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3 October 2012

The Hon Brad Hazzard MP  
Minister for Planning & Infrastructure  
Level 31 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

### **SHOROC submission on the NSW Planning System Reform Green Paper**

SHOROC, a partnership of Manly, Mosman, Pittwater & Warringah Councils, welcomes the opportunity to comment on the NSW Planning System Reform Green Paper by the extended closing date of 5 October 2012. Please find attached a copy of SHOROC's submission.

Please note that this submission is made on behalf of council staff and covers key strategic issues in regard to the planning system. Further submissions may be made by SHOROC or individual councils at a later date in regard to the White Paper and Exposure Bill later in 2012 and in 2013.

The attached submission focuses on the following key areas:

1. Overall comments and summary
2. Objectives of the planning system
3. Community & stakeholder engagements
4. Strategic planning
5. Development assessment & compliance
6. Infrastructure planning & coordination
7. Delivering a new planning system

The SHOROC region covers an area of approximately 288km<sup>2</sup>, has a population of around 275,000 people who contribute over \$20 billion annually to the NSW economy. Our residents value the region's outstanding natural environment and vibrant communities and as such regional and local planning are of major importance.

Local government will play a pivotal role in the future of greater Sydney and we consider this planning review process is a unique opportunity to reshape the planning system to provide greater confidence in the system and achieve positive outcomes for the residents of NSW and Australia. As such, the SHOROC councils would appreciate your response to this submission and would welcome further discussion with the NSW Government on the matters raised therein.

Yours sincerely

Ben Taylor  
SHOROC Executive Director

# NSW Planning Reform Green Paper

## SHOROC submission October 2012

### Introduction

SHOROC is a partnership of Manly, Mosman, Pittwater & Warringah councils led by a Board of the council Mayors and General Managers. We collectively represent a population of over 275,000 residents who contribute over \$20 billion annually to the NSW economy. Our region covers an area of approximately 288km<sup>2</sup> in north east Sydney and is characterised by its outstanding natural environment and vibrant communities and as such regional and local planning are of major importance.

Local government will play a pivotal role in the future of greater Sydney. SHOROC welcomes the opportunity to provide a submission on the Planning Reform Green Paper and its proposals for the future of planning in NSW.

This submission has been developed by experienced planning professionals and approved by the council General Managers. It has been structured around the sections of the Green Paper and focuses on the following key areas:

<b>1. Major comments regarding the Green Paper</b>	<b>Page 1</b>
<b>2. Objectives of the Planning System</b>	<b>Page 3</b>
<b>3. Community &amp; stakeholder engagements</b>	<b>Page 4</b>
<b>4. Strategic planning</b>	<b>Page 5</b>
<b>5. Development Assessment &amp; Compliance</b>	<b>Page 7</b>
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<b>7. Delivering a new planning system</b>	<b>Page 10</b>

### 1. Major comments regarding the Green Paper

The current planning system has become complex and cumbersome and there is a need for change.

SHOROC is supportive of the focus on strategic planning at a regional and local level, the proposed hierarchy of plans and the significant and meaningful community engagement. However the changes proposed are significant and as such specific comments relating to the major changes are outlined below and in more detail in the sections to follow.

#### Community & stakeholder engagements

SHOROC endorses the focus in the Green Paper on public participation and engagement to meaningfully involve and empower communities in the planning system with a focus on the up-front strategic planning process. However there will be a significant challenge in engaging the community and stakeholders at a strategic level meaningfully and on a representative basis, not to mention getting a substantial proportion of community members involved. Experience to date suggests the community does not engage meaningfully in strategic planning but does engage in local development decisions.

It also needs to be recognised however that this will involve significant time and resourcing to implement appropriately and effectively.

### **Strategic Regional, Sub-Regional and Local Planning**

SHOROC generally endorses the proposed approach whereby a hierarchy of plans is detailed for development and implementation including the State Plan, the Metropolitan Plan, regional or sub-regional plans and local plans.

As the Regional Growth Plan for Greater Sydney, the Metropolitan Strategy should be truly a whole-of-government plan, properly integrating and detailing major infrastructure which is fully funded to provide certainty for the community and planners. The integration of infrastructure and land use planning is fully endorsed. However the accountability for implementation needs to be binding for both state and local governments. It will be critical to ensure that those priorities agreed by Cabinet in state, city-wide and regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans rely on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered.

The development of sub-regional plans is supported and these should be developed in conjunction with the major elements of council Local Land Use Plans (LLUPs). This will enable appropriate evidence-based regional targets to be set based on major infrastructure provision and then local planning to determine target delivery through negotiation between the councils, monitored by the Board and implemented through the LLUPs. The engagement of the community and stakeholders at a regional and sub-regional level will be difficult and could be a role that councils coordinate through ROCs if adequately resourced.

There is a need to recognise and respond to the fact that development of sub-regional strategies, land use plans and coordination of and participation in the Regional Boards will have significant resourcing implications for councils and ROCs.

The geographic groupings of the sub-regions and Regional Boards are unclear in the Green Paper. It is considered in the metropolitan area there should be a Board for each sub-region reporting to the Minister and that these sub-regions should be aligned to the Regional Action Plans established under NSW2021, where Mosman, Manly, Pittwater and Warringah councils are brought together under the Northern Beaches Regional Action Plan.

### **Development Assessment & Compliance**

SHOROC supports continued efforts to depoliticize all levels of decision-making on developments by no longer having politicians involved in decision-making for DAs, and to expand the role of the planner and independent panels in assessing and determining development applications.

However the Strategic Compatibility Certificate process is not supported as it has the potential to circumvent due process and undermine community buy-in and engagement with the strategic regional and local planning process and alternative processes should be explored.

The 10-day code approval process is supported, as is the inclusion of merit assessment. However the proposed code complying development process is not supported as the timeframe proposed is unreasonable for the assessment, including the fact that there is not suitable time for notification. The proposed 'Amber light' approach also appears inconsistent with the aims of a faster development process.

### **Infrastructure planning & coordination**

SHOROC strongly supports a whole-of-government approach to the alignment of planning and infrastructure delivery to provide certainty to the community, development industry and infrastructure agencies.

However the accountability for implementation needs to be binding for both state and local governments. It will be critical to ensure that those priorities agreed by Cabinet in state, city-wide and sub-regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans relies on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered.

In addition, existing areas should not be excluded from infrastructure provision as the Green Paper seems to suggest. Existing areas such as the Northern Beaches critically require transport and health infrastructure upgrades to cope with current issues before any thought is even given to growth targets.

### **Regional Boards, CEOs committee & performance monitoring**

The proposed Regional Boards should include elected representatives as these bodies will be determining the regional and local strategic direction their inclusion aligns with the proposal to strengthen strategic planning and depoliticize development decisions. In addition the make-up of the Boards is critical and an option to be considered is the creation of a core Board with advisory groups on key topics such as health or environment to enable a more effective structure.

It is considered the Regional Boards and development of sub-regional plans should be coordinated by the relevant Regional Organisation of Councils (ROC) which have existing expertise and experience in this area and should be supported through resourcing from the state government to fulfil this role.

The creation of a CEOs group to oversee planning, delivery and monitoring of the plans is supported. It is considered this process would be significantly strengthened and maintain its high-level strategic approach if it were to be led by the Department of Premier & Cabinet, supported by a dedicated secretariat, and an independent commissioner or panel was established to oversee the process and advise the Minister.

SHOROC endorses the mandatory performance monitoring proposed, and considers there is a need to ensure it is meaningful and effective, and that reporting applies to all agencies and is mandatory for state agencies as well as local government.

## **2. Objectives of the Planning System**

SHOROC is generally supportive of the overall objectives outlined in the Green Paper, provided they are integrated objectives and the focus on economic development is not at the expense of the other priorities listed which are focused on connectivity, quality of life and protecting the environment.

In addition, it is considered the objectives should include a focus on community participation or engagement in the planning system, particularly considering the high priority given to community engagement throughout the Green Paper.

The objectives should also recognise contemporary and emerging issues which have significant implications for planning such as population pressures, climate change and sea level rise.

Ultimately, there is a need to ensure that each of these objectives is met under the framework built for the new planning system and for an evaluation framework to be established and adhered to in order to monitor progress and adjust the objectives and function of the system as required.

### 3. Community & stakeholder engagements

SHOROC endorses the focus in the Green Paper on public participation and engagement to involve and empower communities in the planning system. It also needs to be recognised however that this will involve significant time and resourcing to implement appropriately and effectively.

Specific comments in regard to the elements of the community and stakeholder engagement proposals are as follows:

- **The Public Participation Charter:**

The Public Participation Charter is supported and the need for a framework that benchmarks minimums and encourages best practice and innovation is endorsed.

The Charter should be based on the IAP2 Public Participation Spectrum to make it clear the level of engagement that is expected for various elements of engagement.

Also, if the Charter is not included in the Green Paper this should be released prior to the White Paper and Exposure Bill to enable early feedback.

- **Strategic & community participation:**

SHOROC endorses the meaningful engagement of the community and stakeholders in the up-front strategic planning process.

There will be a significant challenge in engaging the community and stakeholders at a strategic level meaningfully and on a representative basis, not to mention getting a substantial proportion of community members involved. Experience to date suggests the community does not engage meaningfully in strategic planning but does engage in local development decisions.

As such there will need to be a significant community information campaign led by the NSW Government to explain the change in the system and people's rights and opportunities for involvement and to encourage involvement in the strategic planning process.

In addition, a statutory defined process will have legal, cost and time implications, particularly as to conduct meaningful consultation at a regional level will require significant time and funding investment. This will be in the order of millions of dollars in metropolitan areas, particularly where the populations residing in the sub-regions will be in the hundreds-of-thousands to the millions.

An option to be considered is the use of more engaging mediums such as 3D modelling (physical and virtual) to adequately engage the community and enable full understanding of the future local implications when making decisions at the strategic planning stage.

- **Transparency in decision-making:**

SHOROC welcomes the proposed increase in transparency in decision-making and the focus on decisions being evidence-based and not political. It is critical that the reasons behind decision-making is clear and transparent for all levels of decision-makers including councils, IHAPs, JRPPs, the Department and the Minister.

SHOROC endorses the use of plain English in all planning documents, however considers that a more straightforward and effective process is to have all planning documents written from the outset in plain English, not accompanied by separate explanatory documents. To assist with

consistency there is a need to define 'plain English', for example the frameworks established by the Plain English Foundation.

- **Use of information technology and electronic planning**

The use of information technology and electronic planning is generally supported as per 2011 submission, which stated that electronic spatial expression of the legislation should be a priority for implementation, including state and local controls that allow for interrogation on a lot by lot basis. There is a need to recognise the technological and cultural shift towards an online future.

Any new act must facilitate this change and include regard for the following:

- Improved customer interface
- Consistent mapping system across the state
- Spatial delivery of data that allows interrogation on an individual parcel basis
- Ability to interrogate online what land uses are permissible and what is prohibited
- Clearly define information required to be submitted with applications
- Transparent application tracking system
- Standardised reporting and monitoring system

However this is a procedural issue for the planning system and not an issue for the legislation.

Also, flexibility must be provided to councils to avoid those who have progressed significantly already having to 'downgrade' their systems to match a consistent level applied for all councils. This could also result in cost implications as systems will need to be unravelled and changed to convert to the new system.

#### **4. Strategic planning**

The proposal to strengthen strategic planning with strong community participation and integration with infrastructure provision is endorsed, however SHOROC makes a number of comments below in regard to the specific elements of this proposal particularly the regional planning framework and role and make-up of the Regional Boards.

- **NSW Planning Policies:**

In theory the proposal to streamline and simplify the way in which state development controls and policy guidance is provided by replacing SEPPs and Section 117 Directions with a succinct series of NSW Planning Policies seems sound.

However, further information on the actual policies and their implementation is required to give proper input and as such these should be the subject of significant consultation in line with the public participation charter prior to being finalised.

- **Regional Growth Plans, Sub-Regional Delivery Plans and Land Use Plans:**

SHOROC generally endorses this approach as per our 2011 submission on the Planning Reform process (attached at Tab A) which advocated for a hierarchy of plans to be detailed as part of the Act, including the State Plan, the Metropolitan Plan, regional or sub-regional plans and local plans.

### *Regional planning & integration of infrastructure*

As the Regional Growth Plan for Greater Sydney, the Metropolitan Strategy should be truly a whole-of-government plan, properly integrating and detailing major infrastructure which is fully funded to provide certainty for the community and planners.

The integration of infrastructure and land use planning is fully endorsed. However the accountability for implementation needs to be binding for both state and local governments. It will be critical to ensure that those priorities agreed by Cabinet in state, city-wide and regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans rely on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered. Infrastructure provision drives all strategic planning as without it, regions do not have the ability to cater for growth.

Existing areas should not be excluded from infrastructure provision as the Green Paper seems to suggest. Existing areas such as the Northern Beaches critically require transport and health infrastructure upgrades to cope with current issues before any thought is even given to growth targets.

### *Sub-regional planning and Local Land Use Planning*

The development of sub-regional plans is supported and these plans should be statutory.

The sub-regional plans should be developed in conjunction with the major elements of council Local Land Use Plans (LLUPs) to enable appropriate evidence-based regional targets to be set based on major infrastructure provision and then local planning to determine target delivery through negotiation between the councils, monitored by the Board and implemented through the LLUPs. This will enable greater coordination at a state level as well as coordination by councils in conjunction with NSW Government at a regional level to ensure optimal strategic planning outcomes are reached in regard to housing, employment and infrastructure planning.

There will be significant difficulty engaging an appropriate level of the community and stakeholders particularly on a regional and sub-regional basis and if this engagement is to be conducted at a sub-regional level, a lead agency or group will be needed. This is a role that councils could coordinate through ROCs if adequately resourced.

The development of LLUPs should be coordinated with the review and development process for the Community Strategic Plans as it is more efficient and also may reduce confusion and “consultation-fatigue” in the community from multiple similar processes.

There is a need to recognise and respond to the fact that development of sub-regional strategies, land use plans and coordination of and participation in the Regional Boards will have significant resourcing implications for councils and ROCs. In addition, coupled with meaningful community engagement and evidence-based strategic planning, development of the sub-regional and local plans will take significant time and resources. These resourcing implications cannot be ignored and must be addressed in developing the regional and local planning framework.

### *Regional Boards*

The Regional Boards should include elected representatives as these bodies will be determining the regional and local strategic direction and their inclusion aligns with the proposal to strengthen strategic planning and depoliticize development decisions.

Involvement of elected Councillors is consistent with the following statement from the Green Paper *“The Government’s agenda for greater involvement from councils in regional and subregional planning will also necessitate more frequent and thorough engagement by the elected councillors with the local community. The shift towards engaging the community to think about planning beyond local government boundaries will depend on strong council leadership. That is best delivered by those people elected to serve the community.”*

The Regional Boards and development of sub-regional plans should be coordinated by the relevant Regional Organisation of Councils (ROC) which have existing expertise and experience in this area and should be supported through resourcing from the state government to fulfil this role. For example SHOROC has already developed a high-level sub-regional strategy which has been formally adopted by the member councils (see [www.shoroc.com/shapingourfuture](http://www.shoroc.com/shapingourfuture)) and as such is well placed to extend this role to sub-regional planning under the new planning system.

#### *Performance monitoring and KPIs*

Performance monitoring and KPIs will be critical and must be developed, monitored and reported by all agencies accountable for delivery under the relevant plans.

- **New zones:**

The introduction of a suburban character zone is supported. However the introduction of an enterprise zone is not supported as the concept is difficult for proper and robust strategic planning and may generate significant uncertainty for communities and stakeholders involved in developing regional and sub-regional plans.

## **5. Development Assessment & Compliance**

SHOROC comments as follows in regard to the proposals for development assessment and compliance.

- **Depoliticized decision-making**

As outlined in our 2011 submission (Tab A) SHOROC supports continued efforts to depoliticize all levels of decision-making on developments by no longer having politicians involved in decision-making for DAs, and to expand the role of the planner and independent panels in assessing and determining development applications. We stress the importance of development assessments being made by experienced professionals, being both impartial and accountable.

The role of IHAPs and JRPPs is generally supported, but any duplication of responsibilities as currently appears to occur should be removed.

In addition, there is a need for clearer articulation to all stakeholders regarding the hierarchy of determination authorities and the roles of agencies.

- **Strategic Compliance**

SHOROC endorses whole-of-government strategic planning and the involvement of genuine community participation.

However the Strategic Compatibility Certificate process is not supported as it has the potential to circumvent due process and undermine community buy-in and engagement with the strategic regional and local planning process. If this is to be allowed, it needs to be done through a proper, accountable, transparent process with appropriate community engagement mandatory. In

addition, we query how metropolitan-wide planning or even sub-regional planning can be robustly translated to the local level for a development without the Local Land Use Plan in place.

- **State significant development:**

The proposed state significant development process is generally supported including the independent environmental impact statement process and the development of an accredited panel required to meet certain standards regarding the impartiality and quality of their work. Local councils and communities should be involved in the EIS process so that appropriate engagement is conducted at all levels as the EIS is prepared.

- **Timely merit/code assessment:**

The early and significant involvement of JRPPs in the development application process (eg. pre-lodgements meetings) is not supported, however briefings are considered appropriate.

The amber light approach aligns with the objective of achieving a better planning outcome however it does not align with having a specified development assessment timeframe as it will potentially add time to the assessment process, therefore being inconsistent with the objective of faster assessment. If allowed, it is also considered that an appropriate fee structure should be introduced to compensate for the additional time required by the assessor.

The proposal for the market to bear the risk is appropriate as long as it is consistent with well-considered sub-regional and Local Land Use Plans and doesn't result in reduced economic activity in defined centres.

The establishment of clear principles about the types of development consent conditions is supported.

The 10-day code approval process is supported, as is the inclusion of merit assessment. However the proposed code complying development process is not supported as the timeframe proposed is unreasonable for the assessment, including the fact that there is not suitable time for notification.

Councils are fully supportive of seeking a faster process but as the community is not aware of the process for exempt and complying development currently, the system will require a significant education campaign to avoid misunderstanding and acrimony.

In regard to building regulation it will be important to strengthen the regulation of private certifiers through an accreditation body that administers the compliance of certifiers. This is important to ensure they comply with the requirements of any code development process and also take responsibility for any compliance or remedying issues that may arise. This is particularly evident where issues arise with the neighbours of a code assessed development and it is not clear the role of council versus the private certifier and as such council is often required to remedy issues created by the private certification process.

- **Right of review for rezonings and merit appeals**

The developer-proposed rezoning process is not supported as it destroys the rigour of the subregional planning process and short-circuits the system. It also does not provide equity in the system for other stakeholders to make similar proposals. If re-zoning reviews are to be provided these should include appropriate community participation in the re-zoning review process.

The review of planning decisions by adjoining councils is inappropriate and is not supported.

## 6. Infrastructure planning & coordination

SHOROC strongly supports a whole-of-government approach to the alignment of planning and infrastructure delivery to provide certainty to the community, development industry and infrastructure agencies. Comments in regard to the proposed integration and delivery of infrastructure are provided below.

- **Integration of infrastructure and strategic planning**

As outlined above SHOROC strongly supports the need for a whole-of-government approach to the alignment of planning and infrastructure delivery.

However the accountability for implementation needs to be binding for both state and local governments. It will be critical to ensure that those priorities agreed by Cabinet in state, city-wide and sub-regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans relies on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered.

Infrastructure provision drives all strategic planning as without it, regions do not have the ability to cater for growth let alone deal with current infrastructure pressures.

- **Contestable infrastructure**

SHOROC supports contestable infrastructure proposals

In regard to Voluntary Planning Agreements (VPAs), SHOROC supports the maintenance of the intent of VPAs of net community benefit, and the need for the VPA process to be robustly transparent and not open to any form or perception of corruption.

- **Growth infrastructure plans**

The focus of the Green Paper creates a concern that the government is intending to concentrate too heavily on infrastructure provision for growth areas and does not provide enough consideration of infrastructure provision required for existing areas and redevelopment.

Existing areas should not be excluded from infrastructure provision as the Green Paper seems to suggest.

Existing areas such as the SHOROC region encompassing the Northern Beaches and Mosman critically require transport and health infrastructure upgrades to cope with current issues before any thought is even given to growth targets.

- **Infrastructure contributions**

The reform of infrastructure contributions is largely supported, however it will be critical that when determining the sub-regional strategies and allocating funding that equitable distribution of open space is a priority. In addition, opportunities for funding need to be clearly defined to avoid a future deficiency of open space where children are left with nowhere to play sport locally.

The funding also needs to include the costs of 'embellishing' the open space by, for example, providing the cricket pitches, rugby and soccer posts and netball courts as otherwise these significant costs will be shifted to local government.

- **Public priority infrastructure**

The proposal for public priority infrastructure is supported as long as there is appropriate community participation and council involvement in the planning process.

## 7. Delivering a new planning system

The implementation framework for the new planning system will be critical to its success. SHOROC makes the following comments regarding the governance framework, performance monitoring and planning culture proposals in the Green Paper.

- **Chief Executive Officers Group**

The creation of a CEOs group to oversee planning, delivery and monitoring of the plans is supported.

It is considered this process would be significantly strengthened and maintain its high-level strategic approach if it were to be led by the Department of Premier & Cabinet, supported by a dedicated secretariat, and an independent commissioner or panel was established to oversee the process and advise the Minister.

This framework is used successfully for other NSW planning processes such as the Metropolitan Water Plan which was overseen by a CEOs Committee, supported by a dedicated team in DP&C, and the Minister was provided advice on development and implementation by a Metropolitan Water Independent Review Panel appointed by the Minister.

- **Regional Planning Boards**

The Regional Boards should include elected representatives as these bodies will be determining the regional and local strategic direction and as such their inclusion aligns with the proposal to strengthen strategic planning and depoliticize development decisions.

The make-up of the Boards is critical and it would appear the proposed Board structure will be too big to effectively make decisions. An option to be considered is the creation of a core Board with advisory groups on key topics such as health or environment.

As outlined above it is considered the Regional Boards and development of sub-regional plans should be coordinated by the relevant Regional Organisation of Councils (ROC) which have existing expertise and experience in this area and should be supported through resourcing from the state government to fulfil this role. For example SHOROC has already developed a high-level sub-regional strategy which has been formally adopted by the member councils (see [www.shoroc.com/shapingourfuture](http://www.shoroc.com/shapingourfuture)) and as such is well placed to extend this role to sub-regional planning under the new planning system.

The geographic groupings of the Regional Boards are unclear in the Green Paper. It is considered in the metropolitan area there should be a Board for each sub-region reporting to the Minister and that these sub-regions should be aligned to the Regional Action Plans established under NSW2021, where Mosman, Manly, Pittwater and Warringah councils are brought together under the Northern Beaches regional Action Plan. Representatives from these sub-regional Boards could then be brought together on a metropolitan-wide basis.

A clear charter should be established for the Boards.

- **Mandatory Performance Monitoring**

SHOROC endorses the mandatory performance monitoring proposed, and considers there is a need to ensure it is meaningful and effective, and that reporting applies to all agencies and is mandatory for state agencies as well as local government.

- **Planning Culture**

The SHOROC councils embrace a positive culture for planners and councils in this area and have already been promoting the focus on strategy, outcomes and innovation as well as the integration of infrastructure and land use.

## **Further information**

For more information visit the SHOROC website [www.shoroc.com](http://www.shoroc.com) or contact SHOROC:

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# Tab A: SHOROC Submission to the Independent Panel on the Planning System Reform 4 November 2011

## Background

SHOROC is a partnership of Manly, Mosman, Pittwater & Warringah Councils located in north east Sydney. The SHOROC region covers an area of approximately 288km<sup>2</sup>, has a population of around 270,000 people and is home to around 100,000 jobs. Our residents value the region's outstanding natural environment and vibrant communities and as such regional and local planning are of major importance.

Local government will play a pivotal role in the future of greater Sydney and this planning review process is a unique opportunity to reshape the planning system to provide greater confidence in the system and achieve positive outcomes for the residents of NSW and Australia.

This submission has been developed by experienced planning professionals and approved by the council general managers. It focuses on the following key areas:

1. Aims & objectives of the Act & planning system
2. Strategic Planning
3. Standardisation of Local Planning Instruments
4. Development Assessment
5. Governance
6. Appeals
7. Infrastructure funding

## 1. Aims & objectives of the Act & planning system

Generally speaking, SHOROC councils support the overall Aims and Objectives of the current Act.

However, it is not considered the Aims and Objectives integrate well with the Act as a whole and form more overarching 'motherhood' statements. There is a need to ensure that there is strong integration with the Aims and Objectives throughout the Act and that the Act and any subsequent revisions continue to remain true to the Aims and Objectives.

The planning system and legislation should focus on the overarching goals of sustainability, including the three spheres of environmental, social and economic sustainability, with an underlying focus on public benefits.

A key element of any new planning Act and system is a clear and easily understood hierarchy of state and local planning responsibilities and roles in plain English. This is needed to establish the responsibilities and roles of Local, State and Federal Governments and align implementation and funding responsibilities with delivery of priorities such as infrastructure. It is also required as a means by which deliverables or actions under the Act can be monitored and measured.

Significant improvement in accessibility and availability of planning information is required and the new Act and system should provide this, including by providing a robust electronic system and integrating all information and relevant legislation in one place. The legislation should be restructured to flow logically and to revise SEPPs and other tools that are voluminous and hard to understand for most residents.

Electronic spatial expression of the legislation should be a priority for implementation, including state and local controls that allow for interrogation on a lot by lot basis. There is a need to recognise the technological and cultural shift towards an online future. Any new act must facilitate this change and include regard for the following:

- Improved customer interface
- Consistent mapping system across the state
- Spatial delivery of data that allows interrogation on an individual parcel basis
- Ability to interrogate online what land uses are permissible and what is prohibited
- Clearly define information required to be submitted with applications
- Transparent application tracking system
- Standardised reporting and monitoring system

Above all, the priority of any planning Act and system should be to restore confidence and certainty for all users of the system.

## 2. Strategic Planning

### Structure

Strategic planning is fundamental to the planning system and planning legislation as it should set the overarching framework for planning on a state, regional and local level. A hierarchy of plans should be detailed as part of the Act and include the State Plan, the Metropolitan Plan, Regional or Sub-regional plans and local plans.

This defined hierarchy of plans is vital to determining and balancing state and local roles, responsibilities and decision-making ability. There is a greater need for coordination at a state level as well as coordination by councils in conjunction with NSW Government at a regional level to ensure optimal strategic planning outcomes are reached when determining issues such as metropolitan housing and employment targets.

In addition, accountability of preparation and delivery is needed on a state as well as a local level. This is vital to ensure that those priorities agreed by Cabinet in state, city-wide and regional plans are funded by Treasury and implemented by the agency responsible, as successful implementation of local plans rely on delivery of these priorities such as transport infrastructure, which have in the past been outlined in state planning documents but not delivered.

### Process

The process of plan-making requires complexity differentiation, that is, the same process should not need to be followed for complex plan making as that for simple plan making. For example there should be a greater emphasis on community participation at the regional plan making stage compared to the development application stage, particularly where compliance with local plans increase.

There is also a need for distinction between prescriptive versus non-prescriptive processes and the hierarchy of processes must be clearer. For example, when certification for public exhibition is under review the rules need to be clearly set out and consistency is required for all levels and steps such as certification should only happen when content is ready for public exhibition.

In addition, consultation is vital on the strategic level and when changes to the Act, regulations, standard instrument elements, orders or at any level of the planning system are proposed as the flow-on effects from changes at this level to the local level can be significant.

There is a need for the Act to provide greater guidance to councils through the new process such as the contents of EPI internal structure, local area studies, strategic mapping and development of local strategies and plans can sometimes be considered as 'flying blind' without guidance.

In summary, consistency and certainty is needed. Parameters should be set to provide more guidance through a strategic planning framework that outlines the process and hierarchy and responsibilities of all levels.

### **3. Standardisation of local planning instruments**

There has been general acceptance for some time that complexity in the planning system has been compounded by differences in the form and content of various planning instruments. After initially considering a template approach to local environmental plans the NSW Government determined by inclusion of section 33A of the Act to implement a standard instrument (SI) approach which included mandatory form and content relating to provisions, zones and mapping.

While it is accepted that there is a need for standardisation of instruments the approach to-date has been clumsy and poorly conceived and has not led to efficiencies in preparation or finalisation of LEPs.

The drafting of the provisions has been very legalistic and not easily amenable to interpretation by lay persons. Similarly mapping conventions have been intricate and introduced elements which have provided no value to users other than conformity. Standard definitions across all LEPs are a useful initiative. The limited number of available zones and several gazetted changes to permissible uses without notice has made it difficult for councils to pursue any rational strategy regarding landuses.

The practice has been that some draft changes have been exhibited for comment but final SI orders have included unheralded changes often with significant consequence. If the SI approach is to be persisted with it should be on the basis of proper consultation in respect of proposed changes. Under the present arrangements an SI Order may be made without any consultation or submissions but, by contrast, the LEP which it would amend has had to undergo a stringent and often costly and time consuming process of engagement and review.

The structure of the SI LEP has been based on clauses which are classed as:

- Compulsory;
- Optional; or
- Local

The SI LEP includes compulsory provisions and permitted uses which have no existing or likely application to some local government areas but still must be included, e.g. development along rail corridors or "farm stay" for inner metropolitan areas. There are other examples.

Optional provisions must take the mandated form which can be demonstrated to have unintended consequences including significant costs if applied without amendment to some areas. There should be scope in the optional approach to allow for local amendments where a case can be demonstrated.

Some Optional provisions have been deemed by the Department of Planning and Infrastructure to be compulsory e.g. Suspension of Covenants (contrary to the view of councils and submissions from the

public). If certain matters are to be compulsory then they should be determined to be such but to have clauses which the council has opposed included in an LEP and listed as a Local provision is not reasonable.

In accepting the SI approach most if not all councils understood that local matters would be able to be dealt with by use of local clauses provided they did not derogate from other adopted provisions. In practice inclusion of truly local provisions has proved very difficult to achieve because of a practice by the Department of Planning and Infrastructure of adopting, so called, Model Local Clauses. The development of drafting guidelines and sample clauses would be a reasonable approach but this has not been the case. Rather, if a clause is accepted by Parliamentary Counsel as being acceptable in the case of one council it has been deemed that the same provision will be suitable for all council areas. Changes to Local provisions clearly were contemplated when the Act was drafted as Section 33A (6) of the Act provides:

*Where a standard instrument has been adopted, the provisions of the environmental planning instrument (other than the mandatory provisions of the adopted standard instrument) may be amended from time to time by another environmental planning instrument or in accordance with any Act.*

The imposition of standard model local clauses therefore seems to be at odds with the existing content of the Act. If an SI approach is to be contemplated for the future there should be clear expression of the need for councils to be able draft and include Local provisions applicable to their areas without unwarranted interventions from the Department of Planning and Infrastructure.

In conclusion, it is clear that a certain degree of standardisation should be included in the drafting of Local Environmental Plans; however, this should include a balance between mandated provisions which are consistent across the state and local provisions which deal with the particular circumstances prevailing in that area. Where amendments are contemplated to any of the mandatory components it seems reasonable that they should be exposed to the same level of public scrutiny and procedures as amendments proposed by local councils.

#### **4. Development Assessment**

SHOROC recommends a tiered approach (relative to the complexity) to development assessment within any new planning system. The amount of information as well as the assessment required for a development application should be revised to suit the relative size and associated risk of the proposal.

Development proposals vary considerably in terms of their risk/impact and the assessment process should address this variation. The provision of information, depth of assessment, public scrutiny and deemed Consent Authority should vary according to the type and risk of a proposed development. It is recommended that future legislative development assessment procedures reflect this tiered assessment approach.

A key area is modification procedures, currently under s.96 of the Act, and the application of such provisions within any future planning system. The new planning system should clearly distinguish between development constituting a modification and that requiring a new development application. It is recommended that any future system provide a clear distinction between development deemed as a modification and that requiring a new development application.

SHOROC supports continued efforts to depoliticize Development Applications and expand the role of the planner in assessing and determining development applications. We stress the importance of development assessments being made by experienced professionals, being both impartial and accountable. SHOROC notes that the development application process would benefit from separation of Councillors from involvement in these matters.

## 5. Governance

### Roles

The role of IHAPs and JRPPs is generally supported, but any duplication of responsibilities should be removed. There is a need for clearer articulation to all stakeholders regarding the hierarchy of determination authorities and the roles of agencies.

The role of Private Certifying Authorities (PCA's) needs to be better defined. There are problems associated with PCA's correctly interpreting conditions related to planning matters.

### Interpretation

The planning legislation should define issues of regional significance so all stakeholders can have a clear understanding of where an application will sit in the assessment and determination hierarchies.

### Enforcement

The current environmental planning system does not offer effective deterrents to non-compliance. There is a perception that the building industry sometimes avoids obtaining necessary approvals, as there is a general belief that Councils lack either the will or the resources to take effective action to demolish unauthorised structures, and even if action is taken, that the consequences are unlikely to outweigh the benefits gained through early construction of a project (eg. reduced holding costs).

There is a clear need for more effective enforcement to build public confidence and to engender respect for environmental planning laws and the authorities involved, including stronger penalties and harsher financial implications.

### Consistency and co-ordination of State agencies

There needs to be consistency and co-ordination between state agencies, including improved communication and greater buy-in where the initiatives and policies of one agency rely on another, such as the delivery of services and infrastructure to support increased housing and employment in locations identified through the metropolitan and regional strategies.

It is confusing for councils and communities when information coming from state agencies is inconsistent. There is a clear need for greatly improved co-ordination in infrastructure delivery. To this end, the Department of Planning and Infrastructure should insure that the infrastructure and services identified in the metropolitan and regional strategies is fully funded, can and will be delivered in appropriate timeframes. Without such commitments it is difficult for communities to have confidence that necessary infrastructure will be delivered, which makes it difficult for communities to accept increased development.

### Consultation

The Department of Planning and Infrastructure often announces changes to legislation and policy with little or no consultation with councils or the broader community. This practice is unacceptable as often these changes can have significant implications at a local level. The DP&I should be an advocate and also practice appropriate public participation to fulfil its own obligations to provide effective consultation.

## 6. Appeals

It is agreed that applicants should maintain the ability to appeal determination decisions, however extending merit appeals to third parties is not supported under the current appeal system primarily due to the potential financial impacts on councils. In any court based appeal system there should be an increased emphasis on mediation to facilitate out of court resolutions.

A simplified non-adversarial, non-legal and low-cost merit appeal system that removes lawyers and courts from the equation for merits based appeals would be preferred, especially for single dwelling applications (eg. The Planning Inspectorate system used in the UK, where most appeals relating to householder applications are completed via 'written representations', have minimal costs to all parties and are generally completed in 8 weeks). It is considered that a system like this would be much more equitable than the current system, which is only available to those with the ability to pay and also places a large financial burden on Councils.

One of the negative by-products of the current court based adversarial appeal system is the complex legal wording which persists in most LEPs. This is considered to be directly related to the nature of the appeal system.

## **7. Infrastructure funding (section 94)**

In most cases Local Government does not have the capacity to provide the infrastructure needed in relation to new development. The upfront cost of providing infrastructure and services required as a direct result of a development should be paid for by the developer.

Any requirement for Local Government to pay for infrastructure related to development would have severe financial implications and would add to the already significant financial burden associated with ongoing maintenance and improvements to existing infrastructure. It is noted that funding available to Local Government is limited by rate capping.

It is not fair or equitable for rate payers to suffer the full burden of paying for infrastructure directly needed for a development that financially benefits a developer. In many cases communities do not want increased population or development in their local areas and will be even less likely to accept it if they are also being asked to pay for related infrastructure through their rates.

The setting of levies for infrastructure should be clear and transparent, and the requirement to show where, how and when funding will be spent is supported. The existing guidelines for section 94 plans need improvement in order to facilitate increased transparency, consistency and efficiency. The levies imposed should reflect the real costs of providing both hard and soft infrastructure (including community facilities and services) directly related to a development.

The use of broad caps on infrastructure levies and contributions is not supported as every local government area has unique requirements and the costs for providing similar infrastructure in different locations can vary considerably. Councils need the ability to demonstrate the levies required to meet the real costs associated with essential infrastructure provision.

To this end there is also a need for greater transparency in relation to the collection of State infrastructure levies. The State should have the same responsibility as Local Government in relation to justifying and reporting on how, when and where infrastructure contributions will be spent.