

**PLANNING REFORM IMPLEMENTATION  
STATUS REPORT DECEMBER 2008**

Issue	Implementation – action to date	LGSA Action and Policy Position
<b>Development Assessment and Review</b>		
<p><b>Housing Code</b></p> <p><b>Exempt and Complying Development</b></p>	<p>Public exhibition of the first draft Housing Code, draft Commercial Code and Exempt Development in May 2008. Housing code covered lots &gt; 600 sq metres and single storey houses, alterations and additions.</p> <p>Gazettal of revised Housing Code on 12 December 2008, with commencement date of 27 February 2009.</p> <p>The gazetted Code is significantly different to the previously exhibited code. Now covering lots &gt;450 sq m and two storey houses.</p>	<p>The LGSA support measures to widen exempt and complying provisions for appropriate development types. The LGSA have raised concerns about a ‘one size fits all’ approach to housing.</p> <p>The revised Housing Code which was gazetted on 12 December 2008 is substantially different to the first draft code that was publicly exhibited in May 2008. The LGSA argued that the substantial changes warranted public exhibition and trial of the revised Code.</p> <p>The LGSA have been working to improve the efficacy of the code for applicants, private certifiers and local councils alike. Revisions to the code have addressed some of Local Government’s concerns by moderating standards by lot size. However these standards still need testing. In addition there are a number of practical issues related to local variations, exclusions and the certificate of information that need to be tested ‘on the ground’ by councils and certifiers.</p> <p>See Presidents media release on revised code at <a href="http://www.lgsa.org.au/www/html/2225-media-releases.asp">www.lgsa.org.au/www/html/2225-media-releases.asp</a></p> <p>LGSA submission on first draft code (May 2008) at <a href="http://www.lgsa.org.au/www/html/2475-planning-changes.asp">www.lgsa.org.au/www/html/2475-planning-changes.asp</a></p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
<p><b>Concurrences and referrals</b></p>	<p>State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008 was gazetted on 12 December 2008 and commenced on 15 December 2008. For details see Planning Circular PS08-015.</p> <p>The Department of Planning also has established an online Register of Development Assessment Guidelines, to assist councils in assessing applications. The register provides a comprehensive list of the guidelines to be used by councils, developers, consultants and the general public for the purposes of development assessment.</p> <p>For further details see Department of Planning website at <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a>.</p>	<p>The changes under the SEPP will increase councils' autonomy in assessing development applications under section 79C of the <i>Environmental Planning and Assessment Act</i>. However, the changes do not alter requirements for referrals required under other legislation. Note that not all concurrence and referral provisions have been repealed.</p> <p>The Register of Development Assessment Guidelines delivers general information to local councils, applicants and the community in an easy to understand format. However it is still unclear whether councils can refer an application to a State agency for advice (that would previously have been classified as a referral) where staff expertise is lacking on the relevant issue.</p> <p>The LGSA understands that advice can be sought from an agency, but the advice will not have any legal standing and it cannot delay the consideration of an application. Where it is not clear whether an application should or could be referred, the LGSA recommends that councils contact the Department of Planning or the relevant agency for advice.</p>
<p><b>Various amending provisions commencing on 1 September 2008.</b></p>	<p>Commencement of amending provisions detailed in Circular PS 08-008, including:</p> <p><b>Changes to <i>Environmental Planning and Assessment Act</i> include:</b></p> <ul style="list-style-type: none"> <li>- Repeal of provisions relating to the Local Government Liaison Committee</li> <li>- Costs in applicant appeals to the Land and Environment Court</li> <li>- Separate appointment of principal certifying authorities</li> <li>- Power of authorised persons to require answers and</li> </ul>	<p>See notes under Certification and Accreditation.</p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
	<p>record evidence</p> <p><b>Changes to the <i>Environmental Planning and Assessment Regulation 2000</i>:</b></p> <ul style="list-style-type: none"> <li>- Applications for construction certificates, occupation certificates and subdivision certificates.</li> <li>- Fees for building certificates.</li> <li>- Applying for a strata certificate.</li> </ul>	
<b>Development Contributions</b>		
<p><b>Treasury review of development contributions</b></p>	<p>On 17 December 2008 the NSW Government announced the outcome of its review of development contributions including:</p> <ul style="list-style-type: none"> <li>• A cap on development contributions payable to councils at \$20,000 per lot – with all contributions exceeding \$20,000 requiring approval from the Minister for Planning.</li> <li>• Abolition of development contributions payable to Sydney Water and Hunter Water (worth an average \$15,000 per lot.)</li> <li>• Reduction of state infrastructure charges in the South-West and North-West growth centres from \$23,000 to \$11,000 per lot to June 2011.</li> <li>• The timing of the payment of state levies has been changed from upfront to when the lot is sold.</li> </ul> <p>The Premier’s media release is available at <a href="http://www.premier.nsw.gov.au/default.html">http://www.premier.nsw.gov.au/default.html</a></p>	<p>The LGSA and council officials met with the NSW Treasury and made a submission to the review, arguing that it was highly unlikely that changes to the existing system of development contributions would have any impact on housing affordability and development activity. While reducing the levies will save the developers a small amount of money, there is no way the government can guarantee that those savings will be passed on to home buyers.</p> <p>The LGSA also contended that cuts in development contributions would impact on councils’ capacity to provide their communities with local roads and footpaths, parks, playgrounds, libraries and sporting facilities. Without this funding the alternative could be significantly less and lower quality facilities.</p> <p>LGSA submission: <a href="http://www.lgsa.org.au/www/html/2266-development-contributions.asp">www.lgsa.org.au/www/html/2266-development-contributions.asp</a></p> <p>Presidents’ media release 17 December 2008: <a href="http://www.lgsa.org.au/www/html/2225-media-releases.asp">www.lgsa.org.au/www/html/2225-media-releases.asp</a></p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
<p><b>New framework for development contributions under the Environmental Planning and Assessment Act</b></p>	<p>In June 2008, as part of the planning reform agenda, the NSW Parliament amended the provisions in the Environmental Planning and Assessment Act relating to development contributions.</p> <p>The legislation repeals the existing provisions of the Environmental Planning and Assessment Act relating to development contributions (Part 4, Divisions 6 &amp; 6A) and replaces them with a new Part 9.</p> <p>The new provisions of the Act are yet to be commenced and will be amended, if required, to accommodate the policy changes announced by the Premier in December 2008.</p>	<p>The new legislation gives the Minister wide ranging control over local contributions and introduces new state infrastructure contributions in greenfield release areas outside the growth centres. The legislation:</p> <ul style="list-style-type: none"> <li>• places limits on the types of projects for which local levies can be used;</li> <li>• gives power to the Minister to approve projects outside the prescribed list;</li> <li>• gives the Minister the power to direct councils in relation to the type of community infrastructure that can be levied for, the means for determining contribution levels; the maximum amount of any direct contribution; type or area of development for which community contribution may be imposed and maximum percentage of an indirect contribution; and time frames for spending contributions;</li> <li>• provides for Growth Centre councils' contributions to be collected and held by Treasury. The Minister can also declare other areas to be covered by these provisions via an order in the Government Gazette.</li> </ul> <p>For more information see the LGSA website at <a href="http://www.lgsa.org.au/www/html/2266-development-contributions.asp">http://www.lgsa.org.au/www/html/2266-development-contributions.asp</a></p>
<p><b>Planning panels and arbitrators</b></p>		
<p><b>Planning Assessment Commission (PAC)</b></p>	<p>Minister Sartor announced membership of the PAC on 3 September prior to his leaving the portfolio. He indicated that the PAC would determine over 80% of Part 3A applications.</p> <p>Minister Keneally announced on 6 November 2008 that</p>	<p>In October 2008, Minister Keneally requested the LGSA's comments on the operation of the PAC.</p> <p>The following points were conveyed to the Minister:</p> <ul style="list-style-type: none"> <li>• The question of whether the Minister or the PAC is the determining authority for Part 3A developments is less an</li> </ul>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
	<p>she would be appointing additional members to the PAC with skills in property development, environmental assessment and community consultation. The members of the PAC would also be used in appointments to Joint Regional Planning Panels (JRPPs).</p> <p>The Minister subsequently announced that the PAC would determine only those applications involving a developer that had made a political donation within the past 2 years and applications where the Minister had a conflict of interest.</p> <p>Minister’s media releases are available at <a href="http://www.planning.nsw.gov.au/mediareplan/index.asp">www.planning.nsw.gov.au/mediareplan/index.asp</a></p> <p>Details of the Minister’s delegation of powers to the PAC can be found in the Government Gazette of 5 December 2008.</p>	<p>issue than ensuring greater transparency, probity and certainty in the Part 3A development process.</p> <ul style="list-style-type: none"> <li>• It should be clear to applicants which body will be responsible for the assessment and determination of their development application.</li> <li>• There needs to be improved transparency and probity in Part 3A process.</li> <li>• The Minister’s powers to ‘call in’ certain residential, commercial and retail developments over \$50m should be limited.</li> <li>• The PAC should play a role in the listing of sites of state or regional significance</li> </ul>
<p><b>Joint Regional Planning Panels (JRPPs)</b></p>	<p>Minister Keneally announced on 6 November 2008 that JRPPs will:</p> <ul style="list-style-type: none"> <li>• Comprise 5 members - 3 members (including chair) appointed by State Government and 2 council appointed members from the local government area where a development application has been made.</li> <li>• Determine development applications for residential, mixed use and commercial development projects worth more than \$10 million. This threshold is significantly lower than the \$50m (residential) and \$20m (commercial and retail) indicated in Minister</li> </ul>	<p>The LGSA has made representations to Minister Keneally strongly opposing the establishment of Joint Regional Planning Panels (JRPP).</p> <p>The LGSA believe that the JRPPs will:</p> <ul style="list-style-type: none"> <li>• Undermine local decision making and local accountability.</li> <li>• Add another layer of bureaucracy and complexity to the DA process.</li> <li>• Potentially reduce legitimate community participation in the development process.</li> </ul>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
	<p>Sartor’s policy paper tabled in Parliament in June 2008.</p> <ul style="list-style-type: none"> <li>• Determine public and private community infrastructure and ecotourism development decisions worth more than \$5 million.</li> <li>• JRPPs will commence in mid 2009.</li> </ul> <p>Minister’s media releases are available at <a href="http://www.planning.nsw.gov.au/mediareplan/index.asp">www.planning.nsw.gov.au/mediareplan/index.asp</a></p>	<ul style="list-style-type: none"> <li>• Place extra costs on councils as they will be required to meet the administrative costs and fees associated with the establishment and servicing of the JRPPs.</li> <li>• Provide no identifiable benefits to developers or the community.</li> </ul> <p>See LGSA Presidents’ media release at <a href="http://www.lgsa.org.au/www/html/2677-6-november-2008---planning-panels.asp?intSiteID=1">www.lgsa.org.au/www/html/2677-6-november-2008---planning-panels.asp?intSiteID=1</a></p>
<p><b>IHAPS</b></p> <ul style="list-style-type: none"> <li>• <b>Councils can be directed to establish IHAPs to deal with certain developments.</b></li> <li>• <b>IHAPs would be advisory.</b></li> <li>• <b>Role of IHAPs, design review panels and independent advisory panels rationalised to remove duplication and ensure consistent and timely advice.</b></li> </ul>	<p>Draft operational guidelines for IHAPs being prepared by the Department of Planning.</p> <p>Possible release in early 2009.</p>	<ul style="list-style-type: none"> <li>• The LGSA supports the use of IHAPs in an advisory role to councils and the development of best practice guidelines to assist councils in their establishment and operation.</li> <li>• The LGSA opposes an overly prescriptive framework for IHAPs proposed in the legislation as being unnecessary and against the intent of IHAPs. Administrative guidelines would be of assistance to councils.</li> <li>• The IHAPs should remain under the administration of councils that adopt them, not the Minister.</li> <li>• The imposition of an IHAP by an environmental planning instrument is unnecessary and counterproductive to the efficient and effective operation of IHAPs.</li> </ul>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
<p><b>Planning arbitrators are proposed to be:</b></p> <ul style="list-style-type: none"> <li>• <b>Appointed to deal with s82A reviews and deemed refusals for developments &lt; \$1m.</b></li> <li>• <b>Appointed by council from register accredited by PAC or State.</b></li> </ul>	<p>No action to date.</p>	<p>The LGSA has written to Minister Keneally expressing our opposition to the model of planning arbitrators. Arbitrators are an unnecessary and potentially costly addition to the development system with few obvious benefits. The LGSA objects to the system of planning arbitrators as:</p> <ul style="list-style-type: none"> <li>• No justification and no costings have been presented for what amounts to an additional appeal system to be undertaken by private consultants in the name of and at the cost of the council.</li> <li>• Potentially large number of applications will be dealt with by planning arbitrators with cost and resource implications for councils and potentially increase delays in the time taken to process DAs.</li> <li>• Significant probity concerns.</li> </ul>
<h3>Certification and Accreditation</h3>		
<p><b>Various amendments to EPAA and Building Professionals Act commencing 1 August 2008</b></p>	<p>On 1 August the Department commenced a range of amendments to the EPAA and BP Act. See Circular PS 08-006.</p> <p>A number of these provisions were enabling provisions to allow the Department to prepare regulations under the Acts.</p> <p><b>Changes to <i>Environmental Planning and Assessment Act</i> in relation to:</b></p> <ul style="list-style-type: none"> <li>- Section 22 committees</li> <li>- Increased maximum penalties for carrying out work without authorisation</li> <li>- Evidence of payment of long service levy</li> <li>- New provisions in environmental planning instruments to facilitate the issue of subdivision</li> </ul>	<p>In early 2008 the Associations commissioned John Mant, lawyer and urban planner, to develop alternative solutions to key problems with the current reform agenda relating to certification and decision making.</p> <p>The Associations were keen to see a resolution of the problems relating to certification, as well as transparent and efficient decision making processes that balance the legitimate expectations of key stakeholders in the development process. The Mant paper outlines a number of proposals for addressing these issues.</p> <p>The Minister did not support the alternative solution of having certificates issued to government and instead sought to address the symptoms of a fundamentally flawed private certification</p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
	<p>certificates by accredited certifiers</p> <ul style="list-style-type: none"> <li>- New regulation-making power in relation to Part 4A certificates and complaints.</li> <li>- Clarification of when building or subdivision actions can be brought</li> <li>- Records of missed inspections</li> <li>- Matters relating to strata certification</li> </ul> <p><b>Changes to <i>Building Professionals Act</i>:</b></p> <ul style="list-style-type: none"> <li>- New definitions</li> <li>- Amended accreditation procedures</li> <li>- Changes allowing urgent action to be taken by the Board against a certifier</li> <li>- Improved processes relating to disciplinary matters</li> <li>- Increased powers of the Board to make disciplinary findings against accredited certifiers</li> <li>- Savings and transitional provisions</li> <li>- Regulations for terms of contracts between accredited certifiers and applicants.</li> </ul> <p>See Department of Planning website at <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a></p> <p>The Amendment Acts and proclamations are available online at <a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a></p>	<p>system. The symptoms have been dealt with by changes such as:</p> <ul style="list-style-type: none"> <li>• Enabling certifiers to obtain, for a fee, the opinion of council as whether the construction drawings are <i>consistent with</i> the consent (S109PA).</li> <li>• Enabling the consent authority to require payment of a security to be used if enforcement action has to be taken.</li> <li>• Providing for the certifying authority to issue a notice of any breach to the builder. In the event that it is not remedied then the consent authority is to be advised so that action can be taken.</li> <li>• Enabling certain stop work orders to be given without the need to first give notice of the intention to do so.</li> <li>• Increasing the power of the Building Professionals Board to suspend certifiers without the need to go to the Tribunal.</li> </ul> <p>These changes are certainly improvements but the fundamental flaws in the system are not resolved.</p>
<p><b>Amending provisions commencing on 3 November 2008</b></p>	<p>Amendments in relation to certification detailed in PS 06-010.</p> <p><b>Amendments to the <i>Environmental Planning and Assessment Act and Regulation</i> as follows:</b></p>	<p>The Associations welcome the opportunity provided by the Minister to discuss the range of proposals relating to building and subdivision certification and will continue to work with the Minister and the Department to resolve issues relating to building and subdivision certification.</p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
	<ul style="list-style-type: none"> <li>- Definition of accredited certifier</li> <li>- Notice of commencement of work</li> <li>- Changing the principal certifying authority</li> <li>- Form of certificates</li> <li>- Form of records of critical stage inspections</li> <li>- The fee for a building certificate</li> <li>- Action that may be taken against a council following investigation</li> </ul> <p><b>Amendments to <i>Building Professionals Act</i></b> Investigation of councils as certifying authorities.</p> <p>See Department of Planning website at <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a></p>	<p>The Associations support the strengthening of councils and the BPB’s powers of enforcement. However it is critical that councils can recover the costs associated with enforcement and are given indemnity against damages arising from taking action in good faith.</p>
<p><b>Accreditation of council officers</b></p>	<p>In November 2008 the Building Professionals Board placed on exhibition proposed changes to the <i>Building Professionals Regulation 2007</i> and the accreditation scheme made under the <i>Building Professionals Act 2005</i>.</p> <p>Among other things, the regulation and scheme amendments propose:</p> <ul style="list-style-type: none"> <li>• Categories of accreditation for council building surveyors.</li> <li>• The requirements for accreditation for these officers (qualifications and experience).</li> <li>• A process for the accreditation of council officers.</li> </ul> <p>See Building Professionals Board website at <a href="http://www.bpb.nsw.gov.au">www.bpb.nsw.gov.au</a></p>	<p>The Associations support a model of corporate accreditation of councils instead of individual accreditation of council officers. Councils/General Managers should be provided with corporate accreditation at no or substantially reduced cost if they can demonstrate adequate systems and processes are in place to provide certification services.</p> <p>Councils are a level of Government and staff are accountable through a wide range of political processes, administrative procedures and legislative provisions that do not apply to private certifiers or individual companies.</p>

## Local Government and Shires Associations of NSW

Issue	Implementation – action to date	LGSA Action and Policy Position
<p><b>Corporate accreditation</b></p>	<p>PS 08-011 Commencement of provisions on 3 November 2008 - accredited bodies corporate.</p> <p>Section 5 of the Building Professionals Act has been amended to enable a body corporate to apply for a certificate of accreditation.</p> <p>The Board may only accredit a body corporate as an accredited certifier if the body corporate has at least one director who is an accredited certifier and employs, or has as directors, at least two other people who are accredited certifiers.</p> <p>See Department of Planning website at <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a></p>	
<p><b>Plan Making</b></p>		
<p><b>‘Gateway’ model to stream LEPs and improve timeliness of plans</b></p> <p><b>Accelerated development protocols that will allow development outside areas identified and agreed in strategic plans.</b></p>	<p>Department of Planning is preparing draft regulations and guidelines for the new ‘gateway’ model.</p>	<p>The LGSA support the model of a gateway system and streaming of LEPs, improved timeliness of plans and a reduction in the number of plans and policies. Further consultation with Local Government is needed on the details of the gateway system, criteria to be addressed in justification reports and guidelines for LEPs and DCPS.</p> <p>LGSA are concerned with the accelerated development protocols that will allow development outside areas identified and agreed in strategic plans, as this process has the potential to undermine the principles of the Metropolitan Strategy and regional strategies.</p>