The NSW Government commenced a review of the Environmental Planning and Assessment Act (1979) and the broader planning system in July 2011. Wollongong City Council provided initial input to the review in October 2011 and to the Issues paper in March 2012.

The State Government is now seeking feedback on the “A new planning system for NSW – Green Paper”.

This report presents the draft submission for Council endorsement.

**Recommendation**

The draft submission on the “A new planning system for NSW – Green Paper” (Attachment 1) be endorsed for finalisation by the General Manager and submitted to the NSW Government.

**Attachments**

Draft submission on the “A new planning system for NSW – Green Paper”

**Report Authorisations**

Report of: Renee Campbell, Manager Environmental Strategy & Planning and Mark Riordan, Manager Development Assessment & Certification  
Authorised by: Andrew Carfield, Director Planning & Environment - Future City & Neighbourhoods

**Background**

The Environmental Planning and Assessment Act came into force in 1979. The provisions of the Act are supplemented by the Environmental Planning and Assessment Regulations 2000. The legislation controls:

- The preparation of State Environmental Planning Policies by the NSW Department of Planning and Infrastructure;
- The preparation of Local Environmental Plans, Development Control Plans and Development Contributions Plans by Councils;
- The assessment of Development Applications and Major Project Applications;
- Regulation and enforcement of development issues; and
- Administrative functions.
In July 2011, the State Government announced the commencement of replacement legislation and appointed Tim Moore and Ron Dwyer, Joint Chairs of an Independent Panel, to lead the review. The review has followed the following timetable, Council’s responses are also noted in blue italics:

<table>
<thead>
<tr>
<th>DATE</th>
<th>MILESTONE</th>
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<tbody>
<tr>
<td>29 September to 2 November 2011</td>
<td>State wide listening tour</td>
</tr>
<tr>
<td>4 October 2011</td>
<td>The co-chairs held two (2) meetings in Wollongong as part of their State wide “listening tour”</td>
</tr>
<tr>
<td>31 October 2011</td>
<td><em>Council endorsed a written submission as input to the listening and scoping stage of the review</em></td>
</tr>
<tr>
<td>4 November 2011</td>
<td>Closing date for written submissions</td>
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<tr>
<td>December 2011</td>
<td>Issues Paper released which posed over 200 questions</td>
</tr>
<tr>
<td>27 February 2012</td>
<td><em>Council endorsed a written submission on the Issues Paper</em></td>
</tr>
<tr>
<td>2 March 2012 (extended from 17 February 2012)</td>
<td>Closing date for submissions on the Issues Paper</td>
</tr>
<tr>
<td>July 2012</td>
<td>Green Paper published (which sets out the Government’s preferred structure for the new Planning System). The Joint chairs reports and “A Review of International Best Practice in Planning Law” by Leslie Stein were also published.</td>
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**DATE** | **MILESTONE**
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23 July 2012 | *Council resolved to seek an extension in the submission deadline to 31 October 2012.* The Government subsequently agreed to an extension for Councils to 5 October 2012.
7 August 2012 | The Department held two (2) meetings in Wollongong as part of their consultation on the Green Paper
17 September 2012 | *Councillor briefing on the Green Paper*
5 October 2012 | Closing date for submissions from Councils
November 2012 (proposed) | Publish White Paper and draft Exposure Bill for consideration by the NSW Parliament (draft Act / law). It is indicated that community consultation will occur.

**Proposal**

The Green Paper acknowledges that the NSW Planning system is dated, overly complex and cumbersome, contradictory and needs replacement. The Green Paper proposes 21 reforms under the broad headings of:

- Community participation;
- Strategic focus;
- Streamlined approvals;
- Provision of infrastructure; and
- Delivery culture.

The attached submission addresses each of the proposed reforms and includes recommendations for Council’s consideration.

Many of the proposed reforms are logical and are supported. However, the Green Paper lacks detail on how the reforms will be implemented. There is a risk in supporting an “idea” without the detail, as the Government could use the support to justify the detail in the White Paper. Some of the proposed reforms could be implemented now, and do not need to wait for legislative change.

The Green Paper is development focused and the proposed reforms largely relate to processes and timeframes, not the quality of development outcomes.

The Green Paper is also silent on issues such as the relationship with other State legislation, existing use rights, enforcement and transitional arrangements.
Consultation

The draft submission has been prepared with input from Corporate Strategy, Economic Development, Environmental Strategy & Planning, Development Assessment & Certification and Regulation & Enforcement.

Conclusion

The NSW Planning System provides the framework for Council in undertaking core responsibilities in relation to planning and development. The current Planning System is over 30 years old and has become increasingly complex.

Council has made both verbal and written submissions as input to the listening and scoping, and the Issues Paper stages of the Planning System Review being undertaken by the NSW Government. Responding to the Green Paper prepared by the NSW Government is an important way in which Council can express its views on a new Planning System.
Submission by
Wollongong City Council
to NSW Department of
Planning & Infrastructure

A New Planning System for NSW
- Green Paper
(September 2012)
Wollongong City Council welcomes the opportunity to provide feedback on the NSW Government’s Green Paper which outlines “A New Planning System for NSW.”

It is widely acknowledged that a comprehensive review of the NSW planning system is needed to improve the quality and efficiency of planning decisions and restore public and investor confidence across the state.

The Green Paper sets out the broad aims for the new planning system which will be expanded in the future White Paper and Exposure Bill which will include specific proposals for change of the Environmental Planning and Assessment Act, as well as any supporting mechanisms, processes or governance structures.

Wollongong City Council supports the broad direction of the reforms outlined in the Green Paper. However, it must be acknowledged that translating the ideas and principles of the Green Paper into effective legislative and operational changes remains a significant task for the government, state agencies, councils and other key stakeholders.

In this regard, Council urges the Government to take due care and diligence in expanding and further developing the proposed reforms into the White Paper and Exposure Bill. The opportunity to ‘get it right’ should not be undermined by the desire to meet overly ambitious deadlines.

Local Government must be a key partner in this process.

Specific comments on the proposals outlined in the Green Paper are provided below.

COMMUNITY & STAKEHOLDER ENGAGEMENTS

Change 1 - A Public Participation Charter

The Green Paper proposes the introduction of a Public Participation Charter. The Public Participation Charter is proposed to set standards of community participation depending on the planning issue under consideration (eg Local Land Use Plans or Development Applications).

The Green Paper indicates that the Charter will:

- provide a framework that benchmarks minimum requirements, and encourages best practice and innovation;
- require information to be provided in plain English;
- meet standards of consultation that are underpinned in law; and
- engage in a richer dialogue with the community.
The introduction of a Public Participation Charter is supported, however the Green Paper provides little detail. Based on other sections of the Green Paper, it is anticipated that councils will be required to consult extensively on planning strategies and Local Land Use Plans and there will be minimal community consultation on Development Applications.

Upfront consultation on strategies and Local Land Use Plans is supported, but is difficult to achieve as the community is unlikely to engage until a proposal directly affects them.

The likely reduction in consultation at Development Application stage will improve assessment times, but may well leave the community out of the decision making assessment process.

Recommendation: That greater detail be provided on the type and extent of community engagement proposed under the new planning system.

Change 2 - Strategic Community Participation

The Green Paper proposes that the Government undertakes community engagement in the development of Subregional Delivery Plans. The Green Paper suggests that the current system allows issues to be revisited a number of times, resulting in delays.

Upfront community participation is supported. However, the Green Paper proposes community participation at the Subregional Delivery Plan level (the third tier in the hierarchy of Plans). If the NSW Government wishes to genuinely engage with the community, it should also seek community input as part of the development of the higher order NSW Planning Policies and Metropolitan / Regional Growth Plans. The Green Paper suggests consultation but only after the priorities / rules / strategies have been set.

Recommendation: Greater provision be made for community and stakeholder engagement in the preparation of State Planning Policies and Metropolitan / Regional Growth Plans.

Change 3 - Transparency in Decision Making

The Green Paper notes that the Independent Panel found that communities lacked confidence in the integrity of the planning system. A major contributor was the perception that decision making was politicised.

The Green Paper proposes that communities will be supported to engage effectively through the provision of clear, relevant and accurate information. Planning documents will be accompanied by plain English explanatory materials on:

- what is being proposed and why;
- the anticipated outcomes, impacts, benefits and costs of proposals and plans;
- the evidence on which decisions and plans will be based;
- how communities can participate and who is making the decision; and
- details of the process and time frames.

Transparency in decision making is supported, but it does not require legislative reform to be introduced. There is no reason why the NSW Government can not be publicising plain English documentation now.

The Green Paper also proposes public tracking of decision making processes, public reporting of time frames for decision making and performance assessment of planning outcomes.
It is unclear whether these initiatives are aimed at State or Local Government. It is anticipated that Council will be required to participate.

**Recommendation:** Simple measures to improve the transparency of planning decisions, at state and local levels, be introduced in advance of the proposed legislative reforms.

**Change 4 - Use of Information Technology and Electronic Planning**

The Green Paper proposes that all strategic plans and policies and information relating to any development application or approval to be provided and accessible online. “E-planning” involves making the planning system (strategic plans to development assessment) online.

The NSW Government proposes to establish an online planning portal to allow the community to view data sets that apply to parcels of land. The Green Paper suggests that “E-planning” will improve the transparency of the system by making real-time information available.

Similar to change 3, there is no reason why “E-planning” cannot occur now, apart from the overly complex current planning system.

Council’s LEP maps are available online both at Council’s website, using the map viewers, as well as on the State Legislation website (A3 profile).

The written LEP instrument can be view on Council’s website as well as on the State Legislation website.

“E-planning” was an objective of the standard LEP instrument. Currently, only 69 Councils have a standard LEP instrument approved.

While most councils publish their LEP information online, the State has not been as pro-active in making its data sets available.

Ideally, a community member should be able to determine what State and Local planning policies apply to their land.

**Recommendation:** Improvements to “E-planning” systems are supported and should form a fundamental building block of the new planning system.

**STRATEGIC PLANNING**

**Change 5 - NSW Planning Policies**

The Green Paper notes that the current system of State planning controls and directions is complex and cumbersome. There are 76 State Environmental Planning Policies, 31 Section 117 Ministerial Directions on LEP preparation and numerous circulars and policies.

There are also a number of draft State policies, that have been draft documents for many years and it is unclear whether they are required to be complied with.

The State controls should address state wide issues, but have been used to address site specific development issues. The State controls can also be contradictory and do not provide clear guidance.
The Green Paper proposes the reduction in the number of State policies to 10-12, covering issues such as:

- Employment;
- Biodiversity Conservation;
- Agricultural Resources;
- Mining and Petroleum Extraction;
- Coastal Management;
- Retail Development;
- Tourism;
- Regional Development; and
- Infrastructure.

The State policies are proposed to be non-statutory, but are proposed to be approved by NSW Cabinet.

It is agreed that the number of State policies should be reduced. Ideally, they should be contained in a single document to ensure integration and consistency.

However, as a non-statutory document they could be easily changed by Government. The proposal seems inconsistent with the Government's Public Participation chapter, as well as good governance.

An additional issue that should be included in the proposed State Policies is climate change, as this is a state-wide issue that will affect future generations.

**Recommendation:**

1. The reduction in the number of State policies is supported; however, the State policies should remain statutory documents.
2. The issue of Climate Change be included in the proposed state policies.

**Change 6 - Regional Growth Plans**

In 2008, the State replaced statutory Regional Environmental Plans (such as the Illawarra REP) with non-statutory Regional Strategies (such as the Illawarra Regional Strategy 2007). The current Government has renamed the regional policies as Strategic Regional Land Use Plans, and has recently adopted plans for the Upper Hunter and New England-North West.

The Green Paper notes that the regional strategies are not well aligned with infrastructure funding, have poor delivery mechanisms, lacked performance accountability, are not supported by other Government agencies and contain unrealistic housing and employment targets.

The Green Paper proposes the introduction of Regional Growth Plans to provide the principal direction on how a region will grow over a 20 year period. The Regional Growth Plans are proposed to be non-statutory documents, prepared by the Government.

A regional planning document is supported. However, there are a number of concerns with the current proposal.
• By name “Regional Growth Plans” are focused on development, which suggest that environmental or social issues are of lesser concern. The term “Regional Strategy” is more balanced.

• The current Regional Strategies have a 20 year timeframe, yet only include the provision of infrastructure identified in the current 3 year State budget. For an area, such as the West Dapto Release Area it is important to acknowledge that a wide range of State services will be required to support the growth. It is important to know that schools will be provided, State roads widened, bus services provided, the railway upgraded to support the development. The exact date of construction is not required, just an acknowledgement that the service or infrastructure will be provided when the future demand is created.

• The Green Paper suggests that the community and other stakeholders will be involved in the preparation of Regional Growth Plans. However, this appears to be contradictory with Change 2 which indicates that the community will be involved in the preparation of Subregional Delivery Plans and the diagram on page 28, which highlights that the Regional Growth Plans will be prepared by the Government. Appointed ‘expert panels’ do not necessarily have a good understanding of the issues that affect local communities.

Recommendations:

1. The concept of Regional Plans is supported, however there needs to be a balance between economic, environmental and social issues of a region.

2. Regional Plans must include long term infrastructure requirements to meet anticipated growth.

3. A greater level of genuine community engagement is required in the preparation of Regional Growth Plans.

Change 7 - Subregional Delivery Plans

To implement the Regional Growth Plans, the Green Paper proposes Subregional Delivery Plans will be prepared for growth centres. In the Illawarra this may include the West Dapto Release Area.

The Green Paper indicates that the Subregional Delivery Plans will:

• determine the distribution of the targets defined in Regional Growth Plans (e.g. housing affordability and growth, employment, retail, environment protection) taking into account the state of the market and development feasibilities;

• identify the required supporting infrastructure and inform the preparation of a Growth Infrastructure Plan (refer to Change 17 for further detail) for the Subregion;

• identify key growth centres, precincts, and corridors which will be required to support increased growth;

• identify key biodiversity conservation areas/ corridors, environmental protection or prime agriculture land to be protected;

• identify priority growth areas where change is key for delivery of the Regional Growth Plan. For each priority growth area, provide the necessary planning framework to facilitate its delivery;
• rezone key areas and provide for streamlined assessment of development in these areas; and
• provide for integrated approvals in line with development parameters and guidelines.

Subregional Delivery Plans are proposed to be prepared by Regional Planning Boards which will add another layer of bureaucracy into the system.

The Green Paper indicates Subregional Delivery Plans will have two sub-components:

1. Sectoral strategies on the drivers of growth in the region, for example housing or employment.
2. Growth Infrastructure Plans – integrated and funded infrastructure plans.

The Green Paper indicates that the community will be engaged in the development of Subregional Delivery Plans (as noted by Change 2). However, as noted previously the high order state and regional documents will have already set the priorities which will be required to be implemented. The community and Councillors are not listed in the proposed membership of the Regional Planning Boards.

The development of a Subregional Delivery Plan for the West Dapto Release Area could be beneficial as it could require Government agencies to commit to the provision of support infrastructure. However, as the first two stages of the release area have been rezoned and development has commenced, a further review may just as easily create uncertainty and delay development.

Recommendations:

1. The rezoning of land through Subregional Delivery Plans is not supported as it would remove the local council from the planning process. A simplified process for preparing and amending Local Land Use Plans (with full delegation given to councils) is a much better approach to overcome delays in the rezoning of land.
2. The identification of state infrastructure required to support the development of a release area is supported.

Change 8 - Simplifying Local Land Use Plans

Council implements its planning strategies and controls development through its Local Environmental Plans. The LEPs are supplemented by the Wollongong Development Control Plan 2010 which contains development controls for development types, locations and issues.

The Green Paper suggests key issues with existing LEPs are:

• lack of a clear link between the strategic intent and statutory planning controls;
• lack of consistency with, and clarity of, state and regional strategies or priorities;
• narrow focus on measurable development controls (e.g. heights, floor space ratios) rather than merit-based planning outcomes;
• the time and resources taken to prepare including even minor amendments to existing instruments and resultant impact on investment decisions;
• the lack of technical basis or justification for many of the existing controls;
time delays and resources taken up in referrals and concurrences on Local Environmental Plans to a multitude of government agencies for little benefit; and

the ever increasing use of planning controls within Development Control Plans adds another layer of complexity and regulation which has further exacerbated dysfunctions in the system.

It is Council’s experience that most LEP amendments take at least one (1) year to progress from Council resolution to commence the preparation of a planning proposal to notification of the amendment. The current system involves duplication by Council and the NSW Department of Planning and Infrastructure and the review of the proposal by a number of Department sections. Previous measures aimed at reducing delays have had the contrary effect. In 2006, the Department published the Standard Instrument order which required the preparation of LEPs in accordance with the state template. To date, only 69 Councils including Wollongong, have a Standard LEP approved.

The Green Paper proposes to replace LEPs with Local Land Use Plans. Local Land Use Plans are proposed to contain four (4) parts:

A. **Strategic - containing:**

- A clear, simple, plain English explanation of the strategic framework that the plan is trying to implement. It will reflect:
  - NSW Planning Policies -
    - Regional (including metropolitan) and subregional planning outcomes
    - Local council strategic direction
    - Community expectations
    - Concise statements on the desired planning and development outcomes to be achieved across the local government area

- This part will draw on the existing Community Strategic Plans prepared by councils.

B. **Spatial Land Use Plan - statutory part providing - containing:**

- Standardised zoning based on a reformed more flexible standard instrument
- Local land use allocation to reflect strategic planning

C. **Infrastructure and Services - containing:**

- An outline of infrastructure (local, regional and state) to be provided to support development including timing and delivery mechanism.
- This part will be closely linked to the local infrastructure funding plan.

D. **Development Guidelines and Performance Monitoring - containing:**

- All necessary guidelines/performance measures for development. Development guidelines/performance measures will inform and provide context to assist in the assessment of development proposals.
- Provisions for code assessable development.
- Key performance indicators and monitoring requirements to assess the Plan’s performance in achieving the planning and development outcomes articulated in Part A.
The inclusion of Part A – Strategic, is supported as it will contain the state, regional and local strategies that are being implemented via the other parts. This also provides opportunity to link the LEP to Council’s Community Strategic Plan - Wollongong 2022. Council undertook extensive consultation to develop the 10 year vision for the City, and it is important that all Council documents reflect the Council and community vision.

Part B – Spatial Land Use Plan appears to be equivalent to Council’s current LEP. The Green Paper indicates that while the LEP will remain a standard instrument, there will be increased flexibility, which is supported.

The inclusion of Part C – Infrastructure and Services, is supported as it will outline state, regional and local infrastructure required to support the plan. It is unclear as to the level of commitment the state will include in this part. Historically, the state has only published its current budget infrastructure commitments, not future infrastructure requirements. Council’s Delivery Plan 2012-17 includes Council’s Capital Works Budget for the five (5) year period, consistent with the requirements of Integrated Planning and Reporting.

Part D – Development Guidelines and Performance Monitoring appears to be replacing Development Control Plans with development guidelines. It is unclear as to how much detail will be able to be contained in the guidelines.

The Green Paper indicates that the guidelines will provide a context for the development of proposals and a context for their merit assessment. Development guidelines will focus on performance based outcomes and will not be a compendium of rules.

The simplification of the DCP / development guidelines is supported. However, it will be difficult to achieve in cities like Wollongong where there are a range of landscape types, natural constraints and hazards that need to be considered as well as the built form outcomes.

It would be difficult to reduce Council’s comprehensive DCP to a set of guidelines.

Part D is also proposed to contain indicators and monitoring requirements to enable the assessment of the plans performance in achieving the strategies outlined in Part A. It is unclear as to whether this requirement will apply both to Council and the state.

Recommendation. Clarification be provided on how much detail will be able to be contained within the Guidelines (Part D) of Local Land Use Plans.

Change 9 - New Zones and Greater Flexibility within Zones

The Green Paper proposes the introduction of three (3) new zones into the Standard LEP (Local Land Use Plan – Part B):

1. Enterprise zone – to capture investment opportunities.
2. Future Urban Area zone – to indicate future use prior to programming infrastructure investment.
3. Suburban Character zone – to give greater certainty in areas where the local community want to preserve local character.

Additional zones will increase the flexibility of the Standard LEP Instrument; however it is unclear as to why these three (3) zones have been chosen.
It is also unclear as to why this reform is part of the Green Paper. The state has previously introduced new zones into the Standard LEP Instrument. Similarly, these changes could occur now as an amendment to the Standard LEP Instrument.

The Enterprise zone is proposed to be introduced as a means to attract investment in certain locations. However, unlike the other two (2) zones, the Green Paper suggests that this zone could be applied to a location by the Government. There is concern that it could be used by the Government to spot rezone sites for specific development proposals, contrary to the strategy for the location.

The Future Urban Release Area zone is supported and could be applied to stages 3-5 of the West Dapto Urban Release Area. The zone would clearly indicate that the land will be developed for housing / employment in the future. The land use table for the zone should allow current uses to continue provided they don’t sterilise future urban development potential.

The Suburban Character zone will enable Council to exclude medium or high density housing from areas to preserve the local character. It will acknowledge that some suburbs or neighbourhoods have special character that should be protected, for example heritage conservation areas, however it is envisaged that many communities will argue that their locality has special character and should be preserved as a means to prevent a dual occupancy development nearby. It is unclear as to why the existing low density residential zone can not be used to exclude medium density development.

**Recommendations:**

1. The proposed new zones and greater flexibility within zones is supported and could be implemented in advance of legislative changes.

2. The provision for the State government to apply the proposed Enterprise zone in certain locations through a ‘spot rezoning’ rather than strategic planning process is not supported.

**DEVELOPMENT ASSESSMENT & COMPLIANCE**

**Change 10 - Depoliticised Decision Making**

Wollongong City Council has had an Independent Hearing & Assessment Panel (IHAP) in place since 2008. Clear, objective criteria are used to determine which applications are referred to the IHAP. Importantly, Wollongong City Council’s IHAP does not have delegated authority to determine applications as is proposed in the Green Paper. Instead the IHAP is used to hold public hearings and undertake peer reviews, leaving the final determination with the appropriate levels of council staff to determine under delegated authority. Since the election of Council in September 2011, only one (1) application has been determined by full Council, and this was linked to the overseeing role provided to Council in situations where the IHAP and Council Planning officers disagree on a key assessment issue. To provide the IHAP with delegated authority, as proposed in the Green Paper, is considered an unnecessary and inefficient requirement.
Regarding the hierarchy of decision making identified in the Green Paper, Council raises no objections in principle. A clear and simple hierarchy will add confidence to the process. However this will require careful classification of development, and a periodic review mechanism, to ensure ‘development type’ and ‘decision makers’ are appropriately applied. For example Wollongong has seen many local scale applications sent to the Joint Regional Planning Panel (JRPP) due to poor classification, which should have been left to Council officers and/or the IHAP to review and determine. This has added time delays to the determination of these applications.

Whilst the JRPP should remain responsible for the determination of regionally significant development, the assessment of these applications should remain the responsibility of the relevant Council. Regular meetings with applicants should also remain with Council and not the JRPP.

The continuing role of the Planning Assessment Commission (PAC) in the decision making of state significant developments and state significant infrastructure is supported. The PAC should also be entitled to re-assess a state significant development proposal, assess the issues raised in submissions and the proponent’s responses to those issues, and not be limited to evaluating the evidence provided by the Department of Planning & Infrastructure.

**Recommendation:** That further consideration be given to the role of Councillors in the determination of development applications. As Wollongong City Council has demonstrated, there are simpler models to de-politicise decision making.

**Change 11 - Strategic Compliance**

The Green Paper states that where local land use plans do not reflect metropolitan and regional strategic planning strategies, applications should be assessed primarily against the strategies rather than the out of date controls in the existing local land use plan.

However, the goal of the new planning system should be to ensure land use plans are kept up to date and to simplify the process for amending these plans rather than devising ways to work around them.

Wollongong Local Environmental Plan 2009 and Wollongong Local Environmental Plan (West Dapto) 2010 are both standard template LEPs, and involved extensive strategic land use planning (including public consultation) in their development.

Therefore, Council has concerns with the ability of the Department of Planning & Infrastructure to issue a Strategic Compliance Certificate which effectively overrides the adopted planning controls for a site. This will undermine public confidence in the planning process, allowing prohibited development without prior community consultation and proper local strategic planning. Furthermore, as an example of the flaws in this approach please consider the Headlands Hotel site in Austinmer. Here a Site Compatibility Statement was issued by the Director General of the Department of Planning & Infrastructure to allow seniors living (currently prohibited) on this iconic tourist site, against both the recommendations of Council and the local branch of the Department.
In relation to Code Assessment, the Green Paper indicates that such applications will be assessed against the zones, standards and requirements of the Subregional Delivery Plan. It is recommended that the Code Assessment application be also assessed against the Local Land Use Plan. Code Assessment should require the local land use plan to be complied with.

In addition, serious problems may arise from the proposed ‘merit assessment’ process. The partial or ‘component merit assessment’ (page 57) fails to recognise that the non-complying element, subject to merit assessment, will invariably be an essential component of the overall development, and cannot simply be assessed separately. The ‘full merit assessment’ option (figure 15.2 page 57) will also encourage development completely outside of the agreed planning controls. The result is further undermining of the strategic planning process and loss of public confidence. By creating uncertainty, developer confidence and investment is likely to decrease (particularly in appropriately zoned locations). The extent of variation and subsequent negotiation on merit assessment proposals may become unworkable and assessment timeframes unacceptable.

The removal of concurrence requirements from government departments for development applications (given that issues are resolved at the strategic planning phase) is generally supported. The idea that specific concurrence requirements could be included in the local plan or alternatively, appropriate standard conditions for certain developments could be included to address agency issues is supported. However this logic does not carry through to proposals involving ‘merit assessments’ which are contrary to the adopted local planning controls.

**Recommendation**: The proposals for ‘component merit assessment’ and ‘merit assessment’ are not supported. These reform proposals will have unintended consequences including reduced investor/developer confidence. These proposals also work against the arguments for removing concurrence requirements from government departments.

**Change 12 - Reforming State Significant Development**

State significant developments should be assessed taking into account broad environmental, economic and social considerations, including state and regional impacts. The introduction of state planning principles will provide state and regional considerations but local land use plans should also be considered.

Council is supportive of the proposed changes (including case management) to improve timeframes for the processing of state significant developments. In this respect, state significant developments should be assessed the same way as local development which requires merit assessment with ‘stop the clock’ provisions retained and net processing times being calculated the same way.

The Green Paper lacks detail as to how the new planning system will streamline the assessment of state significant development.

It has been the experience of Wollongong City Council that the NSW Department of Planning & Infrastructure does not have the technical expertise, in many cases, to undertake an objective independent assessment of state significant development proposals. Wollongong Council has multi-disciplinary teams to assist in the assessment of floodplain, geotechnical, biodiversity, water quality, landscaping, traffic and transport issues.
There is currently significant duplication in the assessment of state significant development proposals that could be avoided if councils that are properly resourced are given the opportunity to complete the assessment of state significant development proposals which are determined by the Planning Assessment Commission.

The NSW Government’s idea that consultants preparing Environmental Impact Statements must be chosen from an accredited panel is supported, provided no restraint of trade issues arise. However, a key concern here is the monitoring and review of the performance of the accredited consultants. For example, Council regularly identifies poor quality consultant reports submitted in support of proposals which fail upon peer review. Whilst this shift to accreditation is an attempt to address this issue, inadequate independent oversight will inevitably lead to substandard outcomes, including environmental impacts and reduced community confidence in the process.

**Recommendation:** Councils that have appropriate resources be given responsibility for the assessment of state significant development proposals that are determined by the PAC (in a similar approach to that currently used by the JRPP).

**Change 13 - Smarter and Timely Merit Assessment**

The NSW Government’s proposal to limit the range of reports and other information necessary at each development stage, in order to reduce the costs of seeking approval, is supported in principle provided the new planning act provides for a staged approval system similar to the old Development Application / Building Application model.

Council however does not agree with the comment that there is no accountability for timely determination of applications by consent authorities.

It is considered impractical for the JRPP to hold pre-lodgement meetings or other progress meetings with the applicant and be directly involved through all stages of the development assessment process. The JRPP already hold regular update briefings with Council assessment officers. In addition, to maintain objectivity with this change, the JRPP would also need to provide opportunities for meetings with objectors.

Council does not support the use of an amber light approach by the NSW Government. This will be problematic when the changes required are significant, and a major redesign may be required. These processes will inevitably lead to delays in the assessment process, for which Councils are often unfairly blamed. This will generate further need for application amendments and advertising/ re-notification, and it will tend to encourage ambit claims on many DAs. There is also the problem of a non-complying element being central to the overall project, therefore undermining the Code Approval, as discussed above in Change 11.

Council agrees that the planning system should facilitate investment and development and not be involved in determining as to whether a proposal is viable within the market.

The provision of standard development consent conditions from the Department of Planning & Infrastructure is supported provided that Council may still place additional conditions of consent. This initiative may work more effectively at a Regional level.

**Recommendation:** That the State Government reconsider the proposed amber light approach due to the practical issues it would create.
**Change 14 - Increasing the Use of Code Complying Assessment**

The Green Paper proposes to increase the use of code complying assessment in the new planning system to include the majority of residential developments, additions to commercial buildings and new industrial buildings.

However, it is considered that new industrial buildings should not be included in code complying assessment given the range of potential environmental impacts arising from industrial building uses.

The Electronic Housing Code (EHC) is supported by Council. In this regard, Wollongong City Council has recently applied to participate in the EHC program.

**Recommendation**: That Complying Development Codes be developed and implemented at a Regional or Subregional (rather than state-wide) level to maximise their benefits and acceptance.

**Change 15 - Right of Review for Rezonings and Merit Appeals**

The Green Paper indicates that proponents may seek a right of review for rezonings at both the pre-gateway and post gateway marks. These reviews will be held by expert bodies such as the PAC or the JRPP.

The Green Paper also suggests that the existing review mechanism (s82A and s96AB) for Development Applications should be retained and expanded. The Green Paper proposes that an expert not involved in the original decision making be involved in the review. For instance, where the original decision was made by council staff – a mechanism is proposed to be established where a senior staff member of an adjoining council undertakes the review or the establishment of a small appeals tribunal is made.

However, the process used at Wollongong Council for s82A review applications is to use the IHAP and this works very well. The added complexity of using an adjoining council for such applications is considered unnecessary.

**Recommendation**:

1. Introducing a ‘right of review’ for proponents on local zoning decisions is not supported. Zoning decisions should be consistent with adopted strategies and remain a Council decision. A far more effective approach would be to simplify the rezoning process and reduce duplication, confusion and timeframes, by providing full delegations to councils in making and amending Local Land Use Plans.

2. That review of Development Application determinations (ie s82A or s96AB) be undertaken by expert panels such as an IHAP where they are in place.

**INFRASTRUCTURE PLANNING & CO-ORDINATION**

**Change 16 - Contestable Infrastructure Provision**

The concept of competition in the provision of infrastructure is in principle supported to achieve cost effective outcomes. However, it is the design and scope of works that councils and state agencies must retain control to ensure that future infrastructure will meet its intended use and the quality is not compromised. Upfront cost savings should not be traded for long term maintenance burdens.
Voluntary Planning Agreements (VPAs) should be maintained and available to all sizes/types of development. The intention of VPAs is to provide flexibility for the consent authority and the applicant to negotiate contributions in circumstances where the Contributions Plan is not appropriate or suitable to deal with the specific situation. For example Voluntary Planning Agreements can allow an applicant to provide a piece of infrastructure designated to benefit the wider development area at an earlier time than would have otherwise been provided and potentially in a more cost effective manner.

If “defined infrastructure outcomes” are to be set as a VPA benchmark, these need to be flexible enough to be customised to align with the Contribution Plans that apply to the area, to ensure the outcomes specified within the Plans are achieved.

**Change 17 - Growth Infrastructure Plans**

A coordinated whole of government approach to infrastructure provision is a positive initiative and the concept is supported. To ensure these plans can be implemented, the State Government needs to identify long term infrastructure requirements and funding arrangements (beyond the 4 year political cycle).

**Change 18 - Fairer, Simplified and More Affordable System for Infrastructure Contributions**

A simple and affordable system for contributions is a worthy goal. However, reducing costs for land developers will not ensure that savings are passed on in the form of lower (affordable) housing prices. In some areas the local infrastructure requirements are simply more expensive due to existing constraints such as flooding and other environmental constraints. However, these areas may still be more cost effective to develop from a whole of government infrastructure perspective if they are located close to employment, services and other existing state and local infrastructure.

Existing residents should not be asked to fund infrastructure that only benefits new developments and new residents. (such as new roads and drainage in a Greenfield release area). This is simply not fair, particularly for those who have already paid a substantial contribution when their land was developed under the existing development contributions system.

A number of the ‘new principles for infrastructure levies’ contradict each other so need to be further explained in detail. For example:

Principle 3 - ‘levies must not compromise housing affordability or inhibit housing delivery’ contradicts Principle 1 - ‘levies should be based on principle of contributing to cost recovery’, that is if infrastructure cost recovery affects the housing price.

Principle 5 - ‘levies should demonstrate an element of ‘cost reflectivity’ - demonstrating that the provision of infrastructure in some areas is higher than others, and the levies should reflect at least some of that cost’ contradicts Principle 2 - ‘levies must be competitive with comparable markets in other jurisdictions’ as well as Principle 3 - ‘levies must not compromise housing affordability or inhibit housing delivery’, that is infrastructure costs will partly influence comparable markets and housing affordability.
There is no clear direction on whether the current hard dollar Caps are proposed to be retained or not. Elimination of these arbitrary Caps would be supported. If Caps are to be retained they should be set on a case by case basis with respect to acceptable standards of infrastructure required for that community. Caps should not be simply an arbitrary value applied across the state. Indexation of any Caps is essential to keep pace with increases in costs of infrastructure, land and buildings proposed to be funded.

Contributions charges should not be capped on a per dwelling/lot basis but rather based on developable land area to encourage target densities and optimise return on infrastructure expenditure.

If contributions income is limited then cutting back infrastructure to match income may compromise urban design outcomes and will impact on the needs of future residents. Limiting infrastructure, in conjunction with requiring developers to provide more infrastructure directly is realistically the only option available to councils under a Cap system.

If councils are forced to borrow on a commercial basis to fund infrastructure, and then recover this additional cost over time via rates from new residents in greenfield areas, this will simply raise the cost of infrastructure and increase the ongoing cost to the residents in that area.

There is no explanation as to why building "community facilities" is proposed to be excluded from Local Infrastructure Plans. Social infrastructure is important to the development of new communities and new residents.

It is unclear how the Regional Open Space Levy will operate. The State Government should not be levying for and delivering local level infrastructure, particularly if these facilities are simply to be transferred to councils for ongoing management. There would be potential benefits for regional facilities that serve multiple local government areas.

There is no discussion on funding the embellishment of Local or Regional Open Space. Improvements to open space can have significant community benefits. The basic acquisition cost of land may represent less than half the cost of providing quality open space in greenfield areas. It is understood the cost of land for open space is a significant concern in Sydney's Growth Centres, however, it is not such a concern in other regional areas.

There are no suggestions of any alternate funding mechanisms to cover the shortfalls generated by preventing councils collecting appropriate contributions from new development to fund required new infrastructure. Councils already have significant challenges funding infrastructure renewal in addition to new infrastructure with a limited income.

Some suggested funding options are:

- Direct funding to local councils from the Federal Government who collects the major share of tax revenues in Australia.

- Remove rate pegging and provide councils with more options for funding local infrastructure.
Recommendation:

1. That the State government reconsider policy provisions on setting limits or caps on developer contributions.
2. That local government be provided opportunities to contribute to the preparation of the White Paper reforms that relate to the provision of local infrastructure and developer contributions.

Change 19 – Public Priority Infrastructure

The objectives of this initiative are supported. Greater private sector and community involvement early in the planning process along with increased certainty that the projects will proceed will be positive particularly in Greenfield areas.

Some Local Infrastructure Projects can be closely associated to these State Public Priority Projects and consideration should be given to a similar approval mechanism to ensure that the full benefit of the State Public Priority Projects is realised.

DELIVERING A NEW PLANNING SYSTEM

Change 20 - Chief Executive Officer’s Group

The initiative of formally bringing together the CEOs of state government departments to oversee the preparation of growth plans and other planning policies is supported.

This initiative does not require legislative reform to implement.

Change 21 – Regional Planning Boards

The proposal to establish Regional Planning Boards needs to be carefully considered. The Regional Planning Boards will create a new layer of bureaucracy within a system that needs to be simplified.

The membership of the Regional Planning Boards is not properly detailed within the Green Paper.

Recommendation: The creation of Regional Planning Boards is not supported. This will add another layer of bureaucracy within a system that needs to be simplified.

Change 22 – Mandatory Performance Monitoring

The proposal to introduce mandatory performance monitoring against targets in regional, subregional and local level plans including the timely delivery of infrastructure is supported.

Change 23 – Planning Culture

All levels of government contribute to the culture of the planning system in NSW. Reducing bureaucracy, duplication, simplifying planning policies and making the system more accessible to the average person will remove significant obstacles in improving culture.

Local government is at the closest level to the community and the development industry and will have a key role in improving the culture of the planning profession.
OTHER ISSUES

- The Green Paper does not provide any detail on “existing use rights”. This is a complex issue within the current planning system that needs proper consideration prior to the drafting of the White Paper.

- The Green Paper is also silent on a range of other key issues, including -
  - whether the orders/ notices regime will be retained in the new Planning Act;
  - whether the suspension of covenants provisions (under section 29) will be included in the new Act;
  - whether the existing provisions within Part 5 – Environmental Assessment will be retained; and
  - whether Building Certificates and Planning Certificates will be retained.

**Recommendation**: Careful consideration and further consultation is required should changes to these current provisions be proposed.