

Submission to the Planning White Paper and Exposure Bills

June 2013

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Executive Summary

Local Government NSW (LGNSW) is pleased to make a submission in response to “A New Planning System for NSW – White Paper” and the two exposure bills (Planning Bill 2013 and Planning Administration Bill 2013). Local Government has welcomed the review of the NSW planning system, with its focus on strategic planning, community engagement, and integration of land use and infrastructure planning. The new system hinges on partner and stakeholder engagement, major cultural change and a resource intensive period to develop new plans and strategies. Significant and sustained investment of resources is critical to its success.

LGNSW understands that the fundamental transformative changes proposed in ‘A New Planning System for NSW – Green Paper’ (released in July 2012) have been adopted by the NSW Government and that the purpose of this current round of consultation on the White Paper is to refine the details of how these changes will be implemented. While reform is welcomed, there are deficiencies, contradictions and insufficient detail to give Local Government confidence that it will be able to implement the new system as currently proposed. We expect the opportunity to work with the NSW Government to address the deficiencies and develop the detail before proceeding to legislation.

State and Local Government Partnership

LGNSW is pleased the NSW Government refers to Local Government as a ‘partner’ rather than just a ‘stakeholder’ in the new planning system. However, the concept of a ‘partnership’ needs to be more than just words – it must be reflected in the processes and frameworks in the new planning system and become embedded in the new culture. It is also important that the NSW Government recognise that Local Government is an elected autonomous sphere of government and not an agency of the NSW Government. The partnership would be strengthened if the NSW Government respected councils’ primacy in managing local plan making and development decisions, and enabled Local Government to take the lead in implementing changes to local planning processes.

Certainty

There are a number of provisions in the White Paper that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system. LGNSW calls for binding strategic plans and checks and balances to provide certainty and confidence.

Resourcing and Transitional Arrangements

A sustained revenue source will be required to fund the considerable additional strategic planning effort envisaged in the new planning system. LGNSW suggests that an expansion of the Department of Planning & Infrastructure’s (DPIs) existing Planning Reform Fund is one mechanism that could be used to support this additional strategic planning work. We also maintain that the transition must be undertaken over a realistic time period, especially in rural and regional areas.

Economic, Social and Environmental Objectives

LGNSW cautions against placing too much stake in the planning system to drive economic growth. The legacy of development arising from the new system will remain for 50 years or more, and we should not fall into the trap of designing a planning system that is responding only to the immediate economic concerns of the day. LGNSW maintains that in the new system all four ‘bottom lines’ – economic, social, environmental and civic leadership – should play equal part in planning decisions and principles of intergenerational equity should be reflected in the objects of the legislation.

Culture Change

We note that there is an expectation and responsibility on Local Government to embrace cultural change along with state agencies, the private sector and the community. LGNSW endorses the formation of a Culture Change Action Group and LGNSW must be an integral member of this group. Local Government also emphasises that the development industry also needs cultural change and needs to perform better in terms of the quality of development applications. The White Paper promotes the development of a 'can do' culture. LGNSW maintains that the question 'should we do?' still needs to be asked.

Community Participation

Local Government strongly upholds the rights of the community and individual citizens to have a say in decisions that may affect them, therefore the concept of a Community Participation Charter is a welcome proposal. A legitimate concern however, is that communities will suffer 'consultation fatigue' which will compromise their ability to provide genuine and ongoing input. LGNSW therefore recommends that the community participation guidelines incorporate an overarching consultation timeline, detailing each stage of community engagement and setting specific milestones to clarify opportunities for stakeholder input.

We endorse the intent of early community engagement in the strategic plan making process. However, we advocate retaining the community's right to have a say on Development Applications (DAs) that would have a significant impact on their local area. We also expect the new planning system to include the voice of communities through retaining council determination of certain developments. While the concept of having Community Participation Plans (CPPs) is sound, the overall framework and process is unclear in the White Paper. LGNSW would like clarification on matters to do with the timeframes and approval of CPPs, and the circumstances under which councils can substitute their community engagement strategies to meet the CPP requirement. Local Government must be represented in any technical group that is set up to provide feedback on the guidelines for CPPs as they are developed and be involved as a partner with the DP&I in establishing the framework for managing and monitoring these plans.

Councils have long been committed to expressly engaging their communities and do so on a daily basis. The imperative in the new planning system will be to harness the information gathered from this 'grassroots' level and ensure that it is fed upwards into strategic planning at higher levels. LGNSW recommends that the Division of Local Government (DLG) and DP&I work together with councils, to identify strategies that can be incorporated within councils' community engagement strategies to specifically address land use issues.

ePlanning

The intention to introduce online planning services and a NSW Planning Portal is commendable and ambitious. The alignment of datasets for planning information presents an enormous challenge. It will be critical that funding is available for ePlanning as the success of the proposed new planning system is vitally dependent on it. The NSW Government also needs to clarify who will own, manage and pay for the system.

Strategic Planning

LGNSW agrees with the greater focus on strategic planning, however we have reservations about the promise of certainty in strategic planning versus the provision of multiple mechanisms that allow deviation from agreed strategic plans. There is also a considerable challenge to find models for community engagement that will be effective at a subregional and regional scale. We maintain the view that the power of communities to have a say about what they would like to see in their local areas will be curtailed by the imposition of planning targets and controls from the top down. Councils have also queried how the subregions will be

defined, and are calling for Local Government to have a say in defining the subregions. LGNSW endorses the proposal that each council in a subregion will be represented on the subregional planning board, however, the governance model for these boards and resourcing require clarification.

LGNSW supports the replacement of the multitude of existing State Environmental Planning Policies (SEPPS) with a smaller number of State Planning Policies. Local Government must be consulted in the formulation and integration of these planning policies into Local Plans. There is a noticeable absence of a state-wide policy position on population growth and LGNSW considers this should be reflected as one of the new State Planning Policies.

One of the major downfalls of regional plans in the past has been the failure of infrastructure planning and delivery to support growth goals and targets. The proposal to integrate the planning and provision of infrastructure with strategic planning for growth would be one of the biggest advances under the new planning system. It is critical for delivering regional and subregional objectives. LGNSW supports the concept of Growth Infrastructure Plans, although the detail on the format and timing of these plans is unclear. We note the establishment of the Chief Executive Officers (CEOs) group to help coordinate the disparate priorities of different state agencies, and we recommend that suitable groups be established within the regional planning framework through which Councillors can have ongoing dialogue and involvement with state agencies at the regional level.

Another weakness in the past has been the lack of monitoring and evaluation of regional plans. LGNSW supports the intention to establish a performance monitoring and reporting framework for each Regional Growth Plan. However, LGNSW recommends a more reasonable and practical formal reporting timeframe be established for these plans.

Councils strongly support the further development of local strategic planning, provided that the DP&I does not require them to re-do work already completed, and new Local Plans and Development Guides are developed based on need, rather than to meet mandatory timeframes. This is particularly relevant for councils in rural and regional areas, where there is generally less development pressure and councils' planning resources are limited.

We note that the final list of land use zones in the new system is to be developed with councils and key stakeholders. Councils are best placed to provide much needed practical advice about how these zones should be applied. LGNSW refers the DP&I to councils' individual submissions for this information, and recommends that councils must be involved in further discussions to refine the final list of zones.

LGNSW recommends that Local Government leads the preparation of the Model Development Guides to ensure that a flexible framework is developed that is suitable for all councils. Regarding planning proposals, LGNSW opposes the rights of proponents to proceed to the NSW Government on an application for rezoning, or Strategic Compatibility Certificate, without the support of council. This will encourage 'ad hoc' land use decisions that will reduce certainty and accountability for communities, in relation to the planning schemes, as well as undermine councils' role as local plan maker.

Development Assessment

Requiring development standards that result in good design is critical to achieve compatible infill development or new forms of sustainable development in greenfield areas. However, it is essential that the sound planning practice of the current system is not compromised in the interests of expedience.

Councils agree that the current system is overburdened with too many state and local plans and state regulatory controls. Unless the new track system reduces and aligns the planning codes the tracks approach will have marginal benefit. The new Development Guides need to provide an overarching set of local controls that logically apply to all local development - both code assessable and merits assessable development.

Our interpretation of the proposed new system is that it strengthens state-led planning controls and diminishes council powers to apply local controls to local development. LGNSW has concerns that the emerging Model Development Guide may be over prescriptive in format and content. We recommend that Local Government leads the preparation of the new Model Development Guides to ensure that these codes are able to reflect local planning considerations.

Of particular concern to councils is the marked reduction of community engagement within the DA process. LGNSW calls for the retention of community participation for certain classes of development within the code assessable track. This would enable medium to high impact development and controversial development, to be advertised, allowing councils to gauge community concerns.

LGNSW also opposes the imposition of a mandatory Independent Hearing and Assessment Panels (IHAPs) on the basis of an arbitrary assessment of a council's DA performance times. Very few DAs (3%) are referred to the full council, so it is illogical to deduce that the DA process is held up by matters being referred to full council. If council performance is to be evaluated, a more robust process is needed that is independent and based on sound planning criteria, not simply on assessment times for DAs. LGNSW maintains that the adoption of IHAPs should be voluntary.

Many councils report that much time is lost due to the inadequacy of information provided by proponents. Councils argue that there would be less delay if applicants for development took advantage of pre-lodgement consultation opportunities and advice, observed and respected minimum standards and provided full and appropriate information to support their proposals. LGNSW supports the practice of providing formal pre DA advice to proponents. We also suggest that any new approaches to improving the referral process need to be trialed to ensure that any procedural changes deliver measurable improvements.

Infrastructure Provision

LGNSW opposes the proposal to impose a three year limit on councils holding contributions prior to expenditure. This is impractical and unrealistic, particularly with staged development and developments in many regional areas. We support the inclusion of biodiversity offsets contribution provisions within the proposed new planning legislation. The recognition of councils' ability to understand their local context and set the parameters of the contribution framework is supported. However, we provide some specific comments in our submission to clarify a number of points.

The new arrangements for planning agreements that apply to State Significant Development need further clarification. LGNSW urges the DP&I to seek input and guidance from councils on what types of infrastructure should/could be included in planning agreements and in what circumstances they should apply.

Building Certification and Regulation

LGNSW and its predecessors have argued for some time that there are a number of problems with building certification that need further analysis and resolution. The introduction of a tougher building regulation regime is essential if code based assessment and private

certification are to be expanded. We therefore support proposals in the *White Paper* to address these issues. Comments on specific proposals and provisions are provided in the submission. There is also a need for the introduction of tangible measures to address the shortage of certifiers, particularly in regional areas.

1. Introduction

Local Government NSW (LGNSW) is the peak body for NSW Local Government, representing all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW.

LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW thanks the NSW Minister for Planning for the invitation to make a submission in response to “*A New Planning System for NSW – White Paper*” and the two exposure bills (*Planning Bill 2013* and *Planning Administration Bill 2013*) released in April 2013. Local Government has welcomed the review of the NSW planning system with its focus on strategic planning, community engagement, and integration of land use and infrastructure planning. The new system hinges on partner and stakeholder engagement, considerable cultural change and a resource intensive period to develop new plans and strategies. Significant and sustained investment of resources (new technology, people, education and training) will be critical to the success of the new system.

While reform is welcomed, there are deficiencies, contradictions and insufficient detail to give Local Government confidence that it will be able to implement the new system as currently proposed. We expect the opportunity to work with the NSW Government to address the deficiencies and develop the detail before proceeding to legislation. Much work will also be needed to clarify transitional and governance arrangements, resourcing and responsibilities once these deficiencies are addressed.

LGNSW recognise that the *White Paper* and exposure bills are the result of a two-year consultation and review process to date that has involved 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. We understand that the fundamental transformative changes proposed in ‘*A New Planning System for NSW – Green Paper*’ (released in July 2012) have been adopted by the NSW Government and that the purpose of this current round of consultation is to refine the details so that these changes can be effectively implemented.

This submission reiterates some overall concerns expressed in our submission on the *Green Paper* and also provides comments on some of the details of the changes proposed in the *White Paper* and how these have been given effect in the exposure bills. Where we do have concerns, we have endeavoured to provide suggestions on how these might be addressed, through the implementation phase of the new system.

The structure of this submission generally follows the format used for the *White Paper*, and is prefaced with some general observations and concerns from Local Government’s perspective.

Section 2 provides an overview of our main areas of concern and the remaining sections are structured to reflect the transformative elements contained in each chapter of the *White Paper*.

2. Overall Observations and Concerns of Local Government

2.1 Partnership Between State and Local Government

LGNSW is pleased the State Government refers to Local Government as a ‘partner’ rather than just a ‘stakeholder’ in the new planning system. However, based on experience, Local Government remains cautious about how this undertaking will be reflected in reality. Some councils have been disappointed to date with their experience with the Urban Activation Precinct (UAP) Program established in 2012. Councils have felt that they are not considered to be equal partners under the program.

The concept of a ‘partnership’ needs to be more than just words – it must be reflected in the processes and frameworks in the new planning system and become *embedded* in the new culture. The partnership culture must also be genuine and based on mutual respect of the rights and positions of both parties. It is also important that the NSW Government recognise that Local Government is an elected autonomous sphere of government and not an agency of the State Government.

There needs to be a clearer demarcation between what is considered to be the NSW Government’s and Local Government’s role within the planning system. The proposed changes again blur the lines of responsibilities, extending the NSW Government’s role further into local plan making matters. The partnership would be strengthened if the NSW Government respected councils’ primacy in managing local plan making and development decisions, and enabled Local Government take the lead in advising and implementing changes to local planning processes.

2.2 Timeframe for Finalising Legislation

The Exposure Bills in their current form are far from ready for legislation. There are deficiencies and flaws contained in the White Paper proposals and implementation that need further discussion and clarification with Local Government to fully consider and determine how the new planning framework could work. We expect the NSW Government to re-examine the issues identified through the review of submissions and to work with Local Government to resolve the deficiencies and develop the detail before the current Exposure Bills proceed to legislation. LGNSW recommends that a working group (involving Local Government practitioners and elected representatives) is established to work through these issues. The key areas of concern for Local Government are discussed below and in section 6.1 of this submission.

2.3 Certainty Versus Flexibility

LGNSW has ongoing concerns about the underlying tension between the desire for certainty in the system and at the same time, the provision of flexibility. A key concern for Local Government is the introduction of multiple mechanisms to promote development for economic growth. There are a number of provisions in the *White Paper* that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system. For example:

- ‘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;
- Enterprise zones, which are to be “supported by development guides that are characterised by limited controls providing they do not result in any significant adverse environmental impacts”; and
- The ability for developers to submit applications that do not comply with prescribed codes.
- Fewer and broader zones, with the removal of density provisions.

This lack of clarity has also been highlighted as a concern by the Independent Commission Against Corruption (ICAC)¹, to provide certainty and confidence the system needs to have binding strategic plans with checks and balances built in. This is discussed below.

2.4 Checks and Balances

LGNSW continues to argue that certain ‘checks and balances’ must be retained in the new planning system if all players are to be given the very certainty and assurance that was promised at the start of the review process two years ago. As discussed in section 2.3 of this submission, a flaw in the new system is that there are multiple opportunities for development proponents to circumvent community-agreed strategic plans, and this will significantly erode people’s confidence and certainty about strategic planning processes. 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.

A recurring theme in this submission is the desire to maintain the rights of the community to have a say in decisions that may affect them. Retaining the following provisions in the development assessment process would provide much needed checks and balances in support of this principle:

- The community’s right to have a say on Development Applications (DAs) that have the potential to present a significant impact or change to their local area or neighbourhood.- This could be facilitated by requiring proponents of certain large or controversial developments to undertake community participation in the early stages of their proposals, rather than, as is currently the case, having neighbours being notified once a DA is lodged; and;
- Councillors being involved in the determination process for certain complex and/or controversial proposals.

2.5 Resourcing the Reforms

LGNSW has consistently raised concerns about the need for an unprecedented commitment of time, resources and further extensive and sustained community/stakeholder engagement to achieve a shift in focus from development assessment to strategic planning. The resourcing implications are substantial, however the *White Paper* is unclear about how they will be resourced:

“The shift in focus from development assessment to strategic planning will impact on resources and processes for state agencies, local government, developers and

¹ ICAC *Submission Regarding A New Planning System for NSW (White Paper and Accompanying Bills)*, June 2013

industry. Over the next few months, the NSW Government, in consultation with local government and stakeholders, will work through various models to fund the transformative policies proposed in the White Paper².

Strategic land use planning is not a function that has traditionally been well-supported from routine (and constrained) 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 new planning system. Substantial additional resourcing will be necessary to develop new plans and tools such as the electronic planning and to support the changeover to a new paradigm from assessment to strategic.

While the *White Paper* acknowledges the need to appropriately resource strategic planning, no details are provided as to how this will work. This funding will need to be ongoing, 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. LGNSW suggests that an expansion of the Department of Planning & Infrastructure's (DP&Is) existing Planning Reform Fund is one mechanism that could be used to support this additional strategic planning work. This is consistent with Recommendation 127 in Volume 1 of the *Major Issues Review Paper*³. Formal partnership arrangements with relevant DP&I Regional Offices in connection with work on the proposed Regional Growth Plans should also be supported.

2.6 Transitional Arrangements

The quantum of work associated with all of the new plans and sectoral strategies, a new ePlanning portal, new codes, guidelines, templates, and reviews, together with the need for workable, fair and reasonable transitional arrangements, presents a huge resourcing challenge for planning practitioners and decision-makers in both State and Local Government. Overlaying this, and upon which the entire system hinges, are the challenges of embedding a new planning culture and a whole new level of public engagement that has not been seen before in NSW. Key questions that have not been elaborated on in the *White Paper* are:

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

The *White Paper* commits the DP&I to a vast number of new tasks/activities. LGNSW questions how these will be resourced and within what timeframe they will be delivered. Some of the guidelines, templates and plans for example, need to be completed before councils can develop *their* plans. LGNSW would like reassurance that the Government has a staged and realistic plan/program for transitioning into the new system and, as discussed in section 2.5 of this submission, is prepared to invest and sustain the resources/funding which are critical to its success.

The transition program requires a dedicated program director (and team) and should incorporate:

- Establishing technical working groups, where appropriate, to develop details and options for particular issues;
- Establishing consultation processes for the development of the Community Participation

² White Paper, p 61

³ *The Way Ahead for Planning in NSW - Recommendations of the NSW Planning System Review*, May 2012

- Guidelines, State Planning Policies, model codes, etc.;
- Developing Terms of Reference for all the groups proposed to be established (e.g. Culture change action group, CEO's group, working parties, etc.);
- Establishing suitable mechanisms and/or groups through which Councillors can have ongoing involvement in planning and decision-making at the regional level;
- Engaging with state agencies and Local Government to develop the one stop shop for concurrences;
- Engaging with Local Government to further develop the governance framework for subregional planning boards; and
- Scoping and committing funds for the development of the Planning Portal.

The transition to the new system will have significant resource implications for Local Government, therefore resourcing and effective transitional arrangements must address all areas of the State, not just high growth areas. LGNSW advocates that the transition must be undertaken over a realistic time period, especially in rural and regional areas. The speed of the transition may not be as imperative for council areas where there are less development pressures and there may be no considerable /measurable benefit to imposing mandatory targets to move to the new system within mandated timeframes.

2.7 Summary of LGNSW General Observations and Concerns

- The 'partnership' between State and Local Government must be reflected in the processes and frameworks in the new planning system in order to become *embedded* in the new culture. LGNSW is pleased the NSW Government refers to Local Government as a 'partner' rather than just a 'stakeholder'.
- LGNSW expects the NSW Government to re-examine the issues identified through the review of submissions and to work with Local Government to resolve the deficiencies identified by Local Government and develop the detail before the current Exposure Bills proceed to legislation.
- LGNSW calls for binding strategic plans and checks and balances to provide certainty and confidence in the new system. The following checks and balances must be retained:
 - the community's right to have a say on DAs; and
 - Councillors being involved in the development assessment process for certain complex and/or controversial proposals.
- An expansion of the DP&I's existing Planning Reform Fund is one mechanism that could be used as a potential revenue source to fund the additional strategic planning work envisaged under the new system.
- LGNSW advocates that the transition to the new planning system must be made over a realistic time period, especially in rural and regional areas where there are less development pressures and councils' planning resources are limited.

3. Objects of the *Planning Bill*

LGNSW has concerns with the economic imperative that underpins the reforms. We caution against placing too much stake on the planning system to drive or deliver economic growth.

We note that some of the Objects in Section 1.3 of the *Planning Bill* are directed more at the *process* of plan-making and development assessment⁴ rather than focusing on the *outcome* of these processes. We should not fall into the trap of designing a planning system that is responding only to the immediate economic concerns of the day. As stated in our predecessors' submission to the *Green Paper*, 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, and for the generations that follow.

LGNSW maintains that in the new system all three 'bottom lines' – economic, social and environmental – should play equal part in planning decisions and principles of intergenerational equity be reflected in the objects of the legislation. We note there has been some debate about whether the objects of the *Planning Bill* adequately reflect a desire from some groups to foster ecologically sustainable development (ESD) principles. We note that a number of councils have expressed the view that this is a concept that has well defined legal principles, and has been consistently used in planning and other legislation around Australia. Councils are concerned that the removal of these principles may limit their ability to protect important natural assets which underpin future economic and social viability. These concerns are consistent with the issues raised in our predecessors' submission to the *Green Paper*. We consider that the focus on sustainability within the objects of the *Planning Bill* needs clarification as part of the reform package.

LGNSW is pleased that social well-being is included in the first Object of the *Planning Bill* and applauds the inclusion of health in the Objects under Section 1.3(1) (g)⁵ and recommends that 'health' be defined as follows:

- 1) World Health Organisation definition of health is: *Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*
- 2) National Aboriginal Community Controlled Health Organisation (NACCHO) definition of health based on Aboriginal health which is: *"Aboriginal health" means not just the physical well-being of an individual but refers to the social, emotional and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their Community. It is a whole of life view and includes the cyclical concept of life-death-life.*

4. Delivery Culture

4.1 Key Comments/Concerns

The *White Paper* has described the current planning culture as too conservative and encouraging an overly regulatory approach to planning. Instead it is promoting a 'can do' culture, with changes proposed to a range of behaviours for those in the planning system. LGNSW understands that structural change is already underway in the DP&I. We also note that there is an expectation and responsibility on those in Local Government also to embrace

⁴ For example, Object (1)(h) promotes "efficient and timely development assessment proportionate to the likely impacts of proposed development"

⁵ Planning Bill Section 3.1(1)(g): "health, safety and amenity in the planning, design, construction and performance of individual buildings and the built environment"

cultural change. These changes will take time and a sustained commitment from leaders in all spheres of government, as well as within the private sector and the community.

In relation to the main players in the planning process, LGNSW would like to make the following comments.

Department of Planning and Infrastructure

Councils commonly report having good relations with DP&I regional offices. However, the observation is that the Department's culture is too centralised with 'decisions being made by head office' without proper consultation and/or understanding of what is happening 'on the ground'. Regional staff have solid working relationships with council staff and a good understanding of the local issues for each of the councils in their regions. LGNSW therefore contends that the Department's regional offices should be supported, appropriately resourced and given greater autonomy to develop supportive working relationships with Local Government and make decisions that affect regional locations.

Councillors and Planning Staff

LGNSW sees one of the challenges of moving to a 'can do' culture will be to achieve this cultural shift within the existing regulatory frameworks (such as the Land and Environment Court, ICAC and NSW Ombudsman) that have contributed to the current planning culture. Another area of change for Local Government will be the greater focus on strategic planning, with an increased role for Councillors in this process. We acknowledge there is a role for LGNSW, councils, Councillors, professional bodies and others to bring about this transformational cultural change and we expect our organisation to be involved in planning and developing the shape and content of the cultural change program. LGNSW therefore consider it essential that we are represented on the proposed Culture Change Action Group referred to in Chapter 3 of the *White Paper*. We also encourage the NSW Government, in consultation with Local Government, to investigate the merits of establishing a support agency similar to the Planning Advisory Service in the United Kingdom, which was highlighted in the *White Paper* (p 37).

Development Industry

In addition to cultural change that has been identified in government and public sector agencies, there is a need for culture change in the development sector and the community. While one of the aims of the new planning system is to streamline councils' assessment times, the *White Paper* fails to acknowledge that the development industry itself also needs to perform better in terms of the quality of development applications and supporting documentation. A recent survey by LGNSW found that many councils report that much time is lost due to the inadequacy of information provided by proponents. Councils argue that they could achieve better turnaround times if applicants for development took advantage of pre-lodgement consultation opportunities and advice, observed and respected minimum standards and provided full and appropriate information to support their proposals. In addition to the quality of applications, the industry should also take greater responsibility for engaging with communities, especially as we move towards increasing densities in established communities. The outcome has the potential to be better for everybody if developers were required to actively engage with the people in whose communities they were proposing to develop. Requiring proponents of certain large or controversial developments to undertake community participation is recommended as a means of providing early and upfront input.

Community

The *Environmental Planning and Assessment Act 1979* was ground-breaking in the area of public participation, and after 30 years in operation, individuals and community members have a degree of expectation of their rights when it comes to planning and development decisions that might affect them. The new planning system upholds the concept of public participation, but is

heavily reliant on this being 'upfront', with limited community input at Development Application (DA) stage. At the same time, the *White Paper* proposes to allow flexibility for development to deviate from what was envisaged or locked in at the strategic plan stage. This raises questions about how much influence communities will ultimately have in what is built in their local area. It will take significant time and building of trust for the community to embrace this new 'community participation culture'. Government agencies in all spheres will face considerable challenges in engaging people effectively in the early planning phase. To an extent where they feel confident their views have been in upfront planning decisions. It is for this reason that LGNSW continues to argue that there must be provisions ('checks and balances') in the system that allow community input at DA stage for certain development proposals.

4.2 Culture Change Action Group

We note the proposal for the DP&I to establish a Culture Change Action Group, to be facilitated and resourced by the Department and include members of the planning profession, Local Government, NSW Government agencies, academia, the development industry, peak industry groups and community representatives. LGNSW endorses the formation of a Culture Change Action Group referred to in Chapter 3 of the *White Paper* to design and oversee a range of culture change actions alongside the implementation of the new planning system.

The responsibilities of the action group to identify "ways to improve, encourage, benchmark and lead on the culture of the system"⁶ will require significant leadership and commitment. Its success will very much depend on the mix and selection of the members of the group, their terms of reference and the governance and accountability arrangements. As culture change is such a vital aspect to the success of the new system, LGNSW also recommends that accountability of this group should be to the highest level (e.g. the agency Chief Executive Officer's (CEO's) Group or the Minister for Planning and Infrastructure). LGNSW must be an integral member of the Culture Change Action Group.

4.3 Summary of LGNSW Position and Recommendations – Delivery Culture

- LGNSW appreciates the enormous cultural change required to successfully introduce a new planning system. LGNSW will partner with the NSW Government in fostering constructive change.
- The Department of Planning and Infrastructure's regional offices should be supported, appropriately resourced and given greater autonomy to develop supportive working relationships with Local Government and make decisions that affect regional locations.
- One of the challenges of moving to a 'can do' culture will be to achieve cultural change within the existing regulatory frameworks (such as the Land and Environment Court, ICAC and NSW Ombudsman) that are in place to ensure probity and transparency.
- LGNSW endorses the formation of a Culture Change Action Group and recommends that accountability for the group should be to the highest level. There is a role for LGNSW, councils, Councillors, professional bodies and others to bring about transformational cultural change and it essential that LGNSW is represented on the proposed Culture Change Action Group.

⁶ White Paper, p 39

- LGNSW encourages the NSW Government, in consultation with Local Government, to investigate the merits of establishing a support agency similar to the Planning Advisory Service in the United Kingdom.

5. Community Participation

5.1 Key Comments/Concerns

LGNSW endorses the intent of early community engagement in the plan making process. However, councils and communities need to be involved in some way at later stages of development, especially if there are opportunities for applicants to appeal council decisions or to seek to review plans if the characteristics of the local community change. Communities will only be able to take responsibility for local plans if the initial engagement strategy is done well. Maintaining the current community engagement process (established under Integrated Planning and Reporting) will ensure that communities can “own” the plans that are developed and therefore endorse the plan’s directions.

A planning regime that restricts the community’s rights needs checks and balances to ensure transparency and build community confidence in the system. LGNSW therefore advocates retaining the community’s right to have a say on DAs that would have a significant impact on their local area.

We expect the new planning system to include the voice of communities through the well understood councillor representation system - it provides transparency and accessibility to communities. In addition it provides a much needed ‘check and balance’ to a system that can be overly bureaucratic.

As discussed in section 4.1 of this submission, it will take some time and rebuilding of trust before the community may be willing to embrace this new community participation culture where participation is early in the planning process and decisions are made ‘upfront’. LGNSW calls for ‘checks and balances’ to be built into the system so that the community can be satisfied and confident that it truly does have a say in what is going to be built in their locality.

5.2 Current Engagement Activities by Councils

As the sphere of government closest to the community, councils are inherently engaged with the community on a daily basis. They have long been committed to expressly engaging their communities.

Further, as part of the *Local Government Act 1993* and the *Planning and Reporting Guidelines for Local Government in NSW*, NSW councils are required by law to produce and adhere to a Community Engagement Strategy⁷ to guide community engagement processes that take place during formulation of Community Strategic Plans (CSPs). In accordance with these requirements, councils in NSW are actively engaging communities in planning for their future.

Local Government is already practicing community engagement within the Integrated Planning and Reporting (IPR) process, and this goes beyond the level of participation provided under the proposed Community Participation Charter. Community engagement currently enables the

⁷ Required under the *Local Government Act* to be prepared by councils

community to build a local plan. This is in contrast to the somewhat paternalistic approach in the proposed Charter where the community is to be “provided with opportunities” to participate, rather than to understand their capacity for involvement and influencing change over a period of time. The DLG identifies examples of good practice Community Engagement Strategies which could be used as a benchmark for future community engagement models in their *Integrated Planning and Reporting Manual for Local Government in NSW* (p 44).

NSW councils have also been very successful at identifying and engaging specific stakeholder groups. Councils are required to base their Community Engagement Strategy on social justice principles and this extends to the community engagement process.”⁸ Refer to section 6.5.2 of this submission for a discussion of the integration of community strategic plans with land use planning processes.

A recent review of the community engagement profiles of councils in NSW by LGNSW revealed elements of best practice and contributed to a broader understanding of the general trends in community engagement in NSW councils. Trends that have emerged through this research are detailed in Attachment 1 of this submission.

5.3 Community Participation Charter

Local Government strongly upholds the rights of the community and individual citizens to have a say in decisions that may affect them. It is pleasing to see that the Community Participation Charter applies to all ‘planning authorities’, including the Minister, Director-General, Planning Assessment Commission (PAC), regional panels and boards and not just to local planning authorities. LGNSW recommends that these provisions should also apply to other agencies involved in the delivery of various strategic plans, for example, Roads and Maritime Services and Sydney Water.

The concept of a Community Participation Charter is a welcome proposal, and the principles in section 2.1(1) of the *Planning Bill 2013* are supported, with some amendments which are detailed in the table in Attachment 2.

The *White Paper* notes that “the effectiveness of community participation in planning will be assessed through a system of monitoring, independent evaluation and annual public reporting”⁹. It is unclear how effectively it will be monitored and by whom. LGNSW recommends that monitoring should be undertaken by accredited specialists in public participation. The *Planning Bill* is also silent on what is likely to happen if a planning authority is found to have breached the principles of the Charter.

5.4 Community Participation Plans

LGNSW supports the provision in s 2.4(1) of the *Planning Bill* that requires certain planning authorities (i.e. the Director-General, the PAC, regional planning panels, subregional planning boards, councils, and prescribed public authorities) to prepare a Community Participation Plan (CPP) which is to be published on the DP&I web site. We also agree with the *White Paper*’s acknowledgement that “it should be left up to the planning authority to determine the most appropriate combination of techniques in each situation”¹⁰.

⁸ *IPR Guidelines 2010*, p 38

⁹ *White Paper*, p 49

¹⁰ *White Paper*, p 48

It is pleasing to see that the *White Paper* acknowledges the work already done by councils in the area of community participation, and specifically, the provision in section 2.4(4) of the *Planning Bill* that councils will not be required to prepare a separate Community Participation Plan if their community engagement strategy includes the matters required in the community participation plan.

With the emphasis on community participation upfront in the new planning system, we observe that the community will need to be given a clear 'roadmap' or framework of where and when they will be expected to contribute to the many consultation activities planned by councils and other planning authorities over a period of time. A legitimate concern of councils is that their communities will suffer 'consultation fatigue' which will compromise their ability to provide genuine and ongoing input. There is also potential for strategic plan 'clutter' and overlap unless the relationship of various strategic documents is articulated.

These processes would be clearer for the community if they were conveyed within an overarching consultation timeline, with each stage of community engagement and specific milestones set out to clarify opportunities for stakeholder input, LGNSW recommends that the DP&I's community participation guidelines incorporate the concept of an overarching consultation planning timeline which shows the community when they will be consulted for various plans.

While the concept of having CPPs is sound, the overall framework and process for the preparation, approval, publication and review of community participation plans is unclear in the *White Paper*. In particular, LGNSW would like further clarity on the following:

- Timeframes - The *White Paper* and draft legislation appears to be silent on the timeframes for preparation of Community Participation Plans by planning authorities. The *White Paper's* undertaking for the DP&I to prepare guidelines which "will set out key standards that planning authorities are to meet in preparing their Community Participation Plans" (p 47) appears to imply that community participation plans should await publication of these guidelines. Local Government should have input throughout the development of these guidelines to ensure they are practical and realistic. However, there is no detail in the *White Paper* about the expected timing of the guidelines and the timing required for preparation of these plans by planning authorities. It is also unclear how often Local Plans will be reviewed and when the community will be able to input into new plans.
- Approval of CPPs - While the *Planning Bill* (s 2.4(5)) provides for the completed plans to be published on the DP&I website, it is not clear who is responsible for approving these plans.
- Councils' Community Engagement Strategies - It is unclear what process will be used to determine whether a council's existing community engagement strategy meets the necessary requirements for community participation plans in the *Planning Bill*. LGNSW notes the *White Paper's* intention that the Director-General of the DP&I "will establish an expert panel to audit Community Participation Plans and make recommendations about these plans, the performance of planning authorities under their plans and good practices in community participation. The Director-General will report on community participation practices and request planning authorities to amend Community Participation Plans that are not effective".¹¹ LGNSW strongly supports the alignment of the review of Community Participation plans with the quadruple bottom line of the Integrated Planning and Reporting framework, i.e. economic, environmental, social and civic leadership.

¹¹ White Paper, p 49

- Proportionate CPPs- The degree and sophistication of community consultation should be proportionate to the matters under consideration and the needs of the community. For example, many councils, particularly in rural and regional areas where communities are better connected, do not find the need for elaborate consultation processes on all issues.

LGNSW recommends that Local Government be involved as a partner with the DP&I in establishing the framework for managing and monitoring these plans and that Local Government be represented in any technical group that is set up to provide feedback on the guidelines/templates for CPPs as they are developed.

5.5 Minimum Mandatory Community Participation Requirements

LGNSW supports the concept of minimum public exhibition periods for strategic plans¹² and in particular that these minimum periods will now apply to NSW Planning Policies, as well as other strategic plans. This is an improvement on current legislation, in which there is no statutory requirement for the Government to consult on State Environmental Planning Policies (SEPPs). However, we caution that the 28 day minimum should not automatically become the default exhibition period for all draft strategic plans.

'Strategic plans' include NSW planning policies, regional growth plans, subregional delivery plans, and local plans (s 1.7 (1) of the *Planning Bill*). Some of these plans represent complex policy matters (e.g. the provisions relating to coal seam gas contained in the recent amendments to the Mining SEPP) or large and detailed plans (e.g. strategic regional land use plans for Upper Hunter and New England North West regions) which may warrant a longer public exhibition period than the minimum 28 days. The timeframes allowed for consultation by the NSW Government in recent months for some of these strategic documents have been far shorter than even this minimum 28 day period. Councils have consistently reported concerns that the short timeframes that have been given to date for public comment on some strategic documents were inadequate for internal consultation (given councils' monthly meeting cycles), let alone to consult with local communities.

If Local Government is to be regarded and treated as a partner alongside State Government, it should be consulted and have meaningful input prior to strategic plans going on public exhibition. This could be effectively done by involving the Department's Regional Offices, which are already engaged with councils on a day to day basis and have a good and practical understanding of the local issues.

5.6 Electronic Planning Services (ePlanning)

The intention of the *White Paper* to introduce online planning services and a NSW Planning Portal is commendable and ambitious. The consolidation and alignment of datasets for planning information presents an enormous challenge. However, the *White Paper* does not commit to a timeframe for delivery of this new Planning Portal, and is vague about who will own, manage and pay for it. It is assumed that this will be the responsibility of the DP&I.

Developing a practical and workable ePlanning system with a reliable dataset will not be without its challenges. The *White Paper* has pointed out that some councils are already advanced with ePlanning services, including those who have been participating in the E Housing Code (EHC) program being conducted by the DP&I. It is recommended that the DP&I

¹² *Planning Bill*, Schedule 2, Part 1, Division 1

taps into the valuable knowledge and experience of these councils and the program staff when investigating ePlanning technologies and developing the state-wide system.

It will be critical that funding is available for ePlanning as the success of the proposed new planning system is vitally dependent on it.

5.7 Summary of LGNSW Observations and Recommendations – Community Participation

- A planning regime that restricts the community's rights needs checks and balances to ensure transparency and build community confidence in the system. LGNSW advocates retaining the community's right to have a say on DAs that would have a significant impact on their local area. We also expect the new planning system to include the voice of communities through councillor involvement in the determination process for certain complex DAs.
- Councils have long been committed to expressly engaging their communities, and do so on a daily basis. The imperative in the new planning system will be to harness this information gathered from this 'grassroots' level and ensure it is fed upwards into strategic planning at the regional/subregional levels.
- LGNSW recommends that the community participation guidelines incorporate an overarching consultation timeline, with each stage of community engagement and specific milestones set out to clarify opportunities for stakeholder input.
- LGNSW recommends that the Division of Local Government (DLG) and DP&I work together with councils, to identify strategies that can be incorporated within councils' community engagement strategies to specifically address land use issues.
- Local Government must be involved as a partner with the DP&I in establishing the framework for managing and monitoring Community Participation Plans and be represented in any technical group that is set up to develop these plans.
- It is imperative that the NSW Government commit funding and resources to the development of ePlanning as it is critical to the success of the proposed new planning system.

6. Strategic Planning

6.1 Key Comments/Concerns

While LGNSW agrees with the greater focus on strategic planning in the new system, there remain a number of areas of conflict and unresolved issues which are discussed below.

- *Creating certainty and trust in strategic plans* - As discussed in section 2.3 of this submission, LGNSW has ongoing concerns about the underlying tension between the goal of creating certainty for all players, while at the same time, proposing flexibility through a multitude of mechanisms that would allow deviation from agreed strategic plans in order to promote development. There are a number of provisions in the *White Paper* that could undermine strategic planning outcomes, significantly reducing certainty and potentially eroding public confidence in the system.

- *Top down approach* - The proposed hierarchy of plans is not new to the planning system in NSW; the *EP&A Act* established this hierarchy 30 years ago. The problem in the past has been with the lack of deliverable actions, monitoring and evaluation of regional plans and the disconnect between land use and guaranteed infrastructure delivery. An inherent conflict in the proposed new system is how to reconcile the top-down approach (supported by a hierarchy of cascading plans) with the idea of empowering communities to have a say about what they would like to see in their local areas. LGNSW questions how the plans at the regional and subregional levels will effectively be able to include the community's input when the plans are being driven from the top down. Public engagement will be a considerable challenge and one on which the system hinges. Local Government has a wealth of local knowledge that is crucial to feed up into evidence based strategic planning. Mechanisms are therefore needed to ensure that this knowledge is fed into the regional and subregional plans. Local Government must be a partner in this process, not just another stakeholder making submissions during the public exhibition phase.
- *Early Community Involvement* - From extensive experience, Local Government knows that it is extremely difficult to involve the general community effectively in the early stages of strategic planning. While councils have had some success in consulting their communities for Community Strategic Planning, these consultations have been at the local level, and there will be additional challenges posed for finding engagement models that are effective at a subregional and regional scale.

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. People have trouble envisaging and comprehending abstract concepts and distant outcomes, so innovative approaches, enhanced use of technology and huge resources will be needed to make this work. There is also a danger that only well resourced, organised and vocal members of the community will engage in the community participation process. Planning authorities will need to demonstrate that they have adopted an affirmative action approach to reaching the silent majority, the disenfranchised and disadvantaged community members.

The new system will rely on community members and stakeholders having the foresight and means to voice their ideas and concerns much earlier, when plans are being written and zonings decided. It will require a whole new level of public engagement that has not been done at the state or regional levels before in NSW.

- *Subregional boundaries* - LGNSW questions how the regional and subregional boundaries are and/or will be defined for future planning, and what criteria and process will be used. The *White Paper* is vague about what criteria and process will be (or has been) used to define subregions. If Local Government is to be a true partner with the NSW Government and to work together on Subregional Planning Boards, councils must have a say in defining their subregions. This is discussed further in section 6.4.1 of this submission.

6.2 Strategic Planning Principles

LGNSW agrees with the concept of having Strategic Planning Principles to guide the preparation of strategic plans (Part 3, Division 3.1 of the *Planning Bill*). However, while we generally support these principles, we consider that the prescriptive approach in Principle 10, which specifically stipulates that local plans "*should not contain overly complex or onerous controls that may adversely impact on the financial ability of proposed development*") is inappropriate and has the potential to be used in reviews or court challenges to undermine

sustainable outcomes from strategic planning processes. We recommend that Principle 10 be amended to read as follows:

Principle 10: “*Local plans should facilitate development that is consistent with agreed strategic planning outcomes*”

In order to recognise local communities of identity and culture, LGNSW also recommends the inclusion of health and cultural considerations into Principles 1 and 9, as follows:

Principle 1: Strategic plans should promote the State’s economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social (including health) and cultural considerations.

Principle 9: Strategic plans are to be based on evidence, set realistically deliverable targets and take account of economic, environmental and social (including health) and cultural considerations.

6.3 NSW (State) Planning Policies

LGNSW supports the replacement of the multitude of existing State Environmental Planning Policies (SEPPs) with a smaller number of State Planning Policies. Local Government must be consulted in the formulation and integration of these planning policies into Local Plans. We agree that these policies should be subject to four-yearly review as proposed in the *White Paper*¹³.

Current legislation does not provide for public participation in the formulation of SEPPs, and in the past, this has effectively allowed the Government to circumvent public participation and community debate on key policy matters. It is positive to see that “Legislation will require that these policies are prepared with participation from the community and stakeholders, who will be involved early and throughout the process”¹⁴.

Within the hierarchy of plans, there is a noticeable absence of a state-wide policy position on population growth and settlement across NSW regions. The NSW Government should adopt a ‘Whole of State Development’ approach¹⁵, where the local and regional dimension to State development and population distribution is recognised and emphasised in new policy directions. This should be reflected as one of the new State Planning Policies. There is an underlying assumption in the *Draft Metropolitan Strategy for Sydney to 2031* for example, that forecast population growth can and should be accommodated within the existing Sydney basin, and it is disappointing that this long term forecasting for Sydney appears to have taken place in the absence of any whole of State population targets or strategies. LGNSW maintains that planning policies should facilitate decentralisation rather than reinforce centralisation.

LGNSW recognises that there are key issues which apply across a number of planning policy

¹³ White Paper, p 69

¹⁴ White Paper, p 68

¹⁵ For full details see ‘A Framework for Whole of State Development’
http://www.lgsa.org.au/sites/lgsa.org.au/files/imce-uploads/39/Framework_for_wholeofstate_development_final_291105.pdf

areas, such as health. As health and safety are objects of the *Planning Bill* (section 1.3 (g))¹⁶, LGNSW supports the development of a State Planning Policy specifically for the following areas:

- Health, using as a basis the NSW Health, Healthy Urban Development Checklist, http://www.lgnsw.org.au/files/imce-uploads/38/Healthy_urban_development_checklist.pdf
- Safety, using the Community Protection through Environmental Design principles cultural identity

LGNSW requests that Local Government be involved in the formulation and review of these policies, not just as a stakeholder, but as a partner. Local Government looks forward to working with the Government to establish the content of the NSW Planning Policies.

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.

6.4 Regional and Subregional Planning Framework

6.4.1 Regional and Sub-Regional Boundaries

Given that the proposed new planning system is so heavily reliant on a regional and subregional framework, it is difficult for our sector to provide informed comment without some detail on how the regions and subregions are to be devised. This is particularly relevant given other reviews of Local Government that are currently in progress. .

There is no detail on what criteria and processes will be used to determine the groupings of councils for subregions and what criteria and process will be used. As Local Government will be partners in the regional and subregional planning processes, councils must have a say in defining the subregions. Local Government seeks further advice from the NSW Government as to how it can contribute to this process.

6.4.2 Regional Growth Plans

One of the major downfalls of regional plans in the past has been the failure of infrastructure planning and delivery to support growth goals and targets. The *White Paper* proposal to integrate the planning and provision of infrastructure with strategic planning for growth is therefore probably one of the most important elements of the new planning system. It is critical for delivering regional and subregional objectives. LGNSW has long advocated the necessity of this approach, and therefore strongly supports the new concept of Growth Infrastructure Plans as the “key mechanism for the integration of land use planning and infrastructure provisions”¹⁷.

Another weakness in the past has been the lack of monitoring and evaluation of regional plans. LGNSW supports the intention to establish a framework for each Regional Growth Plan for ongoing performance monitoring and reporting against key objectives, and to measure and report on the performance of the plan. However, it is considered that quarterly reporting as proposed in the *White Paper* (p 77) is impractical and will become overly bureaucratic without

¹⁶ *Planning Bill 2013*, Section 1.3 (g) “health, safety and amenity in the planning, design, construction and performance of individual buildings and the built environment”

¹⁷ White Paper, p 157

much gain to the overall achievement of the outcomes of the plan. LGNSW recommends that a more reasonable and practical formal reporting timeframe be established for these plans.

LGNSW notes the establishment of the CEOs group as a mechanism for coordinating previously disparate priorities of different State agencies. If Local Government is to be a partner with the NSW Government, LGNSW recommends that suitable mechanisms and/or groups be established within the regional planning framework through which councillors can have ongoing dialogue and involvement with state agencies at the regional level.

6.4.3 Targets and Monitoring Plans

The *White Paper* indicates that housing, employment and environmental targets will be applied at a regional and subregional level. It also indicates that there will be a revised methodology for developing housing targets, although it is less clear how the other targets will be developed or monitored. Councils must be involved with the development of a new methodology for setting targets, to ensure that such targets are measurable, evidence based, and adaptive to local circumstances.

6.4.4 Local Affordable Housing Policy

LGNSW supports the retention and facilitation of opportunities for affordable housing as an integral part of the strategic planning process at a regional/subregional and local planning level. In particular, we support the inclusion of an affordable housing target where land is being up-zoned for new housing, such as the Urban Activation Precincts and where there are growth opportunities in subregional and local plans.

LGNSW supports councils being able to prepare a Local Affordable Housing Strategy that will enable them to develop practical and locally specific plans that are able to deliver acceptable affordable housing outcomes. While we recognise that councils have limited capacity to provide for affordable housing, councils can have an important role in identifying the need for the retention and provision of affordable housing within the housing supply stream.

Although councils support broadly based affordable housing targets to guide the strategic planning process, they do not support a target based monitoring process that evaluates councils' planning performance, on achieving targets that are generally outside their powers to deliver.

Hence, LGNSW supports working collaboratively with the DP&I in developing an appropriate methodology for devising affordable housing targets that would be applied at a regional/subregional and local level.

In summary, the ability for councils to be able to meet affordable housing targets under the provisions of the *Planning Bill* is problematic and needs to be addressed.

6.4.5 Subregional Delivery Plans

LGNSW questions limiting the development of subregional delivery plans to only designated 'growth areas'. Regional areas generally want to attract development, while in metropolitan and coastal NSW the focus is generally more on containing or managing growth and development. Subregional plans need to be developed for those regions seeking to promote growth and development.

Local Government therefore maintains the view that strategic plans are needed to address two separate issues:

- 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).

LGNSW notes that the *White Paper* does propose, in areas where a Subregional Delivery Plan will not be separately prepared, that “the Minister for Planning and Infrastructure may establish panels or committees on a regional basis with membership from all councils in the region, where such a group would facilitate the resolution of key strategic planning issues within that region”¹⁸. LGNSW recommends that this could be led by the DP&I regional offices, in partnership with the relevant councils.

It is hoped that the integration of infrastructure with a strong focus on regional and subregional planning will help address current urgent and critical gaps in strategic planning at a regional and state perspective e.g. providing funding for Flood Plain Risk Management, Biodiversity Management Plans, studies of natural hazards under changed climatic conditions such as extreme weather and bushfire.

LGNSW welcomes the intent in the *White Paper* to use ‘strategic impact assessment’ as input to sectoral strategies in the subregional planning process¹⁹. We note that the DP&I will be developing guidelines to support the application of strategic impact assessment in subregional planning,

Another area of concern is that Subregional Delivery Plans are proposed to directly zone land. This has the potential to be another example of the top down approach, and will have to rely heavily on gaining community consensus at the subregional level.

Specific comments about Subregional Planning Boards are discussed in section 6.4.6 of this submission.

6.4.6 Subregional Planning Boards

LGNSW endorses the proposal in the *White Paper* (p 83) to allow councils to choose whether they are represented by the Mayor, Councillor, senior officers or independent appointees on subregional planning boards. We also support having each individual council being represented. This is in accordance with the position taken in our submission to the *Green Paper* in September 2012.

However, the governance model for how these boards will operate is unclear. E.g. who will do the work for the subregional planning boards? How are they resourced, what resourcing commitment will be available, and how will councils be involved? What actual powers will council representatives have on these boards and how will decisions be made?

We note that Section 24(1) (c) of the *Planning Administration Bill* gives the Minister the power to appoint the chairperson of each subregional planning board and that Section 24(3) requires the Minister to obtain the concurrence of “the Local Government and Shires Associations of New South Wales (LGSA)”. Note that the *Bill* needs to be amended to reflect our organisation’s new title which took effect on 1 March 2013, when the LGSA merged to become Local Government New South Wales (LGNSW).

¹⁸ White Paper, p 83

¹⁹ White Paper, p 88

The LGNSW Chair of the Subregional planning boards should be elected by the members of the board, not by the Minister. This should then be confirmed by the Minister.

The *White Paper* undertakes that the planning boards are “new planning bodies that...will provide a partnership with state and local government. The Boards will partner with the public in the consideration of development alternatives and in deciding preferred solutions” (p 51). However, given the track record on metropolitan and regional planning to date, the lack of clarity about resourcing, and the considerable culture shift that is required, it is difficult to be convinced about how this ambitious undertaking to “partner with the public” will be transformed and translated into actual, meaningful and deliverable subregional plans.

6.5 Local Plans

6.5.1 Local Plan Making

LGNSW is concerned that important local planning matters may have no place in the proposed new local planning framework. Overall the four components of the Local Plan will require all councils to overhaul their current controls into a more standardised format that purports to be simpler and more user friendly. Yet, the proposed new local planning framework is currently deficient in to demonstrating how local planning issues, such as density, car parking and design issues, are to be managed. It also fails to demonstrate how the state and regional plans will be integrated into the Local Plan.

In general, there are concerns that the proposed system will produce a series of state led Development Guides that will ignore local place based controls creating further confusing and complexity to the system. Local Government is concerned that these Development Guides will be used to override councils' powers to manage local development decisions. Particularly, LGNSW is concerned with the proposals to:

- Introduce a more broad based zoning system that will limit councils' capacity to control land use decisions within a locality, resulting in more uncertainty and debate in the system; together with
- Omit the consideration of density of the development, that will restrict council's planning tools to manage the intensification of an activity and the housing density of established and new areas.

The *White Paper* suggests that councils will have extensive powers in preparing these local plans, however this is not supported in the draft exposure bills. The *Draft Planning Bill 2013* will further reduce councils' current planning powers through:

- The re-introduction of another Standard Instrument to direct the planning provisions of the Local Plan. Local Plans will be required to comply with this new Standard Instrument before that plan is able to be approved by the Minister - section 3.19. The content of that Standard Instrument is not known.
- The Development Guides being subordinate rather than supplementary planning documents, to be read alongside the planning provisions of the Local Plan- Section 3.27 (2) of the *Draft Planning Bill 2013* limits the content and capacity of Development Guides to limit development. Additionally it is unclear whether the Minister will be required to approve the Development Guide/s before they are able to be included in the Local Plan.

It is imperative that councils are involved in developing the new Local Planning framework so that the above issues are addressed and councils retain their ability to represent community interests and manage local development.

LGNSW does not support that all councils must rework their planning controls. Many councils, in particular, rural and regional councils have adopted a planning system that does not warrant an extensive overhaul in the short term. The proposed new system offers little benefit to councils that have limited development pressures. It would be costly and inefficient for such councils to unnecessarily overhaul their current LEPs and DCPs as a matter of priority. The implementation process must recognise the need for and capacity of councils to implement the proposed changes.

While LGNSW supports the focus on strategic planning to provide the direction for the development provisions and the Development Guides, the State Government needs to:

- Recognise the current appropriate work that has already been undertaken by councils and does not require them to re-do work already completed;
- Acknowledge the resources required to undertake the revision work and provide suitable support/resources;
- Recognise the time frame it will take to implement the changes and allow suitable period for transition; and
- Build flexibility into the system, so that the proposed changes address the real/unique issues at a local level and not forced to conform to arbitrary benchmarks.

6.5.2 Integrating Community Strategic Plans with Local Plans

The community strategic planning process under the *Local Government Act 1993* is one of the main representations of Local Government authority and autonomy. Councils facilitate this strategic conversation with their citizens about what local community they want to live in and what services they want including whether Local Government can provide this at all and what it might cost them (e.g. through rates) and to ultimately decide where they want to go.

While the *White Paper* promises that the legislation will integrate these plans with land use planning, it is unclear about how this will occur. This is particularly concerning considering that:

- The strategic intent of local land use plans is to meet regional planning objectives that might be arrived at with very limited Local Government influence or bottom up input from community strategic plans;
- The underlying objective of the new planning system of facilitating economic growth might conflict with the outcomes of the community strategic planning process; and
- The land use planning system appears to be given the scope to be very broad in terms of targets and decisions on how people want to live and thus has the risk of 'taking over' as the main strategic instrument.

Ideally, strategic decisions on local land use should be guided, even directed, by the objectives/outcomes identified by the community through the community strategic planning process. It is uncertain to what extent current community engagement strategies are affecting land use planning processes during the development of councils' local environmental plans (LEPs). We believe that this highlights an area within the Integrated Planning and reporting (IPR) model which needs strengthening. As Local Government transitions from the LEP instrument to the development of Local Plans (which we understand to be a four year timeframe) there appears to be an opportunity to create new alignment between councils' land use and community strategic planning processes. This raises the question about the level of engagement available to the community during the development of Local Plans and how these will contribute to Subregional Delivery Plans and Regional Growth Plans.

The imperative in the new planning system will be to harness the information gathered from this 'grassroots' level of consultation and ensure that it is fed upwards into strategic planning at

higher levels. This will be the challenge faced in the setting of regional and subregional targets. LGNSW recommends that the Division of Local Government (DLG) and DP&I work together with councils, to identify strategies that can be incorporated within councils' community engagement strategies to specifically address land use issues. This would help to ensure the legitimacy and transferability of the CSP in regional and subregional planning processes.

6.5.3 Land Use Zones

The *White Paper* proposes fewer more generic zones. While reducing the number of zones may be presented as a means of simplifying the system, this is unlikely to be the outcome. Councils have concerns that unnecessarily restricting the range of zones to 13 generic categories may require them to apply key planning constraints within supplementary planning documents (e.g. development guides), that are less clear to the applicant.

LGNSW considers the reduced number of categories may be restrictive and no other jurisdiction applies such a restrictive list of zones. In other states where zones are compressed into generic categories, a series of sub zones are established by the use of overlays.

Queensland has recently introduced a more flexible system where councils can either apply a more generic based approach to zoning, where feasible, or apply a wider series of subordinate zones, where necessary. The advantage of this system is that councils can tailor the zones to suit their needs. Where feasible, they can apply a generic zone, such as one general industrial zone, but change to a more expansive approach for residential development, where necessary, or vice versa. This system recognises the issues councils have in applying standard systems and the need for appropriate level of flexibility.

LGNSW supports a measured approach to zoning that is based on standard parent zones with a limited range of subzones, with the capacity for councils to adopt a simpler or more expansive approach depending on the local context and issues within the parent zone.

We note that the final list of zones is not included in the legislation and will be developed with councils and key stakeholders subject to consultation in the coming months²⁰. Under this new system it is important that there is an agreed approach to how density is managed within residential zones, either within the zones or as overlays to the zones. Councils are best placed to provide much needed practical advice about how these zones should be applied. LGNSW refers the DP&I to councils' individual submissions for this information, and recommends that councils must be involved in further discussions to refine the final list of zones.

6.5.4 The Enterprise Zone

The introduction of the Enterprise Zone appears to be an experimental method of delivering growth in certain areas, but may be difficult to manage for councils as the unrestricted nature of the zone could give rise to a wide range of expectations on what may be permissible or is reasonable on a site by site basis. The *White Paper* provides little information on how this zone will be applied and how development will be managed within the zone apart from specifying that development will "not result in any significant adverse environmental impacts"²¹. It is presented as an area available for redevelopment with no planning controls.

²⁰ White paper, p 97

²¹ White Paper, p 95

To designate certain areas where there is unrestricted opportunity for development/ redevelopment is contrary to good planning principles such as, creating new centres that do not comply with the strategic context. In the absence of development controls and with financial incentives, such new precincts present as a lottery for proponents and have the potential to undermine the viability of existing centres. If the NSW Government considers it necessary to identify certain land for redevelopment by the use of an Enterprise Zone, the rules and the process for managing the redevelopment plans needs to be clearer. LGNSW opposes the concept of an Enterprise Zone in its current form and requests that further discussions be held with Local Government on the merits and application of this new zone.

6.5.5 Development Guides

LGNSW understands the new system is based on introducing a performance based approach to the assessment process with a series of state-led Development Guides that will to deliver a development track approach to assessment. The Development Guides are to apply to complying and code assessable development, both of which we understand will preclude community engagement in the assessment process.

LGNSW supports the return to a more performance based assessment system. This is not new to Local Government as many councils have been influenced by the Planning Blueprint, called *The National Resource Document for Residential Development*, also known as AMCORD, that established the principles of performance based planning and assessment in 1995.²²

Nevertheless, LGNSW questions some of the fundamental assumptions and refers to the seemingly significant gaps in the proposed Development Guides.

The Development Guides will replace councils' Development Control Plans that provide the 'backbone' to local planning controls. The new system will enable the State Government to set up the framework and planning controls under proposed State 'Model Development Guides' that councils will be encouraged to apply to achieve sign off. The fact that the Minister will be required to approve councils' Development Guides (as they will form part of the Local Plan) is another example of the top down approach in this new system. The economic feasibility of the Development Guide will be established to determine whether the code is effective in delivering the desired outcome "and not place unrealistic burdens on development".²³ It is unclear how this "test" will be applied and by whom.

The success of the new system will rest on the Development Guides and in particular:

- The overarching framework of the Development Guides;
- The level of adaptability to the range of activities that are needed by the sector;
- The degree to which councils can apply local controls;
- The degree to which they can include local advertising/notification policies;
- How they apply to local development under the merits assessment track; and

²² A performance based approach to planning can be a more sophisticated and robust system of assessment can be criticised as being more complicated for applicants who do not understand the purpose of a code, and takes more time to assess as it often requires additional information where alternative solutions are requested. With a performance based assessment process the DA is assessed against the performance criteria established for the category of development under the code. Acceptable solutions are provided to meet the performance standards. Acceptable solutions can comprise numerical standards (objective) and/ or performance standards (subjective that require a merits assessment). A merits assessment is needed to assess the 'alternate solution' against the performance criteria. This is usually referred to as a 'performance test' under a merits assessment.

²³ White Paper, p 99

- Whether or not the new system will result in a plethora of codes replacing the current codes, instead of reducing the overlaps and inconsistencies at a state and local level.

We agree with the concept of having a model or template so that local codes have an agreed format and a common terminology or 'dictionary' across all the relevant documents. However, councils must be able to develop locally relevant and responsive planning codes, if they are to be able to rebuild trust with local communities, as part of the Government's desired delivery culture for the new system.

To address the above issues, LGNSW recommends that:

- Local Government leads the preparation of the Model Development Guides to ensure that a flexible framework is developed that is suitable for all councils;
- The format of the Development Guides provide an overarching framework that manages local development and enables councils to apply local controls; and
- An opportunity is retained for council to apply an advertising/notification policy for potentially controversial development.

In addition, LGNSW would like to have further discussion with the DP&I to consider whether the track system could be simplified by having:

- assessment tracks based on the scale and or the category of development (an objective criteria) rather than on whether or not a development is considered to 'comply' (which may be somewhat subjective and debatable); and
- place based local controls (e.g. character statement where application for Suburban Character Zones) and/or overlays (e.g. Heritage Conservation Zones) being integrated within the format of a Development Guide. This will enable local controls to be appropriately and sensibly incorporated within the generic codes. (See Figure 1 overleaf)

It is preferable from councils' perspective that the preparation of the Development Guides takes into consideration both development that is to be assessed as 'code assessable' and development under the 'merits track' to ensure that a coherent and simple set of codes apply to local development.

An alternative approach for assessing regional and state developments could consider separating these development types into a separate track called 'Impact Assessment'. The benefit of establishing an 'impact track' would be to clarify the responsibilities of the consent authority and the associated planning requirements for these high impact development applications.

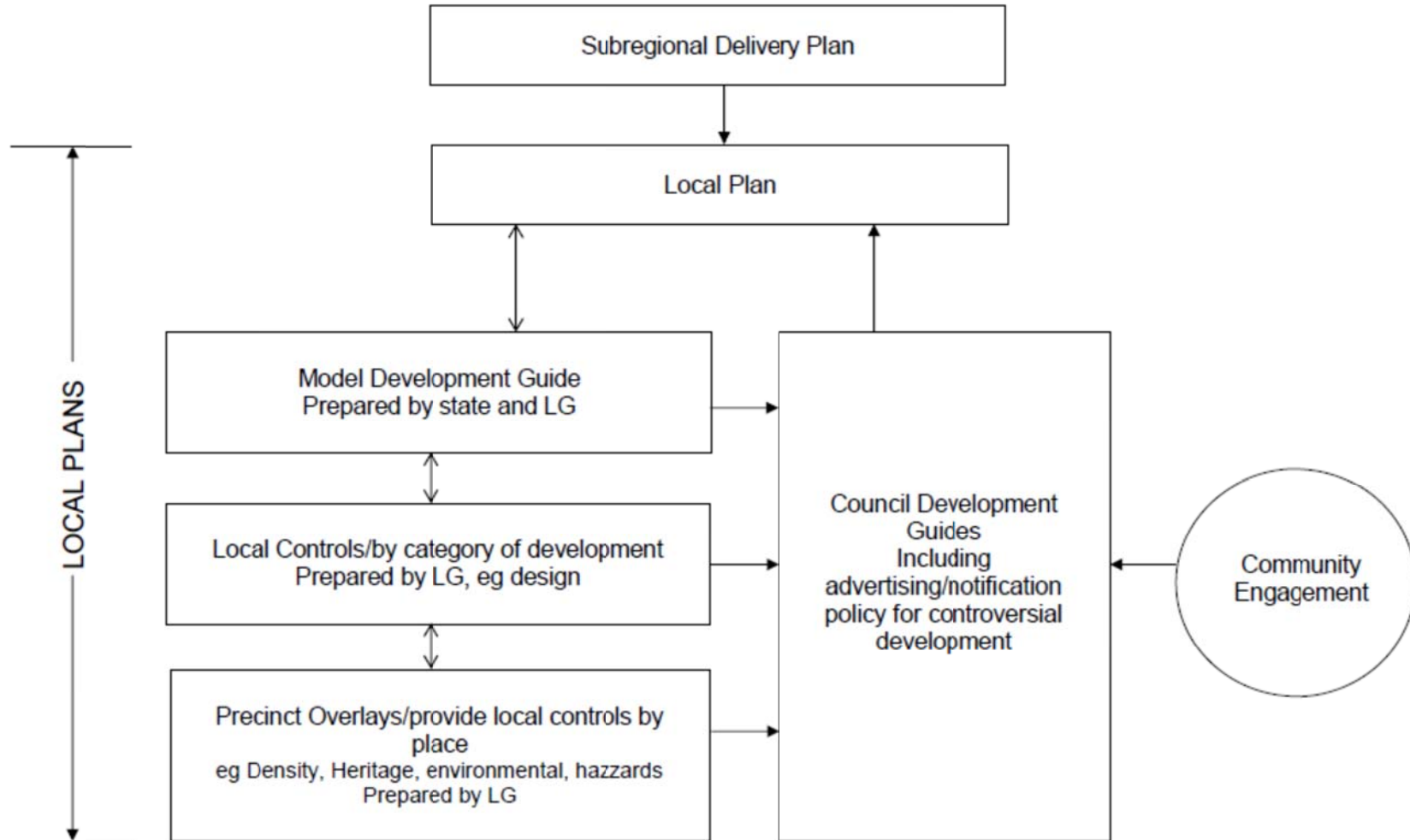
Under this alternative proposal, the Merits Track would be divided into two sub-tracks as follows:

- Code assessable development - the fast track system where DAs are assessed against performance criteria. Some of these DAs may need advertising where they are large and potentially controversial.
- A second track for merits assessment for DAs that require alternate solutions to meet the specified performance criteria. These also require advertising.

LGNSW also questions whether it is reasonable to solely rely on building envelopes as a means of managing the mass and scale of a development. Councils rely on floor space controls to manage the internal arrangement of uses that is relevant in protecting core business areas and other mixed uses.

Figure 1 overleaf portrays a suggested method for developing a council Development Guide.

Figure 1: Proposed method for developing council Development Guides



6.5.6 Minister's Powers in Local Plan Making

The *White Paper* proposes giving various powers to the Minister for Planning and Infrastructure to directly amend Local Plans, and to direct councils to develop plans “in a timely manner”. For example:

- “The Minister for Planning and Infrastructure (or his/her delegate) will be able to directly amend a Local Plan to give effect to the NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans through zoning and performance criteria”²⁴.
- “The Minister for Planning and Infrastructure can amend Local Plans to give effect to NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans”²⁵.
- “Councils will not be able to amend provisions the Minister includes in a Local Plan.”²⁶
- “The Minister for Planning and Infrastructure will have power to direct planning authorities in how they exercise their planning functions to ensure their functions are carried out in a timely manner, in accordance with the legislation and strategic plans.”²⁷

The Minister also has powers to “appoint the Planning Assessment Commission as the relevant planning authority if Subregional Planning Boards do not meet performance objectives”.²⁸

While the circumstances which might lead the Minister to exercise these and other powers affecting Local and Subregional Plans are outlined in the *White Paper*, the detailed conditions for making such decisions are not, and therefore appear to be left to a degree of discretionary interpretation.

LGNSW expects the conditions in which the Minister exercises his discretionary powers to be subject to the same level of transparency and rigour that is expected of other planning authorities. We question how these discretionary powers are to be prescribed and applied, and we advocate that the conditions upon which these powers are exercised must have sufficient legal recognition to ensure that they cannot be subject to potential misuse by a future Minister or Government.

6.6 Rezoning and Planning Proposals

There will be a number of ways that Local Government's plan making powers will be constrained under the new system. The introduction of the Subregional Delivery Plan will establish broad based land use decisions that councils' Local Plans will be required to conform with. It is important that councils will be able to collaborate in developing the subregional plans so that a local planning perspective is able to inform the plans, otherwise the system may become very prescriptive and unnecessarily restrictive for councils for little benefit.

It is also unclear whether councils will be able to make a formal application for amending a Subregional Delivery Plan. It is suggested that a process is established where councils are able to seek an amendment that is independently processed, possibly by the Planning Assessment Commission.

²⁴ White Paper, p 66

²⁵ White Paper, p 92

²⁶ White Paper, p 101

²⁷ White Paper, p 102

²⁸ White Paper, p 82

In addition, the new plan making processes will enable other ways for councils' plan making powers to be overturned. The new system allows proponents to be able to make an application for rezoning more readily and without the support of council. This will result in a significant change to current practice where Local Government has the role of local plan maker. This is based on the understanding that local plans are developed through a lengthy process, where councils engage with and are accountable to, local communities on zoning decisions. This provides rigor and certainty to the plan making process.

New rights for proponents will allow the applicant to be able to apply to the Regional Planning Panel for a rezoning, where a planning proposal has been opposed by councils or failed to be considered within 60 days. We are concerned that this will allow fundamental land use decisions to be able to be changed on an 'ad hoc' basis, overriding community based Local Plans.

In addition, proponents will also be able to seek a Strategic Compatibility Certificate that constitutes a fast track rezoning that will enable zonings Local Plans to be changed without council support. These applications will likewise be referred to the Regional Planning Panel for advice. Again the Regional Planning Panels will be granted powers to advise on plan making matters that may result in overturning a decision of council.

LGNSW opposes the rights of proponents to proceed to the State Government on an application for rezoning, or Strategic Compatibility Certificate, without the support of council. This will encourage 'ad hoc' land use decisions that will reduce certainty and accountability for communities, in relation to the planning schemes, as well as undermine councils' role as local plan maker.

6.7 Other Planning Issues

6.7.1 Social Planning/Impact Assessment

Social factors are an integral part of planning decisions that need to be appropriately considered under the new planning system. They are essential for creating environments that positively enhance the way of life, culture and cohesion of a community.

For Local Government, 'social justice' is based on the application of the following four principles:

- *Equity* - fairness in the distribution of resources, particularly for those in need.
- *Rights* - equality of rights established and promoted for all people.
- *Access* - fair access for all people to economic resources, services and rights essential to their quality of life.
- *Participation* - opportunity for all people to genuinely participate in the community and be consulted on decisions which affect their lives.

Social Impact Assessment is important for building better communities and for better planning. Social impacts should be considered as an integral part of any planning decision, and the relationships between environmental, social and economic aspects of community life need to be adequately considered during the planning process. Social objectives identified in the hierarchy of plans, from the State Planning Policies down to Local Plans can be addressed through Social Impact Assessment. Assessing the social impact of a development should address, amongst others, aspects relating to the following:

- Health impact on the population by addressing the social determinants of health. Tools such as the Healthy Urban Development checklist could be included or used as a guide in

further developing development assessment tools. Capacity building and education for local councils should be included in the planning, review and implementation of newly developed tools²⁹.

- Accessibility for people of all ages and abilities to the development and within the development, taking into account the principles of universal design and the elements of age friendly environments including pavement materials, shade, seating, lighting and the availability of public toilets.
- Aboriginal culture and heritage, to ensure that the sense of place for Aboriginal people is acknowledged and preserved. Decisions made at the development application stage can be more easily justified if they have been supported by an understanding of the cultural significance of an area at a strategic level that has been incorporated in land-use planning.
- Local culture, to recognise the concept of local distinctiveness and reflect how each and every place is unique. Local distinctiveness enhances the identity, morale and social cohesion of local communities.
- Cultural diversity, to recognise and develop the cultural and linguistic characteristics of a community and ensure that communities from all backgrounds have the opportunity to participate in planning decisions and that the impact on these communities is acknowledged.
- Families, young people and children.
- Women.
- Community safety.
- Housing.

6.7.2 Climate Change

The impacts of climate change present a significant challenge for councils in ensuring the sustainability of their communities. Increases in local population, housing and other development will intensify the consequence of these and other environmental impacts.

Planning for climate change needs to be flexible and allow for adaptive management. In this new planning system, the Regional Growth Plans and Subregional Delivery Strategies need to be able to respond to new knowledge as it becomes available. This is particularly relevant to the evolving scientific understanding of climate change. In a system where evidence-based strategic planning will determine future development scenarios, it would be very difficult to lock in planning considerations as our understanding of vulnerabilities and adaptation responses evolve.

Councils will continue to update their climate change risk assessments as new knowledge becomes available such as further technical studies that increase knowledge for impact assessments e.g. improving models to assess flood and erosion hazard. However, there needs to be some flexibility to allow for plans to be reviewed and revised as new evidence becomes available, and also to allow councils to develop policies that do not lock them into inappropriate and costly financial investments, or restrict further adaptation action in the future.

6.7.3 Environmental Issues

'Sustainable development' as proposed in the *White Paper* must balance economic, environmental *and* social considerations. Local Government is concerned to ensure that

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- ²⁹ An example of Health Impact Assessment is:
http://hiaconnect.edu.au/wp-content/uploads/2012/05/Health_Impact_Assessment_A_Practical_Guide.pdf

accelerated development, particularly in growth areas is not at the cost of due consideration of environmental constraints. LGNSW is hopeful that the integration of infrastructure with a strong focus on regional and subregional planning in the new planning system will help address current urgent and critical gaps in strategic planning at a regional and state perspective e.g. providing funding for Flood Plain Risk Management, Biodiversity Management Plans, studies of natural hazards under changed climatic conditions such as extreme weather and bushfire. However, the success of strategic planning will be dependent on councils having the funding and the technical expertise to complete the mapping of environmental constraints such as flooding, within realistic time frames.

6.7.4 Planning for Aboriginal Land

The NSW Aboriginal Land Council (NSWALC) is the peak representative body for Aboriginal people in NSW. The responsibilities of NSWALC and Local Aboriginal Land Councils (LALCs) under the Aboriginal Land Rights Act 1983 (ALRA) include the protection and promotion of Aboriginal culture and heritage in NSW. Aboriginal land councils in NSW are significant land holders and have functions under the Aboriginal Land Rights Act 1983 in respect to management and development of lands.

The NSWALC and local Aboriginal land councils are best placed to respond to matters of the management and planning for these lands, therefore we recommend that local Aboriginal land councils, NSWALC and Aboriginal peoples in NSW be consulted on matters that relate specially to Aboriginal lands.

6.7.5 Design and Heritage

LGNSW supports the assessment of design issues as an integral part of the DA process, in particular relationship to high impact development and for sites and buildings that have cultural heritage value.

The quality of development is often directly related to the consideration given to the design of the proposed development - both in relation to the design process and the outcome itself. Although many aspects of design involve an informed evaluation of the form and function of the development on the site and within its context, a council's assessment process is required to focus on urban design, evaluating the development within its context and any relevant heritage issues. Although the evaluation of design issues can give rise to debates in some cases, mostly good design ensures that the functionality, serviceability and liveability of the proposed development meets acceptable publicly agreed standards, such as safety and health issues, for the type of development proposed and within its context.

Ensuring that proposed development meets good design outcomes will become increasingly important for councils to take into consideration within the DA process. This is because well designed development can make a crucial difference to whether a residential flat development is compatible or intrusive in an area under redevelopment. In addition, the need to consider sustainability issues up front on the design process, can significantly improve outcomes for the environment.

Design will continue to be increasingly important in the redevelopment process, especially where land is upzoned for higher density housing. It is important that councils are able to continue to assess design against criteria as those incorporated within SEPP 65 and local controls under current DCPs. In particular it is critical that the assessment of design is appropriately considered for code assessable development, so that good design principles are promoted for local development.

LGNSW supports the consideration of design principles within the new assessment process, including code assessable development.

6.8 Summary of LGNSW Observations and Recommendations – Strategic Planning Framework

- LGNSW disagrees with having multiple ways that allow development to deviate from agreed strategic plans.
- Mechanisms are needed to ensure that Local Government knowledge, expertise and community input are fed into the regional and subregional plans and that these plans are not being driven from the top down.
- Local Government should be consulted and have meaningful input prior to strategic plans going on public exhibition. It must be a partner in this process, not just another stakeholder making submissions during the public exhibition phase.
- The governance model and resourcing of the subregional planning boards require further clarification and councils must have a say in defining their subregions. LGNSW endorses the proposal that each council in a subregion will be represented on the subregional planning board
- Suitable mechanisms and/or groups should be established within the regional planning framework through which elected local members can have ongoing dialogue and involvement with state agencies at the regional level.
- The replacement of the multitude of existing State Environmental Planning Policies (SEPPS) and replacement with a much smaller number of broader State Planning Policies is supported and Local Government must be consulted in the formulation and integration of these planning policies into the Local Plans.
- LGNSW supports the new concept of Growth Infrastructure Plans to integrate the infrastructure provision with strategic planning for growth; however, clarification of the details is needed.
- The intention to establish a performance monitoring and reporting framework for Regional Growth Plans is supported, but LGNSW recommends a more reasonable and practical formal reporting timeframe be established for these plans.
- LGNSW opposes the proposed reduction in the number of land use zones as they will restrict councils' ability to apply local planning controls. Local Government must be directly involved in the preparation of the new 'Standard Instrument' for the Local Plan, so that a workable zoning system is developed.
- LGNSW opposes the application of the Enterprise Zone as a means of redeveloping land, and recommends a more responsible and clearer zoning process to guide future development.
- The Model Development Guide must not have an overly prescriptive format that limits councils' capacity to adequately reflect local planning issues.
- LGNSW recommends that Local Government leads the preparation of the Model Development Guides to ensure that a flexible framework is developed that is suitable for all councils. In addition, that this process involves piloting the proposed model Development Guide on specific councils, before it is applied to the sector.

- The proposed development assessment model must be reviewed to enable community participation to be included for certain categories of development, within the code assessable track.
- LGNSW recommends that Development Guides be prepared for and embrace all forms of local development, both code assessable and merits tracks assessable development, so that a sensible and simple set of controls apply at the local level.
- LGNSW recommends that a separate 'impact assessment track' be considered for regional and state significant DAs so that large and very large development can be appropriately managed.
- LGNSW recommends that the current set of complying codes (under the Codes SEPP) be simplified and logically integrate with the proposed Development Guides.

7. Development Assessment

7.1 Key Comments/Concerns

LGNSW supports calls from all sectors for a reduction in the 'red tape' that surrounds the current planning system. 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.

Importantly, a robust assessment process is essential in achieving best practice sustainable development outcomes, in areas undergoing change. Requiring development standards that result in good design is critical in achieving compatible infill development when land is being up-zoned for higher density development. It is essential that the benefits of the current system are not compromised for expedience. It is considered to be counter-productive to save two weeks on a DA assessment process that results in the approval of plans for a development that has a life span of over 50 years.

Hence Local Government has concerns that the changes proposed in the *White Paper* will result in:

- more rigorous performance monitoring of councils that appears to be limited to assessment times of DAs;
- councils being required to introduce an IHAP where performance is considered to be below an arbitrary standard;
- councils being encouraged to apply an 'amber light' approach to approving development, that will provide less time to get the 'detail right' before the consent is granted;
- the use of a track system that needs further refinement to be workable and applicable to local development.
- reduced participation of neighbours in the DA process, resulting in concerns about lack of transparency and loss of community rights on moderate to high impact development; and
- more limited capacity and tools for councils to prepare and administer their Local Plans and Development Guides.

7.2 Codes Assessment and Complying Development

7.2.1 Community Rights

The new system intends to have 80% of applications processed as complying development

(mostly under the state complying codes) or as code assessable development, in five years. This will mean that for the overall majority of applications, community members will not be able to participate in local development decisions, including development that occurs next door. Only a small proportion of DAs that will be assessed under the merits track will be advertised with community feedback to be considered. This constitutes a fundamental shift in policy and will significantly reduce existing rights of the community to have a say in local development. In addition it will make the system less transparent and accountable.

LGNSW advocates councils being able to prepare an advertising/notification policy within the development guide for certain code assessable development that enables retention of council and community rights to have a say on large, high impact and potentially contentious developments. This will also enable larger developments to be approved under the code assessable system in certain situations. This can be achieved within a prescribed period of time and implemented efficiently using ePlanning technology. Retaining this right to apply to potentially controversial code assessable development, we believe will enable more applications to be approved under this track. This was also discussed in section 6.5.5 of this submission.

7.2.2 The Amber Light Approach

There are a number of issues associated with the amber light approach to approving development that will be challenging for councils to administer. Segmenting aspects for approval and seeking variations can be theoretically reasonable but in practice can give rise to disputes about the level of variation and what can be approved in part and full. More information is needed for councils to be able to administer this system smoothly so that councils are able to implement local planning codes consistently and applicants do not use the system to avoid complying with reasonable controls.

Section 4.16 (5) of the *Planning Bill 2013* enables councils to issue consent for a 'specific aspect' of the development with an understanding that the other aspects of the development are approved subsequently. This will be challenging for councils to manage and could give rise to debate. In addition, under Section 4.18, in relation to code assessable development, councils cannot refuse to grant development consent on aspects of the development that meet the 'acceptable solution'. Given that there may be a level of judgment as to whether a DA represents an 'acceptable solution' under a performance based system, this section could give rise to legal debate over councils' powers rather than the DA itself.

7.2.3 The Track System

The track system needs to be further developed so that councils are confident that their local planning policies are adequately incorporated into the new system. The new changes focus on the code assessable track on the assumption that applicants will choose this track as it will be faster to process. However, much development in growth areas will 'fall outside' this track because the category of development precludes its inclusion, or it is assessed to be non-complying. It is recommended that:

- where development clearly falls outside local controls, such as State significant development, these DAs are assessed under a separate 'impact track'; and
- where development constitutes local and regional development it should be managed by a relevant Development Guide for the relevant category of development.

LGNSW recommends that:

- The new Development Guides (that will replace the DCPs) should not be overly prescribed

by the Model Development Guides so that they adequately reflect local planning issues or local planning controls;

- Development Guides will apply to both code assessable and merits assessable development and that these codes be integrated;
- A separate 'impact assessment track' be considered for regional and state significant DAs/sites so that large and very large development can be appropriately managed; and
- The current set of complying codes should be simplified and taken out of the context of a legal document and relate to the locally developed Development Guides.

7.2.4 Independent Hearing and Assessment Panels

LGNSW is opposed to councils being required to set up an Independent Hearing and Assessment Panel (IHAP) if DA assessment times fail to meet arbitrary performance standards. Evaluating the performance of a council on DA assessment times can be misleading and unfair. If council performance is to be evaluated, a more robust process is needed that is independent and based on sound planning criteria, not simply on assessment times for DAs.

In addition, the introduction of an IHAP is not considered to be a panacea for resolving assessment issues. Currently only 3% of DAs proceed to council for determination, and hence delays that may occur in referring a DA to councils are relatively rare. The real issues are more procedural and have to do with the application itself.

Further, IHAPs are not, or will not, be an appropriate decision making model for the majority of councils across NSW as there is an inadequate stream of DAs in the category of development that would be referred to a IHAP. Councils are aware of the resource issues associated with setting up an IHAP and any perceived benefits may not outweigh the costs.

7.3 Concurrences and Referrals

The new system offers a 'concurrence toolkit' for addressing referrals of DAs to state agencies and other planning related approvals that delay the assessment process. As this a procedural issue LGNSW undertook a survey of councils to provide feedback on the proposed options.

In February 2013, LGNSW sought councils' views on the effectiveness of:

- Applying a standard set of generic State agency conditions to the consent; and/or
- Having a 'one stop shop' for referrals; and /or
- Facilitating a pre-lodgement certification – this would require the applicant to obtain 'certification' from the relevant agency that is attached to the DA.

The survey found that councils had a range of views and did not have an agreed solution on how to improve the referral process. However, they did make comments on the alternative approaches and there was some preference for the pre-certification approach and less endorsement of the 'one stop shop'.

There was some agreement that replacing advice currently obtained under the referral system, with generic conditions would add little value to the assessment process. Most councils are aware of the general requirements and conditions established by state agencies, but it is the specific advice on the application in question that is needed. Adding a list of generic conditions of consent was considered to be of marginal benefit and suitable for a limited number of DAs.

There was more support for encouraging or rewarding applicants who had obtained pre-lodgement certification from agencies for relevant requirements for a DA, where feasible. This would enable councils to fast track the DA. This would require applicants to obtain pre-approval via a standard request forms and the application of information technology to resolve matters before the DA was lodged.

LGNSW recommends that any new approaches to improving the referral process need to be trialled to ensure that any procedural changes delivers measurable improvements.

7.4 Pre DA Meetings

Likewise last year LGNSW undertook a survey of councils on how to improve the formal pre DA advice process that applicants are offered to assist in the preparation of a DA. The survey found that councils are both diligent and cautious when providing advice to proponents. The hesitancy from the sector to provide confident advice arises from a system under constant review, together with some fundamental conflicts that arise between state and local plans. This survey also revealed how critical pre DA advice is when a system is under change.

The survey findings revealed that pre DA advice is more useful to the applicant when the meeting:

- Focusses on the specific activity and is not to general;
- Delivers legible and easy to access information and directions;
- Is attended by senior council personnel and the meeting is appropriately recorded so that the relevant information is passed through to the assessment staff;
- Allows officers from state agencies to attend meetings (by the use of teleconferencing); and
- Manages the expectations of the applicant so that the advice is not interpreted as an approval in principle. The survey revealed that obtaining pre DA advice is a critical means of improving the DA assessment process and if advice from agencies could be integrated into such meetings the benefits to the applicant would be worthwhile.

Councils argue that they could achieve higher turnaround times and less delays if applicants for development took advantage of pre-lodgement consultation opportunities and advice. This should be encouraged as part of the culture change required of the development sector.

7.5 Regional Planning Panels

Councils have concerns that the role of the Joint Regional Planning Panels (JRPPs) will be expanded under the new system. The concern is that JRPPs will be increasingly used to take on plan making roles that have always been councils responsibility, even though the new system clearly acknowledges the role of council as plan maker, and specifically endorses Councillors role in this activity.

The new system enables applicants to be able to seek support for a planning proposal (rezoning application) from the JRPPs, where a council has failed to support an application for rezoning. In addition, JRPPs will be asked their view on applications for Strategic Compatibility Certificates, another form of rezoning, that is available to the applicant to pursue prior to the establishment of the Subregional Delivery Plan.

LGNSW opposes the expansion of the role of JRPP on rezoning matters. This role will enables RPPs to make critical decisions that will affect how land is developed or redeveloped on key sites in an area. RPPs do not have the local planning expertise that is critical in determining

these types of decisions. It also encourages land use decisions to be made on an 'ad hoc' basis, often out of context with other applications that may be before the council.

Overall both these new ways of enabling land to be upzoned for is fundamentally opposed to best planning practice as they can encourage a stream of rezonings that can be considered 'out of turn' with councils growth strategy. It is important that these types of applications are considered in context with the newly emerging Growth Infrastructure Plans.

In addition, LGNSW strongly supports a regional assessment process that is based on transparent rules and requirements for the relevant consent authority. Hence we support a Code of Conduct for members of the JRPP that ensure that decisions are made fairly with impartiality, where community access to the JRPP is clearly incorporated into the system.

7.6 State Significant Development

The *Planning Bill 2013* provides wide ranging powers to the Minister to identify, 'call in' and determine development applications that are considered to be 'state significant'/state infrastructure development/or public priority infrastructure. Councils are required to be notified of these applications in certain circumstances and are expected to comment on extensive EISs in a short time frame or complex sets of conditions that, on occasions, may warrant legal advice. While councils do not expect straightforward advice on simple matters to be financially compensated, a proportion of the fees need to be allocated to the councils where they have undertaken a considerable level of assessment and analysis.

LGNSW suggests that these issues can be addressed by councils:

- being provided a proportion of the fees from the NSW Government;
- as well as establishing better practice so that councils can obtain specific advice, mentoring programs and Master Programs on complex DAs.

7.7 Reviews and Appeals

A significant change, introduced under Section 4.16(4) of the draft *Planning Bill*, will require councils to 'prescribe' how a DA may achieve an acceptable outcome. This may be a reasonable approach for the Land and Environment Court to apply to DAs before the court that have already been through an sifting process, but it is not an appropriate approach for councils to apply to the range of DAs lodged with council, some of which are clearly not suitable or cannot be readily amended to comply. This approach needs to be applied only where it is reasonable for council to do so. It is essential that council staff remain neutral during the assessment process, to ensure that the staff is able to meet their responsibilities and behaviour under the Local Government Code of Conduct and that advice given to proponents is reasonable and neutral.

In addition, the *White Paper* proposes to expand rights to 'owner builders and small developers' to be able to lodge very cost effective fast track merits appeal to be able to access the Land and Environment to the Court.

The above changes clearly favour the proponent. It would be reasonable for this pro-development approach for appeals to be matched by providing similar rights to communities. It is reasonable to expand the very fast appeal system to enable communities to be able to access the courts on applications that are considered unreasonable under the merits track. This would enable cost effective and fast track appeals to be facilitated for development that falls outside the agreed codes. This would expand third party appeal rights to all DAs under the merits track that is considered to be a small proportion of DAs.

7.8 Part V Assessments

LGNSW supports the continuation of environmental impact assessment under Part 5 of the proposed new legislation. However, while this Part is quite specific on the requirements of a consent authority where a development triggers an Environmental Impact Statement (EIS), it is not clear as to what the process should include if the 'impact significance' does not trigger an EIS. Greater clarity needs to be provided to all infrastructure providers.

The *White Paper* states that the government will develop guidelines and standard templates to ensure a consistent risk based approach to environmental impact assessment. The government is encouraged to consult extensively with councils to ensure that these guidelines and templates are appropriate and user friendly. LGNSW also encourages the government to investigate existing tools and resources developed by Local Government, such as the Electronic REF Template developed by Hunter Councils (<http://www.hccrems.com.au/Programs/Environmental-Compliance/Sub-projects/Electronic-REF-Template.aspx>).

7.9 Summary of LGNSW Observations and Recommendations – Development Assessment

- LGNSW opposes the reduction of local planning powers that will limit councils' capacity to prepare and administer Local Plans, including Development Guides.
- LGNSW opposes the imposition of mandatory IHAPs, on the basis of an arbitrary assessment of a council's DA performance times.
- The track system needs to be further amended to sensibly and practically manage local, regional and state significant development.
- Community participation must be retained for certain classes of development within the code assessable track, to enable medium to high impact DAs, and controversial development, to be advertised under the new Development Guides.
- The proposed 'amber light' approach to approving development will result in ambiguity and debate about what may be approved. This needs to be reviewed in consultation with Local Government to provide a clearer and more practical guide for assessing and determining DAs.
- LGNSW recommends that any new approaches to improve the referral process need to be trialed to ensure that any procedural changes deliver measurable improvements, including the 'one stop shop'.
- LGNSW strongly supports the expanded use of pre DA advice as a means of improving the quality of DA applications and streamlining the assessment process. This should be encouraged as part of the culture change required of the development industry and facilitated by Local Government.
- LGNSW opposes the expansion of the role of regional planning panels (RPPs) on plan making matters, such as rezoning.
- LGNSW opposes the rights of proponents to proceed to the State Government on an application for rezoning, or a Strategic Compatibility Certificate, without the support of council.

- Members of JRPPs must be subject to transparent rules and requirements, including a Code of Conduct.
- LGNSW supports a fee sharing agreement between the Department of Planning and Infrastructure and councils, for the assessment of State significant development/infrastructure.
- LGNSW suggests that the proposed improvement of appeal processes for proponents be matched by extending the same rights to communities.

8. Provision of Infrastructure

8.1 Infrastructure Contributions

One of the major downfalls of regional plans in the past has been the failure of infrastructure planning and delivery to support targets for growth. LGNSW therefore supports the integration of infrastructure and land use planning as a key part of the proposed reforms, and the proposal to legislate that infrastructure is integrated with strategic plans³⁰. However, an area where Local Government is seeking clarity is the question of how regional contributions will operate outside high growth areas where there will be no Subregional Delivery Plans or Subregional Planning Boards.

We can anticipate that this approach will provide high growth areas access to a high level of funding for necessary infrastructure, but it should not be forgotten that areas with low population growth also require access to funds for the provision of regional infrastructure.

We note that current methods for obtaining local infrastructure contributions are maintained under Part 7 of the *Planning Bill*, including as a *direct contribution* or an *indirect contribution*³¹. We also note there is provision in the *Planning Bill* for the use of planning agreements³² (previously known as Voluntary Planning Agreements).

LGNSW opposes the proposal in the *White Paper* and section 7.9(5) of the *Planning Bill* to impose a three year limit on councils holding contributions prior to expenditure. This has practical limitations and is considered unrealistic, particularly for staged development. In regional townships, the progress of even a relatively small subdivision could plausibly take more than ten years to reach completion, and a council may not be in a position to finalise any new works/infrastructure until most of these funds have been collected. The alternative would be for councils in these circumstances to secure funds up front to provide significant infrastructure and later recoup the cost through developer contributions, but this would have adverse cash flow implications for councils.

8.2 Growth Infrastructure Plans

LGNSW supports the concept of Growth Infrastructure Plans. However, from what is discussed in the *White Paper*, how the plans will lead to the actual delivery of infrastructure remains somewhat arbitrary. It is unclear as to what forms of infrastructure a Growth Infrastructure Plans will include.

³⁰ White Paper, p 154

³¹ *Planning Bill*, Section 7.6

³² *Planning Bill*, Division 7.5

For example, will it address State as well as local infrastructure? We note that Section 7.20 of the *Planning Bill* makes provision for the Director-General to prepare a Growth Infrastructure Plan “for any subregion of the State”. This section sets up provisions for these plans to identify regional infrastructure for which regional contributions can be imposed. However, there is nothing in the *Planning Bill* that appears to link to agency requirements or require the Growth Infrastructure Plans to contain such information.

In addition, Section 7.3 of Schedule 7 of the *Planning Bill* provides that:

“The regulations may make provision for or with respect to the preparation and approval of local infrastructure plans and growth infrastructure plans, including the format, structure and subject-matter of plans”³³

While new Growth Infrastructure Plans are promised as the main solution to integrate infrastructure provision with land use planning, LGNSW is concerned that the timing of these plans will not align with the land use plans that are being developed, and people may be confused when they are asked for feedback on regional plans, subregional plans, growth infrastructure plans. The format of these plans is also unclear.

Growth Infrastructure Plans are promised as the key to integrating previously disparate State agency infrastructure priorities with land use planning, LGNSW remains concerned that if regional targets are imposed without a commitment to the necessary infrastructure or these plans being firmly in place there is a real potential for cost shifting from State Government to councils.

8.3 Biodiversity Offset Contributions

LGNSW supports the inclusion of biodiversity offsets contribution provisions within the proposed new planning legislation. Biodiversity offsets have become accepted practice in recent years as a way of mitigating impacts arising from development. The new legislation should appropriately recognise offsets as a land use planning tool, provide a suitable framework supporting current practice, and provide for improvements over time. In practice, biodiversity offsetting is complex by necessity and this needs to be provided for in the legislative provisions. The recognition of councils’ ability to understand their local context and set the parameters of the contribution framework is strongly supported. However, the following comments are made and clarification sought on a number of points.

Principles for biodiversity offsets should be included in planning legislation based on international and Australian best practice, such as the following:

- Biodiversity offsets will be used as a last resort, after consideration of alternatives to avoid and/or mitigate impacts.
- Offsets must be based on sound ecological studies (of both the area to be disturbed by the development and the offset area) and principles.
- Offsetting must achieve benefits in perpetuity.
- Offsets must be based on the principle of ‘net gain’ in terms of both the area of native vegetation and biodiversity values.
- Offset arrangements must be enforceable.

³³ *Planning Bill*, Schedule 7, Section 7.3

LGNSW supports the provision to extend the nexus between the development and the natural environment for which the contribution can be imposed. This will allow for broader whole of catchment projects to be undertaken for the benefit of the community. The fact that the biodiversity offset is in addition to any other local or regional contribution is also very positive.

8.4 Planning Agreements

A cause of enormous frustration to councils and communities is the lack of certainty surrounding the use of planning agreements, previously known as Voluntary Planning Agreements (VPAs), as a mechanism to obtain contributions towards local infrastructure. The *White Paper* has specifically reduced the opportunity for councils to be able to use planning agreements, limiting their use to “State significant development and under exceptional circumstances such as through density bonus schemes”³⁴ that generally need to be referenced in a higher order strategic or infrastructure plan.

Local Government wishes to ensure that State significant developments contribute their share to the demands on local infrastructure. Currently councils have been able to use these agreements to deliver key outcomes for communities that are affected by State significant development. While these are often one-off developments, we would welcome any opportunity to include greater certainty in the legislation and to be clearer about the type of infrastructure that could be included in a planning agreement.

The new arrangements for planning agreements that apply to State significant development need further clarification so that proponents’ expectations are clear and councils are able to implement the planning agreements to contribute to the local and regional communities that are affected by such developments. LGNSW urges the DP&I to seek input and guidance from councils on what types of infrastructure should/could be included in planning agreements and in what circumstances they should apply.

8.5 Public Priority Infrastructure

LGNSW acknowledges the need to progress the delivery of essential state infrastructure, and that special planning processes may be required to ensure their successful implementation. However, further clarification is required on how relevant councils will be consulted during the strategic planning, design and construction phases of infrastructure development. While the infrastructure may be designated as a broader public priority, the adjoining local community must not be forgotten. As the representative of these local communities, councils will play a vital role in ensuring that the process is seen to be open, transparent and fair.

The *White Paper* states that the declaration of development as PPI will authorise the carrying out of projects without the need for further planning approval. It goes on to say that environmental assessment will be based on the risks of impacts that are underpinned by robust methodologies and standard management measures. LGNSW seeks greater detail on what these ‘robust methodologies and standard management measures’ will be, how they will be developed and implemented, and what role councils will play within their local area.

³⁴ White Paper, p 170

8.6 Summary of LGNSW Position and Recommendations – Infrastructure Provision

- LGNSW opposes the proposal in the *White Paper* and section 7.9(5) of the *Planning Bill* to impose a three year limit on councils holding contributions prior to expenditure. This has practical limitations and is considered unrealistic, particularly in regional areas.
- LGNSW supports the removal of contribution caps and the inclusion of capital costs for basic local community facilities. We urge that the particular circumstances of rural and regional councils in relation to developer contributions be given further consideration by the proposed Contributions Taskforce.
- LGNSW supports the introduction of Growth Infrastructure Plans. If regional land use targets are imposed without these plans being firmly in place there is a real potential for cost shifting from the NSW Government to councils.
- LGNSW supports the inclusion of biodiversity offsets contribution provisions within the proposed new planning legislation.
- LGNSW urges the DP&I to seek input and guidance from councils on what types of infrastructure should/could be included in planning agreements and in what circumstances they should apply.
- LGNSW seeks greater detail on the methodologies and standard management measures proposed to be developed for environmental assessment of public priority infrastructure.

9. Building Regulation

9.1 Key Comments and Concerns

LGNSW and many councils have consistently argued that the introduction of a tougher building regulation regime is essential if code based assessment and private certification are to be expanded. The private certification system has a poor track record with respect to issuing certificates that are significantly inconsistent with consents, failing to detect and act on unauthorised work during inspections, certifying incorrect plans or incorrectly applying Building Code of Australia (BCA)/Regulations. The *White Paper* has recognised the urgent need to address these issues in order to reinstate public trust and confidence in the certification system.

LGNSW and its predecessors have argued for some time that there are a number of issues with building certification and regulation that need further analysis and resolution. We welcome provisions to tighten building regulation and address these issues. Some comments on specific proposals and provisions are provided below.

Regulatory Role for Councils

An issue that councils have had with the 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 appear to be 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), councils expend significant resources resolving regulatory planning issues without resorting to 'formal' regulatory action. Councils need to be able to recover costs of enforcement action, and suitable cost recovery

mechanisms should be made available (either from the landholder, proponent, private certifier or other appropriate source (e.g. state fund)) to compensate councils in circumstances where a matter is resolved informally. LGNSW notes that Section 47 of the Planning Administration Bill makes provision for councils to recover the costs of entry and inspection of premises by an investigation officer. We submit that Section 47 be amended to provide for councils to recover costs in respect to the carrying out of *all* regulatory functions.

Penalty Regimes for Certifiers

Local Government contends that one of the main problems with the current system is the need for higher penalties to introduce greater incentives for certifiers to do the right thing. We understand that this is a matter for the Building Professionals Board (BPB), and we urge that this issue is addressed as part of the review of the BPB Act.

Better Auditing

There is a need for a 'checking' or 'auditing' role to monitor and regulate the work of private certifiers. Currently this function defaults 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. A tougher regulator is required, with provisions to conduct random checks/audits and to issue stop work orders in certain circumstances.

LGNSW notes that the *Building Professionals Board Act* is currently being reviewed, and the *White Paper* has also made some general undertakings about a "significantly enhanced" auditing program of the Building Professionals Board due to the availability of building information in the building manual³⁵. It is difficult to see how the requirement for a building owner's manual will enhance the auditing program. However, LGNSW is pleased to see that according to the *White Paper* "resources are also being increased for auditing of accredited certifiers to focus on key community concerns, including the certification of high risk buildings"³⁶. Additional auditing of certifiers who have had two or more disciplinary findings against them in a 12 month period is also being undertaken.

Roles and responsibilities

LGNSW is pleased to see recognition in the *White Paper* of the need to clarify roles and responsibilities in the certification process. The *White Paper* notes that:

"It is proposed that the responsibilities of the building certifier, the consent authority and the council be clearly defined to reduce confusion, create better community understanding, reduce unnecessary overlaps and define the limits of their relevant functions. The builder's responsibilities in relation to certification requirements will also be clearly defined."³⁷

LGNSW also notes the broadening of the definition of *building certifier* (e.g. instead of *certifying authority* and *principal certifying authority*) in Section 8.1 of the *Planning Bill* and the inclusion of building and subdivision certifiers' functions at Section 8.3. However, while some roles and responsibilities have been defined in the *Planning Bill*, LGNSW does not consider that the dual roles that councils play in the area of building certification have been addressed.

Regulations 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. This issue appears to remain unresolved.

³⁵ White Paper, p 202

³⁶ White Paper, p 202

³⁷ White Paper, p 192

We note that the *White Paper* proposes that “Accredited certifiers must hold professional indemnity insurance under the Building Professionals Act 2005 at all times while accredited” and “The Building Professionals Board is currently considering options in relation to the insurance of accredited certifiers as an alternative to professional indemnity insurance”³⁸. This does not appear to have addressed one of the core issues with the current situation, where 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). LGNSW contends that a certifier cannot reasonably take on responsibilities and liabilities of the whole design and construction team and each and every contractor. It is unclear whether the new legislation will bring about any change to address this anomaly.

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 in relation to the definition of ‘not inconsistent with consent’. To address this issue, we note that the *White Paper* has proposed that “Completed building work will have to be consistent with the development consent”³⁹.

9.2 Owner’s Building Manual

LGNSW agrees with the proposal in the *White Paper* to introduce a building manual “to help improve the quality and accessibility of key building information”⁴⁰. However, we do not agree that the certifier for the building should be responsible for preparing the ‘Owners building manual’, as proposed in Section 8.20 of the *Planning Bill*. The responsibility of preparing such a manual should rest with the building owner or the applicant for the construction certificate for approval by the building certifier. The provisions of the building manual should place full responsibility for compliance with the building manual upon the owner of the building.

The provisions must also be practical and achievable and must not place any requirements on councils in relation to the implementation, management, certification or registration of the ‘building manual’ and its components. The current provisions in *Environmental Planning and Assessment Regulation 2000* for the registration and follow-up of missed, incomplete, inaccurate Fire Safety Statements are unworkable and onerous for Local Government and should not be transferred or incorporated into the ‘building manual’ or the associated ‘Annual Statement’ provisions.

We can foresee there may be some potential practical limitations with the requirements that “A full copy of the building manual have to be held at the building and be readily available to relevant persons during business hours”⁴¹. Consideration could be given to establishing a State-wide register which would contain all required building related documentation/certification which is accessible by councils, certifiers and other applicable State agencies such as the Building Professionals Board and NSW Fire and Rescue.

Crown building work (referred to in Section 8.21 of the *Planning Bill*) should also be subject to the same or similar ‘Owners building manual’ provisions, occupation certificate (or equivalent certification) and fire safety certification requirements with the responsible Minister’s Department being the repository for such certification.

³⁸ White paper, p 197

³⁹ White Paper, p 193

⁴⁰ White Paper, 198

⁴¹ White paper, p 199

9.3 Governance and Regulation of Building and Certification (Building Commission)

The Building Professionals Board has been unable to effectively deal with the issues associated with private certification, and there may be value in considering the merits of a building commission model for the NSW planning system.

9.4 Summary of LGNSW Position and Recommendations – Building Regulation

- The introduction of a tougher building regulation regime is essential if code based assessment and private certification are to be expanded, and we support proposals in the *White Paper* to address this issue.
- One of the main problems with the current system is the need for higher penalties to introduce greater incentives for certifiers to do the right thing. LGNSW urges that this issue is addressed as part of the review of the BPB Act.
- LGNSW is pleased to see recognition in the *White Paper* of the need to clarify roles and responsibilities in the certification process, however we do not consider that the dual roles that councils play in the area of building certification have been addressed.
- Provisions are needed to ensure that all those involved in the design and construction of a building (i.e. not just the certifier) are accountable for their work and hold professional indemnity insurance accordingly.
- LGNSW agrees with the proposal to introduce an 'owners building manual', however we do not agree that the certifier for the building should be responsible for preparing the manual.
- Consideration could be given to establishing a State-wide register which would contain all required building related documentation/certification which is accessible by councils, certifiers and other applicable State agencies such as the Building Professionals Board and NSW Fire and Rescue.
- There is also a need for the introduction of tangible measures to address the shortage of certifiers, particularly in regional areas.

10. Conclusion

Local Government remains committed to genuine reform of the planning system. LGNSW commends the Minister and DP&I on the extensive consultation and review process that has brought us to this point. However, even after this two year process, there are still many 'unknowns' and much work needed on the details to give confidence to Local Government that the system is workable and represents an improvement to the current planning system. There are deficiencies and insufficient detail in what has been presented in the *White Paper* and the exposure bills to give Local Government confidence in the new system. LGNSW would be pleased to work in partnership with the NSW to address the deficiencies and develop the detail before proceeding with legislation.

LGNSW consider that the next steps should include:

- Developing and implementing a Memorandum of Understanding (MOU) between the Minister and Director General for Planning and Infrastructure and LGNSW. This MOU would specifically deal with the new planning system.

- Forming an implementation steering committee including DP&I, LGNSW and other agreed parties to oversee the transition process.
- Establishing expert working groups, where appropriate, to develop details and options for particular issues;
- Establishing consultation processes and working groups for the development of the Community Participation Guidelines, State Planning Policies, model codes, etc.;
- Developing Terms of Reference for all the groups proposed to be established (e.g. Culture change action group, CEO's group, working parties, etc.);
- Designing and establishing suitable mechanisms and/or groups through which Councillors can have ongoing involvement in planning and decision-making at the regional level;
- Engaging with state agencies and Local Government to develop the one stop shop for concurrences;
- Engaging with Local Government to further develop the governance framework for subregional planning boards; and
- Scoping and committing funds for the development of the Planning Portal.

11. Summary of LGNSW Positions and Recommendations

LGNSW's key observations and recommendations have been summarised in each section of this submission and they are listed in the table below:

Issue	LGNSW Positions and Recommendations
Local Government General Observations and Concerns	<ul style="list-style-type: none"> • The 'partnership' between State and Local Government must be reflected in the processes and frameworks in the new planning system in order to become <i>embedded</i> in the new culture. LGNSW is pleased the State Government refers to Local Government as a 'partner' rather than just a 'stakeholder'. • LGNSW expects the NSW Government to re-examine the issues identified through the review of submissions and to work with Local Government to resolve the deficiencies identified by Local Government and develop the detail before the current Exposure Bills proceed to legislation. • LGNSW opposes councils being required to set up a mandatory Independent Hearing and Assessment Panel (IHAP) if DA assessment times fail to meet arbitrary performance standards. • LGNSW calls for binding strategic plans and checks and balances to provide certainty and confidence in the new system. The following checks and balances must be retained: <ul style="list-style-type: none"> ○ the community's right to have a say on DAs; and ○ Councillors being involved in the development assessment process for certain complex and/or controversial proposals. • An expansion of the DP&I's existing Planning Reform Fund is one mechanism that could be used as a potential revenue source to fund the additional strategic planning work envisaged under the new system. • LGNSW advocates that the transition to the new planning system be made over a realistic time period, especially in rural and regional areas where growth is slower and councils' planning resources are limited.
Delivery Culture	<ul style="list-style-type: none"> • LGNSW appreciates the enormous cultural change required to successfully introduce a new planning system. LGNSW will partner with the NSW Government in fostering constructive change. • The Department of Planning and Infrastructure's regional offices should be supported, appropriately resourced and given greater autonomy to develop supportive working relationships with Local Government and make decisions that affect regional locations. • One of the challenges of moving to a 'can do' culture will be to achieve cultural change within the existing regulatory frameworks (such as the Land and Environment Court, ICAC and NSW Ombudsman) that are in place to ensure probity and transparency. • LGNSW endorses the formation of a Culture Change Action Group and recommends that accountability for the group should be to the highest level. There is a role for LGNSW, councils, Councillors, professional bodies and others to bring about transformational cultural change and it essential that LGNSW is represented on the proposed Culture Change Action Group.

	<ul style="list-style-type: none"> • LGNSW encourages the NSW Government, in consultation with Local Government, to investigate the merits of establishing a support agency similar to the Planning Advisory Service in the United Kingdom.
Community Participation	<ul style="list-style-type: none"> • A planning regime that restricts the community's rights needs checks and balances to ensure transparency and build community confidence in the system. LGNSW advocates retaining the community's right to have a say on DAs that would have a significant impact on their local area. We also expect the new planning system to include the voice of communities through councillor involvement in the determination process for certain complex DAs. • Councils have long been committed to expressly engaging their communities, and do so on a daily basis. The imperative in the new planning system will be to harness this information gathered from this 'grassroots' level and ensure it is fed upwards into strategic planning at the regional/subregional levels. • LGNSW recommends that the community participation guidelines incorporate an overarching consultation timeline, with each stage of community engagement and specific milestones set out to clarify opportunities for stakeholder input. • LGNSW recommends that the Division of Local Government (DLG) and DP&I work together with councils, to identify strategies that can be incorporated within councils' community engagement strategies to specifically address land use issues.
Strategic Planning	<ul style="list-style-type: none"> • LGNSW disagrees with having multiple ways to allow development to deviate from agreed strategic plans. • Mechanisms are needed to ensure that Local Government knowledge, expertise and community input are fed into the regional and subregional plans and that these plans are not being driven from the top down. • Local Government should be consulted and have meaningful input prior to strategic plans going on public exhibition. It must be a partner in this process, not just another stakeholder making submissions during the public exhibition phase. • The governance model and resourcing of the subregional planning boards require further clarification and councils must have a say in defining their subregions. LGNSW endorses the proposal that each council in a subregion will be represented on the subregional planning board • Suitable mechanisms and/or groups should be established within the regional planning framework through which elected local members can have ongoing dialogue and involvement with State agencies at the regional level. • The replacement of the multitude of existing State Environmental Planning Policies (SEPPS) and replacement with a much smaller number of broader State Planning Policies is supported and Local Government must be consulted in the formulation and integration of these planning policies into the Local Plans. • LGNSW supports the new concept of Growth Infrastructure Plans to integrate the infrastructure provision with strategic planning for growth, however clarification of the details is needed. • The intention to establish a performance monitoring and reporting framework for Regional Growth Plans is supported, but LGNSW recommends a more reasonable and practical formal reporting timeframe be established for these plans. • LGNSW opposes the reduced number of land use zone categories that will restrict councils' ability to apply local planning controls. Local Government must be directly involved in the preparation of the new 'Standard Instrument' for the Local Plan, so that a workable zoning system is developed.

	<ul style="list-style-type: none"> • LGNSW opposes the application of the Enterprise Zone as a means of redeveloping land, and recommends a more responsible and clearer zoning process to guide future development. • The Model Development Guide must not have an overly prescriptive format that limits councils' capacity to adequately reflect local planning considerations. • LGNSW recommends that Local Government leads the preparation of the Model Development Guides to ensure that a flexible framework is developed that is suitable for all councils. In addition, that this process involves piloting the proposed model Development Guide on specific councils, before it is applied to the sector. • The proposed development assessment model must be reviewed to enable community participation to be included for certain categories of development, within the code assessable track. • LGNSW recommends that Development Guides be prepared for and embrace all forms of local development, both code assessable and merits tracks assessable development, so that a sensible and simple set of controls apply at the local level. • LGNSW recommends that a separate 'impact assessment track' be considered for regional and state significant DAs so that large and very large development can be appropriately managed. • LGNSW recommends that the current set of complying codes (under the Codes SEPP) be simplified and logically integrate with the proposed Development Guides.
Development Assessment	<ul style="list-style-type: none"> • LGNSW opposes the reduction of local planning powers that will limit councils' capacity to prepare and administer their Local Plans, including Development Guides. • LGNSW opposes the imposition of a mandatory IHAP, on the basis of an arbitrary assessment of a council's DA performance times. • The track system needs to be further amended to sensibly and practically manage local, regional and State significant development. • Community participation must be retained for certain classes of development within the code assessable track, to enable medium to high impact DAs, and controversial development, to be advertised under the new Development Guides. • The proposed 'amber light' approach to approving development will result in ambiguity and debate about what may be approved. This needs to be reviewed in consultation with councils to provide a clearer and more practical guide for assessing and determining DAs. • LGNSW recommends that any new approaches to improve the referral process need to be trialled to ensure that any procedural changes deliver measurable improvements, including the 'one stop shop'. • LGNSW strongly supports the expanded use of pre DA advice before the lodgement of a DA, as a means of improving the quality of DA applications and streamlining the assessment process. This should be encouraged as part of the culture change required of the development industry and facilitated by Local Government. • LGNSW opposes the expansion of the role of joint regional planning panels (JRPPs) on plan making matters, such as rezoning.

	<ul style="list-style-type: none"> • LGNSW opposes the rights of proponents to proceed to the State Government on an application for rezoning, or a Strategic Compatibility Certificate, without the support of council. • Members of regional planning panels must be subject to transparent rules and requirements, including a Code of Conduct. • LGNSW supports a fee sharing agreement between the Department of Planning and Infrastructure and councils, for the assessment of State significant development/infrastructure. • LGNSW suggests that the proposed improvement of appeal processes for proponents be matched by extending the same rights to communities.
Infrastructure Provision	<ul style="list-style-type: none"> • LGNSW opposes the proposal in the <i>White Paper</i> and section 7.9(5) of the <i>Planning Bill</i> to impose a three year limit on councils holding contributions prior to expenditure. This has practical limitations and is considered unrealistic, particularly in regional areas. • We urge that the particular circumstances of rural and regional councils in relation to developer contributions be given further consideration by the proposed Contributions Taskforce. • The timing of Growth Infrastructure Plans must align with the land use plans that are being developed. If regional land use targets are imposed without these plans being firmly in place there is a real potential for cost shifting from State Government to councils. • LGNSW supports the inclusion of biodiversity offsets contribution provisions within the proposed new planning legislation. • LGNSW urges the DP&I to seek input and guidance from councils on what types of infrastructure should/could be included in planning agreements and in what circumstances they should apply. • LGNSW seeks greater detail on the methodologies and standard management measures proposed to be developed for environmental assessment of public priority infrastructure.
Building Regulation and Certification	<ul style="list-style-type: none"> • The introduction of a tougher building regulation regime is essential if code based assessment and private certification are to be expanded, and we support proposals in the <i>White Paper</i> to address this issue. • One of the main problems with the current system is the need for higher penalties to introduce greater incentives for certifiers to do the right thing. LGNSW urges that this issue is addressed as part of the review of the BPB Act. • LGNSW is pleased to see recognition in the <i>White Paper</i> of the need to clarify roles and responsibilities in the certification process, however we do not consider that the dual roles that councils play in the area of building certification have been addressed. • Provisions are needed to ensure that all those involved in the design and construction of a building (i.e. not just the certifier) are accountable for their work and hold professional indemnity insurance accordingly. • LGNSW agrees with the proposal to introduce an 'owners building manual', however we do not agree that the certifier for the building should be responsible for preparing the manual. • Consideration could be given to establishing a State-wide register which would contain all required building related documentation/certification which is accessible by councils, certifiers and other applicable State agencies such as the Building Professionals Board and NSW Fire and Rescue.

Attachments

Attachment 1

Community Engagement Activities of Councils – Recent Trends

A review of the community engagement profiles of councils in NSW by LGNSW in 2012 revealed elements of best practice and contributed to a broader understanding of the general trends in community engagement in NSW councils. Trends that have emerged through this research are as follows:

- Continuous online engagement using tools such as ‘Bang the Table’.
Advantages:
 - a. Relatively cheap
 - b. Always accessible
 - c. Not limited to single-project engagementDisadvantages:
 - d. Participants self-select
 - e. Requires access to the internet, may therefore disenfranchise some community members e.g. the elderly, those without internet access.
- Appreciative inquiry/visioning as a means of gauging community preferences - This moves the engagement process away from the more traditional ‘*These are the three options: which do you prefer?*’ to asking communities to consider their community’s needs and how they could be met.
- Demographically representative populations in engagement - This lends further legitimacy to the process as the ‘vocal minority’ is much less likely to be able to influence outcomes as much as in a completely open process.
- ‘Personal invitations’ to participate in engagement at specific stages rather than an open public call to participate in all stages - This method is much more likely to have success in terms of higher numbers of respondents.

A key theme that emerged from this review was that resourcing (and in particular, funding) is a key element affecting the ability of councils to conduct in depth community engagement. For example, Warringah Council conducted a four stage community engagement process for their draft Housing Strategy (discussed below) titled ‘Talk of the Town’. Stage Three of Talk of the Town alone cost \$36,000. Canada Bay’s five Citizen Panel meetings cost approximately \$5,000 each to run and this does not factor in the costs of printing and distributing information material.

Many councils are choosing to outsource community engagement to consultants and community engagement specialists. While councils that engaged consultants to run the community engagement process achieved positive results, some of the best examples of community engagement were achieved without the use of consultants.

Councils having the most success in community engagement are devoting time, effort and resources to the process. The intensity of resourcing commitment will vary between councils and from project to project. However, advances in engagement techniques and the increasing use of internet based engagement (combined with increased internet literacy among all age cohorts) has meant that councils can and do undertake much more sophisticated engagement than ever before.

Attachment 2

Comments and suggested amendments to principles of Community Participation Charter

Principle	LGNSW Comment
(1)(a)	<ul style="list-style-type: none"> Partnership and engagement are the underlying principles here. LGNSW recommends that this principle be reworded as follows: “Plans are developed by engaging communities of geography, identity and culture.”
(1)(b)	<ul style="list-style-type: none"> Accessibility – this principle is using a very limited definition of accessibility. LGNSW recommends that the social justice principle be used i.e. “fair access for all people”. This definition would take this principle beyond the production of information and further toward the process of providing access to information for all people including people in remote communities, older people, people with a disability, or others who cannot access the internet and other mainstream information channels.
(1)(c)	<ul style="list-style-type: none"> Early involvement – LGNSW supports the principle of early involvement of the community, but suggests rewording to: “The community is engaged in all stages of the planning process”
(1)(d)	<ul style="list-style-type: none"> Right to be informed – this principle needs to be broadened to the social justice principle of rights i.e. “equality of rights established and promoted for all people” so that the community has the right, not just to be informed, but to actively engage with plan makers.
(1)(e)	<ul style="list-style-type: none"> Proportionate – it is not clear how the “significance of a proposed development” is to be determined. Some developments may have a significant social impact for some members of the community and it seems counter to the principle of engagement to limit the extent to which community members can be engaged by some arbitrary measure of “significance”. LGNSW recommends that significance should be measured in economic, environmental and social (including health) and cultural impacts.
(1)(f)	<ul style="list-style-type: none"> Inclusiveness – LGNSW suggests that this principle be expanded to ensure that disadvantaged people and people who are hard to reach are actively engaged in planning processes i.e. “planning authorities are to demonstrate that they have sought to engage all members of the community, including those who are hard to reach”
(1)(g)	<ul style="list-style-type: none"> The principle of providing reasons for decisions is supported.