

Local Government
Association of NSW



Shires Association of NSW

Local Government and Shires Associations of NSW

Submission to

NSW Planning System Review - Green Paper

DATE

September 2012

EXECUTIVE SUMMARY	3
1. INTRODUCTION	7
2. PURPOSE	7
3. KEY OBSERVATIONS	8
3.1 Role of Local Government in Planning	8
3.2 The Importance of Certainty	8
3.3 Objectives Should Align with Proposals	9
3.4 Quality Planning Outcomes	9
3.5 Checks and Balances.....	9
3.6 Integrating Environmental Considerations into the Planning System.....	9
3.7 Rural and Regional Considerations	10
3.8 Significant and Sustained Resourcing	10
3.9 Transitioning from the Current System	10
3.10 Evaluating the New System	11
3.11 Summary of Key Observations	11
4. PRINCIPLES.....	12
5. OVERVIEW AND THE CASE FOR CHANGE.....	13
5.1 Resourcing, Commitment and Ongoing Stakeholder Engagement.....	13
5.2 Further Explanation and More Details.....	13
5.3 Long Term Horizon/Timeframe	13
6. OBJECTIVES.....	14
6.1 Balancing Economic, Social and Environmental Outcomes.....	14
6.2 Objectives for the New Act.....	14
7. COMMUNITY & STAKEHOLDER ENGAGEMENTS	16
7.1 Public Participation Charter (Change 1).....	16
7.2 Strategic Community Participation (Change 2)	17
7.3 Transparency in Decision-Making (Change 3)	18
7.4 Information Technology and E-Planning (Change 4).....	19
8. STRATEGIC PLANNING.....	20
8.1 Strategic Focus – General Comments.....	20
8.2 NSW Planning Policies (Change 5).....	21
8.3 Regional and Subregional Plans (Changes 6 and 7).....	22
8.4 Local Land Use Plans (Change 8)	24
8.5 New Zones (Change 9)	25
9. DEVELOPMENT ASSESSMENT AND COMPLIANCE	26
9.1 Overview	26
9.2 Depoliticised Decision Making and the Role of Elected Councillors (Change 10).....	26
9.3 Proposed Expansion of Joint Regional Planning Panel (JRPP) Role	27
9.4 Expansion of Code Based Development (Changes 13 and 14).....	29
9.5 Proposed Alternate Assessment Framework.....	30
9.6 Right of Review for Rezoning and Strategic Compatibility Certificates (Change 15 and Change 11).....	33
9.7 Building Certification and Regulation.....	34

10.	INFRASTRUCTURE PLANNING AND COORDINATION	36
10.1	Contestable Infrastructure (Change 16)	36
10.2	Growth Infrastructure Plans (Change 17)	36
10.3	Infrastructure Contributions (Change 18)	36
10.4	Public Priority Infrastructure (Change 19).....	37
11.	IMPLEMENTATION AND DELIVERY	38
11.1	Chief Executive Officers Group (Change 20).....	38
11.2	Regional Planning Boards (Change 21).....	38
11.3	Performance Monitoring (Change 22)	39
11.4	Organisational Reform (Change 23).....	39
12.	CONCLUSION AND RECOMMENDATIONS	40
	ATTACHMENTS	46
	Attachment 1 – IAP2 Core Values	46
	Attachment 2 – Suggested Principles for a Public Participation Charter, as Proposed by Total Environment Centre Inc	47

EXECUTIVE SUMMARY

The Associations have welcomed the *Green Paper* for its focus on strategic planning, community and stakeholder engagement and integration of land use and infrastructure planning. While the approach is positive and reform is welcomed, there are still many ‘unknowns’ and much work needed to advance these ideas and gain agreement on the details. This submission is structured to generally follow the format used for the *Green Paper*, but is prefaced with some general comments about the *Green Paper* and the review process.

The Associations agree with the sentiments portrayed in the *Green Paper* and with other stakeholders that the planning system is in need of an overhaul. We also endorse the focus on stronger and upfront strategic planning, genuine and effective community engagement, streamlined development assessment and the importance of culture change to effect such a transformation in the system. However, we preface our specific responses to the transformational changes with the following general observations with regard to the proposed new system:

- **Role of Local Government in Planning** - The impacts of planning decisions are felt locally and for that reason Local Government must continue to be fully involved in, and lead, the planning system at the local level. Local Government supports a planning system which delivers a built and natural environment in tune with local requirements as articulated by elected Councillors representing the communities which elect them. This is addressed further in section 9.2 of the Associations’ submission.
- **The Importance of Certainty** - Certainty is a fundamental expectation of all players in the market. The Associations are concerned that there are a number of proposals in the *Green Paper* that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system.
- **Objectives Should Align with Proposals** – The *Green Paper* has some inherent conflicts, where the objectives of reducing complexity, increasing transparency, providing a ‘clear line of sight’ through a hierarchy of plans and ultimately ensuring greater certainty, do not match the reality of the proposals contained in the 23 transformative changes. For example we observe a potential conflict with the *Green Paper* having a hierarchy of plans with a top-down approach while at the same time advocating for empowering communities to have a say about what they would like to see in their local and regional areas.
- **Quality Planning Outcomes** - The proposals appear to make economic growth and development the primary if not exclusive objective of the planning system. While not denying the intrinsic importance of the economy, this ideological position is not accepted by Local Government or by a large proportion of the community in general. The Associations maintain that all three ‘bottom lines’ – economic, social and environmental – should play equal part in planning decisions in order to achieve genuine ‘quality of life’ outcomes.
- **Checks and Balances** - In streamlining the planning system, checks and balances need to be retained and embedded to give the community certainty and to manage the perception that the balance will not be tipped too far towards the interests of development proponents. Retaining a role for Councillors in certain local planning and development decisions, and allowing communities to be involved in some way at later stages of development are examples of such ‘checks and balances’.
- **Rural and Regional Considerations** – While many of the planning and development issues and challenges that need to be addressed do manifest themselves in urban contexts, the new planning system must not lose sight of the issues in rural and regional NSW. Certain transformative changes and provisions that may be introduced to address issues of an urban nature may have unintended consequences in rural areas, because of their remote location, or the fact that there are often different drivers of growth in these locations.
- **Integrating Environmental and Social Considerations into the Planning System** - The Associations have concerns with the economic imperative that underpins the reforms and contend that the planning system should also be underpinned by social and environmental objectives. Assessments of matters such as social, health, environmental and agricultural impacts also need to be core considerations of a planning system. The Associations are also disappointed that the principles of Ecologically Sustainable Development (ESD) are not specifically included in any framework outlined in the *Green Paper*. ESD is one of a number of core objectives of the existing planning system that we believe should be the first objective in a hierarchy of objectives under the new land use planning Act.

- **Significant and Sustained Resourcing** - The new system hinges on stakeholder engagement, considerable culture change and a resource-intensive period to develop new plans and strategies. As stated throughout the submission, significant and sustained investment of resources (new technology, people, education and training etc.) will be critical to the success of this new system.
- **Transitioning from the Current System** – Consideration of appropriate transitional arrangements is critical.
- **Evaluating the New System** - The Associations recommend that a rigorous evaluation program be incorporated the new system to give stakeholders the confidence that it will be assessed against its objectives.

The Associations' submission highlights a number of areas of the *Green Paper* which are lacking detail. The Associations were particularly disappointed with the minimal discussion in the *Green Paper* on reforming building regulation and developer contributions. It is essential that these and other crucial elements are subject to separate and comprehensive consultation.

Due regard must be given to the legacy of developments that will emerge from this new planning system. It is important not to lose sight of a long term vision for sustainable land use and development over a 30 years+ time horizon, and not to fall into the trap of designing a planning system that is responding only to the immediate concerns of the day. The Associations caution against placing too much stake on the planning system to drive or deliver economic growth. We endorse the views expressed by many stakeholders that the current objects of the *Environmental Planning and Assessment Act* provide a foundation for a comprehensive set of principles for the new Act and therefore should be retained and strengthened, particularly in relation to social impact.

The concept of a Public Participation Charter as proposed in the *Green Paper* is a welcome proposal, provided that it has substance and that there is an absolute government commitment to public involvement in all stages of the planning process. However, it is essential that the Charter has statutory force and is legally binding at all levels of the planning framework.

The Associations endorse the intent of broad community engagement in the strategic plan making process. However, we have concerns over the practical implementation of this engagement. The new system will rely on concerned residents/communities/stakeholders having the foresight and means to voice their ideas and concerns much earlier, when plans are being written and zonings decided. Getting this 'up front' agreement will require a whole new level of public engagement that has not been seen before in NSW. From extensive experience, Local Government knows that it is extremely difficult to involve the general community effectively in the early stages of strategic planning. Innovative approaches, enhanced use of technology and huge resources will be needed to make this work.

A planning regime that restricts the community's rights needs checks and balances to ensure transparency and build community confidence in the system. Until such time as communities can be satisfied and confident that they truly do have a say in what is going to be built in their localities, there must be provisions in the system that allow community input at Development Application (DA) stage for certain development proposals. For this reason, and to retain some 'checks and balances' in the system, councils and communities need to be involved at later stages of development. It will be difficult for the government to justify the argument that communities will be 'empowered' in the decision making process, while proposing to effectively remove community rights at the DA stage of development.

Local Government is fully supportive of the principle of ensuring transparency in decision-making, and mechanisms are already in place within councils to maintain this transparency. We take issue with how the term 'depoliticising' is used in the *Green Paper*. This is discussed in detail in section 9.2 of the Associations' submission.

With regard to e-planning, the Associations support the proposal for an online planning portal for its potential to improve transparency, clarity and ease of use. However, as with other transformational changes, sustained resourcing and commitment will be needed to ensure its long term success. The portal should be funded and maintained by the state government to ensure its ongoing viability, licensing, compatibility with existing systems, currency of data and ownership of intellectual property.

Local Government supports an increased emphasis on strategic planning, where State and Local Government can partner together to address future planning issues. Effecting ‘cultural change’ within the community will be a key ingredient to the success of this approach. At this stage, however, we question whether the approach proposed in the *Green Paper* may be too radical a conceptual change to achieve ‘buy-in’ from community members and also to bring along the many stakeholders. A sustained revenue source will be required to fund the considerable additional strategic planning effort envisaged in the *Green Paper*.

The Associations support the simplification and reduction of existing State Environmental Planning Policies (SEPPS). However, the newly proposed state planning policies need to have sufficient legal standing that they cannot and will not be readily changed. It is also important that Local Government is consulted in the formulation of NSW planning policies. The Associations support the concept of regional planning and the proposals for regional growth plans and subregional development plans (SDPs). However, we question how these regional and subregional boundaries are and/or will be defined and what criteria and process will be used. Councils must have a say in defining the sub regions. We also query where the Strategic Regional Land Use Plans will fit within this regional plan framework.

For rural and regional councils, the Associations are pleased to see the Government intends to facilitate growth in regional and rural NSW. However, Local Government expects that these plans will be developed for all ‘subregions’, not just those in “high growth areas”. Local Government strongly supports the linking of regional plans with infrastructure delivery through the introduction of Growth Infrastructure Plans. However there needs to be further details on what forms of infrastructure a *Regional Growth Plan* will include (for example, whether it will address state as well as local infrastructure).

Councils have invested considerable time and resources in developing their standard template Local Environmental Plans (LEPs) and want to have certainty that the significant work and goodwill endowed within these LEPs is not disregarded or lost in the move to a new system of local land use plans. The Associations warn against establishing numerous opportunities to overturn local plans as that will undermine confidence and certainty in the strategic planning framework. These plans will be viewed as contestable, open to debate and become well used by industry to override local plans. We recommend that councils be given meaningful powers to amend their own local plans, within reasonable limits. We also recommend the use of Urban Activation Precincts, where supported by councils, to manage growth outside the local plan making system.

Without further detail, the Associations question the intended purpose, outcomes and operation of the new zones proposed in the *Green Paper*. Local Government would like clarity on what is the intended future of current zones and the status of the Standard Instrument LEP. With regard to the proposed Enterprise Zone, it is difficult to see how such a zone is consistent with the evidence based, consultative strategic planning approach and greater certainty proposed throughout the *Green Paper*.

With regard to development assessment, the Associations remain supportive of existing practice which shows that 97% of council development decisions are made under delegation or by private certifiers. However, we maintain that there is a legitimate role for elected Councillors to play in certain decisions. In a local democracy it is still essential for the community to retain the right to make effective representations on planning matters through their elected representatives, especially where variations to adopted policy or deviations from strategic plans may be sought. The Associations therefore recognise the place of Councillors as the final arbitrators of the assessment process to determine the small number of mostly controversial applications that come before them. The new planning system must be designed to take into account the role that elected members play in planning and development decision making. This system provides ‘checks and balances’ to an assessment process that is mostly administered by council staff. Many councils already have in place criteria and/or policies for referral of proposals to Councillors for determination. The Associations consider that these examples should form the basis of criteria that could be developed and adopted by all councils.

The Associations would like to work with the Department of Planning and Infrastructure (DP&I) to develop an alternate assessment framework as proposed in this submission, which combines state and local controls that differentiate assessment pathways based on the complexity of the application.

The Associations strongly oppose the expanded functions proposed for Joint Regional Planning Panels (JRPPs) in the *Green Paper*. The Associations maintain that the proposed changes would undermine the long standing role of Local Government in the plan making process. Councils are elected by the community to make plan making decisions for their area. JRPPs on the other hand are not accountable to the community, and the Associations therefore consider it is totally inappropriate for them to take on a plan making role. The Associations also question whether the expanded functions as proposed in the *Green Paper* would deliver faster and better development decisions. We oppose JRPPs acting as a ‘watch dog’ overlooking councils’ planning and development roles.

The introduction of a tougher building regulation regime, is essential if code based assessment and private certification are to be expanded as proposed in the *Green Paper*. The Associations commend the Building Professionals Board (BPB) for its commitment and consultation to date to separately review the future of building certification in NSW. Local Government is firmly of the view that the new planning system must retain provisions to allow Local Government certifiers to continue to carry out their certification functions. This is particularly essential for councils in rural and regional areas. The Associations’ submission contains a number of issues in relation to building regulation that need further investigation and resolution. We trust that the outcomes of the BPB review will be integrated into the *White Paper* to ensure that a tighter regime is implemented for building regulation in the new system.

In relation to infrastructure contributions, the Associations renew calls to extend Local Infrastructure Contributions to include baseline community facilities, and recommend that contribution caps be removed or increased. This submission recommends establishing a technical working group to flesh out the details on options for developing a “*fairer, simplified and more affordable system for infrastructure contributions*” (*Green Paper*, p 74).

The Associations welcome the proposal that ‘*Local Government will be key participants on Regional Planning Boards*’. However, we consider that the Local Government representatives on the Boards should be Mayors as community leaders or other representatives chosen by councils. We oppose restricting eligibility to General Managers and/or Planning Directors. The Associations’ submission recommends a model for regional planning boards, with the following elements:

- The Board - consisting of (i) Local Government representation from elected representatives of constituent councils; and (ii) State and public sector representation from senior officers of relevant state agencies.
- A stakeholder reference group to assist the Board’s deliberations - The Stakeholder Reference Group established as part of consultation on the strategic regional land use plans may provide an appropriate model.

1. INTRODUCTION

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government. Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the regions of the NSW Aboriginal Land Council. The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community.

The Associations thank the NSW Minister for Planning for the invitation to make a submission in response to “*A New Planning System for NSW – Green Paper*” released in July 2012. The Associations have welcomed the *Green Paper* for its focus on strategic planning, community and stakeholder engagement and integration of land use and infrastructure planning. There are a number of positive and innovative suggestions made in the *Green Paper*. The Associations are encouraged by, and stand alongside the Government in its commitment to genuine reform. We are also optimistic that the Government is taking a realistic view that to achieve these positive reforms will take considerable time, resourcing and further community/stakeholder engagement. While the approach is positive and reform is welcomed, there are still many ‘unknowns’ and much work needed to advance these ideas and gain agreement on the details. Many proposals need further explanation of detail to enable Local Government to fully consider and assess how this new planning framework could work. We look forward to working with the Government and other stakeholders on the next stages of this critical reform.

2. PURPOSE

The Associations note that this review is examining planning law as it is set out under the *Environmental Planning and Assessment Act (EP&A Act) 1979* along with the broader planning system and that feedback is sought in response to the *Green Paper*, which seeks to present the high level directions for reform prior to moving forward with a *White Paper*. We also note that the Independent Panel generated a two-volume *Review Paper (Recommendations of the NSW Planning System Review)* following a five-month State-wide consultation and receipt of over 600 submissions, but that not all of the Panel’s recommendations have been accepted by the Government in proposing its *Green Paper* reforms. This submission provides comments in response to the broad concepts and framework for a new planning system as proposed in the *Green Paper*. It does not deal with the detailed discussions and recommendations contained in the two volumes of the Independent Panel’s *Review Paper*.

The structure of this submission generally follows the format used for the *Green Paper*, but is prefaced with some general comments about the *Green Paper* and the review process. Section 3 offers some general observations about the *Green Paper* overall and section 4 outlines the principles which underpin the Associations’ responses in this submission. The remaining sections are structured to reflect the format of the *Green Paper*, and accordingly address each of the transformational changes in the paper.

3. KEY OBSERVATIONS

The Associations agree with the sentiments portrayed in the *Green Paper* and indeed with other stakeholders that the planning system is in need of an overhaul. We also endorse the focus on stronger and upfront strategic planning, genuine and effective community engagement, streamlined development assessment and the importance of culture change to effect such a transformation in the system. However, we preface our specific responses to the transformational changes with some general observations which underpin many of the sentiments expressed throughout this submission.

3.1 Role of Local Government in Planning

Local Government supports a planning system which delivers a built and natural environment in tune with local requirements as articulated by elected Councillors representing the communities which elect them. We agree with the principle that any planning system must provide flexibility to deal with issues of state-wide and regional significance, but at the end of the day the impact of any planning decisions are felt locally and for that reason alone Local Government must continue to be fully involved in, and lead the planning system at the local level. This expectation was acknowledged by the NSW Government in its pre-election commitments, as follows:

“Firstly, the NSW and Liberal and National Parties are committed to returning local planning powers to local communities (through their councils).

We believe that local residents – through councils – are best placed to make local planning decisions affecting their suburbs. After all, it is local residents – not Macquarie Street planners – who have to live with the results of these planning decisions.”¹

3.2 The Importance of Certainty

Certainty is a fundamental expectation of all players in the market - whether they are development proponents, builders, property purchasers, investors, financiers, members of the public or local communities. The proposed system purports to provide greater confidence and certainty for all parties through better long term strategic planning, while at the same time emphasising the need for flexibility to accommodate and encourage growth. There are multiple references and assurances that “*robust and evidence based strategic planning will provide the foundation for certainty and integrity in decision making*” (*Green Paper*, p 18).

The Associations agree that having community involvement upfront in strategic planning can improve certainty for all parties, if done well. However, we are concerned that there are a number of proposals in the *Green Paper* that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system. For example the Associations consider that the following mechanisms proposed in the paper could set up a system with so much flexibility that it could undermine the agreed strategic outcomes for an area thus reducing certainty, community buy-in and trust in the planning system:

- Proposed introduction of ‘strategic compliance certificates’ – we understand that these certificates would essentially allow development to proceed before strategic planning is finalised and environmental assessment has been carried out;
- Extended rights of review of decisions concerning rezoning proposals;
- Proposed new enterprise zones, which are characterised by “*very little, if any, development controls*” (*Green Paper*, p 45); and
- The ability for developers to submit applications that do not comply with prescribed codes.

To provide certainty and confidence the system needs to have binding strategic plans and checks and balances built in.

¹ “*Putting the Community Back Into Planning*”, Liberal-Nationals Coalition, September 2009

3.3 Objectives Should Align with Proposals

Planning is about finding balance, and the *Green Paper* appears to be seeking to achieve this balance by trying to ‘be all things to all people’. In so doing, it has introduced some inherent conflicts. There are examples throughout the paper where the objectives for the overall framework/system do not match the reality of the proposals contained in the 23 transformative changes. The above discussion about creating certainty while introducing multiple mechanisms that could undermine this goal is a primary example of this apparent contradiction.

Another inherent conflict is that while the *Green Paper* proposes a top-down approach supported by a hierarchy of cascading plans, it also talks of empowering communities to have a say about what they would like to see in their local and regional areas. A huge challenge and one on which the system hinges is public engagement. The Associations question how the paper proposes to include the community’s input when the plans are being driven from the top down. There are various other ‘exceptions to the rules’ that are aimed at providing flexibility for development, but in so doing, they appear to contradict the overall aims of reducing complexity, increasing transparency, providing a ‘clear line of sight’ through a hierarchy of plans, and ultimately ensuring greater certainty.

3.4 Quality Planning Outcomes

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

A consistent theme throughout the *Green Paper* is that planning should be informed by “consideration of the economic and market drivers of investment” (*Green Paper*, p 36). Local Government is concerned that the strong focus on economic considerations may override good planning outcomes. There is a demonstrable lack of balanced consideration of social, economic and environmental outcomes in the *Green Paper*, with an intrinsic assumption that quality of life and other social (and environmental) considerations will follow, simply by supporting economic growth. The Associations maintain that all three ‘bottom lines’ – economic, social and environmental – should play equal part in planning decisions in order to achieve genuine ‘quality of life’ outcomes. With the strong emphasis on some areas (e.g. measures to encourage development) and the considerable lack of detail surrounding others (e.g. environmental and social impact assessment and protection, transitional arrangements, monitoring and evaluation of the new system) there is potential to disenfranchise some sectors because of a lack of a balanced perspective in the *Green Paper* on achieving sustainable growth.

Additionally, implementing planning objectives requires equity amongst all stakeholders and relies on all participants having access to the relevant information as well as remaining well informed. The overriding goal of any reform to the NSW planning system must be to assist in the achievement of a sustainable environment, more liveable communities and a healthy economy.

3.5 Checks and Balances

In pursuing the objective of streamlining the planning system, it is critical that checks and balances be retained and embedded in the system. This will be essential to give the community the very certainty and assurance that the *Green Paper* claims to seek, and to manage the perception that the balance will not be tipped too far towards the interests of development proponents. This was a criticism of the previous Part 3A provisions, and Local Government and the community have an expectation that the risks and shortcomings of these former provisions will be avoided.

3.6 Integrating Environmental Considerations into the Planning System

Land use planning is, in essence, about the use of land by a society. The long term prosperity of that society depends on the sustainable use and management of that land over time. A successful planning system must

recognise the connection between appropriate environmental management and social and economic prosperity. Challenging concepts such as catchment management, land capability, ecosystem services, and sustainable natural resources management must all be acknowledged as vital to the successful management of our environment, with a view to protecting it in the long term, particularly for future generations. Unfortunately the *Green Paper* includes limited comment on how the new system will tackle these challenges. The Associations are disappointed that the principles of Ecologically Sustainable Development (ESD) that have underpinned the planning system for decades, are not specifically included in any framework outlined in the *Green Paper*. As referred to in section 6.2 of this submission, ESD this is one of a number of core objectives of the existing planning system that we believe should be retained in the new legislation.

3.7 Rural and Regional Considerations

While it is acknowledged that many of the issues and challenges that need to be addressed faced within the planning system manifest themselves in metropolitan and urban contexts, the new planning system must not lose sight of the issues in regional NSW. Some rural and regional councils are seeking plans and provisions to balance growth and manage impacts in high growth areas (e.g. coastal zones, and areas with coal seam gas extraction, mining and other resource development). Other low growth underperforming areas need targeted mechanisms to facilitate growth. Certain transformative changes and provisions that may be introduced to address issues of a metropolitan nature may have unintended consequences in rural areas. Private certification is one example which might be applicable in urban areas but which may not be a workable ‘blanket’ solution, because in remote rural areas, travel times for private certifiers are long and there are less private certifiers in the marketplace.

3.8 Significant and Sustained Resourcing

The new system hinges on community engagement, considerable culture change and a resource-intensive period to develop a suite of new plans and strategies, incorporate existing myriad documents into a single standard format, evolve new and innovative community engagement regimes at scale not seen before in Australia. As referred to in sections 5.1 and 8.1, critical to the success of this ambitious new system will be a significant and sustained investment of resources – new technology, people, education and training etc.

3.9 Transitioning from the Current System

While the Associations genuinely acknowledge the effort to take a fresh approach and propose new solutions, for some of the reasons outlined above, we question whether the approach may be too radical a conceptual change to achieve ‘buy-in’ from community members and regain community confidence. The proposed changes are so significant that there are many transitional considerations. Key questions that have not been elaborated on in the paper are:

- What is the intended timeframe for implementing these changes?
- What transitional mechanisms will be put in place?
- What changes are ‘do-able’/achievable in an acceptable timeframe?

Local Government and communities need reassurance that the Government is prepared to invest and sustain the resources/funding which are critical to the success of the new system. Consideration of appropriate transitional arrangements that takes this into account is imperative. The methodology and steps should incorporate:

- Establishing technical working groups where appropriate to develop details and options for particular issues;
- Continuing the public consultation processes throughout the White Paper phase, and in particular for the development of the Public Participation Charter, and the new state planning policies;
- Retaining checks and balances in the system to rebuild certainty for the public; and
- Building in to the new Act and planning framework an undertaking to evaluate the new planning system against the outcomes sought in the *Green Paper*.

3.10 Evaluating the New System

Importantly, there is no mention in the *Green Paper* of how and when the new system will be evaluated. All sectors have been open to the proposed changes and are attempting to understand their implications. To give stakeholders the confidence that the new system will be assessed against its objectives and within an appropriate timeframe, the Associations consider a rigorous evaluation program to be a fundamental aspect of the new system.

3.11 Summary of Key Observations

The Associations make the following observations with regard to the proposed new system:

- Role of Local Government in Planning - The impacts of planning decisions are felt locally and for that reason Local Government must continue to be fully involved in, and lead, the planning system at the local level. Local Government supports a planning system which delivers a built and natural environment in tune with local requirements as articulated by elected Councillors representing the communities which elect them.
- The Importance of Certainty - Certainty is a fundamental expectation of all players in the market. The Associations are concerned that there are a number of proposals in the *Green Paper* that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system.
- Objectives Should Align with Proposals – The *Green Paper* has some inherent conflicts, where the objectives for the overall framework do not match the reality of the proposals contained in the 23 transformative changes. There are various ‘exceptions to the rules’ that appear to contradict the overall aims of reducing complexity, increasing transparency, providing a ‘clear line of sight’ through a hierarchy of plans, and ultimately ensuring greater certainty.
- Quality Planning Outcomes - The Associations maintain that all three ‘bottom lines’ – economic, social and environmental – should play equal part in planning decisions in order to achieve genuine ‘quality of life’ outcomes.
- Checks and Balances - In pursuing the objective to streamlining the planning system, checks and balances need to be retained and embedded to give the community certainty and to manage the perception that the balance will not be tipped too far towards the interests of development proponents.
- Integrating Environmental Considerations into the Planning System - The Associations are disappointed that the principles of Ecologically Sustainable Development (ESD) that have underpinned the planning system for decades, are not specifically included in any framework outlined in the *Green Paper*. ESD is one of a number of core objectives of the existing planning system that we believe should be retained as the first objective in a hierarchy of objectives under the new land use planning Act.
- Significant and Sustained Resourcing - The new system hinges on stakeholder engagement, considerable culture change and a resource-intensive period to develop new plans and strategies. Significant and sustained investment of resources (new technology, people, education and training etc.) will be critical to the success of this ambitious new system.
- Transitioning from the Current System – The Associations emphasise that consideration of appropriate transitional arrangements is critical.
- Evaluating the New System - The Associations recommend that a rigorous evaluation program be incorporated in the new system to give stakeholders the confidence that it will be assessed against its objectives.

4. PRINCIPLES

It is notable that the *Green Paper* does not spell out a set of broader guiding principles for the planning system, something that many agree to be an important foundation of the current system. The Associations have adopted the following guiding principles for planning in NSW, which underpin this submission:

For the overall planning system, the Associations' guiding principles are:

1. All planning and infrastructure decisions should be based on the principles and practices of sustainable development in relation to land use, resource management and building design, in order to achieve:
 - environmental sustainability;
 - social justice;
 - economic growth;
 - equitable access to housing and employment; and
 - optimum quality of life for local communities.
2. The community has a right to have a say in planning decisions that will affect them.
3. Strategic metropolitan and regional planning is best carried out at a regional level in a genuine partnership between Local and State Government. The balance of responsibilities between each sphere of government should be based on the principle of subsidiarity (i.e. a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level).

In terms of local planning, the Associations' guiding principles are:

4. Local Government should have a lead role in planning for local communities with other spheres of government, as it is:
 - best placed to inform the planning process of the needs and expectations of local communities;
 - democratically accountable to local communities;
 - the advocate for its community to other spheres of government.
5. Local Government should retain autonomy in the making of local planning decisions.
6. Adequate financial resources must accompany the devolution of planning powers and responsibilities to Local Government.
7. All spheres of government have reciprocal obligations to recognise and respect the legitimate objectives and strategies of each other.
8. The planning system must provide the capacity of local and state agencies to carry out their planning responsibilities according to best practice planning principles and practice.

5. OVERVIEW AND THE CASE FOR CHANGE

5.1 Resourcing, Commitment and Ongoing Stakeholder Engagement

As stated in our Introduction, the Associations have welcomed the *Green Paper* for its focus on strategic planning, community and stakeholder engagement and integration of land use and infrastructure planning. The Associations are encouraged by the Government’s commitment to genuine reform, but there are still many ‘unknowns’ and much work is needed to advance these ideas and gain agreement on the details before we can be ‘comfortable’ with the full merits of the proposed new system. We cannot emphasise strongly enough that to achieve these positive reforms will take an unprecedented commitment of time, resources and further extensive and sustained community/stakeholder engagement.

5.2 Further Explanation and More Details

Many proposals need further explanation of detail to enable Local Government to fully consider and assess how this new planning framework could work. The Associations were particularly disappointed at the minimal discussion in the *Green Paper* on reforming building regulation and the general lack of substantive proposals put forward to address issues surrounding developer contributions. It is essential that these and other crucial elements of the overall planning system are subject to separate and comprehensive debate and consultation through targeted workshops, stakeholder engagement and the like. These were two of a number of other issues cited in the Associations’ March 2012 submission on the *Issues Paper* that would benefit from a selection of technical working groups to look at certain issues in more detail. A number of other areas which are lacking detail are highlighted in specific sections throughout this submission.

5.3 Long Term Horizon/Timeframe

The system to be replaced has been in place for some thirty years. The focus of the *Green Paper* is unashamedly on having a new system that will ‘kickstart’ economic growth in NSW; this is to a considerable extent a reaction to the current economic climate which is characterised by low growth and economic uncertainty worldwide. The Associations wish to point out that it is important not to lose sight of a long term vision for sustainable land use and development over a 30 years+ time horizon, and not to fall into the trap of designing a planning system that is responding only to the immediate concerns of the day. Due regard must be given to the legacy of developments that will emerge from this new planning system. Once built, a development will remain for the best part of 50 years if not more – the outcome must be one that delivers a good living environment for the occupants of the development as well as those around them.

Further, the Associations caution against placing too much stake on the planning system to drive or deliver economic growth. For example, building and construction do not drive an economy, they simply build the spaces a growing economy requires to occupy.

Summary of LGSA Position and Recommendations – Overview and the Case for Change

The Associations:

- Emphasise that to achieve the ambitious and positive reforms that are proposed will take considerable time, resourcing and further extensive and sustained community/stakeholder engagement
- Were disappointed with the minimal discussion in the *Green Paper* on crucial elements such as reforming building regulation and developer contributions. It is essential that these and other important components of the new legislation are subject to separate and comprehensive debate and consultation through targeted workshops and stakeholder engagement.
- Emphasise that it is important not to lose sight of a long term vision over a 30 years+ time horizon, and not to fall into the trap of designing a planning system that is responding only to the immediate concerns of the day.
- Caution against placing too much stake on the planning system to drive or deliver economic growth.

6. OBJECTIVES

6.1 Balancing Economic, Social and Environmental Outcomes

As mentioned above, Local Government has concerns with the economic imperative that underpins the reforms. The *Green Paper* is ‘growth’ focused with apparently little reference to the management and/or protection of the environment/natural resources and social/quality of life outcomes. The proposals appear to make economic growth and development the primary if not exclusive objective of the planning system. While not denying the intrinsic importance of the economy, this ideological position is not accepted by Local Government or by a large proportion of the community in general.

The Associations contend that the planning system should also be underpinned by social and environmental objectives. While it could be assumed that these objectives will be considered in the plan making process it is not explicit in the *Green Paper* and given the strong emphasis on ‘growth’, it would be assumed that the economic imperative will take precedence in any case.

The *Green Paper* is focused on establishing delivery outcomes that are “*desirable to the market*” (*Green Paper*, p 43). However, it will be critical to ensure that the protections we have established for environmental and social outcomes under the *Environmental Planning and Assessment (EP&A) Act 1979* are retained and embedded in the new planning system, to address areas where the ‘market’ cannot be relied upon to deliver desirable outcomes from a social and environmental perspective. For example, in the same way that the regulation is needed to achieve certain environmental protections, it can be argued that the goal of providing affordable housing cannot be achieved without similar intervention as it is unlikely to be happen if solely left to the ‘market’ to provide. While delivering for the market, the planning system also has to deal with market failure.

6.2 Objectives for the New Act

Any new planning system should retain and strengthen the core objectives of the existing planning system and should incorporate the following:

- Ecologically Sustainable Development (ESD)
- Providing opportunities for public involvement and participation in land use planning and development decisions;
- Promoting the appropriate sharing of responsibilities for land use planning between federal, state and Local Governments;
- Fostering economic growth; and
- Encouraging the proper management of social, health and cultural impacts and fostering social progress.

These principles are based on the current Objects of the *Environmental Planning and Assessment Act 1979* (section 5). We have the benefit of having developed and refined these Objects over the last thirty years and most stakeholders agree that it is not the Objects of the Act that are in need of review. The Associations therefore endorse the views expressed by many stakeholders that the current objects of the Act provide a foundation for a comprehensive set of principles for the new Act, and therefore should be retained, and strengthened (particularly in relation to incorporating social, health and cultural impacts).

The Associations note that the *EP&A Act* adopts the definition of ecologically sustainable development (ESD) as defined in the *Protection of the Environment Administration Act 1991* (section 6(2)). The Associations advocate ESD being the first objective in a hierarchy of objectives under the EP&A Act. For these to be effective and meaningful, they need to be accordingly reflected and delivered in the substantive parts of the Act.

The objects of the Act should be kept minimal and high level, along the lines of the current objects of the Act with ESD as the overarching objective. The greater the number of objectives, the more likely is the tendency or necessity to give weightings to different objectives. Secondary objectives and more specific outcomes should flow out of a limited number of high level objectives, and the existing objects of the Act provide a good basis for these high order objectives.

Summary of LGSA Position and Recommendations – Objectives for the New System

The Associations:

- Have concerns with the economic imperative that underpins the reforms and contend that the planning system should also be underpinned by social and environmental objectives. While not denying the importance of the economy, this ideological position is not accepted by Local Government or by a large proportion of the community in general.
- Endorse the views expressed by many stakeholders that the current objects of the Act should be retained, as they provide a foundation for a comprehensive set of principles for the new Act. They have been developed and refined over the last thirty years and most stakeholders agree that it is not the Objects of the Act that are in need of review.
- Advocate ESD being the first objective in a hierarchy of objectives under the new land use planning Act.

7. COMMUNITY & STAKEHOLDER ENGAGEMENTS

7.1 Public Participation Charter (Change 1)

The Associations strongly uphold the rights of the community and citizens to have a say in decisions that may affect them. ‘Participation’- meaning “the opportunity for all people to genuinely participate in the community and be consulted on decisions which affect their lives” - is one of the four social justice principles which guide Local Government. The concept of a *Public Participation Charter* is therefore a welcome proposal, provided that it has substance and that there is an absolute government commitment to public involvement in all stages of the planning process. For the Charter to actually have meaning and to engender a culture change within government and government agencies, the Associations contend that it needs to be robust and legally binding. This should include a means of auditing and measuring decision makers’ performance against the Charter.

The Associations note that the International Association for Public Participation (IAP2) is regularly cited as reflecting the core values of public participation. These are reproduced in Attachment 1 of this submission, and could be used as a basis for developing the principles underlying the proposed *Public Participation Charter*. IAP2 promotes the values and leading practices associated with public involvement in decisions that impact their lives.

The Associations also note that the Total Environment Centre Inc (TEC) has developed a ‘proposed *Public Participation Charter*’ in a recent publication funded by the Department of Planning and Infrastructure (DP&I) entitled *Our Environment, Our Communities*². (The suggested charter is reproduced in Attachment 2 of this submission.) The approach proposed in the TEC Charter would:

“leave it open to the person undertaking community consultation to develop the most appropriate strategy for consultation (for example, which social media technologies would be suitable, how to conduct community workshops). The obligation would lie in meeting the implementation principles (for example, recognising the diversity of the community and ensuring that information was accessible and easy to understand.”³

The Associations consider it is essential that the Charter has statutory force (for example, as a schedule under the Act), but it should not be so prescriptive as to dictate how public engagement should occur. The Associations therefore agree with the general approach proposed in the TEC’s draft *Public Participation Charter* i.e. the Charter should express the obligation for decision makers to meet certain agreed implementation principles, but leave it open to the organisation undertaking engagement to develop the most appropriate strategy for consultation.

The proposed new planning system hinges on a new era and regimen for community engagement. Getting communities involved across the state will require time, effort and money to ensure real and informed community participation. However, given doubts about achieving effective engagement there is a degree of hesitation within Local Government that introducing the new system involves a high level of risk and is reliant on a great leap of faith.

While the Associations agree with the concept of the *Public Participation Charter* and generally support the approach recommended by the TEC in the joint NCC/EDO/TEC report, the Associations request that Local Government is consulted in the development of the Charter and would like further details as to how the Charter will be developed and who will ‘own’ it. The following questions require more explanation:

- What process (and consultation) is intended to develop the *Public Participation Charter*? Will the ‘public’ and those to whom it will apply (i.e. all spheres of government) have a say in what the Charter will look like? How will the Government finalise the Charter?
- Who will ‘own’ it or will it be a schedule in the Act?

² *Our Environment, Our Communities – Integrating Environmental Outcomes and Community Engagement in the NSW Planning System*, Joint Review by Nature Conservation Council (NCC) of NSW, NSW Environmental Defenders Office (EDO), and Total Environment Centre Inc (TEC), 2012

³ Ibid, Ref 106, page 43

Summary of LGSA Position and Recommendations – Public Participation Charter

The Associations:

- Support and welcome the establishment of a *Public Participation Charter*.
- Suggest that IAP2 Core Values could be used as a basis for developing the principles underlying the Charter.
- Agree with the general approach proposed in the TEC’s draft *Public Participation Charter* i.e. the Charter should express the obligation for decision makers to meet certain agreed implementation principles, but leave it open to the organisation undertaking engagement to develop the most appropriate strategy for consultation.
- Recommend that the *Charter* have statutory force and be legally binding.
- Request that Local Government is consulted in the development of the *Charter*.

7.2 Strategic Community Participation (Change 2)

The Associations endorse the intent of broad community engagement in the plan making process. This engagement will enable communities to be personally involved in shaping planning strategies at the local, subregional and regional levels. However, the Associations have concerns over the practical implementation of this engagement.

From extensive experience, Local Government knows that it is extremely difficult to involve the general community in the early stages of strategic planning. People have trouble envisaging and comprehending the abstract concepts and distant outcomes. Councils have first hand knowledge of the extensive efforts needed to engage a community on strategic issues and the reality that most people are only motivated when a development proposal is put before them.

The new system will rely on concerned residents/communities/stakeholders having the foresight and means to voice their ideas and concerns much earlier, when plans are being written and zonings decided. Getting ‘up front’ agreement from communities on these strategic planning decisions will require a whole new level of public engagement that has not been done at the state or regional before in NSW. Innovative approaches and huge resources will be needed to make this work. (A notable example that has been recently quoted in the press⁴ is the United States city of Seattle which reportedly spent two-thirds of its planning budget implementing a system of local level resident engagement.)

The enhanced use of technology (e.g. extensive use of visual media), community forums and other engagement mechanisms will be critical tools in explaining to the community the trade-offs between different planning options. Unfortunately there is little evidence or detail in the *Green Paper* about how ‘effective’ and ‘genuine’ community engagement in the early planning stages will actually be achieved, and whether it will be properly resourced in the longer term. (Refer to Section 8.1 of this submission). We do note however that the *Green Paper* acknowledges that councils’ consultation with communities for their Community Strategic Plans “*is recognised as an effective model in local level strategic planning. Existing successful techniques such as these, as well as new community driven approaches, will be adopted to engage the community early in strategic planning at the subregional and local level.*” (page 23). It is noted that these consultations have been at the local level, and there may be additional challenges posed for finding engagement models that are effective at a subregional and regional scale.

The Associations believe that the principles and provisions embedded in the current *EP&A Act* for public participation must not be ‘watered down’ under the new framework. It may take some time to establish a new system in which the community and all other relevant sectors have embraced a new ‘community involvement culture’. Until such time as the new systems and processes become embedded, and the community can be satisfied and confident that it truly does have a say in what is going to be built in the locality, there must be provisions (‘checks and balances’) in the system that allow community input at Development Application (DA) stage for certain development proposals. It will be difficult for the

⁴ *Challenge to make planning scheme bulletproof, Sydney Morning Herald, 28 August 2012, <http://www.smh.com.au/nsw/challenge-to-make-planning-scheme-bulletproof-20120828-24xa9.html>*

government to reconcile the proposal to effectively remove community rights at the DA stage while still advocating an argument that communities will be “empowered” in the decision making process (*Green Paper*, p5).

A planning regime that restricts the community’s rights needs checks and balances to ensure transparency and build community confidence in the system. For this reason, councils and communities need to be involved in some way at later stages of development. They must be kept informed about individual developments so they can be confident that these align with the agreed strategic plan for an area.

The planning regime must have regard to the likely resources required to implement greater community participation for different scales of engagement. The Associations recommend that resources be provided within the Department of Planning and Infrastructure to:

- engage suitably qualified staff to lead the development of best practice guidelines/manual and supporting resource(s); and
- set up a dedicated web portal to showcase best practice examples at both macro and local levels.

Summary of LGSA Position and Recommendations - Strategic Community Participation

- The Associations:
- Support the intention for broad engagement in plan making and the major focus on “community participation”.
 - Support the proposals for early engagement opportunities, to enable communities to shape planning strategies at the local, subregional and regional levels.
 - Advocate the community’s right to have a say on Development Applications that would have a significant impact on their local area.
 - Emphasise that large and sustained investment in resources is needed to implement community engagement at the levels and different scales of engagement proposed.
 - Recommend that sufficient and ongoing resources be provided within the Department of Planning and Infrastructure to help develop appropriate consultation mechanisms and processes and embed this new culture within government agencies.

7.3 Transparency in Decision-Making (Change 3)

Local Government is fully supportive of the principle of ensuring transparency in decision-making, and mechanisms are already in place within councils to maintain this transparency. For example many councils offer on-line tracking of DA assessment; and the Department produces the annual Local Development Performance Monitoring Report to outline performance reporting in development assessment.

Public access to documents is an issue that has been raised by many councils. There is currently some confusion among councils as to whether development application documents can be released to the public (including the publication of development applications on councils’ web sites), due to copyright concerns. The new legislation will need to resolve current uncertainties and the apparent contradiction between privacy, copyright and access to government information.

The role of Councillors as decision makers is seen by some as ‘politicising’ the assessment process, however others argue that elected representatives are a legitimate voice for local communities. This issue is discussed in detail in section 9.2 of this submission.

Summary of LGSA Position and Recommendations - Transparency in Decision-Making

- The Associations:
- Fully support the principle of ensuring transparency in decision-making, and note that mechanisms are already in place within councils to maintain this transparency.
 - Support greater public access to documents and request that the new system removes any confusion that currently exists.

7.4 Information Technology and E-Planning (Change 4)

Many councils have adopted on-line DA tracking and on-line advertising of DAs, which assists both applicants and communities in understanding the DA process. In many cases this also assists councils in fast tracking DAs. The Associations support further measures that improve lodgement and assessment processes, such as the Electronic Housing Code (EHC)⁵ project that assists applicants in lodging complying developments under the NSW Housing Code. The Associations have partnered with the DP&I in this project.

The Associations support the proposal for an online planning portal, for its potential to improve transparency, clarity and ease of use. However, sustained resourcing and commitment will be needed to ensure its long term success. The portal should be funded and maintained by the state government to ensure its ongoing viability, licensing, compatibility with existing systems, currency of data and ownership of intellectual property. In addition, to ensure the system can function effectively across a number of software suites currently in local government the portal should:

- Build on the e-DA Interoperability Specification (eDAIS) compatibility used for the electronic Housing Code.
- Be designed to be complementary to systems already in place in local councils.
- Be supported by dedicated staff commitment in the DP&I.

The Associations advocate and support e-planning mechanisms to improve the management and streamlining of the development process, and have partnered with the Department of Planning and Infrastructure with the introduction of the Electronic Housing Code and e-planning roadmap.

Summary of LGSA Position and Recommendations - Information Technology and E-Planning

The Associations:

- Strongly support e-planning initiatives as the most viable means of improving efficiencies within the DA process.
- Support the proposal for a centralised online planning portal where the public can access the planning spatial datasets relating to zoning and other development controls. The portal should be funded and maintained by the state government to ensure its ongoing viability, licensing, compatibility with existing systems, currency of data and ownership of intellectual property.

⁵ <http://www.ehc.nsw.gov.au/>

8. STRATEGIC PLANNING

8.1 Strategic Focus – General Comments

Engaging the Community ‘Up Front’

Local Government supports an increased emphasis on strategic planning, where state and Local Government can partner together to address future planning issues. We acknowledge the effort to take a fresh approach and find new solutions, however we are concerned that this legislative, policy and structural reform program may be too ambitious to achieve. Effecting ‘cultural change’ within the community will be a key ingredient to the success of this approach. The community generally gains a measure of comfort from a system that provides certain controls on development and an opportunity/assumption of having a say about what development proposals that arise from time to time.

As discussed in section 7.2 and 8.1, getting ‘up front’ agreement from communities on strategic planning in their area as proposed in the *Green Paper* will require more innovative and sophisticated ways of applying public engagement. People engage in the planning process in different ways and at different stages. It is somewhat naïve to assume that expecting communities to agree in advance on building types, height and densities will resolve all planning issues or be able to predict the future development scenarios. At this stage, we therefore question whether the approach proposed in the *Green Paper* may be too radical a conceptual change to achieve ‘buy-in’ from community members and also to bring along the many stakeholders.

While fully supporting the intent of enhanced community participation at the strategic planning stage, Local Government advocates that:

- Care is taken with terminology, to distinguish proactive ‘participation’ from reactive ‘consultation’.
- Clear engagement methods and processes are established, with input from experienced practitioners (including professionals from other disciplines such as natural resource management, public health, community safety, etc).
- Participation should include an educational element, covering substantive issues such as health and well-being, environmental protection and local heritage, as well as other government imperatives such as housing and employment targets.
- Adequate resourcing is provided to enable meaningful participation.
- Key performance indicators and quality reporting are provided and implemented for community engagement.

If handled well this would lead to more effective and efficient delivery of the new system.

Plans and Strategies

With all the new plans and strategies proposed (such as regional growth plans growth infrastructure plans, and sectoral strategies) - as indicated in the diagram at Figure 7 of the *Green Paper* - there is a concern that there may be too many. There is the potential to create more confusion and to introduce new complexity in the system, which is contradictory to the overall aim to develop a simpler and more efficient system.

- The Associations note the increased role intended for Councillors in the plan-making process.
- The Associations support the concept of concurrences being dealt with at the strategic planning stage but in some circumstances site specific issues may still require concurrence.

Assessing Impacts

Much of the environmental protection, heritage and social impact assessment that takes place under the current Act are contained within the State Environmental Planning Policies (SEPPs) and a suite of referral and concurrence provisions. With the new framework proposing to remove, reduce or simplify these documents, it is not clear how these protections will be retained and where they will sit.

It is hoped that the strengthened focus on strategic planning will enable the new Regional Growth Plans and Local Land Use Plans to address the expected regional impacts of climate change through the use of

appropriate adaptation and mitigation measures. We note that this issue is highlighted the Stein⁶ report (pages 26-29).

Resourcing

Strategic planning is not work that has traditionally been well-supported from routine (and long term rate pegged) Local Government revenue and is often reliant on grants. A sustained revenue source will be required to fund the considerable additional strategic planning effort envisaged in the *Green Paper*. This funding will need to be ongoing under the new system, at least for a period of some years, until the first round of regional and subregional plans are in place and resourcing of strategic planning becomes ‘embedded’ in the new system. The DP&I’s existing Planning Reform Fund is one mechanism that could be used to support this additional strategic planning work. Formal partnership arrangements with relevant DP&I Regional Offices in connection with work on the proposed Regional Growth Plans should also be supported. While the *Green Paper* promises increased resources for strategic planning there are no details as to how this will work. Resourcing will be necessary in the first few years to support the change over to a new paradigm from assessment to strategic (e.g. for developing spatial interpretation tools to assist community (ref p34)).

Concurrences

When ‘consolidating NSW Government agencies requirements for development’ (*Green Paper*, p 36) into strategic plans (to streamline the assessment and approval process) there is a high risk that environmental, social, heritage and other considerations will be watered down or lost. The Subregional Delivery Plans will be required to cover a significant spectrum of issues, requiring information and objectives from a large number of government agencies. If the development assessment process is as streamlined as proposed in the *Green Paper*, it will become even more vital for agencies to ensure that ‘their issue’ is included at the strategic planning level. To reduce the possibility of the documents becoming long and unwieldy, there will be a temptation to summarise, water down, or remove provisions that are seen as lower priority. While this may have short term benefits, there is potential for significant long term unintended consequences. The Associations seek greater clarity on how government agencies will engage in the strategic planning process with councils across the state.

Summary of LGSA Position and Recommendations - Strategic Focus (General Comments)

The Associations:

- Welcome the effort to take a fresh approach and find new solutions to strategic planning.
- Support the proposal to strengthen the ‘front-end’ (i.e. strategic focus) of planning, subject to the resourcing issues being addressed.
- Are concerned that this version of a new strategic focus may be too ambitious a legislative, policy and structural program to achieve without some incremental steps towards this change.
- Question whether the approach may be too radical a conceptual change to achieve ‘buy-in’ from community members and regain community confidence.
- Recommend that a sustained revenue source is provided to fund the considerable additional strategic planning effort envisaged in the *Green Paper*.

8.2 NSW Planning Policies (Change 5)

The Associations support the simplification and reduction of state-level policies and agree that keeping these to a small number of high level policies on key areas will assist in setting the overall framework for planning outcomes to be delivered in regional, subregional, and local plans. The *Green Paper* nominates a number of likely NSW Planning Policies. Without further detail it is unknown whether these policies would capture all of the matters that should be covered, for example in areas such as natural resource management, health and wellbeing and indigenous cultural heritage.

In keeping with the overall objective of providing certainty and confidence in the planning system, there is a need to be clear about the certainty, longevity and legal status of the state policies. While we recognise that

⁶ *A Review of International Best Practice in Planning Law*, Leslie Stein, May 2012

these policies will “*not be statutory planning instruments in themselves*” (*Green Paper*, p 32) the Associations strongly advocate that they must be given sufficient legal recognition (through the new Act and through reference in strategic regional, sub regional and local plans) that will create confidence that they will not be subject to potential change on a whim of some future Minister or Government. The *Green Paper* seems to provide for a degree of flexibility that could fail to provide this confidence.

Currently, the legislation does not provide for public participation in the formulation of SEPPs, which has effectively allowed the Government to circumvent public participation and community debate on key policy matters. The public participation philosophy embodied in the *Green Paper* should apply to the formulation of the new state planning policies. The Associations maintain that Local Government must be involved in the formulation of these policies. Local Government looks forward to working with the Government to establish the legal standing and content of the NSW Planning Policies.

Summary of LGSA Position and Recommendations - NSW Planning Policies

The Associations:

- Support the simplification and reduction of state-level planning policies that have sufficient legal standing that they cannot and will not be readily changed.
- Recommend that Local Government be consulted in the formulation of NSW planning policies.
- Recommend that a process be articulated for the formulation and review of the state planning policies that includes a public and stakeholder engagement strategy (consistent with the approach taken elsewhere in the *Green Paper*).

8.3 Regional and Subregional Plans (Changes 6 and 7)

General comments

The Associations support the concept of regional planning and the proposals for regional growth plans and subregional development plans (SDPs) where they align land use changes with the delivery of state-based infrastructure. Rural and regional communities in particular have genuine concerns about economic development issues, particularly employment protection and growth. The Associations are therefore pleased to see the Government intends to “*strengthen planning efforts to facilitate growth in regional and rural NSW*” (p 35). However, we are concerned at the suggestion that SDPs will only focus on “*high growth areas*” (p 36). Local Government expects that these plans will be developed for all ‘subregions’, not just those in “high growth areas”.

Local Government maintains the view that regional and subregional plans need to address two key elements:

- Facilitating growth in low growth underperforming areas (such as some inland regions); while at the same time,
- Balancing growth and managing impacts in areas already experiencing or about to see high growth (e.g. coastal zones, and areas with coal seam gas extraction, mining and other resource development).

The Associations agree with the list of “*proposed reforms*” on page 34 of the *Green Paper* for regional growth plans. However, given the previous track record on metropolitan and regional plans it is difficult to be convinced about how this list of components will be transformed and translated into actual, meaningful and deliverable regional growth plans. Similar comments apply to the subregional delivery plan framework. We also query where the Strategic Regional Land Use Plans will fit within the regional plan framework. They are not comprehensive regional strategies, as they only deal with land use conflicts of agriculture and mining/coal seam gas developments, and do not address all other planning aspects (e.g. housing, retailing, transport etc).

Infrastructure Delivery

Accompanying strategic planning with guaranteed plans for infrastructure delivery will be critical in order to make a distinction between this new regional planning focus and that which exists in the current planning framework. In this regard, the Associations support the concept of Growth Infrastructure Plans. However, from what is discussed in the *Green Paper*, how the plans will lead to the actual delivery of infrastructure

remains somewhat open-ended. The *Green Paper* is also not clear as to what forms of infrastructure a *Regional Growth Plan* will include. For example, will it address state as well as local infrastructure?

Local Government therefore strongly supports the linking of regional plans with infrastructure delivery. However, unless this regional level strategic planning is supported with a guaranteed and ongoing commitment to infrastructure delivery by the State, there is a considerable risk that regional planning will remain ‘conceptual’ and will fail to be implemented in any tangible way.

Regional and Subregional Boundaries

The Associations note that the new Act will include “*the metropolitan area and the regional boundaries*” (*Green Paper*, p 35). We question how these regional and subregional boundaries are and will be defined. In particular, there is no detail on what criteria and process will be used to determine the “*groupings of councils*” for subregions. As Local Government will be “key participants” in the regional and subregional planning processes, councils must have a say in defining these sub regions. Local Government awaits further advice from the Government as to how it can contribute to this process.

Specific Provisions in Subregional Plans

An area of concern is that SDPs are proposed to directly rezone land (it is assumed, in a similar to the way that which a SEPP does currently) and to introduce a customised code-based assessment framework in key areas. This approach appears to be at odds with the clear and transparent planning system being advocated, and works against the *Green Paper’s* objectives of “removing complexity and duplication” (p 27) and “providing a “*clear line of sight through the hierarchy of plans*”(p 5).

Cumulative Impact Assessment

The Associations also strongly support the objective of considering cumulative impacts in setting the parameters for growth and change, but more information and explanation is needed as to how these cumulative impacts will be assessed in practice and genuinely factored in to the regional plans.

Regional Planning Boards and Other ‘Regional’ Structures

The Associations support the concept of a Regional Planning Board. However, we oppose restricting eligibility to General Managers and/or Planning Directors. The Associations’ views on the proposed Regional Planning Boards are discussed in section 11.2.

There is a definite need for a governance model to deliver metropolitan and regional planning. A great expectation is being placed on the regional and subregional plans to fill a gap which currently exists in the planning system. However, there is also potential to confuse the public, with planning and communication by a myriad of State and Federal agencies (e.g. NSW Department of Trade & Investment’s ‘regions’ & Regional Business Growth Plans, Regional Development Australia (RDA), etc) about their respective plans for ‘regions’ as they’ve defined them. Examples include:

- NSW Department of Trade & Investment’s ‘regions’ – *Regional Business Growth Plans*
- Regional Development Australia Boards – *Regional Plans*
- Catchment Management Authorities – *Catchment Action Plans*
- NSW Health – Local Health Districts

The Associations advocate that the government considers what processes can be built into the system to consolidate and reconcile the plans, actions and expenditure of other regionally focused NSW and Australian Government bodies with those of the proposed ‘regional planning boards’.

Relationship with Local Land Use Plans

Questions also remain about the relationship of these plans to Local Land Use Plans (LLUPs), (e.g. where they appear to cross over into provisions of local plans such as direct rezoning of land) and the role of Local Government (and in particular Councillors) in developing and signing off the subregional plans.

Summary of LGSA Position and Recommendations - Regional and Subregional Plans

The Associations:

- Support the concept of regional planning and the proposals for regional growth plans and subregional development plans.
- Emphasise the need for a guaranteed and ongoing commitment to infrastructure delivery by the state and more detail to be provided as to how the plans will lead to the actual *delivery* of infrastructure in accordance with these plans (i.e. the linking to the State budget).
- Question how the regions and subregions (“groupings of councils”) will be defined in the new Act, and await further advice from the government as to how Local Government can contribute to this process. Councils must have a say in defining these subregions.
- Strongly support the objective of considering cumulative impacts in setting the parameters for growth and change.

8.4 Local Land Use Plans (Change 8)

The Associations understand from the Minister that the completion of the current program of Standard Instrument Local Environmental Plan (SILEP) ‘conversion’ remains a priority, and that the intention is to provide a consistent and comparable basis for local land use plans across the state, for transition into the proposed Local Land Use Plan (LLUP) format. However, the timeframe and intended process for this transition is unclear from the *Green Paper*. Local Government wishes to ensure that the significant work and goodwill endowed within their SILEPs to reach agreement on good planning outcomes is not disregarded or lost in the move to a new system of local land use plans. Councils have invested considerable time and resources in developing their standard template LEPs, and want to have certainty that the move to the new local land use plans will:

- Recognise the work and validate the content of existing LEPs;
- Be properly resourced; and
- Be guided by a clearly spelled out set of steps and tasks, and sample LLUPs, that convey the intended structure and content of these new plans

With regard to the Government’s intent “*that guidelines should facilitate outcomes desirable to the market, not dictate solutions that preclude choice and flexibility*” (*Green Paper* p 43), Local Government is not necessarily against having greater flexibility to accommodate development that is appropriate to the local area, however, the introduction of greater flexibility to accommodate a market driven approach to development presents serious concerns. This approach appears to contradict the basic premise described elsewhere in the paper of providing certainty.

Local Government advocates a more consistent basis for funding plan-making processes where these are initiated by a (non-council) proponent. The current *EP&A Regulation* (clause 11) currently provides a ‘loose’ basis for cost recovery ‘by agreement’, and many councils now approach this issue on the basis of fee for service, however this varies from council to council. With the intended introduction of additional appeal rights in relation to plan amendments (Change 15) and further delegation of additional plan-making work to Local Government, this issue should be clearly addressed in the new legislation.

Councils’ community strategic planning processes have the potential to provide a critical and important input to this new strategic community participation regime at the local level. However, while the *Green Paper* notes that these processes may be an “effective model” (*Green Paper* p 23) it makes limited reference to these processes and does not seek to integrate the two systems in any way. As discussed in section 3.3 of this submission, the Associations observe a potential conflict in having a hierarchy of plans with a top-down approach while at the same time advocating for empowering communities to have a say about what they would like to see in their local and regional areas. There is evidence of this contradiction in relation to local land use plans (LLUPs), where on the one hand, the *Green Paper* has noted that the strategic part of LLUPs “*will draw on the existing Community Strategic Plans prepared by councils*” (p 43) but at the same time indicating that they will be adjusted if necessary “*to reflect the strategic intent*” (p 42).

Summary of LGSA Position and Recommendations - Local Land Use Plans

The Associations:

- Emphasise that councils have invested considerable time and resources in developing their standard template LEPs, and want to have certainty that the move to the new local land use plans will:
 - Recognise the work and validate the content of existing LEPs;
 - Be properly resourced; and
 - Be guided by a clearly spelled out set of steps and tasks, with sample LLUPs that convey the intended structure and content of these new plans
- Advocate a more consistent basis for funding plan-making processes where these are initiated by a (non-Council) proponent.
- Observe a potential conflict with the *Green Paper* having a hierarchy of plans with a top-down approach while at the same time advocating for empowering communities to have a say about what they would like to see in their local and regional areas.

8.5 New Zones (Change 9)

Without further explanation and detail, the Associations question the intended purpose, outcomes and operation of the proposed new zones. While there may be some potential opportunities and benefits for regional and rural councils, in many areas, councils will be cautious at best about the proposed ‘Enterprise Zone’ which is to be “*characterised by very little, if any, development controls providing they do not result in any significant adverse environmental impacts*”. It is difficult to see how such a zone is consistent with the evidence based, consultative strategic planning approach and greater certainty proposed throughout the *Green Paper*. Without further detail, the Associations question how potentially significant environmental implications would be managed in the Enterprise Zones.

Local Government also has reservations that such a flexible zone would considerably increase speculative spot rezoning requests, particularly if a right of appeal is introduced for planning proposals (Change 15). The Associations would like to point out that this would appear to undermine the integrity of councils’ local environmental plans that have been put in place after many years of planning and community and stakeholder input.

The Associations consider that more discussion is needed on the proposal for a Suburban Character Zone which is aimed at preserving certain areas because of “*the proven significance of the urban character or because of its established development patterns and amenity*” (*Green Paper*, p 45). It is unclear whether current conservation areas and/or character areas can achieve the same result, and in turn, whether the intention would be to use this zone to replace any heritage or conservation area controls.

The interplay between the new zones and existing LEPs is not explained. Given the government’s intention in the *Green Paper* that “*the zoning framework in the new planning system will provide greater flexibility to provide for a broader range of uses within a prescribed zone*” (*Green Paper*, p 45), this opens the question of what is the intended future of existing zones in the Standard Instrument LEP and whether these will be carried forward in their current form into the new LLUPs.

Summary of LGSA Position and Recommendations - New Zones

The Associations:

- Consider that without further detail about how new ‘Enterprise Zones’ would work, on face value the concept appears to be inconsistent with the evidence based, consultative strategic planning approach and greater certainty proposed in the *Green Paper*. Local Government also has reservations that such a flexible zone would considerably increase speculative spot rezoning requests, particularly if a right of appeal is introduced for planning proposals.
- Consider further details are needed on the proposed Suburban Character Zones and clarity about whether this zone would replace or weaken any existing heritage or conservation area controls.
- Would like clarity on what is the intended future of existing zones in the Standard Instrument LEP and whether these will be carried forward in their current form into the new LLUPs.

9. DEVELOPMENT ASSESSMENT AND COMPLIANCE

9.1 Overview

Local Government supports a development assessment process that:

- Incorporates community engagement at a level that is appropriate to the scale or impact of the development;
- Encompasses differing tracks (pathways) for assessment that matches the scale and impact of the development;
- Delivers outcomes that are consistent with the strategic framework that meets local expectations; and
- Recognises council as the consent authority for local development.

The current system is overly complex; burdened by layers of state and local plans and codes that do not relate. It needs to be fundamentally simplified so that criteria for assessment are better understood.

9.2 Depoliticised Decision Making and the Role of Elected Councillors (Change 10)

Role of Councillors in Development Decision Making

The Associations note that the intent to ‘depoliticise’ decision making sits alongside a suite of other transformational changes being proposed with a view to streamlining development assessment and expanding the use of “independent” and “expert” decision makers. In practice, Councillors are involved in about 3% of applications (*Green Paper* p 50) - a very small, yet visible, number of applications. The role of Councillors as decision makers is seen by some as ‘politicising’ the assessment process. Yet others see it as one of several legitimate means of enabling community engagement to be appropriately integrated within a system that can at times be unfathomable to the average person.

There is merit in the concept of expert panels, and a number of councils already adopt this approach through Independent Hearing and Assessment panels (IHAPs). This move appears to reflect a wider trend nationally for various actions by state governments which are seen as reducing local community engagement in land use planning through their Local Governments. However, the Associations are concerned about the impact of these and other changes on principles of community interest and local democracy.

Given the impact of planning on the quality of life for the local community and its current and future economic and social wellbeing, local community involvement and direction of land use planning is desirable. Local Government is closest to the people, has local knowledge and expertise, is directly elected by the citizens who will be affected by planning decisions and is therefore directly accountable for their decisions and actions. However, the trends and directions taken in urban planning and development in the past decade appear to be increasing the power of state governments and private interest, reducing the role of Local Government, and hence undermining the traditional structures of Australian urban governance.

The Associations echo the views of local communities who argue that public interest concerns should have equal ‘voice’ in decision making. While this has its own challenges (as discussed in sections 7.2 and 8.1 of this submission), the Associations recommend that the most effective use of public engagement and participation in government decision making is best achieved using a *combination* of representative, expert and participatory decision making (i.e. public engagement).

The Associations uphold the view that the planning reform agenda must recognise and retain the lead role of Local Government in the local planning system at the local level. Further, that the new planning system must take into account the role that elected members play in planning and development decision making. The Associations base this view on the principle that Local Government is:

- best placed to inform the planning process of the needs and expectations of local communities;
- democratically accountable to local communities; and
- the advocate for its community to other spheres of government.

Local and State Government each have a legitimate role to play in land use planning and development assessment processes, and the principle of subsidiarity should apply. Within a framework of well developed

and comprehensive regional and state planning instruments, the Associations contend that positive local autonomy can coexist with other levels of decision making. The principles of local autonomy and democracy should be respected by retaining councils’ role in local planning matters.

The Associations recognise the place of Councillors as the final arbitrators of the assessment process to determine the small number of mostly controversial applications that come before them. In this role they ensure that local issues are expressed and considered at the determination stage, as well as ensuring that the decision is transparent and understandable to the community. This system provides ‘checks and balances’ to an assessment process that is mostly administered by council staff. The Associations also support councils delegating powers to staff to determine applications that comply with council policies.

Delegated Decision Making

The Associations remain supportive of existing practice which shows that 97% of council development decisions are made under delegation or by private certifiers. However, we maintain that there is a legitimate role for elected Councillors to play in certain decisions.

While there may be an argument for keeping decisions ‘at arms length from politics’, creating a system in which *all* decisions are made by delegation at officer level (i.e. by bureaucrats/technical officers) shifts responsibility for these decisions to those who are one or two steps further removed from those in councils who are ultimately accountable back to their communities. As discussed above, in a local democracy it is still essential for the community to retain the right to make effective representations on planning matters through their elected representatives, especially where variations to adopted policy or deviations from strategic plans may be sought.

While most applications are determined by delegation, there are some developments where it will be appropriate that Councillors or an independent panel of experts determine the proposal. Current practice varies from council to council, depending on factors such as the level of delegation given to council staff, whether objections have been received, and whether the application is outside council controls. Many councils already have in place criteria and/or policies for referral of proposals to Councillors for determination. The Associations consider that these examples should form the basis of criteria that could be developed and adopted by all councils.

Summary of LGSA Position and Recommendations – Role of Elected Role of Elected Councillors

- The Associations:
- Are pleased that the role of Local Government has been recognised as a key stakeholder in both plan making and development assessment (as referred to in Figure 2 and throughout the *Green Paper*).
 - Recommend that the most effective use of public engagement and participation in government decision making is best achieved using a *combination* of representative, expert and participatory decision making (i.e. direct public consultation).
 - Oppose the basic premise behind depoliticising all decision making. There are certain circumstances where there is a legitimate community governance role in some planning and development decisions.
 - Oppose the proposal to remove all consent decisions from elected councils.
 - Maintain that Local Government is best placed to make decisions about the needs and expectations of local communities. While there may be a role for ‘independent decision making’ in some circumstances, this should be minimised by establishing accountable, transparent and consistent decision making processes, with clear roles and responsibilities for land use planning and development assessment.
 - Consider that the criteria and/or policies that many councils already have in place for determining when to refer proposals to Councillors for determination should form the basis of criteria that could be developed and adopted by all councils.

9.3 Proposed Expansion of Joint Regional Planning Panel (JRPP) Role

The Associations question the place of Joint Regional Planning Panels (JRPPs) as a decision making body that is unaccountable to communities and overly represented by state government appointed members. The current membership balance between state and Local Government nominees undervalues the role of Local

Government in regional decisions.

The Associations acknowledge that changes introduced in 2011 by the State Government (i.e. to limit the number of developments going to JRPPs and to amend the process for appointing the Chair of these panels) have been a positive step. However, if the JRPPs are to remain in place, the Associations support a model that clearly recognises the place of Local Government in the decision making process and that allows the majority of members of the panel (three out of five) to be nominated by Local Government.

In addition, the Associations consider that Councillors are suitable Local Government nominees in their own right, based on their experience as Councillors in deciding planning matters, rather than being required to meet a narrow list of qualifications, as currently occurs.

The Expansion of Planning Role

The Associations also strongly oppose the expanded functions proposed for JRPPs in the *Green Paper*

The proposed changes would extensively widen the planning functions of JRPPs by:

- Expanding its plan making role – applicants will be able to seek a review of a council decision to refuse an application for re-zoning to the JRPP (change 15);
- Being given a ‘quasi –judicial’ role – applicants will be able to seek a review of a decision of the elected council to refuse a DA – this virtually gives the JRPP appeal rights for a DA (change 15);
- Reviewing (overturning) a decision of council that does not support a variation to a ‘code based’ development standards under the expanded code based development assessment process (change 11 p54);
- Bringing the JRPPs into the assessment process by enabling the JRPP to be involved in pre-lodgment meetings and briefings (change 13); and
- Giving JRPPs dedicated staff to assist with input into the assessment/determination interface (change 13, p 61).

Expanding Plan Making Role

The Minister currently has the power to seek advice from JRPPs on important re-zoning applications. This role will now be expanded to give all applicants this right under certain circumstances. This will influence the practice of plan making at a local level.

The proposed changes will enable JRPPs to take on an expanded strategic role in influencing key plan making decisions at a local level. These decisions will apply to important precincts and growth areas. Apart from the resource implications that these decisions will have on council staff and the JRPPs, these changes will encourage applicants to seek a review from the JRPP that would overturn a decision of council. This will undermine confidence in the strategic planning process and the plans themselves, and lead to fast tracked ‘ad hoc’ decisions being made out of context with the strategic framework. Once these rights are given they will not be easy to remove.

The Associations maintain that the proposed changes would undermine the long standing role of Local Government in the plan making process. Councils are elected by the community to make plan making decisions for their area. JRPPs on the other hand are not accountable to the community and the Associations therefore consider it is totally inappropriate for them to take on a plan making role.

The Associations’ concerns with the new rights of appeal for rezoning applications are further discussed in section 9.7.

Widening JRPP Role in Development Assessment

The combination of proposed changes will widen the JRPPs’ role in the development assessment process.

The Associations strongly oppose:

- the allocation of special staff to the JRPP as this will build a separate layer of bureaucracy that is considered unnecessary and contrary to simplifying the consent process; and
- members of the JRPP being involved in pre DA meetings, on the basis that it should be consistent council practice that purposefully excludes Councillors being involved in the assessment process.

Instead, we support JRPPs continuing to be appropriately briefed by council staff on applications that are under discussion and assessment that enables appropriate advice and expertise to be discussed.

The Associations also strongly oppose the JRPP taking on the role of reviewing council's development decisions. This role requires an extensive knowledge of current legislation and case law, as each decision will directly affect practice at a local level. It is important that such a role is maintained by an independent body under the auspices of the Court.

The combination of the expanded functions for the JRPPs raises the fundamental question of their role and the reasons for expanding their functions. The Associations question whether the expanded functions will deliver faster and better decisions. The Associations oppose JRPPs acting as a 'watch dog' overseeing councils' planning and development roles.

Summary of LGSA Position and Recommendations - JRPPs

The Associations:

- Strongly oppose the expansion of the roles and functions of JRPPs in plan making and development assessment, including attachment of their own staff. This would create an additional layer of bureaucracy and will lead to unnecessary additional costs and potential overlap.
- Strongly oppose the JRPP being involved in pre DA meetings as this is inappropriate involvement of the final decision maker in the assessment process. We support appropriate briefing sessions of planning staff and members of the JRPP on pending applications and applications in the pipeline.
- Strongly oppose the JRPP taking on the role of reviewing councils' development decisions. This role requires an extensive knowledge of current legislation and case law, as each decision will directly affect practice at a local level. It is important that such a role is maintained by an independent body under the auspices of the Court.

9.4 Expansion of Code Based Development (Changes 13 and 14)

The Associations understand that the *Green Paper* specifically proposes to expand codes based assessment (Change 14) to apply to:

- a wider range of types of development including residential flat development, shopping centres and office buildings;
- applications that exceed the development standards of the codes by allowing variations to be approved by council; and
- Urban Activation Precincts (to enable development to be fast tracked within these precincts).

In addition, the Associations understand that *Green Paper* proposes to reduce the reliance on development control plans (DCPs) in the new system. These controls and standards will be "applied by way of guidance" (*Green Paper*, p 43) within the local land use plan, rather than as statutory instruments. These guidelines will fall outside the 'code based' system. Under the new system these guidelines will have limited applicability, as applicants will increasingly rely on the 'code based' system for approval.

Code based assessment is more suitable for small straightforward applications, of low impact. However, they are less suitable or effective in addressing the majority of applications that proceed through the DA process. This focus on the expansion state/regional wide codes ignores some of the more fundamental flaws of the existing system which the Associations see as:

- There is no framework to integrate the planning controls that apply to development under the Codes SEPP or councils' DCPs – this needs to be further considered to simplify the assessment process.

- The DA assessment process (that covers 80% of applications) ‘falls outside’ the codes based system. However, the current reliance on DCPs to manage DAs will be eroded as the code based system is expanded.
- The expansion of ‘code based assessment’ to cover complex development forms is challenging and unnecessarily excludes communities from the process and overrides councils consent powers.

For these reasons the Associations argue that an alternate assessment framework is needed, to combine state and local controls that differentiate assessment pathways based on the complexity of the application. This may enable certifiers to assess the single dwellings and enable council planners to assess the more complex planning issues.

9.5 Proposed Alternate Assessment Framework

Proposed Alternate Framework

The Associations suggest an alternate Assessment Framework that is based on best practice planning practice in a number of other state jurisdictions.

This alternate assessment framework would:

- Provide a ‘one stop shop’ for development controls that combines state and local codes –that could be accessed by e-planning technology.
- Provide for three different pathways for assessment that match the level of impact or complexity of the development and certain locational issues, such as heritage, bush fire and flood assessment.
- Retain resident rights to object, to an application that require a merits assessment, but limited in certain less complicated applications to specific planning issues.
- Retain council consent for matters that require a merits assessment.

The assessment framework would enable a number of pathways for approval as illustrated in Figures 1 and 2, and outlined below:

- Pathway 1 – ‘Codes based assessment’ - where the certifier would sign off. The pathway would be suitable for simple straight forward applications, such as single dwellings, that comply with all the agreed development standards by a ‘tick the box’ process.
- Pathway 2 – ‘Codes based plus’ assessment would be suitable for low scale medium density development and ‘non complying’ single dwellings – where the certifier assesses the development standards and the council assesses the additional planning criteria or variations to a development standard where an application does not comply with the numerical standards.. This may be suitable for applications where there is a masterplan is approved, or where the application varies to a minor degree with the code. The application is advertised and communities have a restricted right of response to the relevant planning issues. The application is approved by council.
- Pathway 3 – Merits assessment is required. The application is assessed under the combined state (if applicable) and local planning controls (development standards in the LLUP and Guidelines). The application is advertised and approved by council.

Figure 1: Approval Process for Proposed Alternate Assessment Framework

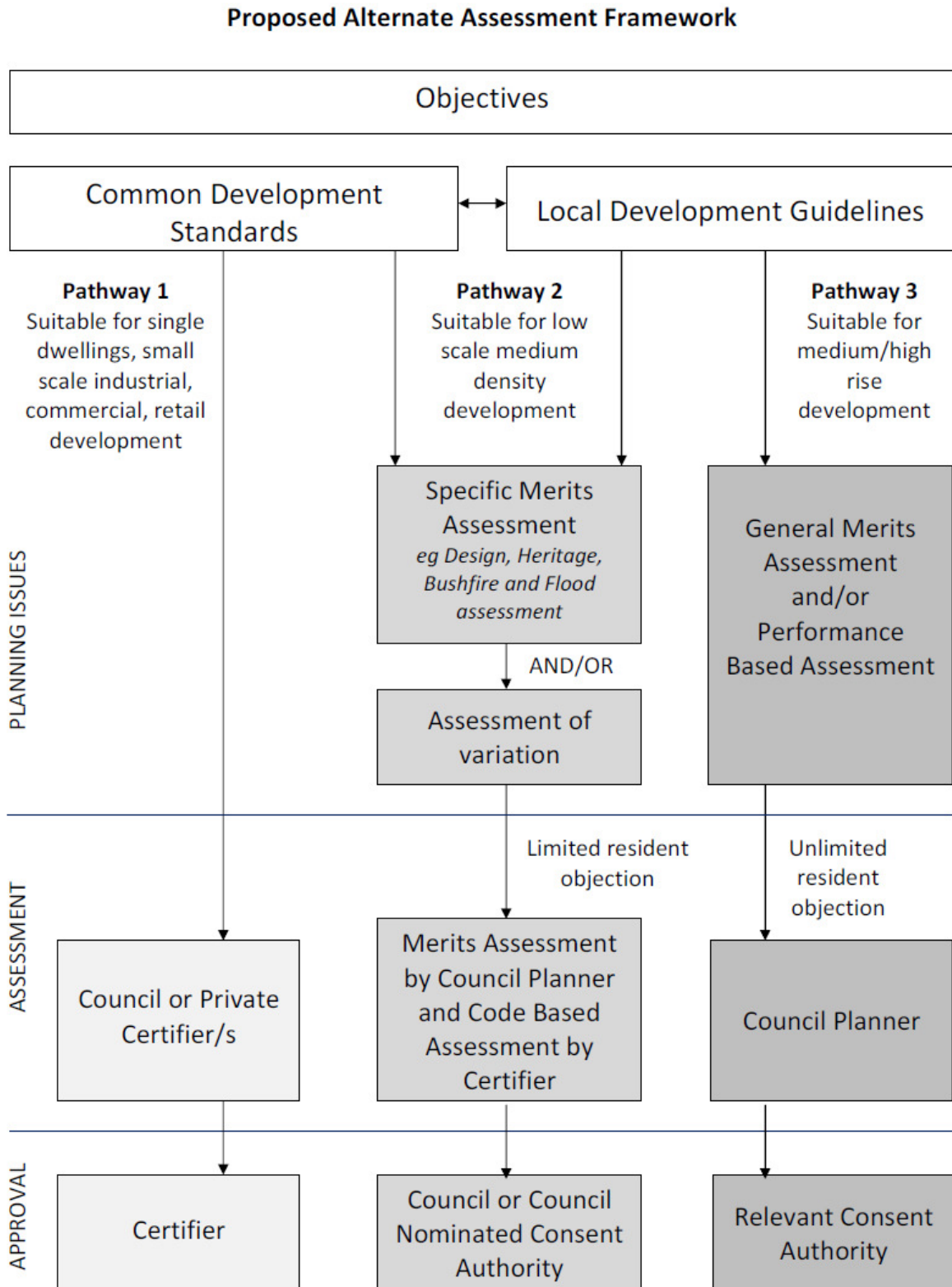
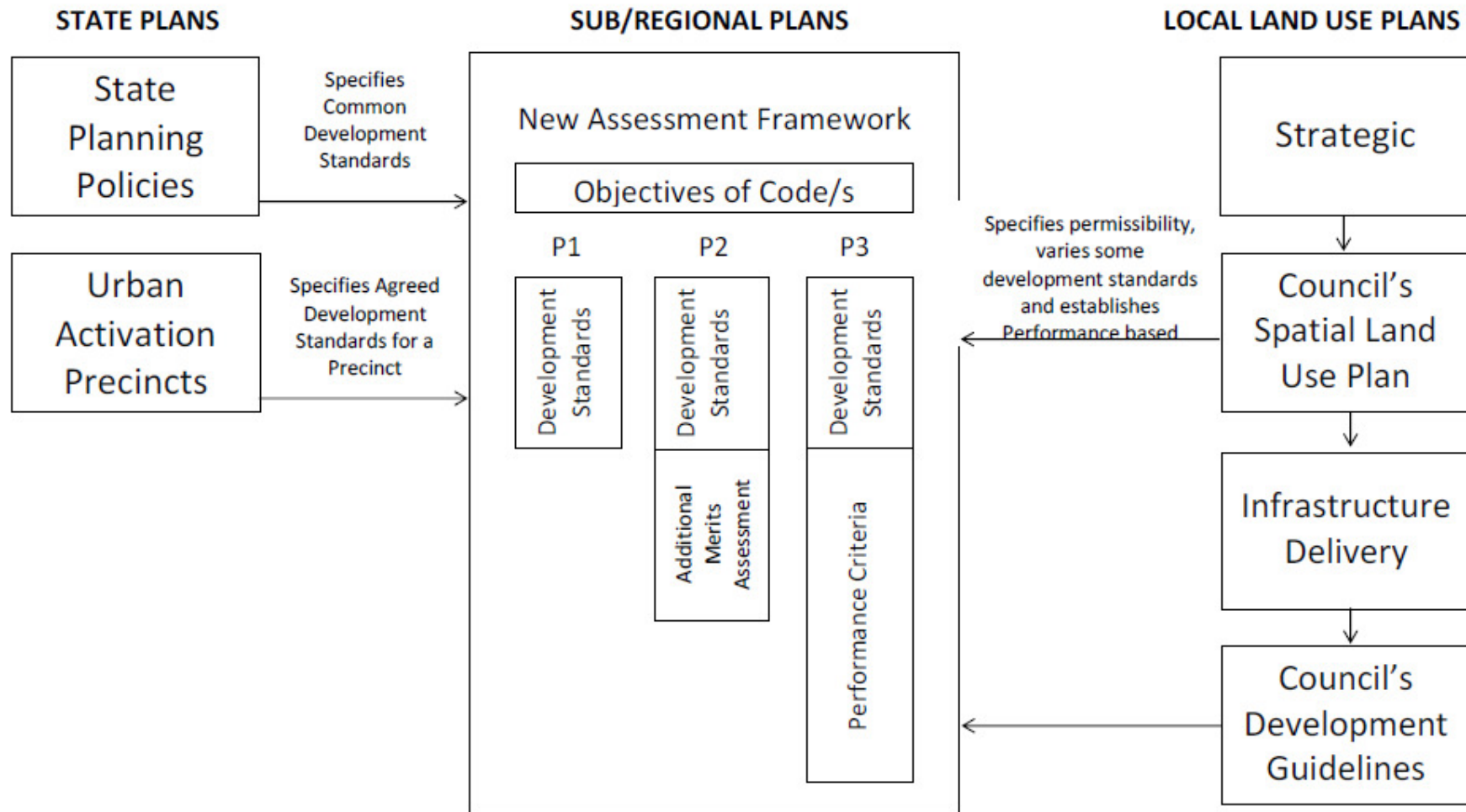


Figure 2: Relationship of Proposed Alternate Assessment Framework with State and Councils' Local Plans



Pathway 1 – Complying development approved by certifier as a 'tick the box' assessment against development standards

Pathway 2 – Complying plus merits assessment for merits assessment of specific planning issues or assessment of the variation/resident objection limited to specific planning issues

Pathway 3 – DA – approved by council/resident objections allowed

E-planning to improve the assessment process

There is an opportunity to develop a state-wide framework that can be delivered in an electronic format by the Department of Planning and Infrastructure. The Associations would like to work with the Department of Planning and Infrastructure to develop an alternate framework as proposed above.

Summary of LGSA Position and Recommendations –Development Assessment

The Associations:

- Recommend consideration be given to establishing an integrated assessment framework to enable state and local planning controls for complying and development applications to be located in a ‘one stop shop’. This would provide the opportunity to rationalise these codes under various plans.
- Support complying codes that are suitable and limited to low risk straightforward development that is supported by communities.
- Argue for the preservation of residents’ rights to have a say on a development proposal during the assessment process, but that this ‘right’ be moderated by the scale and potential risk of the development on communities.
- Support the retention of council consent on moderate to high impact development.
- Would like to work with the Department of Planning and Infrastructure to develop an alternate framework as proposed in this submission.

9.6 Right of Review for Rezoning and Strategic Compatibility Certificates (Change 15 and Change 11)

The Associations acknowledge the emphasis on strategic planning that is intended to reduce the need for spot re-zonings. Nevertheless we are concerned that what is proposed for the new system provides more opportunities to override the strategic planning process by establishing new fast track processes to rezone land by:

- Obtaining a Strategic Compatibility Certificate from the DG (change 11);
- Enabling applicants to obtain a rezoning from either the JRPP or Planning Assessment Commission (PAC) pre and post gateway (change 15) without the support of council.

This is one of a number of inherent contradictions in the *Green Paper* (referred to in sections 3.2 and 3.3 of this submission) that could undermine the very confidence and certainty that the paper is seeking to achieve. On one hand the new system is advocating upfront strategic planning to provide a clear and certain future, yet at the same time a number of opportunities are provided to overturn those agreed strategic outcomes.

In particular, concerns are raised in relation to:

- The power of the Director General to support a rezoning via a Strategic Compliance Certificate. It is unclear how or whether councils will be consulted in this process. The Associations maintain that councils should be consulted.
- The role of a JRPP to override key components of planning instruments, such as zonings and development standards.

The Associations appreciate that plan making can be a lengthy process. However the work of both the LEP Review Panel and more recently the Local Planning Panel has and will accelerate current practice. An obvious way to fast track rezoning applications is to give councils power to make amendments to their own Local Plans, where the application is in conformity with the strategic plan. In addition, where the plan itself is ‘out of date’ the Associations support the use of Urban Activation Precincts to target growth areas where supported by the local council. These plans can be up dated and fast tracked under the new system in partnership with councils.

The Associations maintain that Local Government is the appropriate body to manage the plan making process. Councillors are elected by the community and are accountable for the decisions that affect local communities. They have the relevant expertise and local knowledge to contribute positively to this process.

In contrast, the state members of the JRPPs do not have the local knowledge or accountability necessary in plan making at a local level.

Review of DAs to the JRPP

As discussed in section 9.3 of this submission, the Associations oppose a review of a decision of council on a development application (or modification of a development) to the JRPP.

Summary of LGSA Position and Recommendations – Reviews of Rezonings

The Associations:

- Warn against establishing numerous opportunities to overturn local plans that will undermine confidence and certainty in the strategic planning framework. These plans will be viewed as contestable, open to debate and become well used by industry to override local plans.
- Object to:
 - i. The power of the Director General to support a re-zoning via a Strategic Compliance Certificate.
 - ii. The role of a JRPP to override zonings and development standards.
- Recommend that councils be given meaningful powers to amend their own local plans, within reasonable limits. This would enable appropriate development to proceed that is in accordance with the local strategic framework, or the draft plan.
- Recommend the use of Urban Activation Precincts, where supported by councils, to manage growth outside the local plan making system. This can be used to fast track the updating of local plans to deliver growth outcomes in association with local infrastructure funding.

9.7 Building Certification and Regulation

The Associations note that the Minister has foreshadowed the need to tighten building regulation. Given the significance of building regulation and certification, particularly in an expanded code assessable framework, the Associations were disappointed to see such limited reference to this issue in the *Green Paper* and no information or comment provided about what is proposed for new building regulation.

The Associations maintain that the key problems with the current system of building regulation are:

- Inconsistency between the development consent and ultimately what is signed off with the issue of an occupation certificate – it is not uncommon for developments to be occupied and issued with an occupation certificate without the conditions and requirements of the consent having been completely satisfied.
- It is not rigorous enough – there are insufficient penalties.
- It lacks clear enforcement obligations – these are defaulting to the auditing and stop work provisions of councils.
- Accountability for work done is based on a paper trail audit generated by the certifier, and not on actual and regular site inspections.
- It fails to provide confidence in the system.

We therefore strongly support the introduction of a tougher building regulation regime, which is essential if code based assessment and private certification are to be expanded. The Associations commend the Building Professionals Board for its commitment and consultation to date to separately review the future of building certification in NSW. We trust that the outcomes of this review will be integrated into the White Paper and implementation of a tighter regime under the new planning system will go a long way towards addressing the above issues. There may be value in considering the merits of a building commission model for the NSW planning system, as part of this review.

With regard to council certifiers, Local Government is firmly of the view that the new planning system must retain provisions to allow Local Government certifiers to continue to carry out their certification functions. Councils in rural and regional areas in particular have observed that one of the issues with private certification in rural NSW is that the longer travel distances between certification jobs has resulted in some projects being certified in the absence of site inspections.

An issue that councils have with the State Government's complying development provisions is that the resultant increase in privately certified work may significantly increase councils' regulatory role, to ensure that the community is not disadvantaged by some private certifiers failing to address their concerns and legitimate expectations. There are currently no mechanisms for councils to fund this impost on their regulatory role and these costs may not be able to be adequately funded from councils' current revenue sources. Where enforcement action is necessary (e.g. orders, fines, court action and physical rectification) the new system needs to make provision for councils to recover costs of enforcement action, either from the landholder, proponent, private certifier or other appropriate source (e.g. state fund).

The Associations listed a number of issues in their previous submissions that need further investigation and resolution. The key issues are:

1. **Need to review penalty regimes for certifiers** – these must be increased to introduce greater incentives for certifiers to do the right thing
2. **Identify or establish an agency with responsibility for auditing the building certification system** - There is a need for a 'checking' or 'auditing' role to monitor and regulate the work of private certifiers. Currently this function is defaulting to councils, because of their legal powers and in the absence of any other authority charged with this responsibility. The BPB only responds to complaints. This has potential cost/resourcing implications for councils. (Some councils are having to rely on taking a bond up front from applicants, to cover any of the costs they may incur to follow up and deal with complaints, issue orders etc against private certifiers.) However it was never intended that councils would 'police' the private certifiers, and as competitors in this process, this outcome is an unintended consequence which conflicts with competition principles. A tougher regulator is required, with provisions to conduct random checks/audits and to issue stop work orders in certain circumstances.
3. **Clarify and refine roles and responsibilities** – Currently, councils are charged with both a certification role (in competition with private certifiers) while still retaining regulatory powers to issue orders on private certifiers. The respective roles of council as the 'approving authority', council as 'certifier', private certifiers, and the BPB need to be clarified and refined to ensure there are no overlaps, gaps or potential implications for the spirit of competition.
4. **Improve and tighten regulation in the system to ensure high standards and compliance** – Provisions are needed to ensure that the principal contractor and other professionals involved in the design and construction of a building are accountable for their work and activities and hold professional indemnity insurance accordingly. Currently, the only person in the whole development process that is being held accountable and is required to hold insurance is the Accredited Certifier (including Council). However, a certifier can not reasonably take on responsibilities and liabilities of the whole design and construction team and each and every contractor.
5. **Define and clarify the meaning of the term 'not inconsistent with consent'** - Councils have had ongoing problems with the liberal interpretation adopted by many certifiers to clause 145 'not inconsistent with consent'. A definition of this term is essential to resolve ongoing issues for Local Government.

Summary of LGSA Position and Recommendations – Building Certification and Regulation

The Associations:

- Recommend the introduction of a tougher building regulation regime, which is essential if code based assessment and private certification are to be expanded.
- Commend the Building Professionals Board for its commitment and consultation to date to separately review the future of building certification in NSW.
- Trust that the outcomes of the BPB review will be integrated into the *White Paper* to ensure that a tighter regime is implemented with a view to:
 - Reviewing penalty regimes for certifiers.
 - Identifying or establishing an agency with responsibility for auditing the building certification system.
 - Clarifying and refining roles and responsibilities.
 - Improving and tightening regulation in the system to ensure high standards and compliance.
 - Defining and clarifying the meaning of the term 'not inconsistent with consent'.

10. INFRASTRUCTURE PLANNING AND COORDINATION

10.1 Contestable Infrastructure (Change 16)

The principle of contestability in infrastructure and service delivery is widely supported and practiced in Local Government. The current development contributions system already provides for high degree of contestability. However, contestability should not compromise standards and should only be applied where the costs and potential delays associated with a contestable process are warranted.

10.2 Growth Infrastructure Plans (Change 17)

The proposal to integrate the planning and provision of infrastructure with strategic planning for growth is strongly supported. The Associations have long advocated the necessity of this approach.

10.3 Infrastructure Contributions (Change 18)

The *Green Paper* presents a list of principles but presents only one option that is “*under strong consideration*” (*Green Paper*, p 76). This provides for a:

- Local Infrastructure Contribution limited to roads, local drainage works and land for community facilities. The amount to be identified in Local Infrastructure Plan for Greenfield developments or a fixed percentage of capital investment for infill development.
- Local and Regional Open Space Fund to fund local and regional open space and local and regional drainage land. This would be a fixed contribution and the fund shared between local and state government.
- Regional Infrastructure Contribution for state infrastructure with amount to be identified in the Growth Infrastructure Plan for greenfield areas and a percentage of capital investment for infill development.

It is positive that the *Green Paper* acknowledges the need for development contributions and proposes to embed a contributions framework in the new planning system.

The Associations maintain that the criteria for Local Infrastructure Contributions need to be expanded to include baseline community facilities. Liveable new communities need more infrastructure than just roads and drainage works. Given the financial constraints on councils, it is likely that land provided for community infrastructure will remain undeveloped for many years after the community moves in.

It is hoped that the proposed contribution model includes the management of riparian areas and Water Sensitive Urban Design (WSUD) within the definition of drainage works. It should be recognised that Water Sensitive Urban Design is a low cost and environmentally friendly means of reducing the pressure on existing drainage infrastructure from increased development.

The Associations consider the principle that “*levies must be competitive with comparable markets in other jurisdiction*” (*Green Paper*, p 75) to be problematic. Financing mechanisms in other jurisdictions are the result of different policy settings and circumstances (e.g. the absence of rate pegging, larger local infrastructure spending by state governments etc). They are not directly comparable.

The principle that levies “*must not compromise housing affordability or inhibit housing delivery*” (*Green Paper*, p 75) is also problematic as the cost of new housing development is determined by the complex interaction of a range of market and non market based factors. Unfortunately, this issue tends to be approached simplistically whereas in reality it is difficult to separate the individual cost components. It is also arguable that development contributions do not contribute to housing costs but are factored into the wholesale price of developable land.

Rigid adherence to these two “principles” would potentially undermine the infrastructure contributions system.

The Associations are also concerned that the proposed Regional Open Space Fund may compromise the provision of local open space. With both the state government and councils competing for allocations from

this potentially diminished funding source it is likely that regional open space will gain priority. While supporting the provision of regional open space, it does not replace the need for local open space in communities. Regional and local open spaces serve different purposes and satisfy different needs.

The Associations note that the paper lacks any detail on the level of contributions, the use of caps or the future role of IPART. There is also no detail on how the Local Infrastructure Contribution fund would operate particularly in terms of local and state government apportionment or administration. We understand that the criteria for this fund are basically the same as the current arrangement, with the exception that local open space has been moved into a new Local and Regional Open Space Fund. This type of detail will be required before more comprehensive comment can be provided.

We are concerned that the *Green Paper* is silent on the likely process of how these details will be worked out. This issue is one of several key matters in the planning system that the Associations consider would benefit from having a technical working group to look at the issues in detail and develop some alternative options.

Summary of LGSA Position and Recommendations – Infrastructure Planning and Coordination

The Associations:

- Renew calls to extend Local Infrastructure Contributions to include baseline community facilities.
- Recommend that contribution caps be removed or increased.
- Recommend establishing a technical working group to flesh out the details on options for developing a “fairer, simplified and more affordable system for infrastructure contributions” (*Green Paper*, p 74).

10.4 Public Priority Infrastructure (Change 19)

The Associations generally supports the proposed simplified process for Public Priority Infrastructure. However, the early and coordinated engagement of relevant government agencies should include the relevant councils so that they can also meaningfully input into project design considerations – allowing them to contribute to identifying and resolving environmental and social impacts at the design phase.

11. IMPLEMENTATION AND DELIVERY

11.1 Chief Executive Officers Group (Change 20)

The Associations support the integration of agencies at CEO level to assist with the delivery of plans and infrastructure. However, it will be vital for the CEO Group to consult with the Associations where their deliberations concern Local Government. We also note that there is no representation from the Office of Environment and Heritage and Department of Primary Industries on this group. These agencies are two major land and environmental management agencies that have a legitimate and key role in managing land use conflicts at a strategic level and therefore have a legitimate “input to the preparation of growth plans, planning policies and standards” (*Green Paper* p, p 85).

Summary of LGSA Position and Recommendations – Chief Executive Officers Group

The Associations:

- Request a commitment that the CEOs group consults Local Government through the Associations at appropriate points in its work.

11.2 Regional Planning Boards (Change 21)

The Associations agree with the concept of a Regional Planning Board, although the *Green Paper* contains no detail as to how these boards will be chosen. The Associations consider that a legitimate representative model for Regional Planning Boards is one which incorporates the following elements:

- A Board which consists of two component parts:
 - i. **Local Government representation from elected representatives** of constituent councils (with council planning staff providing logistical support as required, in a non-voting capacity). The Associations oppose restricting eligibility to General Managers and/or Planning Directors (as referred to on p 39 of the *Green Paper*). The Local Government representatives on the Boards should be Mayors as community leaders or other representatives chosen by councils.
 - ii. **State and public sector representation** from senior officers of relevant state agencies.
- A stakeholder reference group made up of relevant/appropriate stakeholder representation to assist the Board’s deliberations. The Stakeholder Reference Group established as part of consultation on the strategic regional land use plans may provide an appropriate model.

As referred to in section 8.3 of this submission, there is concern about potential confusion for the public, about the role of these boards and their relationship with other regional structures in state and federal spheres.

Summary of LGSA Position and Recommendations – Regional Planning Boards

The Associations:

- Support the concept of having Regional Planning Boards and welcome the proposal that ‘*Local Government will be key participants on Regional Planning Boards*’ (*Green Paper*, p 8).
- Recommend a model in which the Board consists of two component parts:
 - i. Local Government representation from elected representatives of constituent councils; and
 - ii. State and public sector representation from senior officers of relevant state agencies.
- Recommend stakeholder representation be provided where relevant/appropriate by way of a stakeholder reference group to assist the Board’s deliberations.
- Oppose restricting eligibility to General Managers and/or Planning Directors - Local Government representatives should be Mayors or other representatives chosen by councils.
- Question the potential for public confusion about the role of Regional Planning Boards and their relationship with other regional structures in state and federal spheres.

11.3 Performance Monitoring (Change 22)

The Associations endorse the principle of performance monitoring. However the limited discussion in the *Green Paper* raises more questions than it answers. For example:

- Who will undertake this monitoring? How will it be funded for the different levels of strategic planning (i.e. regional, subregional and local)?
- How will the performance targets and measures be developed?
- What existing and proposed data is available for measuring performance? Will there be a need to collect new data?
- What will be the outcomes of this monitoring and how is it intended to feed into the strategic planning process to ensure that targets are re evaluated and/or actions reviewed?

Any monitoring conducted should go beyond checking the quantitative delivery of development targets and timing of infrastructure delivery. Ideally, this should be expanded to an evaluation of not only the quantitative measures such as number of dwellings and jobs, but an evaluation of qualitative indicators that could measure the ongoing impacts on local communities. For performance monitoring to be meaningful and useful, all targets need to be measurable and ideally based on data and performance measures that are readily available.

11.4 Organisational Reform (Change 23)

The Associations support this important initiative for organisational reform and acknowledge the need for cultural change in all spheres of government. We recognise that elected representatives at State and Local Government levels will need to be included in the culture change process. We acknowledge there is a role for the Associations, councils, Councillors, professional bodies and others to bring about this culture change and we expect and hope that the Associations will be involved in planning and developing the shape and content of the cultural change program.

The Associations recognise that one area of change for Local Government will be the greater focus on strategic planning, with an increased role for Councillors in this process. The Associations propose to look at ways in which Councillors can engage in this newly strategically focused planning system. It will also be considering other opportunities to supporting and lead Local Government on the cultural change ‘journey’.

Summary of LGSA Position and Recommendations – Organisational Reform

The Associations:

- Recognise the increased role for Councillors in strategic planning and propose to look at ways in which Councillors can engage in this newly strategically focused planning system.

12. CONCLUSION AND RECOMMENDATIONS

The Associations’ submission has sought to provide comments in response to the broad concepts, framework and transformational changes proposed in the *Green Paper*. In doing so, the Associations have welcomed reform to the planning system, but emphasise that many proposals need further explanation of detail to enable Local Government to fully consider and assess how this new planning framework could work.

The Associations are encouraged by the Government’s commitment to genuine reform. We are also optimistic that the Government is taking a realistic view that to achieve these positive reforms will take considerable time, resourcing and further community/stakeholder engagement. As highlighted throughout this submission, a significant and sustained investment of resources – new technology, people, education and training – will be critical to the success of this ambitious new system.

While we support the principles and concepts proposed in the *Green Paper*, the key areas of concern for Local Government relate to the proposed removal of the role of elected Councillors in local development decisions, the widespread expansion of the role of JRPPs and the ambitious proposal to rely on community engagement up front in strategic planning processes coupled with the removal of public involvement at later stages of development. In relation to the expansion of codes assessment, the Associations support complying codes that are suitable and limited to low risk straightforward development that is supported by communities. However, we would like to work with the Department of Planning and Infrastructure to further develop an Alternate Assessment Framework proposed in our submission.

The Associations’ key points made in relation to specific elements of the *Green Paper* have been summarised in each section of this submission and they are listed in the table below:

Transformational Change or Key Issue/Area	Position of the Associations
Key Observations	<p>The Associations make the following observations with regard to the proposed new system:</p> <ul style="list-style-type: none"> • Role of Local Government in Planning - The impacts of planning decisions are felt locally and for that reason Local Government must continue to be fully involved in, and lead, the planning system at the local level. Local Government supports a planning system which delivers a built and natural environment in tune with local requirements as articulated by elected Councillors representing the communities which elect them. • The Importance of Certainty - Certainty is a fundamental expectation of all players in the market. The Associations are concerned that there are a number of proposals in the <i>Green Paper</i> that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system. • Objectives Should Align with Proposals – The <i>Green Paper</i> has some inherent conflicts, where the objectives for the overall framework do not match the reality of the proposals contained in the 23 transformative changes. There are various ‘exceptions to the rules’ that appear to contradict the overall aims of reducing complexity, increasing transparency, providing a ‘clear line of sight’ through a hierarchy of plans, and ultimately ensuring greater certainty. • Quality Planning Outcomes - The Associations maintain that all three ‘bottom lines’ – economic, social and environmental – should play equal part in planning decisions in order to achieve genuine ‘quality of life’ outcomes. • Checks and Balances - In pursuing the objective to streamline the planning system, checks and balances need to be retained and embedded to give the community certainty and to manage the perception that the balance will not be tipped too far towards the interests of development proponents. • Integrating Environmental Considerations into the Planning System - The Associations are disappointed that the principles of Ecologically Sustainable Development (ESD) that have underpinned the planning system for decades, are not specifically included in any framework outlined in the <i>Green Paper</i>. ESD is one of a number of core objectives of the existing planning system that we believe should be retained as the first objective in a hierarchy of objectives under the new land use planning Act.

	<ul style="list-style-type: none"> • Significant and Sustained Resourcing - The new system hinges on stakeholder engagement, considerable culture change and a resource-intensive period to develop new plans and strategies. Significant and sustained investment of resources (new technology, people, education and training etc.) will be critical to the success of this ambitious new system. • Transitioning from the Current System – The Associations emphasise that consideration of appropriate transitional arrangements is critical. • Evaluating the New System - The Associations recommend that a rigorous evaluation program be incorporated in the new system to give stakeholders the confidence that it will be assessed against its objectives.
<p>Overview and the Case for Change</p>	<p>The Associations:</p> <ul style="list-style-type: none"> • Emphasise that to achieve the ambitious and positive reforms that are proposed will take considerable time, resourcing and further extensive and sustained community/stakeholder engagement • Were disappointed with the minimal discussion in the <i>Green Paper</i> on crucial elements such as reforming building regulation and developer contributions. It is essential that these and other important components of the new legislation are subject to separate and comprehensive debate and consultation through targeted workshops and stakeholder engagement. • Emphasise that it is important not to lose sight of a long term vision over a 30 years+ time horizon, and not to fall into the trap of designing a planning system that is responding only to the immediate concerns of the day. • Caution against placing too much stake on the planning system to drive or deliver economic growth.
<p>Objectives for the New System</p>	<p>The Associations:</p> <ul style="list-style-type: none"> • Have concerns with the economic imperative that underpins the reforms and contend that the planning system should also be underpinned by social and environmental objectives. While not denying the importance of the economy, this ideological position is not accepted by Local Government or by a large proportion of the community in general. • Endorse the views expressed by many stakeholders that the current objects of the Act should be retained, as they provide a foundation for a comprehensive set of principles for the new Act. They have been developed and refined over the last thirty years and most stakeholders agree that it is not the Objects of the Act that are in need of review. • Advocate ESD being the first objective in a hierarchy of objectives under the EP&A Act.
<p>Public Participation Charter</p>	<p>The Associations:</p> <ul style="list-style-type: none"> • Support and welcome the establishment of a <i>Public Participation Charter</i>. • Suggest that IAP2 Core Values could be used as a basis for developing the principles underlying the Charter. • Agree with the general approach proposed in the TEC’s draft <i>Public Participation Charter</i> i.e. the Charter should express the obligation for decision makers to meet certain agreed implementation principles, but leave it open to the organisation undertaking engagement to develop the most appropriate strategy for consultation. • Recommend that the <i>Charter</i> have statutory force and be legally binding. • Request that Local Government is consulted in the development of the <i>Charter</i>.
<p>Strategic Community Participation</p>	<p>The Associations:</p> <ul style="list-style-type: none"> • Support the intention for broad engagement in plan making and the major focus on “community participation”. • Support the proposals for early engagement opportunities, to enable communities to shape planning strategies at the local, subregional and regional levels. • Advocate the community’s right to have a say on Development Applications that would have a significant impact on their local area. • Emphasise that large and sustained investment in resources is needed to implement community engagement at the levels and different scales of engagement proposed. • Recommend that sufficient and ongoing resources be provided within the Department of Planning and Infrastructure to help develop appropriate consultation mechanisms and

	processes and embed this new culture within government agencies.
Transparency in Decision-Making	<p>The Associations:</p> <ul style="list-style-type: none"> • Fully support the principle of ensuring transparency in decision-making, and note that mechanisms are already in place within councils to maintain this transparency. • Support greater public access to documents and request that the new system removes any confusion that currently exists.
Information Technology and E-Planning	<p>The Associations:</p> <ul style="list-style-type: none"> • Strongly support e-planning initiatives as the most viable means of improving efficiencies within the DA process. • Support the proposal for a centralised online planning portal where the public can access the planning spatial datasets relating to zoning and other development controls. The portal should be funded and maintained by the state government to ensure its ongoing viability, licensing, compatibility with existing systems, currency of data and ownership of intellectual property.
Strategic Focus – General Comments	<p>The Associations:</p> <ul style="list-style-type: none"> • Welcome the effort to take a fresh approach and find new solutions to strategic planning. • Support the proposal to strengthen the ‘front-end’ (i.e. strategic focus) of planning, subject to the resourcing issues being addressed. • Are concerned that this version of a new strategic focus may be too ambitious a legislative, policy and structural program to achieve without some incremental steps towards this change. • Question whether the approach may be too radical a conceptual change to achieve ‘buy-in’ from community members and regain community confidence. • Recommend that a sustained revenue source is provided to fund the considerable additional strategic planning effort envisaged in the <i>Green Paper</i>.
NSW Planning Policies	<p>The Associations:</p> <ul style="list-style-type: none"> • Support the simplification and reduction of state-level planning policies that have sufficient legal standing that they cannot and will not be readily changed. • Recommend that councils are consulted in the formulation of NSW planning policies. • Recommend that a process be articulated for the formulation and review of the state planning policies that includes a public and stakeholder engagement strategy (consistent with the approach taken elsewhere in the <i>Green Paper</i>).
Regional and Subregional Plans	<p>The Associations:</p> <ul style="list-style-type: none"> • Support the concept of regional planning and the proposals for regional growth plans and subregional development plans. • Emphasise the need for a guaranteed and ongoing commitment to infrastructure delivery by the state and more detail to be provided as to how the plans will lead to the actual <i>delivery</i> of infrastructure in accordance with these plans (i.e. the linking to the State budget). • Question how the regions and subregions (“groupings of councils”) will be defined in the new Act, and await further advice from the government as to how Local Government can contribute to this process. Councils must have a say in defining these subregions. • Strongly support the objective of considering cumulative impacts in setting the parameters for growth and change.
Local Land Use Plans	<p>The Associations:</p> <ul style="list-style-type: none"> • Emphasise that councils have invested considerable time and resources in developing their standard template LEPs, and want to have certainty that the move to the new local land use plans will: <ul style="list-style-type: none"> ○ Recognise the work and validate the content of existing LEPs; ○ Be properly resourced; and ○ Be guided by a clearly spelled out set of steps and tasks, with sample LLUPs that convey the intended structure and content of these new plans • Advocate a more consistent basis for funding plan-making processes where these are initiated by a (non-Council) proponent.

	<ul style="list-style-type: none"> • Observe a potential conflict with the <i>Green Paper</i> having a hierarchy of plans with a top-down approach while at the same time advocating for empowering communities to have a say about what they would like to see in their local and regional areas.
New Zones	<p>The Associations:</p> <ul style="list-style-type: none"> • Consider that without further detail about how new ‘Enterprise Zones’ would work, on face value the concept appears to be inconsistent with the evidence based, consultative strategic planning approach and greater certainty proposed in the <i>Green Paper</i>. Local Government also has reservations that such a flexible zone would considerably increase speculative spot rezoning requests, particularly if a right of appeal is introduced for planning proposals • Consider further details are needed on the proposed Suburban Character Zones and clarity about whether this zone would replace or weaken any existing heritage or conservation area controls. • Would like clarity on what is the intended future of existing zones in the Standard Instrument LEP and whether these will be carried forward in their current form in the new LLUPs.
Role of Elected Councillors	<p>The Associations:</p> <ul style="list-style-type: none"> • Are pleased that the role of Local Government has been recognised as a key stakeholder in both plan making and development assessment (as referred to in Figure 2 and throughout the <i>Green Paper</i>). • Recommend that the most effective use of public engagement and participation in government decision making is best achieved using a <i>combination</i> of representative, expert and participatory decision making (i.e. direct public consultation). • Oppose the basic premise behind depoliticising all decision making. There are certain circumstances where there is a legitimate community governance role in some planning and development decisions. • Oppose the proposal to remove all consent decisions from elected councils. . • Maintain that Local Government is best placed to make decisions about the needs and expectations of local communities. While there may be a role for ‘independent decision making’ in some circumstances, this should be minimised by establishing accountable, transparent and consistent decision making processes, with clear roles and responsibilities for land use planning and development assessment. • Consider that the criteria and/or policies that many councils already have in place for determining when to refer proposals to Councillors for determination should form the basis of criteria that could be developed and adopted by all councils.
Role of JRPPs	<p>The Associations:</p> <ul style="list-style-type: none"> • Strongly oppose the expansion of the roles and functions of JRPPs in plan making and development assessment, including attachment of their own staff. This would create an additional layer of bureaucracy and will lead to unnecessary additional costs and potential overlap. • Strongly oppose the JRPP being involved in pre DA meetings as this is inappropriate involvement of the final decision maker in the assessment process. We support appropriate briefing sessions of planning staff and members of the JRPP on pending applications and applications in the pipeline. • Strongly oppose the JRPP taking on the role of reviewing councils’ development decisions. This role requires an extensive knowledge of current legislation and case law, as each decision will directly affect practice at a local level. It is important that such a role is maintained by an independent body under the auspices of the Court.
Development Assessment	<p>The Associations:</p> <ul style="list-style-type: none"> • Recommend consideration be given to establishing an integrated assessment framework to enable state and local planning controls for complying and development applications to be located in a ‘one stop shop’. This would provide the opportunity to rationalise these codes under various plans. • Support complying codes that are suitable and limited to low risk straightforward development that is supported by communities. • Argue for the preservation of residents’ rights to have a say on a development proposal during the assessment process, but that this ‘right’ be moderated by the scale and potential

	<p>risk of the development on communities.</p> <ul style="list-style-type: none"> • Support the retention of council consent on moderate to high impact development. • Would like to work with the Department of Planning and Infrastructure to develop an alternate framework as proposed in this submission.
Right of Review for Rezoning and Strategic Compatibility Certificates	<p>The Associations:</p> <ul style="list-style-type: none"> • Warn against establishing numerous opportunities to overturn local plans that will undermine confidence and certainty in the strategic planning framework. These plans will be viewed as contestable, open to debate and become well used by industry to override local plans. • Object to: <ul style="list-style-type: none"> i. The power of the Director General to support a re-zoning via a Strategic Compliance Certificate. Will councils be consulted in this process? ii. The role of a JRPP to override zonings and development standards. • Recommend that councils be given meaningful powers to amend their own local plans, within reasonable limits. This would enable appropriate development to proceed that is in accordance with the local strategic framework, or the draft plan. • Recommend the use of Urban Activation Precincts, where supported by councils, to manage growth outside the local plan making system. This can be used to fast track the updating of local plans to deliver growth outcomes in association with local infrastructure funding.
Building Certification and Regulation	<p>The Associations:</p> <ul style="list-style-type: none"> • Recommend the introduction of a tougher building regulation regime, which is essential if code based assessment and private certification are to be expanded. • Commend the Building Professionals Board for its commitment and consultation to date to separately review the future of building certification in NSW. • Trust that the outcomes of the BPB review will be integrated into the <i>White Paper</i> to ensure that a tighter regime is implemented with a view to: <ul style="list-style-type: none"> ○ Reviewing penalty regimes for certifiers. ○ Identifying or establishing an agency with responsibility for auditing the building certification system. ○ Clarifying and refining roles and responsibilities. ○ Improving and tightening regulation in the system to ensure high standards and compliance. ○ Defining and clarifying the meaning of the term ‘not inconsistent with consent’.
Infrastructure Planning and Coordination	<p>The Associations:</p> <ul style="list-style-type: none"> • Renew calls to extend Local Infrastructure Contributions to include baseline community facilities. • Recommend that contribution caps be removed or increased. • Recommend establishing a technical working group to flesh out the details on options for developing a “<i>fairer, simplified and more affordable system for infrastructure contributions</i>” (<i>Green Paper</i>, p 74).
Chief Executive Officers Group	<p>The Associations request a commitment that the CEOs group consults Local Government through the Associations at appropriate points in its work.</p>
Regional Planning Boards	<p>The Associations:</p> <ul style="list-style-type: none"> • Support the concept of having Regional Planning Boards and welcome the proposal that ‘<i>Local Government will be key participants on Regional Planning Boards</i>’ (<i>Green Paper</i>, p 8). • Recommend a model in which the Board consists of two component parts: <ul style="list-style-type: none"> i. Local Government representation from elected representatives of constituent councils; and ii. State and public sector representation from senior officers of relevant state agencies. • Recommend stakeholder representation be provided where relevant/appropriate by way of a

	<p>stakeholder reference group to assist the Board's deliberations.</p> <ul style="list-style-type: none">• Oppose restricting eligibility to General Managers and/or Planning Directors - Local Government representatives should be Mayors or other representatives chosen by councils.• Question the potential for public confusion about the role of Regional Planning Boards and their relationship with other regional structures in state and federal spheres.
Organisational Reform	<p>The Associations recognise the increased role for Councillors in strategic planning and propose to look at ways in which Councillors can engage in this newly strategically focused planning system.</p>

ATTACHMENTS

Attachment 1 – IAP2 Core Values⁷

IAP2 Core Values

As an international leader in public participation, IAP2 has developed the "IAP2 Core Values for Public Participation" for use in the development and implementation of public participation processes.

These core values were developed over a two year period with broad international input to identify those aspects of public participation which cross national, cultural, and religious boundaries.

The purpose of these core values is to help organisations, decision makers and practitioners make better decisions which reflect the interests and concerns of potentially affected people and entities.

1. The public should have a say in decisions about actions that could affect their lives.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

⁷ <http://www.iap2.org.au/resources/core-values>

Attachment 2 – Suggested Principles for a Public Participation Charter, as Proposed by Total Environment Centre Inc

TABLE 2: PROPOSED PUBLIC PARTICIPATION CHARTER

COMMUNITY PARTICIPATION – IMPLEMENTATION PRINCIPLES

The following principles are proposed as a schedule to the Act, and set out the general community participation obligations under the Act. They apply to all decision makers under the Act who are required to take all reasonable steps to ensure consultation is in accordance with these principles. Decision makers are also obliged to prepare a community participation strategy which is subject to biennial evaluation.

1. It is recognised that the community expects and has a right to participate in plan making, development assessment and related decisions. As a consequence these principles will be implemented in good faith and community participation methods should go beyond the minimum standards in the legislation.
2. Community participation should be undertaken independently of the proponent and facilitated to ensure its processes and results have credibility.
3. The decision maker should recognise the diversity of interests and specifically identify and tailor information for:
 - those individuals and organisations likely to have an interest in the proposal, including those who may be directly impacted,
 - those likely to have an interest in the local and regional implications of the project, and
 - those organisations with a state or national interest.
4. Notification and participation opportunities should not be impeded by the timing, location and style (for example, avoid holiday periods or sites not near public transport).
5. The information provided should be transparent, accurate and easy to understand via a variety of methods including letters, social media, websites and events.
6. Participation is not simply the passive supply of information but seeks to encourage and record views and engage informed opinion. Methods of engagement include surveys, submissions, drop-in centres, community group and local meetings, and briefings with key organisations. Providing feedback will also encourage the further development of views towards possible alternatives and solutions.
7. Assistance is provided to the community and those with limited resources to interrogate and understand complex information. For example by the provision of funds to obtain independent advice; meetings with panels of experts; or commissioning of further research by consent authorities and made public prior to a decision.
8. Facilitate dialogue to bring together recognised representatives of stakeholders to allow the opportunity to devise solutions on a level playing field.
9. A public report outlining the issues, responses and further research undertaken is made available prior to the decision.
10. It is recognised that the community should be re-engaged with respect to amendments to a proposal (other than minor amendments), rather than rely on existing information.
11. Community engagement strategies (general or project specific) will be evaluated according to pre-set key performance indicators such as range of groups contacted; surveys of satisfaction with information provided and engagement methods; accurate recording of views; accessibility of information and events.