



Our ref: R04/0066.jb Out-15652
10 January 2008

The Hon Frank Sartor MP
Minister for Planning
Level 34, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2001

Dear Mr Sartor

Discussion Paper: Improving the NSW Planning System

Thank you for the opportunity to provide comments on the planning reforms discussion paper that was released on 27 November 2007.

The Associations would like to submit an early response to the proposals in the discussion paper. We may make a further submission before the deadline of 8 February 2008, depending on member feedback and current discussions between State and Local Government and key stakeholders in relation to building and subdivision certification.

General comments

The Associations are supportive of the intent of the reform process and particularly the stated aims of making the planning system in NSW 'more efficient and accountable and easier for families and small business to navigate.' The Associations support a reduction in the 'red tape' that surrounds the current planning system, and particularly the development assessment and approval process. We are also supportive of reforms that will improve transparency and lead to greater accountability for planning and development decisions.

However, the Associations believe that, taken together, the package of proposed reforms will not reduce 'red tape' but rather increase the amount of regulation and regulatory bodies. This not only adds to the complexity of the planning process but is also costly for councils and confusing for applicants. The discussion paper proposes the establishment of joint regional planning panels (JRPPs), planning arbitrators and independent hearing and assessment panels (IHAPs) covering all Local Government areas. Councils' role in determining development applications is to be reduced through the use of JRPPs and the extension of exempt and complying development provisions. However this perceived reduction in 'red tape' is offset by the need for additional regulatory provisions to address problems associated with the private certification model. In addition, the introduction of mandatory state-wide codes for exempt and complying development has the potential to reduce legitimate public participation in development decisions, negatively impact on the amenity of residents and alter the character of local neighbourhoods, particularly in inner city and metropolitan areas.

The Associations believe that there is a consensus amongst State and Local Government, industry stakeholders, environmental groups and the community that the planning system in NSW needs major review and reform to bring it into the 21st century. As noted in the introduction to the discussion paper, the current legislation is characterised by its complexity, multi-layering of plans and consent bodies and lack of integration with other planning related legislation. The proposed reforms do not address many of the key problems with the existing legislation. The Associations believe that there is a strong argument and broad consensus for a more thorough and wide ranging review of the *Environmental Planning and Assessment Act*. Such a review could:

- incorporate the principles and practices of ecologically sustainable development as it relates to land use and management, resource management and urban and building design;
- reflect advances in technology in the area of planning and development;
- provide for the simplification and integration of approval processes under Parts 3A, 4 and 5 of the Act; and
- provide for the integration of the *Environmental Planning and Assessment Act* with approval processes and regulations under other legislation.

In addition, the proposed planning reforms are almost singularly focused on regulatory changes rather than strengthening the capacity of Local Government and other agencies to better carry out their planning and development roles. The Associations would welcome and support a greater focus on sharing knowledge and information through the development of best practice planning codes and guidelines, improvements to business processes and opportunities to strengthen the financial and resource base of Local Government in NSW.

Detailed response to reform proposals

The Associations' response to the reform proposals is provided in the attached table. Generally, the Associations support the:

- Gateway model for LEPs and rationalisation of planning instruments.
- Establishment of an independent commission to determine Part 3A developments.
- Measures to improve the efficiency and effectiveness of the development assessment process, however not those that will reduce local decision making and legitimate public participation.
- Proposals in relation to private certifiers that aim to strengthen enforcement measures and reduce conflicts of interest and client capture. However the Associations have real concerns about whether the proposed reforms will adequately address existing problems with building and subdivision certification.
- Improved coordination, standardisation and resourcing of land based information systems at the state level, and the extension of e-planning initiatives in Local Government with appropriate resources and support.

The Associations have specific concerns with:

- The proposed establishment of joint regional planning panels and extension of exempt and complying development provisions which, together, will significantly reduce the role of councils in the planning and development process and limit legitimate public participation in development decisions.
- The impact on the amenity and character of local neighbourhoods of the proposed state wide mandatory codes for exempt and complying development.
- The extension of the role of private certifiers given existing problems with the current model of certification and questions surrounding the cost and practicality of some of the proposed measures in the discussion paper.
- The significant cost and staffing implications for councils of many of the recommendations, with little consideration of how these costs can be recovered or resources matched to the requirements of the legislation.
- The arbitrary nature of the targets set in the discussion paper and a lack of analysis of the impacts of the actions and resources required to achieve those targets.

Time frame for submissions

The timing of the release of the paper, just prior to Christmas, and the short time frame provided for comment, have limited our ability to fully analyse the impacts and implications of all the recommendations and to gain feedback from our member councils. The Associations are aware that it is your intention to table a draft Bill for comment; however we would strongly support additional time to enable further development of the current recommendations and proper consideration of any additional proposals arising from public submissions.

Due to the short time frames, the Associations recommend that the planning reform process be split into two stages:

Stage 1 – target implementation date of 1 July 2008 for reform proposals that:

- are supported by Local Government and key stakeholders;

- do not require further analysis or development and can be readily implemented;
- do not have adverse resourcing implications for councils; and
- do not have significant negative economic, social or environmental impacts on communities.

Stage 2 – target implementation date of 1 January 2009 for reform proposals that:


- are supported by Local Government and key stakeholders;
- require further analysis, development, debate or review;
- have resourcing implications for councils that need to be addressed; and
- may have economic, social or environmental impacts on communities that need to be addressed.

The staging of the reform process is likely to result in much better outcomes but with minimal delay in terms of progressing identified and agreed areas of planning reform. Such an approach will enable the Department, in consultation with Local Government and stakeholders, to refine those proposals that are currently lacking in detail or require further analysis to better understand their implications and impacts.

It also will provide time for consultation and debate on submissions received in response to the Discussion Paper.

Thank you for the opportunity to comment on the planning reforms proposed in the discussion paper. The Associations trust that you will consider the comments contained in our submission and we look forward to further discussions with you and your Department on this important initiative.

Yours sincerely



Cr Genia McCaffery
President
Local Government Association of NSW



Cr Bruce Miller
President
Shires Association of NSW

DISCUSSION PAPER ON PLANNING REFORMS

| Rec | Issue | Associations' Response |
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| P1-P10 | Plan making | <p>The Associations:</p> <ul style="list-style-type: none"> • 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. The details of the operation of the gateway system and the criteria need further development in consultation with Local Government. • 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. • Strongly support the rationalisation of planning instruments. • Are concerned that councils will not have an opportunity to review the LEP following legal drafting to correct any anomalies or errors. <p>The Associations recommend:</p> <ul style="list-style-type: none"> • An additional step in the plan making model to enable councils to review their LEPs following legal drafting and prior to approval. • Incorporating SEPP and REP provisions into LEPs to rationalise the layers of plans and consolidate planning provisions. Ideally one Environmental Planning Instrument (i.e. the LEP) should apply to each LGA and contain all local, regional and state planning policies. This model would be facilitated by e-planning initiatives. • Further consultation with Local Government on the details of the gateway system, criteria to be addressed in justification reports and guidelines for LEPs and DCPs. |
| A1-A4 | <p>Planning Assessment Commission (PAC) – to determine applications of State significance.</p> <p>Minister – to remain as determining authority for critical infrastructure projects and projects of 'critical significance' (not defined).</p> | <p>The Associations support the establishment of a Planning Assessment Commission (PAC) to determine the majority of applications under Part 3A of the Environmental Planning and Assessment Act. This proposal is in line with the Associations' policy and has the potential to significantly reduce the potential for and perception of undue influence and corruption in the Part 3A development process.</p> <p>To further improve the Part 3A process, the Associations also recommends that:</p> <ul style="list-style-type: none"> • a separately resourced secretariat be established to support the PAC to enhance the quality and consistency of project assessment. • The PAC publishes criteria and provides reasonable justification for declaring a development or site to be a project to which Part 3A applies. ▪ Local Government be consulted and given the opportunity to make submissions prior to the declaration of |

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| | | <ul style="list-style-type: none"> ▪ a development or site under Part 3A. ▪ The development of clear criteria by the PAC for the declaration of projects as 'critical infrastructure' or 'of critical significance' with the Minister required to publish reasons for any such declaration. ▪ Development of an MOU between the PAC and Local Government to improve working arrangements on Part 3A projects between the levels of Government. ▪ Development of mandatory processes for environmental assessment, community consultation and the concept plan approval process to improve the transparency of the assessment and determination of projects under Part 3A. |
| A5 | <p>Joint Regional Planning Panels (JRPPs) will determine:</p> <ul style="list-style-type: none"> - Regionally significant developments or large local council planning control – likely to comprise developments >\$50m in value and all Crown developments. - JRPPs to be made up of three State appointed members and two council appointees. - JRPPs to be resourced by the host council; or PAC if council does not have capability to undertake assessment. | <p>The Associations strongly oppose the establishment of Joint Regional Planning Panels (JRPP).</p> <p>These panels will:</p> <ul style="list-style-type: none"> • Undermine local decision making and local accountability (to who are the JRPPs accountable?). • Add another layer of bureaucracy and complexity to the DA process. • Potentially reduce legitimate community participation in the development process. • 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. • Provide no identifiable benefits to developers or the community. The Minister has indicated that only 31 applications in 2005/06 would have been considered 'regional' developments under the proposed definition. This does not warrant the creation of a separate assessment and determination system. <p>The Associations recommend that:</p> <ul style="list-style-type: none"> • 'Regional developments' be defined based on their impact and significance to a region rather than \$ value. • 'Regional developments' should then be considered by either the PAC or councils depending on their significance. • Crown applications not be automatically considered as 'regional development' but should be considered as local or regional depending on their impacts and significance (as above). • The Minister and councils be given the option of referring defined 'regional developments' to the PAC for assessment and determination under the same rules as would apply to local development. • The Major Projects SEPP be reviewed and developments of 'local environmental planning significance' be defined and excluded from Part 3A assessment. These developments should be returned to councils for determination. This would free up resources in the Department/PAC and ensure that local developments are dealt with at the appropriate (Local Government) level. |

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| A7 | <p>Planning arbitrators</p> <ul style="list-style-type: none"> - To deal with s82A reviews and deemed refusals for developments < \$1m. - Appointed by council from register accredited by PAC or State. | <p>The concept of a low cost, non-legal avenue for s82A reviews and deemed refusals for low cost developments may have some merit. However the Associations have a number of concerns about the system that is proposed including:</p> <ul style="list-style-type: none"> • duplication of services given existing mediation services provided by the Land and Environment Court (see Rec M5); • potential costs to councils and applicants; • availability and quality of planning arbitrators; • access of planning arbitrators to relevant administrative, legal and educational support; and • consistency in decision making. <p>The Associations recommend that this proposal be subject to further review.</p> |
| A8 | <p>IHAPS</p> <ul style="list-style-type: none"> - Councils can be directed to establish IHAPs to deal with certain developments e.g. major SEPP 1 variations. - IHAPs would be advisory. - Role of IHAPs, design review panels and independent advisory panels should be rationalised to remove duplication and ensure consistent and timely advice. | <p>The discussion paper does not provide any clear reasons for making IHAPs compulsory for certain developments nor does it provide any evidence of problems with the current system of advisory panels tailored to suit local planning needs.</p> <p>In June 2007 the Associations undertook a survey on the use of planning panels by councils. The survey showed that advisory panels, tailored to local planning needs, can be a useful option for council to assist in their DA process. However often the costs (resources and time taken) of using a panel far outweighs its benefits. Given the survey findings, and the lack of justification for the recommendations contained in the discussion paper, the Associations cannot support the recommendations with respect to the use of IHAPs.</p> <p>The Associations recommend that:</p> <ul style="list-style-type: none"> • The current model of DA decision making, which ensures that elected councillors are accountable to their communities for development decisions in their local area, should remain. • Advisory panels, with independent experts and tailored to suit local requirements, remain as an option (not compulsory) to assist councils in the assessment of development applications. • The Department develop 'best practice' guidelines for the establishment and operation of advisory planning panels, which can be used by councils wanting to establish a panel model as part of their DA process. |

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| A9-A17 | <p>Development Assessment and Review</p> | <p>The Associations:</p> <ul style="list-style-type: none"> • Support measures to improve the efficiency of the DA process but not at the expense of local decision making and legitimate public participation. Establishing different consent models for various types and/or \$ value development is not the answer to improving efficiency in the DA process. See further comments in relation to exempt and complying developments. • Support differentiated benchmarks for the time taken to determine DAs according to complexity, although definitions of different 'scales' of development need further work, and the practicality of the time frames is questioned. Meeting time frames will depend on the quality of applications received, compliance with existing zones and codes and availability of skilled planning staff. • Support review of information requirements and review of State agency referrals. The option of pre-certification of applications and best practices in relation to the fast tracking of DAs should be investigated as a means of speeding up the development process and overcoming problems associated with poor quality and incomplete DAs. • Support review of DA fee regime and matching fees to service. • Support a model set of conditions of consent however councils must be able to apply conditions to suit the development context. <p>The Associations recommend:</p> <ul style="list-style-type: none"> • Reviews of state agency referrals, information requirements and DA fee regime be progressed as a matter of priority. • State referral agencies be required to report publicly, and to the same standards as local councils, on DA processing times. • Further consultation with Local Government on mandatory codes or guidelines for information requirements, conditions of consent for DAs, consultation and notifications. Recognised best practice guidelines and codes currently in use by councils should inform these reform proposals. • The proposal to require a Statement of Environmental Effects for all development applications (Rec M7) should be reconsidered in light of the review of information requirements. |
| C1-C18 | <p>Exempt and complying development</p> | <ul style="list-style-type: none"> • The Associations support measures to widen exempt and complying provisions for appropriate development types. Development that can be assessed according to prescribed codes should meet the following criteria: <ul style="list-style-type: none"> ○ Exempt – has low impact beyond the site, is simple for applicants to identify, has quantifiable parameters that need to be met and does not affect the achievement of any policy objective. ○ Complying – can be assessed against clearly articulated quantitative criteria or performance standards, little judgement is required as to whether the criteria are met and there would be no need for public notification. |

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| | | <p>Consent is only available to applications which comply with preset criteria.</p> <p>Development that may meet the above criteria includes: residential dwellings in greenfield sites, commercial fit-outs, certain light industrial. Developing a state wide code to apply to residential developments in areas as diverse as Bourke, Blacktown and Bondi will be both challenging and, for inner city areas, likely to result in negative impacts on resident amenity and urban character and to cause neighbour conflicts.</p> <ul style="list-style-type: none"> • The Associations do not support mandatory 'one size fits all' state wide codes. Codes should be developed for councils to use and adapt to their local circumstances. • Codes should be informed by best practice DCPs in use by councils and trialled prior to implementation. • The Associations support the establishment of the Complying Development Expert Panel (CDEP) with strong Local Government representation. • The Associations support the extension of appropriate complying development codes to environmentally sensitive lands however this measure must be supported by improvements in state-wide mapping. • The Associations do not support the proposals for managing minor variations in complying development, and particularly the requirement on councils to respond within 7 days. This will have cost and resourcing implications for councils. Using the above criteria for determining appropriate exempt and complying developments, there should be no need for complying development to be notified and variations to complying development standards should not be permitted. • Instead of pursuing unrealistic targets for CDCs, the legislation should be amended to provide a 'fast track' process for small scale and low impact DAs that require merit assessment, similar to the previous building application process under the Local Government Act. <p>The Associations recommend that:</p> <ul style="list-style-type: none"> • The proposal for mandatory state wide codes be dropped in favour of best practice guidelines on exempt and complying development. Such developments to meet the criteria noted above. • A CDEP, with strong Local Government representation, be established to develop these guidelines. • Exempt and complying development guidelines be based on best practice codes currently in use by councils and be limited to low impact developments that do not require merit assessment or notification. • Variations to pre set standards for complying development should not be permitted. • Exempt and complying development codes should be trialled prior to implementation. • A fast track assessment process be developed to enable councils to process building applications that are low impact and small scale but require merit assessment. |

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| B1-B17 | <p>Building and Subdivision Certification</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. The following comments are provided in response to current proposals contained in the Discussion Paper.</p> <p>Private certifiers and conflicts of interest - the Associations support proposals to reduce conflicts of interest and client capture. However the proposal to limit the number of CDCs that can be issued to one client may be considered anti-competitive and would be costly and difficult to ensure compliance.</p> <p>Accreditation of councils – the Associations support the model of corporate accreditation of councils. 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. 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> <p>Individual accreditation of council officers (to A3 level) is not supported given:</p> <ul style="list-style-type: none"> • The lack of recognition of council staff that have the requisite experience but not formal qualifications required for higher levels of accreditation. • Limited services that can be provided by A3 accredited officers – this is particularly problematic for rural councils where officers at A3 are restricted to Class 1 & 10 buildings and will not be able to certify relatively simple applications e.g. a commercial fit-out. • The mandatory requirement on all councils to provide certification services – councils will be required to employ consultants but cannot recoup these costs under the current fee structure. In addition, many of the jobs that councils will be required to pick up as ‘last resort’ PCAs are often costly and require significant staff resources. • Management and retention of council staff given their dual roles of regulation and certification – many council officers may not be able to maintain accreditation requirements if they are working in a regulatory role for 12 months or more. • The likely loss of council staff to the private sector once council has paid for their accreditation. <p>Role of the Building Professionals Board - the costs associated with accreditation and ongoing professional development are of concern to Local Government. In Queensland, the equivalent body to the BPB provides a ‘licence to operate’ to individuals who are separately and nationally accredited by the relevant professional associations e.g. AIBS, Institute of Engineers etc. This reduces duplication and costs as the professional associations already provide national accreditation schemes and require and provide professional training as part of their</p> |

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| | | <p>accreditation requirements. Such a model would complement the efforts of COAG to 'harmonise' planning and building regulations across Australia and would also allow the BPB to focus efforts and resources on their auditing, monitoring and enforcement roles.</p> <p>Private certification of subdivisions – the Associations would not support extension of the role of private certifiers until such time as existing problems with the model of private certification are resolved.</p> <p>Split accountabilities for building work – it is noted that the Campbell Inquiry in 2002 recommended that the regulation of all persons responsible for building work – from tradespersons to certified specialists – be under the one regulatory body. Currently there is split responsibility between the Office of Fair Trading and the BPB. This split responsibility, added to the system of private certification, makes it difficult for consumers, and particularly 'mum and dad' home builders and renovators, to understand who is responsible for what when things go wrong. A longer term objective should be to amalgamate those bodies responsible for regulating building work in NSW.</p> <p>Responsibilities and Sanctions – 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>Standard Documentation - the proposal for model contract documentation should be extended to include standard checklists and forms and these should be prescribed under the <i>Environmental Planning and Assessment Regulation</i>. Work undertaken as part of the 'SmartForms' projects (RRIF) could be used and built on by the BPB to work with key stakeholders to develop a standard set of forms for use by accredited certifiers.</p> <p>Complaints procedures – the Associations believe that the BPB should develop alternative dispute resolution and complaints management processes which can address community concerns quickly and effectively.</p> <p>Costs and resources - many of the recommendations have significant cost and resourcing implications for local councils. These additional costs need to be recognised and quantified and measures put in place to ensure that costs can be recovered in an equitable and efficient way. In many cases, it has been the general community – through DA fees, rates and charges – that has borne the costs associated with fixing up the errors and omissions of private certifiers.</p> <p>The Associations recommend that:</p> <ul style="list-style-type: none"> • A review of fees under the <i>Environmental Planning and Assessment Regulation</i> be undertaken to ensure that councils can recover the true costs associated with processing DAs and issuing building and |

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| | | <ul style="list-style-type: none"> • subdivision certificates. • The Department investigate the option of replacing the current system of accreditation by the BPB with a system based on licensing certifiers properly accredited through the professional bodies. • Councils be given the power to issue compliance cost notices (similar to those under the <i>Protection of the Environment Operations Act</i>) to recover the costs associated with enforcement actions against accredited certifiers. This will ensure that those responsible for poor quality work bear the costs associated with fixing it up, rather than councils or the BPB. • In line with the Campbell Inquiry report, the State Government investigate bringing together the roles and functions of the BPB and the Office of Fair Trading to provide a 'one stop shop' for regulating building work. • Councils' powers of enforcement be supported by legislative provisions that limit liability in cases where the council has acted 'in good faith'. • Appeals be allowed to the Land and Environment Court for stop work notices. If not appealed the notice becomes an order of the Land and Environment Court and becomes contempt of court if breaches occur, with relevant penalties. • Legislation be amended to enable consents and certificates to be voided where the applicant has provided false or misleading information on which the consent authority or certifier has relied. This provision should be supported by legislation to provide for two types of building certificates: one for conveying purposes and one to regularise unauthorised building work. The fee for the latter should be set at the same level as a DA (i.e. % of development costs). • It should be mandatory to obtain a final Occupation Certificate and an Interim Occupation Certificate should be subject to limited to specific time before a final OC is required (i.e. 12 months). If not complied with, the Certifier could issue relevant Notice of Intention and if appropriate the Council could issue relevant Orders and/or commence proceedings for the offence. • Councils be given the option of 'opting out' of providing certification services if they are unable, due to staff shortages or financial constraints, to provide such services. |
| E1-E9 | e-Planning | <ul style="list-style-type: none"> • The Associations support the improved coordination, standardisation and resourcing of land based information systems at the state level. • The targets for e-planning are arbitrary and should not be set until the implementation plan has been developed and properly costed. The State Government needs to ensure that adequate funding is made available to support e-planning initiatives across the Local Government sector. • Achieving improvements in the take up rate of e-planning initiatives will be highly dependent on resources (particularly funding) being made available to Local Government as well as the business priorities of individual |

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| | | <p>councils.</p> <p>The Associations recommend that:</p> <ul style="list-style-type: none"> • An implementation strategy be developed by the Department of Planning in close consultation with Local Government practitioners. • The strategy include a detailed analysis of likely costs and benefits to Local Government. • Targets for the implementation of e-planning initiatives such as DA tracking, on line certificates etc should be realistic and recognise the resources and business priorities of individual councils. |
| <p>PA1to PA3</p> | <p>Resolving Paper Subdivisions</p> | <p>Associations' comment:</p> <ul style="list-style-type: none"> • PA 1 – urban and non-urban paper subdivisions may need to be treated independently due to the Growth Centres criteria applying to urban paper subdivisions. Paper subdivisions are a small part of the planning scheme of NSW. It would seem that there will be winners and losers under any such scheme. Figure 9 on page 120 shows 5 lots becoming 3 lots with no clear indication of how the owners of the 2 lots that have been subsumed will be compensated. • PA 2 – legislation is proposed to deal with circumstances where unanimous agreement between landholders cannot be achieved. The costs to implement and administer the land trading scheme could be problematic. This scheme may not be practical where a lot owner has only 1 or 2 lots and may need to have other mechanism provided to assist these people. What are the alternatives for a precinct that does not comply with the preconditions to be declared a suitable area for the land trading model? • PA3 – to protect the interests of owners, a precondition of such a scheme to be declared could include a requirement that it be supported by at least 60% of the landholders, owning at least 60% of land holdings by area. This proposal could generate a legal minefield where 60% of subdivision owners agree to enter a scheme of arrangement and 40% are opposed to such a scheme. This could leave a large number of disaffected landholders. The rights and obligations of land holders will need to be clearly defined in any proposed legislated land trading scheme. <p>The Associations recommend that these proposals be further considered and developed prior to implementation.</p> |

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| MISCELLANEOUS REFORMS | | |
| M1 | Lapsing of development consents | The Associations support the intent of this proposal. |
| M2 | Share of Council rates to public authorities | <ul style="list-style-type: none"> • The Associations believe that it is inappropriate for this issue to be raised in the discussion paper as the proposal relates to intergovernmental financial relationships and not the planning system. In addition, the proposal is flawed in that it fails to comprehend the nature and purpose of council rates. Rates are a form of taxation, the only taxation instrument available to Local Government. They are not a fee for service. They are similar to land taxes and like other State and Commonwealth taxes, they do not entitle the individual taxpayer to a specific range of goods and services. • The reference made to garbage services is incorrect. Domestic and trade waste/garbage services are not covered by council rates but are financed by separate and specific waste charges. Trade waste services as used by businesses are generally competitive and businesses may opt to engage services directly from private providers rather than use and pay for the trade waste service provided by councils. • Non-commercial properties on lands held by the Sydney Harbour Foreshores Authority (SHFA) and the Sydney Olympic Park Authority (SOPA) are not subject to rates. • The question of the payment of rates by State Owned businesses has previously been reviewed at length by the former Reciprocal Charging Committee (RCC) convened by NSW Treasury to develop policies and principles relating for achieving competitive neutrality under National Competition Policy (NCP). The RCC provided its final report to Cabinet in December 2001. The report concluded that all land held by State Government businesses for commercial purposes should be fully rateable. This included bodies such as SHFA. A relevant extract from the report is appended (Attachment A) to this submission. |
| M5 | Compulsory mediation | This proposal should be considered as part of the recommended review of appeal mechanisms instead of planning arbitrators (see Rec A7). |
| M7 | Mandatory requirement for submission of Statement of Environmental Effects | This proposal should be reconsidered in light of the proposed review of information requirements for DAs (Rec A9) |

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| M9 | <p>Planning panels</p> | <p>The Associations strongly oppose the further extension of the Minister's already unfettered powers to intervene in councils' planning role. These proposals would enable the Minister to:</p> <ul style="list-style-type: none"> • Appoint a planning panel to prepare or amend development control plans or contributions plans; and • Appoint a panel to exercise councils' planning functions if the Minister forms the opinions that council has not met just one of the heads of consideration under s118. <p>The Associations recommend that Ministerial intervention under s118 be permitted only if:</p> <ul style="list-style-type: none"> • Council is the subject of adverse findings in relation to the exercise of all or part of its planning and development functions by the Ombudsman, the Department of Local Government or an independent panel constituted under the Environmental Planning and Assessment Act; and • Council has, without justifiable cause, over a two year period, consistently exceeded key performance benchmarks in the exercise of its planning and development functions. |

Reciprocal Charging Committee

5.2 PAYMENT OF COUNCIL RATES

There is an argument for State Government businesses to pay Council rates simply from the perspective that the private sector businesses with which they compete are required to pay rates on all land. Government businesses should also be required to earn a commercial return on their assets to recover the opportunity cost of capital investments. The Commercial Policy Framework was developed in recognition that NSW Government businesses, like their private sector counterparts, should be exposed to the disciplines of the market.

As indicated in section 3.3, Government businesses lose their exemption from Council rates when they become corporatised. The complete implementation of competitive neutrality policy would require that Council rates be imposed on all Government businesses to remove any competitive advantage attributable to these exemptions.

In principle, there is no reason for a State Government business to be exempted from Council rates when they operate in potentially competitive markets and are subject to the financial requirements of the Commercial Policy Framework. To ensure consistent application of the policy framework, Government businesses should pay full Council rates on all landholdings currently (or potentially) used for commercial business purposes.

Policy Principle 1b:

State Government businesses to commence payment of full Council rates and charges on all commercial (or potentially commercial) landholdings from the scheduled commencement of the reciprocal charging policy.

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The Working Group therefore considered that protection or exemption from Council rates should only be retained by 'non-commercial' or 'non-business' activities. For the purposes of this Review, the coverage of charging policy will include all land held for commercial, or potentially commercial, purposes by Government businesses.

To give effect to this policy, the principle has been established that all land owned by a Government business is deemed to be held for commercial purposes and therefore fully rateable under the charging policy, including all public recreation areas (see Box 1). This principle excludes land that is held for 'non-commercial' or 'non-business' purposes by virtue of the Government's social policy objectives.

The Working Group recognises that there is a much broader issue at stake, whether ownership of 'non-commercial' land should be retained by Government businesses.

Policy Principle 2a:

All land owned by a State Government business is deemed to be held for a commercial purpose and therefore fully rateable under the reciprocal charging policy. This principle excludes land that is held for 'non-commercial' purposes by virtue of the Government's social policy objectives.

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