Hawkesbury City Council

attachments to item 6

Attachment 1
Summary of proposed recommendations (extract from NSW Department of Planning Discussion Paper)

Attachment 2
Draft submission to the Department of Planning

date of meeting: 5 February 2008
location: council chambers
time: 5:00 p.m.

APPENDIX A

SUMMARY OF PROPOSED RECOMMENDATIONS

Changing Land Use and **P**lan Making

P1. It is proposed is to introduce a new system of plan-making that is better tailored to the scale, risk, and complexity of land use changes, and allows most LEPs to be finalised more quickly. For smaller LEPs, the system is expected to reduce average time of processing time by at least 50 per cent.

P2. A gateway screening system for land use changes would be introduced. This would be carried out prior to any rezoning or LEP being commenced. A rezoning, or LEP, would not proceed if it did not meet certain specified criteria. The criteria would vary according to the risks and scale associated with a rezoning or development proposal, and would apply whether initiated by a council, State agency, or private proponent. Gateway evaluations for large scale proposals would require a whole of government approach, while smaller proposals, or LEP amendments, would be progressively delegated to other authorities. The gateway evaluation could also look at whether a temporary or permanent rezoning was appropriate.

P3. When land use changes have been agreed to in principle, the making or amendment of a rezoning or LEP would also be authorised. The LEP (or relevant plan) would then be streamed into different pathways for processing and determination commensurate with risk, scale and sensitivity. For minor land use issues, consideration could be given to expanding those matters that can be dealt with under Section 73A.

P4. Where land use or plan changes are initiated by a private proponent, an appropriate fee for service would be chargeable to compensate the relevant council or agency for resources required in both gateway reviews and plan-making.

P5. Referral to and consultation with State agencies would be required at gateway stage before a plan or LEP is commenced. In areas approved for release, where infrastructure and environmental issues have been addressed, no further referrals should be required. The referral and consultation process for all Plans would be subject to time limits to allow for efficient processing.

P6. A system of accountability for LEPs would be introduced which might include:

- P6.1 Mandatory timeframes for different stages of the process.
- P6.2 The ability to refer an outstanding LEP or land use issue to the proposed PAC, or a JRPP, where timeframes are not being met or finalisation of an LEP has stalled.
- P6.3 Extending the existing power in the EP&A Act (Section 74) to allow the State to directly amend an LEP where there are issues of State or regional significance.

P7. To support the gateway and streaming process the responsibilities of different parties in the plan making process would be better defined to streamline the mechanical elements of plan making, in

particular legal drafting. This would include a one stop shop model to operate once a council has exhibited and adopted a policy/land use change for incorporation into an LEP.

P8. The Department of Planning should continue to streamline and reduce the number of REPs and SEPPs by:

P8.1 Preparing and implementing the regional and subregional strategies.

P8.2 Enabling SEPPs to be prepared for issues of regional significance.

P8.3 Further consolidation of SEPPs.

P8.4 The possible removal of REPs from the plan-making system.

P9. The Department of Planning would issue guidelines for different levels of LEPs and DCPs to support a new system that would identify the appropriate content and timeframes of these Plans and non compliance with State policies such as SEPP 65 would be prevented.

P10. The following measurable outcomes are recommended for the changes to plan-making:

P10.1 Reduce processing time for LEPs by 50 per cent.

P10.2 Reduce the number of SEPPs/REPs by 50 per cent

Development **A**ssessment and Review

A1. A hierarchy of decision making bodies would be established to reflect the differing levels of assessment for State significant, regionally significant, local, minor and complying developments (including reviews) and the degree of the environmental impacts.

A2. Currently under Part 3A the Minister for Planning cannot delegate determinations to another body. Under this revised scheme, the Minister would delegate the majority of ministerial-level determinations to a new PAC, excluding applications for critical infrastructure and other key projects of State significance.

A3. The new PAC would determine most projects of State significance. The PAC would also be able to conduct public hearings, provide advice to the Minister, and undertake other planning functions as directed by the Minister from time to time, such as a review of outstanding LEPs.

A4. The PAC would determine regionally significant projects where the host council does not have the resources to support a JRPP.

A5. At a regional level, JRPPs would be established to determine applications of regional significance. These could include applications by State agencies, and other developments exceeding $50 million in value. JRPPs would be modelled on the current Central Sydney Planning Committee (CSPC) for the City of Sydney, and would comprise three State appointees and two council appointees. These would only be established where Councils have sufficient planning resources to provide proper assessment advice on major applications.

A6. At the local level, Councils could be directed to establish an Independent Hearing and Assessment Panel (IHAP) to deal with certain developments, such as applications seeking a major SEPP 1 variation beyond the existing LEP controls. However, such IHAPs would be advisory only and would be appointed by Councils from an accredited register.

A7. For small applications, such as single dwellings and matters worth less than $1 million in CIV, it is proposed to establish a system of planning arbitrators. These would deal with all Section 82A reviews and deemed refusals for small matters. Planning arbitrators would be appointed by a council from a register accredited by the PAC, or the State. Senior council staff from adjacent or nearby councils may serve as planning arbitrators.

A8. The role of IHAPs, design review panels and independent advisory panels should be rationalised to remove duplication and ensure consistent and expeditious advice to elected councils. One possibility is to ensure IHAPs contain appropriate design skills.

A9. The nature and extent of information required for different types of development applications could be mandated. Councils would prepare appropriate guidelines to outline the minimum requirements for plans, reports and studies. The period for councils to reject DAs on the basis of inadequacy could also be increased from seven to 14 days.

A10. ePlanning will provide the basis for improved DA lodgement and tracking and would be strongly encouraged. See Chapter 6.

A11. Appeals to the Court would generally be allowed, as is presently the case. However, the need for appeals when the PAC has held public hearings should be reviewed. Small applications subject to local independent review should only proceed to the Court after the matter has been considered and determined by a planning arbitrator. Stricter accountability measures for complying development would be introduced (see Chapter 5), but no appeals would be allowed.

A12. The NSW Government would continue its review of agency referral requirements with a view to reducing unnecessary referrals. Where referral matters have been determined during plan-making, they would generally not be referred again at the development assessment stage. Concurrence and DA referral guidelines would be prepared to streamline the referral process.

A13. Conditions of development approval would be standardised. One option is to require councils to prepare and publish standard development consent conditions consistent with State guidelines.

A14. The current system of development modifications would also be improved. Changes to be considered would include:

- A14.1 Reducing the number of Section 96 modifications that can be approved for a development.
- A14.2 Allowing councils greater flexibility to re-issue consents under Section 96 if an error is made.
- A14.3 Ensuring that Section 96 modifications are subject to SEPP 1 where relevant.

A15. To strengthen assessment accountability it is proposed to introduce a range of 'deemed to comply' periods to better reflect realistic determination times for developments. A scale of the following magnitude has been suggested:

- A15.1 Ten days for complying development.
- A15.2 Twenty days for DAs not requiring exhibition.
- A15.3 Forty days for small scale development.
- A15.4 Sixty days for medium scale development.
- A15.5 Ninety days for development equivalent to designated development.

A16. The current DA fee regime would be reviewed to enable councils to match fees for service.

A17. The Department of Planning would issue consultation guidelines, which incorporate community consultation principles and standardised notification procedures. Councils will be able to require applicants to address issues raised during community consultation, as is currently the case with major project applications under Part 3A.

A18. The following measurable outcomes are recommended for changes to the development assessment process:

A18.1 Reduce overall time frames for local government DA processing from 68 days (current State average) to 48 days.

A18.2 Reduce the number of Section 96 applications by a third.

A18.3 Improve DA processing time frames and facilitate better regional planning by:

A18.4 Establishing a Planning Assessment Commission – to deal with about 80 per cent of State significant projects.

A18.5 Establishing Joint Regional Planning Panels - to deal with about 80 per cent of regionally significant projects.

A18.6 Reduce the need for legal appeals to the Court by 20 per cent. Achieve this by establishing planning arbitrators to double the number of minor appeals reviewed under Section 82.

Exempt and **C**omplying Development

C1. The Department would extend the ambit of exempt development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.

C2. The Department would extend the ambit of complying development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.

C3. The Department would establish a Complying Development Experts Panel (CDEP) to advise on complying codes policy, and the acceptability of complying development codes. The Panel would include experts working within local government.

C4. The Department would develop, with the assistance of the CDEP, a series of Statewide complying development codes for common minor development categories such as single dwellings, alterations and additions, industrial sheds, and commercial fitouts. Such codes would define acceptable standards for community amenity, and would be subject to public exhibition and stakeholder consultation prior to adoption.

C5. The Statewide complying development codes would be made mandatory default codes, to apply to all relevant development categories unless an alternative local code has been accredited. Complying development codes will provide for numeric based ‘deemed to comply standards’, which will provide for both certainty in terms of the standards to be complied with; and flexibility to accommodate innovative design and matters such as different lot sizes and densities and minor non compliances. Performance based measures may be incorporated into the code.

C6. Councils would be permitted to develop alternative complying development codes, which must be generally consistent with the State codes. These would be accredited by the Department on the advice of the CDEP and must achieve at least the same level of complying development as the State codes.

C7. The achievement of increased levels of complying development should be reported annually through the *Local Development Performance Monitoring Report* issued by the Department, with an expectation that the level of complying development will increase from 11 per cent to 30 per cent within two years of implementation, and to 50 per cent within four years.

C8. The following procedures would be adopted for determining development where a complying code applies:

C8.1 Where a development proposal is fully compliant with an applicable code, a certifier (private or council), may approve the development and lodge the complying development certificate with the local council.

C8.2 Where a development proposal has minor non compliances that in the opinion of the certifier (private or council) would not generate an impact on neighbours or set a planning precedent in the neighbourhood, the certifier would be required to lodge a provisional complying development certificate with the local council. This would become effective after seven days unless challenged by council. If however, the council did not consider the non compliances to be minor then a DA would need to be formally lodged and processed in the normal manner.

C8.3 Where a development proposal has minor non compliances, which require a performance assessment by the council, only that aspect of the proposal will require council approval.

C8.4 A certifier could also be empowered to condition an application that has minor variations so that it becomes compliant.

C9. Where an accredited certifier issues a complying development certificate with minor non compliances endorsed by council, the council would be entitled to a fee for the service.

C10. Where a development does not comply with the relevant codes (and non-conformities are not minor or trivial), then a development application to Council would be required.

C11. The mandatory default code would include appropriate complying development standards for developments in environmentally sensitive or heritage areas. These codes will be informed by better mapping of environmentally sensitive areas.

C12. The certifier (whether council or private) would have an obligation to provide a courtesy notice to immediate neighbours advising of the request for a complying development certificate, noting works found to be complying development would be automatically approved.

C13. The local council would be required to keep an electronic database of all complying development details (certificates issued, construction values etc) for public and annual reporting purposes.

C14. Statewide procedures and guidelines governing the complying development certification process and for public reporting purposes would be required.

C15. Changes to existing arrangements would be made to strengthen the accountability of private certifiers (see Chapter 7).

C16. The implementation of the first mandatory complying code would be targeted for 1 July 2008.

C17. The NSW Government, in conjunction with local government and industry representatives, would conduct a public education campaign on the system as it is implemented.

C18. The following measurable outcomes are recommended for the changes to exempt and complying development administration:

C18.1 Increase the number of exempt & complying development certificate from 11 per cent (currently) to:

C18.1.1 30 per cent within two years.

C18.1.2 50 per cent within four years.

C18.2 Mandatory default code to be adopted by 100 per cent of Councils across the State by July 2008.

ePlanning Initiatives

E1. The NSW Government, in conjunction with local Councils, should assess the readiness and current competencies of local government and relevant NSW Government agencies in the areas of ePlanning.

E2. The SiX Viewer should be implemented as the platform for e-planning to collate, integrate, manage and display planning information from councils and relevant NSW Government agencies to facilitate and accelerate the adoption of ePlanning initiatives.

E3. The Department of Lands and Department of Planning should implement a number of regional and local council pilot programs utilising the SiX system within the existing Statewide framework to demonstrate the benefits of early adoption of ePlanning and to build on the work already undertaken in a number of sectors.

E4. Protocols should be developed to ensure standard approaches to the exchange and the organisation of planning information.

E5. More effective delivery of the planning system using ePlanning should be explored in:

E5.1 e-DAs.

E5.2 Exempt and complying codes.

E5.3 Access to Section 149 certificates.

E5.4 The tracking of LEPs.

E6. The Department would establish an ePlanning experts panel (EPEP) to advise on appropriate directions for ePlanning that are practical and work with existing systems. The EPEP would include experts working within local government. Its detailed terms of reference would be determined prior to its establishment.

E7. That the collection and development of assessment information be expanded to include construction details.

E8. An implementation plan would be developed over the next three years by the EPEP with targets for State and local government achievements. The plan would also include potential funding to reach these targets and an ePlanning training and communications strategy.

E9. The following measurable outcomes are recommended for the implementation of ePlanning:

E9.1 Implementation plan with targets adopted by State and local government within three years.

E9.2 Adoption of ePlanning platforms in local councils:

E9.2.1 Within two years 80 per cent of councils are to provide online DA tracking.

E9.2.2 Within two years 100 per cent of exempt and complying codes will be available on line (State provided) and 50 per cent of Council codes (as accredited by the State).

E9.2.3 Within three years 50 per cent to provide online Section 149 planning certificates.

E9.2.3 Within three years 50 per cent are to have LEP tracking systems.

Building and Subdivision Certification

B1. For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested:

B1.1 The number of construction or complying development certificates that can be issued to any one client or involving any one builder or developer by an accredited certifier to be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available.

B1.2 Only the landowner would be allowed to appoint a certifier to issue a construction certificate or complying development certificate. An education campaign will be undertaken to inform landowners of this change.

B2. For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested:

B2.1 The number of projects to which an accredited certifier could be appointed as the principal certifying authority by any one client or involving any one builder or developer be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available.

B3. For large or complex projects, (defined under the BCA as any building requiring a fire isolated exit), staff of the BPB would allocate the accredited certifier to issue construction certificates and act as the PCA for the project subject to the right of developers to reject the first two certifiers allocated.

B4. The BPB would develop a model set of contractual arrangements that will clearly specify the responsibilities of the certifier and the builder/developer.

B5. The BPB would undertake targeted audits focussing on:

B5.1 Those certifiers whose income from any one client or income derived from developments involving any one builder or developer exceeds a significant proportion of their total income for the year.

B5.2 Those certifiers who work on larger projects.

Broadening accreditation

B6. The proposed changes would expand the accreditation system from individuals to include companies, provided the company employs at least three accredited certifiers. Under this system, at least one director of the company would be a certifying authority, and an appropriately accredited person must sign all certificates.

B7. Under these revised rules, Councils would also seek corporate accreditation. All individuals in Council who are required to sign certificates or conduct mandatory inspections will be deemed to be accredited at A3 level of accreditation. These deemed accredited certifiers will only be allowed to certify certain types of development. All other developments will need to be certified by appropriately accredited certifiers, either from Council or the private sector.

B8. The NSW Government would investigate whether certain categories of building design professionals, particularly those involved in designing critical building systems, need to be accredited.

Clarifying responsibilities and sanctions

B9. Councils' responsibility to enforce development consents, whether or not the principal certifying authority is an accredited certifier, would be mandated. Penalties could be imposed against councils where they are made aware of an issue and do not act.

B10. Councils' powers of enforcement for unauthorised work would be increased.

B11. Consideration would be given to increasing fees for building certificates to avoid these certificates from being used as retrospective approvals for unauthorised building works.

B12. The BPB's powers to fine or suspend an accredited certifier or attach conditions on their accreditation would be expanded and streamlined.

B13. The respective roles and responsibilities of certifiers, Councils and landowners, should be clarified through the development of guidance/education material as well as possible legislative changes.

Certification of land subdivisions

B14. Consideration be given to allowing private certification of subdivisions (both land subdivision and strata subdivision), but with the following controls:

B14.1 A developer could only be able to appoint a certifier from a list of five certifiers identified by the local council.

B14.2 The certifier would be required to lodge a provisional subdivision certificate with the local Council, which would become effective after fourteen days unless challenged by council.

B14.3 The local council would be entitled to a fee for the service of reviewing the certificate.

B15. Consideration will be given to enabling greater ranges of strata subdivision development proposals as complying development as one of the complying development codes outlined in Chapter 5.

Miscellaneous amendments

B16. Consider miscellaneous amendments to improve the certification system including:

B16.1 Mandatory training for accredited certifiers regarding policies for complying development.

B16.2 Mandatory reporting of complaints about developments to both council or the certifier (depending on who has received the complaint).

B16.3 Provide powers to the Minister to define the level of consistency with respect to the relationship of construction certificates to development consents.

B16.4 Review the role of occupation and interim occupation certificates including their relationship with the development consent.

B16.5 Allow for conditioning of construction certificates in relation to BCA matters only.

B16.6 Additional mandatory inspections for fire separating construction and acoustic insulation in BCA class 2–9 buildings as well as new inspections before the issue of strata certificates; construction certificates and complying development certificates.

B16.7 Amend liability provisions for certifiers under the EP&A Act to make consistent with the insurance requirements under the BPB Act.

Monitoring the performance of the reforms

B17. The following measurable outcomes are recommended for changes to certification:

B17.1 Private certifiers undertaking the role of the principal certifying authority to be audited at least every two years.

B17.2 BPB to undertake at least 100 audits per annum within the first two years of the changes, and to increase this number over time.

B17.3 Number of complaints to the BPB relating to enforcement of development consents by private certifiers to reduce by 50 per cent in the first four years of the reforms.

Strata management Reform

It is proposed to amend the legislation to:

S1. Require candidates for election to the executive committee to disclose any connections they have with the developer, builder or building caretaker/manager.

S2. Clarify that a person who acts as a building manager is covered by the provisions, regardless of whether they are called a caretaker, building manager or some other title.

S3. Remove the exemption for decisions about the exclusivity of car parking so that they can only be made by the owner's corporation after the expiry of the initial period.

It is proposed to consider amending the legislation to:

S4. Restrict the number of proxies able to be held by any one person. For example, in a scheme of 20 or more lots, a person must not hold proxies greater in number than 5 per cent of the lots. For smaller schemes, each person may hold only one proxy.

S5. Prevent a building developer, original owner or related party from exercising voting rights (greater than what they presently own) through contractual arrangements with subsequent purchasers.

S6. Create a statutory right for a Fair Trading inspector to enter common property on the invitation of individual owners.

S7. Reflect these changes in the Community Land Management Act.

It is proposed to examine:

S8. The options for an education campaign to increase owner's awareness of their rights under Fair Trading Schemes.

Resolving **Pa**per Subdivisions

PA1. Across NSW there are a number of local precincts with multiple landowners holding 'paper subdivisions' largely incapable of development. In order to facilitate the development of these precincts, and provide the necessary infrastructure, it is proposed to introduce a new power to mandate a scheme of arrangement, in order to resolve a way forward. Under such a scheme, land could be exchanged or traded for other land or infrastructure, sold or compulsorily acquired.

PA2. Legislation would be required to deal with circumstances where unanimous agreement between landholders cannot be achieved. This would provide for:

PA2.1 The identification of preconditions to be met before a precinct could be declared an area suitable for the land-trading model.

PA2.2 The nomination of a State agency, or a local council, to implement the scheme.

PA3. To protect the interests of owners, a precondition for such a scheme to be declared could include a requirement that it be supported by at least 60 per cent of landholders, owning at least 60 per cent of land holdings by area.

Miscellaneous Reforms

M1. Lapsing of development consents

M2. Public authorities responsible for providing services usually provided by local government – share of council rates

M3. Standard instruments

- M3.1 Issue of Section 65 certificates for LEPs
- M3.2 Exhibition of draft LEPs prepared in accordance with the standard instrument
- M3.3 Conversion into standard LEPs
- M3.4 Provision for savings and transitions in preparation of non-standard LEPs

M4. Exhibition and amendment of planning agreements

M5. Compulsory mediation in the Land and Environment Court

M6 Amendment of proposals on appeal to the Land and Environment Court

- M6.1 Limiting amendments to matters currently on appeal
- M6.2 Discouraging amendments to matters on appeal

M7. Mandatory requirement for submission of statement of environmental effects

M8. Review of conditions of development consents

M9. Planning panels

- M9.1 Allowing panels to deal with development control plans under Part 3
- M9.2 Clarifying the appointment of planning panels

M10. Ensure planning outcomes are achieved

M11. Ensure appropriate tailored assessment in Part 3A

M12. Minor amendments

- M12.1 Power to delegate functions under Part 3A
- M12.2 Section 96 modifications of development consent
- M12.3 Section 82A review of determination

HAVE YOUR SAY

We want to know your views on the proposals in this paper

This document and summary booklet can be downloaded from www.planning.nsw.gov.au/planning_reforms

This document can also be viewed at Department of Planning offices and local councils across NSW.

Send your comments via:

Online

www.planning.nsw.gov.au/planning_reforms

Email

planningreform@planning.nsw.gov.au

Mail

Planning Reforms, Department of Planning, GPO Box 39, Sydney NSW 2001

Telephone

If you have a questions about the reforms please call the Department of Planning on 1300 305 695

Closing date

The closing date for comments is Friday 8 February 2008.

Hawkesbury City Council DRAFT submission to NSW Department of Planning Discussion Paper - "Improving the NSW Planning System".

CHANGING LAND USE AND PLAN MAKING

P1 – Support changes to tailor the LEP process to the scale, risk and complexity of the proposed land use changes using a gateway screening process. However, the streamlining of the process should not downgrade the LEP process so that it is viewed a rubber stamp to changes to the LEP.

P2 – The recommendation to "gateway screen" land use changes is supported as it would provide an up front assessment of whether a proposal should proceed and reduce wasted expenditure and resources on proposals that are not likely to be supported.

The streaming pathways and screening evaluation criteria should be developed in conjunction with State and Local Government practitioners to ensure that the criteria is practical, clear and measurable so that the improvements to the system are not defeated by impractical, subjective criteria.

Varying the criteria depending on the risk and scale of the proposal is also supported. This process should be automatically delegated to local Councils where there is an adopted Strategy, endorsed by the Department, already in place.

P3 – Where a landuse change has been agreed to in principle, the recommendation to authorise the LEP changes and simplify that process according to the scale of the proposal is supported.

P4 – The recommendation to align fees to the service provided is supported.

P5 - The referral to relevant State agencies at the gateway stage should be mandatory. However, after this initial referral, if the proposal is supported and consistent with the relevant criteria, no other referrals should be required for an LEP. The referral and consultation process should be subject to time limits to ensure that that the processing is efficient. Criteria should also be developed by each agency to ensure that an LEP amendment is assessed at the Policy level and not at a fully detailed level that is better to leave to the development application stage.

P6 - The recommendation to introduce timeframes for the LEP process is supported. The timeframes should be applicable to all parties involved in the process including State authorities, Parliamentary Counsel, Local Councils and applicants. However, these timeframes should be developed in conjunction with practitioners, Local Councils and communities to determine that the timeframes are workable whilst ensuring that community involvement and consultation is adequate and not undermined. Imposing set timeframes without consultation is not supported.

P7 - The recommendation to define the responsibilities of different parties in the plan making process is supported. The definition of the responsibilities should extend to the applicants where the land use change is proposed by a private proponent. A comprehensive education campaign, aimed at all relevant parties, should be developed and implemented by the Department to ensure that there is a clear understanding of the LEP process. This education should concentrate on the detail of information that is required for such LEP proposals as well as defining the differences between this process and the development application process.

P8 - The work of the Department of Planning to date in relation to the preparation of Strategies and reduction in the number of SEPPs should be commended. The continuation of this work should continue in consultation with Local Councils and communities.

The Act should be amended to give greater Statutory recognition to the making and implementation of Regional, Sub-Regional and endorsed Local Strategies. The current process of using Section 117 Directions to give these documents recognition is cumbersome and seems to defeat the current reform agenda to "simplify" the system. These Planning Strategies are more than just development controls and Instruments but include broader social, economic,

sustainability and environmental goals that would assist in the implementation of the Objects of the Act whilst informing the "gateway screening" process of land use changes.

The Standard LEP should be considered more broadly when work is undertaken to reduce the number of SEPPs. Whilst there may be a need for some SEPPs many can easily be incorporated into the Standard LEP with optional Clauses if the SEPP does not apply to certain Local Government Areas.

The Department should work more closely and consult with Local Councils in relation to the consolidation of SEPPs and REPs. Often the local Council practitioners have a clear understanding of the "on ground" impacts and implications and can provide valuable assistance with this work. Some Councils, including the Hawkesbury and Penrith, have, as part of the Standard LEP work, formulated practical solutions to incorporate SEPP and REP provisions into the LEP reviews.

P9 - Any recommendation that the Department dictate the content of Development Control Plans (DCPs) is not supported. There is some merit, however, for the Department to work with Local Government on standardising the format for LGA wide DCPs. The standardisation of the format for DCPs, similar to the South Australian model, with the incorporation of local controls, would be consistent with the intent of the current reforms to simplify the system for users. Any guidelines on format or controls should not be allowed to evolve into directives for Councils.

The status of DCPs needs to be raised to give them greater authority to complement the statutory instrument.

P10 The measurable outcomes are noted. However, the recent gazettal of SEPP(Infrastructure)2007 merely consolidates SEPPs rather than reducing the number and may make it more difficult for proponents.

DEVELOPMENT ASSESSMENT AND REVIEW

A1 - Whilst there is merit in the establishment of a hierarchy of decision making bodies, this should not replace the current role played by Local Government as a consent authority. At the very least Local Government should be the decision making body for Local, Minor and Complying Development and should figure highly in regional decision making. Involvement in decision making for State Significant development should be paramount for the local Council or Councils that are impacted by that development.

A2 - The delegation of some Part 3A proposals to a Planning Assessment Commission (PAC) is supported subject to the process including the community, relevant Local Council and industry consultation, process for performance review of the PAC, inclusion of appropriately qualified persons on the PAC and adequate funding/resources for the PAC assessments from the State Government.

The PAC could be considered as a review body for decisions on Local, Regional and Part 3A matters, as an intermediate review, prior to appeal to the Land and Environment Court.

A3 - The PAC should have a mandatory requirement to include consultation with the community and relevant Local Councils.

A4 - If the host Council does not have the resources to support a Joint Regional Planning Panel (JRPP) then the PAC should be fully resourced by the Department of Planning.

A5 - The recommendation for the formation of a JRPP to deal with regionally significant proposals is generally supported. Criteria would need to be well defined to identify projects to be referred to the JRPP. Membership of the JRPP should be determined by the Director-General and should vary depending on the expertise required for the particular proposals.

However, the JRPP should not be formed only on the proviso that the host Council has sufficient resources. If the JRPP is required, the establishment and consultation requirements should not be dictated on resources alone and the community and Council should be consulted as a mandatory provision.

A6 - The principle of Independent Hearing Panels (IHAP) is generally supported, particularly with the recommendation that the appointments are from an accredited register. However, it should not be mandatory for Councils to maintain an IHAP and guidelines and options should be considered that would provide flexibility for Councils that do not have a large number of applications or issues with determination of applications. Sharing of an IHAP between Councils and use of the Panel as a mediation and facilitation resources should also be an option.

The establishment and maintenance of an IHAP can be a significant cost to a Council where the application numbers are low or relevant applications are rare. Consideration should be given to the ability to charge a fee for service where if an application is required to be considered by the IHAP then the applicant pays a fee to recover the costs of running such a panel.

A7 - The concept of using a "third party" to review certain decisions or applications (subject to strict guidelines) is generally supported. However, the use of an "Arbitrator ", which can only be engaged under the Commercial Arbitration Act with specialised skills, is not supported. In these cases a shared IHAP may fulfil a similar function.

A8 - The recommendation to rationalise IHAPs, Design Review Panels and independent advisory panels is supported. However, this seems to be in conflict with other recommendations for IHAPS, PACs and JRPPs in the discussion paper. There already exists a system for determining applications via the local Council. This system works the majority of the time and the reforms should focus on the situations where this does not work and propose changes in these areas.

A9 - The recommendation to define the nature and extent of information submitted with different types of applications is generally supported. The "type" of application will need to be carefully defined with regard to location, level of information already available for the locality, eg, soils, bushfire, flooding, etc. It is clear that the current approach of "one size fits all" for submission requirements (Schedule 1 of the EP&A Regulations) does not work with some Council requirements simply repeating Schedule 1 and some Councils with no set requirements.

This recommendation will depend and require an education campaign promoting a culture change across Councils of not requiring multiple specialist reports up front and more use of pre-lodgement and pre-compliance reports/assessments and a greater use of "staged" approvals.

A10 -Whilst ePlanning will provide an interface for DA lodgement and tracking, the success of ePlanning is dependent on the quality and consistency of the information submitted. A standard for the specifications and use of ePlanning, ie, what should and should not be shown on websites (rather than the Software requirements), should be set prior to further implementation to ensure consistency for users.

A11 - The recommendation to review the need for Court appeals following independent arbitration or public hearings is supported. Whilst it is not suggested that the rights to appeal decisions should be denied, frivolous or appeals following extensive review are, in some cases, generating significant costs to applicants and communities for little gain.

A12 - The recommendation to further reduce NSW Government referrals of applications is supported. Guidelines to focus comments provided and the setting of strict timeframes for this process should also be considered. The resourcing implications of the required referrals on the Government agencies should be reviewed and additional resources provided where necessary.

A13 - Standard development consent condition templates are generally supported provided these can be adjusted for local conditions as required. An "Australian Standard" approach may be considered with the State Government responsible for the maintenance of these conditions when legislative or Government Department name changes occur.

Guidelines should also be developed to standardise what are valid conditions (ie, legally enforceable) and what should be provided as advice in development consents.

A14 - Recommendations to tighten up the use of Section 96 amendments is supported. **Section 96 should not be used as an avenue to obtain retrospective approval or regularise unauthorised works.** The number of amendments to a development proposal, whilst a somewhat crude device as some large developments may require multiple amendments, is a way to start this process. However, consideration should be given to the Department of Planning developing guidelines on the use of S96 to assist in the definition of what is "substantially the same development". These guidelines should be based on relevant Court decisions and reform issues. Consideration should also be given legislative changes to define "substantially the same" development.

Providing greater flexibility to re-issue consents under S96 if an error is made or where minor, inconsequential changes are made is supported.

A15 - A graduated system of Statutory Assessment periods is supported where the assessment days are counted as "working days" rather than calendar days. However, in order to implement this system the thresholds, not necessarily defined by development costs, for what constitutes small and medium scale development must be clearly defined.

The Statutory Assessment times should not be used as an automatic timer for an applicant to appeal in Court. The introduction of a "buffer" period, starting from the end of the Statutory period, should be considered. This buffer period can provide the applicant, rather than an immediate Court appeal right for deemed refusal, with an opportunity to give the consent authority a "notice of intention" to appeal or request that the matter be reviewed by a third party. The "notice of intention" timeframes and response rights can be on a similar basis as the current Orders provisions in the Act. This system should encourage a facilitatory or mediation culture in the system rather than an adversarial culture.

A16 - The recommendation to amend the fee regime to match fees for service is supported. There may be a need to set minimum guidelines for fees based on the types of development listed in Recommendation A15.

A17 - Improvements to the guidelines for community consultation are supported. These guidelines should be linked to the development types as listed in recommendation A15. The guidelines should clarify the purpose of the consultation and what can be expected from the outcome of the consultation, ie, objectors of minor development and complying development should not expect to prevent development if it is consistent with adopted policies.

EXEMPT AND COMPLYING DEVELOPMENT

C1/2 - The general concept of extending appropriate complying development is supported, but this increase should be gauged on a State-wide basis rather than a Council by Council basis, as local conditions may preclude extensive Complying development in some areas. The concept of mandatory guidelines would seem to repeat the "one size fits all" problems that the discussion paper is trying to overcome. Targets can still be set in relation to types of development that should be considered for Complying Development, however, the detailed standards should be left to each Local Council.

The take up rate for Complying Development does not seem to be solely reliant on the standards or codes within each Council. There is a general lack of understanding in the general community, and within the industry, of the Complying Development system. For example, an applicant just wants an outcome, whether it is assessed as Complying or a DA is often irrelevant. In the Hawkesbury's case minor DA's are processed in most cases just as fast as complying development. A comprehensive educational program needs to be developed on a State-wide basis as well as a local basis to inform applicants about the system.

C3 - The concept of a Complying Development Experts Panel (CDEP) to assist with Complying Development codes is supported provided the scope of advice is clearly set out and all Local Councils are assured equal access to the Panel's advice.

C4 - The development of a State-Wide complying development code would only be supported if the code makes provision for local variations based on local conditions. A comprehensive education campaign should also be included in the development of the code.

C5 - The introduction of a mandatory code that has provision for merit based assessment of complying development is not supported. This would go against the whole definition of complying development. The community currently has difficulty understanding what complying development is and this proposal will add to this confusion. Any complying development code should be numerically based to provide certainty and confidence for the system users.

C6 - The preparation of local complying development codes, guided by State codes and with assistance from the CDEP is supported.

C7 - Complying development statistics are currently reported in the Local Development Performance Monitoring Report. Whilst the targets should be commended, the goal of reaching the targets should not be ant the expense of good design and acceptable development.

The Department should set the specifications for this report and advise Council of these specifications with enough time for Councils to adequately provide that information. The requirements for the report have been changing each year and this results in poor reporting compliance and data that cannot be compared to previous years.

C8.2 - The proposal for "provisional complying development certificates" is not supported. This proposal would create uncertainty, misunderstanding and confusion and is duplicating an already existing system for dealing with development that is non-conforming, ie, the DA process.

C8.3 - Where development that contains complying and non-complying components it would seem reasonable that the Council can be restricted to assessing only the parts of the non-complying development. However, if this is the case then there needs to be safeguards in place that prevents the progress of the complying sections of the development from forcing the acceptance of the non-complying sections, ie, structure built in such a way as to prevent rectification of the non-compliance.

C8.4 - Whilst it seems reasonable for a CDC to be conditioned for compliance, the enforcement of those conditions or rectification of the development if the conditions are ignored must be clearly defined. The current system of enforcement by some private certifiers leaves much to be desired. This is evident in the current discussion paper under the "Building Certification" section. That section suggests that the ultimate body responsible for conditions enforcement would be local Councils. If this is the case then conditioning of CDCs by private certifiers is not supported.

C9 - The concept of merit assessment for CDCs is not supported. However, if there is a requirement for Council to provide comments to private certifiers as part of the process then an appropriate fee for that service is supported.

The inclusion of a Bond to ensure enforcement by the private certifier should also be considered.

C10 - This recommendation seems to endorse the Status Quo.

C11 - Any code, whether mandatory or local, should include appropriate standards for sensitive areas. Funding assistance should be made available, via the Plan First fees, to assist in the detailed mapping of these environmentally sensitive and heritage areas. This would also assist with the streamlining of other development applications in the system.

C12 - The issue of a "courtesy" letter prior to the issue of a CDC is unlikely to occur if not legislated to do so. A "courtesy" letter would seem to be contrary to the discussion paper reforms regarding consultation where it is stated that "expectations of objectors would need to be tempered" where the "courtesy" letter implies that the person notified has some power to object. It would appear that a legislated process to issue a letter after issue of the DCD would be more practical.

There are some privacy issues that would need to be addressed if a private certifier is to be given contact details, by the Council, for property owners in the locality. Some of these details are protected and cannot be given out. This may then lead to these letters being issued by the Council, on behalf of the private certifier. Given that Councils will be essentially competing for business with private certifiers, this situation is not acceptable.

C13/14 - Agreed

C15 - Whilst the majority of private certifiers are reputable there is a real need to strengthen the accountability and responsibility of private certifiers.

C16 - The target date of 1 July 2008 is not realistic given the work currently being undertaken by Councils in relation to the Standard LEP and other planning reform requirements. This timeframe also seems to imply that there will only be token consultation with the community and other stakeholders rather than realistic dialogue. The target for the code to be prepared by this date would be more realistic.

C17 - A public education campaign is supported. However, whilst local Councils and other stakeholders should be heavily involved, there needs to be realistic resourcing support from the State for involvement in this State initiative.

C18 - As expressed previously, the targets for this component should be reviewed to ensure realistic consultation and development of codes and systems that are workable.

ePLANNING INITIATIVES

E1 - The assessment of readiness of local Councils and State Agencies should be undertaken prior to any timeframes being set.

E2 - The endorsement of the SiX Viewer system is premature unless a full assessment of the readiness of all stakeholders has been completed. Currently many Councils have a variety of systems that provide all or some of the ePlanning initiatives. Whilst a single standard platform with a set of protocols is supported the compatibility and cost of implementation should be thoroughly investigated, particularly when it may mean that many existing systems may not be compatible and will need to be replaced. Pilot programs should be set up initially to test all parts of the system. These are mentioned in recommendations E3 and E4. However, the Six Viewer system seems to be adopted for the pilots.

E5 - There is no doubt that the implementation of ePlanning has benefits as a tool to assist in the planning system. ePlanning should not be seen as a panacea to all the issues of development assessment or as a replacement for good strategic planning and appropriate decision making. Is should be remembered that a system such as ePlanning relies heavily on the Policies and strategic planning behind the system and is only as good as the information input into the system.

E6 - E8 These recommendations are generally agreed with providing the initiatives are properly discussed and all relevant stakeholders are adequately consulted. Councils will need assistance with funding these initiatives.

BUILDING AND SUBDIVISION CERTIFICATION

B1.1 - The recommendation to limit the number of certificates issued to one client is good in theory. The implementation of this recommendation will not only depend on increased powers to the

BPB but will also require appropriate staffing and resources to undertake the work on the ground. In the absence of this there will be inadequate enforcement of the limits and any potential benefits of this recommendation will be lost.

B1.2 Whilst the theory of only allowing the landowner to appoint a certifier to issue certificates may seem to have merit, the reality is that the "mum & dad" development applicant will not understand the process, or have the appropriate industry knowledge, to appoint. In reality the builder or developer will make a recommendation and the majority of the landowners will accept that recommendation.

B3 If the BPB are to appoint the certifier or PCA to large or complex developments the relevant Local Council should be on any list of potential certifiers. There is concern that the discussion paper implies that Council Building Surveyors are not qualified beyond Class 3 certifiers and that this implication may adversely affect the Council's ability to be competitive in this market.

B4 A model set of contractual arrangements regarding responsibilities is supported.

B5 A system of targeted audits is supported if there are clear guidelines as to the matters to be investigated in the audit. Apart from income being the only focus of the audit, the proportion of certificates issued to a builder (as a percentage of certificates issued to that builder) by one certifier should also be considered.

B6 Corporate accreditation is generally supported. A system that provides for the auditing of individuals within that corporation as well as the corporation should be considered. Transitional provisions for this process should be considered.

There is concern regarding the arbitrary figure of "the company employs at least three acreditors" and "at least one director of the company would be a certifying authority". This can potentially exclude some corporations where an employee leaves and takes time to replace. Also, given that a Council will need to obtain corporate accreditation, it is unclear how these limits apply to the structure of a Local Council. A Director of a Council, given the broad nature of the functions of a Council, is not usually required to be accredited to the extent proposed in the reforms discussion paper. It seems that the system may be biased away from Councils becoming competitive by excluding them from the process.

B7 Again this recommendation seems to have a bias against employees of Councils in regards to their qualifications. Many Council building surveyors have a variety of accreditation from other bodies and experience that can only be obtained from working in Local Government. The accreditation system should be set up to acknowledge these other factors when accrediting Local Government Building Surveyors rather than simply using a "deemed to comply" provision.

B8 Extending appropriate accreditation requirements for related professions is supported.

B9 This recommendation in its current form is not supported. To make Councils responsible for enforcing all development consent conditions will result in duplicating the inspection system. The system must clearly delineate the responsibilities of both the PCA and Council under the development consent. The system should also clearly set out responsibility for enforcement where one of the parties does not comply. In this instance the Council may be the overall authority responsible for enforcing the development consent conditions. However, in this case there must be improved powers for Council to recover costs of enforcement where a PCA has not undertaken there responsibilities.

B10 Improvements to Council's powers for enforcement is supported. A range of changes should be considered to ensure that enforcement actions do not become an alternate approval for unauthorised works. Often the penalty for unauthorised work is less than the cost of obtaining the correct approval or the cost of pursuing the matter through the Courts is expensive to the community and cost recovery less than adequate.

Enforcement and/or penalties should be clearly defined and act as a true deterrent to unauthorised activities.

B11 The recommendation to increase fees for Building Certificates to avoid them becoming retrospective approvals is supported. As mentioned in B10, all fees and penalties should be reviewed to ensure this objective.

B12 A review of all enforcement powers to **all** relevant agencies is supported.

B13 Agreed.

B14.1 There is merit in permitting private certification for limited minor subdivisions that generally do not involve public infrastructure. Private certification of infrastructure to be accepted as Public assets is not supported unless there is scope for individual Councils to set the parameters for this certification. Appointing a certifier from an approved list from the Council is supported.

B14.2 A provisional subdivision certificate lodged to Council, with Council given fourteen days to comment would seem to be a reasonable outcome. However, the reasons the Council may object to the issue of the subdivision certificate need to be defined. Issues such as non payment of fees, inadequate construction, non-submission of works-as-executed plans, etc, are examples of valid reasons for non acceptance.

The size of the subdivision and the amount of work required to check the subdivision certificate (eg, multiple works-as-executed plans, etc) should be taken into account when considering the time limits. A sliding scale depending on the type (size) of the subdivision, similar to DA assessment, should be considered.

B14.3 A fee should be a mandatory consideration where a Council is required to check and/ or accept a certification of a private certifier.

B15 It is agreed that many Strata subdivisions could be considered as complying development where there is no additional building or BCA matters to be addressed.

B16.1 to B16.7
There is general agreement to these recommendations. However, it almost seems that the reforms may be taking a retrograde step back to the pre 1998 Building Applications (particularly the proposal to condition BCA matters on a construction certificate).

There are potential resourcing implications relating to some of the detail (not provided) of these recommendations and it is strongly suggested that the details be prepared and Councils and the industry be consulted widely to ensure workability.

STRATA MANAGEMENT REFORM

General Comments

Reforms that deal with the clarification of resident rights and reduce the potential for developers to dominate the owners corporation in a Strata Scheme are supported. There is concern that the reform agenda is driven via the Planning Reforms. Consultation for these reforms should be wider than via the Planning System reform discussion paper and should also include Strata Managers and resident associations.

RESOLVING PAPER SUBDIVISIONS

Whilst these matters do not impact on the Hawkesbury, this matter is a significant problem in the localities where these exist. Council supports the resolution of any issues that will assist landowners.

MISCELLANEOUS REFORMS

The miscellaneous reform recommendations deal principally with minor matters that clarify powers or enable minor amendments to agreements or planning instruments. These reforms are generally

supported where the proposed changes enable minor, inconsequential changes to be made easily. However, there is a need for some of the proposed changes to include clearly defined limits as to the extent of application of the changes, eg, what is a "minor" change in the circumstances. If these matters are not adequately addressed and defined, a similar situation of "what is substantially the same development" in relation to Section 96 of the EP&A Act will quickly develop.

There has been a need for some time for the clarification of physical commencement and lapsing of development consents and this reform is well supported.