

ANNEXURE F: Review Questions to Housing NSW and Housing NSW Submission and Response

(i) Review Questions

HOCE 10/472



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24 May 2010

Mr M. Allen
Chief Executive
Housing NSW
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CHIEF EXECUTIVE

Mike
Dear Mr Allen

Review of Implementation of the Nation Building and Jobs Plan in NSW and Potential Applications for Other Projects

The review required by s.30 of the Nation Building & Jobs Plan (State Infrastructure Delivery) Act 2009 has been commissioned by the Premier with wide Terms of Reference (Annexure 1).

Social Housing projects make up a substantial part of the Nation Building and Jobs Plan in NSW and the Review therefore involves gathering and analysing a substantial amount of information involving the operations of your Department. The Review has had the benefit of briefings from the Social Housing Program Management Office (Paul Vevers and staff) and from the Department's asset management executives (Steven McIntyre and staff).

Resulting from those briefings and from analysis of other material a number of issues have arisen for which the Review would seek the considered view of the Department as a whole. The list of issues is at Annexure 2 and is structured as a series of questions that the Review considers it will have to address in its report.

The Department's response is required no later than 16 June 2010 for it to be considered by the Review.

If you wish to discuss any aspects of this request I can be contacted on 0417 410 475 or by email at shepherd.4cast@optusnet.com.au

Yours sincerely

Dr Neil Shepherd AM
Review Chair

ANNEXURE 2

NSW DEPARTMENT OF HOUSING – ISSUES AND QUESTIONS

Definitions and Glossary

- 'Social Housing' is used to cover all housing-related activity under the NSW Stimulus Plan
- The Act is the NSW Nation Building & Jobs Plan (State Infrastructure Delivery) Act 2009
- The 'Taskforce' is used generically to cover the ICG and the Taskforce
- The 'Plan' is the NSW Stimulus Plan
- IPO is the Integrated Program Office

6. The IPO Model

The IPO model is only one of the possible options for delivery of the Social Housing components of the Plan.

- (e) Why was it chosen?
- (f) What are the significant differences between the IPO model and business-as-usual?
- (g) What changes to the model would improve its capacity to deliver projects in similar circumstances?
- (h) What elements of the model could be adapted to the business-as-usual environment?
- (i) What action is the department proposing in relation to any elements considered suitable for adoption under (d)?

7. Role of the Act

The proportion of projects that required use of the provisions in Parts 3, 4, and 5 of the Act has been sought from the Taskforce. However, the views of the Department would assist the Review in relation to:

- (e) any possible modifications to the Act to make it more effective in supporting a Social Housing-type program;
- (f) any possible modifications to the AHSEPP that would enable it to fulfill the purpose of allowing Social Housing-type developments in reasonable timeframes in a non-Global Financial Crisis context (the Review is aware that review of the AHSEPP is proposed in the near future);
- (g) the importance or otherwise of the provisions under Part 6 in relation to appeals and administrative review; and
- (h) the influencing role of the existence of the ICG's powers (even when not exercised) on the behaviors and actions of key stakeholders.

8. Role of the Taskforce

The relationship between the Taskforce, the Department and the IPO is obviously considerably more complex than lines on a structural map might suggest.

The real question (and the one most difficult to get an answer to) is what would have happened in the Taskforce had either not existed, or did not have the 'reserve' powers in Parts 3 and 4 of the Act. Would the IPO have existed? Would the private sector involvement in the Social Housing aspects of the Plan have been as extensive? Would the IPO have enjoyed its apparent operational independence,? etc.

The considered views of the Department on the nature and extent of the value of the Taskforce in delivering the Social Housing program would be of substantial interest to the Review.

9. Value-for-money in the Social Housing program

The Review will have to address this issue. The primary questions have been directed to the Taskforce since it is the performance of the ICG that the Review must investigate under s30 of the Act. However, the Department should have relevant information and views on any limitations imposed by either the Commonwealth or the Taskforce that affected the capacity of the Department to deliver optimally cost-effective projects and the Review wishes to obtain this information.

The Review is aware that there were other factors, such as skills shortages, that also may have affected the capacity of the Department to deliver the projects. The Review requests that the Department provide an assessment of these factors including their impact (if any) on value-for-money on the Social Housing projects.

10. Probity and Risk

The Review requires a comprehensive outline of the approach taken to probity and risk management in the Social Housing program including the audit strategy adopted. Details of the audit strategy should include timelines for development and implementation of the strategy. The rationale for decisions about the level of audit and the areas of the program selected for audit will need to be provided.

11. Social Housing Achievements and Concerns

As with Question 4, the primary question has been directed to the Taskforce. The Review has also already received some information from the Department of Housing concerning the achievements of the program. However, the Review would appreciate having the benefit of the Department's views on the concerns about the Social Housing program being expressed by some stakeholders and in the media. Three particular issues that appear to be of concern to stakeholders are whether the consultation processes were adequate, whether the apparent changes in policy concerning developer contributions were justified and whether the apparent decrease in provision for parking would lead to significant community opposition and long-term neighbour disputes. The Review would be particularly interested in what action(s) the Department may have taken in response to those concerns and what it would consider doing differently should a similar program eventuate in the future.

(ii) Housing NSW Submission and Response to Review Questions

Our Ref HOG 10/16536

Dr Neil Shepherd
Review Chair
Nation Building and Jobs Plan Act Review
Level 13, 55 Hunter St
SYDNEY NSW 2000.

Dear Dr Shepherd

Review of Implementation of the Nation Building and Jobs Plan Act in NSW and Potential Applications for Other Projects

Thank you for seeking the views of Housing NSW regarding the above review.

As noted in your letter of 26 May 2010, the Review has had briefings from the Program Management Office and the Assets Division of Housing NSW. Enclosed with this letter is a consolidated Housing NSW response, including key findings and recommendations.

The response addresses the specific questions attached to your letter, prefaced by background information on the experience of Housing NSW with the planning approval system. While this information addresses some of the matters canvassed in the earlier briefings, I think it is useful that it be documented to provide a clear understanding of the context of the specific responses.

Housing NSW is absolutely committed to minimising the time required to deliver our capital works program. For every day that a social housing project is unnecessarily delayed in the planning approval process, people on the waiting list are paying rent for private accommodation that is beyond their means and many social housing residents are living in outdated buildings which no longer meet their needs.

That said, I am confident that Housing NSW's revised corporate structure and internal systems, together with recent amendments to the NSW planning system, have significantly improved our capacity to deliver the Government's social housing program.

The Nation Building & Jobs Plan Act was vital to secure delivery of the social housing component of the Stimulus Plan on time and on budget. It provided valuable lessons which are now being adapted and incorporated into our practices and systems.

With continued implementation of our planned structural and system reforms and with the further adjustments of the planning system recommended in the attached paper, extension of the NBJP Act provisions will not be required to achieve timely delivery of Housing NSW's capital works program.

I trust you will find this information of assistance and await the outcomes of your review with much interest.

Yours sincerely

Mike Allen
Chief Executive
Housing NSW

REVIEW OF THE NATION BUILDING AND JOBS PLAN ACT HOUSING NSW SUBMISSION¹⁴⁵

INTRODUCTION

This submission is in three main parts:

- Part A – Planning Context of Housing NSW Capital Works Program
- Part B – Response to specific questions raised by the Review
- Part C – Key Findings and Recommendations

The submission focuses on addressing the terms of reference which require the Review to examine and report by July 2010 on:

- (a) the effectiveness of the *NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009* in facilitating the implementation of the Nation Building Economic Stimulus Plan in NSW;
- (b) the exercise by the Coordinator General of the functions conferred by the Act in accordance with section 30 of the Act;
- (c) the legal and economic benefits and consequences of applying the principles of this legislation, and the manner in which it has been implemented, to other significant projects or classes of projects in NSW;
- (d) options and mechanisms for applying the principles should they be applied to such projects or classes of projects in NSW.

PART A - PLANNING CONTEXT OF HOUSING NSW CAPITAL WORKS PROGRAM

Capital works program strategic context

The key role of Housing NSW is the delivery of housing assistance for people in housing need. A challenge for Housing NSW is to ensure that its asset base, worth around \$28 billion, is appropriate for client needs and is in high need locations.

The current high proportion of larger, older dwellings, significant maintenance backlog and concentration of assets in estates requires an effective program of reconfiguration and asset renewal. A supportive planning framework (both strategic planning and development assessment) is critical to achieve this reconfiguration and renewal.

Under *Reshaping Public Housing*, the NSW Government is currently undertaking the most comprehensive reforms to public housing in 50 years. One of the key components of the *Reshaping Public Housing* reforms is the redevelopment and realignment of social housing properties to better meet client need.

There is also a focus on increasing the contribution community housing can play in the supply of affordable housing. The Government has set a target to grow community housing to 30,000 homes by 2016.

Together these two strategies will require a substantial level of asset related activity over the next decade.

Planning system requirements

In February 2008, Housing NSW made a submission to the Department of Planning's review of the NSW planning system reflecting the organisation's major involvement in the NSW planning system.

¹⁴⁵ The layout of this Annexure differs slightly from the original document but the content is exactly the same.

In the year of the planning review, Housing NSW had lodged over 200 development applications with councils across the state and had sought numerous land use changes through the LEP rezoning process.

The time taken for councils to approve Housing NSW DAs across the State has been highly variable but in recent years averaged 180 days and in some areas, was three to four times the average taken for comparable private sector projects, as illustrated in **Attachment 1**. The delay and unpredictability of the approvals process have seriously hampered capital works planning and delivery.

Historically, Housing NSW has been reluctant to engage the Crown development provisions of the *Environmental Planning & Assessment Act 1979* (EP&AAAct) which enable referral of stalled DAs to the Minister for Planning for determination. On average, this process has been utilised for about one project per year. This reluctance reflects a desire to maintain positive relations with local councils and also the time consuming and resource intensive nature of the process which typically took 15-18 months due to the many steps involved.

Other planning issues impeding Housing NSW's asset programs included:

- Restricted supply of Housing NSW sites zoned for medium and high density residential development;
- Unreasonable site area requirements for residential development;
- Unreasonable and inconsistent development standards applied across the state;
- Residential design needs of Housing NSW and community housing providers having implications for site and floor space area provisions.

Whilst Housing NSW strongly supported the planning system reforms of 2008, the reforms did not fully address all of its requirements. Housing NSW proposed that additional planning reforms be introduced to ensure the efficient and effective implementation of its programs and support was subsequently given to the preparation of a State Environmental Planning Policy to address affordable housing. The draft SEPP would include provisions to enable Housing NSW to approve its own developments that did not exceed 2 storeys and contain not more than 20 dwellings.

In February 2009, the Infrastructure SEPP was amended to implement these Housing NSW self approval provisions so that they could be utilised in delivering the Nation Building and Economic Stimulus Plan (NBESP).

Affordable Rental Housing SEPP

In July 2009, the Affordable Rental Housing SEPP (ARHSEPP) was made. The ARHSEPP repealed the housing provisions of the Infrastructure SEPP and placed all affordable rental housing provisions, including Housing NSW self approval provisions, into a single document.

The ARHSEPP:

- delivers significant savings in time and money for social and affordable housing development, including that undertaken by Housing NSW;
- provides new supply-side incentives for affordable rental housing including expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards;
- enables the NSW Government to meet housing targets and benefit from the Federal Government's stimulus package;
- streamlines the delivery of affordable housing and ensures participation in various stimulus programs including HAF, NRAS and A Place to Call Home;

- increases supply of sites for medium and high density residential development in appropriate locations (which also improves the value of the government's asset base and reduces budgetary impact on the provision of social housing);
- substantially contributes to achieving the goals of the State Plan and Metropolitan Strategy.

Current planning approval processes

Approval of Housing NSW projects is currently obtained through the following mechanisms:

- NSW Nation Building and Jobs Plan Act (enables ICG to exempt NBESP projects from development control legislation and approve their construction)
- Affordable Rental Housing SEPP (enables Housing NSW to self-approve projects of up to 20 units and 2 storeys. Applies whether these are NBESP or 'business as usual' projects)
- Complying Development (10 day approval by private certifiers of specified minor development)
- Crown Development Applications (lodged with local councils and determined by council or Joint Regional Planning Panel)
- Part 3A applications (major projects & masterplans lodged with Department of Planning for determination by Minister for Planning).

Housing NSW projects under the NSW Nation Building and Jobs Plan Act

At 30 April 2010, a total of 70 planning approvals had been issued under the Nation Building and Jobs Plan Act for social housing projects. These were all NBESP projects which could not be approved by Housing NSW under the ARHSEPP for reasons such as having more than 20 dwellings or being prohibited under relevant planning instruments.

Housing NSW projects self-approved under the Affordable Rental Housing SEPP

The Affordable Rental Housing SEPP includes provisions that enable certain forms of affordable housing development to be undertaken where it would not otherwise be permissible under the existing LEP (most importantly for Housing NSW, permitting villas and townhouses in single dwelling house zones).

ARHSEPP also provides Housing NSW with a self-approval function for projects of up to 20 units or 2 storeys, however the project must be permissible under an environmental planning instrument (either the LEP, the Seniors Housing SEPP or the ARHSEPP itself). In accordance with Part 5 of the EP&A Act, the environmental impact of the project must be considered to the fullest extent possible. Adjoining neighbours and the local council must also be notified of the project and any submissions they make must be taken into consideration.

Approximately 300 projects have been self-approved under ARHSEPP, the majority being NBESP projects. Most of these were villas and townhouses in single house zones where they would not normally be permitted by the relevant LEP but had been made permissible by Division 1 of ARHSEPP (the 'Infill Housing' provisions).

Before Housing NSW projects are considered for self approval, they are subject to separate merit review by external independent town planning consultants. The review process has no functional or organisational link with the development arms of the organisation and is accountable directly to the Chief Executive. The rigour of this process is comparable to what takes place in local councils.

As a result of this assessment process:

- in addition to the 80-90 standard conditions typically proposed in each project application, special conditions were applied to 78% of projects (see **Attachment 2**);

- some 20 projects were negotiated at senior officer or executive level, generally resulting in substantial design amendments to unit numbers, layouts, levels, parking and landscaping.

Housing NSW projects as Complying Development

Housing NSW can undertake limited residential development under the Exempt and Complying Development Codes SEPP. The policy provides codes that have State-wide application, identifying low-impact types of development that may be carried out either with no environmental assessment or approval (exempt) or in accordance with a complying development certificate issued by a private certifier or the local council. This generally provides Housing NSW an approval path for minor alterations and additions and demolition of single cottages.

Housing NSW projects as Crown Development Applications

Following changes to the Crown development provisions of the EP&A Act in July 2009, Housing NSW projects exceeding 20 units and a value of \$5M will be determined by Joint Regional Planning Panels (JRPPs) and not by councils. Generally, a project that exceeds the 20 dwelling threshold under ARHSEPP will have a capital value in excess of \$5M and will therefore fall into the category that will be determined by JRPPs.

Where the JRPP fails to determine a Crown DA within 50 days, the applicant (or the JRPP) may refer the DA to the Minister for Planning. The Minister can then issue directions to the JRPP regarding determination of the DA. This should considerably expedite the long timelines previously required to resolve disputed Crown DAs.

There is no JRPP in the City of Sydney local government area, but a similar function is performed there by the Central Sydney Planning Committee which determines DAs for major developments (exceeding \$50 million) and DAs seeking to vary a development standard under SEPP1 (unless delegated to the Council to determine).

Housing NSW has not yet had any projects determined by a JRPP, although some Housing NSW projects now with councils will be going down this route.

Housing NSW projects under Part 3A of the EP&A Act

Part 3A of the *Environmental Planning & Assessment Act 1979* allows the approval of major projects to be assessed by the Department of Planning and can also effectively 'rezone' a site to overcome a prohibition. In July 2009, the Government raised the threshold for Part 3A residential, commercial and retail projects from \$50M to \$100M.

Housing NSW has a number of current Part 3A projects including Minto, Bonnyrigg and Airds as well as Telopea, West Ryde and Seven Hills. A project currently proposed is Riverwood North and future projects that would be suitable for Part 3A are Mount Druitt, Redfern-Waterloo and Claymore. (In regard to the increase in threshold to \$100M, the West Ryde project was under this amount but preceded the change).

The increase in threshold to \$100M may not be a significant impediment, as Housing NSW major projects involve master planning of precincts where the total cost of the project is generally in excess of \$100M. These projects can receive Concept Approval from the Department of Planning and then be implemented in smaller stages and include Joint Venture arrangements if necessary.

Part 3A is very beneficial to Housing NSW where master planning is involved. There is opportunity to review property assets to identify strategic opportunities for master planning and possible expansion to Part 3A.

Housing NSW Capital Work Program 2010/11 – 2017/18

Table 1 and the following graphs illustrate the Forecast Capital Work Program 2010/11 – 2017/18 by projects and units and the applicable planning approval process.

209 projects comprising 1,948 dwellings have less than 20 units and 51 projects comprising 2,598 dwellings have 21 or more units.

Project size	No. of Projects	Units Gained	Project value (\$'000s)
Less than 20 units	209	1,948	\$534,651
21-25 units	16	374	\$108,805
26-30 units	8	224	\$66,416
31-50 units	16	650	\$171,302
More than 50 units	11	1,350	\$405,569
Total	260	4,546	\$1,286,743.00

Table 1: Capital Works program 2010/11 – 2017/18

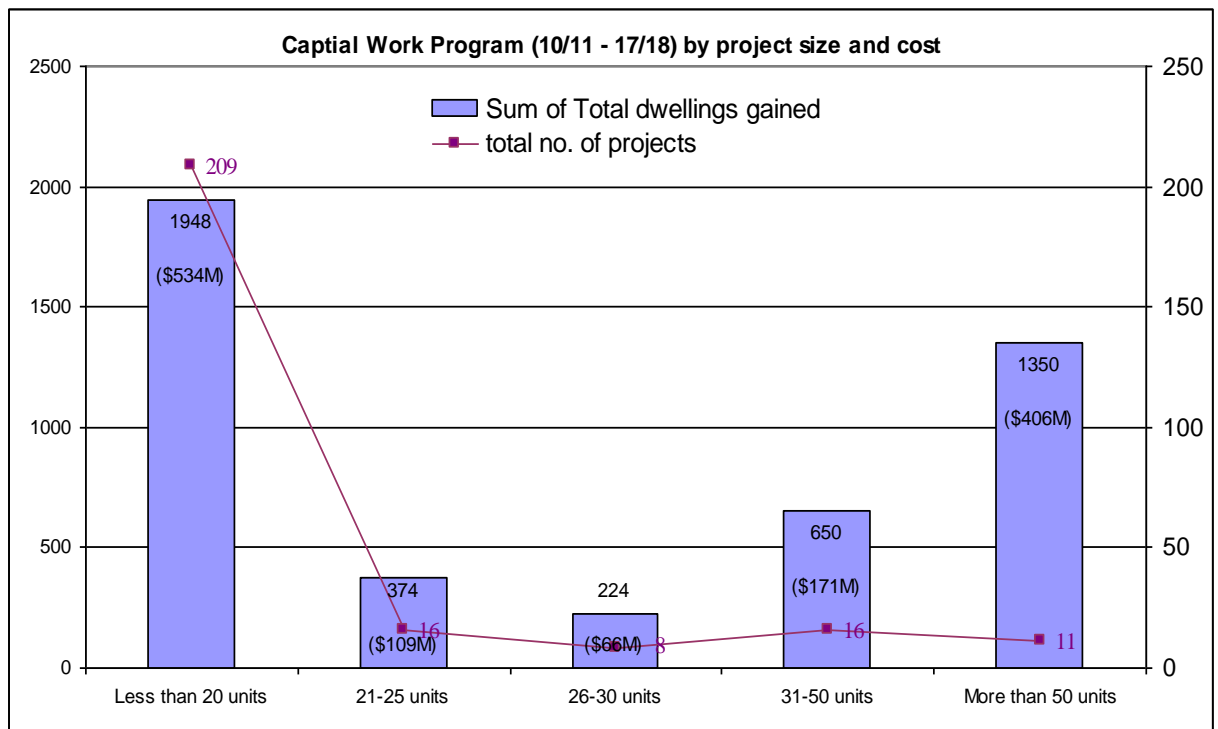


Figure 1: Capital works program (10/11 – 17/18) by project size and cost

As indicated in the following graph, a majority of planned *projects* are within the ARHSEPP self approval process, however the other planning approval processes will account for a majority of the program in terms of *units*. Successful delivery of the program is therefore dependent on the effective operation of each of the approval processes.

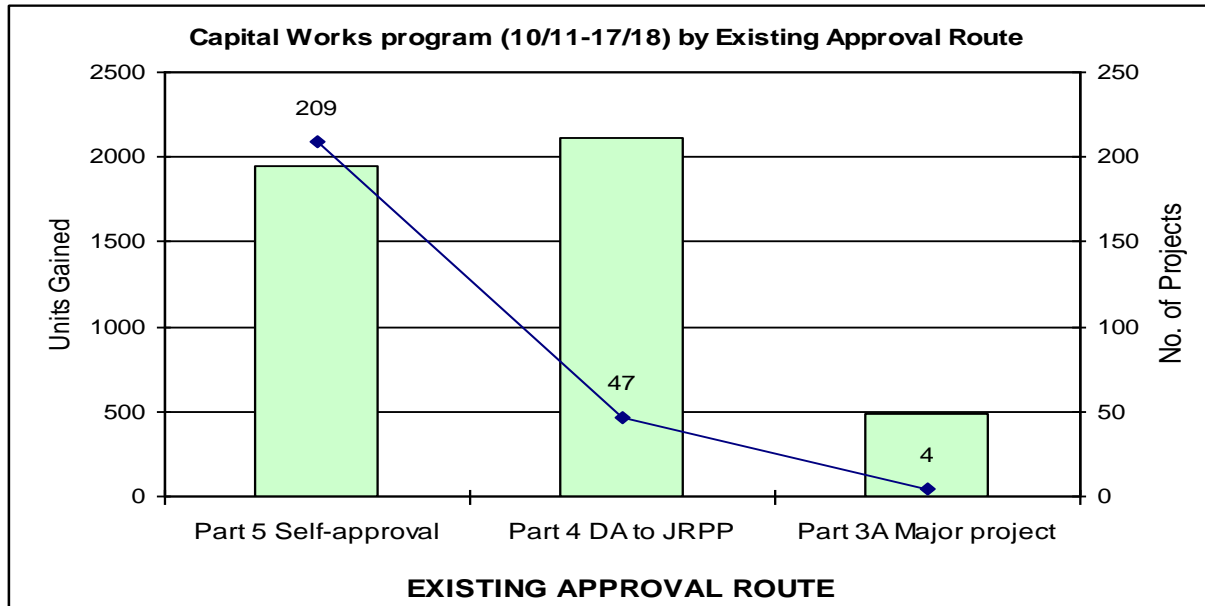


Figure 2: Capital works program (10/11 – 17/18) by existing planning approval route

Evaluation of planning approval processes

Part 5 self-approval

The self-approval process under ARHSEPP and Part 5 of the EP&A Act has been very effective in managing time, cost and predictability of approvals for small scale construction projects. However its ‘finality’ is considered a higher risk than the other approval processes because community scepticism of self-assessment generally, together with the absence of any statutory protection for Part 5 approvals, combine to heighten the risk of legal challenge.

“Third party” determination of larger projects engenders greater community and council acceptance and hence finality of approvals. Also importantly, it supports good working relationships with local government. The concept of limiting the scale of projects which can be self-approved is therefore supported in principle, though the threshold of scale is not necessarily fixed.

Improving the scope of consultation and the transparency of decision making in the Part 5 self-approval process would also support council and community relations and help lessen the risk of appeals.

The cost of the Part 5 self-approval process is comparable to that of the Part 4 DA process. The major component of this cost is the Environmental Impact Assessment (EIA) report required for each project to discharge the legal obligation to consider environmental impacts “to the fullest extent possible”.

For minor projects, the cost of the EIA can be out of proportion to the potential environmental impact. There is provision in the EP&A Act for routine works to be self-approved without the need for an environmental impact assessment if they are carried out in accordance with a code approved by the Minister for Planning. At the commencement of the NBESP program, Housing NSW sought to utilise this provision for demolition works but this was not supported at the time by Department of Planning.

Demolition of a single house on a single lot can now be undertaken as complying development (10 day approval by a private certifier) but if there is more than one dwelling (eg, townhouses or bedsitters), complying development cannot be used and a full EIA is required to enable self-approval.

Part 4 DA to JRPP

The JRPP process is untested by Housing NSW and hence its predictability is unknown. On face value the process should be more responsive than the determination of DAs by councils because it removes the unpredictability of local politics. However, as council officers remain responsible for assessing DAs and reporting them to the Panel, there is still scope for delay and cost imposts through unreasonable requests for more information and inflexible enforcement of inappropriate local controls. Significant delay would also occur if the Panel itself deferred determination due to their likely operation on a fixed meeting cycle.

The Department of Planning's recent review of the JRPP process generally supports this analysis. It found that Panels took an average of 114 days to determine DAs compared to the 249 day average previously taken by councils for development valued over \$5 million. This is quicker than the historical 180 day average for councils to assess Housing NSW DAs but would still be unreasonably long for many of the social housing projects that will come within this process.

Given that the ARHSEPP was gazetted on 31 July 2009, it is unlikely that any DAs for affordable housing designed under ARHSEPP have been considered by a JRPP.

The development standards of the ARHSEPP are expressed in non-discretionary terms (ie, the subject matter of the standard cannot be a grounds of refusal if the development meets the numeric standard). The standards are intentionally 'generous' and NBESP projects almost without exception achieved those standards.

The capacity for a council or JRPP to refuse or delay a project that meets the ARHSEPP standards is therefore significantly lower than it has been for projects regulated exclusively by local planning controls (LEPs and DCPs). This suggests that the assessment time for those projects may be better than the average 114 days for all JRPP approvals. However the main issue affecting capital works planning and delivery is predictability of approval times and it is expected that this will be improved by the JRPP process and will continue to improve as the process becomes routine.

NBJP Taskforce

Like the Part 5 self-approval process, the Taskforce approval process has been effective in managing time, cost and predictability of approvals of NBESP projects, including those not otherwise permissible under the planning legislation.

It also provides finality because the NBJP Act removes opportunities for appeal against determinations. However without rigorous time and cost imperatives such as those imposed by the Stimulus program, there is a risk that approval times could over time become extended.

The Taskforce also has capacity to bulk-approve a program of minor works as an efficient alternative to requiring an individual application, consultation and environmental assessment for each site. This has been used to expedite NBESP demolitions and bedsit conversions. The bulk approvals are subject to works meeting prescribed standards (verified by completion of a compliance checklist for each site prior to works commencing).

The successful operation of this process provides a basis for Department of Planning to reconsider using existing provisions of the EP&AAAct (s110E) that enable short-form self-approval of demolitions and other routine activities.

Community housing and Aboriginal housing projects

The self-approval provisions of ARHSEPP are only available for development ‘by or on behalf of the Land and Housing Corporation’. The term ‘by or on behalf of’ is subject to the usual principles of legal interpretation and each case has to be examined in relation to its particular circumstances to see whether the facts fall within the framework. Certain Aboriginal housing projects undertaken by Housing NSW have been found to meet this test. However, it generally does not enable Housing NSW to act in the role of proponent of an activity and self-approve a project that is in reality a project being undertaken by another entity such as a private developer or community housing organisation or other government agency.

In summary, continuation of current arrangements will require JRPP approval for the majority of units in the program. This presents an appreciable risk to timely delivery of the program. Options to reduce this risk are considered below.

OPTIONS FOR REFORM

Expand Housing NSW self approval provisions under ARHSEPP

The limitation of Housing NSW self approval provisions to 20 dwellings and 2 storeys was introduced during policy development and drafting of the SEPP by the Department of Planning at officer level to limit the size and scale of development which could be self-approved by Housing NSW. At the time it was considered a reasonable balance between expediting social housing delivery and limiting community and local government concern with a new and untested approach.

An independent audit of the planning approval process recently undertaken by Deloitte concluded that a high level of statutory compliance was achieved in the self-approval process and appropriate procedures are in place to manage the risk of any non-compliances occurring.

A workshop recently held with the external planning consultants who undertook the independent assessment of NBESP projects on behalf of DART indicates that Housing NSW has assessed its own development in accordance with best industry practice and has delivered generally good housing outcomes.

A detailed review of the assessment process and built outcomes is being undertaken by the Portfolio Strategy & Urban Planning Unit of the Housing NSW Assets Division to help inform the Government’s review of the ARHSEPP and further refinements of its provisions, including the self-approval provisions.

Options for expanding the self-approval provisions include increasing the threshold to:

- 30 units and 2 storeys;
- 50 units and 2 storeys;
- Any permissible residential development below the major projects (\$100M) threshold.

Increasing the threshold to 30 units would include an additional 24 projects containing 598 units but would still arguably be within the bounds of “small scale” development and therefore most capable of community and council support. It would result in a majority of the program (2,546 units) being self-approved and 2,000 units being delivered by other mechanisms (JRPP and Part 3A).

Increasing the threshold to 50 units would result in a further 650 units being capable of self-approval (total 3,196 units) and 1,350 units approved by other mechanisms. However, a 50 unit project is unlikely to fit within the general perception of “small scale”.

It is considered that third party review is more appropriate for this scale of development, though expansion to 50 units could be reconsidered once Housing NSW has more firmly established its credentials for responsible assessment.

Increasing the threshold to any permissible residential development would involve self-approval of approximately 4,000 units and approval of 500 units through Part 3A. It would attract strong opposition from community and local government groups, making it difficult to achieve Government support, particularly as the power is readily misrepresented as allowing Housing NSW to build multi-storey flats in dwelling house neighbourhoods.

Expanding the scope of the self-approval power to 30 units is therefore considered the most appropriate option. In addition, the Department of Planning should be requested to reconsider using the existing provisions of the EP&AAct to remove the need for a comprehensive EIA report when Housing NSW is self-approving demolitions and other routine activities. This would further improve the efficiency of the self-approval process without compromising environmental outcomes.

The acceptability of any expansion in self-approval powers will be significantly improved if accompanied by requirements for expanded community consultation and transparency of decision making. The scope of these changes will require discussion with Department of Planning.

Options for expanded community consultation include carrying out the same consultation as would normally be required in that LGA for that type of development. This would overcome the contention that the existing notification process is substandard. Notification of property owners (not just occupiers, as required by the current ARHSEPP provisions) would generally be required if this option were adopted. To manage the risk of this process, the SEPP could include a requirement for the council to undertake the notification (as occurs with Part 3A projects) or should supply Housing NSW with ownership information so that Housing NSW can do so efficiently (though privacy considerations may prevent this). Provisions to absolve Housing NSW and council of liability for any errors or omissions in this information should also be sought if this option were pursued.

To improve transparency of decision making, one option is to publish EIA reports for self-approved projects on the Housing NSW website. This would be consistent with the practice of Department of Planning, the Taskforce and many local councils. Unlike those bodies, Housing NSW does not have the benefit of legislative provisions limiting the grounds for third party appeal against planning approvals. This option could increase the risk of appeal if, for example, the EIA did not fully address a particular issue or neglected to address it at all. On the other hand, it could reduce risk by demonstrating that issues were properly considered. In view of this uncertainty, any decision on this option should be deferred until Botany Council's current appeal against the NBESP project in Eastlakes has been determined and its implications are carefully reviewed.

Expand self approval provisions to include community housing

Part 5 of the EP&AAct was designed to preserve the traditional exemption of public utility authorities from the need to obtain development consent from local councils, but with a requirement that they consider the environmental impact of their proposed activities before making a decision.¹⁴⁶

¹⁴⁶ Department of Environment & Planning, A Guide to the NSW Environmental Planning Legislation, 1987.

The Part 5 self-approval process has only recently been extended beyond utility authorities to public housing and schools, but remains a function of public authorities.

The significance of this extension should not be underestimated. Utility projects were traditionally exempt from local planning approvals because they were designed and certified by engineers who were accorded a higher level of trust than the building industry and because local authorities did not have a similar level of qualification or technical expertise. Small scale social housing projects are well within the assessment capabilities of local government and do not involve the highly specialised technical expertise required to evaluate highways, electricity transmission towers or gas pipelines.

Amendment of the Act would be required to further extend Part 5 beyond public authorities to non-government bodies such as community housing providers. It is difficult to credibly argue that expediting community housing approvals justifies such far-reaching change to the legislation.

Granting community housing the self-approval powers of a public authority would also run counter to the philosophy of community housing being responsive to local communities and operating co-operatively with local councils.

Expand complying development to multi-unit housing

The advantage of complying development is that it completely depoliticises the planning approval process, making approval a question of technical compliance rather than subjective merit.

At present, complying development is largely confined to the erection, alteration and extension of single dwelling houses and ancillary works. It therefore has limited application to the Housing NSW capital works program which largely comprises redevelopment of old cottages for multi-unit housing.

The Department of Planning has a program for expanding exempt and complying provisions to other forms of development such as rural areas, housing on small lots and change of use of commercial and industrial premises. There is a long term goal to also cover multi-unit housing which is being progressed on a national basis through COAG.

The Department of Planning is currently finalising a report to COAG's Local Government and Planning Ministers' Committee on *National Development Standards for Complying Development*. This considers, amongst other things, the concept of using complying development for multi-unit housing where planning approval has been obtained for the general building envelopes. This is conceptually the same process used for major projects under Part 3A of the EP&A Act, whereby the Minister for Planning approves a concept plan showing the general street layout and building envelopes, subject to a requirement for future DAs for the detailed design of individual buildings and open spaces being submitted for approval to the local consent authority (council or the JRPP).

The Department of Planning should be encouraged to progress this work as quickly as possible. It would be in the interests of Housing NSW to offer its substantial expertise in medium density housing to assist this process.

Should NBJP Act provisions be retained for social housing projects?

The principal argument for introducing the Taskforce's planning powers was to ensure approval of a specific program of works within a specific timeframe and budget so that the maximum number of construction jobs would be generated in the minimum possible time. These constraints also promote the internal rigour required to administer approvals efficiently.

It is considered that the recent introduction of the ARHSEPP and Joint Regional Planning Panels, together with modest expansion of the self-approval provisions discussed above, will largely resolve the historical delays encountered in approval of Housing NSW projects.

As well as expediting approvals, the NBJP Act provisions resolved permissibility issues for some Request for Tender NBESP projects. This is not as significant an issue for Business as Usual projects which are generally on residential sites where two storey multi-unit affordable housing is now permitted by the ARHSEPP and can be self-approved by Housing NSW.

Where a higher density of development is appropriate, the ARHSEPP has provisions enabling residential flats for social housing to be approved on sites close to centres that are not zoned for flats, subject to a site compatibility certificate being obtained from the Department of Planning. Those provisions provide a mechanism for overcoming inappropriate zoning restrictions for significant and well located affordable housing proposals.

And where zoning is an impediment to a large scale masterplanned project, this can be resolved through Part 3A EP&A Act which will generally be the process used for such development.

PART B: RESPONSE TO SPECIFIC QUESTIONS FROM THE REVIEW

- **The PMO Model**

1. The PMO model was chosen because it allowed:
 - (a) A dedicated focus on the specific objective of delivering the NBESP, without any distraction from business-as-usual (BAU) matters and without impacting on the normal operations of Housing NSW which had to continue uninterrupted while the NBESP was delivered.
 - (b) Direct reporting to the Chief Executive in order to streamline decision-making.
 - (c) Development of different business rules and practices appropriate for a time limited project working under short timeframes.
 - (d) Development of a somewhat separate culture in which the private sector had a greater influence than is normal under business-as-usual.
2. Main differences between PMO and BAU models.

In comparing the two models, it is important to recognise that the BAU delivery model has recently undergone major reform. The reform process started prior to NBESP, was implemented throughout NBESP and is now substantially in place.

The reforms have involved adoption in BAU of some elements utilised in the PMO. The BAU capital works program is more complex, including estate regeneration, maintenance and upgrading as well as redevelopment.

The main reform is tighter central control of asset planning, policy and delivery through a corporate Assets Division. While this is also a feature of the PMO model, the PMO model does include some significant differences such as:

- (d) A three gate decision making process which set out what decisions were to be made at each gate and did not allow for excessive re-visiting of decisions.
- (e) Greater certainty of funding than has traditionally been the case with BAU (although the budget was reduced on one occasion).
- (f) A partnership with the private sector right at the heart of government. The PMO is headed by a public servant, but the other management positions are a mix of public and private sector managers. It is not just the delivery staff who are from the private sector, but also the more senior positions. This has allowed a process of innovation and implementation of private sector practices (such as the three gate process described above). It has also allowed a harder-nosed commercial culture to develop – for example, imposing liquidated damages for builders who are late in delivery.
- (g) Autonomy in decision making. The head of the PMO reports to the CE directly and was given the right by the CE that, in extreme cases where agreement with executive colleagues could not be reached, to have the final decision on NBESP projects (with a right for those executives to ask the CE to intervene). This allowed for a more speedy decision making

- (h) process. It also enabled the PMO to enforce the use of HNSW design guidelines (now the function of the Assets Division in BAU).
- (i) Immutable timeframes which galvanised the whole organisation – nobody in the NSW government could change the timeframes, which has given them a great rigour.
- (j) The PMO outsourced 100% of project management, architectural services, engineering design and related construction services. In BAU some of this work is outsourced and some done in-house.
- (k) The PMO provided both directly and through DM and PM firms a higher level of monitoring of safety and quality in construction projects than is generally undertaken by the smaller residential building sector used for BAU. External experts in building defects were used to educate builders and architects in the early stages of projects.
- (l) The inclusion of a program management function. The role of this position was to ensure that a full program was kept in the pipeline. As projects fell over, substitute projects drawn from the BAU pipeline were slotted in. Where projects ran late, the program manager was able to re-schedule some other projects to make-up the shortfall. The Assets Division has made the adoption of a stronger program management focus for BAU a priority for the next 12 months.
- (m) The ability to change staff as the project went through its phases. For example, initially the PMO had a significant team of town planners to help resolve planning issues and drive projects through the planning approval process. By April 2010 most of these had gone, but the PMO had taken on a team of experienced construction managers to review and audit the work of project management firms and builders in delivering the projects. However it should be noted that BAU programs have in recent years been delivered using a combination of in-house and external resources to enable flexibility in responding to varying workload demands, and that this approach will continue in future.

Notwithstanding these differences, the decision to ensure that the head of the PMO was a member of the Housing NSW Executive and the program director was also a Housing NSW person meant that the PMO was closely linked with the rest of the organisation. It cannot be stressed enough that the PMO is only one part of HNSW's NBESP effort. For example, the critical task of relocating 1,200 tenants for Stage 2 was not undertaken by the PMO – it was co-ordinated from the PMO but the work was undertaken by Housing Services staff. Stage 1 was delivered by the then called Resitech – an in-house project management arm. Housing NSW Legal set up over 700 contracts. In-house asset experts gave advice on town planning requirements and construction materials. Housing NSW's media section dealt with what was at times an avalanche of media inquiries.

Being part of Housing NSW was as important as having an autonomous PMO. A PMO which was not part of Housing NSW would have been unlikely to have been as successful in harnessing the highly skilled resources of other parts of HNSW. Its external communications would not have been as sensitively attuned as were those of HNSW and could have risked alienating stakeholders and the media.

A free-standing PMO would also have been less sensitive to some of the tenant and community issues which have been a big part of the pre-construction phase of activity. A

PMO based in Housing NSW was able to engage local staff in critical early decisions about the design of properties, their fitness for social housing tenants and how local communities would respond to proposals. They also provided a vital link to councils and were able to smooth the way for project managers to discuss proposals with key people in councils.

So far, only some 25 out of 503 sites have proven controversial. Whilst there has been a lot of media coverage of those sites, it is worth noting that in the other 95% of locations, stakeholder engagement and communication has been uncontroversial.

(c) Changes to the PMO to improve its capacity to deliver projects in similar circumstances

It is considered that relatively few changes to the model would be appropriate if similar circumstances were to arise. The main change for the future would be to embed a legal capacity directly into the PMO from the outset. Some time was lost in the movement of issues between the PMO and Legal Section. Further, a huge amount of legal work (land and building contracts) was required in a short period of some 8 weeks, which was disruptive to BAU.

(d) Elements of PMO which could be adapted to BAU

As noted previously, Housing NSW's ongoing structural reform includes adaptation of some elements of the PMO model into BAU. These are discussed below in (e).

There are elements which worked well for the PMO but are not proposed for BAU. For example, the PMO contracted out 100% of architectural design work, engineering work and other expert pre-construction activity. In BAU, it is useful to have some permanent in-house expertise in all of these areas, both to tackle specialist projects which may be unique to social housing and also to ensure that the organisation has enough expertise to be able to work with and appropriately manage external suppliers of these same services, inform asset policy development and maintain corporate memory.

(e) Proposed action by Housing NSW to adapt PMO elements into BAU

Housing NSW has established a project to draw out all of the lessons learned from the PMO and NBESP more generally. This includes changes in practice as well as lessons learned from the use of the Housing NSW PMO model. A number of workshops are being held to draw out the key lessons learned, and the first tranche of lessons learned (about relocating tenants) has already been published, accepted and is being implemented.

The three gate decision making process is being investigated to help streamline internal decision making and result in less revisiting of decisions, leaving the project delivery arm greater certainty in progressing projects.

There may be scope for developing a tougher commercial approach through rotating private sector commercial managers into the BAU organisation to keep in touch with current best practice in the commercial sector. Care would be required to ensure that commercial managers respect the need to balance commercial objectives with the organisation's core public service obligations.

The emphasis on quality and safety demonstrated in NBESP could be adopted in BAU through a stronger focus on key milestones, closer monitoring and the use of building experts at the start of projects to make sure that essential items such as water-proofing

(which cause severe maintenance problems later if not done properly) are done to standard.

A clear program management function, with the same authority as exists in the PMO to substitute projects and drive the program as a whole, was a key aim of establishing the central Assets Division. In the past this function was fragmented, with each of four Housing Services regions and Community Housing Division managing its own program, leaving the project delivery arm with disruptive stops and starts and then unreasonable pressure to complete delayed projects.

Assets Division will also be able to enforce the NSW design guidelines in a similar manner to PMO, and this role will be supported by its core responsibility for reviewing, updating and obtaining executive approval of the guidelines.

- **The role of the Nation Building Act**

The planning approval processes used for NBESP are noted in the following table:

Planning process	Stage 1 NBESP		Stage 2 NBESP		Total NBESP	
	Projects	Units	Projects	Units	Projects	Units
NBJP Act	23 (19%)	204 (24%)	65 (17%)	1792 (33%)	88 (17%)	1996 (31%)
DA to council	76 (62%)	528 (61%)	48 (13%)	646 (12%)	124 (25%)	1174 (18%)
HNSW Self-approval	22 (19%)	128 (15%)	268 (70%)	3052 (55%)	290 (58%)	3180 (50%)
Total	121	860	381	5490	5012	6350

The NBJP Act made a useful contribution to the planning approval of NBESP projects, accounting for 17% of project approvals containing 31% of the total unit count.

(a) Possible modifications to the NBJP Act

Housing NSW found the planning approval provisions of the Act to be generally appropriate for the intended purpose of maximising job creation in the shortest possible time through construction of social housing, in order to mitigate the impact on Australia of a global financial crisis.

However, it is considered that it is unsustainable for any planning body making decisions on construction projects (other than minor works) to not have to consult immediately affected parties such as neighbours. Housing NSW did not avail itself of this feature of the ICG powers and always consulted council and neighbours even for projects which were to be assessed by the ICG.

(b) Possible changes to the ARHSEPP

Possible changes to ARHSEPP were canvassed in Part A of this submission. As previously noted, Housing NSW is undertaking a detailed review of the effectiveness of the self-approval process and the built outcomes of NBESP self-approved projects. This internal review will inform Housing NSW's input to the review of ARHSEPP being conducted by the Department of Planning in the coming months. Preliminary indications suggest Housing NSW would support:

- A modest increase in the threshold of projects which can be self-approved, from 20 units / 2 storeys to 30 units / 2 storeys;
- Expanded provisions for neighbour consultation and transparency of decision-making.

Some refinement of the development standards of Division 1 of the ARHSEPP may also be appropriate. This will be informed by the built outcomes review currently underway.

Housing NSW will also be seeking Department of Planning support for using existing provisions of the EP&AAct which provide for short-form self-approval of minor works (in a similar manner to the bulk approvals issued by the ICG for NBESP demolitions and bedsit conversions). This will reduce the cost and time required for Housing NSW to assess and self-approve minor works without compromising environmental impacts.

(c) Importance of Part 6 NBJP Act

The provisions of Part 6 which prevent legal challenge of ICG determinations are appropriate in the context of the intended purpose of the legislation, as job creation would have been compromised if projects were stalled by third party appeals.

There is no equivalent protection for the project approvals issued by Housing NSW under Part 5 of the EP&AAct, which remain open to challenge under s123 of the EP&AAct.

It would be difficult to advocate the introduction of such protection, as s123 provides a general remedy for any breach of the Act and therefore has much wider application than to the relatively few Part 5 approvals issued by Housing NSW. It may also be unnecessary given the rarity and cost of s123 appeals against Part 5 approvals and potentially counterproductive to community and council relations. However, Housing NSW will need to reconsider this position when an outcome is reached for the current s123 challenge by Botany Council against a Housing NSW project approval in Eastlakes.

(d) The influencing role of the existence of the ICG's powers (even when not exercised) on the behaviours and actions of key stakeholders.

The ICG has the capacity to 'call up' any NBESP projects, exempt them from all development control legislation and give planning approval. It is difficult to gauge the indirect influence of this reserve power on key stakeholders but possible impacts are:

PMO:

- promoting design flexibility of NBESP projects rather than strict adherence to council controls which may be inappropriate in the circumstances.
- enabling council and neighbour submissions to be assessed on their planning merit.

Councils:

- encouraging council submissions to focus on merit issues rather than political positioning.

Housing NSW assessment team (DART):

- The ICG's adoption of a policy of only permitting variation of normal planning controls when this was justified on sound planning grounds supported DART's adoption of a similar approach. This encouraged consistency of approach across the NBESP program.

3. The role of the ICG

The Review has asked HNSW for its view of the value of the role of the ICG.

The ICG has performed a valuable role in challenging Housing NSW to consider a wide range of strategies for the delivery of the program overall. Through this, the Task Force has helped us broaden our thinking. It has also encouraged us to undertake contingency planning, which was useful as we did call on the contingency plan earlier in the program when we were short of sites to achieve our target unit numbers.

The role of the ICG in working through the delivery strategies for the program in the early days of the stimulus plan was invaluable. Many hours were spent doing this, and this input made a significant contribution to what appear to be proving to be successful strategies.

NSW had greater input from its Task Force in this area than any other State or Territory appears to have had. In some jurisdictions, the housing authority appears to be left to run the stimulus with little input from its coordinator-general. There is not one reason alone which explains why NSW appears to be far ahead of some other States, at least at this stage, in delivery of the program - but one contributing factor was the strategic input of the ICG and Task Force at the start of the program.

The Task Force has also monitored our performance externally and challenged us to improve. In practice, Housing NSW has, from the date of announcement of the housing stimulus package, had the highest level of motivation and commitment to over-achieve on the stimulus targets – and to do so to the highest quality levels.

It also has established its own rigorous performance management system, which operates in considerable depth and breadth, from state-wide performance monitoring, down to the level of tracking the detailed construction milestones for each project, each builder, each project manager, each risk. It also controls the costs and quality of each project with a level of rigour, the construction industry has told us, they have not seen before in the residential sector. The Task Force monitoring system is based on HNSW's system and has elements of duplication.

HNSW believes that the Task Force had to have these roles of challenging and performance monitoring, as this was part of building the confidence of other stakeholders, especially the Australian Government and NSW government central agencies. It also had to have the right to step in if HNSW was failing to deliver. Whilst in its history, HNSW has successfully delivered large programs, and is an efficient organisation operationally, external stakeholders would not have known whether HNSW was capable of delivering on the stimulus plan or not. For this reason, it was essential that there was a Task Force and that it had the roles it had. HNSW has put and continues to put great effort into demonstrating to the Task Force that it is achieving well, and is very responsive to suggestions and comments from the Task Force. The ICG has had an essential role in building HNSW's reputation for achievement among key stakeholders, and had to have confidence itself in HNSW's ability before it could do that.

The ICG also had powers in relation to procurement which Housing NSW used. This allowed HNSW to depart from some unnecessary constraints in the normal procurement process. For example, normal procurement processes would have said that when buying land, Housing NSW should not exceed the market price exceeded by the independent valuation. However, in some cases, the combination of the land plus the proposed building would produce a built project which would have a total cost less than the valuation of the finished project. Not to proceed because one element of the project was

over valuation in an otherwise good value project would have been a perverse outcome. The ICG was able to allow this revised approach to procurement.

The Review has asked if the PMO would have existed without the ICG. The PMO would have existed without the ICG – this was a decision taken by the CEO following external advice from Evans and Peck. Whilst the Task Force contributed vigorously to the final shape of the PMO, the fundamental decision to establish a semi-autonomous organisation, but one which was carefully linked to the rest of the organisation, and to staff it with a heavy element of private sector staff was made by the CE of Housing NSW and would have been made even if there were no ICG.

The Review has also asked if the PMO would have enjoyed its operational independence without the ICG. This is an important question. The answer is that it certainly would have been able to operate semi-autonomously within HNSW (as the CE deliberately set it up that way, noting that asset policy decisions were always addressed in consultation with Assets Division) but would not have been allowed an essential level of operational independence within the NSW government.

The normal process of scrutiny of expenditure of this magnitude by central agencies involves processes of submissions, meetings, scrutiny of detail and referral upwards for decision. In BAU this can work because the timeframes are generally longer. But for NBESP, it would have taken too long to reach a resolution on each major decision under this sort of process and this would have meant that the essential Australian Government timelines would have been missed.

Both Treasury and DPC have stood back from detailed involvement and have allowed HNSW to get on with the job. HNSW reports regularly to both agencies, as is entirely appropriate and both agencies have supported HNSW when necessary. But they have not got involved in a more detailed level, and HNSW's view is that having the Task Force in place gave both central agencies sufficient comfort to step back to some degree.

In terms of media and communications, almost all of the media and communications in relation to social housing have been managed by Housing NSW and the office of the Minister for Housing. This is to be expected as that is where the knowledge in terms of specific housing issues lies.

Housing NSW has also turned to the Task Force for assistance in making representations to industry bodies and dealing with a small number of specific project related issue where HNSW was not getting a timely response

4. Value for money

The Review has asked if the ICG or the Australian Government affected the ability of HNSW to achieve value for money. Housing NSW did not find any of the actions of the ICG to limit value-for-money.

Some of the Commonwealth decisions entailed additional costs, for example for additional environmental factors such the inclusion of solar heating and water tanks. However, these were policy decisions made by the Commonwealth and were achievable within the funding provided. The cost of projects could have been reduced by excluding them, but that would not necessarily provide value for money. Some would argue that excluding such features would result in poorer value-for-money for society as a whole.

HNSW has not found any of the Australian Government requirements to be a limiting factor in terms of value-for-money. It is true that the Australian Government has asked for a large amount of data – almost all of these data are items HNSW would have collected anyway, and HNSW collects more data than the Australian Government requires, so there is no additional cost involved. HNSW would expect a body providing almost \$2bn of funding to have detailed data requirements, and has willingly responded to requests from the Australian Government for information. HNSW finds that FAHCSIA goes to some lengths to keep a limit on the amount of information it asks for.

Housing NSW had four principal strategies for securing value for money:

- Tight control over the design of projects to ensure they met Housing NSW design guidelines, but did not exceed them. Some of these guidelines resulted in more expensive components than is normal in residential housing – for example, the use of semi-commercial grade windows. However, the strong justification for such inclusions is that they reduce long-term maintenance costs. A PMO architect and cost accountant reviewed the design of every one of the Stage 2 projects (some 400 of them) to ensure that designs were both aesthetically appropriate as well as meeting the guidelines.
- Competitive tendering. Every main element of the NBESP has been competitively tendered. The project management firms were selected via a competitive tender. Every building project was subject to a competitive tender with 300 pre-approved firms of builders competing for work and only one in three of those being successful. If no builder in a tender offered value-for-money (as happened in Moree, for example) then the projects were re-tendered.
- Fixed price contracts, which provided a defence in case the cost of construction escalated as a result of unexpectedly large growth in the economy or as a result of shortages triggered by the stimulus plan itself.
- Tight control over quality and strict management of variations by builders. The project management firms review all cost variations by builders, but the PMO also scrutinises these and will not pay any variations which belong to the builder. Sites are visited weekly as a minimum and up to daily if the builder is not performing well in terms of timeliness, safety or quality.

5. Probity and risk

The NBESP program has been subject to more audit and review than any program in Housing NSW's collective memory. There are five streams of audit and review:

- FAHCSIA collect a range of financial and performance measures and track these with Housing NSW
- The Task Force undertook initially weekly performance management meetings with HNSW, now fortnightly, and also receives and analyses a large amount of data and undertakes spot visits to sites.
- Housing NSW's own audit program includes audits of the PMO and PMO activity by Deloittes
- The Task Force, through OCM, undertakes audits of a range of aspects of NBESP
- The PMO itself has an audit program of aspects of the program
- Deloittes undertakes a monthly review of financial transactions using data mining techniques to highlight any payments which merit further investigation.

In addition, it is expected that at some stage the NSW Auditor General and the Commonwealth Auditor General may wish to undertake some audit activity. Agreement has been reached between HNSW and the Task Force about the audit programs of OCM, Deloitte and the PMO so that there is a coherent program which covers all aspects of the NBESP. Audits so far have included:

- (a) The selection of project managers
- (b) The operation of the PMO
- (c) The operation of ARHSEPP planning submission and approval process
- (d) Safety audits of sites
- (e) Quality audits of sites
- (f) PMO systems
- (g) Payments to contractors
- (h) Review of maintenance spend
- (i) PMO complaints handling system
- (j) Audit of project management firms' readiness for the construction phase
- (k) Certificates of demolition
- (l) Select tender process
- (m) Project management firm tendering procedures

Audits are planned on the following topics:

- (n) Review of financial governance
- (o) Value for money
- (p) PMO management of service providers
- (q) Allocations of houses
- (r) Payments for variation
- (s) Taskforce reporting framework
- (t) Builders panel

The PMO maintains a live risk register and this is reviewed by senior managers monthly.

6. Social housing achievements and concerns

Information has been provided on how the NBESP has helped Housing NSW achieve strategic objectives. Three areas of concern have been identified by the Review.

- Consultation on planning proposals

Housing NSW undertakes both a formal and informal consultation process. For every NBESP development, HNSW met at least once with the council and always offered to meet at least twice. In some cases, six or seven meetings were held. These meetings were all held right at the outset when only concept designs had been completed, and these provided an opportunity for councils to give initial feedback. Often there were significant changes in design and yield at this stage.

Housing NSW also undertakes a formal 21 day consultation on all projects as required by ARHSEPP. Neighbours (the people most impacted) receive formal notification as does council. Other interested parties can review the plans which are placed in council offices. HNSW also provides a telephone contact for people with questions about the projects.

In addition, HNSW attended meetings with groups of residents where appropriate. Initially in the NBESP process, HNSW attended public meetings. Without exception, these proved unproductive and often degenerated into abuse. Since then, HNSW

offered to meet with numerous representative groups of residents, often in the offices of local MPs and this has proven more productive.

It is also worth bearing in mind that over 500 projects are being built under NBESP and only some 25 locations were significantly controversial. Some of the media comments from councils about lack of consultation are untruthful or are economic with the truth – for example, claiming that there was no consultation with councillors individually, when HNSW had several formal meetings with officers representing the council. Some of these comments appear to be motivated by difficulty in accepting that HNSW is responsible for approving the smaller developments which councils used to approve.

Some councils have also disingenuously claimed that Housing NSW developments do not comply with their Local Environment Plan (LEP). They do not add that there are other planning instruments aside from the LEP (such as ARHSEPP and the Seniors Housing SEPP) which council would have to comply with and which would have resulted in the developments being permissible if the council had been the approving body.

In this regard it is important to note that HNSW can only approve permissible developments – it cannot approve developments which are not permitted under an environmental planning instrument, and the independent planners confirm whether a development is permissible or not.

In some media reports, HNSW has been accused of lack of consultation because it did not agree with submissions (though in some cases it did and amendments were made or further expert reports were commissioned). Consultation does not mean agreement – it means that opportunity is provided for concerns to be raised and taken into account. The independent planner's Environmental Impact Assessment prepared for each project addressed every objection, demonstrating a high degree of consideration of comments made during consultation. The Chief Executive specifically instructed the independent assessment team to check that this was done before a project was submitted to the Chief Executive (or delegate) for final approval.

As suggested previously, the review of the ARHSEPP will consider whether there are other or wider forms of notification which could be given. One option might be to require the same level of consultation as is normally carried out by the local council for that type of development (which generally would include notification of owners, not just occupiers). To avoid legal exposure on the grounds of procedural error, this would need to be coupled with a requirement for councils to provide HNSW with a list of owner addresses or to do the mail out on behalf of HNSW, and provisions which absolve HNSW and council of responsibility for any errors or omissions made in good faith.

While Environmental Impact Assessment reports for approved projects have been provided on request, consideration could be given to their online publication as soon as projects are approved. This demonstrates an open, transparent approach. Enabling submitters to see the objective, professional consideration that is given to submissions may defuse community anxiety regarding the consultation process.

- Payment of Section 94 fees

A legal requirement to pay Section 94 contributions does not arise when Housing NSW self-approves a housing project. Housing NSW has nonetheless adopted a policy for self-approved BAU projects of making an *ex-gratia* payment to council equivalent to the normal s94 contribution (subject to it satisfying the usual planning tests of nexus and reasonableness).

Under NBESP, the ICG policy was to pay s94 fees only on the 21st and subsequent units and no contribution was payable for projects of up to 20 units. To ensure consistency across projects approved by Housing NSW or the ICG, Housing NSW adopted a similar policy of not paying contributions for NBESP projects with 20 or fewer units.

Housing NSW did however, pay other council fees for NBESP projects such as water and sewerage augmentation and connection charges.

The policy of not paying s94 contributions for NBESP projects self-approved by Housing NSW was appropriate in the context of the NBESP because:

- Any contributions paid would have been held in council section 94 accounts and would not have been immediately available for employment generating construction work.
- In the absence of this policy, a higher proportion of the program could have been allocated for Seniors Housing which is in significant undersupply and has for many years been exempt from all s94 contributions.
- NBESP projects were approved in over 54 local council areas. The contributions foregone in any one area would constitute a small proportion of the total contributions receivable over the lifespan of the typical council Section 94 Contributions Plan. In some areas, this shortfall would have been offset by the value of works undertaken in the area under the Community Infrastructure component of the NBESP.

(c) Car parking provision

The ARHSEPP requires a minimum of one car parking space for five units for social housing developments. Housing NSW generally provides this amount in metropolitan areas and town centres where there is public transport. Outside those areas, a more generous level of car parking, generally up to 1 parking space per unit, is provided depending on the location.

The average amount provided in NBESP projects self-approved by Housing NSW was 2 spaces per 5 units (double the minimum required under ARHSEPP).

Housing NSW has carried out a number of ad hoc surveys of car parking usage in its multi-unit projects in metropolitan and non-metropolitan areas. These do not provide a comprehensive survey but indicate that in the metropolitan and major regional centres surveyed, approximately one in eight units uses a car parking space for themselves or their visitors and in more rural settings, about one in five units uses a car parking space.

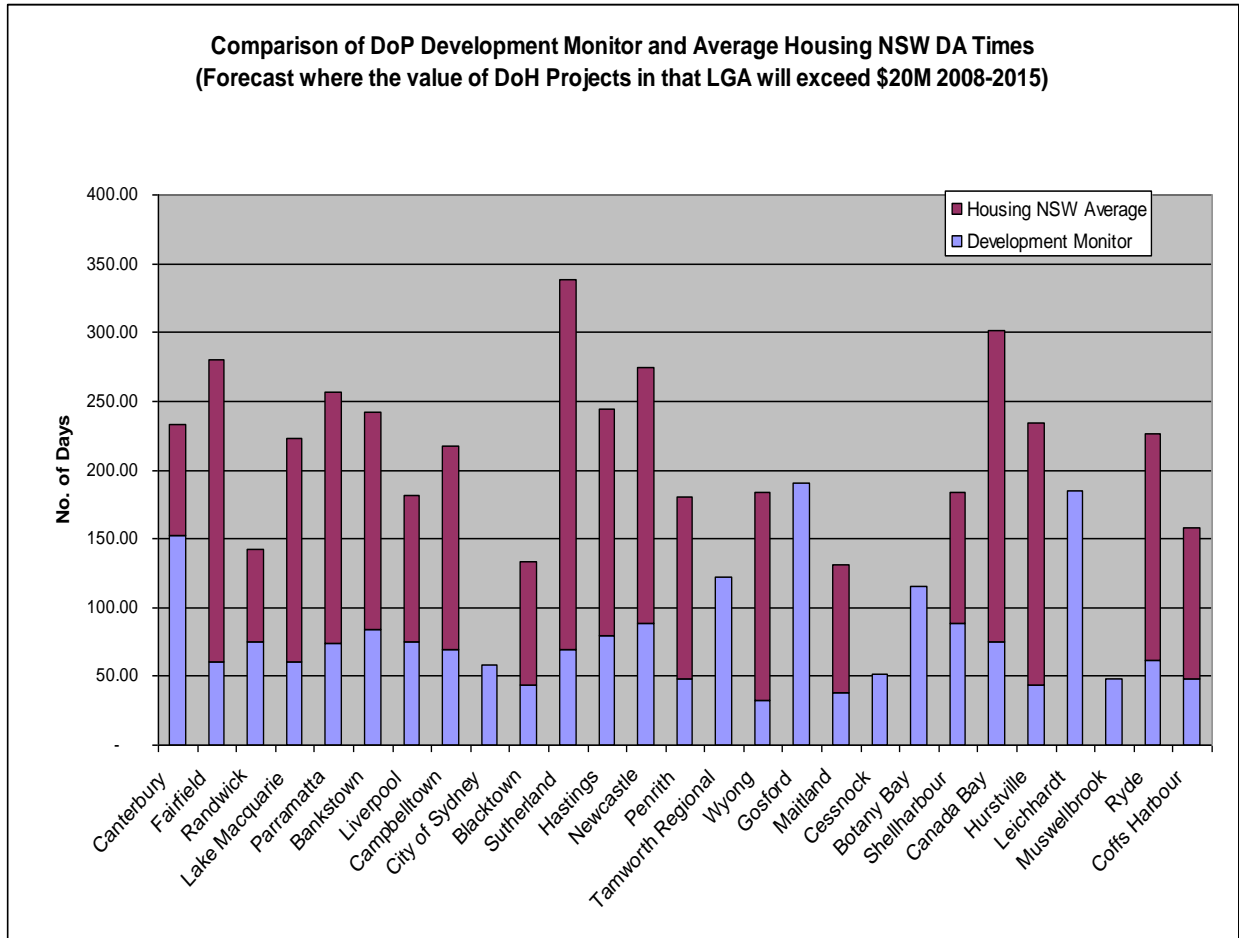
Prior to the advent of ARHSEPP, Housing NSW was often required by councils to over-provide parking and this is evident in the number of empty spaces at many complexes. The amount of parking provided in the NBESP is therefore considered to be appropriate overall and avoided spending money on unused car parking spaces which is better spent on providing valuable affordable housing and landscaped area.

Housing NSW is reviewing its design requirements and in the process, will be undertaking comprehensive parking surveys in multi-unit projects to accurately identify the appropriate level of parking provision for particular locations and project types. The establishment of this strong evidentiary base should help resolve council and community concern regarding the parking levels provided in Housing NSW projects.

PART C – KEY FINDINGS AND RECOMMENDATIONS

- (a) There is a long history of unreasonable local government delay of development applications for urgently needed social housing projects. Numerous projects over the years have been delayed, cut back or omitted from the capital works program, contributing to insufficient social housing being available to meet growing demand. This results in people on the waiting list paying rent for private accommodation that is beyond their means and many social housing residents living in outdated buildings which no longer meet their needs.
- (b) Housing NSW is therefore absolutely committed to minimising the time required to deliver the State Government's capital works program for social housing.
- (c) It is considered that improvement of the existing planning system rather than extension of NBJP Act provisions to bypass that system is the most sustainable way of realising this commitment.
- (d) Arising from the Government's review of the NSW planning system in 2007/08, *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) was prepared to improve affordable housing supply.
- (e) ARHSEPP significantly streamlines and supports the delivery of affordable housing (including social housing provided by Housing NSW and community housing providers) and contributes to achieving the goals of the State Plan and Metropolitan Strategy.
- (f) ARHSEPP largely resolves zoning and development standard issues that had impeded Housing NSW's asset programs and includes limited self-approval powers for projects of up to 20 dwellings and 2 storeys. These provisions were very effective in securing timely planning approvals for the majority of NBESP projects without compromising environmental standards.
- (g) Housing NSW supports reconsideration of the 20 dwelling threshold of the ARHSEPP. A modest extension to 30 dwellings and 2 storeys would still be within the scope of small scale development and would enable the majority of the capital works program to be self-approved.
- (h) Any expansion in self-approval powers should be accompanied by amendments providing for expanded community consultation and transparency of decision making. The scope of these changes will require discussion with Department of Planning as part of the Department's upcoming review of ARHSEPP.
- (i) Projects that exceed the ARHSEPP threshold will either be determined by Joint Regional Planning Panels or would be major projects determined under Part 3A of the EP&A Act. It is anticipated that these two processes overcome most of the difficulties historically arising from council assessment of such projects.
- (j) Housing NSW strongly supports the extension of complying development provisions to multi-unit housing. It is understood that this is being progressed on a national basis through COAG's Local Government and Planning Ministers' Committee. Housing NSW is keen to offer its substantial expertise in medium density housing to help expedite this important initiative.
- (k) The capacity of the ICG to bulk-approve a program of minor works was an efficient alternative to requiring an individual application, consultation and environmental assessment for each site. The successful operation of this process for demolitions and bedsit conversions supports the use of corresponding provisions of the EP&AAct (s110E) to enable short-form self-approval of these and similarly minor, routine activities.

**ATTACHMENT 1:
2007 PROJECTION OF COUNCIL DA ASSESSMENT TIMES FOR HOUSING NSW**



**ATTACHMENT 2:
PLANNING OUTCOMES FROM SELF-ASSESSMENT OF NBESP PROJECTS**

Total NBESP Stage 2 projects self-approved (@ 18 May 2010)	267
Projects with additional conditions imposed by assessment team	207 (78%)
Subject matter of conditions:	
Privacy (eg, screening, opaque glazing, highlight windows, delete balcony)	65
Car parking (modify layout – 23; delete space/s – 22; add space/s – 6)	51
Landscape/deep soil area (eg, increase to meet AHSEPP standards)	50
Eaves & awnings to be provided	47
Garbage bin store - redesign/reposition	32
Wall cladding (eg, provide variation in materials)	26
Building design modifications (eg, relocate windows/doors to address street)	23
Solar access (eg, relocate windows; modify/lower roof form, increase setback)	16
Tree preservation	15
Utility service provision (easements, stormwater design)	12
Rainwater tank - relocate or redesign (Note: all projects have tanks)	9
Delete units (But also done through negotiation rather than condition)	3