

PLANNING REFORM IMPLEMENTATION STATUS REPORT JULY 2009

Issue	Implementation – action to date	LGSA Action and Policy Position	Further information/ links
Overarching framework for reform program	The LGSA has raised with the Minister and the Department of Planning the need for an overarching framework for the reform program. While the various reform projects are being progressed, they are being implemented in an ad hoc and uncoordinated manner, without a clearly articulated sense of how the various reforms ‘fit together’ to deliver the ‘best planning system in Australia’. As examples, the Department recently notified councils of the details of JRPPs and changes to the plan making legislation on 2 July – 2 days after commencement. In addition, the Department will be making further changes and additions to the complying codes however the final scope and reach of the codes program is unknown.	The LGSA is promoting, and will continue to pursue with the Department and Minister, the need for an overarching policy framework for the reform program. The framework should address: <ul style="list-style-type: none"> • Clearly articulated objectives and targets – which can provide councils and stakeholders with a shared view of what the planning system (as a whole) will look like once all the reforms are in place. • Performance measures against which the planning system can be evaluated – at both a higher order level as well as measures at the project level. • A timetable for implementation of the reforms that recognises the relative impacts of the reforms on councils and other bodies responsible for ‘on-the-ground’ implementation. The timetable should provide adequate time for consultation, education and training (at council and community levels) and adjustment of IT and business systems. • A supporting communications strategy. • A monitoring and evaluation program linked to the targets and identified performance measures. 	
JRPPs	<ul style="list-style-type: none"> • Panels commenced 1 July in 5 regions. The western region to be commenced at a later date (not yet known). • The Code of Conduct and Operational Guidelines have been finalised by the Department. 	The LGSA are opposed to consent panels and had called on councils to delay/ defer nominating local members until the details of their operation had been finalised and issues resolved. The Code and Operational Guidelines were amended by the Department following feedback from the LGSA and	The Dept of Planning has set up a dedicated JRPP website at www.jrpp.nsw.gov.au which contains all relevant information.

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	<ul style="list-style-type: none"> • State members recently appointed. • Plan making powers given to JRPPs (see next item). 	<p>councils. A number of the LGSA’s concerns were addressed.</p> <p>The Presidents met with the Minister on 9 July and discussed the panels, particularly their efficacy and ongoing cost. The Minister agreed to an evaluation of the JRPPs after the first 6 months of operation. With respect to the ongoing cost of the panels, the Minister indicated that she would not transfer the costs of the panels (administration and State member expenses) to councils while she held the planning portfolio.</p> <p>Councils have been advised by letter of the latest developments.</p>	
<p>JRPP plan making powers</p>	<p>Joint regional planning panels have been prescribed as bodies that can be directed by the Minister to be a relevant planning authority for the purpose of preparing a LEP (Part 2, s9 of Regulation).</p> <p>Under the amended Act (s54), the Minister may direct that the Director General or any other person of body prescribed by regulation, is the relevant planning authority in the following cases:</p> <ul style="list-style-type: none"> • where the matter is of state or regional environmental planning significance, in the opinion of the Minister; • where the LEP is consequential on the approval of a Part 3A project; making of another EPI; or changes to a standard instrument under section 33A of the Act; • where a PAC or JRPP recommends to the Minister that a LEP be made; 	<p>The LGSA is concerned that:</p> <ul style="list-style-type: none"> • The Minister’s power to prescribe plan making powers to a JRPP are too expansive, discretionary, open to interpretation, and cannot be challenged by councils. The exercise of these powers lacks transparency • The model is contrary to the DAF Leading Practice Model that plan making powers should be retained by elected bodies. <p>The Presidents raised this issue with the Minister at their meeting on 9 July. The Minister has agreed to take a submission from the LGSA detailing our concerns, which are:</p> <ul style="list-style-type: none"> • The Ministers power to prescribe plan making powers to JRPPs be limited to exceptional circumstances and those circumstances be defined by regulation. • That councils be given the opportunity to request that the Minister justify the removal of councils plan making powers and that such powers be limited. • That where a JRPP has been given plan making powers the role of council needs to be clarified. 	<p>Department of Planning circular PS 09-015 - click Planning Circulars or visit www.planning.nsw.gov.au</p>

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	<ul style="list-style-type: none"> • where the council has failed to comply with its planning obligations or carried out its obligations in preparing a LEP in the Ministers opinion; and • where the land is not within a local government area. 	<ul style="list-style-type: none"> • The JRPPs right to enter into an agreement with a person to prepare a planning proposal needs to be clarified. 	
Part 3 Plan Making	<p>Changes to Part 3 of the Environmental Planning and Assessment Act and Regulation commenced on 1 July 2009. The new process for plan making includes a 'gateway' process which is designed to reduce the time taken to make LEPs and tailor the process to the scale of the planning changes.</p> <p>The gateway process has the following steps:</p> <ul style="list-style-type: none"> • Planning proposal — the relevant planning authority is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister, the Minister can appoint the Director-General or a joint regional planning panel to be the relevant planning authority. • Gateway — The Minister (or delegate) determines whether the planning proposal is to proceed. This Gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied. 	<p>The LGSA supports the concept of the gateway plan making process but will monitor its implementation to ensure that it operates to the benefit of councils and their communities.</p> <p>The changes to Part 3 were discussed at a meeting between the Minister and the Presidents on 9 July 2009:</p> <ul style="list-style-type: none"> • The Department is aiming to complete 33 comprehensive LEPs in 2009/10 and will be relying on the new process to meet this target. • The Director General is looking to establish a Reference Group of key stakeholders to review barriers to the making of LEPs. The LGSA advised it would like to have a representative on the Reference Group. • The Minister shortly will be advising councils of the new timetable for the completion of comprehensive LEPs. • The Department has provided information on its website about the new plan making process (guidelines and fact sheets) and a tracking system for monitoring the progress of LEPs. 	<p>See Department of Planning website under 'plan making' or click plan making</p>

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	<ul style="list-style-type: none"> • Community consultation — the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held. • Assessment – The relevant planning authority considers public submissions and the proposal is varied as necessary. Parliamentary Counsel then prepares a draft local environmental plan — the legal instrument. • Decision – With the Minister’s (or delegate’s) approval the plan becomes law and is published on the NSW legislation website. 		
<p>Changes to Part 4 Development Assessment</p>	<p>Part 4 amendments include:</p> <ul style="list-style-type: none"> • Removal of ‘stop the clock’ provisions where a DA is referred to an agency or the applicant is asked to provide extra information. • Deemed refusal times have been lengthened to 50, 70 and 90 days. • Revised requirements for DAs- including guidelines for SEEs. • Reduced opportunity to request more information from applicant. • Introduction of standard templates for development applications, SEEs and development assessment reports. <p>The Department is in the process of developing guidelines and standard templates to accompany the legislative amendments and these have been sent to Local Government and stakeholders for comment.</p>	<p>The LGSA has requested that the Minister and Department delay the commencement of Part 4 changes until councils have been given sufficient notice and advice and/or training. The amendments require considerable change to business processes and IT systems and will require additional staff training to understand the changes. .</p> <p>At a policy level the LGSA are concerned about the strict reduction in the time frame for councils to request extra information from the applicant – it is likely to be unworkable and result in more DAs being refused.</p>	

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<p>Codes SEPP</p>	<p><i>The NSW Housing Code</i> NSW Housing Code (Stage 1) commenced on 27 February 2009. It applies to new houses and alterations and additions to houses on sites 450m² and over. The code also contains provisions for exempt development for housing and commercial development. The development rules in the Housing Code cover 4 lot sizes. Where an application meets these rules the applicant can apply for a Complying Development Certificate either from a private certifier or from a council certifier and receive approval in 10 days.</p> <p>Minor changes to the NSW Housing Code are also due to commence in August/September. They do not change the policy framework but cover technical details such as definitions and interpretations.</p> <p><i>Commercial and Industrial Code</i> Amendments to the Codes SEPP to introduce the Commercial and Industrial Code (Stage 1) to be gazetted 5 August 2009 with a delayed commencement to 7 September. Workshops on the new code are being run by the Department commencing 5 August.</p> <p>Further changes to planning certificates will be required due to changes to the commercial code.</p>	<p><i>Action:</i> The LGSA have been represented on the Complying Expert Development Panel since its inception in early 2008 including two working groups: Housing Code and the Commercial/ Industrial Code. The LGSA have sought to limit the scope of the state wide codes and improve the flexibility of the code by allowing local exclusions and local variations.</p> <p>The LGSA have established the <i>Housing Code Monitor</i> - www.housingcodemonitor.lgsa.org.au - a web site that facilitates feedback and discussion amongst councils on the Code. A first report on councils' experiences with the Code was relayed to the Department of Planning, which has acknowledged the need for some changes. A survey to gain information from councils on the uptake of the Code has recently been sent to councils registered on the Monitor. Survey results will be available in mid-August.</p> <p>The LGSA have been asked to nominate a member to the <i>Local Exclusions and Variations Panel</i> that will advise on applications from councils on local exclusions and variations.</p> <p><i>Policy:</i> LGSA supports measures to widen exempt and complying provisions for appropriate development types. However, the LGSA oppose the mandating of state wide standard categories of complying development where they override local context, lower planning standards by overriding environmental, planning and heritage controls applicable to precincts and reduce the opportunities for local residents to have a say in the development process.</p>	<p>See Department of Planning website for information on housing code and commercial and industrial code. Click on following link: http://www.planning.nsw.gov.au/PlanningSystem/ImprovingthePlanningSystem/NSWHousingCode/tabid/102/Default.aspx</p> <p>Councils can join the discussion forum at the LGSA Housing Code Monitor at www.housingcodemonitor.lgsa.org.au</p>
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		<p>LGSA have had concerns with stage 1 of the NSW Housing Code but recognise that many changes have been included in the code in response to these concerns. LGSA have more concerns with the anticipated scope of stage 2 of the Housing Code.</p> <p>LGSA support in principle Stage 1 of the Commercial and Industrial Code- although some details need to be resolved. Broader concerns include:</p> <ul style="list-style-type: none"> • Need for review of the target of 50% of DAs to be determined under complying development provisions. Meeting the target is likely to produce significant and negative planning outcomes for local communities. • Stage 2 of the Housing Code needs to be limited in scope to protect communities from adverse planning outcomes and allow residents to be involved in the planning process. This is particularly the case for developments on small lots of land in established/ high density areas where a merit assessment of the application is preferable. • The overall policy framework for the development of the Codes SEPP needs to be articulated so that the application of the codes is reasonably applied. Councils need to be briefed on how the Codes SEPP will relate to local plans (DCPs) and Part 4 of the DA assessment process. 	
<p>Infrastructure contributions</p>	<p><i>Review of councils' applications to levy in excess of \$20,000 cap:</i></p> <ul style="list-style-type: none"> • First tranche announced 3 June. 10 councils given approval to levy over \$20,000. Lane Cove was directed to reduce levy. • Second tranche announced on 13 July. Five councils were directed to reduce their levies below the cap – Hunters Hill, North Sydney, 	<p>The LGSA believe that the review process affirmed the principle of development contributions and their importance for local councils and their communities. However the LGSA were disappointed in the decision to restrict six councils to the \$20,000 developer levy cap, and expressed serious concerns about the ability of those six councils to meet the infrastructure needs of their communities –</p>	<p>Minister's media release Local Contributions Review</p> <p>LGSA media release Minister must reconsider</p>

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	<p>Manly, Coffs Harbour and Tweed (except for Seaside City). 11 councils approved to levy over cap.</p> <p>Implementation of new Part 5B - Regulations, guidelines and manual under the new Part 5B – local infrastructure contributions – due out in August/September. LGSA has not seen any details as yet.</p>	<p>particularly in light of rate pegging legislation.</p> <p>Part 5B LGSA are waiting on the details of the new Part 5B regulations and guidelines and will be making representations to the Department to ensure Local Government has the opportunity to comment on the details of the new framework.</p>	<p>development contribution determinations</p>
<p>Changes to planning certificates</p>	<p>The Department has made and will be making a number of changes to s149 certificates. These changes are being made in an ad hoc and uncoordinated way. Changes include:</p> <ul style="list-style-type: none"> • Information for complying development on planning certificates was required when the NSW Housing Code commenced (27 February). • The format of information in planning certificates was required with the introduction of the plan making regulations (1 July). • Additional information required due to changes to contaminated land guidelines (15 July) • Further changes to planning certificates will be required when the Commercial and Industrial Complying Code is introduced in August/September. 	<p>LGSA concerns:</p> <ul style="list-style-type: none"> • Changes to planning certificates have been made with very limited or no formal notice to councils. • Changes to planning certificates are being made in an ad hoc and uncoordinated manner. • The changes lack a policy framework. • Every change involves administrative costs on councils including changes to business and IT systems and procedures. <p>LGSA concerns were conveyed in writing to the Department on 9 July 2009. Currently waiting on a response.</p>	
<p>\$200m Local Infrastructure Fund</p>	<p>A \$200 million Local Infrastructure Fund was announced in the NSW Budget.</p> <ul style="list-style-type: none"> • Fund is a one off program to provide interest free loans to councils to bring forward local infrastructure projects that are delayed due to a lack of funding. 	<p>The Associations have long called for the provision of low interest or interest free loans from the government to help councils fund essential infrastructure and have welcomed this initiative. The Associations will seek to have the program extended if it proves to be successful.</p>	

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	<ul style="list-style-type: none"> • The loan program is designed to leverage s94 funds and projects should already be identified in existing contributions plans. • The interest free loans may be used for roads, water, sewerage, drainage and other infrastructure that will bring forward development. Eligible projects must cost a minimum of \$1 million and priority will be given to ready to start projects in growth areas. • Projects must commence in the 2009/10 financial year and must be completed within 18 months of receiving funding. The loans repayment period is up to 10 years. Applications open 22 June 2009 and close 31 August 2009. • It is a NSW Treasury fund but will be administered by the Department of Planning. 	<p>Advice from the Director General is that the take up rate of the loan fund has been very slow.</p>	
<p>Accreditation of council certifiers</p>	<p>The Building Professionals Board placed a draft accreditation scheme for council certifiers on public exhibition in November 2008. The LGSA strongly opposed the proposed scheme as being unnecessarily complex; onerous and costly for councils to implement and administer; and providing few if any tangible benefits to the community.</p> <p>The BPB has responded constructively to feedback from Local Government and other stakeholders and has made significant revisions to the draft accreditation scheme. The revised scheme:</p> <ul style="list-style-type: none"> • Places council staff and private certifiers under the same accreditation process. • Avoids significant costs and time constraints 	<p>The Presidents of the LGSA met with the President of the BPB, Sue Holliday, and the Executive Director, Neil Cocks on 2 July.</p> <p>The BPB outlined the revised accreditation scheme which, it was acknowledged, was a significant improvement on the exhibited draft scheme of 2008. Some questions remain in relation to the timing of its implementation, costs and liabilities associated with the revised scheme and training requirements.</p> <p>The BPB has asked for comments from the LGSA; a submission is now being finalised.</p>	

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	<p>associated with the previous draft scheme.</p> <ul style="list-style-type: none">• Allows staff to transfer accreditation between councils.• Ensures all relevant qualifications and experience are recognised.		
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