA submission referred to a study by the Australian Building Codes Board that looked at the cost impacts on housing affordability due to local councils increasing building standards through planning codes and found a one per cent to 14 per cent impact on construction costs:

The investigation focused on nine variations in a variety of NSW council areas. The results vary widely, but all added to the construction cost, ranging from a 1% to 14% increases. The samples used were multistorey apartment buildings and two commercial buildings, where additional council requirements for increased ceiling heights, natural lighting, room sizes, energy efficiency, disabled access and termite protection were applied.⁶⁴⁹

- 9.22** JBA Urban Planning Consultants also referred to the compliance costs associated with meeting minimum standards in councils' residential building codes. The submission acknowledged the impact of SEPP 65 and related Residential Flat Design Guidelines, but claimed that this is exacerbated because of 'great disparity amongst Councils over even simple standards such as the minimum size of apartments'.⁶⁵⁰

⁶⁴⁷ Submission 93, Mr Graham Wolfe, Housing Industry Australia Ltd, p 7

⁶⁴⁸ Submission 93, p 7

⁶⁴⁹ Submission 93, p 8

⁶⁵⁰ Submission 72, p 22

Levies

- 9.23** The Urban Taskforce Australia submission referred to ‘massive development levies’ on Greenfield development. Although lower, the submission called levies on brownfield development ‘burdensome’.⁶⁵¹ The submission explained the impact of these levies on housing affordability:

... there is only one party who must pay for an increased developer charge – the home buyer... however often a home buyer cannot afford a new or increased levy, That’s because there is a ceiling on the price that home buyers are able to pay i.e. their borrowing capacity... As a result, any project which cannot be delivered at a price home buyers can currently afford simply doesn’t get built. Any increase in costs from a new developer charge can’t be passed onto a home buyer until home buyers’ borrowing capacity increases enough to pay for the levy.

That’s why, in part, the supply of new houses in Sydney has almost completely dried up. State, local council charges of up to \$70,000 to \$90,000 for each home lot in the growth centres cannot be afforded by anyone – land owners, developers or home buyers. So the homes simply don’t get built and no money is actually raised.⁶⁵²

- 9.24** The Council of Social Services of NSW (NCOSS) supported levies, particularly for new development, as they provide necessary community facilities, although the submission did note that ‘it would be possible to reduce some developer charges were there to be much greater Commonwealth investment in needed infrastructure in the state’s growth centres’.⁶⁵³ NCOSS cautioned against reducing charges by reducing or delaying necessary infrastructure, calling this a ‘false economy’:

These charges reflect the true cost of developing new housing, and are necessary if residents of new communities are to have access to the range of community facilities and services that people living in more established areas take for granted. NCOSS has no desire to see anyone charged a greater levy than is necessary but believes that it is a false economy to reduce charges by delaying or eliminating the provision of necessary community facilities and infrastructure.⁶⁵⁴

- 9.25** In their submission, the Local Government and Shires Association (LGSA) also questioned the assertion that reducing developer contributions will lower house prices:

The LGSA question the conventional wisdom that reductions in developer contributions will result in lower prices for new homes. There is a considerable body of expert economic research that challenges that conclusion. ...

⁶⁵¹ Submission 91, p 94

⁶⁵² Submission 91, p 95

⁶⁵³ Submission 71, Council of Social Services NSW (NCOSS), p 4

⁶⁵⁴ Submission 71, p 4

Although looking to increase housing affordability by streamlining planning processes is desirable, it is likewise imperative to recognise that the quality of the assets purchased through developer contributions is important to the creation of sustainable suburbs. Quality open space and infrastructures can reduce the life cycle cost of house ownership and provide considerable social and environmental benefits.⁶⁵⁵

9.26 The Property Council of Australia provided the Committee with an example from the City of Sydney, where a 4 per cent ‘affordable housing’ levy is imposed on all new residential and commercial development. In respect of this levy, the Property Council raised the following issues:

- council is ignoring the fundamental issue of increasing supply, lowering costs and streamlining assessment processes to improve the provision of housing to the market
- council’s analysis of the impact of the levy ignores its own other policies that make housing more expensive and difficult to deliver including a proposed ESD DCP (\$11,000 additional per dwelling), Design Excellence DCP and a new Scaffolding and Hoardings Policy
- council has actually ruled out other approaches such as the utilisation of its own land and providing incentives such as rate incentives, development bonuses or partnership approaches.⁶⁵⁶

9.27 Mr Wolfe agreed that affordable housing contributions should not decrease the affordability of housing more generally. He believed the State government needed to take a leading role on access to affordable housing for people who are disadvantaged, without indirectly increasing the cost of housing.

Local government

9.28 The LGSA maintained that ‘the provision of affordable housing is not Local Government’s core responsibility and the State Government needs to maintain its position as the key provider of affordable housing’.⁶⁵⁷ With this in mind, the LGSA identified a role for local government in ‘providing incentives and opportunities to facilitate the provision of affordable housing as well as providing a level of housing choice to meet the needs of all members of its communities’.⁶⁵⁸

9.29 The City of Sydney’s *Sustainable Sydney 2030* policy sets a target of 7.5 per cent of all housing being affordable housing and 7.5 per cent being social housing delivered by the not for profit sector by 2030. In relation to achieving those targets, Ms Monica Barone, CEO, City of Sydney emphasised the Council’s reliance on other levels of government:

⁶⁵⁵ Submission 66, p 25

⁶⁵⁶ Submission 84, Property Council of Australia, p 16

⁶⁵⁷ Submission 66, Local Government and Shires Association, p 24

⁶⁵⁸ Submission 66, p 24

While achieving targets within *Sustainable Sydney 2030* will largely rely on the policies of other levels of government to increase the capacity of the not-for-profit sector and encourage the investment of the private sector in affordable housing, direct provision of affordable housing by Council will have a limited, but important role.⁶⁵⁹

- 9.30** The President of the Local Government Association, Clr Genia McCaffery told the Committee that in her view local government can play two roles in the delivery of affordable housing – managing public housing and by ensuring that housing development is delivered effectively and efficiently:

There are two roles that local government can play in the delivery of affordable housing. We can play a role in managing public housing in our communities, and North Sydney does that so I am familiar with our capacity to do that. We also have a lower North Shore housing service that manages those houses for us, and I think we do it effectively. On one level we are well placed to manage public housing, as long as we get adequate funding from both State and Federal governments to do that.

We also have a role to ensure that housing development is delivered effectively and efficiently. That goes back to what I was saying in my opening address: local government is desperate for proper planning reform. Over the past 15 years we think the problem has been that the planning process has become more complex and it is harder for us to process applications effectively and efficiently. That is why we are asking the State Parliament to produce a new piece of planning legislation.⁶⁶⁰

- 9.31** The Committee raised the issue of local government areas that through desirability of location have a predominance of high-cost housing that precludes relatively low-wage earners from living in the area in which they work. Mr Malcolm Ryan told the Committee this was an issue for Warringah council in maintaining its outdoor staff in the long term.⁶⁶¹
- 9.32** The submission from Waverley Council described its Waverley Affordable Housing Program (WAHP), a social initiative designed to encourage the increased provision of new affordable rental accommodation. The program seeks to target and retain low to moderate income households who can demonstrate a connection to the Waverley local government area.
- 9.33** The WAHP uses contribution collected from developers to purchase housing stock which is then managed by a non-profit community housing organisation. The developer contributions are collected via voluntary planning agreements:

The WAHP applies to all new multi-unit residential and mixed use development (comprising of a residential component) within residential zones where a proposed development seeks to exceed the FSR (floor space ratio).

⁶⁵⁹ Submission 60, Ms Monica Barone, CEO, City of Sydney, p 26

⁶⁶⁰ Clr Genia McCaffery, President, Local Government Association of NSW, Evidence, 30 March 2009, p 16

⁶⁶¹ Mr Ryan, Evidence, 17 August 2009, p 20

The WAHP contributions generated are determined in accordance with the Waverley Affordable Housing Program Calculator, designed to determine an equal benefit to a development applicant and the community. Contributions are obtained through Council's Voluntary Planning Agreement Policy 2007 designed in accordance with section 93F of the EP&A Act and Regulations 2000.⁶⁶²

- 9.34** The submission noted with concern that the recent 2008 amendments could potentially have major implications for the continuation of schemes such as the WAHP. It was also critical of the fact that the State Government had not yet [at the time of making the submission] introduced an affordable housing SEPP that applied to all local government areas within the State.⁶⁶³

Affordable Rental Housing SEPP

- 9.35** In July 2009 the NSW Government released the Affordable Rental Housing SEPP 2009. The aims of the SEPP are to:

- provide a consistent planning regime for the provision of affordable rental housing
- facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards
- facilitate the retention and mitigate the loss of existing affordable rental housing
- employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing
- facilitate and expanded role for not-for-profit providers of affordable rental housing
- support local business centres by providing affordable rental housing for workers close to places of work
- facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.⁶⁶⁴

⁶⁶² Submission 86, Waverley Council, p 3

⁶⁶³ Submission 86, pp 3-4

⁶⁶⁴ State Environmental Planning Policy (Affordable Rental Housing) 2009, section 3, Aims of Policy

- 9.36** The Minister for Planning described the SEPP as a significant policy achievement, and noted that providing affordable rental housing is a key responsibility of all levels of government:

Providing affordable rental housing is a key responsibility of all levels of government—Commonwealth, State and local government. The State Government understands that we have a role to play. We have moved to enable the provision of sufficient numbers of affordable rental housing. This is being achieved both directly and indirectly. Directly, it is through the actions of agencies such as the Department of Planning, which has developed policies to encourage and streamline the construction of affordable rental housing, and the Department of Housing, which directly commissions and manages the Government's affordable rental housing supply. Indirectly, the Government encourages the provision of affordable rental housing by the private and public community sectors through the provision of incentives, streamlined policies and assistance.

Across New South Wales there are more than 190,000 households with low or moderate incomes who are paying more than 30 per cent of their income on rent. This is categorised as rental stress, and it is a problem that for the past decade has been getting worse, not better. In fact, rents have been rising in both regional and metropolitan areas, with more than half of Sydney's council areas experiencing rent increases of 10 per cent or more in the year to March 2009.⁶⁶⁵

- 9.37** The SEPP provides improved concessions and incentives for infill housing and support the development of housing projects containing a mix of both market-priced and affordable dwellings. Low-rise developments such as townhouses and villas will now be permitted in all urban residential zones if they contain more than 50 per cent affordable housing for a period of ten years and, if in the Sydney region, they are close to public transport. Where residential flats are already permissible, housing providers will receive a floor space bonus if they offer at least twenty per cent of the flats in a development as affordable rental housing. The SEPP also provides, through streamlined approval processes, for greater allowance for and uptake of the construction of granny flats within residential dwellings.

- 9.38** The Minister for Planning advised that there were now faster integrated approval processes for boarding homes and public housing:

Another key initiative is the extension of the provisions of the existing infrastructure State environmental planning policy to support the provision of affordable rental housing through faster approval processes. Under the changes, both Housing New South Wales and developers entering into a joint venture partnership with it can apply to the Department of Planning for a site compatibility certificate for land near Sydney train stations. These certificates allow the public housing provider to lodge an application for a low-rise residential flat building without the need for rezoning, which would generally be assessed by the local council. The new policy also contains provisions to

⁶⁶⁵ General Purpose Standing Committee No. 4, Inquiry into Budget Estimates 2009 – 2010, Hon Kristina Keneally MP, Minister for Planning, Evidence, 16 September 2009, p 51

support the development of a newer style of boarding house with self-contained rooms in residential zones and appropriate business zones, which will support students, singles, young adults, couples and key workers; allow self-approval by the Department of Ageing, Disability and Home Care for group homes of up to 10 bedrooms; and allow self-approval by Housing New South Wales for public housing of no more than 20 units and two-storeys, provided it meets existing guidelines relating to good design outcomes.⁶⁶⁶

9.39 Mr Ryan was not certain that the Affordable Housing SEPP would in itself provide a solution to the need for affordable housing in his council area. He believed the solution was to make it economically worthwhile for the people building housing to provide affordable housing by giving them sufficient incentives, whether that be greater density or taller buildings. He further argued that when such housing is built it must be handed over to a trust or it be managed for a set number of years.

9.40 The NSW Executive Director, Housing Industry Association Limited said there needed to be a greater separation of the issues of housing affordability and affordable housing. Mr Wolfe questioned the integrity of the practice of relaxing standards in exchange for a social housing contribution:

One has been a longstanding perspective that says that the Government will establish some floor space ratios, site coverage requirements or height restrictions in the planning scheme for a particular block of land. However, if the developer were to provide a social housing contribution, the Government would relax some of those restrictions and allow the developer to get a better yield out of that block of land. That creates a question about whether or not the planning scheme was right in the first place and whether or not the planning scheme was an arbitrary claim by the council or the State Government to which people might be persuaded to provide some social housing. It is worthy of significant debate but I do not think we have the time to go through it. But having been around Sydney council and its ways for about 20-something years, the industry has a view of that and as a consequence of that we have this, if you like, confusion between housing affordability and affordable housing.⁶⁶⁷

9.41 Mr Wolfe believed that this practice realises only a marginal benefit in terms of the provision of affordable housing while significantly increasing the cost, and thus constraining the development of, general housing.⁶⁶⁸

Committee comment

9.42 Evidence regarding the impact of the planning system on housing affordability was mixed. On the one hand, participants were less enthusiastic about opportunities within the planning system to positively influence housing affordability, with statements such as that made by

⁶⁶⁶ GPSC 4, Ms Keneally, Evidence, 16 September 2009, p 52

⁶⁶⁷ Mr Wolfe, Evidence, 24 August 2009, p 41

⁶⁶⁸ Mr Wolfe, Evidence, 24 August 2009, p 41

Woollahra Municipal Council that ‘the planning system should not be identified as a key mechanism for improving housing affordability’.⁶⁶⁹ On the other hand, some Inquiry participants blamed the planning framework for increasing the cost of housing, through the cost of delays, developer levies and by not releasing sufficient land.

- 9.43** The Committee agrees that addressing housing affordability requires a whole-of-government approach, and that the planning framework is only one element of a systemic solution. The introduction of the new Affordable Rental Housing SEPP, with accompanying incentives and concessions, as well as other reforms that will further streamline the planning system, should have a positive effect on housing affordability in New South Wales, although the Committee can not comment on the impact of the SEPP as it was only released in July 2009.

⁶⁶⁹ Submission 87, Mr Chris Bluett, Manager, Strategic Planning, Woollahra Municipal Council, p 5

Chapter 10 Consideration of competition policy issues

This Chapter considers term of reference (e), the appropriateness of considering competition policy issues within the planning system. The underlying premise of the National Competition Policy (NCP) is that competitive markets bring benefits, particularly for consumers and businesses. Incentives to compete lead to greater efficiency in resource use, lower prices and costs, higher real incomes and fairer outcomes.

There is a need to ensure that the planning system does not impede competition by creating unnecessary barriers to new entrants to a market. During the Inquiry there was also discussion on whether the planning system should adopt a more direct, interventionist role to ensure that individual competitors do not dominate certain markets, particularly the grocery market.

The current framework for considering competition issues

- 10.1** It is not the intention of the New South Wales planning system to impede competition unless there are issues of public interest. The principal means of supporting competition in the planning system is through ensuring that there is sufficient suitably zoned land to accommodate market demand, thereby allowing new entrants into the market.
- 10.2** The NSW Government submission identified two ways consideration of public interest issues at the zoning or development assessment stage can restrict new competitors entering a market:
- if a new supermarket threatens to ‘blight’ an existing centre and ‘force’ these customers to travel further for their retail needs. In this case the merit assessment process would weigh the costs of the proposal against any demonstrated community benefit from having a new supermarket or centre which may bring greater choice for the wider community. This is a particularly important issue in regional and rural NSW. Having weighed up all the impacts, where there is a net benefit to society, the new centre/supermarket may be approved, but where there is a net community cost, it would be in the public interest to refuse the proposal.
 - where a development proposal has the potential to sterilise prime agricultural land, or mineral, petroleum or extractive resources due to its location and also where a large development has the potential to exhaust a large proportion of a region’s water or other natural resources, the public interest test will be applied.⁶⁷⁰
- 10.3** The planning system through the application of retail zoning does seek to ensure that retail businesses are located in the most appropriate locations for the benefit of the greater community and residential amenity. A primary aim is to reduce the need for travel, particularly by private motor vehicle.

⁶⁷⁰ Submission 69, NSW Government, p 35

10.4 The NSW Government submission notes that there has been considerable recent debate regarding the interaction between the planning system and competition, particularly with reference to the grocery sector – and that this debate has been fuelled by the publishing of the following recent reports:

- Allan Fels Report for the Urban Taskforce, which argued that the planning system does not allow for sufficient retail floorspace and only allows supermarkets in some centres, which in turn drives up consumer prices, and impacts on national economic performance
- the Australian Competition and Consumer Commission (ACCC) inquiry into the grocery market which argued that zoning and planning laws, including existing centres policies are perceived to act as a barrier to supermarket entry; and that incumbent supermarkets ‘game’ the planning system, using objections to delay/deter the entry of competitors into the market
- the Productivity Commission report into the market for retail tenancies, which argued that planning and zoning laws can limit competition and erode the efficient operation of the market for retail tenancies.⁶⁷¹

10.5 The 2008 planning reforms included expanded third party development review and appeal rights. They also included provisions to ensure that commercial competitors are not able to take advantage of these review or appeal rights for the sole purpose of securing a direct financial advantage over a competitor. The NSW Business Chamber believe the changes should have a positive effect on reducing delays for new competitors to enter a market:

The way the planning system has worked in the past is that the existing coffee shop owner can hold it up with objections—not based on planning, and not to do with the quality of the building that is being added, but just because they do not want a competitor to open. That is why we were particularly positive about the changes around who can object, and that you have to live within one kilometre of the new building. Planning then focuses on the building. Then we have the Trade Practices Act to deal with anti-competitive or predatory behaviour and those sorts of things.⁶⁷²

10.6 In evidence before the Committee Mr Milton Cockburn, Executive Director of the Shopping Centre Council of Australia (SCCA) argued that there are a number of false perceptions regarding the planning system and particularly the operation of the centres policy, namely that:

- the centres policy, whereby economic and social activities, including retailing, are concentrated in a hierarchy of activity centres operates to shield established shopping centres from new competitors
- planning policies have created a shortage of retail space, particularly in Sydney
- the planning system is locking out new retailers, particularly grocery retailers
- the EP&A Act protects existing retailers from competition.

⁶⁷¹ Submission 69, p 34

⁶⁷² Ms Louise Southall, Policy Adviser, NSW Business Chamber, Evidence, 9 March 2009, p 15

10.7 Mr Cockburn said that his organisation's submission provided detailed facts that demonstrate that these perceptions are false.⁶⁷³ In evidence before the Committee Mr Cockburn said that over the last 15 years the amount of shopping centre floor space in Australia had virtually doubled from 9.2 million square metres to 17.3 million square metres. While outside shopping centres the amount of retail floor space had increased from 23.6 to 27.5 million square metres.⁶⁷⁴

10.8 Mr Cockburn also noted that the supermarket operator Aldi, in its eight years of operation in Australia, has opened in excess of 200 new stores, a rate of new store opening per year faster than that of either Woolworths or Coles. Mr Cockburn said he believed that when critics argued that there is not an adequate supply of available retail-zoned land, they in fact were critical that there was not enough relatively cheap (out of existing centres) retail land available.⁶⁷⁵

10.9 Mr Cockburn noted that when the modern form of shopping centres first started to become established in Australia developers' preference was to be located in out-of-town centres, primarily because the cost of the land was cheaper. Mr Cockburn said that the past decisions of planning authorities to focus on creating retail activity centres has been vindicated:

It is fair to say that the shopping centre developers 50 years ago were basically forced into the centres. We now find it somewhat amusing that we are now sometimes being painted as the villains of the piece in saying that everyone should be in the centres, and the accusation that we are being protected by being in the centres. It is as though the arguments that our members were using 50 years ago are now being thrown back at them. I think the attitude of the planning authorities 40 or 50 years ago has been vindicated. We have now got in Sydney, Newcastle and Wollongong fairly large and vibrant town centres—they should be called activity centres because the word "centres" sometimes gets confused with shopping centres. By and large, we have quite good, quite active and quite vibrant activity centres and that was as a result of the fact that the planning authorities said, no, we want these things located inside the centres.⁶⁷⁶

10.10 Mr John Brunton, Director of Environmental Services, Sutherland Shire Council pointed out that simply having additional zoned land available for retailing purposes does not necessarily translate to greater opportunities for new players to enter the market. While councils through zoning can make land available, it is market forces that will determine whether it is developed:

The argument you hear about insufficient land being made available for retailing is true in some places, but it is not universal. We have plenty of land that is available for retail—in some places we are oversupplied—but you will get people who are land banking for some other purpose or they want to develop it for residential, or a whole range of issues like that. The market itself

⁶⁷³ Submission 81, Shopping Centre Council of Australia, pp 2-5

⁶⁷⁴ Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia, Evidence, 15 June 2009, p 36

⁶⁷⁵ Mr Cockburn, Evidence, 15 June 2009, p 37

⁶⁷⁶ Mr Cockburn, Evidence, 15 June 2009, p 38

is more complex than just saying that if you rezone the land or retain that, it will just eventuate.⁶⁷⁷

10.11 Very often zoning and development proposals need to be considered in terms of whether they will have a negative impact on an existing centre and whether a net community benefit or cost would arise from consent to the proposal. This can occur in two ways. The expansion of an existing retail centre to include a new shopping centre or a new large scale retailer (such as a supermarket) can affect the trade and viability of competing small-scale retailers. More significantly the creation of a completely new retail centre some distance away from an established area can draw patronage away from the historical town centre to such an extent that it becomes blighted.

10.12 The potential negative effect on historical town centres is more pronounced in regional and rural areas. Mr Carlo Cavallaro, Managing Director of the Cavallaro Group which operates 13 supermarkets in New South Wales favours adherence to a centres policy to avoid the destruction of traditional rural town centres:

However, every time you move a shopping centre in a country town to a neighbouring centre you destroy the heart of the town and it takes years to return to normal trading activity. Let me give Tamworth and Taree as examples. Any country town that has had a new shopping centre built outside the central business district has suffered the consequences. I am sure you have some knowledge of that.⁶⁷⁸

10.13 Mr Cockburn said that generally the trade area that a shopping centre draws from can extend out to about 15 kilometres.⁶⁷⁹ Mr Cockburn favoured placing new large shopping outlets within existing town centre as opposed to locating new centres a short distance away. He cited Tea Gardens in the Port Stephens area as an example of what he believed to be a planning decision with unfortunate consequences:

...if you go to Tea Gardens you will find the town centre itself is moribund, a lot of vacancies in the town centre, and on the outskirts of Tea Gardens as you come in from the highway is quite a large shopping centre, what we call a subregional shopping centre. Each time I go there I cannot help but think how much more vibrant Tea Gardens would be if the council had said that that shopping centre has to be built in the centre of Tea Gardens, because it would have generated the town centre area and those who might not be able to afford the rents inside the shopping centre could afford the rents outside the shopping centre.⁶⁸⁰

⁶⁷⁷ Mr John Brunton, Director, Environmental Services, Sutherland Shire Council, Evidence, 30 March 2009, p 48

⁶⁷⁸ Mr Carlo Cavallaro, Managing Director, Cavallaro Group, Evidence, 24 August 2009, p 16

⁶⁷⁹ Mr Cockburn, Evidence, 15 June 2009, p 40

⁶⁸⁰ Mr Cockburn, Evidence, 15 June 2009, p 42

- 10.14** The Committee noted that the decision to either centralise new shopping centre developments or to create new ‘out-of-centre’ developments must also be informed by infrastructure and amenity constraints. In some cases the capacity for existing centres to grow is limited.⁶⁸¹
- 10.15** The submissions from both the Local Government and Shires Association (LGSA) and from the Council of the City of Sydney address the arguments contained in public reports fuelling the debate on the impact of the planning system on competition.⁶⁸² The LGSA believe the recent argument that the planning system may restrict competition appears to fail to understand the underlying and prevailing conditions that have led to the planning laws and zoning systems that operate at a State and local level, and have a lack of regard to broader planning and societal implications that planning and zoning laws are established to protect.⁶⁸³
- 10.16** The City of Sydney argued that future planning needed to be based on the creation of mixed use centres:
- Centres policy is fundamental...and involves focussing primary retail development in identified mixed use centres where they can be supported by residential populations, complementary businesses and services and supporting community and transport infrastructure.
- This methodology is essential in creating connected and vibrant communities, and would not be possible without opportunities in the planning framework to encourage and prohibit certain land uses in particular land use zones. Centres policy is also fundamental to planning for future investment in the public domain and public transport infrastructure improvements, cycle and walking connections, open spaces and green connections. The creation and protection of centres is therefore also a way to plan for more environmentally sustainable outcomes.⁶⁸⁴
- 10.17** The City of Sydney recommended, among other things, that a framework should be provided for assessing retail demand in a planning area, in order to determine what retail facilities would serve the population and generate enough healthy competition – and then prepare planning controls that promote this outcome.⁶⁸⁵
- 10.18** Both the LGSA and the City of Sydney are concerned at the prospect of a ‘deregulation’ of planning and zoning laws so as to enable new development to be located with total disregard for broader urban and societal planning objectives.
- 10.19** During the course of the Inquiry the Government initiated a review of the impact of planning policies and legislation on competition, which included consideration of the draft Centres Policy.

⁶⁸¹ Evidence, 15 June 2009, p 42

⁶⁸² Submission 66, Local Government and Shires Association, pp 20-21; Submission 60, Council of the City of Sydney, pp 19-22

⁶⁸³ Submission 66, p 20

⁶⁸⁴ Submission 60, p 20

⁶⁸⁵ Submission 60, p 21

Competition review and draft Centres Policy

- 10.20** In May 2009 the Minister for Planning and the Minister for Regulatory Reform jointly announced a review to consider if aspects of New South Wales planning policies and legislation need to be adjusted to ensure the right balance in achieving sustainable social and environmental outcomes and in promoting a competitive business environment. The discussion paper accompanying the review outlined the current situation and identified the issues requiring examination.⁶⁸⁶
- 10.21** The discussion paper states the NSW Government draft Centres Policy is designed to increase investment by providing flexibility for existing centres to grow, new centres to be established and development to occur out of centre where justified. The draft Centres Policy recognises that the market is best placed to determine the need for development and ensures the supply of available floor space accommodates demand. When finalised, the draft Centres Policy will address some of the concerns about competition and investment raised in previous reviews.
- 10.22** The planning system allows for competition between and within residential, retail, commercial, recreational and industrial sectors. As much as possible there should be a level playing field that allows for innovation and competition across the sectors. For competition to be most effective at delivering these benefits, it is essential that businesses have the flexibility to respond to market demand, including through ensuring there are no unnecessary costs or requirements on their activities.
- 10.23** The discussion paper notes that under the planning system, it is the responsibility of the planning authority to ensure that development proposals are considered on their merits. The merit assessment process at both the zoning and development application stage should not normally take into consideration the likely competition impact of a new entrant on any existing centres or individual developments unless there is a public interest, which requires consideration of broader issues, such as quality of life or infrastructure. Further, within a particular zone, the system should not favour a particular development over another unless there is a clear public policy case for doing so. As a result, the need for the development should not normally be a consideration as part of the merit assessment. Similarly, the impact on individual businesses, measured through, for example, the impact on turnover, should also not normally be considered as part of the merit assessment.
- 10.24** From a competition perspective, it is essential that the planning system minimises any regulatory burdens that could inadvertently constrain sustainable economic development and competition within the industry. This means ensuring there is sufficient suitably zoned land available for development to reduce barriers to entry. It also means that planning controls need to be kept up to date to provide for recent changes in industry formats or take into consideration any improved standards of performance by industry. In addition, as is currently being undertaken as part of the planning reforms, complex planning provisions which can lead to costs associated with preparation of assessment reports along with associated time delays need to be reviewed and streamlined so as to avoid having the zoning and development approval process providing a barrier to entry, and thereby restricting competition.

⁶⁸⁶ Department of Planning and Better Regulation Office, *Issues for Consultation: Promoting Economic Growth and Competition through the Planning System*, 8 May 2009

- 10.25** The discussion paper argues a well functioning planning system supports investment by providing certainty in land use zoning, development approval requirements and the provision of infrastructure. When firms and individuals have confidence about the future use of their own and surrounding land, they are more likely to commit to investment, which drives economic growth, employment and productivity. Uncertainty creates investment risk, imposing additional costs and difficulty securing finance, which may result in otherwise commercially viable projects failing to proceed.⁶⁸⁷
- 10.26** A number of inquiry participants advised the Committee that they had also made a submission to the joint review regarding the draft Centres Policy. The Director General of the Department of Planning said that over 100 submissions had been received and that a number of difficult issues had been raised.⁶⁸⁸
- 10.27** Mr Haddad said the Centres Policy was very significant, with serious implications for the planning framework. He advised that in developing a finalised policy the Department was cognisant of the need to ensure that it recognised and made allowance for the difference in regional, rural and metropolitan circumstances and needs. He further advised that while there was general support for the thrust of the draft policy, support was strongest among the local government sector as opposed to other sectors:
- Some submissions said that this is going completely against the centres policy, others said that it would open up everything and others said that it would affect competition and so on. In general, the message is broadly supported. Some submissions want the department to be more sensitive to differences in regional and rural settings as distinct from metropolitan settings, and we are working with that. I want to have more discussions with some of the local councils as well. However, local councils generally are supportive of the policy as distinct from the other sectors.⁶⁸⁹
- 10.28** Focus has been placed on ensuring that the planning system does not create unnecessary barriers to the competitive operation of the State's development industry. However, it was also put to the Committee that in some specific markets for competition to exist and flourish it may be necessary for the planning system to constrain the development activities of dominant market players through more rigorous assessment regimes.

The need for competition tests

- 10.29** For competition to flourish there must be a number of different organisations competing for consumer patronage in the same market. For consumers to derive competitive benefits when purchasing goods or services, they not only require the ability to select from a number of different retail outlets they need to be able to select from a number of different competitors.

⁶⁸⁷ Department of Planning and Better Regulation Office, *Issues for Consultation: Promoting Economic Growth and Competition through the Planning System*, 8 May 2009, pp 3-4

⁶⁸⁸ Mr Sam Haddad, Director General, Department of Planning, Evidence, 25 August 2009, p 16

⁶⁸⁹ Mr Haddad, Evidence, 25 August 2009, p 16

- 10.30** On 24 August 2009 the Committee heard evidence from Mr Carlo Cavallaro, Managing Director, Cavallaro Grop and Mr Frederick Harrison, Chief Executive Officer and Director, Ritchies Stores Pty Ltd. Ritchies Stores Pty Ltd operates 57 supermarkets nationally, 15 of which are in New South Wales. The Cavallaro Group operates 14 supermarkets, 13 of which are in New South Wales. In evidence both Mr Cavallaro and Mr Ritchie strongly advocated that competition must be taken into account in planning policy and decisions.⁶⁹⁰
- 10.31** With respect to the grocery/supermarket sector, the Committee was told that within a purchasing catchment there is a general finite amount of consumer spending that can be relied upon. Mr Harrison told the Committee that within the supermarket industry it was generally held that in order to determine the weekly total market available for a given area you needed to multiply the population by \$50.⁶⁹¹ As a result any purchasing catchment area can profitably sustain a finite level of retail floorspace.
- 10.32** Mr Cavallaro and Mr Ritchie said that it was becoming increasingly difficult for their organisations to remain a competitive presence in the grocery supermarket sector. The primary reason for this is the over-supply of grocery retail floorspace in many regional centres. Mr Cavallaro said that where there is an over-supply it will be the smaller competitors in the market who will suffer the most from unprofitable trading:
- In Australia we have a situation where two players control 80 per cent of the market. The other 20 per cent of the market is controlled by the independent group, which comprises Aldi, Franklins and the corner shops. That is where the disadvantage comes in. As I said in my opening statement, it relates to the number of people, verses square metres, verses the retail dollar spent in any given area. If an area needs only 2,000 square metres of retail space and you put 4,000 square metres of retail space in that area somebody will go broke. In this case the independents believe that they are the ones that will go broke because they do not have the muscle or the carte blanche possessed by the supermarket chains.⁶⁹²
- 10.33** Mr Cavallaro and Mr Ritchie both related examples of where they had established profitable stores in regional centres and a number of competing stores operated by their large-chain competitors were subsequently opened. They argued these regional centres were now over-supplied with grocery stores and that the profitability of their stores had been severely compromised, resulting in the need to reduce staff.⁶⁹³
- 10.34** In evidence Mr Harrison claimed that the major supermarket chains have adopted a deliberate strategy of opening stores in centres already well served in order to weaken the overall trading position of smaller chain competitors.⁶⁹⁴

⁶⁹⁰ Mr Frederick Harrison, Chief Executive Officer and Director, Ritchies Stores Pty Ltd, Evidence, 24 August 2009, p 13

⁶⁹¹ Mr Harrison, Evidence, 24 August 2009, p 17

⁶⁹² Mr Cavallaro, Evidence, p 15

⁶⁹³ Mr Ritchie, Evidence, 24 August 2009, p12; Mr Cavallaro, Evidence, 24 August 2009, p 13

⁶⁹⁴ Mr Harrison, Evidence, p 14

- 10.35** The Committee was provided with a copy of the submission, prepared on behalf of the Independent Retailers of NSW, to the review being conducted by the Department of Planning and Better Regulation Office.⁶⁹⁵ The submission argued that the concentration of market dominance in the grocery sector makes it necessary to enhance competitive conditions through the government intervention. It noted the role played by federal legislation, particularly the *Trade Practices Act 1974*. It argued that the Act, as presently drafted, has limited ability to manage market concentration, particularly on a regional and sub-regional level. It concluded that this leaves the State planning system as the only available and effective tool. It proposed by that a new competition test should be introduced into the planning system, similar to that being considered in the United Kingdom.⁶⁹⁶
- 10.36** The submission from the NSW Government noted that the UK Competition Commission, as part of its *Investigation into the Groceries Market* (2008), argued that a new competition test should be introduced into the planning system. It is proposed the test would examine:
- whether the proponent was a new entrant into the local market
 - the number of fascias in the local area
 - the market share of the proponent.⁶⁹⁷
- 10.37** The Committee wished to examine whether, since the planning system traditionally has not taken into consideration the competitive impact of a new entrant on existing developments, whether the best response would be to improve legislation such as the *Trade Practices Act 1974* rather than relying on the State planning system.
- 10.38** Mr Harrison argued that action on both fronts was required. He believed that amendments to the planning system were required so that smaller independent retailers could confidently forecast the competition they may face in a regional market and make investment decisions accordingly:
- When you make a decision to agree to sign a lease you use your best judgement as to what you see as being the likely competition path in the years ahead. If the rules and competition factors change all of a sudden it is hard for us to be paying these extreme rents. I think that the two are linked. It is a matter of knowing upfront what are the rules and having consistency in the rules rather than just changing the Trade Practices Act. However, I agree that it would also assist if we had some changes to the *Trade Practices Act*.⁶⁹⁸
- 10.39** In contrast Mr Cockburn argued that the planning system is not the appropriate avenue for dealing with competition issues nor did it have the capacity to deal with such issues:
- I suppose by and large what we are saying is that we do not think the planning system should be the avenue for dealing with competition issues. We have a

⁶⁹⁵ Mr Luke Mackenzie, NSW/ACT Development Analyst, IGA Distribution Pty Ltd, Correspondence, 13 July 2009

⁶⁹⁶ Mr MacKenzie, Correspondence, 13 July 2009, p 5

⁶⁹⁷ Submission 69, p 34

⁶⁹⁸ Mr Harrison, Evidence, 24 August 2009, p 13

Trade Practices Act, which is the appropriate Act, and an independent competition regulator, the appropriate bodies that should be dealing with competition issues. I think that to use the planning system as a competition mechanism is the wrong way to go. There is a competition test, for example, that has now been introduced in the United Kingdom planning system. It is still too soon to see how it is operating, but we have doubts—in fact, significant doubts—about whether that would be a good thing, because it is overloading an already complex planning system to expect it to not just be dealing with the general amenities issue that a planning system should be dealing with but to be dealing with competition issues as well.⁶⁹⁹

10.40 Mr Harrison agreed that market dominance in the grocery/supermarket sector was a national issue, and that a consistent national approach was required.⁷⁰⁰ It is yet to be determined whether an effective national approach would best be achieved through reliance upon federal legislation and regulation or through the respective State and Territory planning systems, or a combination of the two.

10.41 The Committee was concerned that if a competition test was introduced it might place an administrative and complex investigation burden on local councils that they may not have the expertise or capacity to administer. In response Mr Harrison agreed there would need to be a clear unambiguous set of guidelines:

In terms of the more complex assessments, it is agreed that at the present time, there are limits on both the skills sets and resources of local government. In particular, few local government planners have direct training in retail planning or retail economics. That being said, there are ways to reduce the burden on local government in assessing more detailed assessments that might be triggered by a competition test. One of those is to require and apply a standard methodology. While it may not be perfect it would have the benefit of consistency of approach. This would allow work to be easily reviewed to test for consistency with the methodology. As part of that, there needs to be the inclusion of sensitivity analysis, particularly for those assumptions underlying a methodology which are most often disputed. Again, these could be set out in the standardised methodology.

One of the things learned from the UK experience is that it may be better to use a simple, transparent method, based on local data where possible, rather than very complex models which are often open to argument. Again this produces consistent results which enable comparisons to be made. At the end of the day the interpretation of results of any method is the most subjective element and this is acknowledged. In the case of major developments, peer review can assist – a cost of say \$5000-\$7000 in the context of a major development worth tens of millions of dollars is trivial.

⁶⁹⁹ Mr Cockburn, Evidence, 15 June 2009, p 43

⁷⁰⁰ Mr Harrison, Evidence, 24 August 2009, p 20

The Department of Planning at a recent meeting, has requested that a draft net community test be developed which incorporates the above. When completed, a copy of this will be forwarded to the Committee.⁷⁰¹

- 10.42** The Committee also sought advice on whether a competition test should or would be expected to apply to all retailing or service sectors. Mr Harrison advised that ideally the application of the test would be determined by factors such as the costs to enter and exit the market:

There is a clear need for scale issues to be considered in terms of the sectors to be included within the test. When examining the principle of competition, competition is considered to work effectively when there are large numbers of competing businesses in the marketplace and there is good consumer information about those businesses. In addition, barriers to entry and exit would be low. In the case of hairdressing businesses, for example, this type of business approximates the competitive model. In this regard, there are frequently numerous hairdressing businesses within a shopping centre or area and barriers to entry and exit are relatively low as these businesses can operate out of virtually any storefront.

On the other hand, where there are much higher barriers to entry into the market, such as locating a regional shopping facility, a major supermarket, or the like, then there is a case that these sectors should be included within the test. A distinction can be drawn, for example, between service businesses (such as hairdressers, accountants and the like, which are numerous in number and which have low barriers to entry) and retail businesses (such as convenience retailing or comparison retailing) once these exceed certain size parameters. This will be outlined in the net community benefit test discussion paper being prepared for the Department of Planning.⁷⁰²

- 10.43** As part of its input to the review being conducted by the Department of Planning and the Better Regulation Office, the Independent Retailers of NSW submitted a document entitled *Draft guidelines for assessing net community benefit including a retail impact assessment test*. A copy of this document was forwarded to the Committee⁷⁰³ and is reproduced at Appendix 11.
- 10.44** The guidelines identify a number of trigger levels at which enhanced assessment of retail development needs to occur:

The guidelines are consistent with the best practice guidelines of the Development Assessment Forum. This establishes a national approach to determining levels of assessment, based on impact. In other words, the greater the potential for impact, the greater is the required level of assessment. Smaller scale developments and larger developments not exceeding the trigger levels would [be] consistent with the Code and Merit tracks respectively (eg.

⁷⁰¹ Answers to questions taken on notice during evidence, 24 August 2009, Mr Fred Harrison, Chief Executive Officer and Director, Ritchies Stores Pty Ltd, Independent Retailers, p 2

⁷⁰² Answers to questions taken on notice during evidence, 24 August 2009, Mr Harrison, p 4

⁷⁰³ Mr Mackenzie, Correspondence, 9 November 2009

complying or standard DA assessment), while developments that meet or exceed the trigger levels would be Impact Assessable (the most rigorous level of assessment).⁷⁰⁴

- 10.45** The guidelines also include a market dominance test, which, if a trigger level is exceeded, requires a retail economic impact assessment to be conducted:

The market dominance test is applied using a floorspace dominance test. This test uses gross leasable floor area. On the basis of the relevant regional catchment, commercial rivals are identified within the relevant retail category. Where 25% or more of the floorspace within that retail category is within the same ownership group (including related entities) then a retail impact assessment needs to be conducted.⁷⁰⁵

- 10.46** The Committee notes that the methodologies for assessment, including determining a primary trade area and regional catchment, are heavily data driven with a preference for the data to be sourced from local/subregional survey work including household surveys and street surveys within activity centres.

Committee comment

- 10.47** The Committee notes that the market dominance of the grocery/supermarket sector, and the resulting lack of competitive tension, is a national issue. The Committee believes that whatever approach is designed to address the issue must ultimately be consistently applied at a national level.
- 10.48** Traditionally, the planning system has not taken into consideration the direct impact on one organisation arising from the entrance into the same market of one of its competitors. The Committee must also note that it did not receive any evidence or suggestion from the local government sector that competition issues should be considered to a greater extent than they currently are within the planning framework.
- 10.49** If a competition test were to be introduced into the State planning system, the Committee would be concerned at the prospect of an increased administrative burden and associated costs being placed upon the shoulders of local government. Given that decisions could result in the constraint on the ability of certain organisations to freely trade, it would be best if those decisions were made by a level of authority above that of local government.
- 10.50** The Committee agrees that the Centres Policy being finalised by the Department of Planning is a significant plank of the NSW planning framework. A well designed Centres Policy provides certainty and allows for strategic and infrastructure planning. The Committee notes that an aim of the policy will be to provide flexibility for development to occur out of centre where justified. That justification will need to be expressed in terms of the community's need and demand for such development.
- 10.51** The Committee recognises the importance of smaller community shopping areas to the people of New South Wales. Policy and legislation should recognise possible anti-competitive

⁷⁰⁴ Appendix 11, p 2

⁷⁰⁵ Appendix 11, p 4

policies of major corporate organisations and differentiate between competitive and monopolistic behaviour.

Appendix 1 Submissions

No	Author
1	Mr Ninian Struthers
2	Ms Helen Pearce
3	Mr David Shaw (Bathurst Regional Council)
4	Mr Chris Berry (Goulburn Mulwaree Council)
5	Clr Rhonda Hoban (Nambucca Shire Council)
6	Mr Warwick Bennett (Mid-Western Regional Council)
7	The Hon Patricia Forsythe (Sydney Chamber of Commerce)
7a	The Hon Patricia Forsythe (Sydney Chamber of Commerce)
8	Clr John Faker (Burwood Council)
9	Mr Milan Marecic (Liverpool City Council)
10	Mr Peter Watson (Gosford City Council)
11	Mr Alan Stoneham (Penrith City Council)
12	Mr Stephen Barnier (Ballina Shire Council)
13	Ms Gillian Calvert (NSW Commission for Children and Young People)
14	The Hon Delia Lawrie (Minister for Planning and Lands, Northern Territory)
15	Mr Brian Wilkinson (Richmond Valley Council)
16	Mr Warwick Winn (North Sydney Council)
17	Ms Erika Roka (Rockdale City Council)
18	Mr Chris Egan (Australian Property Institute - NSW Division)
19	Mr Robert Pitt (Kempsey Shire Council)
20	The Hon Paul Holloway (Minister for Planning and Urban Development, South Australia)
21	Mr Robert Mowle (Upper Lachlan Shire Council)
22	Ms Sue Morris (Camden Council)
23	Mr Geoffrey Cox (Crighton Properties Pty Ltd)
24	Ms Margot Sachse (Jerrabomberra Residents' Association)
25	Mr Andrew Roach (Port Macquarie Hastings Council)
26	Ms Katrina McDonald (Namoi Regional Organisation of Councils)
26a	Ms Katrina McDonald (Namoi Regional Organisation of Councils)
27	Mr Peter Brooks (Griffith City Council)
28	Mr Peter Fitzgerald (City of Botany Bay)
29	Ms Louise Southall (NSW Business Chamber)

No	Author
30	Mr Howard Tanner (Australian Institute of Architects)
31	Ms Louise Mason (AMP Capital Shopping Centres Pty Ltd)
32	Ms Phillipa Kelly (Bulky Goods Retailers Association)
33	Mr Ken Ineson (The Village Building Company)
33a	Mr Robert Winnel (The Village Building Company)
33b	Confidential
34	Mr Shane Burns (Armidale Dumaresq Council)
35	Mr Joe Vertel (Mosman Council)
36	Mr Vince Badalati (Hurstville City Council)
37	Mr Ernie Royston (Shoalhaven City Council)
38	Ms Karen Harragon (Hornsby Shire Council)
39	Mr Gerard José (Greater Taree City Council)
40	Mr Stewart Seale (Baulkham Hills Shire Council)
41	Mr Barry Smith (Hunter's Hill Council)
42	Ms Gina Vereker (Wyong Shire Council)
43	Mr Gabriele Calcagno (Lake Macquarie City Council)
44	Mr Ron Moore (Blacktown City Council)
45	Mr Stephen Byron (Canberra Airport)
45a	Mr Stephen Byron (Canberra Airport)
46	Mr J W Rayner (Sutherland Shire Council)
47	Ms Heather Berry
48	Mr John Mant
49	Mr Patrick Wong (Strathfield Council)
50	Mr Joe Catanzariti (Law Society of NSW)
51	Ms Jennie Minifie (Manly Council)
52	Mr Matt Evans (Mobile Carriers Forum)
53	Ms Kai Hansen
54	Mrs Sharon Fingland (Western Sydney Regional Organisation of Councils Ltd)
55	Mr Ray Darney (Byron Shire Council)
56	Clr Ted Cassidy PSM (Ashfield Council)
57	Mr David Carswell (Queanbeyan City Council)
58	Mr Greg Paine
59	Mr Peter Robinson (Warringah Council)
60	Mr Andrew Thomas (City of Sydney)

No	Author
61	Mr David Lewis (Southern Sydney Regional Organisation of Councils)
62	Dr Deborah Dearing (Australian Institute of Architects)
63	Mr Graham Quint (National Trust of Australia, New South Wales)
64	Mr Neil Ingham (Ingham Planning Pty Limited)
65	Mr Adam Searle (Blue Mountains City Council)
66	Mr Noel Baum (Local Government and Shires Association of NSW)
67	Ms Julie Bindon (Planning Institute of Australia NSW Division)
68	Ms Suzanne Lollback (Lithgow City Council)
69	The Hon Kristina Keneally MP (Minister for Planning, New South Wales)
70	Mr Richard Evans (Australian Retailers Association)
71	Mr Warren Gardiner (Council of Social Service of NSW)
72	Mr James Harrison (JBA Urban Planning Consultants)
73	Ms Niamh Kenny (Friends of Currawong)
74	Mr Robert Ghanem (Environmental Defender's Office)
75	Ms Sima Truuvert (Randwick City Council)
76	Mr Nick Duncan (Urban Development Institute of Australia NSW)
77	Mr Merv Ismay (Holroyd City Council)
78	Dr Nikki Williams (NSW Minerals Council)
79	Mr Rob Stokes MP (Member for Pittwater)
80	Mr Michael Sergent (Wollongong Against Corruption)
81	Mr Milton Cockburn (Shopping Centre Council of Australia)
82	Ms Sunniva Boulton
83	Mr David Winterbottom (GEM Action Group)
84	Mr Angus Nardi (Property Council of Australia)
85	Mr Bruce Mackenzie (Port Stephens Council)
86	Mr Peter Brennan (Waverley Council)
87	Mr Chris Bluett (Woollahra Municipal Council)
88	Ms Nerida Carter
89	Mr Andrew Mooney (Fairfield City Council)
90	Mr James Ryan (Nature Conservation Council of NSW)
91	Mr Aaron Gadiel (Urban Taskforce Australia)
91a	Mr Aaron Gadiel (Urban Taskforce Australia)
92	Ms Sylvia Hale (NSW Greens)
93	Mr Graham Wolfe (Housing Industry Association Ltd)

No	Author
94	Dr Robyn Bartel (University of New England)
95	Dr Dorothy L Robinson (Armidale Air Quality Group)
96	Mr Michael J Taylor AO (Department of Infrastructure, Transport, Regional Development and Local Government)
97	Mr Paul Tosi (Campbelltown City Council)
98	Mr Greg Vickas (Hoi Polloi Consultants)
99	Mr Bruce Fitzpatrick (Oberon Council)
100	Mr Ned Icton
101	Mr David Laughner (Leeton Shire Council)
102	Mr David Broyd (Local Government Planning Directors Group)
103	Ms Jennifer Bennett (Central NSW Regional Organisation of Councils)
104	Clr Patricia Gould (Albury City Council)
105	Confidential
106	Mr Brian Brown (Queanbeyan Branch (NSW) of the Australia Labor Party)
107	Ms Mary Newlinds OAM (Duffys Forest Residents Association Inc)
108	Clr Richie Williamson (Clarence Valley Council)
109	Mr Jock Laurie (NSW Farmers' Association)
110	Mr Mitchel Hanlon (Mitchel Hanlon Consulting Pty Ltd)
111	The Hon Frank Sartor MP (Member for Rockdale)
112	Dr John Formby
112a	Dr John Formby
113	Mr David Brooks (Parkesbourne/Mummel Landscape Guardians Inc)
114	Mr James Ryan, Mr John Jeayes, Ms Anne Reeves, Ms Lorraine Cairns and Ms Cate Faehrmann (Nature Conservation Council of NSW)
115	Ms Christine Lloyd

Appendix 2 Witnesses

Date	Name	Position and Organisation
Monday 9 March 2009 Jubilee Room, Parliament House	Mr Bill Mackay	Acting Director, Planning and Regulatory Services, City of Sydney Council
	Mr Michael Harrison	Director, Strategy and Design, City of Sydney Council
	Mr Andrew Thomas	Executive Manager, City Plan, City of Sydney Council
	Ms Louise Southall	Policy Adviser, NSW Business Chamber
	Mr Jeff Smith	Director, Environmental Defender's Office of New South Wales
	Mr Robert Ghanem	Acting Policy Director, Environmental Defender's Office of New South Wales
	Mr John Mant	Practising Town Planner and retired lawyer
	Mr John Sheehan	Past President and Chair, Government Liaison Committee, Australian Property Institute – NSW Division
	Ms Gail Sanders	Executive Officer, Australian Property Institute – NSW Division
	Ms Julie Bindon	President, Planning Institute of Australia – NSW Division
	Mr Peter Jensen	NSW Planning Law Chapter Chair, Planning Institute of Australia – NSW Division
	Mr Brian Zulaikha	President-elect, Australian Institute of Architects – NSW Chapter
	Mr Michael Neustein	Member, Australian Institute of Architects – NSW Chapter
	Mr Murray Brown	Policy and Advocacy Manager, Australian Institute of Architects – NSW Chapter

Monday 30 March 2009 Jubilee Room, Parliament House	Mr Sam Haddad	Director General, Department of Planning
	Ms Yolande Stone	Director, Policy and Systems Innovation, Department of Planning
	Mr Marcus Ray	Director, Legal Services, Department of Planning
	Clr Genia McCaffery	Mayor, North Sydney Council, President, Local Government Association of NSW and Shires Association of NSW
	Mr Shaun McBride	Strategy Manager, Local Government Association of NSW and Shires Association of NSW
	Ms Jennifer Dennis	Policy Officer, Planning, Local Government Association of NSW and Shires Association of NSW
	Mr Aaron Gadiel	Chief Executive Officer, Urban Taskforce Australia
	Mr Ted Cassidy	Mayor, Ashfield Council
	Mr Ken Morrison	Executive Director, Property Council of Australia
	Mr Angus Nardi	Deputy Executive Director, Property Council of Australia
	Mr John Brunton	Director, Environmental Services, Sutherland Shire Council
	Mr Paul Lemm	Manager, Development Services, Penrith City Council
	Mr Roger Nethercote	Manager, Environmental Planning, Penrith City Council
	Mr Peter Adams	Group Manager, Community and Corporate, Blue Mountains City Council
	Mr Paul Cashel	Program Leader, Strategic Planning, Blue Mountains City Council

Friday 1 May 2009 Orange City Council	Clr Reg Kidd	Mayor, Orange City Council and Executive Councillor, NSW Farmers' Association
	Ms Elizabeth Tomlinson	Executive Councillor and Association President's Taskforce for Land Use Planning, NSW Farmers' Association
	Mr Craig Filmer	Director, Planning and Environment, Young Shire Council
	Ms Jennifer Bennett	Executive Officer, Central NSW Councils
	Mr Garry Styles	General Manager, Orange City Council
	Mr David Shaw	Director, Environmental, Planning and Building Services, Bathurst Regional Council
Tuesday 19 May 2009 Airport International Motel, Queanbeyan	Mr Greg Cooper	Director, Environmental Services, Cabonne Council
	Ms Lorena Blacklock	Strategic Planning Coordinator, Queanbeyan City Council
	Mr Gordon Clark	Strategy Planning Manager, Shoalhaven City Council
	Mr Chris Berry	Acting General Manager, Goulburn Mulwaree Council
	Mr Stephen Byron	Managing Director, Canberra Airport
	Mr Noel McCann	Director, Planning, Canberra Airport
	Mr Andrew Leece	Manager, Regulatory Affairs, Canberra Airport
	Ms Margot Sachse,	President, Jerrabomberra Residents' Association
	Mr Robert Winnel	Chief Executive Officer, The Village Building Company
	Mr Ken Ineson	General Manager, Special Projects and Feasibilities, The Village Building Company

Tuesday 21 May 2009 Quality Hotel Powerhouse, Tamworth	Clr James Treloar	Mayor, Tamworth Regional Council
	Mr Glen Inglis	General Manager, Tamworth Regional Council
	Ms Genevieve Harrison	Manager, Strategic Planning, Tamworth Regional Council
	Mr Michael Silver	Director of Planning and Environmental Services, Gunnedah Shire Council, Namoi Regional Organisation of Councils
	Ms Katrina McDonald	Executive Officer, Namoi Regional Organisation of Councils
	Mr James McDonald	Chairman, Namoi Regional Organisation of Councils and Catchment Management Authority
	Ms Fiona Simson	Executive Councillor and Member, Conservation and Resource Management Committee, NSW Farmers' Association
	Mr Graham Gardner	Director, Planning and Building, Greater Taree City Council
	Mr Richie Thornton	Member, Tamworth & District Chamber of Commerce & Industry
Tuesday 26 May 2009 Ramada Hotel, Ballina	Ms Kate Singleton	Strategic Planner, Strategic Services Group, Ballina Shire Council
	Mr Matthew Wood	Strategic Planner, Strategic Services Group, Ballina Shire Council
	Clr Jan Barham	Mayor, Byron Shire Council
	Mr Ray Darney	Director, Planning, Byron Shire Council

Friday 29 May 2009 Quest Albury, Albury	Mr Ken Exley	Director, Environmental Development Services, Richmond Valley Council
	Mr Tony Thorne	Member, Urban Development Institute of Australia
	Clr Patricia Gould	Mayor, Albury City Council
	Mr Les Tomich	General Manager, Albury City Council
	Mr Michael Keys	Director, Planning and Economic Development, Albury City Council
	Mr Ian Graham	Consultant Planner
	Mr George Cilliers	Planning and Environment Manager, Griffith City Council
	Ms Elizabeth Stoneman	Manager, Planning and Development Services, Leeton Shire Council
	Mrs Louise Burge	Board member, Executive Councillor and Chair, Conservation and Resource Management Committee, NSW Farmer's Association
	Mr Bob Karaszekewych	Director, Planning, Wagga Wagga City Council
	Mr Kerry Pascoe	Mayor and Councillor, Wagga Wagga City Council
	Mr Rod Jones	Senior Development Manager, Alatalo Brothers
	Ms Heather McCallum	Planning Consultant, Esler & Associates
	Mr Adam Dyde	Director, Envolutions Pty Ltd

Monday 15 June 2009 Jubilee Room, Parliament House	The Hon Frank Sartor MP	Member for Rockdale
	Clr Alison McLaren	President, Western Sydney Regional Organisation of Councils Ltd
	Mrs Sharon Fingland	Assistant Director, Western Sydney Regional Organisation of Councils Ltd
	Ms Judy McKittrick	President, Urban Development Institute of Australia – NSW
	Mr Tim Robertson	Senior Policy Officer, Urban Development Institute of Australia – NSW
	Ms Jenny Rudolph	Councillor, Urban Development Institute of Australia – NSW
	Mr Milton Cockburn	Executive Director, Shopping Centre Council of Australia
	Ms Katye Jackett	Deputy Director, Shopping Centre Council of Australia
Monday, 17 August 2009 Jubilee Room, Parliament House	Clr Bruce Mackenzie	Mayor, Port Stephens Council
	Mr David Broyd	Group Manager, Sustainable Planning, Port Stephens Council; Member, Local Government Planning Directors Group
	Mr Malcolm Ryan	Director, Planning and Development Services, Warringah Council
	Ms Sue-Ern Tan	General Manager, Policy and Strategy, New South Wales Minerals Council
	Ms Rachelle Benbow	Director, Environment and Community, New South Wales Minerals Council

Monday, 24 August 2009 Jubilee Room, Parliament House	Mrs Lorraine Wilson	Executive Councillor, New South Wales Farmers' Association
	Mr Fred Harrison	Chief Executive Officer and Director, Ritchies Stores Pty Ltd, Independent Retailers
	Mr Carlo Cavallaro	Chief Executive Officer, Cavallaro Group, Independent Retailers
	Dr John Formby	Environmental Policy Chairman, Friends of Crookwell
	Ms Alison Peters	Director, Council of Social Service of New South Wales
	Mr Warren Gardiner	Senior Policy Officer, Council of Social Service of New South Wales
Tuesday, 25 August 2009 Jubilee Room, Parliament House	Mr Graham Wolfe	Executive Director, New South Wales Region, Housing Industry Association Limited
	Mr Sam Haddad	Director General, New South Wales Department of Planning
	Mr Marcus Ray	Executive Director, New South Wales Department of Planning
	Ms Yolande Stone	Director, Policy, Planning Systems and Reform, New South Wales Department of Planning
	Mr Don Colagiuri SC	The Parliamentary Counsel, Parliamentary Counsel's Office
	Mr Robin Rogers AFSM	Assistant Commissioner, New South Wales Rural Fire Service
	Ms Anne Reeves	Executive member, Nature Conservation Council of New South Wales
	Mr James Ryan	Treasurer, Nature Conservation Council of New South Wales

Mr Joe Woodward	Deputy Director General, Department of Environment, Climate Change and Water
Mr Mark Gifford	Director, Reform and Compliance, Department of Environment, Climate Change and Water
Mr Tom Grosskopf	Director, Landscapes and Ecosystem Conservation, Department of Environment, Climate Change and Water

Appendix 3 Tabled documents

1. Monday 9 March 2009

Public Hearing, Jubilee room, Parliament House

- Mr Mant, Planner and non-practicing lawyer, tendered a document containing the text of his opening statement and schematic diagrams depicting the current and a proposed alternative development assessment decision making process.
- Mr Sheehan, Past President and Chair, Australian Property Institute (API) – NSW Division, tendered a copy of a submission from the API – NSW Division to the Independent review of the Environment Protection and Biodiversity Conservation Act 1999.

2. Monday 30 March 2009

Public Hearing, Jubilee room, Parliament House

- Mr Haddad, Director General, Department of Planning, tendered a Flow diagram of steps in the development approval processes.
- Mr Brunton, Director, Environmental Services, Sutherland Shire Council, tendered a document entitled Integration: Effective Planning Requires Integration through Collaboration.

3. Friday 1 May 2009

Public Hearing, Orange City Council

- Councillor Kidd, Mayor, Orange City Council and Executive Councillor, NSW Farmers' Association tendered his opening statement.
- Mr Filmer, Director, Planning and Environment, Young Shire Council, tendered his opening statement and a Report to February 2008 Young Shire Council Meeting: The NSW Planning Reforms Proposal.
- Mr Shaw, Director, Environmental, Planning and Building Services, Bathurst Regional Council, tendered his opening statement.

4. Tuesday 19 May 2009

Public Hearing, Airport International Motel, Queanbeyan

- Mr Clark, Strategy Planning Manager, Shoalhaven City Council tendered his opening statement.
- Mr Byron, Managing Director, Canberra Airport, tendered two maps of Canberra Airport.
- Mr Ineson, General Manager, Special Projects and Feasibility, The Village Building Company, tendered his opening statement, a map of Canberra International Airport and a document on the Australian Noise Exposure Forecast.
- Ms Sachse, President, Jerrabomberra Residents' Association, tendered a Map of Jerrabomberra.

5. **Tuesday 21 May 2009**
Public Hearing, Quality Hotel Powerhouse, Tamworth
 - Mr Silver, Namoi Regional Organisation of Councils, tendered a map showing coal tenements in Namoi Valley.
 - Ms Simson, Executive Councillor and Member, Conservation and Resource Management Committee, NSW Farmers' Association, tendered her opening statement.
6. **Tuesday 26 May 2009**
Public Hearing, Ramada Hotel, Ballina
 - Councillor Barham, Mayor, Byron Shire Council, tendered a Byron Local Environmental Plan 1988 and Byron Shire Council resolution.
 - Mr Darney, Director of Planning, Byron Shire Council, tendered Section 5 of the Environmental Planning and Assessment Act 1979.
7. **Monday 15 June 2009**
Public Hearing, Jubilee Room, Parliament House
 - The Hon Mr Sartor MP, Member for Rockdale, tendered a copy of the Development Assessment Forum News Feb 2004.
8. **Monday 17 August 2009**
Public Hearing, Jubilee room, Parliament House
 - Ms Tan, General Manager, Policy and Strategy, NSW Minerals Council, tendered her opening statement.
9. **Monday 24 August 2009**
Public Hearing, Jubilee Room, Parliament House
 - Mrs Wilson, Executive Councillor, NSW Farmers' Association tendered her opening statement.
 - Mr Gardiner, Council of Social Service of NSW, tendered a copy of a report for Shelter NSW by Chris Elenor, 'Provisions for adaptable housing by local government in New South Wales'.
 - Ms Peters, Council of Social Service of NSW, tendered a copy of Shelter NSW Comment 'Affordable rental housing SEPP'.
10. **Tuesday 25 August 2009**
Public Hearing, Jubilee room, Parliament House
 - Mr Haddad, Director General, Department of Planning, tendered a document entitled Regional Strategy Update Report 2009.
 - Mr Woodward, Deputy Director General, Environment Protection and Regulation Group, Department of Environment, Climate Change and Water, tendered Maps and Graphs regarding projected sea level rises.

Appendix 4 Answers to Questions on Notice

The Committee received answers to questions on notice from:

1. Albury City Council
2. Ashfield Council
3. Ballina Shire Council
4. Blue Mountains City Council
5. Byron Shire Council
6. City of Sydney
7. Goulburn Mulwaree council
8. Griffith City Council
9. Housing Industry Association
10. Independent Grocers of Australia
11. Leeton Shire Council
12. Local Government and Shires Associations of New South Wales
13. Mr John Mant
14. New South Wales Minerals Council Ltd
15. NSW Business Chamber
16. NSW Department of Environment, Climate Change and Water
17. NSW Department of Planning
18. NSW Farmers' Association
19. NSW Rural Fire Service
20. Penrith City Council
21. Planning Institute of Australia
22. Property Council of Australia
23. Shoalhaven City Council
24. Shopping Centre Council of Australia
25. Sutherland Shire Council
26. Tamworth and District Chamber of Commerce and Industry
27. The Hon Frank Sartor MP
28. The Village Building Company Ltd
29. Urban Taskforce Australia
30. Wagga Wagga City Council
31. Western Sydney Regional Organisation of Councils Ltd

Appendix 5 Department of Planning flow diagram of steps in the development approval process

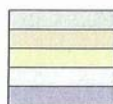
FLOW DIAGRAM OF STEPS IN THE DEVELOPMENT APPROVAL PROCESSES

1.	Overview of Development Approval Processes.....	2
2.	Complying Development under Part 4.....	1
3.	Simple DA under Part 4.....	2
4.	DA with concurrences under Part 4.....	3
5.	Designated & Integrated Development under Part 4.....	4
6.	Major Projects under Part 3A.....	5
7.	Comparison of Public Consultation or Notification.....	6

Stage in Assessments

Stage 1	Confirmation of approval regime and preparation of assessment documents
Stage 2	Notification
Stage 3	Assessment and determination

Colour Code indicating roles

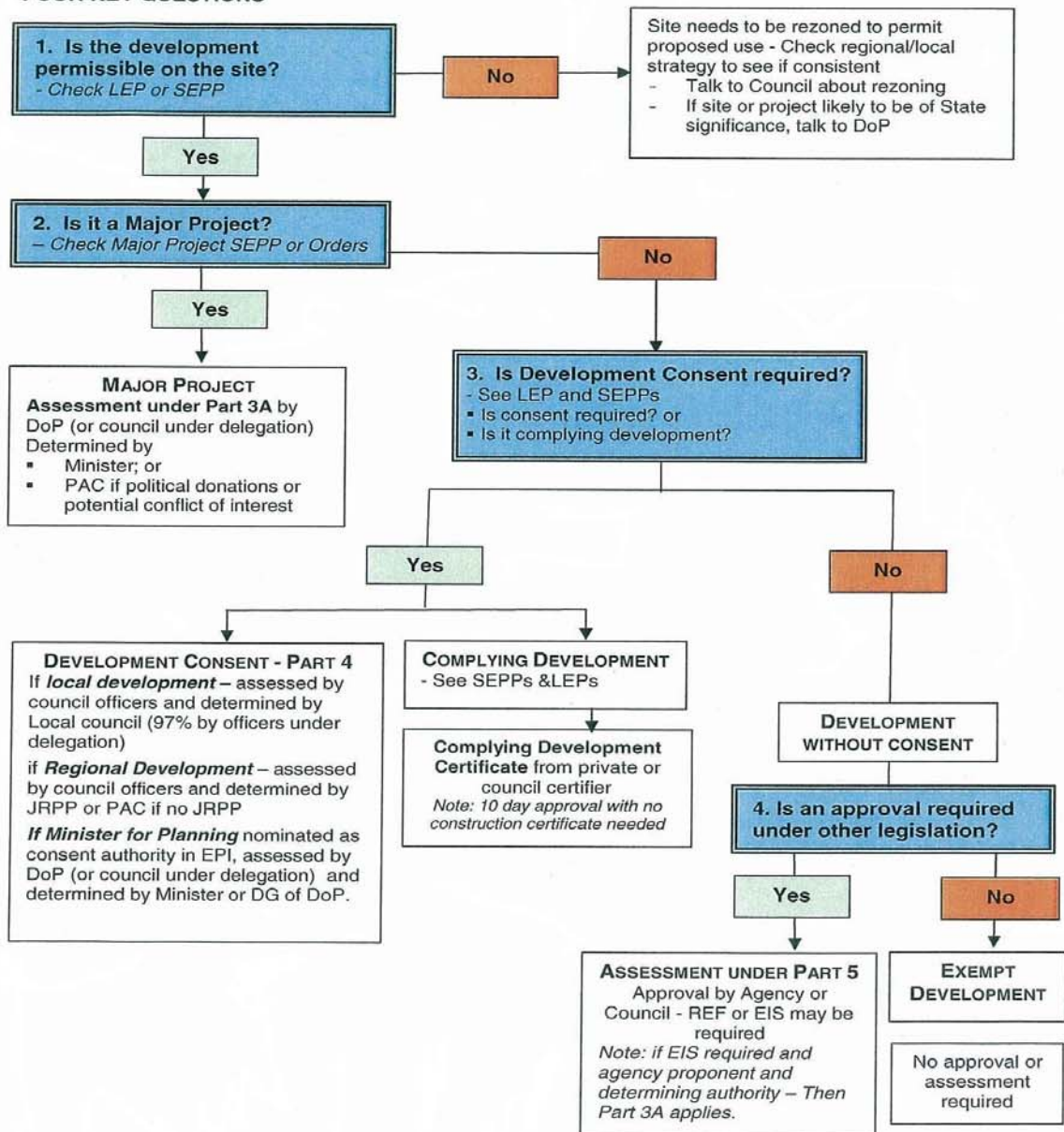


Dept of Planning
Councils
Proponents
Agencies
Certifiers

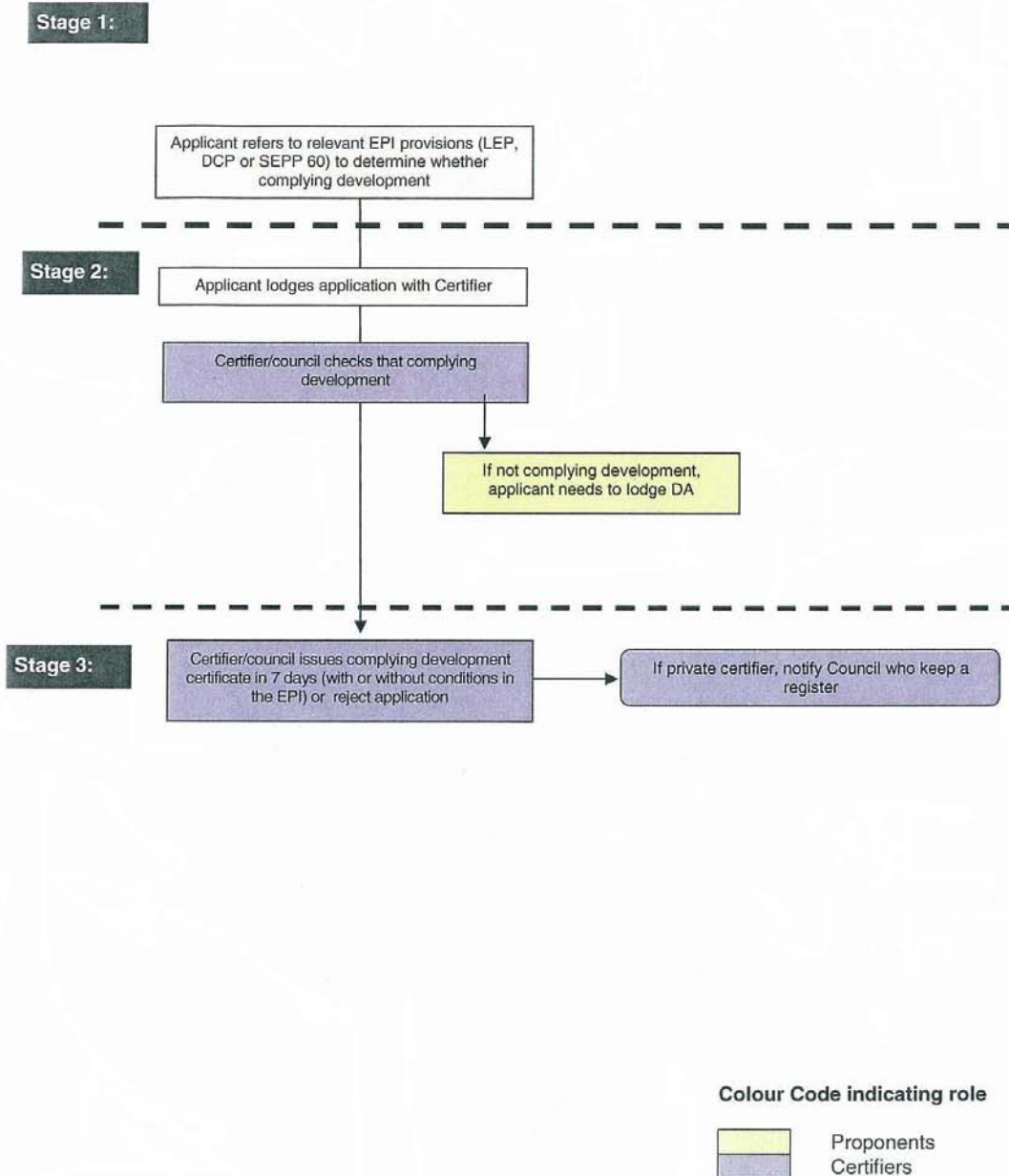
1. Overview of Development Approval Processes

What planning approvals do I need for my development proposal?

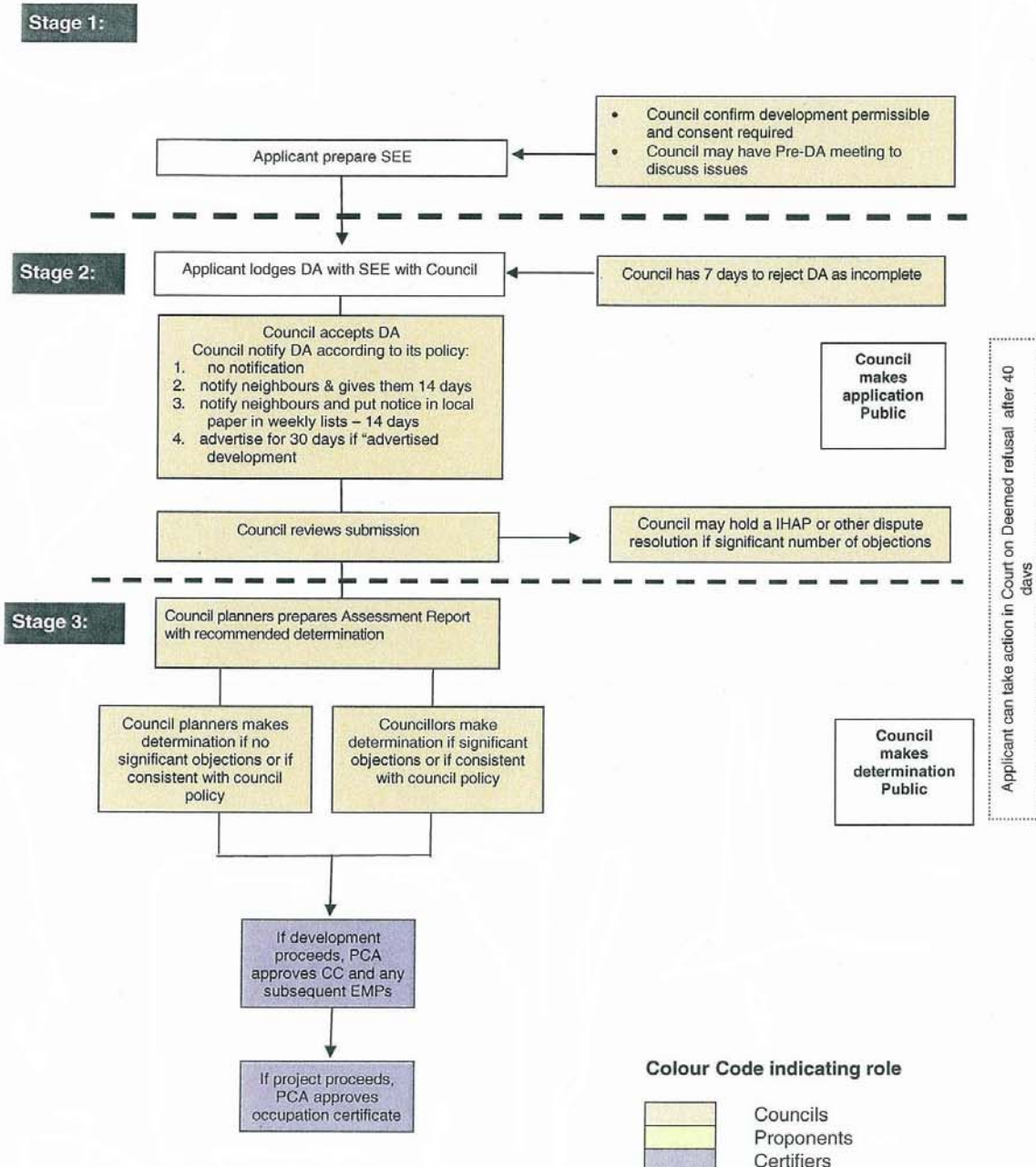
FOUR KEY QUESTIONS



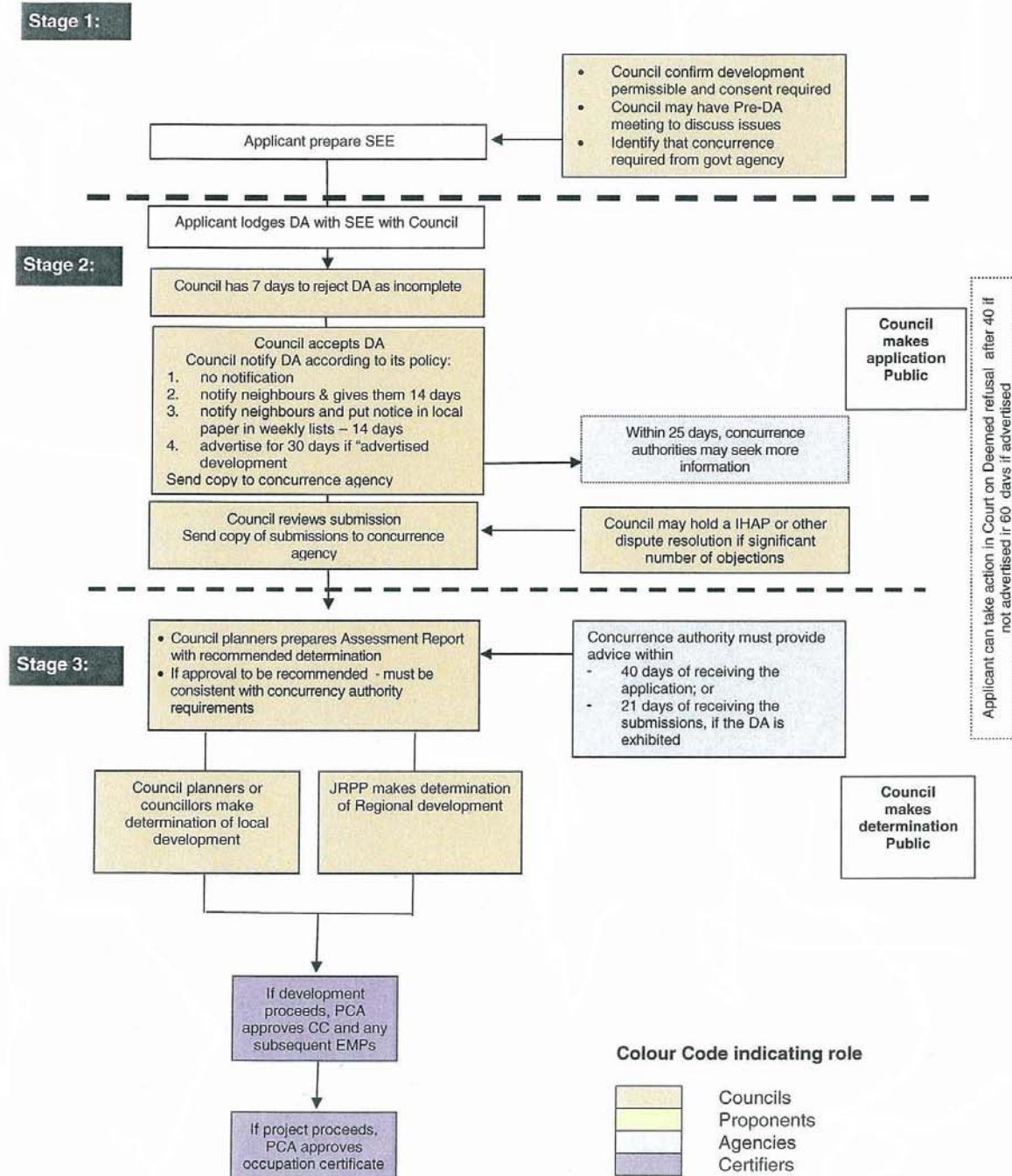
2. Complying Development under Part 4



3. Simple DA under Part 4

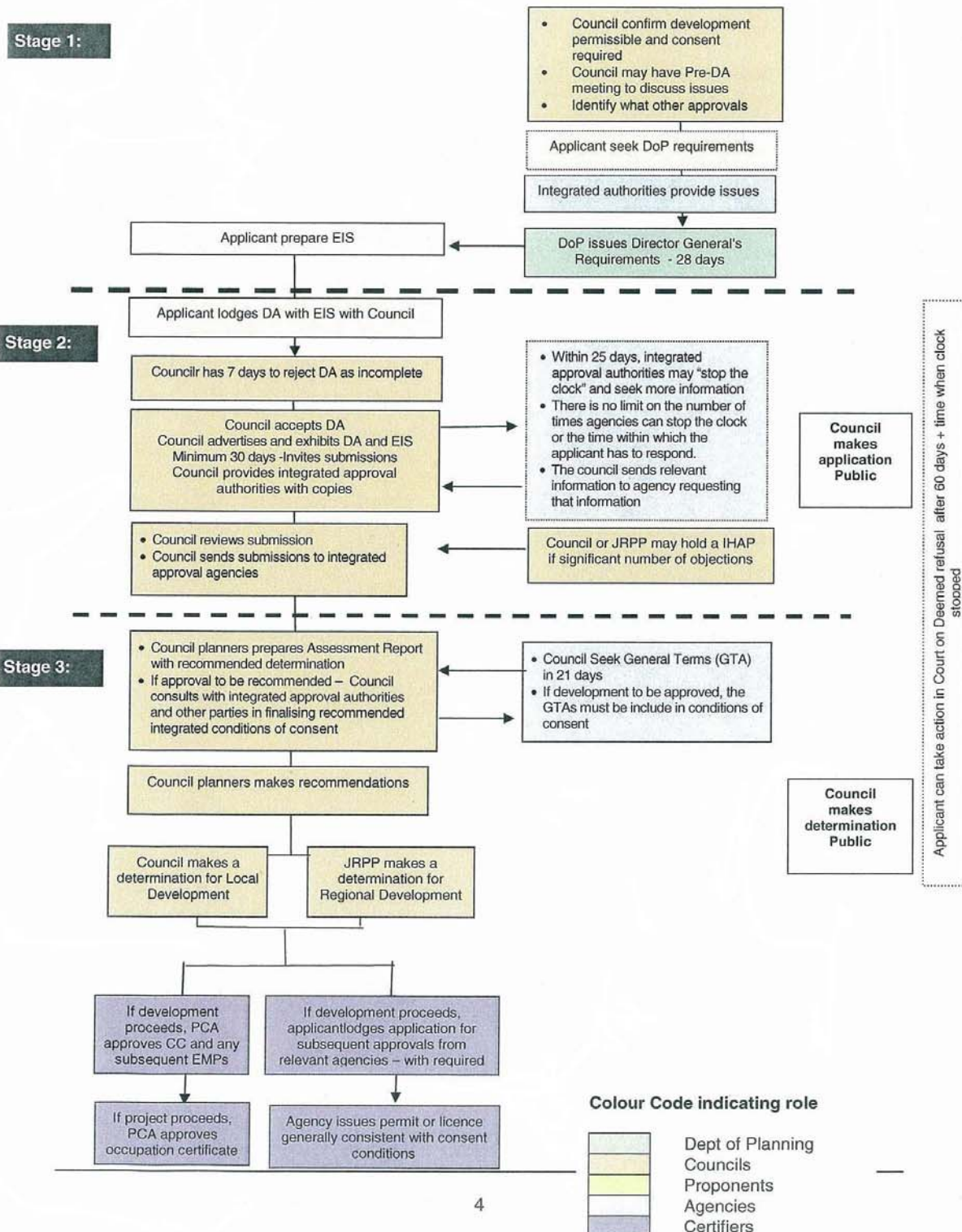


4. DA with concurrences under Part 4



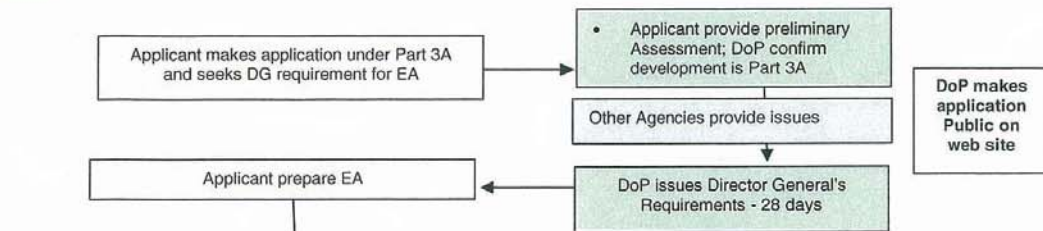
5. Designated & Integrated Development under Part 4

(most designated developments are also integrated)

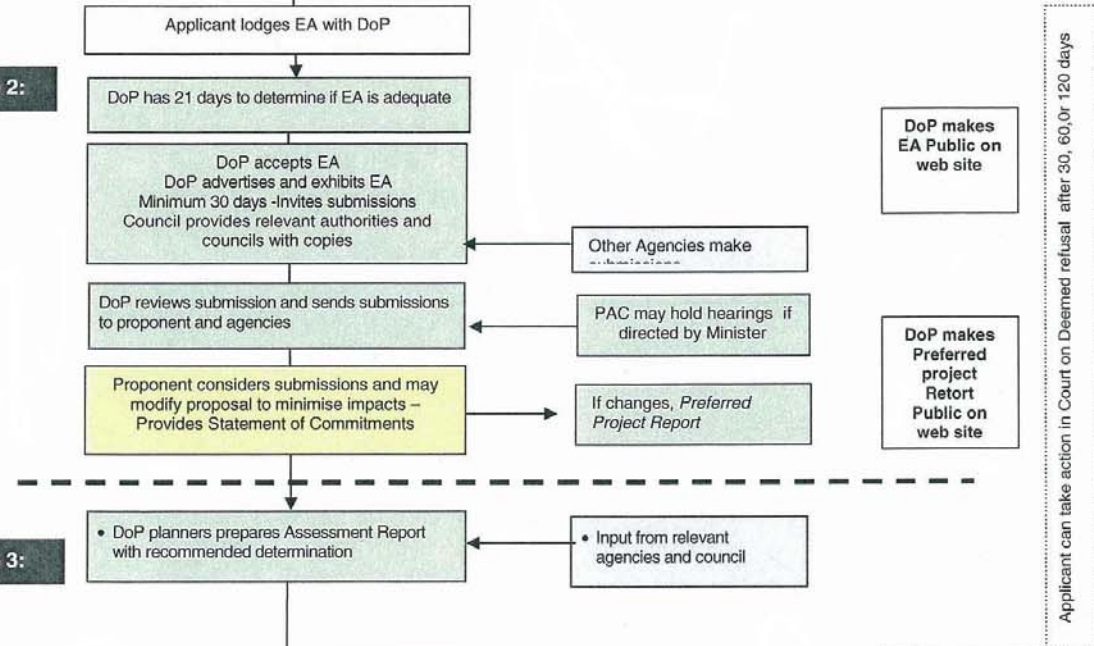


6. Major Projects under Part 3A

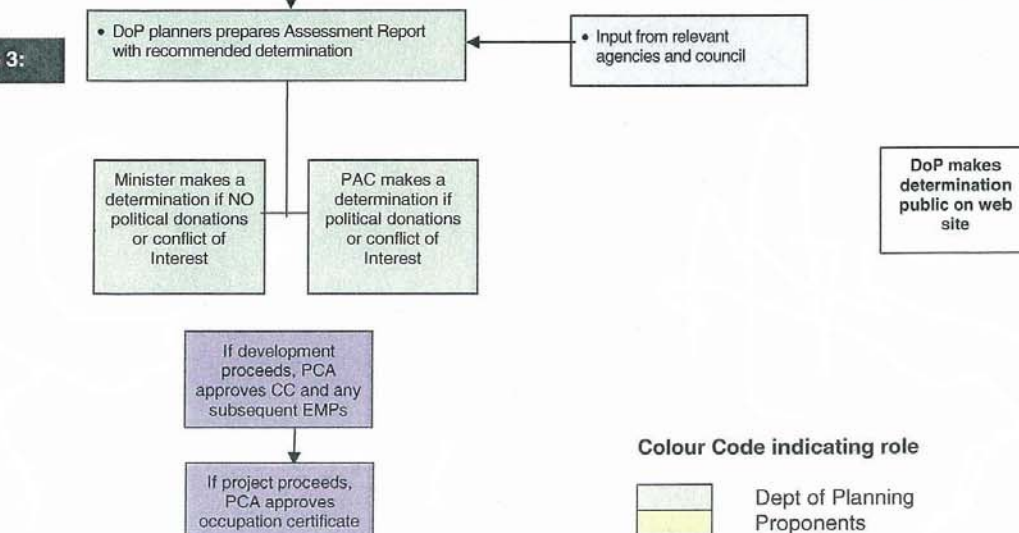
Stage 1:



Stage 2:



Stage 3:



Colour Code indicating role

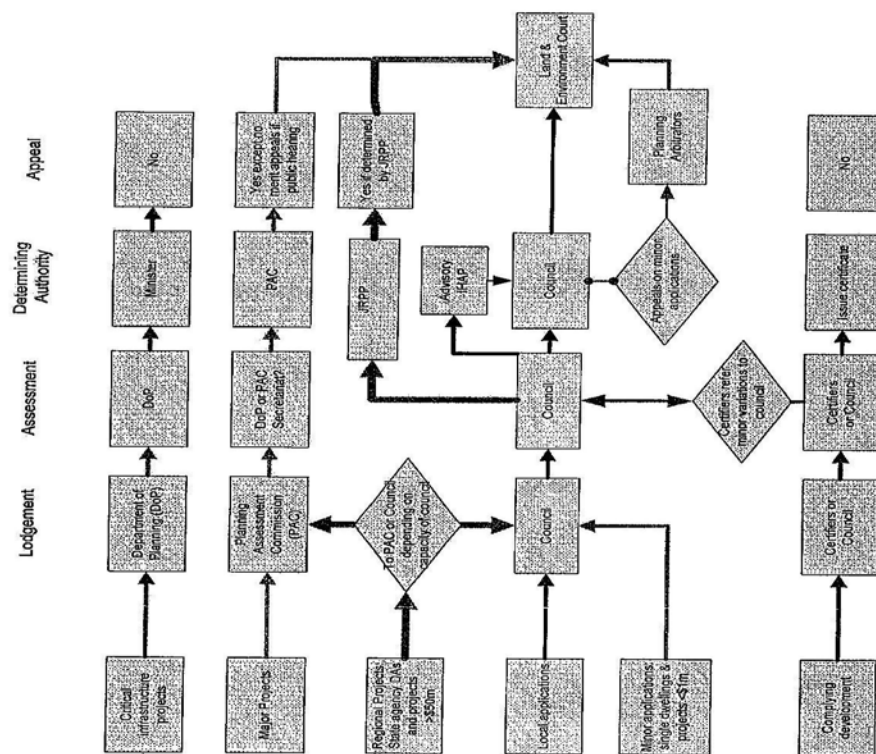
	Dept of Planning
	Proponents
	Agencies
	Certifiers

7. Comparison of Public Consultation or Notification

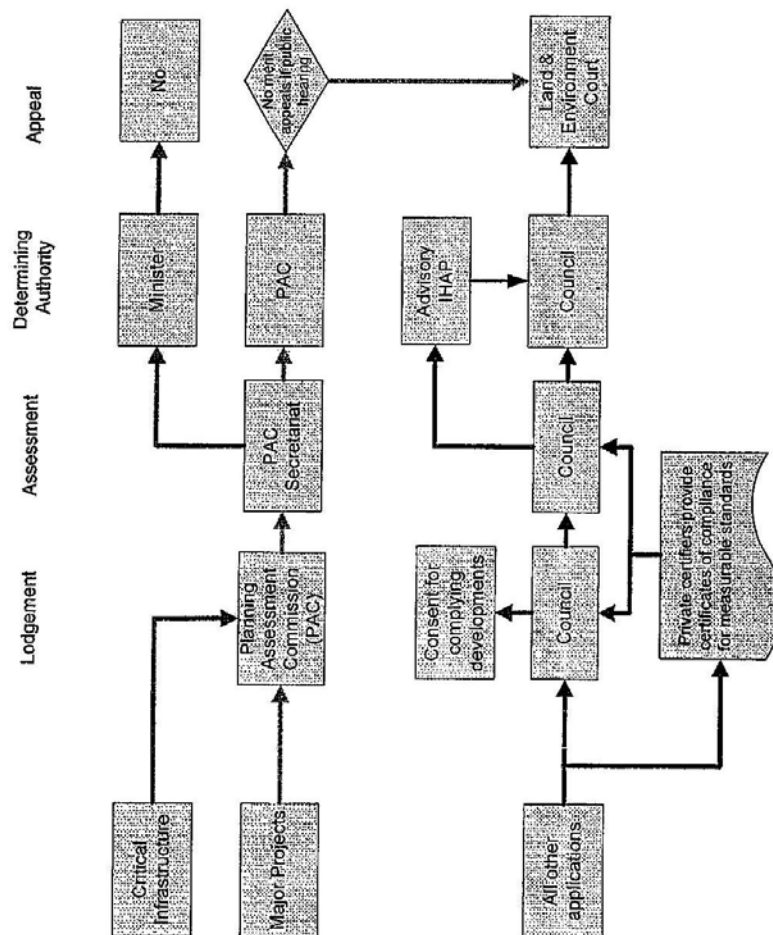
	Complying development	Simple DA	Designated & Integrated development DA	Part 3A application
Stage 1 – proponent undertakes assessment			Consult with Agencies / council when issuing DGRs	- Consult with Agencies / council when issuing DGRs - Place application with preliminary document and DGRs on Web
Stage 2 – lodge assessment		- Notify neighbours – 14 day for comment - May place notice on website or local paper - Documents available for inspection	- Notify neighbours – 30 day for comment - Advertised for 30 days - May place notice on website - Documents available for inspection	- Notify neighbours – 30 day for comment - Advertised for 30 days - Place all documents on DoP Website and make available for inspection - Proponent asked to respond to submissions - May change proposal in response - Preferred Project Report put on Website
Stage 3 – consent authority assesses application & makes determination	Notify neighbours prior to construction commencing	May place notice of determination on website	May place notice of determination on website	Place determination on DoP Web

Appendix 6 Local Government and Shires Association: flow diagrams of development assessment process: - current and alternative model

DA Decision Making Process – Government Reform Proposal



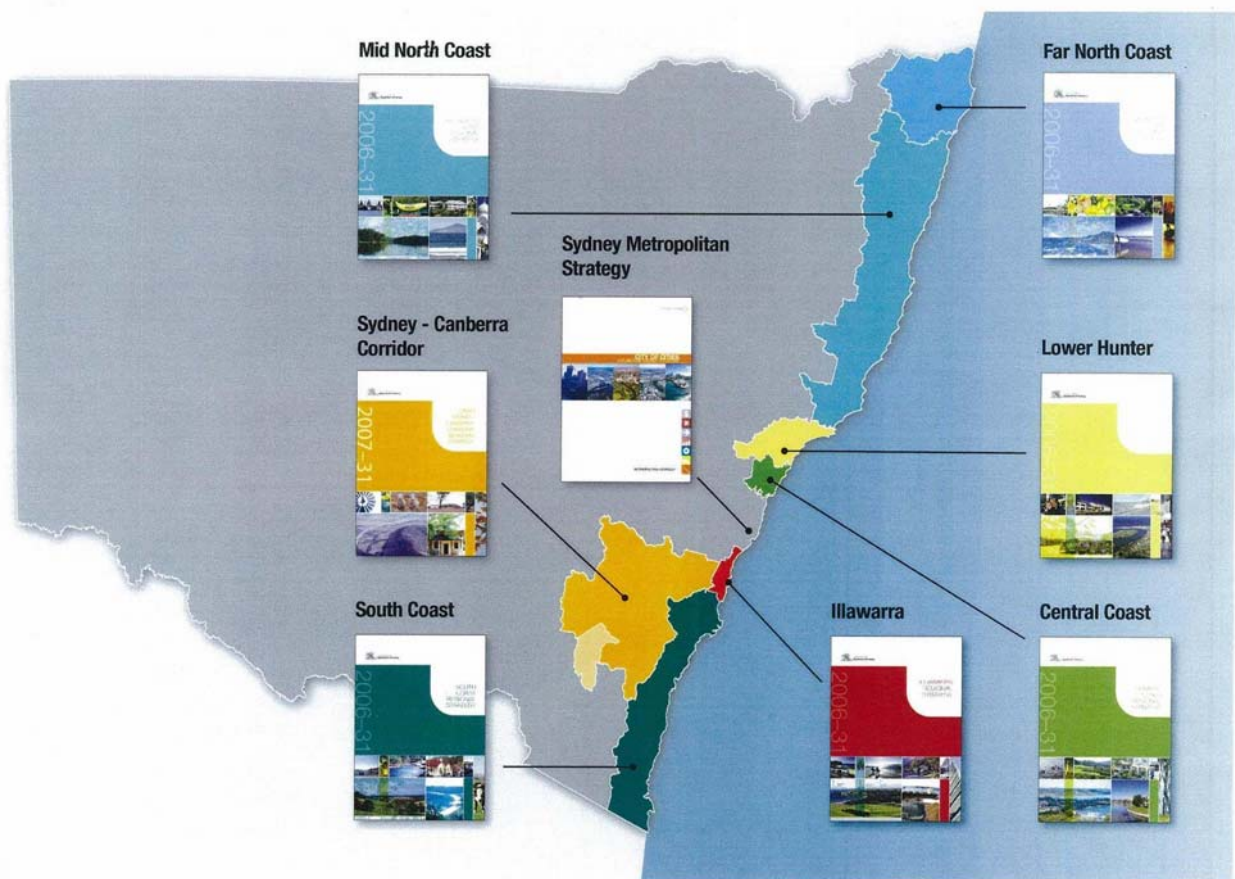
DA Decision Making Process – Alternative Option



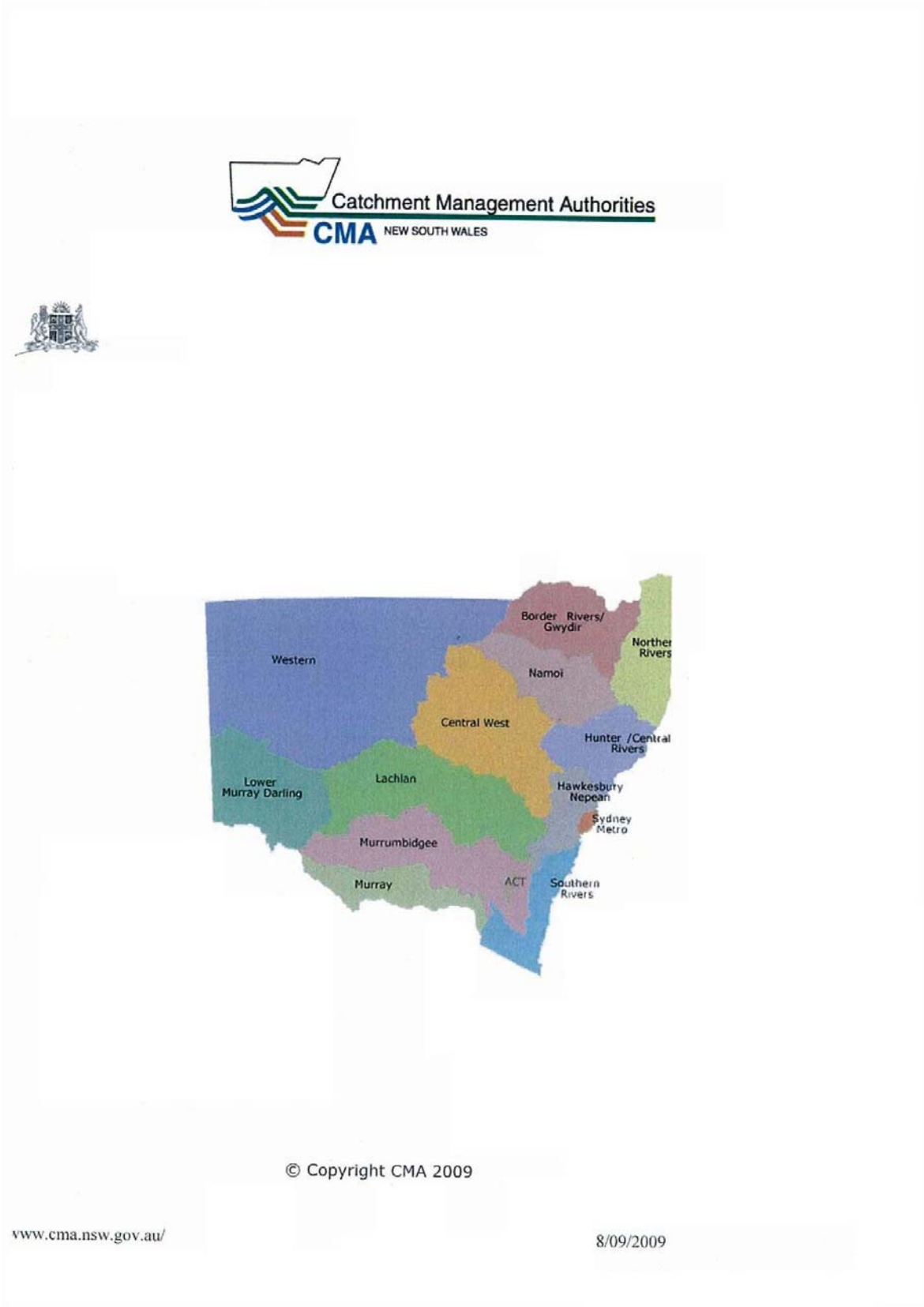
Appendix 7 Regional boundaries

1. Map of Regional Strategy regions
2. Map of Catchment Management Areas
3. Map of State Plan regions
4. Map of Department of Planning Regional Boundaries

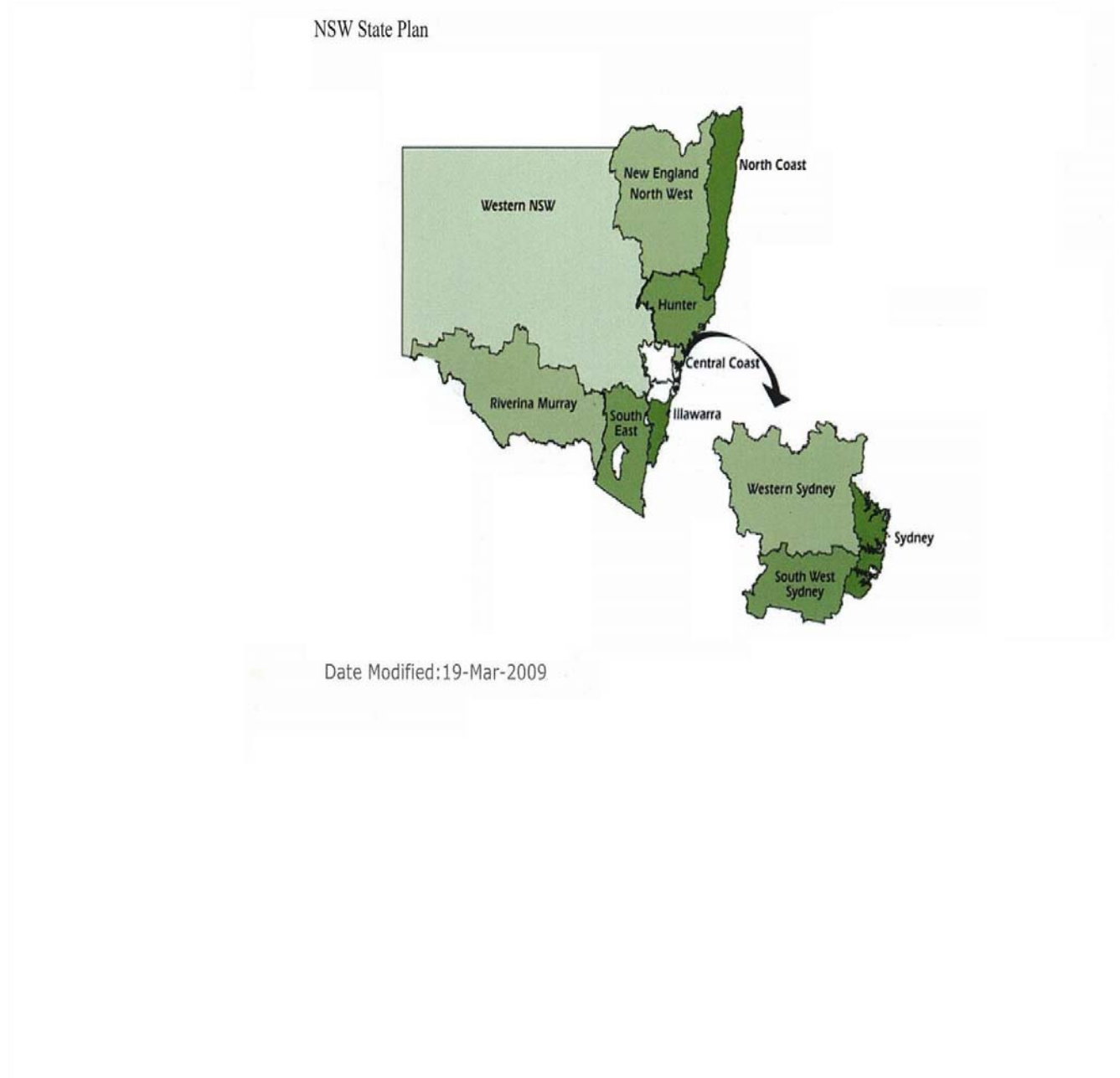
Map of Regional Strategy Regions



Map of Catchment Management Areas



Map of State Plan regions

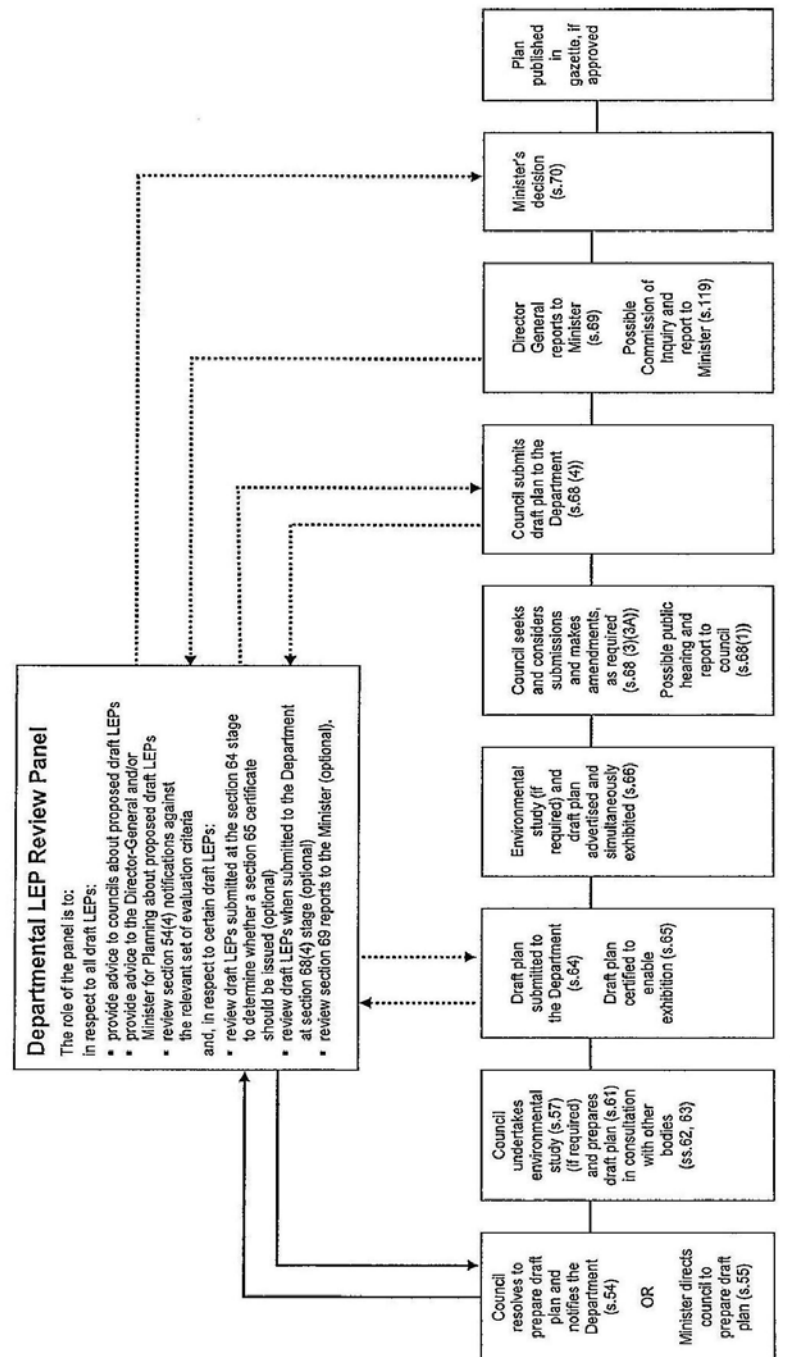


<http://www.nsw.gov.au/stateplan/index.aspx?id=80f0a4ea-3c8e-46f7-9e64-3d9a7c5cde>

[illegible]

Appendix 8 Local Environmental Plan Process

Local Environmental Plan Process



Appendix 9 Integrated Planning diagram

INTEGRATION

EFFECTIVE PLANNING REQUIRES INTEGRATION THROUGH COLLABORATION

INTEGRATED GOVERNMENT PLANNING

- Whole of Government
- eg State Plan

INTEGRATING ECONOMIC, SOCIAL AND ECOLOGICAL

- comprehensive
- establish priorities for action

INTEGRATING PLAN FOR STATE WITH CORPORATE PLAN

- agencies pursue government objectives
- agencies collaborate

INTEGRATING PLANNING WITH IMPLEMENTATION

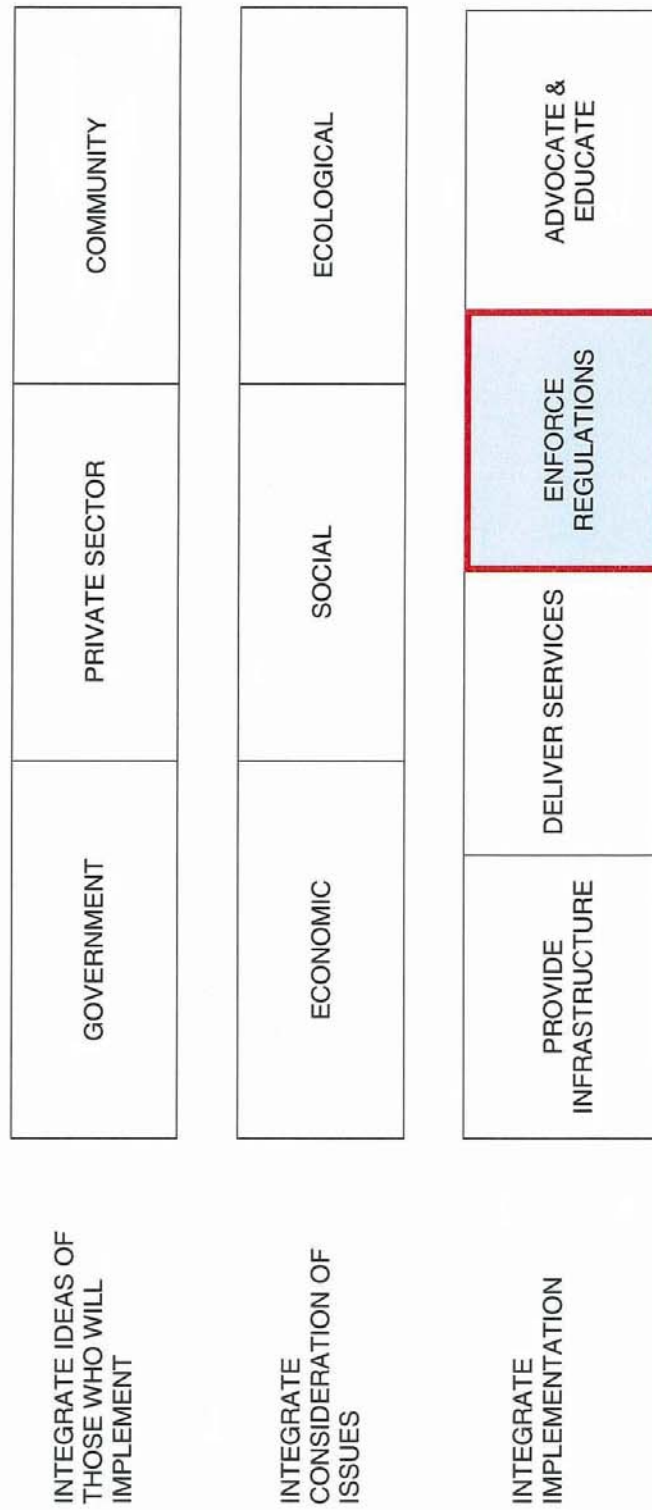
- plan is tested by reality check
- need for resources is identified
- roles and responsibilities are defined
- resources are allocated.

INTEGRATED IMPLEMENTATION

- provision of infrastructure
- delivery of services
- regulation
- education and advocacy

INTEGRATED ACTION

- collaborative implementation by government, private sector and community



Appendix 10 NSW Department of Planning response to the need for a review of the Planning Act

QUESTION ON NOTICE

INQUIRY INTO THE PLANNING FRAMEWORK

REVIEW OF THE PLANNING ACT

On 25 August, the Committee placed the following questions on notice during the Inquiry into the Planning Framework.

The Hon. CHRISTINE ROBERTSON: This question is really on notice because it is far too complex to be answered in a short period of time. It relates to original statements about there being no requirement for review of the Planning Act. Much of the evidence we have received from planning experts has indicated that a long-term review—like, let us not write a new one next year but perhaps have the commencement of the process of the review next year—would give us an outcome that would mean that we would not have masses of pieces of legislation for the one process and perhaps stand the State in good stead for the future.

The question that will be sent to you on notice relates to exactly why you do not perceive that to be a good idea.

The other part of the question is, do you propose then—because we currently have a Commonwealth review going on of the planning process—to continue to amend the multitudinous Acts that planning persons are dealing with in order to deliver some real strategy for the future of New South Wales?

They are definitely on notice questions and they will be sent to you because they would probably take another an hour to discuss.

Answer:

Since the introduction of the *Environmental Planning and Assessment (EP&A) Act 1979* in 1980, the Act, regulations and environmental planning instruments have undergone numerous amendments to deliver a robust planning regime.

These amendments were made to reflect and in response to changing social, economic and environmental conditions and associated community demands and expectations. Over the years, emerging issues such as sustainability, pollution controls, building controls, contaminated land, housing affordability, heritage, national parks and wilderness, biodiversity, water management, coastal development issues, climate change, ageing population, state and local infrastructure contributions, and depoliticisation of decision making have been integrated into the planning and development approvals systems.

The Department is currently implementing the 2008 planning reform. This is a high priority of the Government and the Department. These reforms addressed significant concerns with the planning system and are intended to:

- provide a planning system that is outcome based;
- produce efficient practices and processes and timely decision-making;
- provide a whole of government integrated approach;
- further depoliticisation of decision making;
- a transparent and up to date public participatory process; and
- decision-making at the most appropriate level.

During the course of the committee's hearings, there have been a number of suggestions that there should be new planning legislation – the legislation and practices developed over the last 30 years should be abandoned and a new approach taken. Sometimes this call is for one new Act, sometimes it is for two or more new Acts. Some advocate that the NSW system should be more like South Australia – others more like Victoria. In both cases, those States legislation has been or is being revised to be more like NSW.

The justification given by those wanting a new act or more than one act, generally falls into three reasons:

1. Some have said they want a new Act which is 'modern' so it can deal with the 'new issues' that have come up in planning since 1979 – the most recent of these being 'climate change'.
2. Others have said that the current Act is too 'complex' but apart from wanting a simpler system they again generally do not explain how one or two new Acts will achieve their desire for simplicity.
3. Finally, some rightly point to overlap with Federal and with other State legislation and the overlap in roles between Federal, State and local councils. However, they again do not explain what the remedy should be – a reduced role for NSW planning legislation, and for local councils that use it, where the Federal legislation is involved or something else.

Modernising the Act, or bringing the Act up to date.

It is 30 years since Parliament passed the EP&A Act. However, the Act has not been preserved in its 1979 form over that time. The Act has been through significant modernisations particularly in 1997, 2005 and 2008. The principles of ecologically sustainable development were introduced as an object of the Act along with consideration of housing affordability and the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats. Other issues such as contaminated land, water management, building controls, heritage, national parks and wilderness, coastal development issues, state and local infrastructure contributions, and depoliticisation of decision making have also been addressed.

Apart from wanting to see current issues, like 'climate change' dealt with in the Act, the submissions generally have not identified the benefits that 'modernising' the Act would achieve. It does not appear that there is general agreement about which parts of the Act need to be modernised, and which do not. The recent reforms have "modernising" the key aspect of the system

- focusing the local plan making process and removing a layer of plans and complexity
- removing complexity and the causes of delays in the development application process
- strengthening the certification process for both the private and council certification provisions,
- updating and focusing the development contributions regime
- providing review, advice and decision making options to strengthen and depoliticise decision making – with the introduction of the planning assessment commission and joint regional planning panels.

On the question of climate change, the Act, while it does not use the term 'climate change' nor has a definition of it, is more than capable of ensuring climate change issues are dealt with comprehensively, both at a statutory planning level and at a development approval level.

The Act provides a broad framework that enables the consideration of all relevant environmental, social and economic issues when developing statutory plans and in the development assessment undertaken under the Act. Even now, after 30 years, the objects of the Act are broad enough and the provisions of section 79C are comprehensive enough to ensure that climate change is considered by decision makers in those cases where climate change issues are relevant.

There is no justification to rewrite the Act to include climate change. As with biodiversity, if necessary, provisions can be inserted into the existing Act to provide for integrated consideration of climate change matters.

On the question of simplifying the Act, or removing complexity

It is agreed that the State's Planning Act should be as simple and straightforward as possible. When considering the many different views expressed by witnesses before the Committee, it is obvious that there is no consensus on the shape of any new Act, or new Acts or as to the need for a radical change. While many called for simpler legislation, at the same time it was acknowledged that the range of issues to be addressed are increasingly complex.

One of the strengths of the EP&A Act that has not been recognised in some of the submissions to the Committee is the integration of plan making and development control into the one planning structure. This provides for the flexibility to consider issues in an integrated manner at the plan making stages, when development controls are being developed and when these provisions are being implemented on the ground at the development approval stage. To break these aspects into different acts, would result in unnecessary tensions and complexity, as currently often occurs when different Acts control different aspects of the one development. Another of the strengths is the integration of consideration of environmental, social and economic issues in decision making, an integrated systems approach rather than consideration of issues on a case by case basis.

Submissions have also acknowledged that the process of getting a new Act, or two or three new Acts, in place would take considerable time and resources, perhaps as long as four or more years. But that will not be the end of it, because with a new Act or Acts will come "savings and transitional" provisions and the need to get practitioners up to speed on the changes. A key consideration is the time required following the introduction of any new Act or Acts to change systems in councils, to change practices by proponents and their advisors and to change the understanding and expectations of the community resulting from the new provisions.

From the current experience in introducing the changes in 1997, as well as in 2005 and 2008, there will be at least another two years before practitioners would feel comfortable with new legislation, transitioning away from the previous processes. As a result, it is critical that the introduction of any new legislation does not divert resources from obtaining the best outcomes under the existing legislation while any rewrite is underway. This is the job being done now, with the current reforms to the Act.

It is also critical in this period of economic uncertainty, that further uncertainty is not introduced into the planning approvals regime with potential implications for outcomes for employment, housing, communities, conservation and environmental protection in NSW.

It is also important that the Committee looks carefully at what the witnesses have actually said about how a new Act would simplify planning and whether and how these suggestions would better deliver the important outcomes which users of the planning system seek. The Committee will need to be confident that the witnesses have identified a strong causal link between 'complexity' of the Act and inefficiencies in planning outcomes if a complete rewriting of the Act is to be justified.

Very often the inefficiencies are associated with the practices associated with implementing the law rather than the law itself. As a result, the Department of Planning is now implementing communications and education programs to raise applicants and councils' awareness of improved plan making and development assessment practices which will assist in delivering sound environmental, social and economic outcomes in a more efficient cost effective manner.

Overlapping of Federal and other State laws

While it is acknowledged that there is overlap between Federal legislation and the EP&A Act, this overlap has grown significantly since the introduction of the Environmental Protection and Biodiversity Conservation Act 1999. The New South Wales Government is working with the Australian Government to ensure appropriate administrative procedures are in place to minimise duplication between the regimes.

Under the Constitution, the breadth of Federal environmental regulation is a matter for the Australian Parliament. Inquiries are currently taking place into the Federal legislation and one of the matters for review is the possibility of expanding Federal intervention in this area to climate change matters. The only certain thing about Federal involvement is that over time, the range of matters they will become directly involved with is likely to increase along with the pressure to have similar or the same planning regime in all States.

It is not clear how any new NSW Planning Act would be in any better position to respond to the changing goal posts of Federal regulation than the existing Act. It would appear that an administrative solution under the existing Act would be preferable to a statutory provision in a new Act. Any suggestion to remove any approval role by Councils or the State Government where a Federal approval was also required for a development, is not supported.

On the question of overlapping State laws, work is being done to minimise the duplication between the EP&A Act and other State legislation. The first step in this direction was the integrated assessment provisions introduced in the development approval process under Part 4 of the Act in 1997. Another step was the integrated approval process for major developments introduced in 2005. The removal in 2004 and 2008 of requirements for concurrences and referrals to other State agencies were further steps in providing more holistic and simpler assessment and approvals processes. These are important steps in simplifying the system and in due course more legislative amendments may be appropriate. But of themselves, the need to simplify the interaction between various State laws seem an insufficient justification for a full rewrite of the planning legislation.

The next steps

The Government is committed to securing Australia's best planning system, in terms of practice, culture and legislation, including:

- a model legislative framework that is outcome based;
- efficient practices and processes and timely decision making;
- a whole of government integrated approach; and
- a transparent and up to date public participatory process

As the current reforms are being implemented, they will go a long way to achieving the above and should be afforded priority to progress. At this stage, any major legislative change would divert resources from a much needed focus on efficiently delivering appropriate outcomes and changing aspects of the "culture" to be more outcomes focussed to improve the planning system.

Reform must be on an as needs basis. It must be targeted and it must bring clear benefits that will outweigh the costs associated with implementing the change. When the Act commenced in 1980, it was considered state of the art legislation but it was also, in many ways experimental. It was an innovative and groundbreaking initiative. It sets out to provide a simple integrated framework for both planning and development delivery, which is still one of its major strengths.

The Government considers that the key emerging matters and directions for future reform are:

1. better alignment of strategic planning and development control (including rezoning);
2. strengthening land use and transport/infrastructure integration;
3. better integration of natural resources and planning;
4. leadership in dealing with medium and longer term sustainability challenges, including climate change and ageing population;
5. simpler procedures and elimination of duplicated processes with overlapping legislation;
6. a more outcome-based legislative framework; and
7. an improved framework for community engagement at the strategic level.

Some of these matters may require legislative change, many will require the development of strategic frameworks such as integrated transport and land use planning to provide for improved infrastructure, conservation and resource planning at the State, regional and local level, and some will require improved system at the State and local government level.

In order to progress the next step in improving the planning system in NSW, consideration could be given to establishing an Expert Group in 2010 to review and make recommendations on how these emerging issues can be better addressed. Any such review would need to be evidence based, with appropriate analysis undertaken of existing practices in NSW and other regimes. While the submissions received to this Inquiry would provide important input to the process, a more rigorous investigation based on research and analysis by an Expert Group would better inform the next step in the process.

Consideration could also be given to whether the remaining components of the 2008 reforms should be commenced prior to the recommendations of this Expert Group being received. These uncommenced components include provisions relating to development approvals and developer contributions. This would further avoid "change fatigue" currently being experienced by councils.

Instead, while waiting for the recommendations of the Expert Group, the focus could be placed on improving electronic planning systems with better integration of electronic information into the plan making and development approval system. In addition, electronic systems which improved the communities' access to information on planning and which provided improved opportunities for public participation in the planning system could be developed. Irrespective of the legislative framework under which these systems operate, there would be significant immediate benefits to all stakeholders to have efficient e-planning information in place in all councils across the State. This project would build on existing initiatives currently being developed by the Department of Planning, Department of Lands, Department of Environment, Climate Change and Water, Local Government and Shires Associations and a number of councils.

Further, to ensure that there is an appropriate regional strategic frameworks across the State as the basis for land use planning and the provisions of improved infrastructure, conservation and resource planning at the State, the focus over 2010 could be on the review and updating of the Metropolitan Strategy along with the development of regional strategies in the remaining regions in NSW for which regional strategies have not yet been developed.

These initiatives would significantly contribute to securing Australia's best planning system, in terms of practice and culture with significant steps towards improved practices, more efficient access to information and better integration of infrastructure and natural resources.

Appendix 11 Draft guidelines for assessing net community benefit including retail impact assessment (Independent Retailers of NSW)



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Draft guidelines for assessing net community benefit including a retail impact assessment test

**Discussion paper prepared for
NSW Department of Planning**

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Revision D - 30 October 2009

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1 Introduction

These guidelines have been prepared to operationalise the planning framework surrounding retail development described in the document "Promoting economic growth and competition through the planning system - discussion paper" (Witherby, 2009). They outline how the various suggested controls would operate in practice and also how these controls would intersect with each other. The guidelines also present a framework for assessing the economic impact of retail proposals.

2 Definitions

In these guidelines the following definitions are used:

Accessibility principles means the location of retail development so as to minimise overall trip making within the town or region, including the location of retail development so as to maximise chained trip patterns by consumers.

Activity centre means an area of retail and commercial development, identified by a business zoning, which may also contain recreational, administrative and service uses.

Competitive Tension describes the economic process by which the existence of two or more competing firms in a market leads to consumers benefiting from outcomes such as lower prices, increased choice or higher service levels because of the competition between those firms.

Note: Competitive tension does not include use by a firm with market power of techniques that, without the existence of market power, would cause harm to that firm (e.g sustained pricing of products at levels below marginal cost so as to force a rival out of business).

Core commercial area means that portion of an activity centre where the majority of activity is located.

Gross leasable floor area means the sum of the area within the floors of the building, being the area within the internal faces of the walls excluding stairs, amenities, lifts, corridors and public areas but including all stock storage areas. In the absence of gross leasable floor area information, the gross leasable floor area will be taken to mean 80% of the gross floor area of the building.

Market means the geographic area of operation of a local firm for the purpose of assessing market dominance.

Market dominance means the proportion of a market that is held by a single business (including other businesses within the same ownership group including related entities).

Metropolitan means areas within the Sydney, Newcastle and Wollongong statistical divisions.

Net community benefit means whether, on balance, a proposal is of net benefit to the community.

Note: This is determined through tests as outlined in these guidelines, which provide a structured approach to merit-based assessment of major retail proposals.

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Non-metropolitan means areas outside the Sydney, Newcastle and Wollongong statistical divisions.

Primary trade area means the trade area of a retail business (eg a supermarket or department store or hardware store) the outer edge of which is defined by a line where people are equally likely to shop at an equivalent competitor that is outside this area. This should generally be determined by way of household survey.

Regional catchment means the primary trade area of the nearest high order activity centre directly servicing the locality (e.g. regional shopping centre, town centre or the like).

Note: This should generally be determined by way of household survey.

Retail impact assessment means the qualitative and quantitative methods used to assess the economic impacts of new retail development.

Sequential test means the principle of first seeking to locate additional retail floorspace within the existing activity centres and, if this is not feasible, then seeking to locate floorspace on the edge of existing activity centres. New activity centre development should only be considered where it is impracticable to locate within or on the edge of existing activity centres, or where an area can justify a new activity centre based on accessibility principles.

Vacancy rate means the percentage of shopfronts vacant at ground floor level (including shops within arcades) within the business zoned lands of the activity centre.

3 Overall planning approach and the interrelationship of tests

3.1 Application of the guidelines and the trigger levels

The guidelines apply to NSW. They identify the "trigger levels" at which enhanced assessment of retail development needs to occur. Proposals need to meet both the incremental change test and the market dominance test, otherwise a retail impact assessment is required.

The guidelines are consistent with the best practice guidelines of the Development Assessment Forum. This establishes a national approach to determining levels of assessment, based on impact. In other words, the greater the potential for impact, the greater is the required level of assessment. Smaller-scale developments and larger developments not exceeding the trigger levels would be consistent with the Code and Merit tracks respectively (e.g. complying or standard DA assessment), while developments that meet or exceed the trigger levels would be Impact Assessable (the most rigorous level of assessment). These guidelines provide the basis and tests for impact assessment.

The trigger levels for the tests are as follows:

3.1.1 Incremental change test for new retail development involving a rezoning

- Merit assessment through a net community benefit test is required if

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- o regional catchment floorspace >2 m² per head, or
- o site is not within or directly adjacent to existing commercial zoning, or
- o area rezoned > 15% of existing business zoned area, or
- o activity centre vacancy rates > 10%, or
- o development is not within the core commercial area ("Main Street") (non-metropolitan areas only)

Details

The regional catchment is reviewed to assess whether total floor space provision exceeds 2 m² per head of population. This is to ensure that where areas of substantial floorspace oversupply exist, pressure is applied to utilise existing zoned land and infrastructure more efficiently prior to rezoning additional lands. For the purpose of this test, additional floorspace is to be calculated from the maximum floorspace ratio under the proposed zoning.

If the catchment has a total floor space provision of 2 m² per head of population or less, and the proposed rezoning site is within or directly adjacent to an existing commercial zoning (the sequential test) then the rezoning should be supported provided that the quantum of the rezoning is 15% or less of the business zoned area of the existing activity centre and that vacancy rates within the activity centre are also less than 10%.

Within regional areas it is vital that the "Main Street" be supported. The test therefore examines whether the proposal is within the commercial core, as defined by the most active part of the business area. This area would be less than the existing business zoning and should be determined on the basis of indicators including major pedestrian generators (e.g. newsagent, pharmacy, chemist, bank, supermarket) and overall pedestrian activity. As a guideline, areas failing the "health check" would not be considered core areas.

3.1.2 Incremental change test for new retail development not involving a rezoning

- Merit assessment through a net community benefit test is required if
 - o increased floorspace > 15% of existing activity centre floorspace, or 1000 m² (whichever is the smaller) or
 - o activity centre vacancy rates > 10% or
 - o development is not within the core commercial area ("Main Street") (non-metropolitan activity centres only).

Details

If the development is located within an existing activity centre and represents an increase in floorspace of less than 15% of the ground floor floorspace of retail development within the activity centre or 1000 m² (whichever is the smaller), no additional economic impact assessment is required provided vacancy rates within the existing activity centre are also less than 10%.

*Community Benefit Test Guidelines***3.1.3 Market dominance test for new retail development (whether or not involving a rezoning)**

- Impact assessment is required if
 - 25% of category floorspace within the 15 minute off-peak isochrone is within the same ownership group (metropolitan areas), or
 - 25% of category floorspace within the 45 minute off-peak isochrone is within the same ownership group (non-metropolitan areas).

Details

In addition to the incremental change tests, retail proposals would need to pass a market dominance test to determine whether additional economic impact assessment would be required. Retail proposals have been identified for this test on the basis of the relative catchment size as compared to other forms of development (e.g. housing). Because of the nature of retailing, in particular convenience retailing, the focus of competition relates to market dominance within a sub-region, generally defined by a 15 minute off-peak isochrone. Convenience retailing is of most significance when reviewing local accessibility to goods and services.

The market dominance test is applied using a floorspace dominance test. This test utilises gross leasable floor area. On the basis of the relevant regional catchment, commercial rivals are identified within the relevant retail category. Where 25% or more of the floorspace within that retail category is within the same ownership group (including related entities) then a retail impact assessment needs to be conducted.

3.2 Components of a net community benefit test

This section of the guidelines outlines the components of a net community benefit test. This test combines both qualitative and quantitative measures needed to review the social, environmental and economic aspects of new development.

The test needs to recognise that activity centres are much more than the provision of retailing, but that they represent social and administrative hubs as well.

Below are the key "dot points" of the recommended test.

3.2.1 Economic Impacts

- Retail economic impact assessment (see Appendix A for draft methodology)
 - what are overall impacts of the proposal on the host activity centre and sub region?
- impact on competitive tension
 - would the proposal tend to exclude other competitive entrants?
- Impact on net employment

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- what is the predicted net employment impact by employment sector?

3.2.2 Environmental Impacts

- Impact on overall vehicle trips
 - including consideration of chained trips, would car-based net trip making (by distance) increase or reduce as a result of the proposal?
 - would the development result in a net increase in the number of walk-based trips undertaken for convenience shopping purposes?
- Site specific impacts ("traditional" DA assessment) - Traffic and parking, urban design, sustainability
 - does the development complying with local policies and codes?

3.2.3 Social Impacts

- "Urban blight"
 - are any activity centres/sectors at particular risk?
 - If so, for what time period?
 - Would there likely be a call on public investment in those activity centres if risks are identified?
- Accessibility to local goods and services
 - does the development increase in overall accessibility to local goods and services within a 15 minute off-peak isochrone?
 - Would any areas or groups suffer disadvantage not made good by the proposed development?
- Integration with/strengthening of an existing activity centre
 - does the proposal take best advantage of its site in terms of integration with the existing activity centre?
 - does the proposal maximise synergistic opportunities with other retail types?
 - does the proposal fill an identified a gap in service provision?
- Contribution to social places/spaces
 - does the development enhance the public realm?
 - does the development contribute social and meeting places?
 - does the development minimise privately owned public open space?

*Community Benefit Test Guidelines***4 Appendix A*****Draft methodology for retail economic impact assessment***

This methodology establishes guidelines for the conduct of retail impact assessment. Each of the dot point indicated below can be further expanded to provide increased certainty regarding the operation of the methodology.

The key point to undertaking retail economic impact assessment is to ensure that whichever techniques are selected (e.g. conventional modelling, spreadsheet approaches or the like) are data driven. This means that, wherever possible, the data are sourced from local/subregional survey work including household surveys and street surveys within activity centres.

Assumptions used in modelling are to be explicit and justified.

Base data

- project description
 - location
 - type of floorspace
 - business type (e.g. supermarket, specialty retailing, etc)
 - category of goods sold (e.g. convenience retail, comparison retail)
- study area identification
 - identification of regional/subregional catchment
 - description of overall retail hierarchy (existing)
 - relationship to highest order activity centre directly serving the study area
 - sub-catchments by activity centre
 - determination of primary trade areas (e.g through isochrones, standard radii based on activity centre type and floorspace or household survey (preferred)).
 - activity centre of proposed location.
 - other competing activity centres within the subregion
- review of existing shopping provision (activity centre of proposed location and other competing activity centres within the subregion)
 - retail census and "health check"
 - quantitative (all activity centres)

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- floorspace by category,
- diversity of uses,
- retailer representation,
- vacant properties
- qualitative (activity centre of the proposal).
 - safety and security
 - overall quality of activity centre
 - current activity centre urban design/integration
 - indicators of over/under performance
 - pedestrian activity levels
 - accessibility (car, public transport, walking)
 - consumer satisfaction (street survey)
- recent developments/approvals/proposals
 - floorspace, business type

Quantitative Analysis

- Definition of base parameters and key assumptions
 - Population
 - Growth rates (population and expenditure)
- Determination of existing retail expenditure
 - Population and per-capita on business type or goods type (preferably triangulated through survey work)
- Existing activity centre and category turnover estimates
 - Market shares (based on household survey)
 - Escape expenditure (based on household survey)
 - Inflows from outside study area (eg tourists)
- Capacity analysis
 - Growth in expenditure (including basis for assumptions)
 - Recovery of escape expenditure (including basis for assumptions)
 - Other committed or planned developments
 - Current floorspace provision (by sector and activity centre)
- Impact assessment (base year and roll forward to year 10)

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- Trade diversions (amount and %)
 - Basis for the assessment
- Potential spin-offs from new development
- Revised turnover estimates by activity centre and sector
- Sensitivity analysis
 - Expenditure growth
 - Escape expenditure recovery
 - Turnover per m2 of the new development
- Interpretation and conclusions
 - impacts on existing retail in the sub region by sector and activity centre
 - identification of "at risk" activity centres/key anchors (if any)
 - risk of "urban blight" through increased activity centre vacancies and reduced investment capacity
 - review of net employment impacts
 - by employment type
 - overall conclusions regarding the development

Appendix 12 Minutes

Minutes No. 20

Thursday 26 June 2008

Members' Lounge, Parliament House, at 10:45am

1. Members present

Mr Catanzariti (*Chair*)

Mrs Pavey (*Deputy Chair*)

Revd Nile

Ms Robertson

Mr Veitch

2. Correspondence

The Committee noted the following item of correspondence:

- 24 June 2008 – Letter from the Hon Frank Sartor, MP, Minister for Planning enclosing a proposed terms of reference for an inquiry into the New South Wales planning framework.

3. Consideration of Ministerial reference

The Chair tabled the terms of reference for an inquiry into the New South Wales planning framework received from the Hon Frank Sartor, MP, Minister for Planning on 24 June 2008:

1. That the Standing Committee on State Development inquire into and report on national and international trends in planning. In particular, the Committee is to inquire into:
 - (a) Whether the development of new NSW planning legislation over the next five years would be justified, and if so, the principles that should guide such legislation
 - (b) The implications for NSW planning of the Council of Australian Governments (COAG) reform agenda
 - (c) Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation
 - (d) Consideration of climate change and natural resources issues in planning and development controls
 - (e) Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW
 - (f) Regulation of land use on or adjacent to airports
 - (g) Inter-relationship of planning and building controls
 - (h) Implications of the planning system on housing affordability.

That the Committee report by 14 December 2009.

The Clerk-Assistant Committees addressed the Committee and tabled proposed minor amendments to the terms of reference, in accordance with paragraph 5(2) of the resolution establishing the Committee.

Resolved, on the motion of Revd Nile: That the Committee adopt the following amended terms of reference:

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

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

2. That the committee report by 14 December 2009.

Resolved, on the motion of Ms Robertson: That, in accordance with paragraph 5(2) of the resolution establishing the Committee, the Chair inform the House of the adoption of the terms of reference for an inquiry into the New South Wales planning framework referred to the Committee by the Minister for Planning.

4. **Inquiry into the New South Wales planning framework**

Resolved, on the motion of Ms Robertson: That the closing date for submissions to the inquiry be Friday, 12 December 2008.

Resolved, on the motion of Mrs Pavey: That the Chair issue a media release announcing the establishment of the inquiry.

Resolved, on the motion of Mr Veitch: That the inquiry and the call for submissions be advertised in early August 2008 in the Sydney Morning Herald and the Daily Telegraph.

Resolved, on the motion of Mr Veitch: That the secretariat compile a list of stakeholders to be invited to make a submission to the Inquiry, with Committee members to provide details of suggested stakeholders by end July 2008.

Resolved, on the motion of Mr Veitch: That the Committee write to identified stakeholders to invite them to make submission to the inquiry in early August 2008, and that a supplementary invitation be sent to all local councils in mid-September 2008.

Resolved, on the motion of Mr Veitch: That initial hearings for the inquiry be held in early 2009.

5. **Adjournment**

The Committee adjourned at 11:00am sine die.

Simon Johnston
Clerk to the Committee

Minutes No. 21

Monday 4 August 2008

Jubilee Room, Parliament House, at 1:00pm

1. **Members present**

Mr Catanzariti (after item 3) (*Chair*)

Mrs Pavey (*Deputy Chair*)

Mr Mason-Cox
Revd Nile
Ms Robertson
Mr Veitch

In accordance with Standing Order 211(2), in the absence of the Chair, the Deputy Chair took the Chair for the purposes of the meeting.

2. Confirmation of Minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No 20 be confirmed.

3. #####

4. #####

5. Inquiry into the New South Wales planning framework

Resolved, on the motion of Mr Veitch: That the Committee write to the following individuals and organisations to invite them to make a submission to the inquiry, with any additional contact details to be provided by members to the secretariat by Friday 15 August 2008:

Local government and government departments:

1. NSW Planning
2. NSW Department of Environment and Climate Change
3. NSW Local Government and Shires Associations
4. NSW Councils
5. All Regional Organisations of Councils
6. NSW Aboriginal Land Council
7. State and territory government planning departments
8. Other international jurisdictions

Professional organisations:

1. Association of Accredited Certifiers
2. Archicentre
3. Association of Building Sustainability Assessors
4. Australian Architecture Association
5. Australian Consumers' Association
6. Australian Institute of Building Surveyors
7. Australian Institute of Conveyancers
8. Australian Institute of Project Management
9. Australian Retailers Association
10. Australian Steel Institute
11. Australian Water Association
12. Building Designers Association of NSW
13. Bulky Goods Retailers Association
14. Bus and Coach Association (NSW)
15. Business Council of Australia
16. Caravan & Camping Industry Association of NSW
17. Clean Up Australia
18. Committee for Sydney
19. Council of Social Services of NSW (NCOSS)
20. Energy Retailers Association of Australia
21. Engineers Australia Sydney Division
22. Environment Business Australia
23. Environmental Defenders Office
24. Greater Western Sydney Economic Development Board
25. Green Building Council of Australia
26. GROW Employment Council
27. Growth Centre Commission
28. Housing Industry Association (NSW)
29. Housing Industry Association (National)
30. Hunter Economic Development Corporation

31. Institute of Engineers Australia
32. Institute of Public Administration
33. JBA Urban Planning Consultants
34. Landcom
35. Local Government Managers Association (NSW)
36. Master Builders Association of NSW
37. Master Plumbers Association
38. Mobile Carriers Forum
39. National Association of Women in Construction
40. National Trust of Australia (NSW)
41. Nature Conservation Council
42. NSW Business Chamber
43. NSW Chamber of Commerce
44. NSW Council of Social Services
45. NSW Council of Tourist Association
46. NSW Farmer's Association
47. NSW Minerals Council Ltd
48. NSW University planning departments
49. Newcastle Master Builders Association
50. Planning Institute of Australia (NSW)
51. Planning Workshop Australia
52. Property Council of Australia (NSW)
53. Property Industry Foundation
54. The Royal Australian Institute of Architects NSW
55. Real Estate Institute of NSW
56. Retail Traders Association
57. Retirement Village Association
58. Royal Australian Institute of Architects
59. Shopping Centre Council of Australia
60. Sydney Chamber of Commerce
61. Sydney Ports
62. Timber Development Association
63. Total Environment Centre
64. Urban Development Institute of Australia
65. Union International Association of Public Transport
66. Urban Task Force

Industry:

1. A & V Mamone & Sons Construction Pty Ltd
2. ABI Group Ltd
3. Accord Pacific
4. AFC Aubrey F Crawley & Co
5. AHGIL
6. ANKA
7. Ashe Morgan Winthrop
8. AVM Constructions
9. Babcock & Brown Pty Ltd
10. Balmain NB
11. BDO Property
12. BIS Shrapnel Pty Ltd
13. Blue Hills Village
14. Boral Recycling
15. Bradcorp
16. Brenex Building & Property Developers
17. Bringelly Group
18. Brophy Oakley Consulting
19. Business Land Group
20. Caroline Pidcock Architects
21. CB Richard Ellis

22. CG Caverstock Group
23. CGE Australia
24. Charter Hall
25. Chesterton International Pty Limited
26. City Freeholds Pty Ltd
27. Coles Myer Ltd Retail Property
28. Colin Biggers & Paisley Slcrs
29. Colliers International Limited (NSW)
30. Colliers Jardine Limited
31. Concrete
32. Cornish Group
33. Crestway Constructions Pty Ltd
34. CSR Building Products Limited
35. DB Real Estate
36. DB RREEF Trust
37. Deacons
38. DesignInc
39. DLTR Update Magazine
40. Drummond & Rosen
41. ERM Mitchell McCotter
42. Forbes Rigby Pty Ltd
43. G & J Drivas Pty Limited
44. Gelonesi De Bortoli & Co
45. GHD
46. Glenmore Park Estates
47. Griffin Properties
48. Grosvenor
49. Handibuild
50. Harvey Norman
51. Hatmax
52. Hill & Knowlton
53. IKEA
54. Infrastructure and Planning Australia Pty Ltd
55. ING Real Estate Asset Management Australia
56. Ingovernment
57. Insurance Australia Group Limited
58. Investa Property Group
59. Jaguar Property Group
60. JOKONA Pty Ltd
61. Jones Lang La Salle
62. Ken Rootsey & Associates
63. Key Security
64. Kinsley & Associates Pty Ltd
65. Knight Frank
66. KPFW Pty Limited
67. Landmark White
68. Lensworth Glenmore Park
69. Lian Huat Group
70. Mahlab Cramb
71. Manpower
72. Market City Shopping Centre
73. MARS Property Media
74. Master Real Estate
75. Medina Executive Apartments
76. Melor Holdings
77. Metro Commercial Sales & Management Pty Limited
78. Michaelhull
79. Mirvac Group
80. MJD Valuers

81. National Australia Bank Limited
82. National Electrical & Communications Association
83. Newtown Developments Pty Ltd
84. Nigel Bowen Chambers
85. NM Rotschils & Sons
86. Oxford Property Group
87. Oz Design Furniture P/L
88. Paragon Retail Property Group
89. Pelorus Property Investments Ltd
90. Penrith Lakes Development Corp
91. PH Group of Companies
92. Phillips Fox (Lawyers)
93. Planning Development Solutions
94. Pongrass Development Group
95. Preston Development & Project Management
96. Pricewaterhouse Coopers
97. Remo Group Pty Ltd
98. Reserve Hotels Pty Limited
99. Ronmark Coporation Pty Limited
100. S & A Project Management
101. SAMADI Corporation
102. SG Australia Limited
103. Shark Hotel
104. Sheargold Group Developers & Property Consultants
105. Southern Cross Constructions
106. Southpac Projects
107. Souths Projects
108. SPOWERS
109. Stockland Trust Group
110. Suncorp Metway
111. Supercheap Auto
112. Sydney Home Finder
113. Taylor Kelso Lawyers
114. Tesrol Holdings Pty Ltd
115. Tenix Investments
116. The Coogee Bay Hotel
117. The Cox Group
118. The Hayson Group of Companies
119. The Peak
120. The Treadstone Co
121. The Warehouse Group Australia
122. TMG Developments Pty Ltd
123. Toga Group of Companies
124. Transfield Project Development Group
125. TTF Australia Ltd
126. Vermitech Pty Ltd
127. Vipkoma
128. Westfield Ltd
129. Westpac Institutional Bank
130. Westpoint Corporation Pty Ltd
131. Winchester Capital Management Limited
132. WT Malouf Pty Ltd
133. Xstrata Coal

6. Adjournment

The Committee adjourned at 2:50pm until 10:00am, 20 October 2008.

Simon Johnston

Clerk to the Committee

Minutes No. 22

Monday 20 October 2008

Room 1102, Parliament House, at 10:05am

1. Members presentMr Catanzariti (*Chair*)Mrs Pavey (*Deputy Chair*)

Mr Mason-Cox

Revd Nile

Ms Robertson

Mr Veitch

2. Confirmation of Minutes

Resolved, on the motion of Ms Robertson: That draft Minutes No 21 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 1 September 2008 – Letter from Ms Wendy Evans, Electorate Assistant, on behalf of the Hon Graeme Sturges MP, Minister for Infrastructure, Government of Tasmania, advising that the Committee's correspondence concerning the Inquiry into the New South Wales planning framework will be brought to the Minister's attention.
- 8 September 2008 - Letter from Mayor of Shoalhaven, Clr Greg Watson, advising that the Shoalhaven Council is considering making a submission to the Inquiry into the NSW planning framework.
- 8 September 2008 - Letter from Mr Michael Pahlow, General Manager, Local Government and Northern Australia, on behalf of the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, Australian Government, acknowledging the Committee's invitation to contribute to the Inquiry into the NSW planning framework.
- 10 September 2008 – Letter from Sophie Adlaf, Officer Manager, on behalf of the Hon Patrick Conlon MP, Minister for Transport, Infrastructure and Energy, Government of South Australia, advising that the terms of reference for the Inquiry into the New South Wales planning framework fall within the portfolio responsibility of the Minister for Urban Development and Planning, the Hon Paul Holloway MLC, and have been referred to that Minister for consideration.
- 6 October 2008 – Letter from Lord Mayor of Sydney advising that the Council of the City of Sydney will be making a submission to the Inquiry into the NSW planning framework.

Sent

- 25 August 2008, 28 August 2008 and 8 October 2008 - Letters inviting submissions to the Inquiry into the NSW planning framework (536 in total – list of recipients attached)
- 25 August 2008 – Letter from Chair to the Hon Justin Madden MLC, Minister for Planning, Government of Victoria, requesting information on Victoria's planning framework.
- 25 August 2008 – Letter from Chair to the Hon Allanah MacTiernan MLA, Minister for Planning and Infrastructure, Government of Western Australia, requesting information on Western Australia's planning framework.
- 25 August 2008 – Letter from Chair to the Hon Paul Lucas MP, Minister for Planning and Infrastructure, Queensland Government, requesting information on Queensland's planning framework.
- 25 August 2008 – Letter from Chair to the Hon Patrick Conlon MP, Minister for Infrastructure, Government of South Australia, requesting information on South Australia's planning framework.
- 25 August 2008 – Letter from Chair to the Hon Graeme Sturges MP, Minister for Infrastructure, Government of Tasmania, requesting information on Tasmania's planning framework.

- 25 August 2008 – Letter from Chair to the Hon Andrew Barr MP, Minister for Planning, Government of the Australian Capital Territory, requesting information on the Australian Capital Territory’s planning framework.
- 25 August 2008 – Letter from Chair to the Hon Delia Lawrie MLA, Minister for Planning and Lands, Government of the Northern Territory, requesting information on the Northern Territory’s planning framework.
- 25 August 2008 – Letter from Chair to the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, Government of Australia, requesting information on Australia’s planning framework.
- 25 August 2008 – Letter from Chair to the Rt Hon Hazel Blears MP, Secretary of State for Communities and Local Government, Government of the United Kingdom, requesting information on the UK’s planning framework.
- 25 August 2008 – Letter from Chair to the Hon Lawrence Cannon, Minister of Transport, Infrastructure and Communities, Government of Canada, requesting information on Canada’s planning framework.
- 25 August 2008 – Letter from Chair to the Hon Shane Jones, Minister for Building and Construction, Government of New Zealand, requesting information on New Zealand’s planning framework.

4. Inquiry into the NSW Planning Framework

Resolved, on the motion of Ms Robertson: That the Committee hold a meeting in the first sitting week in November, on a date and at a time to be confirmed by the Secretariat in consultation with Members’ offices, to consider the publication of a briefing note on the NSW planning framework prepared by the Parliamentary Library Research Service and the Secretariat.

5. #####

6. Adjournment

The Committee adjourned at 11:50am until the first sitting week in November, on a date and at a time to be confirmed by the Secretariat in consultation with Members.

Rachel Callinan

Clerk to the Committee

Minutes No. 23

Wednesday 12 November 2008

Room 1102, Parliament House, at 1:20pm

1. Members present

Mr Catanzariti (*Chair*)
 Mrs Pavey (*Deputy Chair*)
 Mr Mason-Cox
 Revd Nile
 Ms Robertson
 Mr Veitch

2. Confirmation of Minutes

Resolved, on the motion of Mrs Pavey: That draft Minutes No. 22 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 21 October 2008 – Letter from Councillor Sonya Phillips, Mayor, Central Ward, Baulkham Hills Shire Council, advising that the Council is likely to make a submission to the Inquiry into the NSW planning framework following the preparation of a report by the Council’s Environment and Planning Group.

- 3 November 2008 – Letter from Eric Lumsden PSM, Director General, Department for Planning and Infrastructure, Government of Western Australia, advising that the Department does not intend to make a submission to the Inquiry into the NSW planning framework.

4. Inquiry into the NSW Planning Framework

4.1 Consideration of draft discussion paper

Resolved, on the motion of Mr Veitch: That the draft discussion paper titled Inquiry into the NSW planning framework: discussion paper, November 2008 be the discussion paper of the Committee and that the Committee authorise the publication of the discussion paper in accordance with Standing Order 226(4).

Resolved, on the motion of Mr Veitch: That the closing date for submissions be extended to Friday 13 February 2009, and that the Secretariat write to stakeholders informing them of the extension, attaching the discussion paper.

4.2 Consideration of submissions

Resolved, on the motion of Mrs Pavey: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions Nos 1 to 5.

4.3 Consideration of proposed timetable

The Committee noted the proposed timetable for the Inquiry.

Resolved, on the motion of Revd Nile: That the Secretariat, in consultation with the Chair, circulate proposed hearing dates for March 2009 and proposed site visit dates for April/May 2009 to members for them to indicate their availability.

5. Adjournment

The Committee adjourned at 1:26pm, sine die.

Merrin Thompson

Clerk to the Committee

Minutes No. 24

Wednesday 3 December 2008

Member's Lounge, Parliament House, at 1:05pm

1. Members present

Mr Catanzariti (*Chair*)
Mrs Pavey (*Deputy Chair*)
Mr Mason-Cox
Ms Robertson
Mr Veitch

2. Apologies

Revd Nile

3. Confirmation of Minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No. 23 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Sent

- 17 November 2008 – Letter from Chair to key stakeholders advising of extension to submission closing date for the Inquiry into the NSW planning framework, and enclosing Inquiry into the NSW planning framework: discussion paper, November 2008.

5. Inquiry into the NSW Planning Framework

5.1 Consideration of submissions

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions Nos 6 to 10.

5.2 Consideration of proposed timetable

The Committee noted the proposed timetable for the Inquiry.

Resolved, on the motion of Ms Robertson: That the Committee hold public hearings on the following dates, with destinations for regional hearings to be determined and two additional dates for regional hearings to be confirmed by the Chair in consultation with the Committee:

Sydney hearings

- Monday 2 March
- Monday 9 March
- Monday 30 March
- Monday 1 June
- Tuesday 9 June
- Monday 15 June
- Monday 17 August
- Monday 24 August
- Tuesday 25 August

Regional hearings

- Tuesday 19 May
- Thursday 21 May
- Tuesday 26 May

Resolved, on the motion of Ms Robertson: That the Secretariat, in consultation with the Chair, identify potential witnesses for the public hearings in March 2009 and circulate the list to Committee members in February 2009 for comment and confirmation.

6. Adjournment

The Committee adjourned at 1:09pm until 9:30am Monday 2 March 2009.

Merrin Thompson
Clerk to the Committee

Minutes No. 25

Monday 2 March 2009

Room 1102, Parliament House, at 1:05pm

1. Members present

Mr Catanzariti (*Chair*)
Mrs Pavey (*Deputy Chair*)
Mr Mason-Cox
Mr Veitch

2. Apologies

Revd Nile
Ms Robertson

3. Confirmation of Minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No 24 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Sent

- 12 February 2009 – Letter from Chair to Registrar of Land and Environment Court of NSW advising of the Inquiry into the NSW planning framework and extending an invitation to the Court to make a submission.

Received

- 28 November 2008 – Letter from Paul Green, Mayor of Shoalhaven City Council to the Chair regarding extension of submission deadline.
- 10 December 2008 – Letter from Justin Madden, Minister for Planning in Victoria to the Chair regarding Victoria's review of the Planning and Environment Act 1987.
- 11 December 2008 – Letter from Delia Lawrie, Minister for Planning and Lands, Northern Territory to the Chair regarding lodgement of a submission.
- 6 January 2009 – Letter from Dr Deborah Dearing, NSW President, Australian Institute of Architects, welcoming the inquiry and identifying overseas jurisdictions.
- 27 January 2009 – Letter from Aaron Gadiel, Chief Executive Officer, Urban Taskforce Australia to the Chair requesting consent to lodge submission after the closing date.

5. Inquiry into the NSW Planning Framework

The Chair introduced to the Committee Ms Claire Allen, from the Department of Environment and Climate Change, a participant in the Working in the Legislative Council Program. The Committee welcomed Ms Allen.

5.3 Acceptance of submissions

Resolved, on the motion of Mr Mason-Cox: That the Committee continue to accept submissions and supplementary submissions to the Inquiry after the closing date.

5.4 Publication of submissions

Resolved, on the motion of Mr Mason-Cox: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submission Nos 11 to 72.

5.5 Regional public hearings

Resolved, on the motion of Mrs Pavey: That the Committee:

- fly to Queanbeyan on 18 May 2009 and conduct a public hearing at Queanbeyan on 19 May 2009.
- fly to Tamworth on the evening of 20 May 2009 and conduct a public hearing at Tamworth on 21 May 2009.
- fly to Ballina on the evening of 25 May 2009 and conduct a public hearing at Ballina on 26 May 2009.

Resolved, on the motion of Mr Veitch: That the Committee fly to Orange on the evening of 30 April 2009 and conduct a public hearing at Orange on 1 May 2009.

Resolved, on the motion of Mr Veitch: That the Committee conduct a further regional hearing on 29 May 2009 at a location to be determined by the Committee.

5.6 Attendance of regional council representatives at Sydney hearings in June and August

Resolved, on the motion of Mrs Pavey: That the Committee authorise the expenditure for travel costs for up to two representatives from regional councils that are invited to appear at public hearings held in Sydney.

6. Adjournment

The Committee adjourned at 1:25pm until 9:15am in the Jubilee Room, Parliament House, Monday 9 March 2009.

Rachel Simpson

Clerk to the Committee

Minutes No. 26

Monday 9 March 2009

Jubilee Room, Parliament House, at 9:15am

1. Members presentMr Catanzariti (*Chair*)Mrs Pavey (*Deputy Chair*)

Mr Mason-Cox (after item 3)

Revd Nile

Ms Robertson

Mr Veitch

2. Confirmation of Minutes

Resolved, on the motion of Ms Robertson: That draft Minutes No 25 be confirmed.

3. Inquiry into the NSW planning framework**3.1 Publication of submissions**

Resolved, on the motion of Revd Nile: That according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions 73 and 74.

3.2 Return of answers to questions taken on notice

Resolved, on the motion of Ms Robertson: That, for the duration of the Inquiry into the NSW planning framework, the Committee request witnesses to return answers to questions taken on notice during hearings within 21 days of the date on which the questions are forwarded to witnesses by the committee clerk.

3.3 Members' additional questions

Resolved, on the motion of Ms Robertson: That, for the duration of the Inquiry into the NSW planning framework, Members forward to the committee secretariat additional questions for witnesses who appear at Inquiry hearings by close of business two days following the date of the hearing at which the witnesses appeared.

3.4 Schematic diagrams of planning assessment and decision pathways

Resolved, on the motion of Mr Veitch: That the Chair, on behalf of the Committee, write to the Minister for Planning requesting that the Department of Planning prepare and provide to the Committee schematic diagrams illustrating the pathways of assessment and decision making that apply to the various categories of development proposals.

4. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Bill Mackay, Acting Director, Planning and Regulatory Services, City of Sydney
- Mr Michael Harrison, Director, Strategy and Design, City of Sydney
- Mr Andrew Thomas, Executive Manager, City Plan, City of Sydney

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Louise Southall, Policy Adviser, NSW Business Chamber

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Jeff Smith, Director, Environmental Defender's Office
- Mr Robert Ghanem, A/Policy Director, Environmental Defender's Office

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr John Mant, Planner and non-practicing lawyer

Mr Mant tendered a document containing the text of his opening statement and schematic diagrams depicting the current and a proposed alternative development assessment decision making process.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John Sheehan, Past President and Chair, NSW Government Liaison Committee, Australian Property Institute (API) – NSW Division
- Ms Gail Sanders, Executive Officer, Australian Property Institute – NSW Division

Mr Sheehan tendered a copy of a submission from the API – NSW Division to the independent review of the *Environment Protection and Biodiversity Conservation Act 1999*.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Julie Bindon, President, Planning Institute of Australia – NSW Division
- Mr Peter Jensen, NSW Planning Law Chapter Chair, Planning Institute of Australia – NSW Division

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Brian Zulaikha, Incoming President, Australian Institute of Architects (NSW Chapter)
- Mr Michael Neustein, Member, Australian Institute of Architects (NSW Chapter)
- Mr Murray Brown, Policy and Advocacy Manager, Australian Institute of Architects (NSW Chapter)

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:18pm.

The public and media withdrew.

5. Deliberative meeting

5.1 Acceptance and publication of tendered documents

Resolved, on the motion of Ms Robertson: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Opening statement and schematic diagrams depicting the current and a proposed alternative development assessment decision-making process, tendered by Mr John Mant.
- A copy of a submission from the API – NSW Division to the independent review of the Environment Protection and Biodiversity Conservation Act 1999, tendered by Mr John Sheehan.

5.2 Regional public hearing

Resolved, on the motion of Revd Nile: That the Committee fly to Albury on the evening of 28 May 2009 and conduct a public hearing at Albury on 29 May 2009.

6. Adjournment

The Committee adjourned at 4:30pm until 9:30am in the Jubilee Room, Parliament House, Monday 30 March 2009.

Rachel Simpson

Clerk to the Committee

Minutes No. 27

Monday 30 March 2009

Jubilee Room, Parliament House, at 9:30am

1. Members presentMr Catanzariti (*Chair*)Mrs Pavey (*Deputy Chair*)

Mr Mason-Cox (after item 3)

Revd Nile

Ms Robertson

Mr Veitch

2. Confirmation of Minutes

Resolved, on the motion of Ms Robertson: That draft Minutes No 26 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 25 March 2009 – Letter from Ms Louise Southall, NSW Business Chamber, containing answers to questions taken on notice at, and additional questions following, the public hearing on 9 March 2009.
- 26 March 2009 – Letter from Mr John Mant, containing answers to questions taken on notice at, and additional questions following, the public hearing held on 9 March 2009.

Sent:

- 11 March 2009 – Letter from the Chair to the Minister for Planning requesting that the Department of Planning prepare and provide to the Committee schematic diagrams illustrating the pathways of assessment and decision making that apply to various categories of development proposals.
- March 2009 – Various letters from the Chair to the relevant Regional Organisation of Councils and member Councils advising that the Committee will be conducting a public hearing for the Inquiry into the NSW planning framework in their regional area.

4. Inquiry into the NSW planning framework**4.1 Publication of answers to questions taken on notice**

Resolved, on the motion of Mr Veitch: That according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the correspondence, containing answers to questions taken on notice at, and additional questions following, the public hearing on 9 March 2009, received from Ms Louise Southall and from Mr John Mant.

4.2 Publication of submissions

Resolved, on the motion of Mrs Pavey: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions 7a, and 75 to 96.

5. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Sam Haddad, Director General, Department of Planning
- Mr Marcus Ray, Director, Legal Services, Department of Planning
- Ms Yolande Stone, Director, Policy and Systems Innovation, Department of Planning.

Mr Haddad tendered a document entitled: Flow Diagram of Steps in the Development Approval Processes.

The evidence concluded and the witnesses withdrew.

The following witness were sworn and examined:

- Clr Genia McCaffery, President, Local Government Association of NSW
- Mr Shaun McBride, Strategy Manager, Local Government and Shires Associations of NSW
- Ms Jennifer Denis, Policy Officer, Planning, Local Government and Shires Association of NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Aaron Gadiel, Chief Executive, Urban Taskforce Australia.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Edward Cassidy, Mayor, Ashfield Council.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Ken Morrison, NSW Executive Director, Property Council of Australia
- Mr Angus Nardi, NSW Deputy Executive Director, Property Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms John Brunton, Director, Environmental Services, Sutherland Shire Council.

Mr Brunton tendered a document entitled: Integration: Effective Planning Requires Integration through Collaboration.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Paul Lemm, Development Services Manager, Penrith City Council
- Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Cashel, Program Leader, Strategic Planning, Blue Mountains City Council
- Mr Peter Adams, Group Manager, Community and Corporate, Blue Mountains City Council.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:42pm.

The public and media withdrew.

6. Deliberative meeting

Acceptance and publication of tendered documents

Resolved, on the motion of Mr Veitch: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Flow Diagram of Steps in the Development Approval Processes, tendered by Mr Sam Haddad, Director General, Department of Planning.
- Integration: Effective Planning Requires Integration through Collaboration, tendered by Mr John Brunton, Director, Environmental Services, Sutherland Shire Council.

7. Adjournment

The Committee adjourned at 4:55pm until Friday 1 May (public hearing – Orange).

Rachel Simpson

Clerk to the Committee

Minutes No. 28

Friday 1 May 2009

Orange City Council, at 9:45am

1. Members present

Mr Catanzariti (*Chair*)

Revd Nile

Ms Robertson

Mr Veitch

Ms Griffin (participating)

The Chair advised that Ms Griffin would be attending the meeting as a participating member.

2. Apologies

Mrs Pavey

Mr Mason-Cox

3. Confirmation of Minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No 27 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received:

- 26 March 2009 – Letter from Mr John Mant, containing answers to questions taken on notice at, and additional questions following, the public hearing on 9 March 2009, and a briefing paper on proposed reforms to the South Australian planning system.
- 30 March 2009 – Letter from Ms Julie Bindon, NSW President, Planning Institute of Australia, containing answers to questions taken on notice at the public hearing on 9 March 2009.
- 16 April 2009 – Letter from Mr Aaron Gadiel, Chief Executive Officer, Urban Taskforce Australia regarding the release of the report 'Liveable Centres'.
- 21 April 2009 – Letter from Cllr Ted Cassidy, Mayor, Ashfield Council containing answers to questions taken on notice at the public hearing on 30 March 2009.
- 3 April 2009 – Letter from Mr Michael Harrison, Director City Strategy and Design, City of Sydney, containing answers to questions taken on notice at the public hearing on 9 March 2009.
- 27 April 2009 – Letter from the Hon Kaye Griffin MLC to the Chair regarding her attendance and participation at the Orange regional hearing on 1 May 2009
- 28 April 2009 – Letter from Mr Aaron Gadiel, Urban Taskforce Australia, containing answers to questions taken on notice at the public hearing on 30 March 2009.
- 28 April 2009 – Letter from the Local Government and Shires Associations of NSW containing answers to questions taken on notice at the public hearing on 30 March 2009.
- 28 April 2009 – Letter from Mr Peter Adams, Group Manager, Community and Corporate, Blue Mountains City Council, containing answers to questions taken on notice at the public hearing on 30 March 2009.
- 28 April 2009 – Answers to questions on notice from Mr Sam Haddad, Director General, Department of Planning, taken on notice at the public hearing on 30 March 2009

Sent:

- 2 April 2009 – Letters from the Chair to the Members of Parliament for Orange, Monaro, Tamworth, Ballina and Albury advising of the date the Committee will be conducting a public hearing of the Inquiry into the NSW planning framework in their area.

5. Publication of answers to questions taken on notice

Resolved, on the motion of Revd Nile: That according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the correspondence, containing answers to questions taken on notice at the public hearings held on 9 and 30 March 2009.

6. Publication of submissions

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions Nos 97 to 102.

7. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Clr Reg Kidd, Mayor, Orange City Council and Executive Councillor, NSW Farmer's Association
- Ms Elizabeth Tomlinson, Executive Councillor and Association President's Taskforce for Land Use Planning, NSW Farmer's Association

Clr Kidd tendered his opening statement.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Craig Filmer, Director, Planning and Environment, Young Shire Council

Mr Filmer tendered the following documents: His opening statement; and Report to February 2008 Young Shire Council Meeting: The NSW Planning Reforms Proposal.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Jennifer Bennett, Executive Officer, Central NSW Councils (CENTROC)
- Mr Garry Styles, General Manager, Orange City Council

Ms Bennett tendered a submission from CENTROC.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Shaw, Director, Environmental, Planning and Building Services, Bathurst Regional Council

Mr Shaw tendered his opening statement.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Greg Cooper, Director, Environmental Services, Cabonne Council

The evidence concluded and the witness withdrew.

The public hearing concluded at 3:15pm.

The public and media withdrew.

8. Acceptance and publication of tendered documents

Resolved, on the motion of Revd Nile: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Opening statement, tendered by Clr Reg Kidd, Mayor, Orange City Council and Executive Councillor, NSW Farmer's Association
- Opening statement and Report to February 2008 Young Shire Council Meeting: The NSW Planning Reforms Proposal, tendered by Mr Craig Filmer, Director, Planning and Environment, Young Shire Council
- Submission, tendered by Ms Jennifer Bennett, Executive Officer, Central NSW Councils (CENTROC)
- Opening statement, tendered by Mr David Shaw, Director, Environmental, Planning and Building Services, Bathurst Regional Council

9. Correspondence regarding the Building Professionals Board

The Committee considered the issue, which had been raised during the public hearing, of the ability of the Building Professionals Board to pursue complaints against private certifiers and to adequately penalise those certifiers found guilty of misconduct.

Resolved, on the motion of Ms Robertson: That the secretariat prepare, for consideration by the Committee, draft correspondence to the Minister for Planning regarding the adequacy of the powers and the actions of the Building Professionals Board in effectively managing complaints against and the performance of private certifiers.

10. Adjournment

The Committee adjourned at 3:15pm until Tuesday 19 May (public hearing – Queanbeyan).

Rachel Simpson

Clerk to the Committee

Minutes No. 29

Tuesday 19 May 2009

Airport International Motel, Queanbeyan, at 9:30am

1. Members present

Mr Catanzariti (*Chair*)
 Ms Pavey (*Deputy Chair*)
 Revd Nile
 Mr Mason-Cox
 Ms Robertson
 Mr Veitch

2. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Lorena Blacklock, Strategic Planning Coordinator, Queanbeyan City Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council

Mr Clark tendered his opening statement.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Chris Berry, Acting General Manager, Goulburn Mulwaree Council

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Byron, Managing Director, Canberra Airport
- Mr Noel McCann, Director, Planning, Canberra Airport
- Mr Andrew Leece, Manager Regulatory Affairs, Canberra Airport

Mr Stephen Byron tendered two maps showing Canberra Airport.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Margot Sachse, President, Jerrabomberra Residents' Association

Ms Margot Sachse tendered a map of Jerrabomberra

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Robert Winnel, Chief Executive Officer, The Village Building Company
- Mr Ken Ineson, General Manager, Special Projects and Feasibilities, The Village Building Company

Mr Ineson tendered his opening statement, two maps of Canberra International Airport and a document on the Australian Noise Exposure Forecast.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3:54pm.

The public and the media withdrew.

3. **Confirmation of Minutes**

Resolved, on the motion of Mr Veitch: That draft Minutes No 28 be confirmed.

4. **Correspondence**

The Committee noted the following items of correspondence:

Received:

- 5 May 2009 – Letter from Mr John Brunton, Director, Environmental Services, Sutherland Shire Council, containing answers to additional questions from the hearing on 30 March 2009.
- 6 May 2009 – Letter from Hon Frank Sartor MP, State Member for Rockdale, regarding lodgement of a submission and appearance as a witness for the NSW Planning Framework inquiry. Committee to consider the request of Mr Sartor.
- 8 May 2009 – Letter from Mr Ken Morrison, NSW Executive Director, Property Council of Australia, containing answers to additional questions from the hearing on 30 March 2009.

5. Resolved, on the motion of Ms Robertson: That the Hon Frank Sartor, MP be invited to appear as a witness at the public hearing on 15 June 2009.

6. **Publication of answers to questions taken on notice**

Resolved, on the motion of Revd Nile: That according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from Mr John Brunton and Mr Ken Morrison.

7. Publication of submissions

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of submission Nos 103, 104, and 106 to 108 and that submission No 105 be kept confidential at the request of the author.

8. Acceptance and publication of tendered documents

Resolved, on the motion of Ms Robertson: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Opening statement, tendered Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council
- Two maps of Canberra Airport, tendered by Mr Stephen Byron, Managing Director, Canberra Airport
- Opening statement, two maps of Canberra International Airport and a document on the Australian Noise Exposure Forecast tendered by Mr Ken Ineson, General Manager, Special Projects and Feasibility, The Village Building Company
- Map of Jerrabomberra, tendered by Ms Margot Sachse, President, Jerrabomberra Residents' Association

9. Suppression of evidence

Resolved, on the motion of Robertson: That, evidence given by Mr Winnell referring to discussions by the Regional Express Airlines Board be suppressed.

10. Adjournment

The Committee adjourned at 3:54pm until Thursday 21 May (public hearing – Tamworth).

Rachel Simpson

Clerk to the Committee

Minutes No. 30

Tuesday 21 May 2009

Quality Hotel Powerhouse, Tamworth, at 9:30am

1. Members present

Mr Catanzariti (*Chair*)
 Ms Pavey (*Deputy Chair*)
 Revd Nile (from 10am)
 Mr Mason-Cox
 Ms Robertson
 Mr Veitch

2. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Cllr James Treloar, Mayor, Tamworth City Council
- Mr Glen Inglis, General Manager, Tamworth City Council
- Ms Genievie Harrison, Manager, Strategic Planning, Tamworth City Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Silver, Namoi Regional Organisation of Councils
- Ms Katrina McDonald, Executive Officer, Namoi Regional Organisation of Councils
- Mr James McDonald, Chairman, Namoi Regional Organisation of Councils and Catchment Management Authority

Mr Silver tendered a map showing coal tenements in Namoi Valley.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Fiona Simson, Executive Councillor and Member, Conservation and Resource Management Committee, NSW Farmers' Association

Ms Simson tendered her opening statement.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Graham Gardiner, Director of Planning and Building, Greater Taree City Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Richie Thornton, Member, Tamworth & District Chamber of Commerce & Industry

The evidence concluded and the witness withdrew.

The public hearing concluded at 3:05pm.

The public and the media withdrew.

3. Acceptance and publication of tendered documents

Resolved, on the motion of Ms Robertson: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Map showing coal tenements in Namoi Valley, tendered by Mr Michael Silver, Namoi Regional Organisation of Councils
- Opening statement, tendered by Ms Fiona Simson, Executive Councillor and Member, Conservation and Resource Management Committee, NSW Farmers' Association

4. Adjournment

The Committee adjourned at 3:15pm until Tuesday 26 May (public hearing – Ballina).

Rachel Simpson

Clerk to the Committee

Minutes No. 31

Tuesday 26 May 2009

Ramada Hotel, Ballina at 9:15am

1. Members present

Mr Catanzariti (*Chair*)

Ms Pavey (*Deputy Chair*)

Revd Nile (from 10:15 am)

Ms Robertson

Mr Veitch

2. Apologies

Mr Mason-Cox

3. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Kate Singleton, Strategic Planner, Strategic Services Group, Ballina Shire Council
- Mr Matthew Wood, Strategic Planner, Strategic Services Group, Ballina Shire Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Clr Jan Barham, Mayor, Byron Shire Council
- Mr Ray Darney, Director of Planning, Byron Shire Council

Clr Barham tendered the Byron Local Environmental Plan 1988 and Byron Shire Council resolution.

Mr Darney tendered a copy of section 5 of the Environmental Planning and Assessment Act 1979.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Ken Exley, Director, Environment Development Service, Richmond Valley Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tony Thorne, Urban Institute of Australia

Ms Pavey left the meeting.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2:47pm.

The public and the media withdrew.

4. Acceptance and publication of tendered documents

Resolved, on the motion of Ms Robertson: That the Committee accept and publish, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1) the following documents tendered during the public hearing:

- Byron Local Environmental Plan 1988 and Byron Shire Council resolution tendered by Clr Jan Barham, Mayor, Byron Shire Council
- Section 5 of the Environmental Planning and Assessment Act 1979 tendered by Mr Ray Darney, Director of Planning, Byron Shire Council.

5. Land and Environment Court processes

Resolved, on the motion of Mr Veitch: That the Committee write to the Land and Environment Court seeking clarification of the process by which appeals relating to development consent decisions may come before the Court; are dealt with by the Court; and decisions of the Court are enforced.

6. Witnesses at upcoming meeting

Resolved, on the motion of Mr Veitch: That the Committee invite representatives of the Parliamentary Counsel's Office to appear and give evidence at a future public hearing of the inquiry into the NSW Planning Framework.

7. Adjournment

The Committee adjourned at 3:00pm until Friday 29 May (public hearing – Albury).

Rachel Simpson
Clerk to the Committee

Minutes No. 32

Friday 29 May 2009

Quest Albury, Albury at 9:45 am

1. Members present

Mr Catanzariti (*Chair*)

Ms Pavey (*Deputy Chair*)

Revd Nile

Ms Robertson

Mr Veitch

2. Apologies

Mr Mason-Cox

3. Publication of submissions

Resolved, on the motion of Mr Veitch: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 233(1), the Committee authorise the publication of Submission Nos 109 to 110.

4. Public hearing - Inquiry into the NSW Planning Framework

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Clr Patricia Gould, Mayor, Albury City Council
- Mr Les Tomich, General Manager, Albury City Council
- Mr Michael Keys, Director, Planning and Economic Development, Albury City Council

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Ian Graham, Consultant Planner

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr George Cilliers, Planning and Environment Manager, Griffith City Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Elizabeth Stoneman, Manager, Planning and Development Services, Leeton Shire Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mrs Louise Burge, Board member, Executive Councillor and Chair, Conservation and Resource Management Committee, NSW Farmer's Association

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Bob Karaszekewych, Director of Planning, Wagga Wagga City Council
- Mr Kerry Pascoe, Mayor and Councillor, Wagga Wagga City Council

The evidence concluded and the witnesses withdrew.

Mr Catanzariti left the meeting. Ms Pavey took the Chair.

The following witnesses were sworn and examined:

- Mr Rod Jones, Land Sales Manager, Alatalo Bros
- Ms Heather McCallum, Planning Manager, Esler & Associates
- Mr Adam Dyde, Director, Envolutions Pty Ltd

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:45pm.

The public and the media withdrew.

5. **Adjournment**

The Committee adjourned at 4:45 pm until Monday 15 May 2009 (public hearing – Parliament House).

Rachel Simpson

Clerk to the Committee

Minutes No. 33

Monday 15 June 2009

Jubilee Room, Parliament House, at 10:20am

1. **Members present**

Mr Catanzariti (*Chair*)

Ms Pavey (*Deputy Chair*) (until 12:45pm)

Revd Nile (after item 4)

Ms Robertson

Mr Mason-Cox

2. **Apologies**

Mr Veitch

3. **Publication of submission**

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 233(1), the Committee authorise the publication of Submission No 111.

4. **Inquiry into the NSW Planning Framework – public hearing**

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined:

- Hon Frank Sartor MP, Member for Rockdale

Mr Sartor tendered a document entitled: Development Assessment Forum News Feb 2004.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Clr Alison McLaren, President, Western Sydney Regional Organisation of Councils Ltd (WSROC)
- Mrs Sharon Fingland, Assistant Director, WSROC

The evidence concluded and the witnesses withdrew.

The public hearing adjourned at 12:00pm. The public and the media withdrew.

Revd Nile joined the meeting.

5. Confirmation of minutes

Resolved, on the motion of Ms Robertson: That Minutes Nos 29 to 32 be confirmed.

6. Publication of submission

Resolved, on the motion of Mr Mason-Cox: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication Supplementary Submission No 45a.

7. Future public hearings – selection of witnesses

Resolved, on the motion of Rev Nile: That the following witnesses be invited to give evidence at a public hearing on 17, 24 or 25 August 2009, and that Members provide names of additional witnesses to the Secretariat by 5pm, Thursday 18 June 2009:

- Rural Fire Service – Assistant Commissioner Rob Rogers, Director, Operational Services
- Port Stephens Council – Cllr Bruce Mackenzie, Mayor
- Local Government Planning Directors Group – Mr David Broyd
- NSW Minerals Council – Ms Sue-Ern Tan, General Manager, Policy and Strategy
- Housing Industry Association – Mr Graham Wolfe, Executive Director, NSW Region
- NSW Farmers' Association – Ms Lorraine Wilson, Executive Councillor.
- Parliamentary Counsels' Office – Mr Don Colagiuri SC, Parliamentary Counsel
- NSW Department of Planning
- NSW Department of Environment and Climate Change
- Shires Association of NSW – Cr Bruce Miller, President
- Council of Social Service of NSW
- National Trust of Australia (NSW)
- Nature Conservation Council of NSW
- University of New England.

Ms Pavey left the meeting.

8. Inquiry into the NSW Planning Framework – public hearing cont.

The public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Judy McKittrick, President, Urban Development Institute of Australia – NSW
- Mr Tim Robertson, Senior Policy Officer, UDIA - NSW
- Ms Jenny Rudolph, Councillor, UDIA – NSW

Evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia (SCCA)
- Ms Katy Jackett, Deputy Director, SCCA

Evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:00pm.

The public and the media withdrew.

9. Acceptance of document tendered during the public hearing

Resolved, on the motion of Ms Robertson: That the Committee accept the following document tendered during the public hearing:

- Development Assessment Forum News Feb 2004 tendered by Hon Frank Sartor MP, Member for Rockdale

10. Adjournment

The Committee adjourned at 4:05 pm until Monday 17 August 2009 (public hearing – Parliament House).

Rachel Simpson

Clerk to the Committee

Minutes No. 34

Monday 17 August 2009

Jubilee Room, Parliament House, at 9:50 am

1. Members present

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Mr Mason-Cox

Revd Nile (after item 4)

Ms Robertson

Mr Veitch

2. Change in committee membership

The Chair referred to Legislative Council Minutes No. 107 – Thursday 18 June 2009, item 8, in which the President informed the House that the Leader of the Opposition had that day nominated Mr Colless as a member of the Standing Committee on State Development in place of Mrs Pavey. The President further informed the House that the Leader of the Opposition had this day nominated Mr Colless as Deputy Chair of the Committee.

The Chair, on behalf of the Committee, welcomed Mr Colless.

The Committee acknowledged and expressed its appreciation of the participation and contribution of Mrs Pavey during her membership of the committee.

3. Confirmation of minutes

Resolved, on the motion of Mr Veitch: That Minutes No 33 be confirmed.

4. Correspondence***Received:*****Answers to questions**

- 15 May 2009 – Letter from Mr Paul Lemm, Development Services Manager, Penrith City Council, enclosing answers to questions taken on notice at the public hearing on the 30 March 2009, including answers to additional questions.
- 18 May 2009 – Document from Elizabeth Tomlinson, Farmers' Association, containing answers to questions taken on notice at the public hearing on the 1 May 2009
- 2 June 2009 – Letter from Mr Michael Keys, Director Planning and Economic Development, Albury City Council, enclosing responses to additional questions on notice following the public hearing on 29 May 2009
- 12 June 2009 – Letter from Mr Chris Berry, Acting General Manager, Goulburn Mulwaree Council, enclosing answers to questions taken on notice at the public hearing on the 19 May 2009 and additional information.
- 17 June 2009 – Letter from Mr Gordon Clark, Strategy Planning Manager, Shoalhaven City Council, enclosing answers to questions taken on notice at the public hearing on the 19 May 2009.
- 19 June 2009 – Letters (2) from Mr Ray Darney, Director of Planning, Development & Environment Services, Byron Shire Council, enclosing answers to questions taken on notice at the public hearing on 26 May 2009 and additional information.
- 19 June 2009 – Letter from Ms Elizabeth Stoneman, Planning and Development Services, Leeton Shire Council, containing answers to questions taken on notice at the public hearing on 29 May 2009.
- 23 June 2009 – Documents from Mr Ken Ineson, The Village Building Company Ltd, General Manager, Projects and Feasibility, containing answers to questions taken on notice at the public hearing on 19 May 2009 and additional information.
- 23 June 2009 – Letter from Mr Bob Karaszewych, Director Planning, Wagga Wagga City Council, containing answers to questions on taken notice at the public hearing on 29 May 2009 and additional information.

- 24 June 2009 – Document from the Tamworth and District Chamber of Commerce and Industry, providing an answer to a question taken on notice at the public hearing on 21 May 2009 (attached).
- 24 June 2009 – Document from Wagga Wagga City Council, containing answers to questions taken on notice at the public hearing on 29 May 2009.
- 25 June 2009 – Documents from Mrs Sharon Fingland, Assistant Director, Western Sydney Regional Organisation of Councils Ltd, enclosing answers to questions taken on notice at the public hearing on 15 June 2008 and three additional reports/documents.
- 26 June 2009 – Letter from Mr Stephen Barnier, Group Manager, Strategic Services Group, Ballina Shire Council, enclosing answers to questions taken on notice at the public hearing on 26 May 2009 and answers to additional questions.
- 26 June 2009 – Letter from Mr George Cilliers, Planning and Environment Manager, Griffith City Council, containing an answer to a question taken on notice at the public hearing on 29 May 2009 and additional answers to questions.
- 7 July 2009 – Email from Hon Frank Sartor MP, Member for Rockdale, enclosing answers to additional questions following the public hearing 15 June 2009.
- 10 July 2009 – Letter from Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia, containing answers to additional questions.

General correspondence

- 12 June 2009 – Document from Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia, comprising a submission to the Better Regulation Office.
- 25 June 2009 – Letter from Mr Stephen Byron, Managing Director, Canberra Airport, enclosing a copy of the press release from Minister Albanese regarding the Sydney Airport Master Plan 2009.
- 29 June 2009 – Letter from Mr Stephen Byron, Managing Director, Canberra Airport, enclosing a discussion paper entitled “Safeguards for airports and the communities around them”.
- 13 July 2009 – Email from Luke Mackenzie, IGA Distribution Pty Limited, attaching a discussion paper on 'Promoting economic growth and competition through the planning system', prepared by Wakefield Planning.
- 6 August 2009 – Letter from Noel Baum, Acting Assistant Secretary General, Local Government Association and Shires Association of NSW, to the Secretariat regarding Councillor Miller’s unavailability for the August public hearings.
- 11 August 2009 – Letter from Acting Commissioner Rob Rogers, Rural Fire Service, to Chair requesting a rescheduling of his appearance before the Committee.

Sent:

- 23 June 2009 – Letter to Mr Don Colagui SC, Parliamentary Counsel, from the chair, inviting PCO representatives to appear and give evidence at one of the remaining public hearings in August.
- 23 June 2009 – Letter to Hon Carmel Tebbutt MP, Deputy Premier, from the chair, inviting Department of Environment and Climate Change representatives to appear and give evidence at one of the remaining public hearings in August.
- 23 June 2009 – Letter to Hon Kristina Keneally MP, Minister for Planning, and Minister for Redfern Waterloo, from the chair, raising the issue that has come out of the inquiry regarding the sub-standard performance of some private certifiers and the perceived lack of adequate response by the Building Professional Board.
- 23 June 2009 – Letter to the Registrar of the Land and Environment Court of NSW, from the chair, seeking written clarification of the process by which class 1 and 2 appeals may come before the court; are dealt with and determined by the Court; and how decisions of the Court are policed and enforced.

Resolved, on the motion of Mr Mason-Cox: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to questions taken on notice by witnesses.

5. Publication of submissions

Resolved, on the motion of Mr Veitch: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication Supplementary Submission Nos 33a, 26a, 91a, and Submission Nos 112, 113 and 114.

Resolved, on the motion of Mr Veitch: That supplementary submission No 33b be kept confidential.

6. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Clr Bruce Mackenzie, Mayor, Port Stephens Council
- Mr David Broyd, Group Manager, Sustainable Planning, Port Stephens Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Broyd, Port Stephens Council, Local Government Planning Directors Group (on former oath)
- Mr Malcolm Ryan, Warringah Council, Local Government Planning Directors Group

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Sue-Ern Tan, General Manager, Policy and Strategy, NSW Minerals Council
- Ms Rachelle Benbow, Director, Environment and Community, NSW Minerals Council

Ms Tan tendered a hard copy of a powerpoint presentation entitled: Inquiry into the NSW Planning Framework, NSW Minerals Council Opening Statement, 17 August 2009.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1:30 pm.

The public and the media withdrew.

7. Acceptance and publication of document tendered during the public hearing

Resolved, on the motion of Ms Robertson: That the Committee accept and publish the following document tendered during the public hearing:

- Inquiry into the NSW Planning Framework, NSW Minerals Council Opening Statement, 17 August 2009, tendered by Ms Sue-Ern Tan, General Manager, Policy and Strategy, NSW Minerals Council.

8. Adjournment

The Committee adjourned at 1:40 pm until 9:45am Monday 24 August 2009.

Rachel Simpson

Clerk to the Committee

Minutes No. 35

Monday 24 August 2009

Jubilee Room, Parliament House, at 9:50 am

1. Members present

Mr Catanzariti (*Chair*)
 Mr Colless (*Deputy Chair*)
 Revd Nile
 Mr Veitch
 Mr Mason-Cox

2. Apologies

Ms Robertson.

3. Confirmation of minutes

Resolved, on the motion of Mr Veitch: That Minutes No 34 be confirmed.

4. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mrs Lorraine Wilson, Executive Councillor, NSW Farmers' Association

Mrs Wilson tendered her opening statement.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Fred Harrison, CEO, Ritches Group, Independent Retailers
- Mr Carlo Cavallaro, CEO, Cavallaro Group, Independent Retailers
- The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr John Formby, Phd, Environmental Policy, Chairman, Friends of Crookwell

The evidence concluded and the witness withdrew.

The following representatives from the Council of Social Service of NSW (NCOSS) were sworn and examined:

- Mr Warren Gardiner, Senior Policy Officer, NCOSS
- Ms Alison Peters, Director, NCOSS

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Graham Wolfe, Executive Director, NSW Region, Housing Industry Association Ltd.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3:45 pm.

The public and the media withdrew.

5. Transcript of Mr Fred Harrison, CEO, Ritchies Group, Independent Retailers evidence

Resolved, on the motion of Mr Veitch: That evidence regarding an independent fuel station, mentioned by Mr Fred Harrison during his evidence, be suppressed, at his request due to the confidentiality.

6. Adjournment

The Committee adjourned until 9:15am Tuesday 25 August 2009.

John Young

Clerk to the Committee

Minutes No. 36

Tuesday 25 August 2009

Jubilee Room, Parliament House, at 9.30am

1. Members present

Mr Catanzariti (*Chair*)
 Mr Colless (*Deputy Chair*)
 Mr Mason-Cox (from 12:15)
 Revd Nile
 Ms Robertson
 Mr Veitch

2. Inquiry into the NSW Planning Framework – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following representatives from the NSW Department of Planning were sworn and examined:

- Mr Sam Haddad, Director General, Department of Planning
- Mr Marcus Ray, Executive Director, Assessment Systems, General Counsel, Department of Planning
- Ms Yolande Stone, Director, Policy, Planning Systems and Reform, Department of Planning

Mr Haddad tendered a document entitled Regional Strategy Update Report 2009.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Don Colagiuri SC, Parliamentary Counsel, Parliamentary Counsel's Office

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Assistant Commissioner Rob Rogers AFSM, Director, Operational Services, NSW Rural Fire Service

Mr Mason-Cox joined the meeting.

The evidence concluded and the witness withdrew.

The following representatives from the Nature Conservation Council of NSW were sworn and examined:

- Ms Anne Reeves, Executive
- Mr James Ryan, Honorary Treasurer

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Joe Woodward, Deputy Director General, Environment Protection and Regulation Group, Department of Environment, Climate Change and Water
- Mr Mark Gifford, Director, Reform and Compliance, Department of Environment, Climate Change and Water
- Mr Tom Grosskopf, Director, Landscapes and Ecosystems Conservation, Department of Environment, Climate Change and Water

Mr Woodward tendered a document regarding sea level projections, four pages of maps/graphs

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3:35 pm.

The public and the media withdrew.

3. Acceptance and publication of document tendered during the public hearing

Resolved, on the motion of Mr Veitch: That the Committee accept and publish the following document tendered during the public hearing:

- Sea level projections maps/graphs tendered by Mr Joe Woodward.

4. Adjournment

The Committee adjourned at 3:37 pm until 7 December 2009.

John Young

Clerk to the Committee

Minutes No. 37

Monday, 7 December 2009

Room 1102, Parliament House at 10:00 am

1. Members present

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Revd Nile

Ms Robertson

Mr Mason-Cox

Mr Veitch

2. Confirmation of minutes

Resolved, on the motion of Reverend Nile: that Draft Minutes Nos 35 and 36 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence received:

- 31 August 2009 – Letter from Mr Andrew Leece, General Counsel, Canberra Airport, requesting the delay of NSW Planning Framework report until after the release of the Commonwealth Government's White Paper for a National Aviation Policy.
- 25 September 2009 – Letter from Ms Joanne Gray, A/g Registrar, NSW Land and Environment Court, responding to our request for information regarding the process for Class 1 and Class 2 appeals.
- 29 October 2009 - Letter from Hon Robyn Parker, Chair, General Purpose Standing Committee 2, regarding the adoption by all Committees of a Vulnerable Witness Protocol.

Answers to questions

- 14 September 2009 – Ms Sue-Ern Tan, General Manager Policy and Strategy, New South Wales Minerals Council Ltd, taken at hearing 17 August 2009
- 16 September 2009 – Mrs Lorraine Wilson, Executive Councillor, NSW Farmers' Association, taken at hearing 24 August 2009
- 16 September 2009 – Mr Rob Rogers, Assistant Commissioner, NSW Rural Fire Service, taken at hearing 25 August 2009
- 18 September 2009 – Part 1 - Mr Fred Harrison and Mr Carlo Cavalaro, IGA, taken at hearing 24 August 2009
- 22 September 2009 – NSW Department of Environment, Climate Change and Water, taken at hearing 25 August 2009
- 23 September 2009 – NSW Department of Planning, taken at hearing 25 August 2009
- 16 October 2009 – Mr Graham Wolfe, Executive Director, Housing Industry Association Ltd, taken at hearing 24 August 2009
- 30 October 2009 – Part 2 - Mr Fred Harrison and Mr Carlo Cavalaro, IGA, taken at hearing 24 August 2009

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from:

- New South Wales Minerals Council Ltd
- NSW Farmers' Association

- NSW Rural Fire Service
- IGA
- NSW Department of Environment, Climate Change and Water
- NSW Department of Planning
- Housing Industry Association Ltd

4. Publication of submission

Resolved, on the motion of Ms Robertson: That, according to Section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and standing order 223(1), the Committee authorise publication of submission No 115.

5. Draft Protocol for vulnerable witnesses

Resolved, on the motion of Revd Nile: That the Committee adopt the draft Protocol for Vulnerable Witnesses, subject to the provision of Crown Solicitor's advice the legal implications for the Secretariat of the draft protocol.

6. Consideration of draft report – inquiry into the New South Wales Planning Framework

The Chair tabled his draft report entitled New South Wales Planning Framework, which, having been previously circulated was taken as being read.

Chapter 1 read.

Resolved, on the motion of Revd Nile: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Revd Nile: That Chapter 2 be adopted.

Chapter 3 read.

Resolved on the motion of Mr Colless: That paragraph 3.30 be amended by omitting the word 'best' and inserting instead the word 'preferred' and by omitting the words 'helps create the best, most sustainable communities in the country' and inserting instead the words 'meets the social economic and environmental expectations and needs of the local community.'

Resolved on the motion of Ms Robertson: That paragraph 3.61 be amended by omitting the words 'acted as' and inserting instead the words 'noted the argument that'.

Resolved on the motion of Mr Colless: That the first paragraph of Recommendation 1 be amended by omitting the words 'as required'.

Resolved on the motion of Ms Robertson: That the third paragraph of Recommendation 1 be amended by omitting the words 'as required'.

Resolved on the motion of Ms Robertson: That the fourth paragraph of Recommendation 1 be amended by inserting the words 'and build upon the work of this committee's report' at the end of the paragraph.

Resolved on the motion of Revd Nile: That the fifth paragraph of Recommendation 1 be amended by inserting the words 'recognising that it can take up to five years' at the end of the paragraph.

Resolved, on the motion of Revd Nile: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved on the motion of Ms Robertson: That paragraph 4.62 be amended by omitting the words 'wherever practicable government agencies should seek to use common regional boundaries. The Committee commends the DECCW for its decision to use common boundaries when developing its RCPs' and inserting instead with 'the New South Wales government must develop and implement common regional boundaries for use by government agencies and the planning framework.'

Resolved, on the motion of Mr Colless: That a new recommendation be inserted after paragraph 4.62 to read: 'That the New South Wales government develop and implement common regional boundaries for use by government agencies and the planning framework.'

Resolved on the motion of Ms Robertson: That paragraph 4.91 be amended by inserting an additional sentence following the first to read 'Regional offices have an important role as a conduit for information both from the region and to the region and this role must be recognised by the Department of Planning.'

Resolved on the motion of Mr Mason-Cox: That paragraph 4.136 be omitted: 'The Committee notes the comment on the perception that the development industry and local councils are in complete opposition with each other. In reality they frequently share the same goal, namely the efficient, sustainable and affordable development of land so as to cater for an increasing population.'

Resolved, on the motion of Mr Colless: That Chapter 4, as amended, be adopted.

Chapter 5 Read.

Resolved, on the motion of Mr Colless: That Recommendation 4 be amended by omitting the word 'new' and inserting instead the words 'standard instrument' and by omitting the word 'made'.

Resolved, on the motion of Revd Nile: That Chapter 5, as amended, be adopted.

Chapter 6 Read.

Resolved, on the motion of Mr Colless: That an additional paragraph be inserted immediately following paragraph 6.36 to read:

'The Committee believes that Part 3A development approvals should seek to be compliant with the relevant Local Environmental Plan and Development Control Plan. The Committee acknowledges that in the case of state significant development this cannot always be the case. However, when development approval is granted the Minister for Planning needs to clearly state the reasons for the basis for state significance and non-compliance with local controls.'

Resolved, on the motion of Revd Nile: That Chapter 6, as amended, be adopted.

Chapter 7 Read.

Resolved, on the motion of Mr Mason-Cox: That paragraph 7.85 be amended by omitting the final sentence: 'The Committee agrees that airports should bear the cost, through compensation or purchase, of implementing what is an operational requirement.'

Resolved, on the motion of Revd Nile: That Chapter 7 be adopted.

Chapter 8 Read.

Resolved, on the motion of Revd Nile: That paragraph 8.105 be amended by inserting the words 'an independent' before the word 'strategic' in the first sentence; by omitting the words 'from the fees levied on mining companies' and inserting instead 'by the mining companies' and by omitting the final sentence: 'As these studies would indicate where exploration was or was not appropriate, consideration should be given to deferring the full cost of an EL until any required studies are complete.'

Resolved, on the motion of Ms Robertson: That an additional paragraph be inserted immediately following paragraph 8.105 to read:

'This could be resolved by the process of the government implementing an independent committee of stakeholders to set the terms of reference for any strategic and scientific assessment at the time when an exploration licence is granted.'

Resolved, on the motion of Ms Robertson: That Recommendation 6 be amended by omitting the words ‘prior to exploration commencing a’ and inserting instead ‘at the time of granting the exploration licence the government appoint an independent committee of stakeholders, to determine the terms of reference and manage the’ and also by omitting the words ‘be undertaken’ and inserting instead the words ‘which is to be funded by the mining company’.

Resolved, on the motion of Revd Nile: That Chapter 8, as amended, be adopted.

Chapter 9 Read.

Resolved, on the motion of Revd Nile: That Chapter 9 be adopted.

Chapter 10 Read.

Resolved, on the motion of Ms Robertson: That a new paragraph be inserted immediately following paragraph 10.50 to read:

‘The Committee recognises the importance of smaller community shopping area to the people of New South Wales. Policy and legislation should recognise possible anti-competition policies of major corporate organizations and differentiate between competitive and monopolistic behaviour.’

Resolved, on the motion of Mr Colless: That Chapter 10, as amended, be adopted.

Resolved, on the motion of Ms Robertson: That the draft report, as amended, be the report of the Committee presented to the House, together with transcripts of evidence, submissions, tabled documents, minutes of proceedings, answers to questions on notice and correspondence relating to the inquiry, except for documents kept confidential by resolution of the Committee.

The Chair advised of his intention to distribute a press release following the tabling of the report on Thursday 10 December 2009.

7. Adjournment

The Committee adjourned at 12:45 *sine die*.

Rachel Simpson
Clerk to the Committee