



SUBMISSION BY THE
Housing Industry Association

to the
NSW Department of Planning
on
Improving the NSW Planning System
Discussion Paper

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Statement:

The enclosed submission has been prepared by the Housing Industry Association (NSW Region) in response to the Department of Planning's *Improving the NSW Planning System – Discussion Paper*.



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Executive Summary

From all accounts the NSW Planning System has long been considered the most difficult in the country. It remains so, despite efforts at a state and national level to improve its standing.

The importance of planning and building regulatory systems to national competitiveness is recognised at the highest Government level. Despite COAG's interest, our planning systems remain disparate and under pressure. There is no consistency in approach or cohering of best practice across Australia's 700 planning jurisdictions.

In 2007, there were 29,000 housing starts in NSW. In 2001, there were 29,000 starts in Sydney alone. Over the 5 years to 2005-06 NSW suffered an average net interstate migration loss of 20,000 persons per year. NSW now grows at 0.8%, well below the national rate of growth. We now build fewer homes than before. In this low supply environment, housing affordability is a casualty and rental stress continues to impose hardship on our communities. New South Wales remains the least affordable housing state in Australia.

Practical planning reform is long overdue. It can and must deliver smarter and easier-to-understand processes for all users of the planning system – investors, practitioners, families and builders. Planning processes must be predictable and must incorporate sufficient flexibility so as not to stifle innovative design and development opportunities.

Importantly, planning reform outcomes must be affordable. Access to affordable and appropriate housing is fundamental to our living standards. Affordability is a key determinant of industry activity. Planning regulations that needlessly increase the cost of land and housing must be eliminated. Practical planning reforms can remove the inherent uncertainties of our planning system and help to remove its unnecessary costs.

HIA welcomes and supports the NSW Government's proposed planning reforms.

1 Introduction

Reforming the NSW planning and building system will reduce costs and address frustrations presently facing NSW homebuyers and owners by eliminating unnecessary delays and uncertainties with the land and housing development process.

Key 'planning system' factors that have impacted on approvals times and housing costs more recently include:

- a significant increase in the number of housing proposals that now require planning approval;
- a more complex assessment process, accompanied by a plethora of planning legislation and referral or concurrence agencies;
- increased time and costs associated with a diverse and layered planning system;
- a monopoly in the undertaking of all development assessment work, exacerbated by a shortage of skilled planning and associated professionals at the local government level; and
- a 'zero-tolerant' application of development standards that has discouraged housing mix and choice.

Unlike building approvals that are regulated within the predictable but flexible framework of the Building Code of Australia, the process of obtaining development approval has become much more complex, fragmented and inconsistent from one council to the next. The myriad of planning controls and the minutia of detail with which they are concerned erodes housing affordability and diminishes community and industry confidence in the benefits of planning systems.

Efficient planning systems can deliver affordable outcomes by:

- reducing complexity and providing greater certainty for the applicant, adjoining owners and the wider community;
- involving the community in the development of strategic policy and subsequent planning rules and limiting third party intervention for "compliant" applications;
- increasing competition in development assessment;
- undertaking comprehensive regional and local strategic planning;

- embracing a nationally consistent approach, as endorsed by COAG¹; and
- incorporating housing affordability as a distinct object of legislation.

To this end, HIA supports the NSW Government's initiatives to improve the operation of the state's planning system.

¹ At its February meeting in 2006, the Council of Australian Governments agreed to make a "down-payment" on regulatory reduction by taking priority action to address specific regulation "hotspots" where overlapping and inconsistent regulatory regimes were seen to impede national economic activity. Development assessment arrangements and building regulation were identified as 2 of the 6 priority areas.

2 The NSW Reforms

HIA strongly supports the tenet of the proposed NSW planning reforms, and agrees that a practical reform approach is possible.

HIA's submission considers leading practice from around the country and compares the proposed reforms to current practiced initiatives. Opportunities to fine-tune the reform proposals are identified.

Commentary is provided with respect to each specific chapter in the *Improving the NSW Planning System Discussion paper (November 2007)*.

Further detailed comment on each of the Discussion Paper's specific recommendations is listed in table form at **Attachment 1** to this submission.

2.1 Changing Land Use & Plan-Making (Chapter 3)

The plan making process in NSW is time consuming and complicated. Rezoning of land to permit urban development is a fundamental stage in the housing industry's business and the importance of a streamlined and appropriate assessment for all rezonings cannot be understated.

HIA is supportive of the principal recommendation to initiate a 'gateway' system to determine the suitability of a proposed rezoning, early in the planning process. A provision to ensure that spot rezoning requests² are not too easily dismissed as speculative or for not meeting "clearly established criteria" would complement the recommendation. Generally, the underlying reason for spot rezonings is to seek consideration for innovative land use types that do not meet current criteria or to correct planning anomalies that stifle development opportunity.

Metropolitan Sydney and the majority of regional towns and cities are well developed, with "new zonings" only common on the fringes of a city. It is inevitable in the ongoing growth and consolidation of our cities, that 'spot rezonings' will increase over time. Changes in manufacturing and commercial practices also continue to create a need to alter the residential/industrial/commercial mix. A 5-yearly review of council LEPs is

² Whilst the Discussion Paper provides information on the number of spot rezonings requested, it does not provide information on how many spot rezonings proceed to LEP finalisation. This data would be useful for designing flexibility into the planning system.

not sufficient to keep pace with the fluidity of investment, nor can it deliver the certainty and efficiency that capital markets require.

This is particularly true in a city such as Sydney where up to 70% of new residential opportunity is expected to originate in the established city area. Much of this opportunity will require the rezoning of land not foreseen in local government planning schemes.

As an alternative to lengthy rezoning procedures, leading planning practice allows for 'non-complying' or 'inconsistent' development to be approved, provided sufficient grounds are established during a comprehensive assessment process. This is the case in South Australia and Queensland.

In South Australia, the Development Assessment Commission considered 195 requests for its concurrence to non-complying development during 2006-07. It concurred with 184 of the requests. It also considered 23 non-complying applications where it was the consent authority. It approved 19 of these.

These leading practices from other states could be incorporated into the new standard LEP format via addition to the Schedule of Additional Permitted Uses (Schedule 1) upon development consent being granted.

A clear benefit of the South Australian and Queensland systems is that an expedited process is available for privately-initiated requests. Typically these requests involve substantial holding costs that inevitably add to the final costs of [housing] product.

In relation to rezoning application fees, Councils currently charge application fees sufficient to cover their costs in dealing with proponent-initiated rezoning requests. If a refined fee-for-service regime is to be introduced it would require the establishment of clear criteria by which assessments are to be made (and performance judged). It follows that it would also be appropriate to allow applicant appeals on rezoning decisions, or the failure to deal with a rezoning request within a reasonable period of time.

2.2 Development Assessment & Review (Chapter 4)

The development assessment process has become weighed down with a bulk of small scale residential projects. These were previously dealt with as building approvals only and were intended to be managed through the post-1998 framework as 'complying development'.

HIA believes that the improvements set out in Chapter 5 which seek to address this fundamental issue, will provide a major relief for all users of the planning system.

HIA has always supported a hierarchical assessment system that distinguishes between state and regionally significant development and local development. Leading planning practice suggests that the complexity of the assessment process should be commensurate to the complexity of the project being considered.

The concept of a Planning Assessment Commission (PAC) to determine state significant projects is welcomed, as is the notion of a Joint Regional Planning Panel (JRPP) to determine regionally significant projects, as well as local Independent Hearing and Assessment Panels for local projects.

HIA considers that the threshold for regionally significant development should align privately-initiated projects with state agency applications, i.e. at a value exceeding \$5 million.

This demarcation should be reviewed over time. It may prove more efficient, for example, for the regional body to take on a larger degree of state significant work.

Whilst most jurisdictions across Australia have ministerial call-in powers, these are rarely used. Leading practice in terms of a hierarchical assessment system again points to South Australia which has an independent Development Assessment Commission for significant development and local and regional Development Assessment Panels for other projects³.

³ The Western Australian Planning Commission also performs a role of determining authority for major land subdivisions, although its function is less suited for adoption into the NSW planning system. No state/regional committees or panels exist in Queensland or Victoria.

Importantly, the South Australian panels operate completely independent of councils and the state government, i.e. they determine applications as opposed to the advisory role recommended for local panels (IHAPs) in NSW. A totally independent system of panels has merit and has been recommended in previous ICAC reviews in NSW.

The South Australian system also distinguishes between categories of applications for the purposes of assessment and public notification. A similar track-based system of assessment, providing up-front clarification of neighbour-notification and the public advertising of applications is required in NSW.

A feature of the current NSW system is the “stop-the-clock” provisions that apply when a development application is put on hold pending further information or a response from a referral agency. Similar provisions apply in other jurisdictions, either officially (Victoria and South Australia) or unofficially (Western Australia and Queensland)⁴.

A problem with the stop-the-clock concept is that, inevitably, councils become clock watchers – they must keep a track of times to legitimately protect their own interests. Unfortunately this often means that the most senior council staff spend the majority of their time monitoring and measuring their own performance. There have been numerous industry reports of applicants being persuaded to withdraw an application only to re-start the process, or of applications being refused when information is not immediately at hand. Whilst acknowledging the rights of councils to correctly establish actual processing times, the system perpetuates less than ideal performance due to its time-consuming monitoring requirements.

Rather than applying such a rigid stop-the-clock system, it is potentially of greater benefit for all system users to more generously nominate times by which various categories of proposals are reasonably expected to be determined. There is no evidence that the purpose for which the current 40-day period was established, i.e. as a trigger to appeal, is regularly called up. Anecdotal evidence would suggest that the majority of applicants do not seek an appeal option on day 41. The time saved by abandoning the stop-the-clock monitoring of DAs could be better applied to the assessment of projects.

⁴ A “deemed approval” applies in Tasmania once the statutory assessment period has expired, putting a different emphasis on actual council performance.

An alternative approach to improve the quality of submitted applications, as practiced in Victoria, is to allow for an increased role in the certification of “complete and complying” applications by external planning practitioners. Evidence from Victoria suggests that where this ability has been introduced the quality of development applications improved appreciably as did corresponding approval times. The Victorian practice encourages a greater role for private planning practitioners in the actual processing of applications, in a manner that assists councils in their consent authority capacity.⁵

2.3 Exempt & Complying Development (Chapter 5)

HIA welcomes the initiative to increase the take-up of exempt and complying development and the use of default codes to do so. The ability of home owners to access a more appropriate breadth of exempt and complying development would be a major benefit of these planning reforms.

HIA strongly believes that it is possible to establish a code for new housing and for alterations and additions to existing homes which is measurable, appropriate and effective in creating a single approval process for the vast majority of domestic applications.

Accredited certifiers perform a critical role in the approval process. HIA strongly supports the involvement of accredited certifiers in improving the timeliness of complying development projects. HIA also acknowledges an ongoing role for councils to assess complying development applications, according to applicants’ choice.

Complying development can and does provide a quantifiable and timely approval whether independently assessed by local government or accredited certifiers.

HIA recommends the development of a separate housing code for both single and two-storey detached homes. This code (or chapter) should be separated from the discussion and work involved to introduce complying development for other land uses such as retail, commercial and industrial uses and fit outs.

⁵ The Development Assessment Forum (DAF) 2003 guideline explores opportunities for increased private planning participation in the development assessment process.

The housing code should contain different criteria to reflect the different housing types and localities e.g. greenfield and infill housing, and distinguish between houses on various lot sizes, e.g. up to 300 square metres, between 300 - 450 square metres and above 450 square metres. These generic house types should be applicable across all council areas, unless otherwise exempted.

Local variation to the housing code should only be allowed in areas where unique circumstances exist which cannot be addressed through accepted construction solutions, e.g. heritage or conservation areas. HIA recognises the difficulty in codifying matters in these areas, which are generally required to be considered on their merit. HIA would be pleased to assist in any efforts to attempt to codify requirements in these unique locations. However it is suggested that the housing types set out above in greenfield and non-heritage areas be addressed as a first step in increasing the level of complying development.

Several issues presently used to prohibit complying development, some of which are set out in legislation, can be addressed through accepted construction solutions. The housing code should include relevant provisions to guide the building designer/applicant in these situations. For example, construction in a bush fire prone area is addressed through compliance with AS 3959 and the BCA, construction in flood prone areas is addressed through the establishment of a minimum floor level based on council mapping. Buildings located on land where such restrictions exist should be able to form part of the complying development process. It is likely to require considerable investment in e-planning resources so that relevant information can be accessed directly by accredited certifiers as well as council staff.

Alterations and additions to existing dwellings should be considered in the context of the housing code, e.g. if an alteration fits within the scope of what would be allowed afresh as a new house then it should be able to be considered as complying development. In this way, there is no need to develop a separate code for alterations and additions in the first instance. Instead provision can be made within the housing code for both new and existing houses.

It is suggested that the opportunity exists for the housing code to be piloted in the first release areas within the South-West Growth Centre.

The involvement of HIA and our members in the development of the housing code is essential in ensuring that the standards established will be practical and acceptable to both home owners and the housing industry.

The Discussion Paper raises the possibility of dealing with minor variations to complying development proposals. However, given the experiences with existing terms in the legislation, such as 'not inconsistent' or 'substantially the same' for other types of approvals, it is likely to be difficult to define 'minor'. HIA does not see minor variations as initially fundamental to the introduction of the housing code or the expansion of complying development.

HIA would be pleased to work with the Department to consider ways for discretion to be incorporated into the complying development approval process. To this end, the following options may be worth considering:

- allowing existing 'building' certifiers to make such decisions;
- introducing a 'consent and report' process similar to that which is practiced in Victoria; or
- requiring a DA to be lodged for the minor variation but assign priority to it when lodged with council, so that it is assessed only in regard to the minor variation.

An alternative solution might be to allow private planning practitioners to sign-off on the minor departure. Such practitioners could be drawn from a panel identified by the local council or they could be formally accredited by the Planning Institute of Australia or the Building Professionals Board.

For efficiency reasons, HIA supports measures that allow this process to function independently of councils, i.e. for 'building' or 'planning' certifiers to sign-off on minor departures. To do otherwise would probably encourage industry and other system users to avoid the CDC route.

2.4 e-Planning Initiatives (Chapter 6)

HIA supports the e-Planning initiatives proposed in the Discussion Paper. In the roll out of e-Planning, it is important to achieve consistency across councils and state agencies in their e-Planning systems. The DAF e-DA project has developed the principles of a common language for the exchange of development information electronically. These principles should be implemented in NSW.

The development of e-Planning technology must accommodate the transfer of information between industry and all levels of government agencies.

HIA recommends that a best practice benchmark for the development of e-Planning systems be produced and communicated to local councils. Industry is concerned that different programs being developed by councils across NSW will result in a fragmented and inconsistent application of this technology.

HIA supports the proposal to expand the Department of Land's SiX Viewer system by adding a centralised planning database.

HIA recognises that a significant amount of funding will be required to assist local government in meeting the suggested targets in the Discussion Paper for the uptake of e-Planning. It would be appropriate for the current 'planning reform fee' paid by all applicants to be partially allocated to a centrally-driven, common-focused e-planning system.

2.5 Building and Subdivision Certification (Chapter 7)

The Discussion Paper sets out proposed reforms to address a small number of areas in the building and subdivision certification process which are considered to be functioning below optimal. These are listed as:

- The perceived close relationships between developers and accredited certifiers implying that actual conflict of interest exist;
- The management of the enforcement of consents and the uncertainty as to the respective roles of councils and certifiers; and
- Application and management of the accreditation process.

Private certification of building approvals and building work now operates in almost every state of Australia. In NSW, certification has operated for almost a decade. The debate surrounding the 'perception' that a certifier is 'in the pocket' of the developer or applicant does not exist in other states. The extent to which NSW legislation now extends to take action against certifiers is significant.

The Discussion Paper makes several recommendations to expand the operation of the Building Professionals Board. However HIA believes that delaying some of the recommendations in the Discussion Paper for a period of 12 months could provide a valuable opportunity for the Government to review the conduct of accredited certifiers in the context of the newly established Building Professionals Board and the adjusted powers and reporting obligations that were introduced under that legislation for accredited certifiers. This would allow the Building Professionals Board to determine more accurately the realities of conflict of interest and potential 'close relationships' through the new annual reporting regime which includes details of the owner, applicant and builder. Once the Building Professionals Board has the opportunity to scrutinise the new annual renewal registers received from accredited certifiers, and if there is clear evidence of 'close relationship' and of poor decision making by those certifiers, then HIA would be open to consider other alternatives.

In terms of the recommendations, HIA acknowledges the introduction of a restriction on who can appoint a certifying authority. This restriction should be identical to the present restriction on who can appoint the principal certifying authority, being that any person entitled to act on the development consent, other than the builder unless they are the owner of the land, may appoint the 'certifying authority'. Such an amendment

would align the two provisions applying to accredited certifiers ensuring consistency of appointment.

HIA does not support a limitation on the number or value of certificates any one certifier may issue in respect of a single client. Rather, HIA supports the ongoing auditing of all building certifiers, both council and accredited certifiers. Should it be considered appropriate to introduce a limit on the number of certificates that can be issued, HIA would argue that for practical application and to avoid “end of year” confusion, an assessment over a 2 – 3 year period would be more appropriate.

HIA supports the introduction of corporate accreditation, which occurs in some other states, as a means of streamlining the ability to allocate workflow within larger companies who employ several accredited certifiers.

The suggestion to commence the introduction of council accreditation of staff undertaking the same functions as accredited certifiers is also supported to provide greater consumer confidence in the building approval and inspection processes. HIA acknowledges that a process of ‘grandfathering’ existing staff may be necessary in part.

The introduction of accreditation for design professionals of any type, whether it be engineers, draftspersons or architects is a significant shift in the present NSW accreditation framework. HIA believes there may be merit in considering this option in the future. However it is not considered fundamental to the present reforms that such a change proceed in the short term.

Clarification of the roles of the PCA when undertaken by an accredited certifier, as opposed to council, is an area of some contention. Any effort to reduce the confusion and conflict between the two parties is supported. It is unclear whether additional regulations will assist in this process, or whether directives from the BPB would be more effective in establishing a line of demarcation. In considering this issue, it is important to clearly identify ‘who’ is responsible for any breach of the development consent. It is not the accredited certifiers role to ‘comply with the development consent’, that is the applicant’s responsibility. The introduction of additional penalties that seek to correct a breach of development consent therefore should not wrongly target the certifier’s conduct.

HIA does not support the implementation of compulsory enforcement bonds. Imposing up-front payment of enforcement bonds to combat unauthorised work is excessive and demonstrates a lack of confidence towards the building industry. The introduction of enforcement bonds would be difficult to manage, and create further administration demands on councils, costs for home owners and delays. It is also important to note that the builder may not be involved in all aspects of the development on the site (e.g. ancillary development and landscaping) and therefore should not take responsibility for all of the conditions of the development approval. In terms of cost recovery and a user pays' approach, any system of income attached to enforcement such as 'on the spot fines' should be tightly managed and the overall income be transparent.

2.6 Strata Management Reform (Chapter 8)

The major issue contemplated in the Discussion Paper with respect to strata management centres on the potential for undue influence or control to be exercised by a developer or original owner beyond the "initial period" (i.e. up to when one-third of the unit entitlements have been sold).

It is not unreasonable that a developer or original owner may, during the selling period, wish to retain control over issues including maintenance, presentation, signage or the completion of minor works (and the times during which this may be done). The desire to retain some control would also be expected to apply in circumstances where the developer is also the mortgagee, thus having a direct and ongoing interest in the value of the asset. The issue is muddled wherever that control is used to block complaints regarding defective work or to allocate contracts to persons associated with the developer / owner.

It is noted that, whilst examples of malpractice are referenced in the Discussion Paper, it does not shed light on whether such malpractice is the reason behind the small percentage of strata scheme disputes that require mediation by the Office of Fair Trading or resolution by the Consumer, Trader and Tenancy Tribunal. No evidence is provided as to extent of the problems that the reform package seeks to address.

HIA is unsure therefore whether the proposed curtailment of developer / original owner rights is the best way to advance this issue. It might be more appropriate, for instance, to limit the matters to which proxy votes can be

applied rather than imposing an artificial restriction on the number of proxies that can be held.

An alternate approach would be to establish specific protocols for owner corporation issues such as defective building work and contract allocations, rather than extend what is already a complex set of laws and by-laws that are not well-understood by strata buyers. The intent of the reforms might also be best assisted, in the first place, by the development of educational information to improve owners' awareness of their rights.

HIA would suggest that further consultation on these issues is warranted before the proposed reforms are implemented. Such consultation should also examine the outstanding issue of unanimous rights in selling or refurbishing strata complexes. This issue alone is probably the single most frustrating element of strata legislation and a considerable barrier to infill development, but is not addressed at all in the reform package.

HIA considers the suggested strata management reforms to be secondary to the principal tenet of the reform package, i.e. to streamline planning processes. Progress of the principal reforms should not be delayed pending resolution of these strata management issues.

2.7 Resolving Paper Subdivisions (Chapter 9)

HIA supports the intention of suggested reforms dealing with paper subdivisions. As with the issue of strata management, however, HIA believes that the progress and outcomes of the reform package should not be predicated on the basis that this issue must first be resolved.

The issue is likely to require considerable consultation with affected landowners and should not delay reforms directed at streamlining everyday planning processes.

2.8 Miscellaneous Amendments (Chapter 10)

There are a number of topics covered in this chapter of the Discussion Paper, some of which do not relate specifically to residential development. Others relate to general process improvements.

HIA's comments on the proposed amendments are provided in the table at Attachment 1 and are restricted to those matters which relate directly to residential development.

2.9 Cost of Reforms

There are many instances of proposals within the reform package which suggest the creation of a new body or process which would require additional resources. Examples include the establishment of a formal LEP gateway panel, a Planning Assessment Commission (PAC), a Joint Regional Planning Panel (JRPP), local Independent Hearing and Assessment Panels (IHAPs) and the engagement of planning arbiters.

No discussion is provided about how these proposals are to be funded. HIA suggests that the reforms should be funded through the extended use of the existing 'planning reform fee'. Additional fees for alternate decision-making forums or processes, beyond that which are currently charged, are not warranted.

3 Conclusion

HIA endorses the need for planning reform in New South Wales and welcomes the proposals outlined in the Discussion Paper.

Whilst comprehensive reform is due, there are clearly a number of priority components of the reform package that will deliver much-needed relief for everyday users of the planning system. These core aspects relate to rezonings, development assessment, the exempt and complying categories of development and the certification of building and subdivision works.

HIA urges the Government to assign appropriate priority to these aspects of the reform package.

HIA is keen to assist the Government in its deliberations on the reform package or to provide additional information with respect to any of the issues raised in this submission.

Attachment 1

Chapter 3 - Changing Land Use and Plan Making

P1 to P10

- ❖ The Discussion Paper suggests that the gateway process will assess new proposals on “typical economic appraisal principles” and that, for major land releases, a “financial appraisal of costs and benefits looking specifically at the likely risks to the state budget of the proposed development” would be undertaken. There is a need for this analysis to be as transparent as possible. The rules of assessment should be made known to the applicant up-front.
- ❖ The Discussion Paper raises the issue of consistency between state and local controls, pointing out that “there is a strong suggestion that DCPs [should] not raise standards above those set within state codes.” Industry is similarly concerned with the ratcheting-up of development standards that occurs through the council DCP process and would look to see this observation followed through in law. Newly developed planning criteria, for instance, should not be able to usurp controls that exist in the Building Code of Australia. One of the most common complaints from industry about the planning system is the lack of consistency from one council to the next. This applies both in council’s interpretation of state and regional policies and in the development of local criteria. In many cases councils choose different criteria merely to be different. There is no reason, for instance, why standard provisions could not apply to ceiling heights, cut and fill, and sunlight access for local development across council areas.
- ❖ The Discussion Paper suggests that a proposed Joint Regional Planning Panel (JRPP) might play a role in overseeing outstanding LEPs. A more expansive role of a JRRP type body would be supported by industry to ensure consistency in LEP and DCP approaches – a regional clearing house that seeks to ensure consistent approaches across council areas. This could be undertaken at either a regional or sub-regional level.
- ❖ A number of rezoning or development proposals often require concurrence or sign off from a variety of state agencies. Processing delays often occur whilst these comments are being sought. The integrated planning provisions of the EP&A Act are a common cause of delay. It would be appropriate at the LEP formulation stage to include the relevant agency criteria by which developments are to be assessed. This criteria could be supported by relevant practice guidelines. Only those proposals which depart from the established criteria would then need to be referred for comment or concurrence.

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| | <p>The standard LEP template should make reference to agency objectives and performance criteria rather than requiring referral in all cases.</p> <ul style="list-style-type: none"> ❖ It is appropriate to allow applicant appeals on rezoning decisions, or the failure to deal with a rezoning request within a reasonable period of time. |
| Chapter 4 - Development Assessment and Review | |
| A1 to A8 | <ul style="list-style-type: none"> ❖ The use of independent expert panels to consider and determine planning applications is supported. These arrangements have proven to operate successfully in other states. The cost of such panels is an administrative one that should not be borne directly by applicants. ❖ Whilst HIA recognises the need to streamline the decision review process and introduce non-costly appeal mechanisms, there is some doubt about the involvement of staff from adjacent or nearby councils as planning arbiters. Industry would have greater confidence in dealing with arbiters with more than local government experience. ❖ Planning arbitration costs should be covered in the Section 82A review payment. The applicant should not be required to pay both a Section 82A fee and the costs associated with the use of an independent arbiter. |
| A9 | <ul style="list-style-type: none"> ❖ Many councils already provide extensive plan lodgement forms, guidelines and checksheets. However, as with the development controls, these are not consistent for the same types of development. A single state-wide DA-lodgement guideline, checklist and plan templates (i.e. waste management plan, environmental management plan, termite management plan etc.) would significantly assist applicants. Councils should not exceed the application requirements once established. |
| A10 | <ul style="list-style-type: none"> ❖ See chapter 2.5 of the submission |
| A11 | <ul style="list-style-type: none"> ❖ Applicants should have the option of choosing a planning arbiter or proceeding directly to court for planning appeals. |
| A12 | <ul style="list-style-type: none"> ❖ Industry supports a review of agency referral requirements. More streamlined processes need to be introduced. |

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| A13 | ❖ There is wide industry support for standardising consent conditions. It might be best for Government to provide councils with a list of standard development consent conditions rather than require councils to adhere to state guidelines. |
| A14.1 | ❖ There should be no artificial limit imposed on the number of Section 96 modifications for a particular project. Better clarification of what is “substantially the same development” might be a more appropriate reform in this area. This would provide certifiers with the confidence to sign-off on minor project variations and eliminate the need for S96 amendments. Anecdotal evidence suggests that many Section 96 amendments are lodged on the advice of accredited certifiers who are reluctant to certify work or plan amendments, despite the apparent ‘consistency’ of the proposed change. |
| A14.2 | ❖ Section 96 already provides scope for an error to be corrected by council and the council has discretion to waive the fee, which is set at a lower rate than the standard fee for other modification requests. It is unclear what improvement is necessary. |
| A14.3 | ❖ HIA agrees that SEPP 1 should be applicable to Section 96 modifications. |
| A15 | <ul style="list-style-type: none"> ❖ See chapter 2.3 of the submission. ❖ Industry would be comfortable with statutory assessment periods. Industry has consistently argued that a track-based assessment system for development applications, i.e. where the complexity of assessment matches the complexity of the project. It follows that the statutory assessment periods should better reflect the type of application being dealt with. |
| A16 | <ul style="list-style-type: none"> ❖ See chapter 2.3 of the submission. ❖ Industry has consistently argued that it should not be asked to recover costs where poor service is provided. For monopoly services a regulated fee is appropriate. Where assessment or review paths are optional, industry does not object to fees based on cost recovery. |
| A17 | ❖ Industry supports the standardisation of notification procedures. |

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| A18 | <ul style="list-style-type: none"> ❖ The reforms should introduce a better reporting basis for the various types of DAs received. Reducing overall processing times for “all DAs” might prove possible but not necessarily productive. Monitoring of processing times for specific types of DAs is required. ❖ The percentage benchmarks relating to the number of projects the PACs and JRPPs should deal with are arbitrary. The Discussion Paper indicates exactly what types of development the PACs and JRPPs should consider. The benchmarks are unnecessary. |
| Chapter 5 - Exempt and Complying Development | |
| C1 & C2 | <ul style="list-style-type: none"> ❖ HIA welcomes the expansion of these categories of development and is able to assist development in the formulation of suitable guidelines. ❖ It has been suggested by some that complying development would apply to projects up to a value of \$1 million. Such a limit is arbitrary and unnecessary. The default codes should be developed according to project type. Default criteria should be designed to match the context of the development (e.g. greenfield or infill) irrespective of the value of the project. |
| C3 | <ul style="list-style-type: none"> ❖ The initiative to create a Complying Development Expert Panel (CDEP) is supported. |
| C4 | <ul style="list-style-type: none"> ❖ HIA supports a single state-wide housing code. Such a code would need to recognise different housing forms across urban and regional NSW. HIA could assist the Government in developing relevant criteria for each housing landscape. |
| C5 | <ul style="list-style-type: none"> ❖ HIA supports the development of defaults codes. Such codes should not prohibit complying development where technical building solutions are available. For example, the default code should consider ways of permitting complying development in flood affected areas where construction is flood-resistant and above the designated minimum floor levels. ❖ Bushfire classification should also not be considered an impediment to complying development, where accurate mapping has been undertaken, as the method to resolve this restriction is a technical construction detail, as set out in AS 3959. Updating current bushfire maps would help overcome some of the current complying development restrictions. |
| C6 | <ul style="list-style-type: none"> ❖ The Government and the CDEP need to ensure that alternative complying develop codes prepared by Councils are principally consistent with the default housing code and only allow place specific variations where justification is provided. |

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| C7 | <ul style="list-style-type: none"> ❖ HIA welcomes the monitoring of all categories of development. The monitoring report should provide information on the type of complying development approvals and the type of DA approvals. This will assist in tracking the effects of the reform proposals and will highlight those areas where further reform might be needed. |
| C8 | <ul style="list-style-type: none"> ❖ See chapter 2.4 of the submission ❖ There are a number of ways in which discretion may be applied to the assessment and approval of complying development. HIA has commenced discussions with the government in this regard and is willing to provide further assistance where required. ❖ It is essential that certifiers are sufficiently supported in their decision-making through the use of established protocols and assessment guidelines. Whatever course is finally decided upon, it is essential to build confidence in the certification system. Public education is fundamental to achieving the reform objectives. |
| C9 | <ul style="list-style-type: none"> ❖ The reforms should not provide an avenue for greater fee collection by councils. Industry will give further consideration to an appropriate fee regime for complying development once an agreed assessment process is determined. The government should seek to avoid council input and associated fees in the assessment of complying development wherever possible. |
| C10 | <ul style="list-style-type: none"> ❖ HIA agrees with the suggested process but strongly recommends that any local development should be assessed against the default housing code i.e. just because a development application is required to be submitted to council, that project should not be assessed against a whole new set of housing criteria. Council's assessment of a non-complying house, for instance, should be limited to the area of non-compliance. |
| C11 | <ul style="list-style-type: none"> ❖ HIA supports this initiative. The default code should allow the assessment and approval of development projects where quantifiable technical solutions can be applied. |
| C12 | <ul style="list-style-type: none"> ❖ HIA considers that it would be more appropriate for councils to advise adjoining owners upon issuing or receiving a complying development certificate. Private certifiers would not have access to adjoining owner details. The site should be signposted prior to the commencement of work. |
| C13 & C14 | <ul style="list-style-type: none"> ❖ HIA agrees with these recommendations |
| C15 | <ul style="list-style-type: none"> ❖ See chapter 2.6 of the submission. |

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| C16 | <ul style="list-style-type: none"> ❖ HIA supports a prioritised implementation of the default codes. Given that a major tenet of the reform package is to assist “mum and dad” users of the system and given the large number of residential related applications (comprising 70% of all DAs), it would be appropriate for the housing code to be completed and implemented by 1 July 2008. |
| C17 | <ul style="list-style-type: none"> ❖ HIA strongly concurs with this recommendation for a public education campaign once the reformed system is decided. |
| C18 | <ul style="list-style-type: none"> ❖ HIA supports the role out and monitoring of complying development. In order to gauge meaningful performance, it will be necessary to consider the types of development for which complying development certificates are issued. |
| Chapter 6 - e-Planning Initiatives | |
| E1 – E9.2.4 | <ul style="list-style-type: none"> ❖ See chapter 2.5 of the submission. ❖ The development of e-Planning is an essential ingredient of planning reform. It is fundamental to DA tracking, to the development of practical exempt and complying default codes and to accessing zoning and site specific development restriction information. It would be relevant for the government to develop a best practice system outlining what an e-planning system should look like and how it should operate. Consistency across councils is imperative. Whilst industry welcomes the suggested e-Planning target dates, it is likely that substantial local government financial assistance will be necessary for these to be achieved. |
| Chapter 7 – Building and Subdivision Certification | |
| B1 – B5 | <ul style="list-style-type: none"> ❖ The term used in section 109E(1A) of the EP&A Act for the appointment of the PCA should be used to ensure consistency and reduce complexities within the certification system. ❖ HIA does not support any restriction of trade within the certification system. If a restriction is put in place, it should be similar to the APSI legislation which prevents more than 80 % of a person’s income being derived from one client. ❖ Certifiers that usually carry out small jobs will be limited in accepting a major job if it comes along due to the limitation of receivable income. Missed business opportunities will prevent a number of certifiers from growing and expanding their businesses. ❖ The paper states that the BPB will have the power to exempt certifiers in rural areas but does not explain the selection process for this exemption. ❖ Existing auditing processes are well regarded by the industry and provide sufficient |

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| | probity checks. |
| B6 & B7 | HIA agrees with these recommendations. |
| B8 | ❖ The registration of design professionals may provide additional rigour in the planning and building system, however it is not considered to be a high priority in the present reform package. |
| B9 | ❖ HIA supports the clarification of roles and responsibilities of councils and accredited certifiers in relation to enforcement of matters during construction which are ancillary to a development. |
| B10 | <ul style="list-style-type: none"> ❖ There are sufficient fines and orders in legislation which give councils the power to address unauthorised work. ❖ Enforcement bonds are unnecessary and would be very difficult to enforce. It is unclear who would pay the enforcement bond. The builder may not be involved in all aspects of the development on the site i.e. ancillary development and landscaping and therefore should not take responsibility for all of the conditions of the development approval. ❖ In terms of cost recovery and a user pays approach, any system of income attached to enforcement such as 'on the spot fines' should be tightly managed and the overall income be transparent. |
| B11 | ❖ Building certificates should only be increased for those seeking a retrospective approval for unauthorised work and not at the time of sale of a building. |
| B12 | ❖ The current BPB powers to fine or suspend an accredited certifier or attach conditions on their accreditation are considered sufficient. The new powers have only be in place for 12 months and it recommended that a review be undertaken after a further 12 months of operation to more clearly identify where these powers may not be adequate. |
| B13 | HIA agrees with this recommendation. |
| B14 | ❖ HIA supports greater involvement by accredited certifiers in the certification of subdivisions. |

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| B14.1 | ❖ A land owner should not be limited in choosing who they can engage for subdivision certification. |
| B14.2 | HIA agrees with this recommendation. |
| B14.3 | ❖ If a charge is put in place for council to review a subdivision certificate, the fee should be prescribed, as presently occurs for the lodgement of certificates. |
| B15 | HIA agrees with this recommendation. ❖ The smooth operation of strata certification has been impeded by a lack of clear guidance information being distributed by both the Building Professionals Board and Land Property Information. Changes made to the EP&A Act and the Conveyancing (Sale of Land) Regulation following the Campbell Inquiry to improve the process are not understood by local councils and the interaction between strata certification and building certification creates significant delays in the process. |
| B16.1 | ❖ Smooth implementation of the default housing code will hinge on the education of both council and accredited certifiers. ❖ HIA supports ongoing CPD training for all building professionals, regardless of where they are employed. |
| B16.2 | ❖ Clarifying the role between council and an accredited certifier when a complaint is received is an important part of defining the role of the PCA. There are some examples of councils taking proactive steps to deal with complaints and communicate with accredited certifiers when acting as the PCA. Awareness that a complaint exists is important. |
| B16.3 | HIA agrees with this recommendation. |
| B16.4 | ❖ Changes to the legislative requirements for final and interim occupation certificates over the last 3 years have created some confusion across councils and building professionals. ❖ There are circumstances which now exist where a building may not be able to receive an occupation certificate and no practical avenue for remedy exists. Where this is a house, it can be a stressful and complex situation where no party in the proceedings is comfortable with the final outcome (e.g. where a critical stage inspection is missed). ❖ It also appears that some changes have been reactive to minor complaints dealt with by the Building Professionals Board and insufficient industry consultation has been undertaken prior to the changes being made. |
| B16.5 | HIA agrees with this recommendation. |

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| B16.6 | <ul style="list-style-type: none"> ❖ The present mandatory inspection regime has not been smoothly implemented, particularly in residential buildings. ❖ Any changes to increase the number of inspections and building types subject to mandatory inspection should not be carried out until appropriate industry consultation has been undertaken, including the involvement of building owners. |
| B16.7 | HIA agrees with this recommendation. |
| B17 | <ul style="list-style-type: none"> ❖ HIA supports the auditing of accredited certifiers and councils. ❖ The BPB should provide transparent information on the number and percentage of complaints received per year similar to the Victoria Building Commission's online building portal, pulse^o. The Victoria Building Commission's pulse provides a portal of consumer surveys along with analysis and data on Victoria's building industry. A recent Victorian pulse consumer survey randomly selected 600 consumers who had building work completed from 2005 to 2006, and interviewed them on their building experience - 92% percent of respondents rated their satisfaction as high or very high. |
| Chapter 8 - Strata Management Reform | |
| S1 – S3 | ❖ Industry considers these recommendations to be fair. |
| S4 & S5 | ❖ Industry has reservations about the need to restrict the number of proxies that can be held by one person and whether proxies can be assigned through contractual arrangements. A preferred approach would be to establish specific protocols for owner corporation issues such as defective building work and the allocation of building management contracts. |
| S6 | ❖ Industry agrees that fair trading inspectors should be permitted to enter common property on the invitation of the individual owners. |
| S7 | ❖ It may be that only minor changes to the Community Land Management Act are required. HIA would prefer for further consultation to occur before the suggested recommendations are legislated. |
| S8 | ❖ HIA strongly concurs that an education campaign for strata owners is necessary. |
| Chapter 9 - Resolving Paper Subdivisions | |
| PA1 – PA3 | See chapter 2.8 of the submission. |

| Chapter 10 - Miscellaneous Reforms | |
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| M1 | <p>❖ The reforms do not include any specific recommendations regarding the lapsing of development consents but the Discussion Paper raises the desire to “ensure [that] an appropriate balance between developers’ rights and the ability to plan for changing circumstances is restored”. The issue centres on what constitutes ‘physical commencement’ of development and whether recent court decisions have been too liberal in this regard. Industry would suggest that the problem, if indeed one does exist, should first be quantified before action is taken. Secondly, industry would be concerned about legislation that attempts to empower councils with the right to determine whether a developer has a “real intention” to act upon a consent, having commenced physical works. Any changes to the legislation should allow an applicant / developer ample opportunity to justify their intentions regarding the completion of work commenced.</p> |
| M2 | Not a residential building matter. |
| M3 | <p>❖ The automatic conversion of an existing LEP into a standard LEP should be permitted if the content is identical and the format is the only alteration. Any changes to policy or development controls should adhere to the existing processes for the making of an LEP. Industry would accept a streamlined process for the conversion of LEPs into the new standard format where only ‘minor’ changes to policy or development controls were involved, but would also expect to be notified of such changes and provided an opportunity for input.</p> |
| M4 | Not a residential building matter. |
| M5 | <p>❖ Compulsory mediation on planning matters is somewhat different to the resolution of commercial disputes which typically involve the negotiation of a financial settlement. Compulsory mediation can actually add costs to the dispute resolution process, primarily because:</p> <ul style="list-style-type: none"> • Planning law is a public law which does not easily lend itself to negotiated settlements; • Council staff are not often in a position to agree to possible settlements without seeking formal ratification from the elected council. Sometimes objectors may not be satisfied with an agreed outcome or may not have been party to it, creating political tension at the mediation stage; • Mediation is usually required to be undertaken early on in the court appeal process, |

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| | <p>often before experts have been engaged or reports prepared. In such circumstances parties are often unwilling to compromise their positions because they do not yet know the strength of their case.</p> <ul style="list-style-type: none"> ❖ Compulsory mediation is unlikely to be any more effective than voluntary mediation as it relies on each party's willingness to compromise and is not binding. If the willingness to compromise was real, then the parties would voluntarily seek mediation. ❖ In the interests of saving costs and time, applicants should be given the option to choose between alternative dispute resolution and proceeding directly to a litigation hearing. |
| M6 | <ul style="list-style-type: none"> ❖ Minor amendments to matters before the court should continue to be allowed, provided the proposal remains substantially the same development. Major amendments should also be allowed where a better outcome is achieved (and where both parties agree or, at least, where no objection to the improved proposal can be justified). All in all, if an improved result is achieved and a decision is able to be made by the court, it would be pointless to abandon the court proceedings to require the submission of a new application to the council. |
| M7 | <ul style="list-style-type: none"> ❖ Whilst a 'statement of environmental effect' can provide a useful summary of planning issues relevant to a project, councils have been known to over-specify what they should contain. It is important to ensure that basic domestic work is not burdened with a requirement for superfluous information. It might be appropriate therefore to distinguish information requirements according to the category of the project proposal. |
| M8 - M12 | Not residential building matters. |