

# **Submission to the NSW Department of Planning and Environment – Draft *Environmental Planning and Assessment Amendment Bill 2017***

April 2017

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## Executive Summary

Local Government NSW (LGNSW) supports the reform of the planning system in NSW. Change is needed. The planning system is overly complex and unwieldy. It requires greater clarity to avoid unnecessary debates on land use decisions, to facilitate sustainable development and to accommodate growth in an efficient manner.

The *Environmental Planning and Assessment Act 1979* (EP&A Act) has been under active review for many years. While there is a level of general agreement on what the problems are, there is less agreement on how to resolve them. The intention of the NSW Government is to deliver a broader package of reforms that includes the draft Bill, and associated regulations (yet to be prepared) and the review of the State Environmental Planning Policies. LGNSW has a mixed reaction to the overall package of reforms. While welcoming some changes that will improve plan making practice to some degree, overall we are concerned that local government plan making and decision making is being eroded.

Our initial feedback is as follows:

### ***Removal of Councillors from determining Development Applications – not supported***

A key theme of the reform package is the removal of the elected council from the decision making process for development applications (DAs), for both local and regional development. The NSW Government is proactively encouraging councils to adopt a local planning panel (LPP) and facilitate the adoption of the common model of LPPs for councils with an Independent Hearing and Assessment Panel (IHAP).

LGNSW welcomes the NSW Government's decision not to mandate the introduction of LPPs across all councils, which would have replaced the council as the decision making body for DAs. LGNSW appreciates that our arguments have been heard that LPPs are not a necessary, nor a suitable model, for all councils. Many councils strongly oppose the introduction of expert panels as decision making bodies.

Councillors are the voice of their communities. Councillors have been elected by their communities to represent their views, including in planning decisions which have long term impacts on neighbourhoods. LGNSW believes that the current decision making model for the approval of DAs, used by the great majority of councils, is not 'broken'. Current practice enables the elected councillor to represent the voice of the community on significant local development matters and all votes are recorded. This is a transparent and accountable system. Councils must be allowed to retain this decision making model and not be coerced into setting up an LPP.

LGNSW is concerned that the Minister will be given unfettered power to impose an LPP on a council, subject to unspecified performance criteria. This must clearly be addressed in the regulations, and developed with and agreed by the local government sector.

### ***Strengthening local strategic planning – supported***

The draft Bill provides an inspired innovation for local government strategic planning, with the proposed introduction of the local strategic planning statement (LSPS).

LGNSW strongly supports that focus on local strategic planning and looks forward to working with the NSW Government to develop a workable process for the development of the LSPS and ensuring it works in alignment with councils' Community Strategic Plans (CSPs).

The challenge will be making LSPSs work, at the same time as the 'space' for local plan making to occur is being progressively eroded under the NSW Government's overall planning reform agenda. The latter is concerning to councils and communities alike.

The NSW Government is continuing to introduce ways to override or diminish local plan making and local planning controls. These range from the draft District Plans which are on exhibition by the Greater Sydney Commission, to priority precincts, and the many proposed changes to SEPPs that will minimise councils' consent powers. The overall combination of changes leaves little space remaining for councils to make, and be a part of, planning decisions that affect the character, amenity and liveability of local areas.

In addition, while LGNSW agrees that an efficient and speedy decision making process is important, it has serious concerns with the current focus on assessment times. This is not a reasonable or useful test for determining councils' planning performance. LGNSW specifically opposes the reliance on DA assessment times which is repeatedly referenced in the draft Bill as a trigger for the removal of planning powers, not least in the context of limited information to explain how these provisions would be applied. The appropriate test for a good planning system should be whether the DA meets the objectives of the local strategic planning statement and delivers compatible and well-designed built form within its local context. We also support the NSW Government Architect's *Better Places*<sup>1</sup>, a design led approach to planning that aims to deliver better designed cities, places and buildings.

### ***Community participation practice – supported***

LGNSW supports the introduction of the Community Participation Plan (CPP) into legislation. This allows public participation, principles and practice around community engagement to be elevated.

Councils have extensive experience and expertise in this practice and look forward to working with the NSW Government on better delivering an agreed approach across the sector on these plans.

However, LGNSW is surprised that the draft Bill does not mandate the public exhibition of SEPPs. This is a major omission.

### ***Expansion of complying development – strongly opposed***

LGNSW opposes the current focus on expanding complying development and the certification process to an ever broadening range of developments. LGNSW accepts the current Codes as they apply to low impact and relatively straightforward developments, for example, the General Housing, Rural Housing and Housing Alterations Codes. However, LGNSW strongly opposes the proposed Medium Density Code as it would remove the ability for councils and communities to determine important planning and design considerations for this type of development. It is risky and counterproductive, in terms of developing liveable medium density communities, in the longer term.

LGNSW also has serious concerns regarding the proposed changes that would make councils responsible for regulating private certification, by making funding available through a new enforcement levy applied to Complying Development Applications. It is widely acknowledged that the NSW Government's existing private certification system is flawed<sup>2</sup>. The Government's first responsibility to NSW communities is to fix the system, before its expansion is considered. Councils should not and must not, be made responsible for policing a flawed system over which they have no say and no control. Councils have serious reservations about the potential for cost and responsibility shifting by the NSW Government.

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<sup>1</sup> <http://www.planning.nsw.gov.au/~media/Files/DPE/Plans-and-policies/draft-nsw-architecture-and-urban-design-policy-2016-09.ashx>

<sup>2</sup> Refer to: *NSW Government Response to the Independent Review of the Building Professionals Act 2005* (September 2016); Lambert, M., *Independent Review of the Building Professionals Act 2005 Final Report* (October 2015); and Maltabarow, G., *Report: Building Certification and Regulation - Serving a New Planning System for NSW* (May 2013).

LGNSW acknowledges and appreciates that the NSW Government recognises there is a problem with the building certification practice in relation to building compliance matters and acknowledges that the NSW Government has initiated actions to tighten certain building regulations through amendments to the Act. This action is long overdue.

***Focus on better planning outcomes is needed***

Planning is a balancing act between competing interests and differing priorities advocated by various interest groups. LGNSW believes the draft Bill and associated changes push the balance 'too far' in the favour of expedient decision making, with not enough emphasis on local plan making.

The impacts of many planning decisions are felt locally and for this reason local government must continue to be fully involved in land use planning decisions at the local level. Democratically-elected local government plays a vital role in representing community views in planning processes and it provides a well-accepted governance framework that should be respected.

We anticipate that some changes in the legislation will be helpful in improving outcomes but the real test of an improved system will be whether cities, places and buildings will be better planned now and into the future. LGNSW is uncertain as to whether the overall changes will deliver better practice, and better planning outcomes, across NSW.

A summary of the recommendations in this submission is provided below:

1. *LGNSW supports the provision in the draft Bill allowing councils to choose whether to introduce an LPP or not. LGNSW opposes any blanket mandatory imposition of an LPP.*
2. *LGNSW believes the community representative of the LPP should be an elected councillor.*
3. *LGNSW opposes the Minister having unrestricted powers to direct a council to set up an LPP.*
4. *LGNSW recommends changes to the draft Bill to require clear principles and criteria to guide the Minister in imposing an LPP. LGNSW recommends that local government be consulted on the Minister's powers to impose an LPP in the draft regulations.*
5. *LGNSW supports the introduction of the LSPS in principle and recommends that local government be involved in advising on the purpose, content and delivery of the LSPS.*
6. *LGNSW supports strengthening local strategic plan making, and opposes practices that undermine long term planning and encourage 'ad hoc' decisions making through the planning proposal process.*
7. *LGNSW recommends that the DP&E set up a local government panel or reference group to advise on the development of the LSPS.*
8. *LGNSW opposes the continuation of proponent-led rezoning reviews via the relevant planning panel. The right of the proponent to seek a rezoning review should be extinguished when council has adopted its LSPS.*
9. *LGNSW supports the CPP in principle and suggests that the DP&E set up a local government reference group or panel to advise on the appropriate provisions of a CPP in the regulations.*
10. *LGNSW supports the CPP and recommends that the notification of planning proposals be further considered.*
11. *LGNSW recommends that councils have the right to set notification periods for DAs within the CPP and this may be lower than 14 days.*
12. *LGNSW recommends that SEPPs should be advertised for a minimum period of 28 days and this should be mandated in the draft Bill.*

13. *LGNSW supports strengthening the independence of the IPC and seeks further information on how rigour is to be maintained in the assessment of SSD that is determined by the IPC.*
14. *LGNSW supports measures to improve the DA process but requests further information on how the changes to the referral process will improve DAs times, and whether transferring conditions of consent will improve enforcement of those conditions.*
15. *LGNSW supports councils' use of VPAs and strongly recommends that councils be consulted on any changes to the methodology under consideration.*
16. *LGNSW questions the proposal to allow VPAs to be applied to CDAs and requires further detail on the purpose and the practical application of this amendment.*
17. *LGNSW recommends that the option to limit the assessment of some sensitive categories of development to council certifiers needs to be further discussed.*
18. *LGNSW opposes the shift of responsibility for the flawed certification system to local government that is implicit in the enforcement levy and additional powers.*
19. *If an enforcement levy on CDCs is imposed, the scale of the levy must be realistic and able to cover the administrative costs of monitoring and enforcing the system.*
20. *LGNSW supports further consideration of limiting any enforcement levy to CDAs submitted by private certifiers.*
21. *LGNSW supports stronger powers to stop work to investigate the alleged non –compliance of a CDA.*
22. *LGNSW supports changes that reinforce the importance of the development consent.*
23. *LGNSW supports the introduction of an owner's building manual.*

## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft *Environmental Planning and Assessment Amendment Bill 2017*.

## Purpose

This submission is a response to the NSW Government's request for feedback on the draft *Environmental Planning and Assessment Amendment Bill 2017* (the draft Bill), and the following two supporting documents:

- Planning Legislation Updates – Bill Guide; and
- Planning Legislation Updates – Summary of Proposals.

This submission has two sections:

- Section A: Highlights key themes from the proposed changes which are of greatest concern for local government; and
- Section B: Contains specific comments on provisions of the draft Bill

## Background

The NSW Department of Planning and Environment (DP&E) has reviewed the *Environmental Planning and Assessment Act 1979* (EP&A Act) with the objective of modernising the NSW planning system. The purpose of the review is to amend the existing legislation.

A more comprehensive review was undertaken in 2013 with the production of the White Paper on *A New Planning System for NSW* and the introduction into Parliament of the Planning Bill 2013 and the Planning Administration Bill 2013. Together, these Bills would have replaced the EP&A Act 1979. The Bills were defeated in Parliament in 2013.

The current review focuses on the following areas:

- Enhancing community participation;
- Strengthening the local strategic planning framework: through local strategic planning statements, up to date Local Environment Plans and more consistent and workable Development Control Plans;
- Simpler and faster planning processes such as expanding complying development;
- Increased accountability and probity;
- Decision-making practices of councils;
- Developing clearer building provisions; and
- Improving compliance enforcement.

Most of the proposed reforms will directly affect local government planning practice. While LGNSW acknowledges the need for change, the extent and rate of proposed change will be challenging for local government. It is important that the NSW Government develops an implementation strategy which introduces change progressively and in close consultation with local government.

LGNSW is pleased to have had the opportunity to influence the content of the draft Bill. LGNSW has been actively advocating on behalf of councils on the proposed changes with the former Planning Minister and DP&E staff. For example, LGNSW advocacy has resulted in the removal of the proposal to mandate local planning panels (LPPs). This is an important outcome for local government (see Section 2) and increases confidence in the consultation process.

There are many other proposed changes that will benefit from close consultation with local government. LGNSW looks forward to working with the NSW Government to make planning reform a reality at a local level.

### **Regulations and State Environmental Planning Policies (SEPPs)**

This submission provides extensive feedback on the draft Bill and associated changes that, together, are designed to reform the planning system in NSW. However, this is basically an enabling Bill, with much of the critical detail to be contained in the associated regulations and SEPPs. If we are to deliver a better planning system, it is essential that local government is able to contribute practical feedback and local planning expertise as part of developing the proposed detail collaboratively. This is a current gap in the reform package.

LGNSW encourages the NSW Government to set up a process with local government so LGNSW and councils can provide timely and practical feedback on the draft regulations and associated SEPPs.

LGNSW will continue to work collaboratively with the DP&E to improve outcomes for councils and their communities with respect to planning in NSW.



## Section A: Comments on the key themes

### 1. Local decision making

The draft Bill enables and encourages councils to introduce LPPs. An LPP is an independent planning panel, which would replace a council's current powers to determine a local development application (DA). The panels will have decision making powers for DAs and some level of advisory power on other planning matters.

An LPP will also replace the current Independent Hearing and Assessment Panels (IHAPs), used by some councils to determine, or advise councils on, DAs.

The current position of the NSW Government is, in the first instance, to allow each council to decide whether it wishes to establish an LPP.<sup>3</sup> Councils that choose to set up an LPP have the right to choose their membership.

The proposed changes also enable the Minister to impose an LPP where a council's planning performance is deemed questionable or where allegations of misbehaviour by councillors in relation to the determination of DAs are found to have substance by the Independent Commission Against Corruption (ICAC). The Minister's powers to impose an LPP are scoped broadly under the draft Bill with more detail to be provided under the regulations. In these circumstances, the membership of the LPP is determined by the Minister.

Further details on the LPP model are outlined below:

- **Membership:** The membership of the LPP is to be 3 persons: 2 independent members with a wide range of applicable expertise for the determination of a DA and one community representative. The community representative may include an elected representative of the current council. Where an LPP is established by a council the membership is chosen by that council. Where the Minister imposes an LPP, the Minister chooses the members.
- **Format:** The draft Bill introduces a standardised format and rules for LPPs. The existing IHAPs will be deemed LPPs, subject to appropriate savings and transitional provisions.
- **Functions:** The LPP will primarily determine DAs. However, the draft Bill makes provision for these panels to take on other planning functions. LPPs may also be able to approve planning proposals and advise or approve other plan making activities.
- **Council's power to set up an LPP:** In the first instance, each council may decide to establish a panel with some level of autonomy on the functions that the panel will take on.<sup>4</sup> Also, councils with IHAPs will be given 12 months to bring these panels into compliance with the state-wide requirements.
- **Powers of delegation to staff to approve DAs:** The Minister's directions will also set up parameters which will standardise powers of delegation to staff to approve DAs. Most councils already delegate a very high proportion of DAs to staff to approve. Only a small proportion of council have low levels of delegations to staff.<sup>5</sup>

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<sup>3</sup> Planning Legislation Updates, Summary of proposals, Jan 2017 p35

<sup>4</sup> Planning Legislation Updates: Summary of proposals, Jan 2017 p 35

<sup>5</sup> Planning Legislation Updates: Summary of proposals, Jan 2107 p37

## **Analysis**

### **Local Planning Panels not to be mandated across the sector**

LGNSW welcomes the NSW Government's reconsideration of the proposal to mandate LPPs across the sector. The current proposals allow council to:

- appoint the membership; and
- determine the scope of the panel functions, apart from determining DAs. This means that councils will have some discretion as to whether the LPP will be able to consider other planning matters, such as planning proposals.

LGNSW strongly supports the right for an elected councillor of the relevant council to be the community representative on the LPP. This mirrors the regional planning panel model used for Joint Regional Planning Panels (JRPPs) and provides a legitimate, democratically elected community 'voice' on the panel.

LGNSW strongly opposes the NSW Government using these panels to make strategic planning decisions such as amendments to local environmental plans (LEPs). These types of planning decisions are the domain of the full council and warrant the full consideration by the elected representatives of that council.

### **Delegating DA decisions to staff**

The need to increase DA delegation to staff is vastly overstated. Currently over 95%<sup>6</sup> of DAs are determined by staff across NSW. This clearly demonstrates that the majority of councils have a very high level of delegation.

It would be of greater concern if the delegation ratio was higher than this. It could indicate that a very low proportion of high impact or sensitive DAs that warrant vetting by the council, are actually being referred to council.

When combined with the proposed power of the Minister to impose an LPP on performance grounds, and the expansion of complying development, there is no justification for state-wide intervention to standardise powers of delegation to staff.

### **The benefits of the full council making decisions on DAs**

LGNSW strongly supports councils being able to retain the more common decision-making model currently used by councils. This is where elected councillors determine the more controversial DAs and the clear majority of DAs are delegated to staff for determination. This model provides the most robust and inclusive way of providing local communities with a voice on local development, as well as fast tracking the more simple and uncontroversial DAs.

The key difference between the two models is that the councillor-led model enables a higher level of community engagement in the process. While the intent may be to push for engagement earlier in the process (which is also supported) councils find that residents are able to provide practical and useful feedback when they are allowed to be involved in local development at the practical implementation stage. This practice will become increasingly valuable as density increases, and it will in effect 'test' the direction of emerging planning policies. This process also enables a more community sensitive and design-led approach to development to be integrated into the local fabric of an area.

Given the current need for development to keep pace with population growth, sound community engagement provides timely and practical feedback on key forms of local development and

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<sup>6</sup> Planning Legislation Updates: Summary of proposals, Jan 2017 p 37

ensures that it meets local expectations. It is also a highly practical way of driving the delivery of better designed housing development for incoming and existing residents, which is a key objective of the draft Bill.

The benefits of the current decision making processes are well tested and should not be needlessly put aside on the presumption that an allegedly 'more independent' panel is a more robust approach.

Other advantages of retaining current practice are outlined below:

- very few DAs are referred to a full council meeting and hence councillors only decide a very small proportion of DAs<sup>7</sup> - and this provides transparency to the overall DA process;
- the right of councillors to call up DAs provides transparency in the system;
- DAs that are referred to a council meeting are those that are of interest to the local community and this process can result in better design outcomes that more adequately address important local concerns;
- These DAs are decided in an open forum, and all votes are recorded, which provides a transparent and accountable decision making process with councillors responsible to their community;
- the Local Government Code of Conduct is able to manage any potential conflicts of interest that may apply to elected representatives: and
- this system has some similarities to the jury system where the 'ordinary person' has the right to consider matters of fact before them.

The disadvantages of the introduction of an LPP are outlined below:

- an LPP will impose an administrative cost on councils that may be unjustified where there are few DAs per se or a minimal number of contested DAs;
- use of an LPP instead of a council meeting is unlikely to improve assessment times as the types of DAs that proceed to these meetings are often contentious, may require a site inspections and are more likely to require modification of the plans; and
- the introduction of the 'expert consultant' in the LPP process gives rise to a set of potential conflicts of interest, for example where the consultant already undertakes other planning work in the area and carries influence because of their position on the panel.

In addition, LGNSW is uncertain as to whether the proposed code of conduct embedded in the draft Bill is as robust as current practice. The rules on non-pecuniary influence and indirect influence are unclear. This needs to be clarified.

Where the LPP model is adopted it needs to be stipulated that private planning consultants who work in the local area are not eligible for membership.

LGNSW has serious concerns with the level of power granted to the Minister to impose an LPP. The draft Bill provides no principles to direct the Minister's actions, and we look forward to working with government to develop further detail in the regulations still to come.

Currently the draft Bill provides no protection for councils to prevent the Minister from making an arbitrary decision or a decision based on political factors.

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<sup>7</sup> On average 98% of DAs are referred to council staff under powers of delegation with an average processing time of 82 days.

**Questions**

1. What principles and criteria are to be included in the regulations that will guide the Minister's powers to impose an LPP?
2. Why should the Minister, not the council, choose the membership of a LPP?

**LGNSW position**

1. *LGNSW supports the provision in the draft Bill allowing councils to choose whether to introduce an LPP or not. LGNSW opposes any blanket mandatory imposition of an LPP.*
2. *LGNSW believes the community representative of the LPP should be an elected councillor.*
3. *LGNSW opposes the Minister having unrestricted powers to direct a council to set up an LPP.*
4. *LGNSW recommends changes to the draft Bill to require clear principles and criteria to guide the Minister in imposing an LPP. LGNSW recommends that local government be consulted on the Minister's powers to impose an LPP in the draft regulations.*

## 2. Strategic planning and local strategic planning statements

The draft Bill introduces changes to provide better alignment between district plans (which apply to the Sydney region), regional plans (which apply to rural and regional NSW) and councils' local strategic and environmental plans by the:

- preparation of the local strategic planning statement (LSPS);
- review of the Local Environmental Plan on a 5 yearly cycle; and
- alignment of the planning proposals with the strategic direction of the LSPS.

A key change to current practice will be the introduction of the LSPS. These statements are intended to provide a clear and concise strategic framework for the delivery of growth that will:

- take a 20-year horizon;
- guide council's decisions on planning proposals and re-zoning reviews;
- be consistent with regional and district plans;
- incorporate and summarise land use objectives and priorities identified through the council's Community Strategic Plan process;
- be refreshed every five years;
- require public consultation with stakeholders (including state agencies) and the general community; and
- be endorsed by the Greater Sydney Commission (for Sydney councils) or the DP&E for all other councils.

### **Analysis**

#### **Local Strategic Planning Statements**

LGNSW supports measures to strengthen strategic planning by councils and welcomes the introduction of the LSPS in principle, as a means of delivering a clear and more and accessible local strategic planning policy.

More detail is required. The LSPS needs to be tied in with the Community Strategic Plan (CSP) cycle, but also stand apart from them, being a synthesis of both local and district/regional perspectives on land use decisions.

The challenge will be whether the LSPS is able to achieve its purpose as a strategic plan for local areas and have the legal 'teeth' to provide direction to other plans, and planning proposals in particular. It is described as a subsidiary plan of the high level plans as well as the land use strategy outcome of the CSP under the *Local Government Act*. How can it be both?

The other confusing aspect of the LSPS is whose plans they are. If they are required to be endorsed by the Greater Sydney Commission (GSC) or the DP&E, they will be required to meet certain unspecified requirements. This raises the question as to whether LSPS may be a subset of the higher level plans and not really local plans by councils.

More work is needed on the role of the LSPS within the system and LGNSW recommends that the DP&E set up a panel of LGNSW and councils to advise on the LSPS to develop an agreed approach on its:

- relationship with the CSP;
- strategic purpose as a planning strategy and whether it comprises a vision statement, actions, priorities and program;
- role and capacity in influencing the location of priority precincts; and
- practical capacity to influence planning proposals.

### **Review of LEPs**

LGNSW has no objections to the introduction of requirements for councils to amend an LEP every 5 years as long as the process is applied with flexibility and is responsive to councils' planning programs. Councils would welcome a more collaborative approach be adopted to the review of LEPs, to enable reform rather than change.

Councils are also unclear how the 5 yearly review process will work with current practice. Planning proposals are typically used to update the LEP and apply a strategic intent, whereas the amendments to the LEP are more often used to address the more minor 'housekeeping matters'.

Councils support ways of fast-tracking changes to LEPs of a minor nature that deal with house-keeping matters. LGNSW recommends that criteria should be developed to define the relevant house-keeping matters that may be permitted by an agreed simple and expedited process.

Further consideration is needed to determine the delivery process for implementing the LSPS through the LEP.

LGNSW also recommends that the steady stream of proponent-led planning proposals is actively discouraged so that the LSPS can be implemented.

LGNSW recommends that rezoning reviews by proponents to overturn a zoning decision of council should be disallowed once the LSPS has been adopted. This change would strengthen local strategic planning.

### **Questions**

1. What will be the process for advising councils on how to update their strategic plans and review their LEPs?
2. What process and criteria will be used to 'endorse' the LSPS?

### **LGNSW Position**

5. *LGNSW supports the introduction of the LSPS in principle and recommends that local government be involved in advising on the purpose, content and delivery of the LSPS.*
6. *LGNSW supports strengthening local strategic plan making, and opposes practices that undermine long term planning and encourage 'ad hoc' decisions making through the planning proposal process.*
7. *LGNSW recommends that the DP&E set up a local government panel or reference group to advise on the development of the LSPS.*
8. *LGNSW opposes the continuation of proponent-led rezoning reviews via the relevant planning panel. The right of the proponent to seek a rezoning review should be extinguished when council has adopted its LSPS.*

### 3. Community consultation

#### ***Changes to community consultation practice***

The draft Bill (p 16-17) requires councils and other consent authorities to prepare a Community Participation Plan (CPP) that explains the authority's policy on community consultation for plan making and development assessment processes. In particular a CPP will:

- be exhibited on the NSW Portal for a minimum of 28 days;
- include exhibition periods for the range of plans that councils prepare (LEPs, LSPS, development control plans (DCPs) and Contribution Plans) as a minimum of 28 days and for DAs as a minimum of 14 days;
- have regard to participation principles such as: communities having a right to be informed and as early as possible in the strategic planning process, information needs to be in plain English and assessable, open and transparent decisions, the community participation method applied (and the reasons for the decision) being appropriate to the significance and likely impact of the proposed development; and
- require consultation before the lodgement of a major project.

Other changes in the draft Bill:

- allow for the establishment of a pre-notification stage so that the applicant is required to notify neighbours of a proposed DA, before lodgement of the DA with council; and
- require council to provide the public with reasons for the determination of the DA.

#### ***Analysis***

##### ***Community Participation Plans***

LGNSW welcomes the introduction of a model CPP that sets out requirements for consultation. Identifying a list of guiding public participation principles is also supported for councils and for other consent authorities. Many councils have already adopted such practice and for them the model will provide a standardised way of presenting council's current policy. For most councils the CPP will be a re-formatting exercise but for others a means of better articulating council's existing consultation practice.

The CPP will outline council's consultation practice for LEPs, LSPSs, DCPs and Contribution Plans and DAs. There is no requirement for advertising/notification of planning proposals. This is a major shortcoming of the CPP and needs to be addressed in the regulations. Also, it is unclear whether the CPP is a council plan that is signed off by council or whether it needs to be signed off by DP&E.

Councils will be able to provide useful input in the development of a model CPP and provide practical feedback on what is required to be included in the regulations, as councils have considerable expertise and experience in this area.

##### ***State Environmental Planning Polices (SEPPs)***

The DP&E will be required to prepare a CPP, which will identify the DP&E's consultation practice on a wide range of planning matters, including SEPPs.

However, currently there is no legal requirement to publicly exhibit a SEPP, and the draft Bill does not include provisions for SEPPs to be placed on public exhibition. This is a major omission. Given that the DP&E is currently undertaking an extensive review of all SEPPs, as part of the reform process, it is unreasonable that SEPPs are not required to be placed on public exhibition for at least 28 days, like other environmental planning instruments under the draft Bill.

##### ***Community Consultation Plans and DAs***

CPPs will require the mandatory notification of a DA for of a minimum 14 days. Councils have indicated opposition to this universal standard as it is too onerous for small scale DAs that do not

need this level of exposure. Council should be able to tailor the appropriate notification period to the scale and potential impact of the DA on adjoining development.

Further information is to be provided on the form, content and process for making and amending the CPP in the regulations. It is important that councils are able to provide feedback on these issues, so that the regulations can build on current best practice.

### ***Early consultation with neighbours***

Other consultation provisions are proposed that may require applicants for DAs to inform neighbours of the proposed DA before lodgement.

Pre-development consultation is considered to be good practice, however it should not be required by law. Councils have raised many practical issues that are likely to arise if such practice is mandated. It may result in applicants providing inducements to neighbours to support the DA and on the other side communities organising themselves to oppose a DA. Also some neighbours may not be able to be contacted or language could present a difficulty. The issues are many.

It is recommended that a DA be assessed on its compliance with the heads of consideration under section 79C of the EP&A Act, which clearly identifies the planning requirements for a DA. The approval of a DA should not be influenced by the applicant being able to garner support, or not, for the DA. The DA should be assessed on its merits.

### ***Statement of reasons for the determination***

The draft Bill also requires public notification of decisions and the reasons for determination of a DA. Councils are unclear what this change means in practice. Given that most councils provide this information on their website is the intention for the decision and supporting reasons to be placed on the NSW Portal?

### ***Questions***

1. Will the regulations for the CPP provide guidance to councils on consultation practice for planning proposals?
2. Who 'signs off' on the CPP? Is it a council plan?

### ***LGNSW Position***

9. *LGNSW supports the CPP in principle and suggests that the DP&E set up a local government reference group or panel to advise on the appropriate provisions of a CPP in the regulations.*
10. *LGNSW supports the CPP and recommends that the notification of planning proposals be further considered.*
11. *LGNSW recommends that councils have the right to set notification periods for DAs within the CPP and this may be lower than 14 days.*
12. *LGNSW recommends that SEPPs should be advertised for a minimum period of 28 days and this should be mandated in the draft Bill.*



#### 4. Development assessment practice and development control plans

The draft Bill includes a number of changes to the development assessment process which alter consent functions and assessment practice for DAs.

This section also covers the proposed changes to DCPs and Voluntary Planning Agreements (VPAs) which are important to councils.

It does not cover the removal of councils' consent functions by the introduction of LPPs as this has been covered in section 2 of this submission.

For major development – State Significant Development (SSD):

- The Independent Planning Commission (previously the PAC) will determine DAs for SSD by law not under the current powers of delegation from the Minister and its assessment role will be reduced;
- Staged SSD may be referred to council for subsequent approval.

For regional development (approved by Sydney or regional planning panel):

- An amendment to a SEPP is proposed to shift councils' consent powers to the relevant Sydney or regional planning panel, where a DA of a certain value under the agreed threshold for regional development, has not been determined within 120 days; and
- Other changes are proposed to raise the value of regional development to be referred to the relevant panel.

For local development that is approved by council:

- DCPs are to be standardised under the regulations;
- Changes will improve the referral process for integrated development;
- Conditions of consent may be transferred to the relevant agency; and
- The approval of the modification of DA consent will be made more challenging.

Other changes are proposed to current practice around the negotiation of VPAs with councils.

The current system allows the applicant for a proposed development to enter into a VPA with council to provide the agreed level of local public infrastructure in a more flexible and site specific way. The changes in relation to VPAs will:

- strengthen the Minister's power to make a direction about the methodology underpinning a VPAs; and
- apply VPAs to complying development certificates (CDCs).

#### **Analysis**

##### ***Major development (SSD and SSI) and the Independent Planning Commission***

The name of the Planning Assessment Commission (PAC) will change to the Independent Planning Commission (IPC) and the Commission will become the consent authority for SSD, by law, rather than by powers of delegation from the Minister<sup>8</sup>. With its role being primarily one of determining State significant proposals, it will no longer have a statutory role in providing advice on SSD proposals. However, State Significant Infrastructure (SSI) will continue to be approved by the Minister.

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<sup>8</sup> Currently the PAC determines SSD under powers of delegation from the Minister. The Planning Minister will retain the power to approve state significant infrastructure which aligns with current practice.

The NSW Government is concerned that the number of days to approve a SSD has been increasing. In 2008 the average assessment time of a SSD was 598 days, which almost doubled to 1089 days by 2014<sup>9</sup>. The intention is to reduce the assessment phase by allowing the IPC to guide the process. This has been estimated to reduce the assessment phase by 70 to 160 days.<sup>10</sup>

The changes to the IPC are intended to result in a shorter assessment process by allowing the IPC to 'guide' the assessment phase. It is unclear what is meant to by this.

It is not clear how new practice will retain the rigour of assessment needed for these highly complex developments, given that it is also asserted that this system will provide more certainty to industry and the community. LGNSW is concerned that rigour may be weakened on the basis of expediency.

LGNSW requests further information on how the new practice will deliver more independence and confidence in IPC.

### ***Staged state significant development***

A small change to the draft Bill will enable SSD to be referred back to council for determination, in relation to development that has been approved as staged state significant development by the IPC. This is a practical change that is reasonable and is supported by LGNSW.

### ***Regionally significant development***

There are a number of new and amended SEPPs that are proposed to shift council consent powers to the Sydney district or regional planning panels from the council. The accompanying information<sup>11</sup> indicates that while some thresholds for regional development are being raised, other changes are proposed that will lower the threshold for regional development, thereby removing consent powers from council.

Key changes that will remove councils consent powers are where:

- the DA (from \$10 m to \$30M) has not been determined within 120 days; or
- councils' assessment practice is considered unsatisfactory<sup>12</sup>; and
- where the activity is a school<sup>13</sup>

LGNSW opposes the trend of removing decision making powers from councils on the basis of the number of days a DA takes to be assessed or where a council's development assessment is "considered unsatisfactory". This is unreasonably arbitrary.

### ***Local Development and Development Control Plans***

LGNSW supports an agreed format for DCPs in principle, but only on the basis that local controls are able to be included into that format. LGNSW recommends that a local government reference group be set up to guide this process as part of the development of the relevant regulation.

Matters that need to be taken into account in developing an agreed format for DCPs include:

- Whether the DCP is a placed-based or an activity-based plan; and

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<sup>9</sup> In 2008 a SSD took 598 days to determine and in 2014 the average number of days increased to 1089 days.

<sup>10</sup> Planning Legislation Update: Summary of proposals, Jan 2017 p 38

<sup>11</sup> Planning Legislation Update: Summary of proposals, p 37

<sup>12</sup> Planning Legislation Update: Summary of proposals, Jan 2017, p 37

<sup>13</sup> Education and Child Care SEPP <http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-education-SEPP> <http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-education-SEPP>

- Whether the development standards in all relevant/applicable SEPPs can be incorporated into the LEP or the DCP<sup>14</sup>.

Local government is concerned to ensure that establishing a common format, structure and subject matter for DCPs is not used to remove all local controls.

LGNSW's support for this aspect is conditional on evidence that the common format delivers a clearer and more legible plan and that councils drive the project.

LGNSW has concerns that the process may dilute well designed local controls that have been agreed to by communities.

The proposed changes to the format of a DCP should be introduced when the relevant DCP is under review. LGNSW opposes councils being required to needlessly re-format current DCPs which would result in poor use of councils resources. The review of DCPs needs to be aligned with the overall plan making process of the council.

### ***Improving the referral process***

Integrated development is a type of development that requires the concurrence of one of more state agencies before council is able to determine the DA. Councils have indicated for some years that this practice delays the assessment of DAs and it is a factor over which councils have no control.

The draft Bill enables the Planning Secretary to act in the place of the relevant agency. This applies where advice from the agency has not been provided in the specified period, or where advice from a number of agencies is inconsistent.

LGNSW welcomes improvements to the referral process and is generally supportive of ways to make the referral process more effective.

However, LGNSW also questions how the proposed changes will improve timeframes unless the Planning Secretary has significant capacity to intervene in the process.

At the same time, councils are required to mediate between the applicant and the agency on relevant issues. Hence further clarification is sought on the Planning Secretary's role within the overall assessment process of the DA.

### ***Transferrable conditions and other conditions of consent***

A new mechanism is proposed which will allow consent provisions on DAs to be transferred to the relevant agency. This applies where the conditions of consent are substantially consistent with those subsequently imposed under another regulatory approval and licence. The intention is for transferrable conditions to lapse as equivalent conditions are transferred to relevant leases, licences or other approvals.

These changes are proposed to address practical issues around the enforcement of conditions of consent. Conditions of consent can be contentious at the local level, and where conditions are transferred to an agency on the basis of being 'substantially consistent' and therefore it is important that councils are involved in this process. Therefore councils have requested further information to ensure that it will protect local communities.

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<sup>14</sup> For example the new approach could combine development (planning and design) standards contained in differed planning policies and instruments so that all the relevant information for the activity is in one document.

Questions have been raised regarding:

- what is meant by ‘substantially consistent’; and
- practical issues around monitoring similar conditions of consent, such as hours of operation of licensed premises in residential areas.

### ***Modification of DA consents***

A further change under the draft Bill is a proposal to amend section 96 of the Act so that if development is carried out in breach of the development consent, section 96 cannot be used to authorise that breach. This change would in effect remove the ability of the applicant to seek a modification of a DA consent under section 96 during the construction phase.

Councils do not support this amendment, as the proposed provisions do not offer any alternate mechanisms to enable consent authorities to deal with these common situations. Many of these types of applications relate to minor modifications and do not appear to be a deliberate attempt to undermine the integrity of the approvals process. LGNSW however agrees that strong deterrents are needed to minimise unauthorised works, but any changes need to incorporate a mechanism to enable such modifications to be assessed on their merits and to provide for the legal resolution of the work. More information and further consideration of this issue is required. While there are faults in the current system, the total inflexibility of the changes is considered impractical and may inadvertently constitute a probity risk.

### ***Voluntary Planning Agreements***

The proposed reform package is intended to provide more transparency and rigour around the VPA process. The changes in the draft Bill will enable the Minister to make a direction about the methodology underpinning VPAs across the sector.

LGNSW supports more transparency and consistency around the application of VPAs across the sector, but opposes the Minister being able to override council practice on VPAs. Many councils have extensive experience in applying VPAs that provide tailored public benefits to local communities.

The application of VPAs is a useful tool for developers and councils as a means of incentivising well-designed development. LGNSW supports councils’ use of VPAs and strongly recommends that councils be consulted on any changes to the methodology for VPAs that may be under consideration by the Minister.

Another change under the draft Bill allows VPAs to be applied to CDAs. Councils have raised concerns as to how a voluntary, negotiated process could apply to a ‘tick the box’ assessment process that requires strict compliance with the relevant state wide planning and design rules.

LGNSW requires further detail on the purpose and the practical application of this amendment.

### ***Questions***

1. How will the IPC be able to speed up the assessment process and provide the level of rigour and independence needed to retain the community confidence in its work?
2. How will the referral process for integrated development be able to deliver faster decisions on DAs, without the Planning Secretary having powers to enforce direct practice of the relevant agency?
3. Further information is required to understand whether transferring conditions of consent currently on a DA to the relevant agency will improve compliance with that condition of consent.

4. Is there a better way to deter the serial modification of DAs without removing all powers to rectify unauthorised work?

**LGNSW Position**

13. *LGNSW supports strengthening the independence of the IPC and seeks further information on how rigour is to be maintained in the assessment of SSD that is determined by the IPC.*
14. *LGNSW supports measures to improve the DA process but requests further information on how the changes to the referral process will improve DAs times, and whether transferring conditions of consent will improve enforcement of those conditions.*
15. *LGNSW supports councils' use of VPAs and strongly recommends that councils be consulted on any changes to the methodology under consideration.*
16. *LGNSW questions the proposal to allow VPAs to be applied to CDAs and requires further detail on the purpose and the practical application of this amendment.*

## 5. Complying development

### ***Broad Changes to expand complying development***

A key part of the reform agenda is the expansion of exempt and complying provisions to a wider set of development types. These changes will be implemented by a series of new complying development codes that will be progressively added to the State Environmental Planning Policy (Exempt and Complying Code) 2008.

The NSW Government has a clear intention to drive housing supply by enabling more types of residential development to be fast tracked through the certification process. The council or private certifier is required to do a compliance check against the numeric requirements of the state wide codes. This bypasses the DA process and the neighbour notification that enables residents to have a say in development next door. In particular, recent proposed changes are to expand the certification process to a wider range of medium density development types.

LGNSW supports the use of exempt and complying development provisions for small and low risk development that is not considered to warrant the more rigorous merits assessment process required for a DA. This is suitable for project homes and other simple forms of development on flat sites.

However, LGNSW opposes the expansion of complying development to medium density development, as proposed under the draft Medium Density Complying Development Code and associated Design Guide.

LGNSW's key objection to the application of complying development to medium density development is that it will expand certification to developments that local government maintains should be subject to a merits based assessment process, which enables residents to have 'a say on development next door'.

While councils have many concerns with the certification process being applied to medium density development, they are not opposed to this form of development in low density areas as a means of increasing housing supply. However, given the need to strictly assess the application within its local context, a DA is warranted to manage the local issues properly.

LGNSW has repeatedly raised our members' concerns with the private certification process. Councils receive many complaints on alleged non compliances of development approved by certifiers that council are required to investigate. Hence LGNSW supports the NSW Government's intention to improve the rigour of the current system but questions some of the proposed strategies.

### ***Changes under the draft Bill and regulations***

A key amendment of the draft Bill important to council is the ability for the regulations to limit some sensitive categories of development to council certifiers. The intention is to progressively widen the categories of development to be able to be assessed as complying development. The category of development and the associated circumstances where these provisions are likely to be applied have not been indicated.

The inference is that limiting these tricky applications to the council certification process will improve the monitoring and enforcement of such applications.

Other changes under the draft Bill are as follows:

- The ability to impose a compliance levy on the CDC;
- Increased powers for council to investigate compliance breaches such as the ability for council to impose a 7 days stop work order to investigate the alleged non-compliance of a CDC;
- Powers to the Land and Environment Court to declare that a non-compliant CDA is invalid;

- Ability to impose deferred conditions of consent; and
- The ability to impose special infrastructure contributions on a CDC.

## **Analysis**

### **Council only certification pathway**

It is challenging for local government to provide initial feedback on the proposal to limit certification of certain categories of development to council certifiers. It is unclear whether these provisions apply to categories of development that are 'sensitive' (such as seniors housing and schools) or land types that are 'sensitive' (such as flood liable or bush fire prone land) or both.

LGNSW supports measures to constrain the use of complying development and developing a pathway for approval that requires greater scrutiny and more rigorous assessment to ensure compliance. Councils have access to information and advice that enables them to make more informed decisions. This information may be more difficult for the private certifier to access.

However, councils may be reluctant to support a practice that is able to fast track the approval of development that is likely to be 'sensitive' and thereby potentially controversial. Communities are unlikely to understand why these developments are approved by council under different planning rules and why the normal requirements around neighbour notification are not applied.

The other side of the argument is that the applications are likely to be more rigorously assessed and monitored by council.

It is recommended that this option be further discussed with local government.

### **Enforcement levies and improved powers**

The draft Bill proposes giving councils greater enforcement powers over complying development. This is a response to the current problems with the system.

To assist councils, it is proposed to impose an enforcement levy on CDAs.

However, councils have reservations about becoming the 'defacto' regulator of the NSW Government's flawed certification system; especially when that certification system is risky and is being actively and progressively expanded by the NSW Government.

In addition to local government's fundamental objection to policing a flawed system over which it has no influence, LGNSW has concerns that this proposal would shift costs to local government which the levy is unlikely to cover. We believe that the real costs of administering the system are likely to be greater than the funds collected under the levy.

Further questions raised by councils are:

- Whether the levy rate will be able to cover the administrative costs of enforcing the system, especially given the unwieldiness of the certification system; and
- Whether the levy, if applied, should be limited to CDAs lodged by private certifiers only, as these applications are not in the public space and will require more council resources to check whether they comply?

LGNSW supports the investigative powers for local government that will enable councils to impose a 7 day stop work order. Further information is required on the details of this process and what measures councils have to take enforcement action regarding a non-compliance arising from the stop work action.

Likewise stronger powers for the court to be able to declare a non-compliant CDA are welcomed. Again further information and advice is need for councils about taking non complying development to the court.

LGNSW supports the practical changes to be able to impose deferred conditions of consent and special infrastructure contributions on a CDA. These changes are sensible.

### **Questions**

1. Further information is requested on the proposal to limit certification of certain types of development to council certifiers. Further information is requested on the proposed enforcement levy and whether its implementation would cover the anticipated enforcement costs.
2. LGNSW request further information on how councils can effectively enforce the compliance of CDCs and how the new stop work provisions will be able to improve practice.

### **LGNSW Position**

17. *LGNSW recommends that the option to limit the assessment of some sensitive categories of development to council certifiers needs to be further discussed.*
18. *LGNSW opposes the shift of responsibility for the flawed certification system to local government that is implicit in the enforcement levy and additional powers.*
19. *If an enforcement levy on CDCs is imposed, the scale of the levy must be realistic and able to cover the administrative costs of monitoring and enforcing the system.*
20. *LGNSW supports further consideration of limiting any enforcement levy to CDAs submitted by private certifiers.*
21. *LGNSW supports stronger powers to stop work to investigate the alleged non –compliance of a CDA.*



## 6. Building provisions

The draft Bill enables the building regulation and certification provisions to be consolidated into a single part of the EP&A Act (Part 6). These provisions are currently located in different areas of the Act, as well as in the EP&A Regulation. Ministerial oversight is also divided between the Minister for Planning and the Minister for Innovation and Better Regulation.

The changes cover:

- clarification of the kinds of certificates required and functions of certifiers for building work;
- building work and certificates relating to building (including construction and occupation certificates) and subdivision work (including certificates relating to subdivision);
- provisions for issuing compliance certificates;
- liability issues for defective building or subdivision work; and
- the introduction of a owner's building manual.

### **Analysis**

New measures are proposed to enhance compliance requirements for construction, subdivision and occupation certificates which include:

- powers given to the court to declare a construction certificate invalid where the certificate is inconsistent with the development consent;
- the ability of certifiers or council to impose conditions on construction, occupation and subdivision works certificates with penalties for non-compliances of these conditions; and
- the addition of a new subdivision works certificate in addition to the existing subdivision certificate.

LGNSW supports the strengthening of the development consent by requiring the construction certificate to meet the requirements of the DA consent. However, a more realistic time frame is required for council to take legal action against a non-complying construction certificate. Three months is not a realistic amount of time to take such action.

The introduction of a new regulatory approval process for subdivision work is supported by LGNSW that is likely to result in a higher level of compliance with relevant regulatory requirements.

However, concerns are raised about allowing certifiers to impose conditions on construction, subdivision and occupation certificates and the purpose of these changes.

### **Questions**

1. What is the purpose of enabling certifiers to impose conditions on construction, subdivision and occupation certificates?
2. Further information is requested on the implementation of the owner's building manual.

### **LGNSW Position**

22. LGNSW supports changes that reinforce the importance of the development consent.

23. LGNSW supports the introduction of an owner's building manual.

## Conclusions

To recap, a summary of the recommendations combined in this submission is provided below:

1. *LGNSW supports the provision in the draft Bill allowing councils to choose whether to introduce an LPP or not. LGNSW opposes any blanket mandatory imposition of an LPP.*
2. *LGNSW believes the community representative of the LPP should be an elected councillor.*
3. *LGNSW opposes the Minister having unrestricted powers to direct a council to set up an LPP.*
4. *LGNSW recommends changes to the draft Bill to require clear principles and criteria to guide the Minister in imposing an LPP. LGNSW recommends that local government be consulted on the Minister's powers to impose an LPP in the draft regulations.*
5. *LGNSW supports the introduction of the LSPS in principle and recommends that local government be involved in advising on the purpose, content and delivery of the LSPS.*
6. *LGNSW supports strengthening local strategic plan making, and opposes practices that undermine long term planning and encourage 'ad hoc' decisions making through the planning proposal process.*
7. *LGNSW recommends that the DP&E set up a local government panel or reference group to advise on the development of the LSPS.*
8. *LGNSW opposes the continuation of proponent-led rezoning reviews via the relevant planning panel. The right of the proponent to seek a rezoning review should be extinguished when council has adopted its LSPS.*
9. *LGNSW supports the CPP in principle and suggests that the DP&E set up a local government reference group or panel to advise on the appropriate provisions of a CPP in the regulations.*
10. *LGNSW supports the CPP and recommends that the notification of planning proposals be further considered.*
11. *LGNSW recommends that councils have the right to set notification periods for DAs within the CPP and this may be lower than 14 days.*
12. *LGNSW recommends that SEPPs should be advertised for a minimum period of 28 days and this should be mandated in the draft Bill.*
13. *LGNSW supports strengthening the independence of the IPC and seeks further information on how rigour is to be maintained in the assessment of SSD that is determined by the IPC.*
14. *LGNSW supports measures to improve the DA process but requests further information on how the changes to the referral process will improve DAs times, and whether transferring conditions of consent will improve enforcement of those conditions.*
15. *LGNSW supports councils' use of VPAs and strongly recommends that councils be consulted on any changes to the methodology under consideration.*
16. *LGNSW questions the proposal to allow VPAs to be applied to CDAs and requires further detail on the purpose and the practical application of this amendment.*
17. *LGNSW recommends that the option to limit the assessment of some sensitive categories of development to council certifiers needs to be further discussed.*
18. *LGNSW opposes the shift of responsibility for the flawed certification system to local government that is implicit in the enforcement levy and additional powers.*
19. *If an enforcement levy on CDCs is imposed, the scale of the levy must be realistic and able to cover the administrative costs of monitoring and enforcing the system.*

20. *LGNSW supports further consideration of limiting any enforcement levy to CDAs submitted by private certifiers.*
21. *LGNSW supports stronger powers to stop work to investigate the alleged non –compliance of a CDA.*
22. *LGNSW supports changes that reinforce the importance of the development consent.*
23. *LGNSW supports the introduction of an owner’s building manual.*

## Section B: Specific comments on Draft Bill

### 1. Preliminary/Schedule 1

This schedule covers the objects of the draft Bill and changes to definitions.

LGNSW supports the general planning objects in the current EP&A Act. However, the proposed updated objects exclude the concept of ‘the proper management of land’ and there appears to be a stronger focus on ‘timely decision making and development’. There is a lack of emphasis on strategic land use planning and the co-ordination and integration of land use activities to deliver optimal planning outcomes. Given the greater focus on strategic planning in the overall legislative amendments, it would be appropriate to include strategic planning in the objects of the Act.

LGNSW opposes the removal of the current object that ‘encourages the provision of land for public purposes’ and recommends that it be reinstated. This is because strategic planning relies on land being set aside for public purpose and the disregard of this practical consideration undermines the effectiveness of the strategic planning process.

LGNSW supports the inclusion of ‘good design’ as a new object of the draft Bill. The supporting material describes design as ‘Design in the built environment creates an urban environment that works for individuals and communities, is fit for the future, attractive, safe, efficient, built to last and can adapt to the needs of future generations’.<sup>15</sup>

LGNSW also questions the need to specifically mention the ‘timely delivery of business, employment and housing’ in particular, when there is no mention of the timely delivery of infrastructure. The timely delivery of infrastructure is the precursor to the ‘timely delivery of business, employment and housing’.

There is also a new object to ‘promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)’. This is supported but it is unclear what changes have been made to the draft Bill to deliver this object.

Proposed Amendment	LGNSW Response
<p><b>1.1</b> Objects of the Act</p> <p>Schedule 1.1. Insert 1.4</p> <p>p 3</p>	<p>LGNSW supports the new objects:</p> <ul style="list-style-type: none"> <li>- ‘elevating the role of design’</li> <li>- ‘promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)’</li> </ul> <p>LGNSW opposes:</p> <ul style="list-style-type: none"> <li>- the removal ‘to encourage the provision of land for public purposes’.</li> </ul> <p><b>Recommended amendment:</b></p> <p>LGNSW recommends the retention of the current object in section 5(a)(iv) of the Act that states:</p> <p>‘(iv) to encourage the provision of <u>land</u> for public purposes’</p> <p>LGNSW recommends that further adjustment to the wording of the objects is required in accordance with the above comment, to better reflect the long term perspective of strategic planning, plan making and development assessment, given that these activities are a fundamental purpose of the Act.</p>

<sup>15</sup> Planning Legislation Updates: Summary of Proposals, Jan 2017 p 46

## 2. Planning administration/Schedule 2

This schedule covers planning administration matters: the role of the Minister, Planning Secretary and planning bodies, comprising the Independent Planning Commission, the Sydney district or regional planning panel and the local planning panel. Of particular interest to local government are the following changes:

### ***Independent Planning Commission – Division 2.3***

The draft Bill will legislate the current practice of requiring major development that is State Significant Development (SSD) to be determined by a newly titled Independent Planning Commission (IPC), replacing the existing Planning Assessment Commission (PAC), instead of the Planning Minister. Also, the Minister will retain the power to approve State Significant Infrastructure as currently occurs.

The draft Bill clarifies how the membership of the IPC will be determined. The IPC will generally comprise three persons, with the Chair able to determine the other two members, subject to direction from the Minister. This allows the membership to rotate and avoid issues of conflicts of interest.

### ***Sydney district and regional planning panels – Division 2.4***

The names of these independent planning panels have changed with the introduction of the Greater Sydney Commission however most of the functions remain the same and comprise the following:

- These panels are a NSW Government Agency and are not subject to the direction or control of the Minister, except in relation to procedural issues;
- The current membership of 5 member is retained – three state and two local government nominees. A council nominee may include councillors, members of council staff and other persons nominated by the council. Only one council nominee is required to have certain expertise relevant to planning and associated skills as currently applies.
- LGNSW retains the right to concur (within 21 days) with the appointment of the Chair of the regional panels. This remains the same as current practice. LGNSW concurrence does not apply to the Sydney District planning panels as the District Commissioner is the Chair.

The Minister can remove council's planning powers (under s118) and impose a planning administrator, a Sydney district or regional planning panel and/or now an LPP.

Other minor changes to current practice are as follows:

- Regulations are to make provisions excluding parties from being able to seek legal representation on planning matters going before an independent panel.
- The Sydney district and regional planning panels may delegate planning functions to a council. Directions can be made to specific entities such as the LPP, the General Manager or other staff. S 2.16 (5) LGNSW questions whether the matter should be deferred to the council, who decides how to manage the issue, based on administrative practice and recommends that planning decisions should not be delegated to specific staff.

### ***Local Planning Panels – Division 2.5***

These provisions are new and cover:

- Council may introduce one or more LPPs.
- The regulations may require a council to establish an LPP.
- Membership includes three persons; two independent persons with relevant expertise and one 'community representative'. A councillor must qualify as such.
- The functions of an LPP are to determine DAs and any other planning matter that is to be determined by a council. Section 2.19 (p 15 of the draft Bill) specifically does not limit the functions that may be exercised by an LPP. Under the provisions of section 2.20 (p 15) an LPP

may be able to approve planning proposals and possibly undertake other plan making functions.

- Council is required to support an LPP with staff and facilities, monitor its performance, and report annually to the Planning Secretary on a range of matters, including the number of LPPs, matters referred to the LPP(s) during the year and other matters as directed by the Planning Secretary.
- The regulations will provide further information on functions and procedural issues.

The powers of the Minister to impose an LPP are in Schedule 4 – see below.

### ***Community participation – Division 2.6***

The schedule introduces requirements for councils and other planning bodies (including the Minister, Planning Secretary, GSC and IPC) to prepare a CPP subject to specified principles (set out in Section 2.23 (p 16)). These principles include, for example: communities have a right to be informed as early as possible in the strategic planning process; information needs to be in plain English and accessible; decisions are to be open and transparent and the community participation method applied should be appropriate to the significance and likely impact of the proposed development. These principles are reasonable.

Other provisions in the draft Bill propose that CPPs are to:

- be advertised for 28 days and published on the NSW planning portal; and
- be guided by regulations on the form, content and procedures for making (and amending) and publishing the CPPs as well as reports on the implementation of CPPs.

The draft Bill also specifies minimum public exhibition periods (refer to p 19) which include:

- 14 days for a DAs; and
- 28 days for CPPs, planning proposals, draft DCPs, draft contribution plans, environmental impact statements (EISs), and applications for designated development, SSD and SSI.

The schedule fails to specify a minimum public exhibition period for SEPPs. LGNSW recommends it should be 28 days to align with the minimum public exhibition requirements for other plans.

### ***Financial impost on councils***

Under the provisions of Division 2.7 (section 2.26, p 18) the IPC and the Sydney district and regional panels may not impose a significantly adverse financial impact on a council 'until after it has consulted with the council'. LGNSW maintains that any financial impost must be agreed with councils.

The IPC or Sydney district or regional planning panel is entitled to access council records and staff to support the work of the panels. There is no limit to the level of support required under the regulations. LGNSW recommends that the schedule be amended to restrict these powers to a reasonable level.

### ***Code of conduct***

The provisions relating to the code of conduct (p 31 of the draft Bill) reiterate many of the current provisions that relate to membership, administrative procedures and disclosure of pecuniary interests.

LGNSW supports rules around the disclosure of pecuniary interest. However, the terms need to be aligned with the Local Government Code of Conduct and there needs to be more clarity around what is a 'direct' and 'indirect' pecuniary interest. There is no reference of non-pecuniary interests and how they might be managed.

Proposed Amendment	LGNSW Response
<p><b>2.1</b> Powers of delegation from the Sydney district and regional panels</p> <p>Division 2.4 2.16 (5) p 14</p>	<p>LGNSW recommends that powers of delegation from these panels should go to the council and not to council staff or the LLP.</p> <p>Remove sub-clauses (b) through to (c).</p>
<p><b>2.2</b> Functions of an LPP</p> <p>Division 2.4 2.19 p 15</p>	<p>The functions of an LPP need to be limited to the determination of DAs and potentially planning proposals (subject to the council's discretion). In contrast, strategic planning decisions such as amendments to LEPs must remain the domain of the full council.</p> <p>The regulations need to restrict the functions accordingly.</p>
<p><b>2.3</b> Mandatory community participation requirements – Schedule 1 of the Act</p> <p>p 19</p>	<p>LGNSW recommends that the draft Bill require the public exhibition of SEPPs for 28 days. Whereas all draft regional, district and LEPs and planning proposals are all required to be exhibited for 28 days, the lack of transparency for SEPPs is unreasonable and contrary to the community participation principles set out under section 2.23(2) (p 16-17).</p> <p><b>Recommended amendment:</b> <i>Schedule 1 Community participation requirements</i> <i>Division 1 Minimum public exhibition period for plans</i> <i>Insert: after 2:</i> <b>6 Draft state environmental planning policy</b> <b>28 days.</b></p>
<p><b>2.4</b> Membership and functions of an LPP Sch 2[1] pp14-15</p>	<p>An elected representative of council qualifies for membership of an LPP as a community representative. This is supported.</p> <p>The functions of an LPP may be wider than the determination of a DA, such as plan making powers. The skills, expertise and local knowledge needed for plan making is wider than for development assessment practice.</p> <p>LGNSW questions the wide scope of the functions of an LPP.</p> <p><b>Recommended amendment:</b> That section 2.19 (2) be replaced by the following wording: <b>(2) The functions of a local planning panel are to be limited to matters related to the development assessment process.</b></p>
<p><b>2.5</b> Financial impost on council</p> <p>Section 2.26 p 18</p>	<p>This section contains a provision enabling planning bodies to impose a significant financial impost on councils, where they have consulted with council on the matter. It is unclear what is considered to be 'significant' in these circumstances and what is expected by consultation with the council.</p> <p>It is unreasonable for a planning body to impose on a council a function that has not been considered in the latter's Delivery Plan and/or is outside its financial capacity to implement. The powers of the IPC or Sydney district/regional planning panels should be limited to advisory power and the clause be re-worded to place more boundaries around this power.</p> <p><b>Recommended amendment:</b> <i>2.26(1) The Independent Planning Commission or a Sydney district or regional planning panel must not exercise a function that will result in the making of a decision that will have, or might reasonably be expected to have, a significantly adverse financial impact on a council (unless it is agreed with the council).</i></p>
<p><b>2.6</b> Code of Conduct</p> <p>Part 4 Section 27</p>	<p>The issues raised in relation to pecuniary interest are similar to, but not the same as the Local Government Code of Conduct.</p>

p 30

**Recommendation:**

The terms need to be aligned with the Local Government Code of Conduct and there needs to be more clarity around what is a 'direct' and 'indirect' pecuniary interest. There is no reference of non-pecuniary interests and how they might be managed.



### 3. Planning instruments/Schedule 3

This schedule covers: planning authorities, review requirements for environmental planning instruments; and local strategic planning statements.

#### ***Planning proposals replacing plan making***

The draft Bill provides guidance on the making of environmental planning instruments i.e: SEPPs and LEPs.

Since all councils have completed their Comprehensive LEP, most councils are using the planning proposal pathway to amend an LEP for strategic and site specific issues. This means that the plan making provisions of the draft Bill are less relevant than current practice around planning proposals that more commonly deliver rezonings.

While the local strategic planning statement has been introduced to provide more strategic direction, how it will be integrated with current practice is unclear. In addition proponents are encouraged to submit rezoning reviews to the Sydney Planning Panel or the regional panel that sit outside the strategic process.

An improvement to the current Act would be:

- the removal of the applicant's right to apply for a rezoning review to the Sydney district or regional planning panel, particularly once councils have uploaded their local strategic planning statement on the NSW Portal; and
- better differentiation in law and practice between planning proposals that are strategic and generally precinct based and site specific planning proposals.

The above two changes would strengthen councils' local plan making powers and provide the opportunity to delegate those powers for more minor matters.

#### ***Local Strategic Planning Statements***

LGNSW supports measures to improve local strategic planning practice. The introduction of LSPSs is welcomed, however there are a number of questions around purpose and application that need further clarification.

The draft Bill (p 45) includes provisions requiring the LSPS to identify:

- 'the basis for strategic planning in the area';
- 'the planning priorities for the area that are consistent with any strategic plan applying to the area and any applicable Community Strategic Plan under section 402 of the *Local Government Act 1993*'; and
- actions to deliver these planning priorities, as well as how council will monitor and report on these actions.

Questions are: How will the LSPS be aligned with the comprehensive consultation process that is being undertaken by councils under the Community Strategic Plan (CSP)? The function of the LSPS seems to be blurred. Is it a tool to identify the local community's vision for its area or is it a plan to deliver the objects of the higher order plan? How is it going to be endorsed and whose plan is it?

Given that the draft Bill enables the Planning Secretary to issue requirements with respect to the preparation and publication of the LSPS, the details will be important.

LGNSW recommends that a local government reference group be set up to discuss how these statements should be progressed based on best practice.

### ***Change of name and functions of planning authorities***

The draft Bill (p 42) introduces two new terms: the ‘local plan-making authority’ (LPMA) and the planning proposal authority (PPA). The LPMA may be:

- the Minister (for land outside the Greater Sydney Region);
- the Greater Sydney Commission for any area in the Greater Sydney Region (GSR); or
- the council, only where a gateway determination process authorises the council to make the LEP.

LGNSW recommends that councils’ powers to authorise (prepare and make) LEPs could be further extended to cover small and inconsequential changes to current LEPs. Directions could be provided by the Secretary to enable council to be the LPMA in certain circumstances. The Direction would establish agreed principles and criteria as to when council could be the LPMA. This could address the lengthy time it takes to make small changes to LEPs.

The PPA approves or makes the rezoning application. This may be council, where authority has been delegated by the relevant LPMA. However, the Minister or the Greater Sydney Commission may direct the Planning Secretary or any planning panel to be the planning proposal authority in certain situations.

Councils’ plan making powers are still very limited under the draft Bill. Some concessions have been given that allow the council to be the PPA. However, this role is limited to ‘the making of the plan’, after the gateway decision has been made. In effect all this means is that the rezoning decision has been made and the council is required to exercise that decision.

A more beneficial amendment for the sector would be expanding councils’ plan making powers to cover certain agreed types of planning decisions. This is a practical way of fast tracking the plan making process for minor non-controversial changes.

### ***5 Year review of the planning instruments***

Schedule 3 of the draft Bill (p 44) also enables all SEPPs and LEPs to be reviewed every 5 years. The Planning Secretary will determine whether the SEPPs need to be reviewed and councils decide whether an LEP needs to be updated.

LGNSW supports this change as it allows councils to decide whether or not the LEP needs to be reviewed in part or full on the basis of need.

### ***Standardisation of the DCP***

This schedule enables Development Control Plans (DCPs) to be standardised subject to the regulations. LGNSW supports standardisation of the form and structure of the DCP but not the content.

	<b>Proposed Amendment</b>	<b>LGNSW Response</b>
<b>3.1</b>	Local strategic planning statements  Schedule 3.1 [20] (New section after 75A1) p 45	LGNSW supports the concept of an LSPS however further information on its purpose, alignment with the CSP and endorsement process is required.  <b>Recommendation:</b> LGNSW recommends that a local government reference group be set up to guide this process and provide input from the sector to make it a useful strategic plan.
<b>3.2</b>	Planning proposal authority  Section 54(2) (d) p 43	LGNSW opposes the removal of councils as the planning proposal authorities where ‘in the opinion of the Minister or the Greater Sydney Commission’, the council has ‘failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner’.

		<p><b>Recommended amendment:</b> It is recommended that this clause be amended to require the Minister or GSC to warn the council and provide evidence of the alleged non compliances before such powers are removed.</p> <p>LGNSW recommends that section 54 (2) (d) be removed and replaced by the following: <i>(d) the council for the local government area concerned has failed to comply with the Minister or Greater Sydney Commission's written directions to comply with its obligations with respect to the making of the proposed instrument, and not satisfied the criteria in the Regulations'.</i></p>
<b>3.2</b>	LEPs reviewed every 5 years  Section 73 (2) p 44	LGNSW supports council determining whether relevant LEPs should be updated.
<b>3.3</b>	Standardisation of DCPs  Section 74E (2A) p 44	<p>The Minister can regulate the form, structure and subject-matter of the DCPs and may require the standardisation of those plans.</p> <p>LGNSW supports a common template for the form and structure of the DCP, but only on the basis that local controls are able to be included into that format.</p> <p><b>Recommended amendment:</b> LGNSW recommends that Section 74E(2E) be removed and replaced by: <i>(2E) The Minister be authorised to make regulations that enable the form and structure of a development control plan be standardised but also enable local content to be incorporated into the format.</i></p>
<b>3.5</b>	No public exhibition of SEPPs  Schedule1, Part 1, Division 1 Add new cl (6) p 19-20	<p>There are no requirements for SEPPs to be required to be placed on public exhibition.</p> <p><b>Recommended amendment:</b> LGNSW strongly recommends that the draft Bill be amended to insert a provision that all SEPPs be placed on public exhibition for a minimum period of 28 days. Insert in 'Schedule 1 Community participation requirements Part 1 Division 1 Add clause 6 <b>6 State environmental planning policies</b> <b>28 days.</b></p>

#### 4. Development assessment and consent/Schedule 4

This schedule outlines who is the consent authority for local, regional and state significant development. The key changes are that:

- The Minister may direct a council to set up an LPP, and the Minister may direct the membership and other requirements in the regulations (Section 76A (8), p 48).
- The consent authority for each category of development (IPC, RPPs, public authorities and councils) will be contained in the planning legislation. This is similar to current practice but makes it easy for the Minister to re-classify what the thresholds are for regional and SSD, without the requirements for a public exhibition of these changes. See 3.5 above.

##### ***Local Planning Panels***

The draft Bill provides no detail on the circumstances that would lead the Minister to impose an LPP on a council. The draft Bill also allows the Minister to 'deal with the persons who may comprise an LPP'.

LGNSW is opposed to the Minister having unfettered discretion to impose an LLP on councils. While the current policy position of the NSW Government is **not** to mandate the imposition of LPPs across the sector, it is nevertheless enabled under the legislation and there is no guidance in the draft Bill on how these powers are to be used.

It is strongly recommended that the regulations prescribe the criteria according to which the Minister may exercise these powers.

##### ***Referral process of integrated development***

The Schedule allows the Planning Secretary to act in the place of an approval body (e.g. state agency) where the agency has failed to provide advice or where advice is inconsistent from a number of state agencies.

LGNSW strongly supports improvement to the referral process. This is where DAs for integrated development are referred to state agencies for advice before the DA can be determined. This process is important but delays DA assessment times as council have no means to speed up advice sought from these agencies.

However, some councils have questioned how the proposed changes will improve assessment times and whether the Planning Secretary has the power to obtain more timely advice or will be able to mediate between conflicting agency advice. Councils, while supportive, are unclear as to their role in the new system.

##### ***Other Matters to do with DAs***

The schedule removes the capacity of council to approve modifications of plans during the construction phase of a DA. Changes to section 96 will remove the ability for council to approve work under construction.

Other changes:

- a condition of consent for a DA may be transferred where the consent authority accepts that the matter can be managed under another Act (section 80A(4A), p 49);
- council is able to be the consent authority for 'staged state significant development' (section 89D(a), p 50); and
- the Minister may vary or revoke monitoring or environmental audit requirements for existing approved projects (section 122C (2), p 51).

### **Complying Development Applications**

The schedule allows for:

- regulations to specify the kind of development for which an accredited certifier is not authorised to issue a CDC (section 85A(2), p 49);
- deferred commencement provisions for CDAs, to ensure that a condition of consent has been implemented (section 85A(9A) p 49);
- CDCs to be declared as invalid by Court Order within a 3 month period after the issue of the CDC (new section, inserted after section 87, p 49-50);
- introduction of an enforcement levy to allow for the reimbursement of costs incurred by councils in investigating and enforcing compliance of CDAs with the Act (section 105 (1) (f1), p 51);
- new powers for councils to be impose a stop work order for 7 days on a development so that council can investigate the compliance of the work with the applicable development standards (section 105 (1) (f2), p 51); and
- regulations requiring greater transparency of CDAs. Information on CDAs will be issued to councils and neighbours before approval.

More information is required about the provisions which will enable council to apply an enforcement levy and the power to issue a stop work order for 7 days to investigate whether the CDA complies.

LGNSW supports measures to strengthen the enforcement of CDCs and seeks further advice on how these measures will be applied. Will the levy be applied to all CDAs and how will the stop work provisions be applied?

Other powers to remedy unauthorised work related to a CDC are located in Schedule 9.

<b>Proposed Amendment</b>	<b>LGNSW Response</b>
<p><b>4.1</b> Planning Minister's consent powers for SSD be shifted to the IPC</p> <p>Schedule 4.1 [3] Section 76A (6) p 48</p>	<p>LGNSW supports the IPC being the consent authority for state significant development.</p> <p>LGNSW is unclear how this will affect the assessment role of the IPC and questions how the IPC will ensure that the assessment process will retain its rigour given the more directive approach to the taken.</p>
<p><b>4.3</b> Local planning panels</p> <p>Schedule 4.1 [3] Section 76A (8) p 48</p>	<p>The draft legislation gives the Minister power to impose an LPP and the circumstances in which the function of determining a DA is to be exercised on behalf of the council by the LPP. This will be subject to the requirements of the regulations.</p> <p>There needs to be clear criteria to guide the action of the Minister given the removal of councils' democratic powers to approve local DAs. The process needs to be fair and reasonable.</p> <p><b>Recommended amendment:</b> LGNSW recommends that the draft Bill be amended by adding the following qualifying statement by inserting <i>(c ) that the Minister is required to justify his/her reasons for the removal of local government's consent powers for local development applications and the imposition of a local planning panel on planning grounds that are outlined in the regulations.</i></p>
<p><b>4.4</b> Planning Secretary is granted powers to intervene when council refers a DA to an approval body (state</p>	<p>The Planning Secretary has the power to act on behalf of the approval body by providing timely advice to council on an integrated DA to fasten up assessment times.</p> <p>It is essential that the Planning Secretary's power be used to speed up the</p>

<p>agency) for advice on an integrated development</p> <p>Schedule 4.1 [12] Section 91A (4A) p 50</p>	<p>system and not impose a decision on council that may undermine council decision making powers.</p> <p><b>Recommended amendment:</b> LGNSW recommends that a the draft Bill be amended that states: <i>(c) That the Planning Secretary's advice to council be limited to the issues relevant to the advice of the agencies, where that advice has not been received or where advice appears to be in conflict. The Planning Secretary is not able to comment on other issues relevant to the DA.</i></p>
<p><b>4.5</b> Modification of DA consent during construction work</p> <p>Schedule 4.1 [15] &amp; [16] Section 96 (3A) &amp; section 96 AA p 51</p>	<p>The intention is to better manage repeated applications for modifications of a DA during construction. While the intention is supported, councils have indicated that it is also unrealistic for councils to be unable to approve completed work that is reasonable and would comply with the planning and building requirements.</p> <p>There needs to be a mechanism to rectify unauthorised work that doesn't encourage variations to DAs.</p> <p><b>Recommended action:</b> The proposed new Section 96 (3A) is not supported.</p>
<p><b>4.6</b> Regulations to limit certification to council certifiers</p> <p>Schedule 4.1 [7] Section 85A (2) p 49</p>	<p>LGNSW believes the Government should fix the certification system rather than transferring responsibility for it to councils. Further information is required on measures to restrict complying development to council certifiers.</p>
<p><b>4.7</b> Court enforcement of complying development applications</p> <p>Schedule 4.1 [9] (New section after section 87) p 50</p>	<p>LGNSW supports the proposed changes to strengthen the court's ability to declare that a CDA is invalid up to 3 months after the CDC has been issued.</p> <p>LGNSW recommends that councils be consulted on how any new powers are applied and provide feedback on what should be included in the draft Regulations on these issues.</p>
<p><b>4.8</b> Enforcement levy for CDAs</p> <p>Schedule 4.1 [17] Section 105 (1) (f1) (f2) p 51</p>	<p>These provisions allow councils to apply an enforcement levy on CDCs and authorises officers to suspend the carrying out of work for up to 7 days pending an investigation of that work.</p> <p>Further information will be included in the regulations.</p> <p>More information is requested.</p>

## 5. Infrastructure and environmental impact assessment/Schedule 5

This schedule allows a state environmental planning policy (SEPP) to designate land for an infrastructure corridor for a future road, railway, public transit way, electricity transmission line, pipeline or other linear infrastructure, subject to suitable land being identified for such purposes.

Concurrence provisions will be applied to this corridor so that the specified public authority has power to ensure that approved development within the corridor does not limit the future development of the corridor for the stated purpose.

LGNSW supports this provision in principle but seeks further information on the purpose and its likely application in a SEPP.

LGNSW recommends that a minimum mandatory advertising period be applied to SEPP, especially given the proposed powers of the NSW Government to apply an infrastructure corridor and change of practice so that such corridors are clearly identified on the council's zoning certificates.

This schedule also makes changes to the infrastructure and environmental impact assessment under Part 5 of the Act.

	<b>Proposed Amendment</b>	<b>LGNSW Response</b>
<b>5.1</b>	Infrastructure corridor imposed by SEPP	LGNSW seeks further information on the purpose and likely application of this new role of a SEPP and the implications for the LEP.
	Schedule 5.1.[1] (Division 5.3) p 53	LGNSW supports an amendment to the draft Bill that requires SEPPs to be advertised for a minimum of 28 days. See changes discussed under Planning Administration/Schedule 2 above.

## 6. Building and subdivision certification/Schedule 6

This schedule constitutes a consolidation of the building regulation and certification provisions into a single part of the EP&A Act (Part 6). These provisions are currently located in different areas of the Act, as well as in the EP&A Regulation. Ministerial oversight is also divided between the Minister for Planning and the Minister for Innovation and Better Regulation. It covers:

- kinds of certificates required and functions of certifiers for building work;
- building work and certificates relating to building, including construction and occupation certificates;
- subdivision work and certificates relating to subdivision;
- provisions for issuing compliance certificates;
- liability for defective building or subdivision work; and
- introduction of an owner’s building manual.

Proposed Amendment	LGNSW Response
<p><b>6.1</b> Kinds of certificates</p> <p>Division 6.2, section 6.4 p 57</p>	<p>The proposed provisions which refer to a new <i>Completion of Work Compliance Certificate</i> are unclear and may be better separated from the current ‘Compliance Certificate’ provisions.</p> <p><b>Recommendation:</b> Council building practitioners should be consulted on the specific wording for certificates in this section, to ensure that any new provision relating to a “completion of work certificate” is clear, effective, practical and serves its intended purpose.</p>
<p><b>6.2</b> Functions of certifiers</p> <p>Division 6.2, section 6.5</p>	<p><b>Recommendation:</b> This section should be amended to include the issuing of directions pursuant to section 6.31 (Directions by principal certifiers) to emphasise this as one the certifier’s key roles.</p>
<p><b>6.3</b> Introduction of owner’s building manual</p>	<p><b>Recommendation:</b> LGNSW supports the introduction of an owner’s building manual and recommends that councils be consulted on the preparation of the relevant regulations that will manage the form, content, maintenance and inspection of building manuals. The building manual provisions must provide an effective, practical and efficient mechanism to address the management, maintenance, inspection and certification of building and fire safety measures and the accessible of the manual by various nominated persons.</p>



## 7. Infrastructure contributions and finance/Schedule 7

This schedule introduces changes on how and in what circumstances infrastructure contributions can be applied to development, such as:

- Planning Agreements are able to be applied to complying development applications (CDAs).
- Directions can be made by the Minister to impose on council a methodology for determining the extent of the provision of the public benefit to be made by the developer under a planning agreement.
- Special infrastructure contributions are to be applied under s 94EF by a Ministerial Direction. The amendments give more scope for the Minister to set out terms for the condition. Also the Planning Secretary is able to determine whether the condition is required in the circumstance. It is unclear what the purpose of this change is.

Proposed Amendment	LGNSW Response
<p><b>7.1</b> Planning agreements applied to CDAs</p> <p>Schedule 7.1 [1] Sections 93F (1)(b), 93I (1)(a), 93I (3)(b) p 73</p>	<p>LGNSW is unclear how a voluntary planning agreement (VPA) between a council and a developer can be applied to a CDA, where the certifier has the power to approve the application in compliance with the development standards. By its nature, complying development is development that falls within the existing planning rules and would be subject to section 94 or 94A contributions, whereas the practice of using VPAs is for developments that seek to change existing planning instruments and hence would not be 'complying'.</p> <p><b>Recommendation:</b> Further detail is required on the purpose and the application of this amendment.</p>
<p><b>7.2</b> Minister to direct method of determining the public benefit under the planning agreement</p> <p>Schedule 7.1 [2] Section 93K (b1) p 73</p>	<p>LGNSW opposes the Minister having power to direct a council on the method of determining the extent of the provision of the public benefit to be made by the developer under a planning agreement. This is a challenging and often controversial matter and should be the subject of independent assessment, not directed by a Minister.</p> <p><b>Recommended amendment:</b> LGNSW recommends the deletion of: <b>Section 93 K (b1)</b></p>
<p><b>7.3</b> Special Infrastructure Contributions (SIC) Schedule 7.1 [5] Section 94EF p 73</p>	<p>The amendments allow the Minister to provide more information on the terms of a SIC. This is considered helpful.</p> <p>It is unclear what the reason is for allowing the proponent to seek a justification for a SIC that has been directed by the Minister. Can this process override the Ministerial Direction?</p>