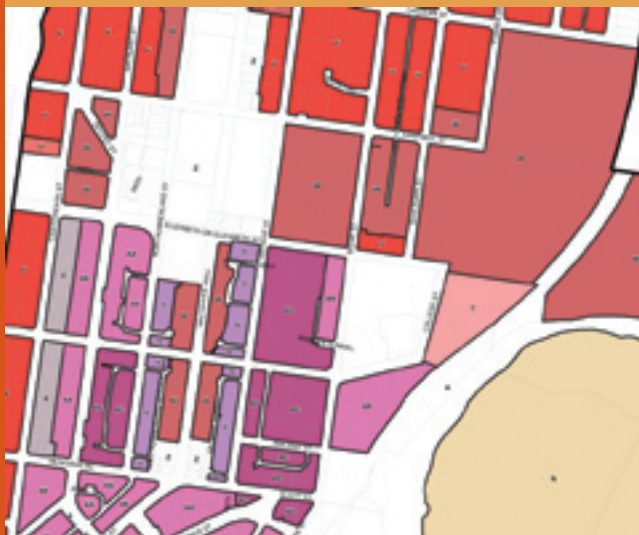




NSW GOVERNMENT  
Department of Planning



# IMPROVING

the NSW planning system

# Community Guide

Draft legislation and  
associated planning reforms

April 2008

## Final input

We want to know your views on the draft legislation by 24 April 2008.

Send your comments via:

### Email:

[planningreform@planning.nsw.gov.au](mailto:planningreform@planning.nsw.gov.au)

### Mail:

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

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

### To see the draft Bills in their entirety:

[www.planning.nsw.gov.au/  
planning\\_reforms/index.asp](http://www.planning.nsw.gov.au/planning_reforms/index.asp)

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

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## The way forward

Following a lengthy discussion process the NSW Government has released draft legislation (*Environmental Planning and Assessment Amendment Bill 2008*, the *Building Professionals Amendment Bill 2008* and the *Strata Management Legislation Amendment Bill 2008*) to implement reforms to the State's planning system.

The Department of Planning has put together this Community Guide to provide a summary of the extensive draft legislation. Key reforms are explained and references given to specific provisions in the draft legislation. Further detailed provisions such as regulations and guidelines will be developed as part of the implementation phase as the reforms commence.

The draft legislation is now out for public comment until 24 April 2008. To see the entire draft legislation, go to: [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au). To see the *Strata Management Legislation Amendment Bill 2008* go to: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



## Minister's foreword

Good urban planning anticipates tomorrow's needs and paves the way for prosperous, liveable communities.

For this reason, ensuring our planning system is transparent, rigorous and accessible is vital.

The reforms proposed by the NSW Government are aimed at bringing our planning system into the 21st century – better equipping it to deal with challenges such as population growth, urbanisation, natural resource management, job trends and changing community expectations.

We want to cut unnecessary red-tape and make the system more accessible for mums and dads, because our research shows they use the system most.

The planning system is subject to continuous public scrutiny and sometimes criticism.

The draft legislation released by the Government addresses public concerns and delivers reforms that are long overdue.

In NSW, the average development approval takes over 70 days. When you consider that 80% of applications are from mums and dads or small businesses, we can see why families feel frustrated and let down by the system.

Under the legislation, many smaller developments will now be controlled by a series of codes that will reduce the approval period to 10 days.

The reforms have been driven by what people are telling us about the failings of the current planning system.

The introduction of independent assessment bodies for major projects will extend independent decision making in the planning system and address some of the perceived conflicts that arise.

I am confident that the result of these and other reforms proposed in the Draft Exposure Bill will be a more efficient and accountable system that will attract greater investment in NSW.

It will also free up our hardworking planners to do what they do best – protecting what we value, and laying the ground for our future prosperity.

A handwritten signature in black ink that reads "Frank Sartor". The signature is stylized and cursive, with a large loop for the letter 'S'.

**The Hon. Frank Sartor, MP**

Minister for Planning

# Delivering reform

The Minister for Planning has released the draft *Environmental Planning and Assessment Amendment Bill 2008* and the *Building Professionals Amendment Bill 2008* for public comment.

The reforms focus on changes to planning processes and development approvals to provide a more efficient, transparent and credible planning system in New South Wales.

A summary of key reforms is below.

## Protecting neighbours' rights and amenity

The vast majority of development proposals assessed under the planning system are for renovations to existing houses or applications for new houses. The Government will introduce a series of codes that give home owners certainty about the rules that apply to their property and their neighbour's property.

The codes will be specifically designed to take into account local factors and cover issues such as overshadowing, setbacks, privacy, height and site coverage. The codes will allow home owners to avoid lengthy development assessment for complying proposals. Where proposals have a significant non-compliance and as a consequence exceed the accepted impact identified by the codes, the proposal will be subject to a merit assessment by council, including consultation with neighbours through the normal Development Application (DA) process.

The codes will consider heritage issues, or 'scenic protection areas'. In these locations some complying developments will still occur, but they will be limited in scope to ensure that there is no chance of an adverse impact.

## Greater community rights to challenge development

At present, the right of objectors to challenge decisions or undertake merit appeals only exists against what is called 'designated development' – typically development with potentially major local impacts such as mines, quarries, waste management facilities or chemical industries. However, the NSW Government is proposing to expand the ability to challenge other types of approvals, further extending the NSW planning system's reputation as one of the most legally inclusive and accountable in Australia.

The NSW Government is proposing to allow persons

affected by development to seek a review of the council's decision. This could include development where planning controls have been significantly exceeded.

## A faster and more efficient system for small-scale projects

At present, on average, small-scale residential development applications are taking 57 days to process, with new single dwellings taking 78 days. In many cases the NSW Government is proposing to reduce this to just ten days. To get a ten day approval, applicants will need to meet design codes prepared by the NSW Government. This will not be a 'one size fits all' code but a series of codes that will be developed to take into account different types of development, lot sizes, environmental and other local factors and issues. Accredited certifiers or your local council can issue this approval, known as a complying development certificate.

## Depoliticising development assessment

A proportion of major development decisions will be taken out of the hands of local or State politicians and be determined by independent experts. This reform is in line with recommendations by the Independent Commission Against Corruption and is similar to assessment changes in other places. A Planning Assessment Commission (PAC) will consider about 80 per cent of the State significant developments currently determined by the Minister for Planning, while Joint Regional Planning Panels (JRPPs) will consider regionally significant developments including commercial, retail or residential projects worth more than \$50 million, designated development and State Government proposals (eg. schools, hospitals, fire stations etc).

## Streamlining the plan-making process

Small amendments to a Local Environmental Plan (LEP) take an average of 196 days, with major LEPs taking up to five years. The planning reforms support early, upfront feedback to local councils on whether new LEPs are justified, along with tailoring the plan-making process based on the complexity of the changes proposed. Furthermore, timeframes will be set for the first time for each stage of the plan-making process.

# Delivering reform

## Reducing legal expenses in decision reviews

Local councils and property owners are spending excessive amounts of money on lawyers and experts by taking cases to the Land and Environment Court.

The reforms propose to shift reviews of determinations or deemed refusals of small development proposals (say some kinds of development worth less than \$1 million) to planning arbitrators in the first instance, unless the applicant and council agreed to go to court. These arbitrators will conduct non-adversarial reviews, free from legal argument, at a minimal cost. Reviews will also be able to be conducted in other cases by JRPP and the PAC. These reforms are designed to drive down legal costs and make reviews more accessible to households unhappy with the determination.

## Tougher rules and penalties for accredited certifiers

The accredited certification system provides greater choice for persons seeking sign-off for building, subdivision and minor works. The current certification system is fast, efficient and ensures buildings are assessed against the Building Code. However there is a need to ensure that there is community confidence in how certifiers operate.

The planning reforms propose much tougher rules and penalties for certifiers – including restricting them from earning more than 20 per cent of income from one person or company, along with giving the Building Professionals Board for the first time the power to cancel a certifier's practising certificate.

## A more accountable developer contribution system

The *Environmental Planning and Assessment Act* has traditionally provided little guidance as to what can be funded by developer contributions – other than to simply say that there must be a “nexus” between the funded infrastructure and the development. This has allowed the contributions system to become a backdoor and uncontrolled form of taxation. Councils currently fund anything from dog pounds to traveller information bays and administration buildings through development levies, with these costs being loaded on to the cost of new homes.

The draft legislation proposes a more accountable developer contribution system with the types of community infrastructure that can be funded through contribution plans to be defined in the legislation. Councils can add to this list with the Minister's agreement. Furthermore, the draft legislation outlines key considerations for developer contributions, including the need for funded infrastructure to be built within an appropriate time.



# How we consulted with you

## A snapshot

### August 2007:

- 640 people attended New Ideas for Planning Forum
- Working groups established to develop reform proposals

### November 2007:

- Release of Discussion Paper – Improving the NSW Planning System
- Extensive package of reforms
- More than 100 recommendations
- 10 week public comment period

### November/December 2007:

- Public consultation
- 1000 people attended roadshows
- 11 workshops around the State -  
Sydney, Parramatta,  
Wollongong, Queanbeyan, Wagga Wagga,  
Dubbo, Tamworth, Ballina, Coffs Harbour,  
Newcastle, Wyong

### February 2008:

- Exhibition period for Discussion Paper ends

A discussion paper, Improving the NSW Planning System, was released by the Minister for Planning in November 2007 for a 10 week public comment period. This produced 538 formal submissions, an additional 124 form letters and

286 survey responses. These comments were incorporated into a 150-page Submissions Report released in March 2008. To see this report, please go to: [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

## Your input

**538 formal submissions**

**124 form letters**

**286 survey respondents to two surveys**

**(Royal Australian Institute of Architects-165 and Planning Institute of Australia-121)**

Stakeholder	Submissions received	Percentage
Community (residents)	180	33.5%
Community groups	71	13.2%
Members of Parliament	3	0.6%
Local Government	117	21.7%
State Government agencies	21	3.9%
Professional practitioners	120	22.3%
Industry	26	4.8%
<b>Total</b>	<b>538</b>	<b>100%</b>

# What you told us

An independent analysis of public submissions reported that of the 31 key issues raised in the Discussion Paper, 22 received general or mixed support.

Issues raised:

- The gateway process for LEPs
- Membership of the PAC
- Operation of the JRPPs
- The Independent Hearing and Assessment Panel (IHAP) process
- Exempt and complying development
- The accredited private certification system

## The gateway process for LEPs

### What you told us

There was general support in the submissions received for proposals relating to streamlining plan making and introducing a gateway process. There was some concern expressed about the criteria that would be used in the gateway process and where community consultation fitted into the process.

There was also support for provisions to refer delayed LEPs to the PAC or JRPP for resolution of issues. It was considered that these approaches would remove a significant source of delays in the processing of LEPs and result in increased efficiency in the delivery of land for investment in housing and jobs.

## Membership of the PAC, operation of the JRPP, the IHAP process

### What you told us

Many of the concerns raised in the submissions were negated when additional details about the operation of the PAC, JRPP and IHAP were provided in discussion with stakeholders.

There was general support expressed for the PAC but concerns were raised about membership and how it would be funded.

There was majority opposition to JRPPs from councils relating to the proposed composition and funding of panels. The panels were supported by industry and government agencies.

There were mixed views on IHAPs in the submissions. Questions were raised regarding how they would be funded and whether it would be made compulsory. Some councils supported the establishment of IHAPs although most did not support the proposal that councils could in some circumstances be directed to establish an IHAP.



# What you told us

## Exempt and complying development

### What you told us

There were mixed views on extending exempt and complying proposals with some arguing that it would improve the system whilst others expressed concern about what they called a one size fits all approach to development. There was also a mistaken belief by the community that development worth \$1million or less would automatically be classed as exempt or complying development, which can be approved by an accredited certifier. This was never part of the reforms. Only developments which comply with specified criteria in the codes can be approved as complying development by a council or an accredited certifier.

There will be different codes for different development circumstances. The Complying Development Expert Panel (with a majority of local government practitioners) is overseeing the development of State wide codes to ensure that the codes and standards for complying

development respond to different lot sizes, environmental and amenity issues.

### Courtesy notification of neighbours

The submissions reported mixed views. There was some support and even suggestions that notification should be mandated, while others argued it would give an expectation to neighbours that they could comment on complying development.

## The accredited private certification system

### What you told us

Submissions strongly supported new accountability measures relating to accredited certifiers. Some submissions called for even more strengthening of accountability, enforcement and auditing of accredited certifiers.



640 people attended the New Ideas for Planning Forum 14 August 2007

# Key aspects of the draft legislation

## Improved plan making

There is general consensus that the existing plan-making process is too complex, too confusing and takes too long. LEPs provide the statutory ground rules under which proposed development is assessed. They typically outline land-use zones (such as residential, public space and commercial zones) and control other issues such as height, building density, environmental protection and subdivision size. Current figures show that a minor LEP amendment takes an average 196 days to complete and a major LEP can take an average of almost five years.

## Streamlining LEPs

In response to this, the draft legislation contains measures to streamline and simplify the planning process, particularly the process for making LEPs. It creates a gateway or screening process to promote efficiency and to tailor the needs of the plan making process to the scale and size of a proposed plan. The aim is to reduce the current timeframes to process LEPs by 50%. The process also provides mechanisms to refer stalled zoning proposals to the PAC or JRPP. (See Schedule 1.1- Division 4, Part 3)

The Department of Planning will develop guidelines and procedures for how the gateway process will work. The draft legislation provides a requirement for consultation on planning proposals once agreed/approved through the gateway process.

The gateway reform builds upon the improvements made by the NSW Government's existing LEP Review Panel, which since early 2006 has provided upfront advice to local councils as to whether their LEPs can proceed further, avoiding unnecessary waste of time and money.

\* Text in this colour refers to draft *Environmental Planning and Assessment Act Amendment 2008* (unless otherwise stated)

## The gateway process for LEPs explained:

To progress a planning proposal a local council will prepare a written submission ('justification report') to present to the Minister.

As part of the gateway process, the Minister will then determine:

- Whether the matter should proceed or be resubmitted;
- Required community and State or Commonwealth agency consultation;
- Whether a public hearing is required by the PAC or other person or body;

The draft legislation enables the Minister to nominate a relevant planning authority eg. council, the Department of Planning or a development corporation to prepare planning proposals. (See Schedule 1.1, Division 4, Part 3)

## Improved development assessment

With an average of 120,000 proposals and a total value of \$21 billion assessed per annum the NSW planning system covers a wide diversity of projects and issues. The NSW Government believes that over 50% of these proposals can be assessed for compliance against pre-set standards. The remaining proposals need more extensive assessment. While the community demands timely assessment for these proposals, it also wants them assessed in a clear and transparent manner, weighing up conflicting issues to ensure that development adds to both the economic and environmental sustainability of communities. The Government's planning reforms will improve development assessment by making the process more transparent.

Reforms to the system are necessary to ensure planning outcomes are achieved efficiently, cutting out red-tape and overlapping processes.

## New development assessment system

The draft legislation introduces new categories of decision making for development approvals. It looks to reduce Ministerial involvement in major applications. It allows the Minister to delegate that approval role to the PAC. The draft legislation provides detailed information on the role and membership of the PAC (See schedule 2.1- Division 2, New Part 2A) and JRPPs. (See Schedule 2.1- Division 3, New Part 2A)

- Timeframes for further plan-making steps;
- Whether the council is endorsed to approve the plan.

In some circumstances, including where the proposed LEP covers regional or State planning matters, the Minister can determine that the NSW Department of Planning carries the planning proposal forward. If there are delays, the proposed LEP may be referred to the PAC.

These provisions provide for flexibility with a strong emphasis on effective community consultation.

The Department of Planning will arrange for the drafting of the proposed LEP following completion of consultation and refinement of the policy by council.

# Key aspects of the draft legislation

The creation of these bodies will improve consistency, transparency and efficiency of decision making.

The draft legislation:

- Establishes a **PAC** to deal with about 80% of State significant projects. (Critical infrastructure and major strategic projects would continue to be dealt with by the Minister). The PAC would be able to conduct public hearings and provide advice to the Minister
- Allow for the establishment of **JRPPs**, including local government representatives, to deal with projects of regional significance. The Major Projects SEPP (State Environmental Planning Policy) will be amended to set out the classes of development that are to be considered regionally significant and therefore assessed by JRPPs
- Makes provision for councils to appoint **IHAPs** as independent advisory bodies. A provision has been included in the draft legislation that a council may establish an IHAP to assess any aspect of a DA or planning matter of local significance. Regulations will prescribe the functions and other arrangements dealing with IHAPs. It is intended that IHAPs will be funded from DA fees. (See Schedule 2.1- Division 4, New Part 2A)
- Creates a greater focus on targeting information requirements to the size/complexity of a DA. Councils will have greater powers to reject DAs that are inadequately prepared.
- Establishes new **statutory timeframes** for development assessments which are more realistic
- Removes the practice of local councils being able to **stop the clock** during the assessment process. This is seen to have contributed greatly to processing time blowouts. Under the proposed reforms, the local council must decide within seven days whether there is adequate information in the development application to proceed further. If there are minor inadequacies, then the council will have 15 days to request additional information but these days will be counted as there is no ability to stop the clock

The statutory timeframes for local council determinations have been increased from existing timeframes, to 50, 70 or 90 days to take into account the fact that there is no stop the clock and the time to obtain an approval includes all days following the application being accepted until a determination is made.

## Appeals and public interest development

The draft legislation allows for the introduction of planning arbitrators to resolve disputes on small applications likely to be less than \$1 million. (See Schedule 2.1- Division 5, New Part 2A) The draft legislation includes provisions necessary to establish the system and to prescribe the function and conduct of arbitrators, including dealing with potential concerns raised by ICAC such as: requirements for registration, appointment and removal of arbitrators and regulating their conduct (including a requirement for compliance with a code of conduct) (See Schedule 2.1- Division 5, New Part 2A)

The introduction of planning arbitrators is aimed at making it more affordable for people to resolve disputes instead of needing to make an appeal to the Land and Environment Court.

The NSW Government is also proposing to expand objectors' rights to seek a review of an approval. It will allow community objectors who are adversely affected by what is to be known as public interest development to seek a review of that development. Public interest development would include development such as where it exceeds controls (such as height or building bulk limits) by more than 25%. (See Schedule 2.1- Division 7A, Part 4)

When the council is the decision-maker, a JRPP would review the decision while for a JRPP decision, a review could go before the PAC.

This provision will provide additional checks and balances and anti-corruption measures in the NSW planning system, already regarded as being one of the most legally inclusive and accountable in Australia.

## What the improved planning system will deliver

- Reducing the number of DAs
- Removing the ability to stop the clock
- Reducing the time for processing of simple local plan changes
- Reducing the number of matters referred for resolution to the Land and Environment Court by 20%.

# Key aspects of the draft legislation

## Protecting neighbours' amenity through complying codes

There is a general view that home owners are being forced to endure unnecessary delays, excessive paperwork and a lack of certainty when they want to build small-scale home developments, such as extensions. The draft legislation proposes a better approach, by tailoring the development assessment process to the size and complexity of the proposal.

The reforms extend the scope of exempt and complying development, by encouraging an increase in the use of complying development certificates in cases where the development proposals are routine in nature. Some of these routine proposals currently go through a lengthy DA process, when a better approach could be to review how well the development meets pre-set standards. Complying development certificates (issued by councils or accredited certifiers), where the development is found to meet all the specified codes and standards, take 10 days to be issued, compared to over 60 days if the development is assessed using a DA and a construction certificate. The reforms are aimed at unclogging the planning system, freeing up councils to deal with more complex matters and making it easier to build or renovate homes and undertake shop or office fitouts.

### Complying Development Expert Panel

**Panel members work at or have a background from the following councils and organisations**

Randwick City Council
Hurstville City Council
Shoalhaven City Council
Penrith City Council
Blacktown City Council
Port Macquarie Hastings Council
SJB Planning formerly at Leichhardt Municipal Council
City of Sydney Council
Blacktown Council
Local Government and Shires Association
Housing Industry Association
Department of Planning

The reforms include targets to increase the number of developments dealt with as development that complies with specified codes and standards – from 11% to 50% within four years.

The NSW Government is to develop consistent codes (exempt and complying development) for common developments to improve certainty, particularly for homeowners and neighbours. A Complying Development Expert Panel will overview the development of Statewide codes. Councils will be able to add to these codes to take into consideration locational differences.

### Proposed complying development codes - residential

House Type	Lot Size
Single Storey New House	>600m <sup>2</sup>
Single Storey House Alterations and Additions	>600m <sup>2</sup>
Single Storey New House	450-600m <sup>2</sup>
Single Storey House Alterations and Additions	450-600m <sup>2</sup>
Single Storey New House	200-450m <sup>2</sup>
Single Storey House Alterations and Additions	200-450m <sup>2</sup>
Terrace House	200-450m <sup>2</sup>
Terrace House Alterations and Additions.	200-450m <sup>2</sup>
Two Storey New House	>600m <sup>2</sup>
Two Storey House Internal Alterations and Additions	>600m <sup>2</sup>
Two Storey New House	450-600m <sup>2</sup>
Two Storey House Alterations and Additions	450-600m <sup>2</sup>
Two Storey New House	200-450m <sup>2</sup>
Two Storey House Alterations and Additions	200-450m <sup>2</sup>
Duplex (Two Storey)	200-450m <sup>2</sup>

### Proposed complying development codes - commercial / industrial

Land Use	Type of Development
Industrial	Change of Use
	Internal Alterations
	Small New Buildings
Commerical/Retail	Change of Use
	Internal Alterations
	Small New Buildings

# Key aspects of the draft legislation

## Using new technology – ePlanning

The reforms seek to ensure greater community involvement, a transparent and accountable process, efficiency in the planning process and consistency of decision making through greater use of technology.

ePlanning reforms seek to:

- Provide a standard portal to share information including online lodgement and tracking of a DA
- Provide a standard portal to gain access to State and local information
- Increase online planning information and support
- Make it easier for the community to do business with council in relation to the planning system
- Provide householders with a one-stop-shop to get information on how to proceed if they want to make alterations or renovations to their homes
- Provide information online for the requirements of council and the steps home owners need to take in the process for approvals of their building work
- Provide the community with a more interactive way to track how their applications are progressing
- Obtaining S149 certificates online.

## Tougher rules and penalties for accredited certifiers

### Background

The system of certification of building and subdivision work by accredited certifiers was introduced in NSW in 1998. The system provides greater choice for persons seeking sign-off for building, subdivision and minor works. The private certification system has been widely embraced by most Australian States and Territories.

To support the integrity of the certification system, the NSW Government in 2007 established the Building Professionals Board (BPB) to oversee the accreditation, audit and investigation of complaints against all accredited certifiers. However, there has been continued public debate about aspects of the system, including potential conflicts of interest which arise as a result of the relationship between certifiers and applicants in some cases.

Proposed reforms in the draft legislation and future regulations:

- Limit the total amount of work a certifier can approve for a single developer to 20% of total annual income
- Corporate accreditation of certifier companies will be allowed. This will ensure that all accredited certifier employees of certification companies can be held accountable for their actions
- The maximum fine the BPB can issue against accredited certifiers will be increased from \$11,000 to \$110,000 and BPB will be allowed to suspend or cancel a certifier's certificate of accreditation without having to go to the Administrative Decisions Tribunal; **(See Schedule 1 to the *Building Professionals Amendment Bill 2008*, proposed sections 8, 12 & 31)**
- Councils will be given new powers to require certifiers and builders to answer questions and provide information, and to issue on-the-spot fines and stopwork orders against landowners
- Councils will be able to fund action that they need to take to address unauthorised building works through a 'performance bond' on the developer, as well as the ability to recover costs through a compliance cost notice similar to provisions in environment protection legislation
- Councils will also be able to charge the same amount of money to assess a building certificate that they would have gained in development application fees for unauthorised works
- Certifiers acting as the principal certifying authority of a building site will also be given powers to direct a landowner to comply with a consent. These provisions will provide abundant powers for both councils and certifiers to deal speedily with unauthorised works
- Council officers undertaking building certification work will for the first time be required to hold accreditation, which will allow the BPB to oversee the conduct of a council employed certifier. A council will be able to apply for exemptions
- Designers of specified fire safety systems will need to gain accreditation by the BPB and will need to certify that their design complies with required standards – this will be a significant feature for the construction of new high rise residential buildings in particular.

# Key aspects of the draft legislation

## Developer contributions for infrastructure

The draft legislation provides a more accountable regime for the NSW developer contributions system. These changes will support the ability of local councils and the NSW Government to levy for local or State infrastructure needed by new residents, along with supporting housing affordability and supply. (See Schedule 3)

At present, local developer contribution levies vary widely between councils for no clear reason. For instance, in south-western Sydney levies vary between \$11-53,000 per lot, while on the Central Coast levies range between \$7,500-64,000 per lot. Furthermore, there is no clear definition under current State law in regards to the sort of things contributions can fund. As a result, some councils are using contributions to fund items such as dog and cat pound facilities, computer upgrades, information rest bays, lookouts and administration buildings.

Also, councils are retaining and not spending an increasing amount of levied money.

The draft legislation establishes overarching principles and accountability provisions for holding and spending levies. This will help stop development contribution schemes being an unaccountable, uncontrolled backdoor form of taxation on the family home.

## Key reforms to developer contributions

- Allowing the NSW Government to require improved reporting of development contributions on community facilities collection and use, including details of the timeframe for the spending of contributions
- Introducing key principles for both local and State development contributions, including that they are spent in a timely manner, be linked to new demand created by the development and not to have a negative impact on housing affordability
- Allowing the NSW Government to define the key community infrastructure which can be outlined in a council contribution plan, with approval needed by local councils to levy for additional infrastructure
- Providing opportunity for the NSW Government to direct a council to spend funds, where a council has not been able to satisfactorily justify a delay in building a facility for which it collected funds.

## Key community infrastructure

Key community infrastructure includes the following types of local or district infrastructure:

- Local roads
- Local bus infrastructure
- Local parks
- Drainage and water management works
- Local sporting, recreational, cultural, civic and social services facilities
- Land for any community infrastructure except riparian corridors

Any district infrastructure but only where direct connection with the development (See Schedule 3.3, proposed clauses 31A & 31B)

As noted above, approval will be needed by local councils to levy for infrastructure outside this list. This approval system will ensure there is some rigour and accountability for the types of things that can be funded by contributions and ensure levies are affordable.

## Management of local funds by the NSW Government

The NSW Government will manage in trust local council contributions in just six local council areas in Sydney's North West and South West growth centres. In the growth centres, the Government is committed to providing \$7.9 billion in infrastructure, of which \$2 billion will be funded from NSW taxes. The Growth Centres Commission is co-ordinating the provision of all infrastructure consistent with the release of development areas. Given the Government's financial commitment, it is not unreasonable for the NSW Government to hold funds in a trust account.

To underline its commitment to limit holding of collections to the growth centres, the NSW Government will only amend the *Growth Centres (Development Corporations) Act*, not the *Environmental Planning and Assessment Act* to create the trust funds.

## Direct and indirect levies

The reforms continue the existing arrangements for councils to require direct contributions (formerly known as Section 94 levies), typically in new release areas. Direct contributions will normally be levied on developments in greenfield sites. These contributions can fund existing facilities, but only if the development to be levied will benefit from the existing infrastructure and the existing infrastructure was prepared to facilitate the carrying out of development.

# Key aspects of the draft legislation

Indirect contributions (formerly known as Section 94A levies) will also continue to be allowed, with a standard rate to be up to one per cent of the total development cost. Councils may be able to levy at a higher rate on presentation of a business case and assessment of the impacts on development viability.

Indirect contributions are typically used in existing urban areas, rather than in new fringe housing estates. These contributions must still meet the key principles outlined above but can more freely fund existing infrastructure.

Both direct and indirect contributions cannot be levied on the same development.

## Deferral of single greenfield contribution

The NSW Government has previously proposed to introduce a single contribution of both local and State levies for all future greenfield release areas in NSW. This contribution was to include a rezoning infrastructure contribution (payable following rezoning) and a serviced infrastructure contribution (payable following release of subdivision or occupancy certificates).

In light of the existing housing market conditions, it is proposed to defer introduction of this system for further consideration.

## Transitional arrangements

Where a local council contribution plan is currently funding infrastructure that is not considered key community infrastructure, it can continue doing this provided that it has already entered into legally-binding arrangements to use the money and the Department has been informed.

Councils will also be required to update their contributions plans to conform with the new key community infrastructure list. (See [Schedule 3.1, proposed Schedule 6, Part 21, Division 4](#))

## Other reforms

### Resolving paper subdivisions

Paper subdivisions is the generic name given to historic land subdivisions that have inadequate infrastructure like roads and drainage to allow the development of individual houses on the lots. Where these subdivisions are proposed for redevelopment and there are many different landholders it can be difficult to organise the landholders under a single unifying development plan, and even harder to fund the redevelopment of the land.

The draft legislation will give the Minister the ability to identify paper subdivisions that could be redeveloped if a suitable development plan can be agreed to and a responsible authority, such as a council, Landcom or the

Growth Centres Corporation, can be identified. Under the draft legislation at least 60% of the owners of the land and the owners of at least 60% of the land area must agree to a draft development plan. Once this occurs the authority responsible for the development plan will have expanded powers to acquire land based on values established by the Valuer General, to compel land owners to make reasonable contributions for the construction of works to implement the development plan and undertake other activities necessary to allow the development of the land for housing. (See [Schedule 5.1, proposed Schedule 7](#))

## Strata management

A strata scheme is a building, or collection of buildings, where individuals each own a lot (eg. apartment/townhouse) but where there is also common property (eg. driveways/gardens) which every owner shares ownership. The strata laws set out basic rules to assist owners to jointly manage the scheme's finances and maintain the property.

When a strata scheme commences, the 'original owner' (usually the developer) owns all lots and carries out the duties of the owners corporation. As the lots are progressively sold, new owners become members of the owners corporation with the right to participate in the scheme's management and vote at owners' meetings. Owners who are not able to attend meetings can appoint a proxy to vote in their place. Owners have a right to cancel their proxy or to override it by attending a meeting to vote in person. They can also specify how they want the proxy to vote on various issues.

The draft legislation proposes to prevent the practice used by some developers to avoid these requirements by making it a condition of the sale of a lot for the buyer to sign over their proxy rights. The amendment will prevent the developer from using a proxy obtained in this way. Other amendments will prevent the developer from selling off visitor parking areas and will allow Fair Trading building inspectors to enter common property to inspect faulty building work reported by an owner.

## Legislation timeline:

Draft legislation *Environmental Planning and Assessment Amendment Bill 2008 & Building Professionals Amendment Bill 2008* issued for public consultation until 24 April 2008

The Minister for Planning will introduce legislation into Parliament for debate in May 2008

# Debunking the myths

## **Myth: All projects under \$1 million will be approved by accredited certifiers**

Fact: This incorrect claim became an ‘urban legend’ during the public exhibition period. In fact, the reforms will only allow accredited certifiers or the council to have the final say on developments if they meet set codes, designed to protect residential amenity. Councils can still issue complying development certificates. The \$1 million figure is not part of the reforms.

## **Myth: The complying development code will be a ‘one size fits all’ document**

Fact: The codes take into account local factors and conditions, including allotment sizes, environmental and amenity impacts and streetscape considerations. There will be many different codes for many development types and lot sizes. Complying development does not cover large development.

## **Myth: The Minister’s powers will be enhanced by these reforms**

Fact: The Minister will actually lose powers, handing about 80 per cent of existing major project determinations to an independent PAC.

The Minister will retain the right to decide on LEPs – as has always been the case.

## **Myth: Environmental protection will be undermined by these reforms**

Fact: The reforms in no way do this. They retain ‘ecologically sustainable development’ as one of the objects of the Environmental Planning and Assessment Act.

Furthermore, the reforms also propose that a new gateway process be created for new LEPs, which ensures that key environmental issues are considered at the start of the strategic planning process – not as an afterthought at the end.

## **Myth: These reforms are in place to help developers**

Fact: The reforms are principally to help small-scale ‘mum and dad’ home builders or renovators.

Furthermore, the Urban Taskforce (which represents large developers) argued against the creation of a PAC and

wanted the Minister to retain control of major projects. This view was not supported by the NSW Government.

## **Myth: The reforms reduce community consultation**

Fact: The reforms will create better upfront certainty and transparency about what sort of development can be built next door as complying development – improving consultation.

Further, the community and individual objectors will gain greater rights to challenge development applications approved by a local council or a JRPP, if it significantly exceeds development standards. This again better involves the community in the planning process.

In the case of LEPs, community consultation will be able to be tailored to the size and complexity of the proposal. At present, council-wide LEPs are subject to a basic 28-day exhibition period and councils are under no obligation to widely publicise the document.

This is despite the fact that such documents will set the statutory planning rules for the assessment of new development proposal across an area for decades to come.

The planning reforms will allow the Minister to require councils to undertake far more detailed community consultation in regard to major LEPs.

## **Myth: The reforms will mean councils will stop funding community infrastructure**

At present, councils are collecting infrastructure contributions for works that have a tenuous link to new development, including new dog euthanasia freezers, traveller information, rest bays, lookouts and administration buildings. One council charges developers for street trees – even after the developer has planted new trees out the front of the property.

Developer contributions have become an unaccountable form of backdoor taxation, which are undermining housing affordability.

The Environmental Planning and Assessment Amendment Bill proposes the Minister be able to define key community infrastructure, with councils to be able to seek approval to fund additional infrastructure outside this.

This will ensure that developers fund key community infrastructure, to service the needs of new residents.



NSW GOVERNMENT  
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