

## ANNEXURE G: Review Questions to DoP and DoP Submission and Response

### (i) Review Questions



Document: 10/00927-001

24 May 2010

Mr S. Haddad  
Director General  
NSW Department of Planning  
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SYDNEY NSW 2001

  
Dear Mr Haddad

#### **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 and Jobs Plan (State Infrastructure Delivery) Act 2009 (the Act) has been commissioned by the Premier with wide Terms of Reference (Annexure 1). These Terms of Reference (ToR) require the Review to examine not only the role of the Act and the performance of the Infrastructure Coordinator General (ICG), but also the possible extension of the legislative and operational frameworks to 'other significant projects or classes of projects in NSW'. Potentially, this could have significant impacts on the planning system in NSW and the purpose of this letter is to outline some of the issues on which the Review would wish to have the benefit of the Department's views. For these views to be considered by the Review the response would be required by 16 June 2010. The issues are set out below.

1. The projects that made up the bulk of the NSW Nation Building and Jobs Stimulus Plan (the Plan) were in two areas: Building the Education Revolution (BER) and Social Housing (SH). While these programs were large, the individual projects within them were relatively small and unlikely to raise significant environmental issues other than those associated with local amenity and bushfire risk. Some of the planning issues in both areas were also governed by SEPPs (for BER the ISEPP and for SH the AHSEPP) though these SEPPs were relatively new and, in the case of the AH SEPP, untested.

Despite both the relatively minor nature of the individual projects and the existence of the SEPPs it was still considered necessary for the ICG to use the powers in the Act in a significant number of cases to meet project timetables. In many of these cases the action was necessary to overcome minor defects or minor non-compliance issues that could potentially have held the projects up for extended periods.

The Review has been asked under ToR(c) to examine whether the principles of the legislation should be extended to any other 'class of projects'. This presumably arises because the principles in the legislation have been observed by government to avoid many of the problems inherent in the current system. But there are risks in an Act that controls development through very wide planning powers with virtually no procedural requirements or environmental planning criteria and, before embarking on this course,

the Review should examine whether it is possible to deal satisfactorily with the 'any possible class of projects' extension under the existing planning system arrangements. The SEPP mechanism would seem to be the likely vehicle for achieving this.

Advantages for the SEPP mechanism in this context are that the criteria for individual SEPPs can be fully debated, the relationship between the normal planning system and the SEPP can be understood by those with consent roles, and a separate bureaucracy is not required to administer a parallel system. However, at the same time some stakeholders have expressed the view that the potential impacts of SEPPs are not always fully explored (SEPPs are not required to undergo a rigorous regulatory impact assessment process) and that this means there is not much difference in terms of risk of poor community outcomes from actions under the Act or actions under some SEPPs.

While most of the stimulus plan projects were processed via EP&A Act provisions, the need to process 800 of these projects through the parallel system created by the Act would call into question the capacity of the SEPP system to provide a completely satisfactory answer. In this context it should be noted that stakeholders have advised that it is extremely difficult to get agreement to develop a SEPP, the development process takes years and the SEPP then often falls short of addressing the problems originally identified.

The extent to which the above observations are correct essentially determines whether there is a need to have an alternative system to the current planning system available to which classes of development can be added as required or whether the current planning system can adapt, either via improvements to the SEPP system or some other changes, so as to make this unnecessary.

The Review would value the Department of Planning's views on the desirability or otherwise of maintaining the parallel system established by the Act and, should that view be opposed to such a system, the Department's views as to how the issues raised might be dealt with effectively. In that context, the Review is aware that both the ISEPP and the AHSEPP are either undergoing or proposed for review and that this may rectify some of their apparent defects. However, the Review does not consider that this is a sufficient answer to the broader issue raised by ToR(c).

2.
  - (a) As noted above, the Terms of Reference require the Review to consider extension of the legislation and/or the ICG model to other classes of developments. Does the Department have a view as to the other classes of development that could either be added to the ICG frameworks or become the subject of a SEPP (or some other planning instrument) in order to improve development outcomes? In this context the Review notes that there are two broad classes of possible objectives for such a move. One is to speed up decisions for a class of developments and overcome obstructions based on minor technicalities and the other is to deal with the situation where there are competing public policy objectives and the broader public interest may be thwarted by obstruction from local interests using all the possible process technicalities available. Social housing development is often an example of the latter.
  - (b) Does the Department have other SEPPs (or equivalent instruments) under consideration at this time that may be relevant to the Review's Terms of Reference?

3. The ICG developed and published guidelines (the Planning User Guide) which, in the words of the ICG, 'needed to be merit based, addressing the usual range of environmental considerations, and where possible adhering to the relevant standards and planning instruments, or at least their intent'. The ICG also published all of its approvals, making it possible for observers to assess whether it had complied with its own guidelines.

At this stage the Review is not aware of significant objections to the merits of the ICG's decisions overall, although some local councils have raised concerns about some specific social housing developments.

Whilst this issue may be more complex than it looks, if the ICG's approach is considered to be simpler, does the Department have a view as to the merit or otherwise of adopting the ICG's approach for projects of a similar ilk across the development spectrum. If the Department agrees that this is worth pursuing, what would need to be done to achieve it?

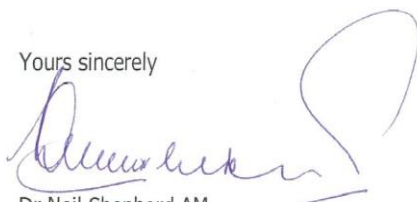
4. The Review's Terms of Reference also require it to consider extension of the legislation and/or the operational model to 'significant projects'. 'Significant projects' are not defined in either the Terms of Reference or the Act. This provides scope for the Review to consider extension to a wide range of possible projects. However, before it does so the Review wishes to seek the advice of the Department as to what it might consider to be 'significant' in this context and whether there is any merit in extending the provisions of the Act or the ICG model to this group of projects.

If the Department is of the view that extension is not warranted, a comprehensive explanation of how the current system deals with 'significant projects', including any concerns with the performance of that system, would be appreciated. For the identified concerns, information on any proposals to address these would also be appreciated.

5. The ICG has raised the importance to the exercise of his functions of the provisions in Part 6 of the Act which limit both appeal and review. Does the Department have any views as to how the appeal system might be improved within the current planning system in the context of the types of developments discussed under 2 and 4 above?

If you wish to discuss the above questions or seek any clarification please contact me on 0417 410 475.

Yours sincerely



Dr Neil Shepherd AM  
Review Chair

**(ii) DOP Submission and Response to Questions**<sup>147</sup>



Department of Planning Submission

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

**19 July 2010**

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<sup>147</sup> The layout of this Annexure differs slightly from the original document but the content is exactly the same.

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

## SUMMARY

The primary role of the NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 (NBJP Act) was to establish the Infrastructure Co-ordinator General (ICG) and to provide the necessary powers to deliver the Commonwealth funded Nation Building and Jobs Plan (NBJP) projects within specified timeframes. The NBJP Act also establishes powers for the ICG to direct State government agencies to co-operate in infrastructure projects delivery and if appropriate, for the Co-ordinator General to take over the delivery of infrastructure projects on behalf of State government agencies.

The Department of Planning recognises the value of having an Infrastructure Co-ordinator General position that is focussed on the co-ordination and delivery (rather than approval) of infrastructure projects that are in the public interest (rather than for private or commercial benefit) to ensure NSW is well serviced with appropriate and efficient infrastructure to stimulate investment and to provide appropriate services for communities across the state.

As such, the Department:

- supports the continuation of the role of the ICG in the project co-ordination and delivery process for key infrastructure projects, including -
  - a. in co-ordinating and ensuring timely and efficient formulation of development project proposals and whole of government submissions for planning approval.
  - b. in the timely post approval delivery of major infrastructure and key strategic projects.
  - c. in co-ordinating service delivery when a number of authorities are involved, for example with major urban renewal or land release projects.
- recommends the consideration of an expanded role for the ICG in directing state agencies to ensure the efficient monitoring and roll-out of infrastructure projects.
- would consider changes to the assessment processes and systems under the *Environmental Planning and Assessment (EP&A) Act 1979* should the review identify examples of better practice from the ICG/NBJP model.
- suggests the ICG could also play an important role in monitoring the implementation of infrastructure projects and independently reviewing the effectiveness of delivery strategies for sectors such as housing and transport related services.

The Department of Planning does not support expanding the planning approval role to additional classes of development to create a parallel development approval regime to that under the EP&A Act.

While the ICG Taskforce played a role in assisting in the approvals of projects under the NBJP program, on the whole, these projects were low risk, low impact and hence are not a good indicator of what is required to efficiently deliver planning approvals across a broad range of projects, particularly more complex private sector projects. Extending this role to be an alternate planning approval authority for projects, other than those funded under the Nation Building Program, is not considered necessary or desirable.

A number of factors have influenced the Department's position:

- Firstly, such an approach would result in a parallel, defacto and ad hoc planning system, setting aside strategic planning, land use zoning, urban design and development controls. Though it may have short term benefits for some sectors, it would lead to significant long term costs.

- Secondly, there is a significant risk to the market, if an adhoc approach was applied to private sector development, for example apartment buildings. The approach would encourage “approvals shopping” and distort investment decisions leading to greater uncertainty. It could also encourage speculation and approvals/land banking, escalation of land prices and reduced housing affordability.
- Thirdly, it is doubtful if the NBJP Taskforce could have delivered 100% of the projects in the required timeframes, had it not been for the provisions of the Infrastructure State Environmental Planning Policy (SEPP) and Affordable Rental Housing SEPP which saw over 65% of the projects delivered efficiently under the normal planning controls.
- Fourthly, the evidence suggests the NBJP Assessment Taskforce did not achieve significantly shorter approval timeframes than the normal planning system for projects which on the whole were not large or complex. Indeed, some of the timeframes were comparable with those of the top performing councils who also had to take into consideration all the planning provisions and controls in the relevant planning regime, as well as undertake notification and consultation with agencies and the community. This is in no way a reflection on the Taskforce’s achievements, but a recognition that complex projects need a longer time to assess, regardless of who does the assessment.
- Fifthly, there is unlikely to be a repeated conjunction of circumstances under which the NBJP Act was established which justified the setting aside of the planning system - including the threat of job losses from the economic downturn, the size of the funding, the need for it to be spent quickly, the public nature of and benefits provided by the projects, and the location of many of the projects on publicly owned land. Unless there is similar set of parameters, there is no justification for using the NBJP model for setting aside the planning, consultation and appeal provisions to deal with “normal” classes of development.

There is, however, justification for making the planning system work more efficiently, and this is currently being addressed. The Department has been working on a number of initiatives to streamline the EP&A Act system, for instance:

- roll out of the comprehensive Local Environmental Plan (LEP) program with a single LEP for each council area based on a Standard Instrument
- use of Joint Regional Planning Panels (JRPPs) and Planning Assessment Commission (PAC) to strengthen and depoliticise decision making
- further streamlining the major project Part 3A assessment processes
- updating the Part 4 assessment regime including revised development application procedures
- expanding the use of complying development
- increased use of e-planning to make the system more interactive, transparent and efficient
- reduction of development Control Plan (DCP) complexities
- capping of development contributions
- strengthening the certification system
- introducing a streamlined low cost conciliation arbitration review for smaller projects

The Infrastructure SEPP, Affordable Rental Housing SEPP and Exempt and Complying Code SEPP are currently being reviewed to extend their scope to further streamline approval of future low impact developments classes. In addition, the Department is currently developing the Urban Renewal SEPP to facilitate the development or redevelopment of key urban renewal precincts as well as a Priority Land Release SEPP to streamline the delivery of new greenfield land. These SEPPs will also provide for a streamlined process to deliver a range of employment and residential development which meet the relevant controls.

## **BACKGROUND TO THE REVIEW**

The NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 (NBJP Act) provides the NSW Infrastructure Co-ordinator General (ICG) with a range of powers to ensure the efficient approval of projects funded under Nation Building Stimulus Package so that projects can be delivered according to the strict timeframes established by the Australian Government.

Under Section 30 of the NBJP Act, a review is being conducted into the implementation of the Act and its potential applications for other projects outside the Nation Building funded program. A report is to be submitted to the Premier by the end of July 2010.

This submission has been prepared in response to the Review of Implementation of the Nation Building and Jobs Plan in NSW for consideration by the Review Panel in preparation of its report to the NSW Premier.

### ***Terms of Reference***

Part 1 of the submission responds to the Terms of Reference for the review which is to examine and report by the end of July 2010 on:

- the effectiveness of NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 in facilitating the implementation of the Nation Building Economic Stimulus Plan in NSW;
- the exercise by the Coordinator General of the functions conferred by the Act in accordance with section 30 of the Act;
- 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;
- options and mechanisms for applying the principles should they be applied to such projects or classes of projects in NSW.

### ***Additional Questions***

Part 2 of this submission responds to a series of additional issues raised with the Department of Planning by the Review Chair on 24 May 2010 including:

- the Department's view on the desirability or otherwise of maintaining the parallel system established under the NBJP Act,
- What
  - other classes of development could either be added to the ICG framework or subject of a SEPP
  - other SEPPs under consideration could be relevant to the Review
- The use of the ICG guidelines for other similar development types
- If the Department does not support the extension of the NBJP Act, how the current system can efficiently assess significant projects
- Suggestions regarding how the appeal system might be improved within the current planning system

**PART 1: ADDRESSING THE ISSUES IN THE TERMS OF REFERENCE**

**Issue (a) The effectiveness of NSW Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 in facilitating the implementation of the Nation Building Economic Stimulus Plan in NSW**

The NBJP Act establishes powers to ensure the infrastructure projects are delivered in a timely manner including:

- (a) A NSW Infrastructure Co-ordinator General with responsible for planning and implementing the timely delivery of the infrastructure projects.
- (b) An Advisory Taskforce of government and private sector representatives.
- (c) Requirement for State government agencies to co-operate in infrastructure projects delivery and, if appropriate, for the Co-ordinator General to take over the delivery of infrastructure projects on behalf of State government agencies.
- (d) Provisions to call-in and override the planning and other approval processes for infrastructure projects.

To streamline outcomes, the NBJP Act removes the application of key planning and environmental provisions including:

- the application of all zoning and development control provisions,
- the requirement for notification of or consultation with the community or other agencies
- s94 infrastructure contribution obligations
- the need for subsequent environmental or heritage permits or licences
- the ability for applicants or the community to appeal a decision.

**Table 1: Determinations under Nation Building Act  
(based on data available on the website)**

<b>Development within the Month of</b>	<b>Number of projects</b>	<b>Average value</b>	<b>Days from Application Date to Notice of Determination#</b>
<b>August 2009</b>			
▪ Public housing	0	-	-
▪ Non-public schools	13	\$1.9M	28
▪ Public schools	34	\$2.0M	46
<b>September 2009</b>			
▪ Public housing	0	-	-
▪ Non-public schools	23	\$2.1M	29
▪ Public schools	55	\$1.9M	29
<b>November 2009</b>			
▪ Public housing	16	\$8.2M	33
▪ Non-public schools	16	\$2.1M	48
▪ Public schools	58	\$2.2M	38
<b>February 2010</b>			
▪ Public housing	12	\$6.8M	55
▪ Non-public schools	12	\$2.3M	90
▪ Public schools	35	\$2.1M	57
<b>March 2010</b>			
▪ Public housing	24	\$2.5M	79
▪ Non-public schools	10	\$3.3M	101
▪ Public schools	38	\$2.5M	78
<b>April 2010</b>			
▪ Public housing	4	\$4.5M	80
▪ Non-public schools	15	\$2.7M	82
▪ Public schools	21	\$2.5M	68

# Note: Some of the days may have involved days in the lodgement process and/or times for checking the proposal by the project managers rather than assessment by the assessment teams – however the total timeframes are still considered to be part of the overall processing time.

The NBJP Act provides an effective vehicle for developments to be assessed and determined with a very focused assessment regime: see Table 1. This assessment regime is highly flexible with the steps at the discretion of the Co-ordinator General / NBJP Assessment Taskforce.

Guidelines and application forms which support the NBJP Act outline an assessment regime. The guidelines suggest that the applications are to be accompanied by appropriate assessment of impacts on the environment and adjacent land uses. The guidelines also suggest that consultation be undertaken with relevant local councils prior to lodgement of an application. The guidelines indicate that projects should be designed, as far as possible, to meet the relevant criteria of the applicable environmental planning instruments. However, there is no legal imperative to comply with planning or environmental controls which would otherwise have applied to projects if assessed under the EP&A Act.

The guidelines are purely discretionary and cannot be challenged in court unlike the equivalent requirements applying under Part 4 of the EP&A Act. Under the NBJP Act, there are no statutory requirements comparable to those under Part 4 of the EP&A Act which have the potential to extend the timeframes, such as:

- the need to comply with the relevant plan's zoning and development controls,
- the need to notify neighbours or exhibit the application and take into consideration issues raised,
- the need to refer applications to other agencies and obtain their approval/ concurrence
- the need to negotiate with councils regarding developer contributions, and
- the need to ensure that the determination would not be open to challenge in the Land and Environment Court.

There were two structural matters that drove quick assessment times under the NBJP Act. First the Act provides for the Co-ordinator General to step in and actually carry out infrastructure projects on behalf of State government agencies. Secondly, proponents were under pressure to be co-operative because of the pressing timeframes set by the Commonwealth to obtain funding. As a result, all parties had a strong interest in achieving efficient timeframes for assessment and approval. The first of these drivers is unique to the NBJP Act and the second is a product of extraordinary circumstances – the need to stimulate the economy and create jobs – which are unlikely to be present to the same degree in future.

In considering the “effectiveness” of the NBJP approach in facilitating the implementation of the Nation Building Economic Stimulus Plan in NSW, the following observations are made:

▪ **Effectiveness in terms of timeframes**

The ‘planning approval’ timeframe component is one fairly small step in delivering the Nation Building Program projects. For example, in the social housing program being managed by Housing NSW, there was a considerable time spent pre-lodgement undertaking due diligence, acquisition, design and documentation processes. It is understood that the ICG process was effective in streamlining these steps.

In regard to the ‘planning approval’ step, while, the average times for determination of simple or smaller projects under the NBJP provisions in the first 6 months of the program were 28 to 46 days, the times in the second 6 months - where more complex projects were being determined - were 55 to 101 days (Table 1). These times may include days checking the proposal by the project managers rather than assessment by the assessment teams – however the total timeframes are still considered to be part of the processing time. In addition, these timeframes do not include the pre-lodgement consultation with councils and agencies or the post approval timeframes to resolve issues with the project that were deferred to be re-submitted for subsequent approval by a certifier.

Overall the timeframes are comparable with the “net” timeframes of a number of councils processing applications for developments of a comparable size (projects in the \$1 million

to \$5 million range). For example, Albury Council determined 17 development applications with a value between \$1 and \$5 million in 60 days with a net processing time of 26 days (Table 2). While the council “gross” timeframes which include the stop the clock, s94 negotiations, consultation and referral times are longer, the “net” times are comparable to the NBJP Assessment Taskforce processes. The average net time for processing development applications with a value between \$1 and \$5 million for all councils across the state was 88 days.

**Table 2: Comparable Determinations Times by Councils in 2008-09 for developments valued \$1-\$5M**

Council	Total Number of DA determined	DAs with a value \$1M-\$5M		
		Number of DA	Mean gross days for DA determined	Mean net days for DA determined
Albury	700	17	60	26
Orange	451	18	71	52
Ku-ring-gai	1,095	27	97	70
Richmond Valley	395	5	98	55
Ryde	763	22	99	64
Sydney	2,305	81	121	87
Dubbo	479	9	123	44
Liverpool	1,193	30	123	38
Tamworth	632	10	128	67
Penrith	1,217	31	143	65
Wyang	1,223	28	159	67
The Hills	1,508	38	160	55
Coffs Harbour	1,106	14	162	51
Randwick	783	42	180	44
<b>Range for all councils</b>	13 to 2454	0 to 81	18 to 765	12 to 264
<b>Average for all councils</b>	471	11	169	88

While Table 2 represents only a selection of the more efficient councils, it is clear that where there is an efficient team in a council with sound internal processes, the same outcomes can be achieved under the EP&A Act as were achieved under the NBJP Act without overriding planning controls and eliminating consultation with the community.

- **Effectiveness in terms of community engagement**  
Notwithstanding that NBJP provided for consultation which it is understood was undertaken, the Department’s Information Centre reported in April this year that it was continuing to receive complaints about the NB process, specifically around limited or non response to enquiries/complaints. It is not possible for the Department to make further comments on these issues.
- **Effectiveness in terms of dealing with environmental and planning issues**  
Anecdotal feedback to the Department from proponent agencies is that the NB process saw issues raised by authorities such as the Heritage Council, Rural Fire Service (bushfire risks), councils (re flooding), and the Department of Environment, Climate Change and Water (re vegetation, and threatened species) being dealt with by attaching conditions to consents. It was left to the proponents to resolve the issues. Under the normal planning system, the issues raised by the various agencies would have been considered and an integrated solution would have been found as part of the assessment process, rather than by conditions of approval in isolation.
- **Effectiveness in terms of design outcomes**  
Anecdotal feedback from some councils to the Department has indicated that the layout, parking, access and building design outcomes for NBJP projects at school sites may have been much better had the projects been subject to a development application (DA) process with appropriate consultation. A detailed analysis has not been undertaken.

In regard to NSW Housing projects, the design process was not much different under the NBJP process from that under 'normal' circumstances. The key difference was the sheer volume of dwellings to be designed in a short period of time, necessitating the engagement of a large team of urban designers and architects to prepare the plans.

▪ **Effectiveness in terms of rights to a review of a decision**

Under the NBJP Act, there are no appeal or review rights. This is in contrast with the decision making by councils on equivalent projects under the EP&A Act where applicants can appeal determinations and the community can appeal the legality of the decision making. The existence of these appeals tends to make councils more risk averse, leading to longer assessment timeframes and often additional conditions of consent. Public participation is at the core of the planning legislation and practice in NSW.

▪ **Effectiveness compared with initiatives under the EP&A Act**

A number of initiatives were introduced into the planning system to make the EP&A Act system more efficient to facilitate investment in NSW (including the delivery of infrastructure). These initiatives also resulted in the efficient approval of nation building projects.

***Affordable Rental Housing***

Under the Affordable Rental Housing SEPP (2009), approval provisions were amended to streamline the delivery of affordable rental housing generally. This includes:

- (a) Housing NSW - self assessment/approval of up to 20 dwelling two storey apartments
- (b) Complying development certificates for granny flats/secondary dwellings
- (c) Complying development certificates for group homes by the public or private sector
- (d) Exemption from the need for rezoning for apartments close to transport nodes
- (e) Incentives to encourage multi unit dwellings

This SEPP consolidated and expanded on existing affordable rental housing policies.

NSW Housing reported that the SEPP provided for the efficient approval of 58% of affordable housing projects under Part 5 of the EP&A Act, with 25% of projects approved by councils under Part 4. Only 17% of the projects were approved under the NBJP Act.

**Table 3 Approval regime for NSW Housing projects under the Stimulus package**

Planning process NSW Housing projects	Stage 1 NBESP		Stage 2 NBESP		Total NBESP	
	Projects	Units	Projects	Units	Projects	Units
(a) NBJP Act	23 (19%)	204	65 (17%)	1792	88 (17%)	1996
(b) DA to council Part 4	76 (62%)	528	48 (13%)	646	124 (25%)	1174
(c) Self-approval Part 5	22 (19%)	128	268 (70%)	3052	290 (58%)	3180
<b>Total</b>	<b>121</b>	<b>860</b>	<b>381</b>	<b>5490</b>	<b>502</b>	<b>6350</b>

The SEPP provisions are part of a broader commitment to increase affordable rental housing in accessible locations in NSW and are not specifically "stimulus package" or NRAS related. A review of the SEPP is currently underway. The review will examine the 17% of projects determined under the NBJP Act to determine if these classes of development can also be included under the SEPP. In addition, the Department has commenced consultation with social housing providers, the development industry and councils to examine the effectiveness of other provisions of the SEPP and to determine how these provisions can be adjusted to further stimulate the delivery of a range of affordable rental housing.

### **Housing affordability and reducing approval times for residential dwellings**

The Exempt and Complying Code SEPP which commenced on 27 February 2009 provides for the efficient delivery of new single dwelling housing as complying development – with approvals in 10 days. The SEPP currently applies to a significant number of residential lots above 450sqm in size, and will soon be expanded to cover residential lots under 450sqm, and rural housing. This will mean that a significant number of homeowners will have the opportunity to obtain a 10 day Complying Development Certificate to build a new home or to undertake alterations and additions.

The SEPP assisted in the delivery of the following Stimulus Package projects:

- (f) *Maintenance of social houses*
- (g) *Defence Housing*

In 2011 it is proposed to extend complying development to suitable multi-unit housing developments. The expansion of complying development into new forms of housing will further assist in housing affordability and the efficient delivery of social housing.

### **Education projects**

The Infrastructure SEPP contains provisions to allow for the efficient delivery of public and private schools and TAFEs in NSW including:

- As exempt development for many minor works including certain sporting facilities
- DET being responsible for self assessment and approval certain types of development.
- Complying development for up to 2 storey halls, gyms and class rooms and certain playground and sporting facilities which meet the nominated criteria.
- Schools and TAFEs being made permissible in a broad range of zones and on land adjoining an existing school without the need for rezoning. This initially only applied to public schools but was extended to private schools in March 2009 because of the Stimulus Package funding.

**Table 4 Approval regime for education projects**

Approval regime	P21 School Project		Science & Learning Centres		Total	
	Number	%	Number	%	Number	%
<b>NBJP</b>						
Authorisations	550	25%	30	13%	580	24%
Special Order (BDRs)	222	10%			222	9%
<b>Total</b>	<b>772</b>	<b>36%</b>	<b>30</b>	<b>13%</b>	<b>802</b>	<b>33%</b>
<b>ISEPP</b>						
Complying	807	37%	70	31%	877	36%
Self assess (Part 5)	379	18%	49	20%	428	18%
Exempt Development	206	9.5%	107	47%	313	13%
DA	4	0.2%			4	0.1%
<b>Total</b>	<b>1396</b>	<b>64%</b>	<b>226</b>	<b>87%</b>	<b>1622</b>	<b>67%</b>
<b>TOTAL APPROVALS</b>	<b>2168</b>		<b>256</b>		<b>2424</b>	

The efficient delivery of education projects depended heavily on the provisions in the Infrastructure SEPP with 67% of projects authorised under the provisions of this SEPP (Table 4).

The Infrastructure SEPP is currently being reviewed. It is expected that these streamlined approval and permissibility provisions will be extended to apply to more of the classes of projects currently being approved under the Nation Building Act, especially for non-government schools. In addition the provisions are being expanded to apply to Universities and in particular to streamline the roll-out of additional student housing.

### **Road Upgrades and Railway Crossings**

The Infrastructure SEPP also provides that railway crossing and road works are self assessed by the road or rail authorities as development without consent. These *Stimulus Package* funded projects have been self approved by agencies without reference to the NB&JP Act, which demonstrates they can be efficiently delivered under the ordinary planning regime:

(h) *Black spot road program and regional road maintenance*

Currently the Infrastructure SEPP makes a range of minor public road maintenance works exempt development. All other public road works are self assessed by RTA or the council under Part 5.

(i) *Rail Crossing boom gates and safety measures*

Currently the Infrastructure SEPP makes a range of rail safety works exempt development. All other rail safety issues are self assessed by the Rail Authority (usually ARTC) under Part 5. ARTC has an agreed Code of Practice to streamline this process.

### **Community infrastructure**

The Infrastructure SEPP makes local community facilities such as town halls, libraries, community centres and sport centres permissible in a broad range of zones, avoiding the need to undertake rezonings and meaning Commonwealth incentives can be efficiently implemented.

- *Town halls, libraries, community centres facilities* Councils are responsible for the approval of the town halls, libraries, community centres facilities. As councils would usually be the proponents of these projects, they would be self assessing the projects under Part 4 or Part 5 (depending on the project).
- *Sport centres* would usually be self assessed by councils under Part 5 with many routine or minor works being exempt development.

**Table 5: Summary of EP&A Initiatives to assist in the delivery of the \$42 Billion ‘Nation Building and Jobs Plan’**

<b>‘Nation Building and Jobs Plan’ Initiative in NSW</b>	<b>Funding</b>	<b>Provisions under the EP&amp;A Act to facilitate delivery</b>
<b>Road Repairs and Infrastructure</b>		
▪ Black Spot Program (350 projects)	\$90M	RTA self-assess under Part 5 or exempt (ISEPP)
▪ Regional Road maintenance	\$150M	
▪ Boom Gates for Rail Crossing (200 sets boom gates)	\$150M	
<b>Community infrastructure</b>		
▪ Local Community Infrastructure Program including town halls, libraries, community centres, sport centres	\$500M	ISEPP - Permissibility + Part 5, as well as (ISEPP and LEP)
<b>Education</b>		
▪ New or upgrade school buildings - libraries and halls	\$12.4B	ISEPP – permissibility + (a) exempt/ complying, or (b) self approved Part 5 or (c) consent under Part 4
▪ 500 science laboratories /language learning centres	\$1.0B	
▪ \$200,000 building works for every school	\$1.3B	
▪ Trade Training Centres in Schools Program	\$110M	
<b>Housing</b>		
New social housing dwellings including:	\$400M	Affordable housing SEPP & Exempt & Complying SEPP (d) exempt/ complying, or (e) self approved Part 5 or (f) need consent under Part 4
▪ 1 <sup>st</sup> Stage - bringing forward 2300 houses		
▪ 2 <sup>nd</sup> Stage –constructions including house / land		
(g) Urgent maintenance 2500 vacant social houses	\$252M	
(h) 802 new Defence houses.		

### **Planning approvals of housing, education and community infrastructure in the future**

All three SEPPs are relatively new and were developed to provide a more efficient approach to delivering infrastructure and housing in NSW – not specifically to respond to the NBJP program. The SEPPs have been received well by NSW Government agencies, social housing providers and public and private schools.

The Department is currently reviewing all three SEPPs with a view to expanding the provisions to cover more development classes, which will result in a significant number of developments

that can be approved quickly. As these provisions are expanded, the need for the NBJP approach to delivery projects such as those under the Stimulus Package will become more limited.

The review of these SEPPs will also consider any recommendations as a result of the NBJP Review.

In this context, the Department considers there is no need to maintain a parallel system of development approvals under normal conditions (given the NBJP Act was created under exceptional circumstances).

Rather than establishing new classes of development under the NBJP Act, the Department considers that the focus should be on:

- further streamlining the development approval process
- raising the performance of all councils as well as referral agencies
- reducing the regulatory overlap around natural resource, hazard and heritage matters.

It is also recognised that the system could be made more efficient by working more effectively with proponent agencies/organisations and their consultants so that design, environmental, infrastructure and other community factors are considered upfront to avoid or reduce delays in the assessment process.

The Department does recognise the value of having a Co-ordinator General position that is focussed on co-ordinating the delivery (rather than approval) of public infrastructure projects that are considered to be of State Government importance.

#### **Issue (b) The exercise by the Co-ordinator General of the functions conferred by the Act in accordance with Section 30 of the Act**

The NBJP Act was a response in exceptional circumstances to the need to coordinate the delivery of NSW infrastructure projects funded by the Commonwealth under the \$42bn Nation Building and Jobs Plan (the Plan). The Commonwealth Government's motivation in implementing the Plan was to help cushion the economy from the worst effects of the global recession. The primary role of the NBJP Act was to establish the Infrastructure Co-ordinator General (ICG) and to provide all necessary powers to deliver the Commonwealth funded projects within specified timeframes. If projects were not delivered within the specified time, the Commonwealth would not provide the funds.

The NBJP Act currently only applies to Commonwealth Stimulus projects where there are concerns that the projects will not be delivered in nominated timeframes with risks that the funding will be lost. Developments nominated under the NBJP Act include:

- education projects including multi-purpose halls and libraries, science and language centres and maintenance and minor building works for government and non-government schools,
- social housing,
- community infrastructure provided by local councils (such as halls, community centres and sport and recreation facilities),
- land transport infrastructure (such as the repair of roads, the installation of railway boom-gates and road safety "black spots" projects).

The Department does not support the extension of this list of classes of development. As set out in this submission, the current planning framework is being strengthened so that it can more efficiently and appropriately deal with the various classes of development.

**(i) ICG Development approval role**

**Exercise of functions in relation to NB projects**

The Co-ordinator General has the powers to exempt projects from development control legislation through the making of an Order under s23 of the Act. The current Order nominating NBJP projects which are funded or partially funded by the Nation Building program and in the opinion of the Co-ordinator General, are at risk of not meeting Australian Government deadlines using normal approval processes, was published in the Government Gazette.

In exempting a project from development control legislation, the Co-ordinator General may require an Authorisation to be obtained under s24 of the NBJP Act before any work is undertaken. The exemption applies to the EP&A Act but also extends to associated development control legislation that would otherwise require a projects to seek approvals, licenses and permits, including the *Heritage Act 1977*, *Threatened Species Conservation Act 1995*, *Rural Fires Act* and *Local Government Act 1993*.

Approximately 800 housing and school projects were “called-in” and approved under the NBJP Act (approximately 17% of housing projects and 33% of education projects). The other projects were approved under Part 5 or via exempt or complying development provisions under the Infrastructure SEPP or Affordable Rental Housing SEPP, or through normal local council approvals processes.

One of the main reasons projects were “called in” under the NBJP Act for determination was because the development proposal did not meet criteria in the Infrastructure SEPP or Affordable Rental Housing SEPP. For housing, the primary reason for use of the NBJP Act was because the projects exceeded the scale criteria under the Affordable Rental Housing SEPP. For education projects, the NBJP Act was used principally where schools sites were affected by either heritage, bushfire or flooding constraints.

Table 6 list the key factors resulting in “call-ins” based on an analysis of NBJP projects on the website. The “site related constraints” issues may relate to important hazard or environmental matters which deserve careful examination. With matters such as bushfire risks, the Department and Department of Education and Training are working with the Rural Fire Service to develop protocols to apply at school sites so that facilities are appropriately located and designed to deal with different levels of bushfire risk.

**Table 6 – Reasons for “call-in” of projects for determination under the NBJP Act**

<b>Development related constraints</b>	<b>Site related constraints</b>
<ul style="list-style-type: none"><li>▪ Type of development not covered</li><li>▪ Not permissible under zoning</li><li>▪ Development not meet boundary setbacks</li><li>▪ Development exceed scale</li><li>▪ Development not comply with design issues</li><li>▪ Development not comply with parking</li></ul>	<ul style="list-style-type: none"><li>▪ Bushfire risk area</li><li>▪ Heritage area/item</li><li>▪ Flood liable</li><li>▪ Coastal hazards</li><li>▪ Native vegetation /tree removal/riparian zone</li><li>▪ Threatened species</li><li>▪ Aircraft noise impact</li><li>▪ Contaminated land</li></ul>

The “development related constraints” are being considered in the review of the Infrastructure SEPP and the Affordable Rental Housing SEPP. In a number of cases, additional criteria are likely to be included so that in the future, these classes of development can be determined under the streamlined processes under the EP&A Act.

The provisions in s76A(6) of the EP&A Act which currently prevent the application of complying development in heritage areas and in certain environmentally sensitive areas are to be removed shortly. The complying development provisions can then be tailored for particular classes of developments and for particular locations, making the system more efficient while delivering appropriate environmental and heritage controls. These types of initiatives will assist in streamlining the delivery of projects in risk zones under the EP&A Act. Once these

provisions have been commenced, many of the types of projects dealt with under the NBJP Act will be able to be considered under the efficient complying development process.

**Exercise of functions in relation to other classes of development**

The Department does not consider that there are any other classes of development that could be appropriately added to the ICG approval framework. There is already a comprehensive approvals framework under the EP&A Act which provides an appropriate consultation, assessment, approvals and appeals system for different classes of development:

- Major developments, including major infrastructure projects, are determined by the Minister for Planning or the Planning Assessment Commission (PAC) following community consultation and a rigorous assessment. This process is efficient, providing an integrated approval. About 120 major projects are determined each year – including all coal mines, hospitals projects valued at more than \$15 million, industrial development valued at more than \$30 million and commercial development valued at more than \$100 million. Determination timeframe target in 85% projects determined in 3 months, 95% in 5 months and all projects determined in 8 months (see Appendix 2).
- For regionally significant development, Joint Regional Planning Panels determine projects in 125 days following consultation and a council assessment of the development application. Typically these are developments valued more than \$10 million or infrastructure projects valued more than \$5 million. About 400 regionally significant developments are determined each year.
- Local developments that require consent are typically determined by councils under Part 4. On average, applications are approved in 76 days.
- Low impact, simple projects may be approved by a private or council certifier in 10 days as complying development. On average, these make up 10-16% of development applications. It is expected the percentage of complying development will rise over the next 3 years to over 40%.
- State government authorities and councils may self assess and determine their own infrastructure projects if nominated as “development without consent” in a planning instrument (typically the Infrastructure SEPP).

**Table 7 Estimate of number of determinations in NSW per year**

Assessment and Determination Routes	DETERMINATION AUTHORITY								
	State			Independent Bodies			Council		Private
	Minister	DG DoP	State Agency	PAC	JRPP	CSPC	Councillors	Officer	Certifier
Major Development – Part 3A	121	6		2					
Development consent – Part 4	16	87			400	10	2,000	69,000	
Complying – Part 4								5,000	5,000
Modifications	13	196						15,000	
Self assessment – Part 5*			3,000					3,000	
<b>Total</b>	<b>150</b>	<b>289</b>	<b>3,000</b>	<b>2</b>	<b>400</b>	<b>10</b>	<b>2,000</b>	<b>92,000</b>	<b>5,000</b>

\*Note: these figures are estimates as currently infrastructure and other projects self assessed by councils and state authorities under Part 5 are not recorded.

The Queensland Co-ordinator General (who also is the Director General of the Department of Infrastructure and Planning) has an approval role for state significant projects under the State Development and Public Works Organisation Act 1971. This approval role is similar to that exercised by the Minister for Planning or the PAC under Part 3A of the EP&A Act. Because there is already a system in NSW for assessment and determination of significant public and private projects, it is not considered necessary or appropriate for a parallel system to be introduced which duplicates or undermines the Minister for Planning’s role.

When there is a program of minor or less complex works such as under the NB program, SEPPs can be developed to provide an efficient targeted approvals regime. These streamlined regimes could apply equally to private or public projects – eg private and public schools.

**(ii) ICG Project Delivery role**

Under the NBJP Act, the Co-ordinator General has the following functions:

- to plan and oversee a program for the delivery of infrastructure projects within the timeframes required for Commonwealth funding,
- to advise on appropriate tendering and procurement procedures for the delivery of infrastructure projects within those timeframes,
- the co-ordination of State government agencies in delivering infrastructure projects,
- the carrying out of infrastructure projects on behalf of State government agencies,
- directing a government agency to comply with a request, direction or decision made by the Co-ordinator General for the purposes implementing the functions under the Act.

These powers could be used to assist in the delivery of major projects or program of works such as the redevelopment of the Sydney Fish Markets and the Hume Highway Duplication.

It is the Department's submission that the ICG can and should perform a very useful function in co-ordinating multiple agencies to prepare solid, detailed project proposals. Those proposals can and should be assessed efficiently under the existing EP&A Act system. If the proposals are approved, the ICG can and should then ensure the agencies involved work together to ensure that the project is delivered to specification, on time and on budget.

Major developments and infrastructure programs of works would benefit from continuing the ICG's role in project co-ordination and delivery, including:

- in co-ordinating and ensuring timely and efficient formulation of development project proposals with a whole of government approach.
- in the timely post approval delivery of major infrastructure projects to deliver the program as a whole on time / on budget – particularly when tight timeframes are to be met.
- in co-ordinating and ensuring the appropriate provision of infrastructure and integration with other projects in the area.

Other types of major programs of works could include the implementation of regional freight strategies including in relation to freight to the Port Botany and the Sydney International Airport, the delivery of the light rail projects identified in the Transport Blueprint and the delivery of the North West and South West Rail projects. This approach would be similar to the delivery role undertaken by the Queensland Co-ordinator General (QCG) in planning, delivering and co-ordinating programs of works and major developments.

**Issue (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;**

It is difficult to respond to the question about legal and economic benefits and consequences without considering the characteristics of specific development classes that might be considered suitable under the NBJP provisions.

With the existing development classes subject to the NBJP provisions, the 'significance' of the projects was in relation to the unprecedented level of funding, the sheer number of projects that were required to be delivered, the cumulative benefits in terms of jobs and enhanced social outcomes, and the tight timeframes in which the projects needed to be delivered. However, in terms of 'planning significance', these NB projects were relatively small in scale and small in impact on the surrounding community.

Because of the nature of the projects - relatively small scale construction projects, many of which on public land or with a demonstrable public benefit - there was a level of community acceptance, even if it felt bypassed in the consultation and assessment process. The program is principally focused on public or private infrastructure which directly benefits communities rather than the private commercial developments. While there have been some complaints, the general public has been accepting and supportive of the program due to the clear and direct benefits to communities – both in terms of jobs and social infrastructure.

One of the other features of the NBJP Act is that there are no legal avenues to challenge the "development approval" decisions. If the NBJP provisions were extended to the private sector "for profit" projects, for the benefit of a private sector proponent, then the communities would be less likely to be supportive because of the absence of legal avenues to challenge development approval decisions. While the lack of legal appeals could reduce the costs associated with the design of the project (being able to side step normal environmental and urban design requirements) and the assessment documentation requirements (because the development determination could not be challenged in the court), the fact there is no legal recourse, may cause a high level of public outcry as well creating externalities to be addressed by the council or community.

Consideration also needs to be given to the short and longer term costs of the nominated classes of development being able to ignore the planning controls and not having to contribute to infrastructure costs. This would give short term benefits to proponents, but could result in higher cost to local or state government for infrastructure. The approach could also create precedents which could affect the approval process for other development nearby.

A comprehensive Cost Benefit Analysis should be undertaken to evaluate the true administrative costs borne by the NSW Government associated with the delivery of the NBJP activities. Any costing analysis should include the full cost of administration, complaints handling, records, compliance and enforcement roles in delivery a project approval system.

**Issue (d) Options and mechanisms for applying the principles, should they be applied to such projects or classes of projects in NSW.**

While the Department recognises the value of having an ICG position that is focussed on the efficient delivery of infrastructure projects as part of national programs, extending this role to be an alternate planning approval system is not considered desirable or necessary.

***Additional classes for approval***

With the nation building projects:

- Proponents had to be co-operative because of the pressing timeframes set by the Commonwealth to obtain funding. As a result, there was a strong interest by all parties in processing matters in efficient timeframes.
- The ICG an important advantage because of unprecedented powers in the NBJP Act. Decisions could not be challenged. The ICG could step in and actually carry out infrastructure projects on behalf of State government agencies.
- The projects were relatively small and had a clear public purpose - being for “social infrastructure” and employment generation/economy stimulation purposes.

The Department does not support the extension of the current development approval provisions under the NBJP Act to any additional classes of development, particularly those undertaken by the private sector:

- With major projects, this would simply duplicate the Minister for Planning’s role under Part 3A, adding cost and complexity not matched with any gains in speed and certainty.
- For other developments, as has been outlined in other sections of this submission, there are now an increasing number of initiatives in place or being developed to streamline approval -
- The NSW planning framework already has a number of provisions that facilitate the fast tracking of public infrastructure and other private sector projects through the Infrastructure SEPP, Affordable Rental Housing SEPP, Growth Centres SEPP, Exempt and Complying Code SEPP and others. These provisions will be added to shortly with the introduction of the Urban Renewal SEPP and the Priority Land Release SEPP.
- In addition, there are concerns that the targeting of certain classes of private sector projects is likely to adversely affect the market, encouraging applicants to go *approval shopping* to override planning controls, introducing investor uncertainty and market distortions. Further, depending on the classes of development targeted, the approach could be considered to be unjustifiably providing preference for a particular class of development inconsistent with competition policy principles.

It is in the longer term interests of the state that the strategic planning framework be respected (including regional strategies and local environmental plans with associated planning controls) and the development approval process be aligned to delivering these outcomes. This is not the objective of the NBJP Act. The application of this Act to classes of private sector projects would allow those nominated classes to override strategies, zoning and development controls, avoid community consultation and consideration of a range of environmental controls, and avoid contributing to community infrastructure, with the potential to leave a legacy of poorly designed and poorly located developments with externalities to be addressed by the council or the broader community.

***Infrastructure planning and delivery***

The NBJP Act establishes powers for the ICG to direct State government agencies to co-operate in infrastructure project delivery. The Department is supportive of the retention and potential expansion of these powers and for their application in the efficient implementation of infrastructure and other major projects.

## **PART 2: RESPONSE TO ISSUES RAISED IN THE LETTER OF 24 MAY 2010**

Dr Neil Shepherd AM, the Chair of the Review, wrote to the Department of Planning on 24 May 2010 to seek its views on a number of specific issues:

- What the Department's view on the desirability or otherwise of maintaining the parallel approvals system established under the NBJP Act?
- What
  - (a) Other classes of development could either be added to the ICG framework or subject of a SEPP?
  - (b) Other SEPPs under consideration could be relevant to the Review?
- Would it be appropriate use the ICG guidelines for other similar development types?
- If the Department does not support the extension of the NBJP Act, explain how the current system addresses significant projects
- What suggestions can the Department make regarding how the appeal system might be improved within the current planning system?

### **1. What is the Department's view on the desirability or otherwise of maintaining the parallel approvals system established under the NBJP Act?**

The NSW Government is supportive of the Commonwealth Government's Nation Building and Jobs Plan, and the motivation behind it, which was to stimulate the economy that was at risk of recession.

However the Department does not support the extension of the NBJP Act to other classes of development and considers that the development approval aspects of the legislation should cease to operate once Stimulus Package projects are approved. The reasons for this position include:

- (j) The NBJP and associated provisions were clearly established due to unprecedented global economic crisis and the need to protect the Australian economy from recession.
- (k) The NBJP Act focused on the provision of social infrastructure, with clear and direct public benefits
- (l) The NBJP projects were small scale generally resulting in minimal impacts.

The Department considers there is no justification for establishing a parallel planning system which would:

1. Undermine the basis planning framework by allowing certain classes of development to ignore the zoning and development controls
2. Would encourage "approvals shopping" and distort investment decisions leading to greater uncertainty
3. Would encourage speculation and land banking, leading to escalation of land and housing prices
4. Would likely result in poorer planning decisions with the focus on responding to developer needs and shorter timeframes, rather than sound urban design and sustainable outcomes.

The NSW planning framework is currently being strengthened. Significant improvements have already been introduced, with more to follow. There are already an effective framework that is facilitating the fast tracking of infrastructure and other projects through the Major Projects SEPP, Infrastructure SEPP, Affordable Rental Housing SEPP, Growth Centres SEPP and others.

The NBJP Act establishes powers for the NSW Infrastructure Co-ordinator General to direct State government agencies to co-operate in infrastructure projects delivery. Additional co-ordination and direction from the Co-ordinator General could greatly assist infrastructure delivery and the efficient rollout of infrastructure projects.

## **2 (a) Are there other classes of development could either be added to the ICG framework or subject of a SEPP?**

As outlined above, the Department does not support the continuation of the ICG as an alternative development approval authority for either public or private sector developments.

## **2 (b) Does the Department have other SEPPs under consideration could be relevant to the Review?**

The Minister for Planning can direct the development of a SEPP in relation any matter considered to be of State or regional planning significance.

### ***Process for developing SEPPs***

The process for developing a SEPP under Part 3 of the EP&A Act is flexible and provides for the Minister for Planning to determine the level of analysis and consultation to be undertaken in the SEPP making process. Extensive analysis of the issues is usually undertaken as part of developing the SEPP provisions including an evaluation of the most efficient approach for delivering appropriate outcomes. As part of preparing the SEPP, consideration must be given to the *Guide to Better Regulation* prepared by the Better Regulation Office (2009).

The Minister must determine the level of public consultation as well as which other Ministers are to be consulted and if consultation is required with the Heritage Council. The Director General is to determine whether consultation is required under the Threatened Species Conservation Act 1995. With some SEPPs, there may be extensive consultation, with public exhibition plus the establishment of a reference group of relevant experts to guide the development of the provisions (eg Exempt and Complying Code SEPP). With other SEPPs, there may only be public exhibition and targeted consultation with key stakeholders in the development of the provisions (Infrastructure SEPP). In certain circumstances, there may be only targeted consultation with key experts and stakeholders (Affordable Rental Housing SEPP).

Depending on the scope and complexity of the matters involved, the time to prepare a SEPP can vary from a few weeks to more than a year. Typically a new SEPP takes 6-8 months to develop and gazette. Once the policy is finalised and agreed with the Minister, the Minister recommends that the Governor approves the SEPP and it becomes law once gazetted.

All new SEPPs include provisions for a review of its operation after 1 year and then every 5 years to ensure the SEPP provisions are achieving the desired objectives in an efficient manner and that the objectives are still relevant.

### ***Updating of existing SEPPs to address NB and similar issues***

Both the Affordable Rental Housing SEPP and the Infrastructure SEPP are currently under review. It is expected additional classes of school, university and affordable housing developments will be included in the SEPP provisions to further streamline the approvals regime for these categories of infrastructure. NSW Housing, the Department of Education and Training, the Independent Schools Association and the Catholic Schools Association have made submissions to the review of the Infrastructure SEPP with suggestions to expand the existing provisions. Many of these suggestions would lead to more efficient approval regimes, avoiding the need for the NBJP "call in" to deliver timely outcomes.

The Exempt and Complying Code SEPP is also under review with proposals to expand the range of development to which it applies (where the impacts are predictable) with the target of 50% of all development applications being determined under this efficient 10 day process. The SEPP currently applies to a range of single dwelling houses, as well as commercial and industrial developments. This current proposed amendment will extend the scope of the

SEPP to small lot residential development, residential in rural settings and multi unit and apartment residential dwellings.

***Development of new SEPPs to address similar issues***

Two new SEPPs are currently under development which will assist in the efficient rezoning of land and the delivery of housing and employment investment in renewal or new land release areas. Both these initiatives are essential in responding to housing and job creation demand as a result of projected growth across the State, but in particular in the Sydney Metropolitan area.

***Urban Renewal SEPP***

Currently 70-80% of the Sydney Metropolitan residential growth is in brownfield sites. To respond to increasing urban renewal pressures, the Department is currently developing an Urban Renewal SEPP to provide for the streamlined rezoning of redevelopment sites, for example around under-utilised railway stations and equivalent sites with good public transport. This SEPP will rezone the sites to provide for increased employment and housing in accessible locations to meet the increase pressure for affordable housing in existing urban areas.

***Priority Land Release SEPP***

The Department is also developing a Priority Land Release SEPP to implement the Government's *Priority Residential and Employment Land Release Policy* to address an existing and imminent housing or employment land supply issue. The purpose of the policy is to efficiently rezone priority sites to help meet dwelling and job targets, in conjunction with planning for infrastructure delivery.

**3. Would it be appropriate to use the ICG guidelines for other similar development types?**

The NBJP Act and its associate processes worked because the scope and type of the projects (social housing and schools) were generally low risk, the impacts predictable and because the projects provided a social benefit. The ICG Assessment Taskforce adopted a pragmatic risk management approach and was efficient in its assessments and in reporting on issues. This is commended and lessons should be learnt from this approach.

For certain low risk and low impact projects, the approach as set out in the ICG guidelines could be used to assist in streamlining the assessment processes. The guidelines and the ICG framework would be of assistance in terms of clearly articulating the level of assessment proportionate to the risk involved for various classes of projects.

However it should be noted that there are no appeal rights, and hence no risk of being taken to the Land and Environment Court for not adequately covering all the issues comprehensively, as is the case under Part 4 of the EP&A Act. As a result, applying this approach to a wider range of projects is potentially more difficult because of the need to take a more cautious approach because of the risks of challenge.

#### **4. If the Department does not support the extension of the NBJP Act, explain how the current system can efficiently assess significant projects**

There is a lot of work already underway to improve the current planning system, designed to make the NSW system the best performing system in Australia. These improvements apply to:

- Strategic planning and delivery of a clear framework which gives certainty and incentives to investment in NSW
  - An efficient development approvals system
  - Mechanism to depoliticise decision making and to provide efficient review and independent advice
  - Efficient processes to streamline approvals for low impact, low risk development
  - Efficient electronic systems for improved public participation and assessment and approvals systems
- **Delivering a clear strategic planning framework**

##### ***Regional Strategies***

The NSW Government's current review of Sydney's Metropolitan Strategy will ensure that there is a world-class strategic planning framework that is responsive to local, national and global change and gives Government and the private sector more certainty when making decisions about planning and investment. This review will, for the first time, bring together land use and transport planning into one strategic and comprehensive vision for Sydney. Once finalised, the single Metropolitan Plan, together with the suite of Regional Strategies, will provide strong strategic planning guidance for New South Wales.

##### ***New generation of Comprehensive LEPs***

The program to roll out the new Standard Instrument LEPs is being accelerated so that there will be a single, consistent strategic planning framework in each local council area in the next few years setting the local strategic framework for decisions. This will result in local planning frameworks across NSW being easier and simpler for residents, businesses and councils to understand and use.

In response to issues raised by councils, the Department of Planning has recently prepared and exhibited a number of draft Model Local clauses that address rural, regional and coastal issues, including flood planning, the erection of dwellings on land zoned rural, and environmental protection provisions. The Department of Planning will, in consultation with local government, continue to add to this suite of model clauses in response to issues raised by councils. This will ensure that councils are able to implement appropriate local provisions to achieve local planning objectives, while maintaining overall consistency across the state.

To assist in achieving targeted outcomes, the Department has recently held a series of workshops in regional and rural areas to assist councils prepare their Standard Instrument LEP. The Department will continue to work with councils to ensure that local planning objectives are efficiently delivered through the Standard Instrument LEP. The NSW Government has also allocated additional funds to assist councils in developing their LEPs.

##### ***More efficient Spot rezoning process***

In addition, procedures have been introduced to provide a streamlined approach to amending LEPs (spot rezonings) ensuring that land use changes can be dealt with more quickly. A "gateway" process provides for an upfront consideration as to whether the spot rezoning should proceed and sets assessment and consultation requirements as well as timeframes for completing the process.

These steps are monitored with the Department providing assistance, as required, to ensure the rezonings are delivered in a timely manner. Consideration is also being given to speeding up the “council resolution” step which formally commences the rezoning process.

#### ***Review of Development Control Plans***

Councils are currently responsible for developing and approving DCPs consistent with the procedures in the EP&A Act and Regulation. When the new comprehensive LEP is introduced, only one DCP is supposed to apply to any lot. However many councils currently have a large number of DCPs, some relating to process, some to particular types of development, some relating to particular sites characteristics and some to performance criteria for particular works. As a result, the large number of overlapping DCPs can add complexity and at times be inconsistent with the LEP or Government policy and hence add legal risks.

The Department is currently reviewing the issues relating to DCPs and will be shortly consulting with councils and other stakeholders about how DCPs can assist in providing incentives for efficiently delivering sound planning outcomes rather than add complexity. The project will look at limiting the complexity, ensuring consistency with the LEP provisions and ensuring the provisions will guide sustainable outcomes, not frustrate or add unnecessary costs to investment in NSW.

- **Strengthening and streamlining Part 4**

A justification for the use of the NBJP Act to delivery the Nation Building program was that the current approval process under the EP&A Act is perceived to be slow in delivery of projects, adding costs and uncertainty. A number of initiatives have been and are being introduced to improve assessment timeframes, reduce complexity and deliver sustainable outcomes:

#### ***Removal of Referrals and Concurrences***

In 2004 and 2008, over 2,500 requirements in planning instruments for referrals or concurrences from government agencies were removed, reducing unnecessary delays. The remaining approximately 250 referral provisions along with other approvals by government agencies are being monitored with reporting to Ministers on performance. Based on the first 6 months of monitoring, it is estimated that there are still approximately 20,000 requests for concurrences or referrals each year, with approximately 45% of those referrals to the Rural Fire Service. The averaging processing time was 14 days with the 90% processed in less than 40 days. At least 30% of the matters related to residential development. As a result of the monitoring process, the agencies have recommended that the Department remove some more of the remaining referral provisions. In addition, authorities such as the Rural Fire Service and Sydney Catchment Authority have proposed approaches to further streamline, or remove the need for, referral processes. See Appendix 1 for more details.

#### ***Monitoring of Local Development Performance***

Since 2006 the Department of Planning has been monitoring and reporting on local development assessment performance by councils. As a result, there have been significant improvements in performance from a number of councils. This monitoring also provides information for evidence based analysis of steps in the process or in relation to particular classes of development to identify where improvements can be made.

#### ***Register of Development Assessment Guidelines***

In 2009 a Register of Development Assessment Guidelines was placed on the Department’s website, consolidating in one place the assessment requirements,

performance criteria and recommended assessment methodology of all government agencies for the use of councils, proponents and the community.

#### ***Update of the Part 4 Development Assessment Procedures***

The amendments to Part 4 in the 2008 Amendment Act have not yet commenced. It is proposed to make some changes to the provisions prior to their commencement in light of further consultation. Additional consultation will occur in August 2010 as part of the review of the EP&A Regulation with the aim of commencing the revised Part 4 provision in early 2011. The proposed changes to Part 4 development assessment process include:

- (1) Providing clearer guidance regarding information required in the development application and Statement of Environmental Effects (not unlike the guide for the NBJP projects)
- (2) Encouraging the use of pre-DA consultation with relevant agencies and the community so key issues can be identified and considered upfront
- (3) Limiting the application of stop the clock – avoiding unnecessary delays
- (4) Encouraging the use of e-planning approaches for more efficient transfer of information and improved consultation approaches
- (5) Increasing DA fees in line with CPI which have not been increased since 2002

Other key issues under review which effect the operation of Part 4, include:

- Changes to contents of Section 149 Planning Certificates
- Updating the designated development Schedule 3 of the EP&A Regulation in line with related *Protection of the Environment Operations Act* provisions and other minor changes to classes of designated development
- Miscellaneous issues such as in relation to existing uses and building certification provisions.

#### ***Strengthening the Building Certification system***

A number of provisions have been introduced over the last two years to further strengthen the building certification system increasing pathways for accreditation of building surveyors, implementing an extensive auditing programming of private certifiers and introducing the accreditation of council building surveyors, providing greater confidence that buildings comply with national building standards. These provisions will also provide more confidence in the system at the construction certificate stage. Further initiatives are to be undertaken to reduce the duplication in provisions between the development application stage and the construction certificate stage, further reducing complexity.

#### ***Rationalisation development contributions***

On 4 June 2010, a comprehensive housing supply strategy including a revised approach for setting local development contributions and local council rates was announced. This revised approach includes a \$20,000 limit per residential lot or dwelling on local development contributions along with a role for the Independent Pricing and Regulatory Tribunal (IPART) in the review of contributions plans prepared under the Act with the ability of councils to apply for special rate variations for legitimate costs arising from development. On 1 July 2010, the new development contribution regime under Part 5B of the *Environment Planning and Assessment Act 1979* should be commenced which will establish the new system for community infrastructure contributions plans, planning agreements and State infrastructure contribution regimes.

#### ***Strengthening Councils' Development Application Practices***

The provisions of the system itself and the practice of those implementing the provisions both affect the efficiency of the system. The provisions of the system could be excellent but the practice could be poor – and hence the outcomes poor, and vice versa. From an analysis of the Local Development Monitoring Report, it is evident that even with current complexity and weaknesses in the system, some

councils are delivering excellent outcomes, both in terms of timeframes as well as development performance.

A number of initiatives are being developed to assist in improving practices in councils including:

- Development of standard development application guidelines and application forms
  - Development of internal DA processing best practice guidance for councils
  - Further assistance with e-planning initiatives, for lodgement and processing of development applications as well as user-friendly access to LEP and DCP information and s149 certificates.
  - Regular monitoring and reporting on the use of SEPP 1
  - Development of protocols with the agencies (especially Rural Fire Service, RTA and DECCW) to reduce the time for referrals and associated negotiations – with standard conditions of consent.
- **Joint Regional Planning Panels**  
Another initiative important in the efficient delivery of infrastructure projects and other regionally significant development was the establishment of Joint Regional Planning Panels (JRPPs) in July 2009 covering all councils in the State, except the City of Sydney – where there is a Central Sydney Planning Committee which undertakes an equivalent role. These panels are responsible for determination of regionally significant development assessed by relevant local councils.

**Table 8: JRPP Assessment Times of Regional Development to July 2009- April 2010**  
(average value of developments \$9 Million)

Region	No. of DAs	CIV	Average gross determination (Days)
Hunter & CC	5	\$35.6M	146
Northern	9	\$51.6M	105
Southern	13	\$141.8M	122
Sydney East	22	\$269.5M	114
Sydney West	14	\$208.5M	156
Western	6	\$53.2M	126
Wagga Wagga	15	\$4.1M	383
<b>TOTAL</b>	<b>84</b>	<b>\$764.6M</b>	<b>126*</b>

\* Excluding Wagga Interim DAs, s.96 modification applications and s.89 Crown DA referrals

Development determined by JRPPs includes infrastructure projects with a capital investment value (CIV) of more than \$5 million and other projects with a CIV of more than \$10 million which are not major projects under Part 3A of the Act. It is expected that approximately 300 applications will to be determined by JRPPs per year. Currently, development applications which are determined by the JRPPs take, on average approximately 126 days to determine, including the 13 days for the JRPP to consider the matter. This is in contrast with the average of 169 gross determination days for development applications valued between \$1 and \$5 million. The panels have assisted in depoliticising decision making and streamlining the determination of these projects.

- **Complying Development**  
Complying development was introduced in 1997, but has not been used as broadly as anticipated. Currently only 16% of all applications are dealt with as complying development. However in some councils such as Port Macquarie-Hastings, over 60% of all DAs are dealt with as complying development.

With the introduction of more extensive complying development provisions, along with the strengthening of the private certification in the 2008 Act amendments and the establishment of a Building Professionals Board, it is anticipated that there will be a greater use of complying development in the future.

The Department is in the process of putting in place the necessary planning controls so that over 50% of all applications are dealt with as complying development. Initiatives include:

- Expanding the provisions in the Exempt and Complying Development Code SEPP
- Working with industry so that there is greater awareness code parameters upfront so that the development can be designed where possible to meet the complying development criteria, and benefit from the faster approval timeframes

The provisions in s76A(6) of the EP&A Act which currently prevents the application of complying development in heritage areas and in certain environmentally sensitive areas are to be removed when the provisions introduced in the 2008 Amending Act are commenced (Schedule 2, Item 16). If these provisions had been commenced prior to the NBJP Act, many of the projects which did not meet the complying development criteria would have been able to be considered under this more efficient process. When the s76A(6) amendment is commenced, the provisions relating to environmental sensitive or heritage sites can be tailored for particular classes of development and for particular locations, making the system more efficient while delivering appropriate environmental and heritage controls.

- **E-planning**

As part of improving the efficiency of the planning system, the Department and LGSA are working on a number of initiatives to support councils in the introduction of services. As can be seen by Table 9, some councils, particularly in the Metropolitan area, have extensive services available to improve the efficiency of the development application process. These initiatives are currently being built upon with two new projects.

**Table 9: Availability of Interactive e-Planning Tools**

<b>e-Planning Initiatives</b>	<b>ALL</b>	<b>Sydney Metropolitan</b>	<b>Non-Metropolitan</b>
<b>Information available</b>			
Planning Instruments	91%	100%	87%
Zoning Maps (pdf)	53%	79%	43%
Council Meeting Minutes	97%	98%	97%
Geographic Information System (GIS)	20%	29%	16%
DA Tracking Tool	38%	83%	20%
<b>Submit information</b>			
Submit comments to DA online	39%	83%	23%
Lodge DA form online	7%	17%	4%
<b>Interactive</b>			
Discussion Forum	6%	12%	4%

- **e-Planning Roadmap**

The “NSW e-Planning Roadmap” promotes a 10 year vision for e-Planning in NSW and a four year strategy designed to guide the implementation and evolution of state-wide electronic planning systems with an on-going yearly review cycle. The Roadmap is being developed along with key state government agencies (Land & Property Management Authority, Department Services Technology & Administration, Department Premier and Cabinet – Division of Local Government). The e-Planning Roadmap is jointly funded by the State Government and the Local Government and Shires Associations (LGSA) and builds on community and industry support for the implementation of electronic systems as an enabler of streamlined planning service delivery.

- **NSW Electronic Housing Code (EHC) Pilot**

The EHC pilot is developing web based tools for the online investigation, preparation, lodgement, assessment, determination and monitoring of complying development applications using the provisions of the new Housing Code SEPP. The project involves 12 Role Model Councils and 10 Accredited Private Certifiers. The delivery of

the EHC pilot system is expected to be completed by the end of 2010. A GIS working group of staff from the role model councils has been established to inform and assist with the GIS component of EHC pilot system.

- **Part 3A assessments**

As well as providing a single pathway for assessment of major projects, the Part 3A system delivers a range of benefits:

- An efficient, sustainable and internationally competitive project approval system with the timely delivery of major projects to support economic development.
- Increasing transparency and community involvement, with increased importance of community submissions, with proponents being required to respond to issues and to amend the project to minimise impacts on the environment or community, without the need to restart the assessment process;
- Providing for one single comprehensive assessment and approval process involving relevant State agencies up front with a tailored process targeting the level of environmental assessment to the issues raised by the proposal, avoiding the distortions created by single-issue approaches and with in-depth studies undertaken where it counts;
- Strengthened enforcement, with greater powers to undertake monitoring, auditing, collection of evidence and enforcement of the Act and the Minister's approvals.

The Department has prepared a series of fact sheets, which help explain the major project assessment system (attached):

- Which development proposals are assessed under Part 3A of the Act
- Steps in the Part 3A assessment process
- What is State significant site
- Role of the Planning Assessment Commission in Part 3A projects
- Critical infrastructure and Part 3A of the Act.

A number of initiatives has been or are being introduced to improve the delivery of assessment and determinations under Part 3A.

- **Planning Assessment Commission**

The Planning Assessment Commission (PAC) is a statutory body with responsibilities for:

- determining applications for approval of Part 3A projects and concept plans as delegated by the Minister for Planning – currently determined 11 projects/concept plans
- reviewing aspects of a major project under Part 3A - currently reviewed 8 matters
- providing advice on planning matters – currently on 18 matters.

The PAC has proved to be very effective in depoliticising and strengthening decision making. On 18 November 2008, the Minister for Planning delegated to the PAC the function as a consent authority to determine a project application under section 75J and 75JA of the EP&A Act if the application:

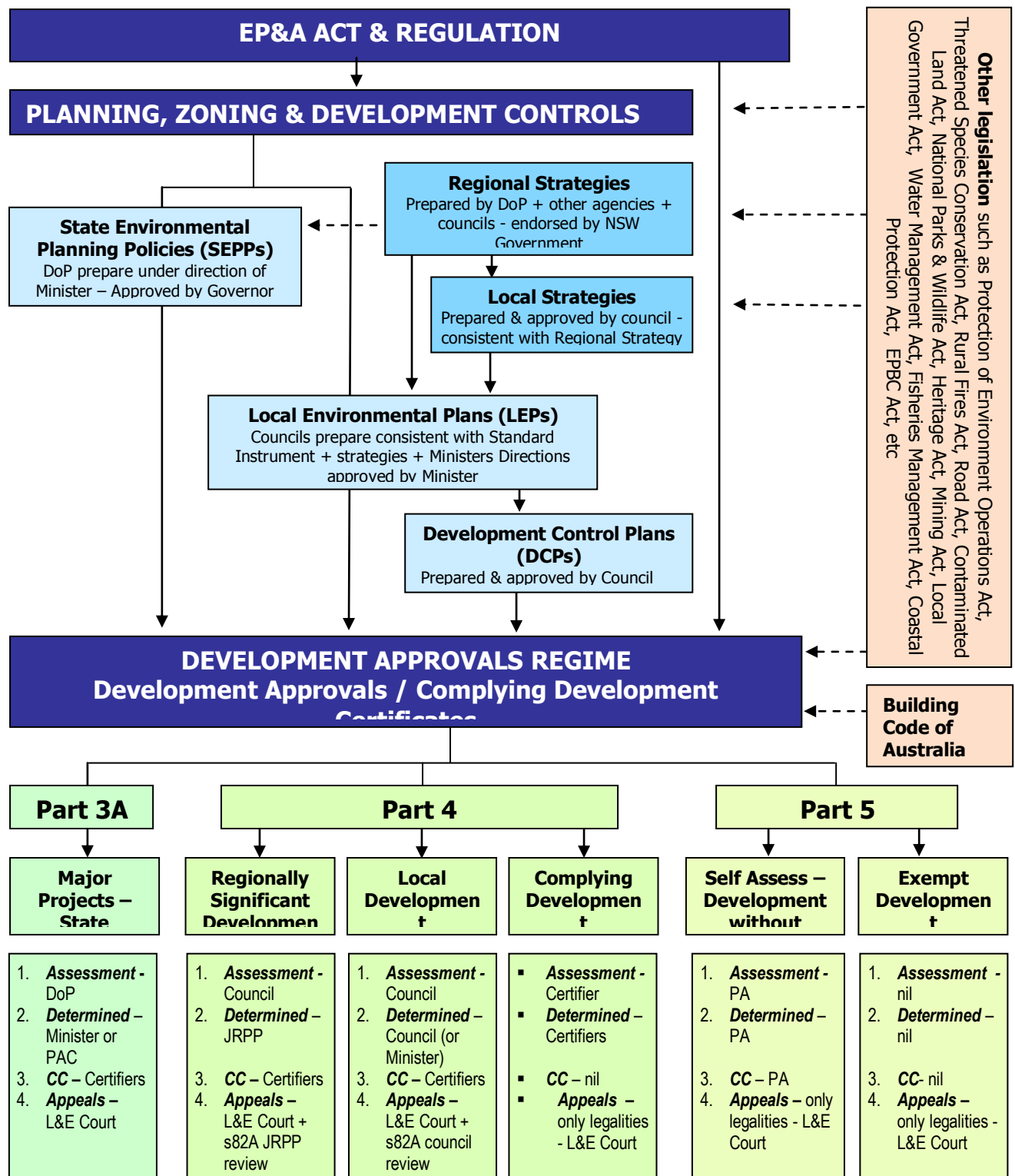
- has a reportable political donation; or
- is within the electoral district of the Minister for Planning; or
- in which the Minister has a pecuniary interest;  
other than an infrastructure project where the proponent is a public authority except a local council.

- **Major Projects Panel**

A Major Projects Panel has been established to consider and determine the appropriate assessment pathway for Part 3A proposals, particularly proposals under Clause 13 of the MD SEPP relating to commercial, retail and residential development where the proposal is prohibited and/or development standards are exceeded.

- **Project Managers**  
The Department has established a team of project managers whose responsibility is to assist in delivering efficient planning outcomes for major investment projects including advice on zoning and development assessment as well as ensuring effective and efficient co-ordination of input from other government agencies and in relation to infrastructure implications of major projects.
- **Internal and external tracking system**  
The Department operates an internal application tracking and reporting system ('Hiive'), which provides for the monitoring of the progress of assessments and internal auditing. In addition, the Hiive system provides for all assessment documents to be uploaded to the Department's website and made available to the public. Because the Director General Requirements are made available early in the process, the councils and the community get early notification of project proposals, well before they would be assessed by councils under Part 4. In addition, from 1 July 2010 all submissions from agencies, councils and the community to Part 3A applications will be made publicly available on the Department's website, enhancing transparency.
- **Timeframe targets**  
The Department is required to determine Part 3A applications efficiently. To achieve this, the Minister requires the Department to finalise the assessment of Part 3A applications by the following deadlines:
  - 85% of assessments to be finalised within 3 months;
  - 95% of assessments to be finalised within 5 months; and
  - 100% of assessments to be finalised within 8 months.
 The deadline includes an initial 30 days during the exhibition of the application (regardless of whether the exhibition period exceeds the 30-day minimum). The balance of the assessment deadline (2 months in the case of a 3-month project) is from the time the response to submissions or Preferred Project Report is accepted by the Department until the time the final recommender signs off on the assessment report. The clock may stop if additional information is requested from the proponent regarding their response. The performance relative to the assessment timeframes targets is summarized in Appendix 2.
- **Internal Guidelines and Standard Templates**  
The Department is developing updated internal and external guidelines for Part 3A. The Department has a comprehensive internal guide for assessment staff ensuring all staff deal with Part 3A applications with a consistent approach. The Department has or is developing *Standard Report Templates* and Standard DGRs and standard conditions of consent to speed up the process, while providing appropriate outcomes.
- **External Guidelines and Assessment Guidance**  
The Department has a number of guidelines available on its website to assist proponents and the community, regarding the Part 3A processes, community consultation and agency protocols. In addition, there are a number of fact sheets and planning circulars available to assist community understanding of the Part 3A process and to assist proponents in developing their applications. The Department's website has a 'Register of Development Assessment Guidelines', which identifies guidelines and standards relating to assessment methodology and assessment of specific project types, some prepared by the Department and some by or in conjunction with other government agencies.

# PLANNING AND DEVELOPMENT APPROVAL REGIME IN NSW



- Key**
1. Minister = Minister for Planning
  2. PAC = Planning Assessment Commission
  3. DoP = Dept of Planning
  4. JRPP = Joint Regional Planning Panel
  5. CC = Construction Certificate – Building approval
  6. Certifiers = Council or private certifiers
  7. L&E Court = Land and Environment Court
  8. PA = Public Authority – council or State government authority

**5. What suggestions can the Department make regarding how the appeal system might be improved within the current planning system?**

At present, there are two options open to applicants who are dissatisfied with a determination by Council - the applicant can request the council to review its determination under Section 82A of the EP&A Act which provides for a review of a determination by the relevant council, or lodge a merit appeal with the Land and Environment Court.

In 2008-2009, only 3% (2,149) of all development applications were refused by councils. A quarter of these applications were for alterations and additions to residences with an average cost of \$133,000. Of the 73 councils who reported utilising s 82A reviews, 612 development applications were reviewed with 71% of the applications approved or amended in response to the review. Of the 67 councils who reported on appeals, there were only 477 legal appeals to the Land and Environment Court which represented approximately 0.7% of determinations.

<b>S82A Reviews by Councils</b>	2008-09
Number of reviews (reported by only 73 councils)	612
% appeals approved by councils on review	71%
<b>Appeals in L&amp;E Court by applicants under s97 Merit Appeals - Class 1</b>	
Appeals lodged by applicants in L&E Court (67 councils reporting)	457
% appeals upheld	33%
% appeals upheld (with amended plans)	19%
<b>Appeals in L&amp;E Court by objectors under s98 Merit Appeals - Class 1</b>	
Appeals lodged by objectors in L&E Court (67 councils reporting)	15
% appeals upheld	85%
<b>Appeals in L&amp;E Court by any person under s123 – Class 4</b>	
Appeals lodged under s123 (67 councils reporting)	25

There is a current trend towards greater use of s82A reviews as an alternative to the use of s97 appeals in the Land and Environment Court, with the number of s82 reviews increasing from less than 500 in 2006-07 to over 600 in 2008-09, with a concurrent decrease in s97 merit appeals by proponents. This trend is supported and it is intended to increase the awareness of proponents to their rights of a review under s82A.

In regard to appeal and review processes, the Department considers the current system does not need to be changed as a result of experiences under the NBJP program.

The Government is working towards the introduction of a streamlined low cost review mechanism in the Land & Environment Court in order to improve access to justice and remove some of the disincentives involved in the existing review procedures of the Court.

At first this new mandatory conciliation-arbitration track within the Court will be limited to applications for single dwellings, dual occupancies and alterations and additions to those developments. These types of development account for 60% of all development applications. Over time the scheme may be extended to other types of development.

The scheme will give applicants a quicker and cheaper review, for the first time providing applicants for most residential development with a practical ability to review onerous or ill considered council conditions of consent.

## **Appendix 1: Concurrence and Referrals Monitoring Report on Agency Processing Performance**

**1st July 2009 – 31st December 2009**

As agreed by COAG in March 2008, and consistent with Jobs Summit initiatives, all levels of government are continuing to identify ways to streamline approval processes to reduce development costs and improve the delivery of employment outcomes, affordable housing and infrastructure. Industry considered that a major impediment to an efficient planning system was the system of concurrences and referrals and the ability of agencies to deal with them in a timely manner. In 2004 and 2008, amendments were made to NSW planning instruments to remove over 2000 concurrences and referrals (C&R) to improved efficiency in the planning system by removing duplicative or unnecessary requirements to consult with State agencies on planning decisions.

In May 2008, Cabinet agreed that electronic reporting systems be established by agencies to report on concurrences and referrals to their respective Ministers and to the Department of Planning every six months. DoP is now coordinating monitoring of concurrences and referrals to report on agency performance and identify areas where further efficiency gains may be made over the longer term. A trial report has been generated after the first 6 months (1<sup>st</sup> July 2009 to 31<sup>st</sup> December 2009) to assess whether agencies systems are able to report against common criteria for measuring activity and performance. These include:

- Number of C&R processed by each agency
- Average number of days to process C&R
- Breakdown by LGA and by Sector
- Qualitative information on adequacy (usual reasons why information is inadequate, usual types of C&R that are delayed, LGAs where there are high numbers)
- Further C&R clauses that could be flagged for removal from EPIs

Individual agencies monitoring systems will continue to be used for monitoring of timely processing of C&R, and identification of issues for resolution. This will allow further analysis of areas where improvement to assessment systems can be made

### **Provision of Data**

DoP requested data for the period 1<sup>st</sup> July 2009 to 31<sup>st</sup> December 2009 from each agency to ensure that adequate systems are in place for monitoring C&R over the 2009/10 year. The six-monthly report indicates difficulties that some agencies are experiencing in providing agreed data, and highlights the measures that will need to be taken by agencies to ensure adequate systems are in place for the next reporting period.

### **Further Possibilities for Removal of C&R Clauses**

Although the reporting period is only 6 months there would appear to be a number of remaining concurrence and referral clauses that are not triggered regularly and could be considered for removal or amalgamation with other clauses. Often the clauses are for specific developments and were included in LEPs at the time the development was being done. Some of these are no longer relevant and consideration should be given to repealing these outdated/redundant clauses. Further analysis of clauses not triggered during 2009/10, which may be appropriately removed from EPIs, will be done.

## Summary of Concurrences and Referrals – 1<sup>st</sup> July 2009 to 31<sup>st</sup> December 2009

Agency / Authority	C&R Received in Period	C&R Processed in Period	Average Processing Time <sup>a</sup>	Adequacy of original information submitted (% adequate)	Processed in ≤40 days (%)
Rural Fire Service	4443	4208	*16.88	92	N.A.
Mine Subsidence Board	2800	2730	*3.2	98	100
Roads and Traffic Authority	1130	967	*22.13	N.A.	N.A.
NSW Office of Water	494	350	26.31	85	78
Heritage Branch of the DoP/NSW HC	294	257	*25.67	N.A.	81
Planning	253	213	20.62	69	85
Sydney Catchment Authority	169	126	28.82	72	94
Industry & Investment	139	136	11.76	91	96
Environment, Climate Change & Water	95	75	22.05	72	83
NSW Maritime	34	34	14.59	97	100
Railcorp	27	15	10.93	15	100
Natural Resources Commission	5	5	16.20	100	100
Sydney Olympic Park Authority	2	2	1.00	100	100
Sydney Water	2	2	21.00	100	100
<b>Overall (all agencies)</b>	<b>9887</b>	<b>9125</b>	<b>14.15</b>	<sup>b</sup> <b>92</b>	<sup>c</sup> <b>91</b>

N.A. = not available from data supplied by agency

### Summary by Sector requiring C&R

Sector	C&R Received
Residential	3089
Other	601
Commercial / retail / office	380
Subdivision	272
Industrial	259
Mixed	154
Infrastructure	93
Community facilities	80
Rural	27
Tourist	32
Not stated	4900
<b>Total</b>	<b>9887</b>

### Top 20 LGAs by No. of C&R

Local Government Area	Total C&R Received (all agencies)
Lake Macquarie	1171
Wyong	476
Shoalhaven	389
Wingecarribee	387
Newcastle	362
Wollondilly	306
Maitland	285
Coffs Harbour	269
Ku-ring-gai	252
Camden	243
Hornsby	240
Campbelltown	234
Blue Mtns	205
The Hills	205
Gosford	185
Wollongong	177
Sydney	174
Wagga Wagga	169
Eurobodalla	147
Byron	136

### Number of councils each agency received C&R

Agency	Number of LGAs C&R activity
Roads and Traffic Authority	127
Rural Fire Service	110
NSW Office of Water	92
Heritage Branch /Heritage Council	67
Planning	59
Environment & Climate Change	40
Industry & Investment	24
Railcorp	14
Mine Subsidence Board	11
Sydney Catchment Authority	9
NSW Maritime	9
Natural Resources Commission	5
Sydney Water	2
Sydney Olympic Park Authority	1
Land & Property Management	0

a. Average processing times are nett times (i.e. total time minus time where additional information was being prepared by proponent). If nett times were not available then gross times were used and marked with an \*.

b. The overall figure for Adequacy is derived from the agencies where this information was provided.

c. The overall figure for % processed <40 days is derived from the agencies where this information was provided.

## Appendix 2 Timeframes for the approval of Major Projects 2009-2010

A benchmark was agreed that 85% of major projects would be determined in 3 months, 95% of projects in 5 months and 100% in 8 months.

### Timeframe Performance for 2009-2010

Assessment time	Up to 3 months (%)	Between 3 & 5 months (%)	Between 5 & 8 months (%)
▪ April 2009	100	0	0
▪ May 2009	75	25	0
▪ June 2009	88	13	0
▪ July 2009	40	50	10
▪ August 2009	42	26	32
▪ September 2009	64	36	0
▪ October 2009	56	0	44
▪ November 2009	100	0	0
▪ December 2009	100	0	0
▪ January 2010	80	0	20
▪ February 2010	67	33	0
▪ March 2010	88	13	0
▪ April 2010	100	0	0
▪ May 2010	64	29	7
▪ June 2010	50	42	8
<b>Average achieved</b>	<b>74</b>	<b>17</b>	<b>8</b>
<b>Benchmark</b>	<b>85</b>	<b>10</b>	<b>5</b>

### Timeframes by sector

Education Infrastructure		Days
Concept Plan University of Technology	\$426m	81
Student Housing (Building 6)	\$69m	88
Energy Technologies Building UNSW	\$91m	109
Macquarie University Concept Plan	\$1,700m	168
<b>Health and Medical Research Projects</b>		
Royal North Shore Hospital Project Application - Substation	\$17m	51
Centre for Obesity, Diabetes & Cardiovascular Disease Building	\$350m	61
Community Hub Building at Auburn Hospital	\$15m	67
Penrith Health Campus Redevelopment	\$64m	72
Royal North Shore Hospital Acute Hospital and Community Health Facility	\$700m	73
Garvan St Vincent's Campus Cancer Centre	\$82m	78
Liverpool Hospital Infrastructure & Ancillary Works	\$48m	79
Concept Plan - Illawarra International Health Precinct	\$316m	82
Westmead Childrens Medical Research Institute	\$99m	85
Project Application Newcastle Private Hospital	\$33m	88
Manilla Hospital	\$16m	96
Greenwich Hospital and ancillary health care services	\$56m	102
Concept Plan - Project Application - Kareena Private Hospital	\$15m	107
Hunter Medical Research Institute	\$84m	111
Neuroscience Research Precinct Prince of Wales Medical Research Institute	\$117m	120
Concept Plan Neuroscience Research Precinct Prince of Wales	\$264m	120
New Private Hospital Site 9	\$51m	128
Rippon Grange Private Hospital	\$44m	187
<b>Energy Infrastructure projects</b>		
Concept Plan Application - New Base Load Power Station (Bayswater B)	\$2,000M	52
Concept Plan Application - Mount Piper New Base Load Power Station	\$2,000M	55
Project Application - Young to Wagga Looping Pipeline	\$38M	72
Gas Project Apex	\$7m	77
Project Application - East-West Gas Pipeline	\$9M	84
Project Application Kyoto Energy Park	\$190M	93
Project Application - North-South Gas Pipeline	\$16M	102
Leafs Gully Gas-Fired Power Station	\$200M	111
Project Application-Concept Plan Lismore to Mullumbimby Electricity Network Upgrade	\$70M	122
Richmond Valley Power Station and Gas Project - Project Application	\$50M	128

Concept Plan- Project Application Sydney CityGrid Project	\$800M	143
Project Application Glen Innes Wind Farm	\$150M	147
Project Application - Buronga Distillate Fired Power Station	\$50M	149
Concept Plan - Marulan Gas Fired Power Stations and Associated Infrastructure	\$809M	185
Project Application-Energy Australia Marulan Gas Fired Power Station -	\$266M	185
<b>Transport Infrastructure projects</b>		
Project Application - CBD Metro	\$4,400M	56
Glenugie Upgrade - Pacific Highway Upgrade Project Application	\$6M	79
Tarcutta Bypass Hume Highway Duplication	\$235M	80
Victoria Road Upgrade - Project Application	\$156M	81
Holbrook Bypass Hume Highway Duplication	\$250M	82
Quakers Hill to Vineyard Upgrading - Rail Clearways Program	\$430M	88
Woomargama Bypass Hume Highway Duplication	\$260M	102
Project Application - Minimbah Bank Third Track	\$100M	115
Tintenbar to Ewingsdale - Pacific Highway Upgrade Project Application	\$368M	255
<b>Water Infrastructure projects</b>		
Project Application Rosehill Recycled Water Scheme	\$100M	79
Murrumbidgee to Googong Water Transfer Project application	\$96M	99
<b>Waste and remediation projects</b>		
Carpark Remediation Project Orica Botany	\$30m	97
Orange Waste Project	\$14m	106
Remediation Project	\$0.2m	126
Incitec Cockle Creek Remediation - Stage 1	\$0.4m	208
Light Horse Waste Facility	\$35M	225

<b>Commercial and residential developments</b>		
Multi-unit Housing Pymble	\$9m	46
Carlton United Breweries Site Block 2	\$269m	58
Stamford Plaza mixed use hotel redevelopment - Double Bay	\$146m	66
Multi unit residential development Arncliffe	\$109m	67
Concept Plan- Project Application for Costco Wholesale Retail Warehouse	\$60m	73
Carlton United Breweries Site Main Park and Related Infrastructure	\$6,m	76
Site 22 - 8 storey serviced apartment building	\$24m	86
Concept Plan 07_0166	\$573m	90
Concept Plan /Project Application for Stage 1 Former Sunbeam Factory Campsie	\$298 m	92
Tempe Tip Site (Marrickville Council)	\$120m	99
Site 13 Commercial Building	\$32m	101
Breakfast Point Blacksmiths Workshop	\$0.9	121
63-77 West Parade, West Ryde	\$55m	123
Commercial and Hotel development Berry Street	\$271m	141
86-96 & 100 Mount Street, North Sydney	\$145m	143
<b>Industry and Industrial Estates</b>		
Minto Maltings Project	\$79M	33
Warehouse Project Reckitt Benckiser	\$2M	34
Concept Plan Application Hoxton Park Industrial Project	\$181m	46
Project Application - Hoxton Park Industrial Project Infrastructure Works	\$10m	46
Project Application - Big W Warehouse Hoxton Park Industrial Project	\$100m	46
Project Application - Dick Smith Warehouse Hoxton Park Industrial Project	\$64m	46
Knauf Insulation Project, Steel River	\$167M	53
Spent Potliner Processing Facility, Tomago	\$15m	55
Port Kembla Soybean Processing & Biodiesel Facility	\$166m	64
Orica Ammonium Nitrate Upgrade	\$450m	65
Dexus Estate -Greystanes Southern Employment Lands	\$150m	93
Cronulla Marina Expansion Project	\$2m	191
Concept Plan Erskine Park Link Road Network		205
<b>Mining and extractive industry projects</b>		
Nowra Brickworks Quarry	\$2m	57
Cadia East Project Gold/Copper Mine	\$2,200m	64
Appin Gas Drainage Project	\$5m	65
Appin-West Cliff CPP Project	\$45m	66
Mackas Sand Project	\$1m	71
Bathroom Project - Wongawilli Mine	\$1m	81
Blakebrook Quarry Project	\$5m	100
Metropolitan Mine	\$50m	104

Modified Project - Ardmore Park Quarry	\$7m	120
Fullerton Cove Sand Extraction	\$0.4m	158
Stage 3 Austar Mine	\$80m	209
Bloomfield Coal Project	\$0.9m	234
Hansons Asphalt and Concrete Facility	\$49m	274

<b>Major sites</b>		
Taronga Zoo: Chimpanzee Enclosure	\$6m	36
Darling Walk Commercial Fitout	\$79m	65
Museum of Contemporary Art Alterations and additions	\$44 m	82
Mixed Use Development, Redfern RSL,	\$28m	90
Cessnock Correctional Centre Maximum Security Facility	\$75m	91
Darling Walk Public Domain	\$15m	93
Honeysuckle Central - Mixed Use Development	\$54m	103
Yulang Pub The Overflow, Sydney Olympic Park	\$7m	106
Pemulwuy Mixed Use Development Redfern	\$60m	107
Potts Hill Reservoirs Redevelopment - NSW Police facility	\$25m	135

<b>Projects in the Coast Zone</b>		
Fairview Outdoor Education Centre	\$2m	38
Casuarina Town Centre, Mixed Use Subdivision (Project Application)	\$26m	42
Casuarina Town Centre, Mixed Use Subdivision (Concept Plan)	\$386m	42
Sapphire Beach Stage 1 being site preparation and demolition	\$0.8m	43
31 lot residential subdivision	\$1m	54
Hearnes Lake Road Woolgoolga Residential Subdivision into 43 lots	\$4m	56
139 Lot Residential Subdivision, Sunshine Bay	\$3m	56
Marmong Point Marina Expansion	\$3m	58
Tweed Coast and Hastings Road Cabarita/Bogangar	\$14m	63
Seascape Grove' Residential Subdivision Stage 1C	\$4m	69
63 Lot Residential Subdivision - Project Application, Morisset Park	\$5m	78
Seniors Living Development (Project Application) , Moruya	\$41m	79
Seniors Living Development (Concept Plan) , Moruya	\$113m	79
Additions to the existing Tathra Motel and boundary adjustment	\$5m	90
13 Lot Rural Residential Subdivision, Lilli Pilli	\$0.1m	93
Extension of camping/caravan Park Kioloa	\$0.2m	94
Tourist & Commercial Development Greenwell Point and Goodnight Island	\$25m	96
Redevelopment of Twin Towns Services Club, Tweed Heads	\$33m	98
Commercial/retail building	\$9m	99
Seniors Housing Development Toukley	\$18m	101
Mixed use marina/tourist/residential (Concept Plan) Trinity Point Drive	\$108m	103
Seven lot rural subdivision	\$0.1m	120
Residential Subdivision Sandon Point	\$22m	135
Settlement City Shopping Centre Redevelopment Port Macquarie	\$55m	136
Swan Bay 4 lot residential subdivision	\$0.1m	186